

Water Resources

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In the Name of Allah the most Beneficent the most Merciful

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Preface

Air and water are the most important things for the existence of mankind, a constant supply of which is required in great quantity. In comparison to other planets a speciality of the planet Earth is that it has been supplied with oxygen in such bounteous quantities to suffice creatures everywhere and that its purification and supply is constantly undertaken. It is another matter altogether that man at times works towards harming this gift of nature; so much so that the West has now developed weapons which when used eliminate the supply of oxygen from the area targeted.

After air the second most important need is of water. Be it sweet or saline, water in both forms is required by man. Sweet water quenches thirst for us and the production of fruits, flowers, vegetables and grains is linked to it. Even the animals from which we derive meat would not be able to live without water nor would they receive nutrition. The saline water that courses the seas absorbs pollutants from the land. This evaporation in the form of steam is the basis of cloud formation and after getting filtered by the atmosphere this steam changes into the sweet water that later pours back to the ground. In essence the conditions for life are so arranged in Allah's innovative scheme that they are dependent on the presence of water: 'وَجَعَلْنَا مِنَ الْمَاءِ كُلَّ شَيْءٍ' (Al Anbiya: 30)

The growing population and industries also require huge amounts of water. It is thus that the issue of water is

gaining importance on a national as well as international scale and it is estimated that any future wars will be fought over water. Another truth lies in the fact that water resources are being exploited at a very high rate. The present scenario also raises many questions pertaining to the issue of water. As Muslims, it then falls upon us to deliberate on these issues in the light of Islamic sharia and disseminate the extroversive lessons gained from doing so into the world. With this backdrop the Islamic Fiqh Academy, India organized its 20th seminar at Rampur titled “Water Resources and Related Provisions”. Not only in India but perhaps in the entire world, this seminar was the first of its kind which analysed the topic at hand from every perspective.

Even though this was a relatively unfamiliar topic it was especially joyous to witness practitioners and masters of jurisprudence taking to their pens in such large numbers and presenting their papers on the various dimensions of the issue. Summaries of the various papers were distributed; the writers presented their papers on the various aspects of the issue, time was allotted for discussions and the panel then ruminated and put forward its observations. These papers have now been completed by Talha bin Ehtesham and are presented to the readers for their perusal. I pray that Almighty Allah accepts this endeavour and other academic endeavours on the academy’s part as Sadqah Jariah on behalf of the founder Maulana Qazi Mujahidul Islam Qasmi. والله هو المستعان

Khalid Saifullah Rahmani

(General Seceretary, Islamic Fiqh Academy, India)

3, January 2014 AD

Water Resources and Related Sharia Rulings

One of man's basic necessities is water. If the water is sweet, it quenches our thirst, is used in cooking, washing clothes and many other tasks. And even if it is saline like that of the seas its uses are manifold because nature has endowed it with the extraordinary properties of absorbing pollutants and dissolving contaminants.

With the progression of culture and industry human population also incurs an increase. This in turn creates a larger demand for water, the shortage of which is a cause of worry for the entire world. So much so that it is said that the future shall see wars over water. In fact even now not just different nations but even states within individual nations are facing disputes over rights to rivers and seas. Improper usage of water has already led to issues regarding water pollution and efforts are underway to reclaim polluted water and make it fit for consumption. In light of this the following questions demand comprehensive and rational answers:

- 1- What rulings does the sharia list out pertaining to the use of water?
- 2- Under what circumstances is extravagance in using water applicable and what sharia rulings back them?
- 3- What procedures does the sharia outline to protect against water pollution and is following them obligatory or simply ethical in value?

- 4- Nowadays stored water which is dirty or contaminated can be chemically treated and made usable. Chemical treatments make possible to rid the water of bad odour and impurities. Will water thus purified be considered ritually pure?
- 5- In view of water shortages governments put restrictions over certain uses of water. Is the government entitled to put up such restrictions and is following these restrictions approved by the sharia?
- 6- Is water found on individual property categorized as personal or public property? For example, a government forbids boring on private property to protect the water table against further decline. Is the government entitled to such a decision from the Islamic point of view and would it be compulsory to follow such a directive under the sharia?
- 7- In some countries citizens are also held responsible for the protection of water reservoirs. This leads to a secure supply for usage and also aids in raising the water table. If the government were to ask its citizens to allot a certain portion of their homes to water conservation, would it be entitled to doing so and would the implementation of this be compulsory according to the sharia. Also, is reservoir building the responsibility of the government or can people also be held accountable for it?
- 8- In some places the population has to be moved to allow the construction of dams or large scale reservoirs. Often even inhabited areas fall under these water projects. In such a

case when collective interests are at hand can the inhabitants of these areas be compelled to vacate their homes and move to alternative areas being provided to them?

- 9- Suppose a settlement is struck by a destructive flood and is about to face ruin. In such a case people break the dam built to hold the water and as a result the water moves forward. This area is now safe for the time being but the next settlement now faces a greater risk of danger. Assuming that the settlement lies at a lower altitude than the previous one, there is a greater risk of destruction occurring here. Under such circumstances is it permissible for the inhabitants of the first settlement to break the dam and release the water?
- 10- To what extent can citizens and individuals utilize seas, rivers, public wells, springs and government lakes?
- 11- If a stream flows adjoining various areas and people's farms then to what extent are those people entitled to utilize the water of that stream for irrigation or consumption?
- 12- Under what circumstances does water become private property?
- 13- Under circumstances in which a person can claim ownership to water, is trading of water held under ownership allowed? –it should be noted that in present times trading in water has become an important and profitable activity.
- 14- An aspect of the spread of urban populations is that in low lying areas (where ponds are essential) plotting is

done and these are then sold to make settlements. On the one hand this leads to the water being divided among the people and also affects rainwater harvesting. As a whole this results in depletion of the water table and causes shortage for the entire population. Is reclamation of land under ponds to create settlements justified? What are the ruling in case the government lays objections to this or otherwise?

- 15- The charter of the government states that it shall provide the citizens with water for drinking and other uses. Even rural areas are covered under this order in developed countries. Is the supply of water then an obligation of the government and is it every citizen's right to demand it? If the government then sets a charge on water would it stand correct in demanding a price and would it be entitled to cessation of supply in case of non payment of charges from the Islamic point of view?
- 16- The same questions arise in the case of used or dirty water and its drainage for which the government has laid out a sewage system. Not only are the interests of the population linked to drainage, the health of the entire settlement is tied to it. From a sharia perspective, will drainage then be considered a duty of the government and a right of the citizens?



Sharia Rulings on Water resources

Water is a very precious gift from Allah and is one of man's most basic needs. This is why Allah has sent many commands pertaining to it. Therefore its importance must be respected and extravagance in its usage has been prohibited. Polluting it has also been strictly forbidden and because it is required by everybody, monopolizing it has not been validated. Nor has the creation of any sort of cache that impinges on another person's right been allowed.

- 1) In situations where the use of water has been allowed, using water beyond need or without due need is extravagance.
- 2) Wastefulness in shared water is Haraam and if the water is owned personally then it is Makruh (disliked).
- 3) The sharia has not just laid out provisions for keeping water pure but instead it has also laid out various provisions to safeguard water against pollutants. Therefore this too is necessary.
- 4) In the face of water shortage if a government prohibits certain uses in the name of the greater good then it is right in doing so insofar as the restrictions do not interfere with any physical or sharia requirements.
- 5) Water under private property is originally present and is not anybody's property. In times of need and in the name of common good the government can put a hold on boring activities.

- 6) Protection of water and the building reserves is originally a responsibility of the state. However this responsibility can also be diverted to the citizens and they can be asked to participate and undertake measures to maintain the water table.
- 7) In times of need and for the greater good, a population can be displaced on condition that immediate compensation is provided which is sufficient to appease and facilitate rehabilitation of the people.
- 8) It is important to keep in mind the safety of both the raised and lower settlements and as much as possible solutions that keep damage minimal should be considered.
- 9) Fulfilling one's needs without stepping over other's needs is acceptable.
- 10) Utilizing water the stream according to one's needs is allowed insofar as the needs of other and the stream itself are not harmed.
- 11) Under situations in which water is purposefully secured in utensils, big or small or other objects, ownership is established. However water may not be modified in any form which may affect other members of the population negatively.
- 12) Upon obtaining ownership of water, trade in its commodity is allowed as long as public welfare is not affected. Therefore exploiting public taps and water reserves and taking more than one is entitled to over the share of others and then selling such water is not permitted.

- 13) Plotting in low lying areas and sale of such land to create settlements is not correct in the face of general harm irrespective of the government's prohibition or permission.
- 14) The availability of water to every citizen is one of the state's responsibilities. It can exact suitable compensation for doing so and also has the power to discontinue supply to those who do not pay in return for the service.
- 15) The drainage of water and the security of the citizens' health is the state's responsibility. It is the citizens' duty to respect the state's efforts and laws in this regard.



Abstracts

Water Resources and Related Sharia Rulings

Maulana Safdar Zubair Nadvi

The Islamic Fiqh Academy's 20th jurisprudential seminar is going to be held in the city of Rampur in the state of Uttar Pradesh between the 5th and 7th of March, 2011. For the purpose of discussion the Academy has selected four topics and "Water Resources and Related Sharia Rulings" is one among them. The Academy received 27 papers on this topic, the summaries of which are being presented to you now. The names of the authors of the received entries are as follows:

[Maulana Sher Ali, Mufti Rashid Husain Nadvi, Maulana Abu Sufyan Miftahi, Qazi Abdul Jaleel Qasmi, Maulana Khursheed Anwar Azmi, Hafiz Sheikh Kalimullah Umri, Dr. Bahauddin Nadvi, Mufti Muhammad Huzaifa Dahoodi, Maulani Naeem Akhtar Qasmi, Maulana Abrar Hasan Ayyubi Nadvi, Maulana Abdullah Kaviwalla, Maulana Ataullah Qasmi, Qazi Muhammad Kamil Qasmi, Mufti Syed Baaqir Arshad Bangalori Qasmi, Maulana Muhammad Usman Bastwi, Mufti Zaheer Ahmad Kanpuri, Mufti Rehmatullah Nadvi, Maulana Ruhul Amin, Maulana Sabahuddin Malik Qasmi, Maulana Muhammad Shahjahan Nadvi, Maulana Tanzeem Alam Qasmi, Maulana Aamir Zafar Ayyubi, Mufti Shahid Ali Qasmi, Maulana Muhammad Mustafa Qasmi,

Maulana Tauqeer Badar Qasmi, Maulana Syed Abdur Raheem Hasani Kashmiri, Sheikh M. A. Abdul Qadir]

As introduction to their papers many authors chose to begin by expounding upon the value of water, its importance to animals, man's basic need for it, Islamic teachings and verses explaining its use and have shed light on the issue using verses and hadiths in concord with their arguments, which are highly informative and beneficial. However to avoid dragging the summary unnecessarily let's glance over them and move turn towards the main arguments and answers to the questions.

1) General guidelines pertaining to the use of water:

Question 1: What rulings does the sharia list out pertaining to the use of water?

While talking about the general rulings on the use of water most authors have especially pointed out the purifying abilities of water, for instance, in ablution, bathing, for the removal of impurities and by deeming it an essential need for mankind. They have also talked about its importance in food and drink and other necessities of daily life. [Refer to papers by Mufti Hussain Nadvi, Maulana Khursheed Anwar Azmi etc.]

(١) "وينزل عليكم من السماء ماء ليطهركم به ويذهب عنكم رجز الشيطان" (Al-Anfal:11)

(٢) "هو الذي أنزل من السماء ماء لكم منه شراب ومنه شجر فيه تسيمون" (Al-Anhal:10)

(٣) "وثيابك فطهروالرجز فاهجر" (Al-Mudatthir:4-5)

(٤) "هو الطهور ماءه" (Mishkaat: Kitab Al-Taharah, Chapter: Provisions on Water, 1/51)

With these as a foundation Maulana Abrar Hasan Ayyubi Nadvi and others have enumerated provisions pertaining to water in the light of Quranic verses:

- 1) Water is used in man's food and drink.
- 2) Man may use water for cleanliness and purification.
- 3) It can also be used to irrigate fields and orchards.
- 4) It can be fed to one's animals.
- 5) Man must avoid squandering and wastefulness in using water.
- 6) He shall save water from contamination.
- 7) He may not use water as a form of exploitation or harassment of others.
- 8) His ownership over water shall be recognized by obtainment of it.
- 9) He will not prohibit any use of water by others which can prove beneficial to them.

Whereas Mufti Tanzeem Alam Qasmi has gone further and declared the generation of electricity and the operation of factories and various industries a direct dependence on water.

Types of water:

Under this heading, certain authors have detailed out the various kinds of water. Mufti Syed Baqir Arshad Qasmi has listed six:

- 1) Water from the skies, i.e., Rainwater
- 2) Seawater
- 3) Water from streams and canals
- 4) Water from wells
- 5) Water from springs
- 6) Water from ice.

On the other hand, Mufti Zaheer Ahmad Kanpuri has categorized the entire water body into four. He lists water accumulated in utensils and has omitted rainwater and water

from ice. He says that water collected in utensils becomes the property of the utensil owner and that person may sell the water according to the sharia. (Referred: ul Fiqh Al Islami Wadilltuhu 6/4661, Badai' Al Sanai 6/188, Tabayeen Al Haqaiq, 4/39, Shami 5/311)

Sharia Ruling:

Similarly certain authors have categorized water in relation to cleansing and management of impurities. Mufti Syed Baqir Arshad Qasmi divides this into three kinds: pure, clean and impure, while Maulana Rehmatullah Nadvi lists five varieties adding pure and purifying water that is detestable and water that is suspect. He further elaborated that pure and purifying water that is detestable is the kind that has been drunk by an impure or generally dirty animal. In Hanafi thought using such water for ablution in the presence of other free water is disliked and in Shafi'i thought water in utensils made of minerals other than gold or silver which has been left out in the sun falls under this category. Similarly regarding water that is suspect, Hanafi thought opines that if a donkey or a mule drinks from a small amount of water, that water becomes suspect. Therefore in the short term its purity or impurity cannot be determined. This is to say that it shall not render any ritually pure person impure or any impure person pure either.

Maulana Syed Abdur Raheem Hasani has copied a long quote from the Kitab Al-Fiqh 'Ala Al-Mazahib Al-Arba'ah (1/29-30) and writes that among the Hanafis ablution or bathing with water that has been heated by the sun is disliked when this water is held in a utensil made of materials other

than gold or silver. Similarly water used by an alcoholic is also detestable in situations where the alcoholic's saliva mixes with the water. The same applies for water that comes in contact with eagles, crows, free roaming fowl and cats, because these animals do not avoid impurities. (Kitab Al-Fiqh 'Ala Al-Mazahib Al-Arba'ah (1/30)

Whereas Maulana Muhammad Mustafa Qasmi, Maulana Aamir Zafar Ayyubi and others have taken into account the various types of rulings regarding the uses of water in their essays:

- 1) Obligatory: ablution for the call to prayer
- 2) Sunnah: Jum'ah, Eid, Arafah and Ihram ablutions
- 3) Recommended: ablution over ablution
- 4) Permissible: usage of water for all various necessities in due amounts
- 5) Disliked: profusion in the use of one's water reserves
- 6) Strictly forbidden: Use of water in excess of legitimate need

Maulana Aamir Zafar Ayyubi has given the following justification for 'Recommended' status to ablution over ablution:

"عن غطيف قال: كنت عند ابن عمر فلما نؤدى بالظهر توضأ فصلي فلما نؤدى بالعصر توضأ فقلت له، فقال: كان رسول الله ﷺ يقول: من توضأ على طهر كتب له عشر حسنات "

(Abu Dawood)

While Maulana Muhammad Mustafa Qasmi has added a variety "Haram" and has mentioned a couple of things under it:

- 1) Using water without the owner's permission
- 2) Use of water for ablution or bathing if the person is aware of the possibility that another may die of thirst

- 3) Use of water for ablution or bathing if it may cause harm to others
- 4) Use of water if it is either so cold or so hot that it may harm

2) Excessive use of water and sharia rulings in this regard

Question 2: Under what circumstances is excess in using water allowed and what is the sharia ruling in this regard?

Almost all the authors stand in agreement on the answer to this question which is that using water in a quantity above the situation and its requirement is considered excess and depending on the situation this can be deemed haram or detestable.

The definition of excess:

Certain authors have defined the term 'excess', for instance:

(١) " (.....)الاسراف فى اللغة: مجاوزة القصد، أما فى الاصطلاح الشرعي: و هو محاوزة الحد"
"السرف الذي نهى الله عنه فهو ما أنفق فى غير طاعة الله قليلا كان أو كثيراً"

(Al Mausuah Fiqhiya 4/176)

(٢) "الاسراف صرف الشئ فيما ينبغى زائدا على ما ينبغى"

(Radd Al Muhtar 10/494, Kitab Al Ta'rifat/26, Qawaid Al Fiqh/p177)

(٣) "إن الإسراف هو الاستعمال فوقه الحاجة الشرعية وإن كانت شط نهر"

(Bahr, Hashiya Tahtawi 'ala Maraqi Al Falah/p53)

(٤) "الإسراف تعدي الحد، فمنهاهم عن تعدي الحلال إلى الحرام، وقيل ألا يزيدوا علي فقد الحاجة "

(Ahkam Al Quran, Ibh Al-Arabi 3/190)

- 5) Maulana Abdul Majid Daryabadi writes that ‘excess’ means spending without limit or is a misplaced fashion. (Tafseer Majidi 2/150)[Paper:Maulana Rehmatullah Nadvi]

٦) " (Jalalain/232, footnote 11)الإسراف هو الزيادة في الانفاق في موقعه"

- 7) Hazrat Thanwi opines: Excess is being unaware of the quantity, this means being unaware of what amount is to be spent and what isn't. (Bayan Al Quran 1/83)[Paper: Maulana Ataullah Qasmi]
- 8) Maulana Muhammad Mustafa Qasmi writes quoting the Maariful Quran (5/470) that according to some venerated gentlemen ‘excess’ and ‘squandering’ hold similar contextual meanings. This means that usage for any sinful purpose or in any unnecessary occasion will be considered excessive or squanderous. And in situations where there is need and more than needful is spent, there the use will be termed excessive. This is why squandering is worse than excessive use. This opinion is also held by Mufti Abdullah Kaviwalla.
- 9) Almost in similar fashion Maulana Muhammad Usman Bastwi has quoted Al Tafseer Al Muneer (5/58) in writing that squandering would mean the use of resources –that have been bestowed for the fulfilment of permissible desires- for the fulfilment of non permitted and illegal desires. Similarly excess in using a resource would be use greater than need and deviation from moderation. A verse states:

"والذين إذا أنفقوا لم يصرّفوا ولم يقتصروا وكان بين ذلك قوما" (Al Furqan: 67)

Conditions of excess in using water:

In this regard almost all of the authors are of the opinion that in places and situations where water is used, like in ablution, bathing, cleansing oneself, washing clothes, in consumption etc, using more than is required, or is a sunnah amount would be considered excess. These gentlemen have presented the hadiths of bathing with a Sa', ablution with a Mudd, and wastage during ablution as sound hadiths.

Evidences:

- (١) "كلوا واشربوا ولا تسرفوا"
(Al Anham/141)[Mufti Shahid Ali Qasmi, Maulana Muhammad Mustafa Qasmi, Mufti Baqir Arshad Qasmi]
 - (٢) "إن المبذرين كانوا إخوان الشياطين"
(Bani Israel/27) [Maulana Muhammad Mustafa Qasmi, Mufti Shahid Ali Qasmi]
 - (٣) "عن جابرٍ أن النبي ﷺ كان يتوضأ بالمد ويغتسل بالصاع"
(Bukhari 1/304, Muslim 1/258)
 - (٤) "عن ابن جبير قال سمعت أنسا يقول: كان النبي ﷺ يغتسل أو كان يغتسل بالصاع إلى خمسة أمداد ويتوضأ بالمد"
(Bukhari 1/23)
 - (٥) "عن سفيّنه أن النبي ﷺ كان يتوضأ بالمد ويغتسل بالصاع"
(Tirmidhi 1/18)
 - (٦) "عن عبدالله بن عمرو بن العاص أن رسول الله ﷺ مر بسعد وهو يتوضأ فقال: ما هذا السرف؟ فقال: أفي الوضوء سرف؟ فقال: نعم، وإن كنت على نهر جار"
- (Masnad Ahmad, Hadith: 7065, Sunan Ibn Majah, Hadith: 465)

(٧) "ومنه (الإسراف) الزيادة على الثلاث أى فى الغسالات مع اعتقاد أن ذلك هو السنة، لما قدمناه من أن الصحيح أن النهى محمول على ذلك فإذا لم يعتد ذلك، وقصد الطمأنينة عند الشك أو فقد الضوء على الوضوء بعد الفراغ منه فلا كراهة...."

(Radd Al Muhtar Ala Al Durr Al Muhtar 1/259)
[Papers: Maulana Muhammad Shahjahan Nadvi,
Maulana Abrar Hasan Ayyubi Nadvi]

Excess in Ablution:

(١) أما الزيادة على الثلاث الموعبة فمكروه عند الجمهور لأنها من السرف في الماء

(Al-Mausua Al-Fiqhiya 4/178-179)

Abdullah bin Mubarak Says:

لا آمن إذا زاد في الوضوء على الثلاث أن يأتى (131/ Tohfatul Ahwazi)

Excess in Ghushl:

(١) "من سنن الغسل التثليث، بأن يفيض الماء على كل بدنه ثلاثاً مستوعباً، والزائد على ذلك يعتبر إسراف مكروهاً"

(Al Mausua Fiqhiya 4/180)

Excess in Food and Drink:

(١) "قال رسول الله ﷺ: أن من الإسراف إن تأكل كل ما اشتهيت"

(Ma'rif Al Quran 3/546)

(٢) "ومن الاسراف فى الأكل، الأكل فوق الشبع، وكل ذلك محظور" (Ahkam
Al Quran Al Tabari 3-4/138)

3) The use of water in an amount that is more than what is required is a strictly forbidden. A hadith states:

"إن شرار أمتى الذين يسرفون فى فضل الماء....وفى الدر: ويكره الإسراف تحريماً ولو بماء النهر أو المملوك"

(Tahtawi Ala Maraqqi Al Falah/45)

"قد أجمعت الأمة على كراهة الإسراف فى الطهور وضوءاً كان أو
غسلاً أو طهارة عن النجاسات، وإن كان على شط نهر جار"

(Bazl Al Majhuda/61)

٤) "وما زاد على الشبع فهو مكروه أو ممنوع على الخلاف بين الفقهاء"

(Al Mausuah Al Fiqhiya 4/185-186)

5) And Maulana Sher Ali Gujrati writes that Allama Abdul Hayi Firangi Mahli has declared profusion in ablution haram in Al Sia'yah (Al Sia'yah/184)

Descriptions of Sa' and Mudd:

In this regard Maulana Rashid Hussain Nadvi, Maulana Muhammad Huzaifa Dahoodi and others have resorted to 'Al Awzan Al Mahmooda' and have thus elaborated upon the terms sa' and mudd:

A mudd consists of two ritls and one sa' is made up of four mudds upon the exact quantity of which there is difference of opinion. Indian scholars place one sa' at 3.149 kilograms and 4.127 litres and because one sa' is equal to four mudds therefore it comes out to be 787.320 grams and 1.031 litres. Thus a sa' is just over 4 litres and a mudd is a little over one litre.

Mufti Abdullah Kawiwalla, referring to Tuhfat Al Ma'i has mentioned the weight of the Prophet's (PBUH) bathing water as 3 kilos 150 gram and the weight of water used by him for ablutions as 790 grams. (Tuhfat Al Ma'i 1/287)

However Maulana Syed Abdur Rahman Hasani Kashmiri, has written while referring to the Badai' Al Sanai' (1-144) that the quantity specified with regard to ablution and bathing is not binding or compulsory because the using more or less than the amount is considered invalid but because the hadiths talk about the use of water in extremely insufficient quantities also.

"إن رسول الله ﷺ كان يتوضأ بثلاثي مد"

(Abu Dawood Hadith: 94, Nasai 1/58)

In relation to this hadith Maulana Kalimullah Umri has quoted this saying attributed to Tirmidhi:

"قال الشافعي وأحمد وإسحاق ليس معنى هذا الحديث على التوقيت أنه

لا يجوز أكثر منه ولا أقل منه وهو قدر ما يكفي" (Tirmidhi: 56)

Similarly this too has been written that the Prophet (PBUH) was known to have taken baths with one 'farq' (a utensil that could hold 9 ser of water) worth of water and this is recorded in the Sahih Hadiths. (Bukhari: 250, Muslim: 319, Abu Dawood: 238, Nasai: 127)

Meanwhile Maulana Aamir Zafar Ayyubi says that the quantity mentioned in the hadiths is only sunnah and not compulsory as is in the Badai':

"ثم هذا الذي ذكره محمد من الصاع والمد في الغسل والوضوء ليس

بتقدير لازم بحيث لا يجوز النقصان عنه أو الزيادة عليه بل هو مقدار

أدنى الكفاية عادة حتى لو أن من أسبغ الوضوء بدون ذلك اجزأه وإن لم

يكفه زاد عليه لأن طباع الناس وأحوالهم تختلف" (Badai' Al

Sanai' 4/144-145)

Situations considered excess:

Certain authors, like Maulana Qazi Abdul Jaleel Qasmi, Mufti Abdullah Kawiwalla and others have enumerated the various situations of excess. These are as follows:

- 1) Washing the required body parts more than thrice during ablution
- 2) Washing the body more than thrice during major ablutions
- 3) Running of water pumps even after the water tank has been filled to the brim

- 4) Bathing or performing ablutions with the tap running
- 5) Leaving the flush running on the toilet
- 6) The use of bath tubs for bathing is considered extravagant
- 7) The use of excessive water in bathing animals
- 8) Using unnecessary water while washing clothes or utensils
- 9) Using too much water while irrigating fields or gardens
- 10) Renewing one's ablution unnecessarily
- 11) Fountains at crossings are unnecessary displays of water
- 12) Bathing in swimming pools is also an extravagant use of water. This case is also included in the Inghimas Fi-al Ma'

Sharia opinion regarding excess:

- ☆ Maulana Muhammad Usman Bastwi and others have elaborated upon this and said that the dislike for excess in using water and the justifications for it are dependent on the need, permissibility, ownership etc of water:
- 1) If water is owned and there seems to be abundance of it, then profusion in using it is not devoid of dislike.
 - 2) If water is owned but there exists scarcity, then excess in usage that may encroach upon others or your one's own rights to water is not acceptable according to the sharia.
 - 3) If water is owned by another and you are allowed its use under special circumstances then exceeding those circumstances is not allowed by the sharia.

4) If water is provided by a donor for the purposes of ablution, drinking or bathing then using that water in situations that exceed the original purposes is not permitted by the sharia.

☆ Maulana Ruhul Amin is of the opinion that if any water becomes completely useless and cannot be used anywhere then that would constitute a strictly forbidden act. On the other hand if water is used by a stream and after using it is left so that it flows back into the river, this would constitute an undesirable act and is unlike the first act as is said by Ibn Abidin:

"ويؤيده ماقدمه الشارح عن الجواهر من أن الإسراف في الماء الجاري جائز لانه غير مضيع، وقدمنا أن الجائر قد يطلق على ما لا يمتنع شرعاً فيشمل المكروه تنزيهاً" (Radd Al Muhtar 1/259)

☆ Maulana Muhammad Shahjahan Nadvi has outlined various situations related to wastage of water during ablution or bathing, for instance:

- 1) Washing of the required body parts more than four or five times while being unaware of the sunnah attached to doing so thrice is to be considered excessive and strictly forbidden. [Papers: Maulana Khurshid Anwar Azmi, quoting: Radd Al Muhtar 1/258]
- 2) Leaving faucets or taps in the mosque running while performing ablutions which leads to unmeasured wastage is haram.
- 3) During baths pouring water unnecessarily more than thrice over the body is to be considered excessive and forbidden. Sheikh M.A. Abdul Qadri is also of this opinion.

- ☆ Maulana Syed Abdul Raheem Hasani writes that using less water than necessary is also considered undesirable just like as excess is using water for ablution is undesirable and this is in a situation when water is personally owned. But if the water is being supplied for the public good then wastage in it is haram and Maulana Rashid Hussain Nadvi is also of the same opinion.
- ☆ Whereas Maulana Qazi Abdul Jaleel Qasmi and Mufti Tanzeem Alam Qasmi and others say that if excessive usage occurs in privately held water then it is an act strictly forbidden and if in public use water then haram. They present the following arguments in favour:
"ويكره الإسراف فيه تحريماً لو بماء النهر أو المملوك له، أما الموقوف على من يتطهر به المدارس فحرام"
(Hashiya Tahtawi Al Maraqqi/80)
- ☆ Maulana Khursheed Anwar Azmi has also written in reference to Badruddin Aini's Umdat Al Qari (2/3) that it proves that there is a dislike for extravagance with water. And in reference to the Bazl Al Mahjud (1/247) that scholars have transcribed the consensus of the community regarding extravagance in using water. [Refer to paper: Maulana Naeem Akhtar Qasmi]
- ☆ Maulana Muhammad Mustafa Qasmi considers profusion in using or wasting water haram.
- ☆ Maulana Ataullah Qasmi says that the verse "كلوا واشربوا ولا تسرفوا" the negating segment of "لا تسرفوا" has been used and its emphasis is the action of "Not" hence wastefulness is haram.
- ☆ And Maulana Muhammad Shahjahan has pointed out two situations related to wastefulness being haram. He writes

that all such situations in which water is wasted unnecessarily without control, they are haram and profusion in water in amounts in excess of the situation is strictly forbidden.

☆ Mufti Abdullah Kawiwalla has declared excess or extravagance in using water strictly forbidden.

☆ Whereas Mufti Shahid Ali Qasmi, Maulana Abrar Hasan Ayyubi Nadvi have deemed it undesirable.

"اتفق أصحابنا وغيرهم على ذم الإسراف في الماء في الوضوء والغسل، قال البخاري في صحيحة: كره أهل العلم الإسراف فيه والمشهور أنه مكروه كراهة تنزيه، قال ألبغوي والمتولى حرام"

(Al Majmu' Sharh Al Muhadhdhab 2/152)

"ترك التقتير والإسراف من المندوبات، وذكر الحلواني أنه سنة، وعليه مشى قاضي خان، ولا يلزم كونه رائدا على المأمور به وغير طاعة أن يكون حراماً، نعم، إذا اعتقد سنينته يكون قد تعدي وظلم لاعتقاده مالم يس بقربة فلذا حمل علماءنا النهي على ذلك يكون منهياً عنه ويكون تركه

سنة مؤكدة" (Radd Al Muhtar 1/268)

Sharia rulings to safeguard water against contamination:

Question 3: What measures has the sharia prescribed regarding keeping water free from contamination and do these fall under the compulsory category or are they simply ethically preferable in nature?

All the authors agree upon the fact that it is haram and impermissible to pollute water. The gentlemen have presented similar proofs and some of the important ones are as follows:

Proofs:

(١) "قال رسول الله ﷺ: لا يبولن أحدكم في الماء الدائم الذي لا يجري ثم يغتسل فيه"

(Bukhari, Bab Al Baul Fi Al Ma' Al Daim, Hadith: 239)

(٢) "قال رسول الله ﷺ: لا تبل في الماء الدائم الذي لا يجزي ثم تغتسل منه"
(Sahih Muslim, Bab Al Nahi An Al Baul Fi Al Ma' Al Daim)

(٣) "عن أبي هريرة أن النبي ﷺ قال: إذا أستيقتظ أحدكم من نومه فلا يغمس يده في الإناء، حتى يغسلها ثلاثاً، فإنه لا يدرى أين باتت يده"
(Rawah Muslim 1/136, Hadith: 278)

(٤) "غطوا الإناء وأوكوا السقاء، فإن في السنة ليلة ينزل فيها وباء، لا يمر بإناء ليس عليه غطاء، أو سقاء ليس عليه وكاء، إلا نزل فيه من ذلك الوباء"

(Muslim, Hadith: 2014, Musnad Ahmad, Hadith: 19829)

(٥) "عن جابر أن رسول الله ﷺ نهى أن يبال في الماء الراكد"
(Muslim, Hadith: 281)

"وفي رواية: نهى أن يبال في الماء الجاري"
(Al Tabrani, Majma Al Zawa'id 1/82)

☆ "عن معاذ بن جبل مرفوعاً: اتقوا الملاعن الثلاث: البراز في الموارد، وقارعه الطريق والظل، وفي رواية وأفنيتهم"
(Abu Dawood, Ibn Majah)

(١) "أما قوله ﷺ "الذي يتخلى في طريق الناس" فمعناه ان يتغوط فموضع يمر به الناس "ومانهى عنه في الظل والطريق" لما فيه من إيذاء المسلمين بتنجيس من يمر به وتنته واستقراره"

(Sharh Muslim 1/122)

(٢) "فحينئذ إذا ذكروا مكروها فلا بد من النظر في دليله، فإن كان نهياً ظنياً يحكم بکراهة التحريم، إلا مصارف للنهي عن التحريم إلى الندب، فإن لم يكن الدليل نهياً بل كان مفيداً للترك الغير الجاز فهي تنزيهية"

(Radd Al Muhtar 1/97)

(٣) "كره بول وغائط في ماء ولو جارياً في الأصح، وفي البحر: أنها في الراكد تحريميته وفي الجار تنزيهيته، وفي الرد: نهى ان يبال في الماء"

الراكذ ونهى أن يبال فى الماء الجارى، والمعنى فيه أنه يقدره، وربما أدى ألى تنجيسه"

(Radd Al Muhtar 1/555)

٤) "البول فى الماء الجارى مكروه كذا فى الخلاصة، ويكره البول فى الماء الراكذ وهو المختار"

(Fatawa Hindiya 1/25)

٥) "قال الكاسانى: أم تنجيس الطاهر فحرام، فكان هذا (لا يبولن أحدكم ألخ) نهيا عن تنجيس الماء الطاهر"

(Badai' 1/209)

٦) "وإن أراد أن يحفر بئر بالوعة يمنع أيضا لسراية النجاسة إلى البئر"

(Sharh Wiqaya 1/81)

"ويكره تحريما البول والغائط فى ماء و لوجاريا، و على طرف نهر و حوض وبئر و عين ماء"

(Al Fiqh Al Hanafi 1/63)

With the above mentioned proofs in sight certain gentlemen pronounced judgements upon polluting water in the following manners:

Mufti Zaheer Ahmad Kanpuri writes that in some situations the protection of water from contamination is individual duty and in certain situations it can be appointed duty of some. Protection of water for personal usage from pollution falls under individual duty and the protection of water that is greater than one's requirement falls in the latter definition. The following have linked the protection of water from contamination to the preservation of life and the preservation of religion.

- Polluting water out of volition can warrant punishment. [Maulana Sabahuddin Malik Qasmi]
- The use of the word 'Baul' (meaning urine) has been used in place of all kinds of excretions and impurities,

discharge of any excretions or impurities into water though is haram. [Maulana Ataullah Qasmi

- Non abidance to the rules regarding protection of water from contamination is disliked [Sheikh Kalimullah Umri]
- In such places polluting should be considered strictly forbidden or at least disliked according to the sharia. [Maulana Rashid Hussain Nadvi]
- Polluting water should be forbidden and impermissible is the water is pure and the jurist should ensure that if the pollutant is harmful to the public then spreading it be forbidden. [Sheikh M.A. Abdul Qadri]

Detailed rulings about protecting water from contamination:

☆ Certain authors have noted the various ruling according to situations, presented below:

Maulana Abrar Hasan Ayyubi Nadvi has noted the following rulings:

- 1) Do not breathe into a vessel while drinking from it.
- 2) Wash the hand before immersing in a vessel holding water.

These rulings are of an ethical nature

- "عن أبي سعيد الخدري أن النبي ﷺ نهى عن النفخ في الشراب"
(Al Timridhi)

The Fath Al Mulhim states:

"وهذا النهي للتأديب لارادة المبالغة في النظافة أن قد يخرج مع النفس بصاق أو مخاط أو بخار أو ردى فيكسبه رائحة جو أو غيره، كذا في الفتح"
(Fath Al Mulhim Sharh Al Muslim 1/525). Allama Aini has also considered this reason made this an ethical prohibition. (Umdat al Qari Sharh Al Bukhari 2/419)

- In the Hadith: 'إذا أستيظ أحدكم من نومه ألخ' The Author of A'la Al Sunan has written: "يدل على أن النهي للتنزيه" (A'la Al Sunan 2/25). Similarly scholars have also written in regard to a saying attributed to Hazrat Usman: "دعا ببناء" فيه "فأفرغ على كفيه ثلاث مراراً فغسلهما ثم أدخل يمينه في الإناء إدخالهما في الإناء" (Umdat Al Qari 2/442) "غسل اليدين قبل ولولم يكن عقيب النوم ولهذا مستحب بلاخلاف

But the condition here is that the hand has not come in contact with impurity.

- 3) Do not urinate in water.
- 4) Do not put waste and refuse in rivers or canals.
- 5) Do not divert dirty water from workshops and factories into rivers.

The rulings of the level of Wajib (Obligatory).

- With regard to the hadith: (Bukhari) "لا يبولن أحد كم في" Hafiz Ibn Hajar has written:

"قال القرطبي: يمكن حمله على التحريم مطلقاً، على قاعدة سد الذريعة لأنه يفضى إلى تنجيس الماء"

(Fath Al Bari, Sharh Sahih Al Bukhari 1/348)

- And in the context of this hadith scholars say: "والتغوط" and further states.

"السابع: المذكور فيه الغسل من الجنابة فيلحق به الاغتسال من الحيض والنفاس وكذلك يلحق به اغتسال، الجمعة و الاغتسال من الميت عند من يوجبها" (Umdat Al Qari 2/670)

This shows that putting impurities into a necessity of sustenance is strictly forbidden at the very least.

"قال رسول الله ﷺ: اتقوا اللاعنين، قالوا: وما اللاعنان يا رسول الله قال: الذى يتخلى فى طريق الناس وظلهم"

(Abu Dawood, Hadith: 25)

Hazrat Maaz Bin Jabal's narration contains the word "الملاعن الثلاثة" and includes the addition of (Abu Dawood, Hadith 26) "البراز فى الموارد"

Allama Shams ul Haq Azimabadi while commenting upon this hadith in the Awn Al Ma'bud has written: والحديث يدل على تحريم التخلّى فى طرق الناس أو ظلهم، لما فيه من إيذاء المسلمين بتنجيس "من يمرّ به واستنقذاره المراد بالموارد (Awn Al Ma'bud Sharh Abu Dawood 1/43) يمرّ به واستنقذره المراد بالمراد المجارى والطرق إلى الماء"

☆ Maulana Shahjahan Nadvi has categorized the rulings according to "لا يبولن أحدكم فى الماء" in the following order"

- 1) If there is little water, that means if it is less than ten hands and still then urinating in it is haram.
- 2) If water is more, i.e. equal to or more than ten hands and still, even then urinating in it is haram.
- 3) If despite its flowing nature the amount of water is little then urinating in it is strictly forbidden.
- 4) Urinating in rivers or ponds is disliked.
- 5) Urinating in the sea is best avoided.
- 6) Urinating in the sea during a journey can be considered.
- 7) Urinating or defecating near a well, tank, stream or canal in a manner that leaves the possibility of germs permeating into the soil is strictly forbidden.

☆ Maulana Muhammad Huzaifa Dahoodi, Maulana Ruhul Amin, Maulana Muhammad Mustafa Qasmi and others have mentioned the following rulings and instances:

- 1) Prohibition on urinating into still water.
- 2) Prohibition on urinating into flowing water.

- 3) Prohibition on relieving oneself on the banks of streams.
- 4) Prohibition on bathing from still water in a state of sexual impurity.
- 5) Prohibition on urinating in the bathing space.
- 6) Prohibition on polluting water in other manners, like coughing, clearing the throat or nasal passages into water.
- 7) Prohibition on inserting unwashed hands into a utensil just after waking up.
- 8) Prohibition on blowing into or exhaling into a utensil holding water.
- 9) Direction to cover utensils holding water.
- 10) Prohibition on putting ones mouth to a water skin or canteen while drinking.

Certain proofs in favor of these are:

- (١) "خمرُوا الأنية وأكوا الأسقية" (Bukhari, Muslim)
- (٢) "نهى النبي ﷺ أن يشرب من فى السقاء" (Bukhari: 5628)
"عن جابر أن رسول الله ﷺ أنه قال: غطوا الإناء، فإن لم يجد أحدكم إلا أن يعرض على إنائه عودا أو يذكر اسم الله فليفعَل" (Muslim 2/170)
- (٣) "لا يغتسل أحدكم فى الماء الدائم وهو جنب" (Muslim 1/138)
"قال رسول الله ﷺ: لا يبولن أحدكم فى مستحمه ثم يغتسل فيه قال احمد: ثم يتوضا فيه، فإن عامة الوسواس منه" (Abu Dawood 1/14)
- (٤) "نهى رسول الله ﷺ أن يتنفس فى الإناء أو ينفخ فيه" (Abu Dawood 2/176)
- "نهى رسول الله ﷺ أن يتخلى الرجل تحت شجرة مثمرة ونهى أن يتخلى على ضفة نهر جار" (Riwayat Al Tabrani Fi Al Awsat, 2392)

"أما البول فى الماء الراكد فقد نقل عن ابي الليث أنه ليس بحرام إجماعاً بل مكروه ونقل غيره إنه حرام ويحمل على كراهة "التحريم، لأن غايه مايفيده الحديث كراهة التحريم" (Al Bahr Al Raiq 1/159)
 (٥) "اختلفوا فى كراهة البول فى الماء الجارى والأصح هو الكراهة" (Al Bahr Al Raiq 1/159)
 "ومن منهيّاته (أى الوضوء) التوضأ..... فى موضع نجس، لأن لماء الوضوء حرمة..... وإلقاء النخامة والاستخاط فى الماء" (Dur M'a Al Rad 1/260)

☆ Maulana Muhammad Shahjahan Nadvi has written that urinating in water can cause the spread of Bilharziasis causing germs, especially in still water. After undergoing some genetic progression these turn into potent microbes swimming in the water and once they have entered the body cause diseases like inflammation of the liver. (Dr. Izzeddin Faraj: Al Islam Wa Al Wiqayah Min Al Amraz P.85, Dr. Muhammad Ali Albaz: Hak Hinak Tib Nabwi p289) [Also see paper: Maulana Syed Abdul Raheem Hasani]

Is the order to protect water from contamination obligatory or ethical?

As a general observation the authors of the papers have declared the rulings for the protection of water against contamination not just ethically applicable but also obligatory. The following gentlemen have categorized them as being obligatory:

[Maulana Muhammad Usman Bastwi, Syed Baqir Arshad Qasmi, Maulana Muhammad Huzaifa Dahoodi, Maulana Sabahuddin Malik Qasmi, Maulana Sher Ali Gujrati, Maulana Tauqeer Badr Qasmi, Qazi Abdul Jaleel Qasmi, Mufti

Adbullah Kawiwalla, Maulana Abu Sufyan Miftahi, Maulana Khursheed Anwar Azmi etc.]

Certain authors have chosen to distinguish between the rulings on situational basis over their being obligatory or ethical, for instance:

- ☆ Maulana Shahid Ali Qasmi feels that if a person pollutes water he holds ownership over, then, only in situations when this act shall not result in public loss, the prohibition is of an ethical nature and if the situation is of polluting rivers, lakes, and other public use water bodies in a manner that causes harm to the public then the prohibition is strict and obligatory.
- ☆ Mufti Tanzeem Alam Qasmi writes that the case for obligatory or not depends on the situation of whether the contamination of the water is likely or not. If contamination is likely then distance from it obligatory and if contamination is not likely then avoiding it is an ethical issue.
- ☆ Maulana Syed Abdul Rahim Hasani Kashmiri has quoted the various situational rulings pertaining to relieving oneself in water from the Al Fiqh 'Ala Al Mazahib Al Arba'ah. The text is as follows:

(١) "الحنفية قالوا: يحرم قضاء الحاجة في الماء الراكد حراماً شديداً، فإن كان كثيراً كره البول فيه تحريماً، بمعنى أن الحرمة تكون أخف لكثرة، فإذا كان الماء جارياً فإن البول فيه يكره تنزيهاً، إلا إذا كان مملوكاً للغير ولم يأذن بالبول فيه، فإنه يحرم البول فيه وإن كان كثيراً ومثله الموقوف"

(٢) "المالكية قالوا: يحرم قضاء الحاجة في الماء الراكد إذا كان قليلاً، أما إذا كان مستبحراً كالماء الموجود في البحيرات التي في الحدائق الكبيرة،

والأحواض الواسعة، فإن البول فيه لا يحرم إلا إذا كان مملوكاً للغير ولم يأذن باستعماله، أو أذن باستعماله، ولم يأذن بالبول فيه، وإلا كان البول فيه حراماً، فإن البول فيه يجوز، إلا إذا كان مملوكاً للغير، ولم يأذن فيه، أو كان موقوفاً"

٣) "الحنابلة قالوا: يحرم التغوط في الماء الراكد والجاري، سواء كان قليلاً، أو كثيراً، إلا ماء البحر، فإنه لا يحرم فيه ذلك، لما قد تقتضيه ضرورة الأسفار، فضلاً عن اتساعه وعدم ظهور شيء من ذلك فيه، أما البول فإنه يكره في الماء الركد، ولم يحرم، كما يكره البول في الماء الجاري الكثير، ولا يكره في الماء الجاري القليل، ومحل هذا كله إذا لم يكن الماء موقوفاً، أو مملوكاً للغير ولم يأذن في استعماله إذن عاماً وإلا حرم قضاء الحاجة فيه مطلقاً"

٤) "الشافعية قالوا: لا يحرم قضاء الحاجة في الماء قليلاً كان، أو كثيراً، ولكن يكره فقط إلا إذا كان الماء مملوكاً للغير ولم يأذن في استعماله أو كان مسيلاً ولم يستبحر فإنه يحرم في هاتين الحالتين إلا أنهم فرقوا في الكراهة بين الليل والنهار، فقالوا: يكره قضاء الحاجة نهاراً في الماء القليل، لا فرق بين أن يكون راكداً أو جارياً، أما في الليل فقالوا: يكره البول في الماء سواء كان قليلاً، أو كثيراً"

(Kitab Al Fiqh 'Ala Al Mazahib Al Arba'ah 1/87)

4- Chemically treating dirty water:

Question 4: Nowadays stored water which is dirty or contaminated can be chemically treated and made usable. Chemical treatments make possible to rid the water of bad odour and impurities. Will water thus purified and be considered ritually pure?

Definition of 'Chemical change':

- 1) The linguistic meanings of chemical change are 'the straightening of something and then it's bending, (Lisan Al Arab 4/274)

"حال الشيء واستحال: أى تغير عن الاستقراء إلى العوج"

In common parlance the term means: (Radd Al Muhtar 1/519) "إنقلاب حقيقة إلى حقيقة أخرى"

[Paper: Maulana Muhammad Shahjahan Nadvi]

2) (Maraqi Al Falah p86) "الاستحالة طهر الأعيان النجسة كالميتة إذا صارت ملحا والعذرة ترابا أو رمادا"

[Paper: Maulana Muhammad Huzaifa Dahoodi]

☆ In this regard most of the authors have written that if contaminated water is chemically treated to completely remove its impurities then it shall be considered pure, when all three attributes of that water, namely colour, taste and smell are removed.

Proofs:

(١) "الماء طهور لا ينجسه شئ إلا ما غير لونه أو طعمه أو ريحه"

(Ibn Majah, Sharh Ma'ani Al Aasar 1/9)

(٢) "هذا الماء والطعام كان طيبا لقيام الصفة الموجبة لطيبه فإذا زالت تلك الصفة وخلفتها صفة الخبث عاد خبيثا، فإذا زالت صفة الخبث عاد إلى ما كان عليه، وهذا كالحصير الطيب إذا تخمر صار خبيثا فإذا عاد إلى ما كان عليه عاد طيبا، الماء الكثير إذا تغير بالنجاسة صار خبيثا فإذا زال التغير عاد طيبا"

(I'lam Al Mauqeein 1/392)

(٣) "أما غسالة النجاسة الحقيقية وهي ما إذا غسلت النجاسة الحقيقية ثلاث مرات فالمياه الثلاث نجسة (إلى) وهل يجوز الانتفاع بالغسالة فيما سوى الشرب والتطهير (إلى) لأنه لما لم يتغير إن النجس لم يغلب على " الطاهر، والانتفاع بما ليس بنجس العين مباح في الجملة."

(Badai' Al Sanaih 1/206, Al Hindiyya 1/19)

(٤) "إذا كان الماء الممتنّس كثيرا وزالت أوصاف النجاسة عنه لو نا وطعما وريحا صار طهوراً فلا ينجس ما أصابه من ثوب أو مكان أو بدن وإن لم تنزل منه أوصاف النجاسة بل بقي بعضها تنجس ما يصيبه من ثوب أو بدن أو مكان"

(Fatawa Al Lajnah Al Daa'imah, Fatwa: 3022)

٥) "إن التطهير يكون بأربعة: الغسل، والدلك، والجفاف، والمسح، في الصيقل.....والسابع انقلاب العين"

(Al Bahr Al Raiq 1/394)

6) Imam Ibn Taymiyyah says:

"وأما إذا تغير (الماء) بالنجاسة، فإنما حرم استعماله لأن جرم النجاسة باق، ففي استعماله استعمالها، بخلاف ما إذا استحالت النجاسة فإن الماء طهور و ليس هناك نجاسة قائمة"

(Fatwa Ibn Taymiyyah 21/33)

7) Imam Ibn Qayyim says:

"الماء الكثير إذا تغير بالنجاسة صار خبيثا، فإذا زال التغير صار طيبا.....إن يسير النجاسة إذا استحالت في الماء ولم يظهر لها فيه لون ولا ريح ولا طعم فهي من الطيبات لا من الخبائث"

(I'lam Al Mauqeein An Rab Al Alamin 2/11)

8) He goes on to say:

"إن الطيب إذا استحال خبيثا صار نجسا كالماء والطعام إذا استحال وعذرة، فكيف أثرت الاستحالة في انقلاب الطيب خبيثا ولم تؤثر في انقلاب الخبيث طيبا، والله يخرج الطيب من الخبيث والخبيث من الطيب"

(I'lam Al Mauqeein 2/14)

9) The Council of Senior Scholars, Hejaz in their 13th jurisprudential seminar organized in Taif decided upon this situation's justification:

"بناء على ما ذكره أهل العلم من أن الماء الكثير المتغير بنجاسة يطهر إذا زال تغيره بنفسه، أو بإضافة ماء طهور إليه، أو زال تغيره بطول مكث، أو تأثير الشمس ومرور الرياح عليه، أو نحو ذلك، لزوال الحكم بزوال علته - وحيث إن المياه المتنجسة يمكن التخلص من نجاستها بعدة وسائل، وحيث أن تنقيتها وتخليصها مما طرأ عليها من النجاسات، بواسطة الطرق الفنية الحديثة لأعمال التقنية يعتبر من أحسن وسائل الترشيح والتطهير حيث يبذل الكثير من الأسباب المادية لتخليص هذه المياه من النجاسات، كما يشهد بذلك ويقرره الخبراء المتخصصون بذلك ممن لا يتطرق الشك إليهم في علمهم وخبرتهم وتجاربهم- لذلك فإن

المجلس يرى طهارتها بعد تنقيتها التتقية الكاملة، بحيث تعود إلى خلقتها الأولى، لا يرى فيها تغير بنجاسة من طعم ولا لون ولا ربح، ويجوز استعمالها في إزالة الأحداث والأخبث، وتحصل الطهارة بها منها، كما يجوز شربها إلا إذا كانت هناك أضرار صحية تنشأ عن استعمالها، فيمتنع ذلك، محافظة على النفس، وتقاديا للضرر، لا لنجاستها" "والمجلس إذ يقرر ذلك يستحسن الاستغناء عنها في استعمالها للشرب متى وجد إلى ذلك سبيلا، احتياطا للصحة، واتقاء للضرر، وتنزها عما تستقذره النفوس وتنفر منه الطباع"

[Paper: Maulana Sabahuddin Malik Qasmi]

Some gentlemen however have detailed out their opinions, for instance:

- ☆ Maulana Rashid Hussain Nadvi says that impurity in itself is not capable of accommodating purity. For example, alcohol, urine, or blood, leave no means of purification unless there is a reversal in the state or in the case of alcohol it leaves the mind and bloodstream. It is mentioned in Shami:

"وكذا يطهر محل نجاسته، أما عينها، فلا تقبل الطهارة" (قوله أما عينها).....ولا يرد طهارة الخمر بانقلابها خلا، والدم بصيرورته مسكاً، لأن عين الشيء حقيقته، وحقيقة الخمر والدم ذهبت، وخلفتها أخرى، وإنما يرد ذلك لو قلنا ببقاء حقيقة الخمر والدم مع الحكم بطهارتها"

(Shami 1/240 Bab Al Anjas, Pub: Maktaba Faiz Al Quran, Deoband)

Maulana Muhammad Huzaifa Dahoodi, Mufti Abdullah Kawiwalla, Maulana Rehmatullah Nadvi also share this point of view.

Maulana Rehmatullah Nadvi further says: However, if a certain area or place is without sewage infrastructure and the Muslims reach a consensus for action, there shall be no parallel to that force.

☆ Maulana Muhammad Huzaifa Dahoodi says –and this is almost exactly expressed by Maulana Muhammad Mustafa Qasmi- that in filtration, there is separation and removal and not a reversal of state. And urine etc which are comprised of impurities can't be purified via filtration however the non impure components, because of removal via separation will become pure on condition that the basis premises of impurity are eliminated.

☆ Maulana Syed Abdul Rehman Hasani has given three conditions for terming water impure:

First: Impure offal that has taste, colour and odour.

Second: Waste from infectious diseases and contamination from germs and medicines.

Third: Waste and other impurities in drain water that lead to the growth of insects and organisms which are impure according to nature and the sharia. After purification of such water it is important to verify the extent to which these have been removed from it because a change in its taste, colour and odour is not proof sufficient of whether it has been rid of harmful germs and organism.

In this context, the following is a very comprehensive piece by the author of Badai':

"إن النجاسة إذا تغيرت بمضى الزمان وتبدلت أوصافها تصير شيئاً آخر، عند محمد فيكون طاهراً، وعند أبي يوسف لا يصير شيئاً آخر فيكون نجساً، وعلى هذا الأصل مسائل بينهما منها: الكلب إذا وقع في الملاحة والجمد والعذرة إذا أحرقت بالنار وصارت رماداً، وطين البالوعة إذا جف وذهب أثره، والنجاسة إذا دفنت في الأرض وذهب أثرها بمرور الزمان وجه قول أبي يوسف: إن أجزاء النجاسة قائمة فل تثبت الطهارة مع بقاء العين النجسة، والقياس في الخمر إذا تخلل أن لا يطهر لكن عرفناه نصاً بخلاف القياس، بخلاف جلد الميتة، فإن عين

الجلد طاهرة، وإن من نجس ما عليه من الرطوبات وإنها تزول بالدباغ،
وجه قول محمد رحمه الله: إن النجاسة لما استحالت وتبدلت أو صافها و
معانيها خرجت عن كونها نجاسة لأنها اسم لذات موصوفة، فتتعدم
بانعدام الوصف وصارت كالخمر إذا تخللت"

(Badai' Al Sanai' 1/243)

- ☆ Maulana Abrar Hasan Nadvi while describing this says that he exchanged ideas with certain specialists in chemistry about this issue and they told him about that in water treatment facilities water is heated to specific temperatures and after passing it through various stages it is finally filtered. This process affects its contamination, its smell and its taste and if treatment is not possible in this manner then the water is not considered completely pure.

The above mentioned method of treatment of water is not a recent invention although science and technology certainly have made the procedure much easier and effective. This concept of sterilizing water was presented by Muhammad Bin Ahmad Al Tamimi in the 4th century Hijri. For its time this was a most brilliant method of purifying water presented in "Maadat Al Baqaa" and now modern science has verified and supported it.

Dr. Khalid Arab in his book "Kaif Waajahat Al Hazarat Al Islamiya Mushkilah Al Miyah" presents a quote from "Maadat Al Baqaa" titled "Mushkilat Talath Al Miyaa" which is presented below:

"ليس إصلاح الماء الفاسد ممكناً بغير طبخه بالنار، إيط النار بحرّها تحلل ما فيه من الغلط وتزيل عنه ما مازجه من فساد الهواء المشابك له، بما يتصاعد بحرّها من بخاره المصفى لجوهره المميط عنه الغلط المميز عنه الكدر، أو يمزجه عنه عند شربه بلشراب العتيق الريحاني، وذلك عند تعذر إصلاحه بالطبخ لمن كان مسافراً على طريق أو مجتازاً ببعض المواضع الفاسدة المياه"

"وسبيله أن يديم طبخه إلى أن يذهب منه الربع ثم يبرد في أنية من جديد
الخزف المتخلل الأجزاء الدائم الرشح إن كان الوقت قيظا - أو في أنية
من الزجاج"

(Kaif Wajahat Al Hazarat Al Islamiya Mushkilah Al
Miyah/45)

In conclusion from the above passage two things are
clear: 1) Seething water rigorously 2) Filtration of water (the
implementation of two steps thoroughly purify water).

Dr. Khalid Arab writes after analyzing the opinions of
Muhammad Bin Ahmad Al Tamimi Muqaddasi:

"تستنتج مما سبق، أن التمييم، قبل ألف عام قد أتى في مجال تلوث
المياه ومعالجتها بأراء تعد سبعا حضاريا في ذلك الوقت، وقد أثبت العلم
الحديث صحت الكثير منها"

(Kaif Wajahat Al Hazarat Al Islamiya Mushkilah Al
Miyah p47, Dr. Khalid Arab)

The gist of the whole argument is that if a lot of water
is impure and it is subjected to chemical processes which
remove its impurities and an original state of smell and taste is
returned to it, then that water should be pure.

Maulana Ruhul Amin mentions two cases in which the
Hanafi consider the impure turns into the pure:

First case: Among the Hanafis only one situation is
found where the impure turns pure, that situation is when water
is set to flow. This means that if from one end water enters and
from the other it is expelled then it shall be considered pure
because by virtue of the water flowing plausible doubt emerges
that perhaps the impurity has also flown with it. Therefore the
presence of the impurity in the water is now questionable and
under this situation the impurity of the water can't be
ascertained and it shall be considered pure.

"ثم المختار طهارة المتنجس بمجرد جريانه أي بأن يدخل من جانب
ويخرج من آخر حال دخوله وإن قل الخارج"

(Dur Ma'a Al Shami 1/345)

فى البدائع: ومنها تطهر الحوض الصغير إذا تنجس....قال الفقيه أبو
جعفر الهندواني إذا دخل فيه الماء وخرج بعضه يحكم بطهارته بعد ألا
تستبين فيه النجاسة، لأنه صار ماء جاريا ولم يستيقن ببقاء النجس فيه
وبه أخذ الفقيه أبو الليث (Badai' Al Sanai 1/447 Beirut Press)

Among the Hanafis another process for deeming the impure pure is a process that changes the impurity's essence. This means that that when an impurity's original substance is eliminated then according to this rule the impurity shall not remain impure. Thus, if a dog falls into a salt mine and turns into salt and if dung is burnt and it becomes ash, then according to the sharia they shall be considered pure. This view is held by Imam Muhammad (R.A) and also by Hanafi Muftis. Badai' explains the reasoning behind this as:

"وجه قول محمد أن النجاسة لما استحالة وتبدلت أو صافها ومعانيها خرجت
عن كونها نجاسة لأنها اسم لذات موصوفة، فتنعدم بانعدام الوصف، وصارت
عن كونها كالخمر إذا تخللت" (Badai' Al Sanai 1/442)

Maulana Muhammad Huzaifa Dahoodi, Maulana Rahmatullah Nadvi and Maulana Muhammad Usman Bastwi have discussed the filtration of water in detail. For more information refer to their papers.

Some other views:

- Maulana Khursheed Anwar Azmi feels that in places where water is scarce and there is no other option for clean water then chemical treatments for water can be used to obtain water which shall be considered pure so that there is no hardship upon the people. This is

inferred from the verses “المشقة تجلب التيسير” and “إذا ضاق “الأمر اتسع”.

- Maulana Abdul Rahim Kashmiri has permitted the use and consumption of such water only in extreme need and urgency.
- Maulana Sher Ali says that for the purification of water it is also important that the chemical components used are also pure and goes on to say that if chemical additives are used to purify a small amount of water then it shan't be considered pure and if it is a large amount of water then it can be purified by means of using the method of flowing out the impurity, in any case flux should be observed.
- Mufti Tanzeem Alam Qasmi and others are of the opinion that the population of the earth occupies one part and the other 3/4ths comprise water so instead of filtering impure water, water from rivers, lakes and other saline sources should be desalinated and used eliminating the need for filtration and bringing nature's limitless resources under employment.

The ruling on impure water under jurisprudential light:

Maulana Syed Abdul Rahim Hasani has elaborated upon this in the following manner:

- 1) Distinguished Hanafis have declared that impurities will either be fluid like water and other fluid things (blood included) or static and solid like pigs, corpses and impure dung. So, (among these two categories) as far as water and other fluids are concerned then use of and benefit from these is haram except under two exemptions:

- a) For making slurry, mixing cement or plaster and then using it for construction.
 - b) To feed animals but with the condition that the colour, taste and smell of the water have not been affected.
- 2) The Malikis consider the use and consumption of polluted water non permissible but under certain situations it can be put to use (e.g. making slurry, animal consumption etc.) although it can't be used for the construction of mosques.
- 3) Shafi'is do not consider it permissible that water and other fluid impurities be utilized except under two scenarios:
- a) To extinguish fires like in household stoves.
 - b) Irrigation in fields and feeding to animals.
- 4) Hanbali scholars have also declared the use of impure water invalid except for use in making slurry or plaster on condition that they are not used in the construction of mosques or in them. (Kitab Al Fiqh A'la Al Madhahib Al Arba'ah 1/43-44)

Moreover Maulana Khalid Saifullah Rehmani's following statements are of great value in this regard:

“The alteration of an impurity's essence is one thing and its decomposition are two different things. If we alter the substance of something altogether then the rulings for that particular thing also change but if only some components of the thing are separated or done away with then there shall be no change in the rulings already present. If faeces is burnt and turned into ash then the ash shall not be deemed impure. Similarly if salt is added to alcohol to turn it into vinegar then

the vinegar is considered pure but if by some scientific process the smell of the alcohol is removed from it, the product shall nevertheless remain impure.

Filtering urine probably does not lead to a change in its original state but only removes changes its malodorous nature hence it shall remain impure and its consumption, use for ablution or bathing is not permitted and whichever part of the body it touches shall become unclean. (Jadeed Fiqhi Msail/108) [Paper: Maulana Syed Abdul Rahim Hasani Kashmiri]

5- The government restricting the uses of water

Question 5: In view of water shortages governments put restrictions over certain uses of water. Is the government entitled to put up such restrictions and is following these restrictions approved by the sharia?

Almost all the authors feel that the government is entitled to restrict certain uses in case of shortages but on condition that the public good and public interest is respected. Also that this restriction does not stem from a motive of unequal treatment [Papers: Qazi Abdul Jaleel Qasmi, Maulana Abu Sufyan Miftahi, Maulana Sabahuddin Malik Qasmi, Mufti Syed BAqir Arshad Qasmi, Maulana Khursheed Anwar Qasmi, Maulana Aamir Zafar Ayyubi, Maulana Rehmatullah Nadvi, Maulana Muhammad Mustafa Qasmi]

Proofs:

(١) "يا أيها الذين آمنوا اطيعوا الله واطيعوا الرسول وأولى الأمر منكم" (Al Nisa: 59)

2) During the journey of Ghazwa Tabuk the Prophet (PBUH) ordered:

"إنكم ستأتون غداً إن شاء الله عین تبوک وإنکم لن تأتوها حتی یضحی
النهر، فمن جاءها منکم فلا یمس من مائها شیئاً حتی آتی"

(Muslim: 5906) [Paper: Maulana Ruhul Amin]

٣) "الناس شركاء فی الثلاث: الماء والكلأ والنار"

(Abu Dawood: 3477)

[Papers: Maulana Ataulla Qasmi, Qazi Abdul Jaleel Qasmi]

٤) "تصرف الامام على الرعاية منوط بالمصلحة" (Al Ashbah /133)

[Papers: Qazi Abdul Jaleel Qasmi, Maulana Badrul Qasmi, Mufti Tanzeem Alam Qasmi]

٥) "فی الأشباه إذا كان فعل الإمام مبنياً على المصلحة فيما يتعلق بالأمر العام لم ینفذ أمره شرعاً إلا إذا وافقه، فإن خالفه لم ینفذ"، قال المصنف

فی شرح الكنز ناقلاً عن أئمتنا إطاعة الإمام فی غیر المعصية واجبة"

(Al Ashbah Wal Nadha'ir M'a Sharh Al Hamwi 1/412)

[Paper: Maulana Ruhul Amin]

6) According to the rule: "إذا اجتمعت البلیتان فاختر أهونهما" the public good supercedes the individual good. [Paper: Mufti Sher Ali]

٧) "فكان كل أحد بسبیل من الانتفاع لكن بشرط عدم الضرر بالنهر

كالانتفاع بطریق العامة، وإن أضر بالنهر فلكل واحد من المسلمين منعه،

لما بینا أنه حق لعامة المسلمين وإباحة التصرف فی حقهم مشروطة

بانتفاع الضرر كالتصرف فی الطریق الأعظم" (Badai' Al Sanai'

5/279)

Certain authors have deemed this restriction conditional:

☆ Maulana Ruhul Amin has said that the government's restrictions should not be contradictory to any sharia ordinance, should be in the interest of the public and should not be instituted as a law but a temporary measure because

nobody holds power to permanently outlaw anything that has been sharia approved.

☆ Maulana Abrar Hasan Nadvi feels that the circumstances under which the government puts restrictions should be certain and not presumptive and in addition should be present in toto and not partially.

☆ Maulana Huzaifa Dahoodi has negated the validity of the state's authority to restrict water usage under these circumstances:

- a) If there is a situation of water shortage, hardship is being endured and said water if used can partially or completely alleviate this shortage.
- b) The use of the water in question pertains to a use greater than the individual need.
- c) The use of said water is tied to any sharia ordinance.

☆ In this regard Mufti Tanzeem Alam Qasmi has proposed that the state should look for a middleground. Neither should such restrictions be enforced that people daily life processes like food and drink, bathing, irrigation and other necessary functions are hampered otherwise for fear of future harm the present shall also be subjected to hardship. Certainly damage can not be recompensed with damage as the adage also states: "الضرر لا يزال بالضرر"

(١) "وليس للإمام أن يخرج شيئاً من يد أحد إلا بحق ثابت معروف"

(Al Ashbah Wal Nadha'ir/189)

(٢) "وليس للحاكم منع أحد من الانتفاع بكل الوجوه إذا لم يضر الفعل بالنهر أو بالغير بالجماعة كما هو الحكم المقرر بالانتفاع في الطريق أو المرافق العامة"

(Al Fiqh Al Islami Wadillatuhu 5/597)

6- Rights of ownership over water below one's land

Question 6: Is water found on individual property categorized as personal or public property? For example, a government forbids boring on private property to protect the water table against further decline. Is the government entitled to such a decision from the Islamic point of view and would it be compulsory to follow such a directive under the sharia?

First view:

Some authors are of this view that if water is discovered under one's land then that water is that individual's and not the state's property. If the state prohibits the person from boring on his land then abiding that order is not obligatory on the individual under the sharia. This opinion is held by the following people:

[Maulana Muhammad Mustafa Qasmi, Maulana Syed Andul Rahim Hasani, Mufti Syed Baqir Arshad Qasmi, Mufti Tanzeem Alam Qasmi, Mufti Abdullah Kawiwalla, Mufti Rashid Hussain Nadvi]

Proofs:

(١) "وَأُورِثَكُمْ أَرْضَهُمْ وَدِيَارَهُمْ وَأَمْوَالَهُمْ وَأَرْضًا لَمْ تَطْوُوهَا، وَكَانَ اللَّهُ عَلَى كُلِّ شَيْءٍ قَدِيرًا"

(Quran: Surah Ahzab: 27)

[Maulana Muhammad Mustafa Qasmi]

(٢) "ولو أن من أجزاء الأرض مركب فيها ولا مؤنة في سائر الأجزاء فكذا في هذا الجزء"

(Hidaya' 1/200)

[Mufti Tanzeem Alam Qasmi]

٣) اعلم أن الماء أربعة أنواع.....والثالث ما دخل في المقاسم أى المجارى المملوكة لجماعة مخصوصة وفيه حق الشفة، ”والرابع المحرز فى الأوانى ينقطع حق غيره عنه و تمامه فى الهداية و حاصله وفى الثالث حق الشفة فقط ولا حق فى الرابع لأخذ" (Radd Al Muhtar 5/311)

٤) "ولو كان البئر أو العين أو الحوض أو النهر فى ملك رجل له أن يمنع من يريد الشفعة من الدخول فى ملكه" (Hidaya'i 4/486)

Second view:

However Mufti Rashid Hussain Nadvi, Maulana Sher Ali Gujrati and Maulana Abu Sufyan Miftahi among others say that any water found under an individual's land is that person's property but if boring into the ground will deplete the water table and cause harm to the general public then the state can forbid such boring and it shall be compulsory from the sharia point of view to follow such orders by the state. The evidences they have given in favour of this are:

١) "القاعدة الخامسة: الضرر يزال، أصلها قوله عليه السلام: لا ضرر ولا ضرار، أخرج مالک فى الموطأ.....وبيتنى على هذه القاعدة كثير من أبواب الفقه، فمن ذلك، الرد بالعيب وجميع أنواع الخيارات والحجر أنواعه على المفتى به، والشفة فإنها للشريك لدفع ضرر القسمة وللجار لدفع ضرر الجار الخ"

(Al Ashbah Wal Nadha'ir Al Ibn Nujaim/139)

٢) "يتحمل الضرر الخاص لأجل دفع الضرر العام....وعنها وجوب نقض حائط مملوك مال إلى طريق العامة على مالکها دفعاً للضرر العام الخ" (As above/142-143)

٣) "إذا تعارض مفسدتان روى أعظمهما ضرراً بارتكاب أخفهما" (As above 145)

٤) "ماء الأودية العظام للناس فيه حق الشفعة على الإطلاق وحق سقى الأراضى بأن أحيا ارضاً ميتة وكرى منه نهراً ليسقيها إن كان لا يضر

بالعامة، وإن كان يضرر بالعامة فليس له ذلك، لأن دفع الضرر عنهم واجب"

(Hidayah 4/474)

Third view:

Maulana Khursheed Ahmad Azmi, Qazi Abdul Jaleel Qasmi, Maulana Abrar Hasan Ayyubi Nadvi, Maulana Aamir Zafar Ayyubi, Mufti Shahid Ali Qasmi, Maulana Shahjahan Nadvi and Maulana Muhammad Huzaifa Dahoodi have written that water below the ground does not belong to anybody, neither the land owner nor the state and it is a commodity shared by all people. It is a gift of nature.

These gentlemen have presented the following as substantiating proofs:

(١) "الناس شركاء في ثلاثة: في الكأ والماء والنار وثمانه حرام" (Ibn Majah: 2472)

(٢) "ثلاث لا يمنعن: الماء والكأ والنار" (Ibn Majah: 2473)

(٣) "الماء الذى يكون فى الحياض والآبار والعيون ليس بمملوك لصاحبه بل هو مباح فى نفسه سواء كان فى أرض مباحة أو مملوكة" (Badai' Al Sanai' 5/274)

(٤) "الماء تحت الأرض لا يملك"

(Dur Al Mukhtar Ma' Radd Al Muhtar 10/9, Mabsut Al Sarakhsi 2/153)

(٥) "الماء الجارى تحت الأرض ليس بملك لأحد ولهذا لو حفر أحد فى ملكه واستخرج الماء الذى تحت الأرض ثم جاء آخر وحفر أبضاً فى ملك نفسه الذى هو فوق الملك الأول فتحول الماء من ملك الأول إلى ملك الثانى لا شئ للأول على الثانى، لأنه غير متعد لكون الماء تحت الأرض لا يملك فلا مخاصمة كمن بنى حانوتاً بجانب حانوت غيره فكسدت الجانوت الأولى بسببه فإنه لا شئ عليه"

(Sharh Al Majalla, 1/676, 10/265, 10/331)

However Maulana Ataullah Qasmi writes that there is only one situation for individual ownership of water and that is when a person stores water in utensils and that water can be sold if he wants to do so.

"الماء الذى فى الظروف والأوانى فهو مملوك لصاحبه، لا حق لأحد فيه" (Badai' Al Sanai' 5/274)

☆ Maulana Muhammad Usman Bastwi has categorized water into 4 kinds on the basis of entitlement and ownership:

- 1) Evident water, i.e., water that has been secured in a utensil or by the construction of reservoirs.
- 2) Water that comes from ponds, wells and springs on held land.
- 3) Water from those streams that have been constructed by individuals in their lands.
- 4) Water from seas, natural rivers and lakes. (Badai' Al Sanai 5/274)

Then the writer goes on to categorize water on the basis of ownership and non-ownership:

- 1) Ownership through agreement
- 2) Exempt from ownership by agreement
- 3) Misc.(Upon whose ownership or non-ownership scholars differ in opinion) (I'la Al Sunan 14/157, Nayl Al Awtar 5/306)

After elaborating upon each category he said that water that is evident can be owned and its purchase via agreement can be done. (Refer: Al Mausua't Al Fiqhiya 25/376, Sharh Al Majalla 10/276, Al Fiqh Al Islami Wa-adilltuhu 5/604, Takmilat Fath Al Mulhim 1/521 and A'la Al Sunan 14/157)

Sea waters and the water from natural rivers is not any person's property and are exempt from ownership through

agreement. Anybody can benefit from their use. (Refer: Al Mausuat Al Fiqhiya 25/371, Al Fiqh Al Islami Wa-adillatuhu 5/603 and Al Dur Al Mukhtar Ma Al Radd 10/13)

There is difference in opinion over the rights of ownership of reservoirs, wells, lakes and springs constructed on private or public land. Among the Hanafis they aren't commodified however an opinion attributed to Shaf'i's and a narration of Imam Ahmad Bin Hanbal and the opinion of the Malikis considers the water from these sources commodifiable. However the Shafi'i's like the Hanbalis lean more towards the idea of natural gift. (Refer: I'la Al Sunan 14/158, Takmilat Fath Al Mulhim 1/523, and Al Mausuat Al Fiqhiyya 25/374)

Sheikh M. A. Abdul Qadir has also used a similar description and has shed light over just three types from the above mentioned categories related to the ownership and non-ownership of water. (Refer: Al Fiqh Al Islami 5/563, 597, Sharh Al Muhazzab 15/236, 239, 242, Fath Al A'lam 5/594, Mughni Al Muhtaj 2/507)

The issue of boring on owned land and compliance with the state's order

☆ Mufti Shahid Ali Qasmi, Maulana Abrar Hasan Nadvi, Mufti Syed Baqir Arshad Qasmi, Qazi Abdul Jaleel Qasmi, Maulana Muhammad Shahjahan Nadvi, Maulana Khursheed Anwar Azmi, Mufti Tanzeem Alam Qasmi and Maulana Aamir Zafar Ayyubi opine that if an individual's boring can affect the water table so that the general public is at the risk of hardship then the government can forbid such boring.

"أعطت الشريعة الإسلامية ولى الأمر حق وضع قيود على الملك، ومن ذلك....الأول...تقييد الملك الخاص لمصلحة العامة" (Al Mausua Al Fiqhiya 39/43)

(١) "دفع الضرر العام واجب" (Al Fiqh Al Islamiya Wa-adillatuhu 4/451)

(٢) "يتحمل الضرر الخاص لدفع ضرر عام" (Durar Al Ahkam Sharh Majallat Al Ahkam 1/36)

☆ Maulana Shahjahan Nadvi also adds since the sovereign is the representative of the people the authority to alleviate risk to the public rests with the sovereign.

- "أن له ولاية عامه يصح أمره لرفع الضرر العام" (Radd Al Muhtar 9/289)

- "فولى الأمر من حقه أن يقيد بعض المباحات إذا كان فى ذلك مصلحة راجحة" (Fatawa Muasira 1/594)

(٣) "فمن أراد أن يحفر فى حريمها منع منه لئلا يؤدى إلى تقويت حقه والإخلال به قال العيني لأنه ربما يذهب ماء البئر الأول أن ينقص ففى الأول فوات حقه وفى الثانى الإخلال بحقه و كلاهما لا يجوز لأن به ضرراً به"

(Hidaya M'a Hashiya/481)

☆ Maulana Rehmatullah Nadvi says the government can only forbid boring on one's land when it is providing an alternative. And if after providing an alternative the government puts restrictions to safeguard against public harm or to achieve collective interests then following its orders is necessary according to the Sharia.

☆ About the issue of following the state's orders Mufti Shahid Ali Nadvi says that if it falls within the sharia's stipulations then it is required that the order be followed otherwise it is not necessary. As is stated in this hadith:

"عن عمر عن النبي ﷺ قال: السمع والطاعة حق ما لم يؤمر بمعصية فإذا أمر بمعصية فلا سمع ولا طاعة"

(Bukhari: 2955)

- ☆ Mufti Abdullah Kawiwalla has mentioned two scenarios related to boring on one's private land: First that boring on the land depletes the ground water level and if this is causing general discomfort then the state's order against it is to be followed compulsorily from the sharia's perspective. Second that when boring on the ground is depleting the water level but it isn't causing general discomfort then following a state order against it is not obligatory.

Compliance is not necessary:

Maulana Muhammad Huzaifa Dahoodi writes that while everybody is entitled to benefitting from water below surface level the government is not in the right when it restricts boring on private land especially when the person's needs are tied to that water and compliance to this preventive restriction is not necessary according to the sharia.

7- The creation of water reserves and safeguarding them

Question 7: In some countries citizens are also held responsible for the protection of water reservoirs. This leads to a secure supply for usage and also aids in raising the water table. If the government were to ask its citizens to allot a certain portion of their homes to water conservation, would it be entitled to doing so and would the implementation of this be compulsory according to the sharia. Also, is reservoir building the responsibility of the government or can people also be held accountable for it?

Most authors feel that the protection and creation of water reserves is originally the state's responsibility but under special circumstances it can be relegated to the citizenry and the state is authorized to defer this responsibility. Compliance of such an order would be compulsory by the citizens. [Papers: Mufti Rashid Husain Nadvi, Maulana Abu Sufyan Miftahi and others]

Proofs:

(١) "ولو احتاجت هذه الأنهار إلى الكرى فعلى السلطان كراها من بيت المال، لأن منفعتها لعامة المسلمين، فكانت مؤنتها من بيت المال لما قلنا"
(Badai' Al Sanai' 5/280, Durar Al Ahkam 10/349)

[Paper: Mufti Rashid Husain Nadvi, Maulana Muhammad Huzaifa Dahoodi]

(٢) "فالأولى كرية على السلطان من بيت مال المسلمين لأنه منفعة الكرى لهم فتكون مؤنته عليهم....فإن لم يكن في بيت المال شيء فالإمام يجبر الناس على كرية إحياء لمصلحة العامة، إذ هم لا يقيمونها بأنفسهم"
(Refer: Hidayat Kitab Al Shurb)

[Paper: Mufti Rashid Husain Nadvi, Maulana Muhammad Shahjahan Nadvi]

(٣) "إذا كان فعل الإمام مبنياً على المصلحة فيما يتعلق بالأمر العامة لم ينفذ أمره شرعاً إلا إذا وافقه، فإن خالفه لم ينفذ (قال الحموى) قوله: فإن خالفه لم ينفذ، قال المصنف في شرح الكنز ناقلاً عن أئمتنا: إطاعة الإمام في غير المعصية واجبة، فلو أمر الإمام بصوم يوم وجب"
(Al Ashbah Wal Nadha'ir M'a Sherh Al Hamwi/189)

[Paper: Mufti Rashid Husain Nadvi, Maulana Khurshid Alam Azmi, Maulana Tauqir Badrul Qasmi, Maulana Muhammad Usman Bastwi]

(٤) "وأما الذى يكون كرية وإصلاحه على أهل النهر فإن أمتنعوا أجبرهم الإمام على ذلك...فإذا أمتنعوا أجبرهم لأن فساد ذلك يرجع إلى العامة وفيه تقليل الماء على أهل الشفة"

(fatawa Hindiyya5:473) [Paper: Mufti Syed Baqir Arshad Qasmi]

٥) "فى العام: لو امتنع عنه كلهم أو بعضهم يجبرون عليه، وفى الخاص: لو امتنع الكل لا يجبرون إلى عند بعض المتأخرين، ولو امتنع البعض أجبر على الصحيح كما فى الخزانة"

(Radd Al Muhtar 10/17)

[Paper: Maulana Muhammad Shahjahan Nadvi]

But certain authors have put up conditions for the deferment of this responsibility to the common man:

- ☆ Mufti SHahid Ali Qasmi has said that the original responsibility of this task can not be placed over the populace but if two situations are observed then this deferment can take place: The first situation is if the government's budget is inadequate to create reserves for the entire population. The second is the creation of locational reserves leads to increase in the groundwater level and if creating reserves will not lead to a future drought.

(فإن لم يكن فيه) أى فى بيت المال (شئ) يكفيه....(فعلى العامة) كرية، يجبرهم الإمام على ذلك لأن فى تركه ضرراً وقلما (ينفق العامة على المصالح باختيارهم، إلا أن الإمام يخرج له من يطيقه ويجعل مؤنثة على المياسير الذين لا يطبقون بأنفسهم كما فى تجهيز الجيوش"

(Mukhtasar Al Wiqaya 2/203)

- ☆ Maulana Muhammad Huzaifa Dahoodi enumerates two other situations: first that there is a need to dispose of somebody's property and the second that the government's doing to results in actual benefit to the people and isn't hazardous or without any benefit. Only then does the government possess authority to ordain as such and compliance is required according to the sharia's point of view.

Compliance to an order to safeguard water isn't necessary:

- ☆ Mufti Abdullah Kawiwalla says if the government declared that every household must allocate a portion to the conservation of water then such an order is not in its powers and compliance to it is not required by the sharia because in doing so will prove difficult especially to the people of the lower strata.
- ☆ Mufti Tanzeem Alam Qasmi's opinion is that the task of protecting water reserves can be relegated to the citizens but to obey an order that requires the allocation of space in the house for reserves is not a sharia necessity.
- ☆ Maulana Ruhul Amin says that such an order can not be enforce by and large because not every home owner can comply with it and thus it would become an order that is based on injustice and following it would not be necessary.
- ☆ Maulana Abrar Hasan Nadvi feels that the creation of water reserves is a responsibility of the state and making the citizens accountable for it would not be right. Although they can be encouraged and incited to do so and in such situations compliance would not be obligatory but morally compliance would be acceptable.

"وعلى السلطان كراء هذا النهر الاعظم إن أحتاج إلى الكراء لأن ذلك من حاجة عامة المسلمين ومال بيت المال معد لذلك فإنه مال المسلمين اعد للصرف إلى مصالحهم"

(Mabsut Al Sarakhsi 23/168)

"كرى النهر غير المملوك وإصلاحه على كبيت المال، فإن لم يكن في بيت المال سعة يجبر على كريه"

(Majallat Al Ahkam Al Adliyyah/705)

8- Relocation of populace for the construction of dams:

Question 8: In some places the population has to be moved to allow the construction of dams or large scale reservoirs. Often even inhabited areas fall under these water projects. In such a case when collective interests are at hand can the inhabitants of these areas be compelled to vacate their homes and move to alternative areas being provided to them? Most authors are of this opinion that if social interests or bebefits are achieved from the construction of the dam then moving the population from the area is justified, especially when the settlement is rehabilitated and provided compensation for their inconvenience. The following proofs have been given in support of this opinion:

1) The Majallat Al Ahkam states:

"يؤخذ لدى الحاجة ملك أى أحد بقيمته بأمر السلطان ويلحق بالطريق ولكن لا يؤخذ ملكه من يده ما لم يؤد له الثمن"

and the commentary to it states:

"يُستملك ملك أى أحد بقيمته الحقيقية للمنافع العمومية كالطريق والمسجد ومسيل الماء، ولو لم يرض صاحبه ببيعه فلذلك يؤخذ لدى الحاجة، أى إذا كان الطريق ضيقاً ومست الحاجة إلى توسيعه - ملك أى أحد بقيمته بأمر السلطان ولو لم يرض صاحبه ويلحق بالطريق.... ولكن لا يجوز أخذ ملك بدون رضائه ما لم يثبت لزومه للمنافع العامة"

(Durar Al Ahkam Sharh Majallat Al Ahkam 10/245)

[Maulana Muhammad Huzaifa Dahoodi]

(٢) "يتحمل الضرر الخاص لدفع ضرر عام" (Durar Al Ahkam, article:26)

[Paper: Maulana Muhamamd Shahjahan Nadvi]

3) In 17 HIjri Hazrat Umar (R.A) purchased the houses and shops around the Haram and expanded the Haram

complex. Similarly in 26 Hijri Hazrat Usman (R.A.) purchased the surrounding lands for the expansion of the Haram complex and forcefully demolished the houses of those who refused and deposited an adequate amount of money for their compensation into the treasury. A similar situation arose during the expansion of the Masjid Al Nabwi but due to the efforts of the great Companions the unwilling people gave consent. (Usman Zulnorain: Maulana Saeed Ahmad Akbarabadi/144, with reference to “Kaami” 3/87) [Paper: Maulana Naeem Akhtar Qasmi, Maulana Usman Bastwi, Maulana Muhammad Mustafa Qasmi and others]

٤) "السبب الشرعى ما جعله الشارع سبباً للملك وجواز التصرف كالبيع والهبة والإرث والوصية، وفى شرح السير (٢/٢٧٤): قال رسول الله ﷺ: لا يحل مال امرئ مسلم إلا بطيبة نفس منه، نعم مواضع الضرورة مستثناة، وفيه (٢/٢٤٥): وللإمام أن يأخذ مال الغير عند الضرورة بشرط أضمن"

(Al Qawaid Al Fiqhiya: Mufti Amimul Ahsan/110)

[Paper: Maulana Khursheed Anwar Qasmi]

5) It is a rule that: "الغرم بالغنم" and "الخارج بالضمن"

(Qawaid Al Fiqh/80, 94)[Paper: Maulana Tauqeer Badrul Qasmi]

٦) "قالوا: وللسلطان أن يجعل ملك الرجل طريقاً عند الحاجة" (Fatawa Qazi Khan 1/133)

[Paper: Maulana Ruhul Amin]

٧) "تؤخذ أرض ودار وحائوت بجنب مسجد ضاق على الناس بالقيمة كرها (قوله بالقيمة كرها) لما روى عن الصحابة لما ضاق المسجد الحرام أخذوا أرضين بكره من أصحابها بالقيمة"

(Durr Al Mukhtar M'a Al Shami 6/576) [Mufti Rashid Hussain Nadvi, Maulana Ruhul Amin]

(٨) "الضرر الأشد يزال بالضرر الأخف" (Al Fiqh Al Islami Wa- adillatuhu 5/595)

[Paper: Mufti Tanzeem Alam Qasmi]

(٩) "تصرف الإمام على الرعاية منوط بالمصالحة" (Al Ashbah Wal Nadha'ir/133)

[Paper: Qazi Abdul Jaleel Qasmi]

(١٠) "عن عقبة بن عامر قال: قلت: يا رسول الله! إنا نمرّ بقوم فلاهم يضيّفونا ولاهم يؤدّون مالنا عليهم من الحق ولا نحن نأخذ منهم، فقال رسول الله صلى الله عليه وسلم: إن أبوا إلا أن تأخذو كرها فخذوا"

(Tirmidhi: 244) [Paper: Maulana Muhammad Usman Bastwi]

(١١) لا يجوز لأحد أن يتصرف في ملك الغير بلا إذنه....أما إذا وجد ضرورة فيجوز لكل إنسان التصرف في ملك الغير بدون إذنه

(Sharh Al Majalla 1/81) [Paper: Maulana Muhammad Usman Bastwi]

12) Maulana Abrar Hasan Nadvi has quoted the opinions of present day scholars. These are presented below :

Dr. Muhammad Salam Madkur (Head of Sharia, Faculty of Law, Cairo University) writes:

"ثمة حالات تتدخل فيها الدولة لصالح الملكية العامة، وهي نزاع الملكية الخاصة أرضاً زراعية أى عادية أو مسكناً لمنفعة العامة كتوسعة الطريق أى بناء مرفق ضرورى يتحدد بها المكان أو تغلب المصلحة فى بنائه فى هذا المكان"

(Mausu'a Al Fiqh Al Islami Al Mu'asir 3/194)

Dr. Abdul Halim Owais says:

"من حق الدولة أن تستولى على المال الخاص وتحوله للملكية العامة إذا اقتضت مصلحة الأمة ذلك" (Ibid)

Dr. Abdullah Al Mohsin Al Turki and Dr. Ouf Al Kufrawi (Muhammad Bin Saud Islamic University, Riyadh) also share this opinion. Dr. Abdullah Al Mohsin Al Turki says:

"واللدولة أن تتدخل لتزيل الملكية الخاصة عن أصحابها في بعض المواطن التي تقتضي ذلك كتوسعة الشوارع وإقامه المنشآت العامة أو إزالة الملكية الخاصة للأغراض الأمنية أو العسكرية أو لشق المصارف والترع وما إليها"

(Mausu'a Al Fiqh Al Islami Al Mu'asir 3/181)

Dr. Wahba Zuhayli states:

"والقاعدة في الملكيات العامة أو ضماناتها هي ملاحظة المصلحة الخاصة للدولة بحق ثابت شرعى معروف وبثمن عادل ومن حاكم عادل أيضاً فإن توفرت الشرعية وعموم المصلحة والعدالة كانت لهذا الملكية مقبولة وإلا اعتبرت غصباً وحراماً"

(Mausu'at Al Fiqh Al Islami Al M'asir 3/192)

Dr. Ouf Al Kufrawi details out:

فالملكية الفردية مصونة في الإسلام، فليس لولى الأمر أن يمسها عن طريق نزعها أو تحديدها أو تأميمها إلا تطبيقاً لنص شرعى أو نزولاً على حكم الضرورة لمصالح جماعة المسلمين، ويشترط علماء الشريعة فى المصلحة شروطاً تكفل عدم : اتخاذها من جانب الحاكم ستاراً يخفى ما يسيطر عليه من أهواء شخصيه - ومن تلك الشروط (١) ان تكون المصلحة يقينية لا وهمية أو ظنية تجلب نفعاً أو تجنب ضرراً أو تدفع حرجاً

(٢) ان تكون المصلحة عامة أو كلية أى لا تكون مصلحة أقلية

(Mausu'at Al Fiqh Al Islami Al M'asir 3/194)

Dr. Abdul Halim Owais has added two more terms with regard to the rulers and interests:

- 1) The ruler should not be of a religiously biases disposition or should not hold views that conflict with Islamic systems of economics. He should not

harbour hatred for any specific stratum that he would humiliate or harass through his actions.

- 2) Another condition for the occupancy is the affirmation of justice, compensation and the guarantee of providing to their basic needs.

13) Mufti Syed Abdul Rehman Hasani has mentioned a decision of the International Fiqh Academy, Jeddah in this context:

First: The care and protection against excesses of individual property is necessary. Causing obstruction to or destruction of individual property is not valid. The owner has control over his property and within the bounds of the sharia he has the authority to dispose or utilize it as he wishes.

Second: For the sake of public welfare the acquisition of citizen's lands can only be done while observing the following Sharia terms and conditions:

- 1) The owners are given immediate and adequate compensation which is determined by experts and is not less than the market value of the property.
- 2) Only the head or his deputy shall have the rights to acquire property.
- 3) The acquisition should be made for purposes that satisfy collective needs like mosques, roads, bridges etc.
- 4) The property taken from its owners should not be invested for any purpose (special or ordinary) and should not be appropriated before there is need for it.
- 5) If the purpose for which the property was claimed stands no more then the original owners of that

property or their heirs are the ones most eligible to buy back the property at the payment of an appropriate sum.

- ☆ Maulana Ruhul Amin considers the collective need a substitute for a necessity and validates the forceful acquisition of land for the construction of a dam provided the compensation provided is at par with market prices.

"الحاجة العامة تنزل منزلة الضرورة الخاصة في حق آحاد الناس"

(Mausuat Al Qawaid Al Fiqhiya 5/67)

9- The ruling for breaking or not breaking a dam in defence:

Question 9: Suppose a settlement is struck by a destructive flood and is about to face ruin. In such a case people break the dam built to hold the water and as a result the water moves forward. This area is now safe for the time being but now the next settlement has a greater risk of danger. Assuming that the settlement lies at a lower altitude than the previous one, there is a greater risk of destruction occurring here. Under such circumstances is it permissible for the inhabitants of the first settlement to break the dam and release the water?

Most authors lean towards the opinion that if there is certainty of damage to life and property in the lower regions, in that case endangering others to protect one's own self would not be considered right. [Papers: Mufti Rashid Husain Nadvi, Mufti Zaheer Ahmad Kanpuri, Qazi Abdul Jaleel Qasmi, Mufti Abdullah Kaviwalla, Mufti Tanzeem Alam Qasmi, Maulana Aamir Zafar Ayyubi, Maulana Tauqir Badar Qasmi, Maulana Abu Sufyan Miftahi, Maulana Naeem Akhtar Qasmi, Maulana Syed Abdul Rahim Hasani, Hafiz Kalimullah Umri, Maulana Muhammad Mustafa Qasmi, Maulana Muhammad Huzaifa Dahoodi, Maulana Muhammad Usman Bastwi]

Proofs:

- (١) "الضرر لا يزال بالضرر أو بمثله"
(Mausuat Al Qawaid Al Fiqhiya 6/257)
[Mufti Rashid Hussain Nadvi, Maulana Ruhul Amin, Maulana Aamir Zafar Ayyubi, Maulana Shahjahan Nadvi, Maulana Abrar Hasan Ayyubi]
- (٢) "خرَّب رجل ضفة نهر، والماء في ذلك الوقت منقطع، ثم وصل الماء فوصل من موضع لتخريب في أرض رجل فاضر بالأرض أو أفسد زرعاً في الأرض قال: ينظر: إن جرى الماء بنفسه يضمن المخرب إذا كان النهر للعامة لأنه مسبب متعد"
- (Fatawa Hindiya: Kitab Al Shurb Al Bab Al Thalith Fima Yahdth Al Insan Alkh 5/400)
- (٣) في فتاوى أبي الليث: نهر عظيم لأهل قرية، يشعب منه نهران، وعلى كل واحد من النهرين طاحونة، فخربت إحدى "الطاحونة، فاراد صاحبها أن يرسل الماء كله في النهر الآخر الذي عليه الطاحونة الأخرى حتى يعمر حتى يعمر طاحونته وذلك، يضر بالطاحونة الأخرى لم يكن له ذلك، لأنه يريد دفع الضرر عن نفسه بالإضرار
(Same as above)
"إذا اجتمع المباشر والمتسبب أضيف الحكم إلى المباشر"
(Al Ashbah Al Nadha'ir)
[Mufti Abdullah Kawiwalla]
- (٤) "وإن أكره على قتل غيره بقتل لم يرخص ولم يسعه أن يقدم عليه، وبصبر حتى يقتل، فإن قتله كان أثماً"
- (Fatawa Hindiya 5/39) [Paper: Maulana Shahjahan Nadvi]
- (٥) "ولهم نصب الأرحية والدوالي إن كان لا يضر بالعامة، وإن كان يضر بالعامة فليس له ذلك، لأن دفع الضرر عنهم واجب، وذلك بأن يميل الماء إلى هذا الجانب إذا انكسرت ضفته فتغرق القرى والأراضي"
- (Fatawa Hindiya 5/391) [Paper: Maulana Muhammad Shahjahan Nadvi, Maulana Muhammad Huzaifa Dahoodi]

Mufti Baqir Arshad Qasmi says that if the first settlement's action of breaking the dam causes harm to the second settlement then the first settlement is to take all responsibility and he has presented these passages from the Fatawa Hindiya to support his case:

(١) رجل سقى أرضه فتعدى الماء إلى أرض جاره أن أجرى الماء إجراء لا يستقر في أرضه بل يستقر في يضمن: وإن كانت أرضه في صعدة وأرض جاره في هبطة ويعلم أنه لو سقى أرضه يتعدى إلى أرض جاره.... "يضمن (Fatawa Hindiya 5/482)

(٢) "وعلى هذا قالوا: إذا فتح رأس نهره فسال من النهر شيء إلى أرض جاره فغرقت ينظر إن كان فتح من الماء مقدار ما يفتح من الماء في مثل ذلك النهر في العرف والعادة لا يضمن وإن فتح مقدار ما لا يفتح مثله في ذلك النهر ضمن كذا في محيط السرخسى" (Fatawa Hindiya 5/483)

Breaking the dam is permissible:

Maulana Khursheed Anwar Azmi's opinion is that if the dam threatens to annihilate the first settlement then at the risk of mortal danger the settlement can choose to break the dam, releasing the water and pull themselves out of danger.

The following passages have been presented as evidences:

(١) "إن الظلم لا أسوة فيه ولا يلزم أحداً أن يولج نفسه في ظلم مخافة أن يوضع الظلم على غيره والله تعالى يقول: "إنما السبيل على الذين يظلمون الناس ويبيعون في الأرض بغير الحق"، ورأيت في بعض المنقولات نحو هذا عن يحيى بن عمر هذا عن يحيى بن عمر أنه لا بأس أن يطرحه عن نفسه مع العلم بأنه يطرحه على غيره إذا كان المطروح جوراً بنبأ" (Al Muwafaqat 2/351)

(٢) "وذكر عبد الغنى في المؤلف والمختلف عن حماد بن أبي أيوب قال قلت لحامد بن أبي سليمان: إني أتكلم فترفع عني النوبة فإذا رفعت عني وضعت على غيري، فقال: إنما عليك أن أتكلم في نفسك فإذا رفعت عنك فلا تبالي على من وضعت" (Al Muwafaqat 2/352)

imilarly Imam Izzuddin Bin Abdus Salam writes in the

“Qawaid Al Ahkaam:

٣) "وإذا اجتمعت مصالح ومفاسد فإن أمكن تحصيل المصالح ودرء المفاسد فعلنا ذلك امتثالاً لأمر الله تعالى: "فاتقوا الله ما استطعتم" (التغابن: ١٦) وإن تعذر الدرع والتحصيل فإن كانت المفسدة أعظم من المصلحة درأنا المفسدة ولا نبيلى لقوات المصلحة قال تعالى: " يسألونك عن الخمر والميسر قل فيهما إثم كبير ومنافع للناس وإثمهما أكبر من نفعهما" (البقره: ٢١٩) حرمهما لأن مفسدتهم أكبر من منفعتهم"

(Al Mujtama Issue No. 1919, Shawwal 1431 H.)

٤) "إن إضرار الغير فى المسائل المتقدمة والأصول المقررة ليس بمقصود فى الإذن وإنما الإذن لمجرد جلب ودفع الدافع وكونه يلزم عنه إضرار أمر خارج عن مقتضى الإذن"

(Al Muwafaqat/ 352)

- ☆ Mufti Sher Ali says that the inhabitants of the settlement can break the dam because for them the protection of their settlement is necessary and the people at the lower level should vacate to a new area or the government should rehabilitate them elsewhere.
- ☆ Maulana Rehmatullah Nadvi feels the the breaking of the dam would be valid in a scenario when this would avert mass damage. And if the population of the next settlement is lesser then damage to a few will be accepted to avoid damage to many or if the lower settlement is in an accident prone area then the act is acceptable because inhabiting such an area is not the right thing to do.
- ☆ Mufti Rashid Hussain Nadvi permits doing so on the condition that the damage that might be incurred by breaking the dam is less than the damage that would be incurred if the dam is left as it is. Upon ascertaining this there is a possibility for an order to break the dam at the

governmental level since it is the lesser of two evils.[See Paper: Mufti Shahid Ali Qasmi]

"إذا تعارض مفسدتان روعى اعظمهما ضرراً بارتكاب اخفهما"

(Al Ashbah Wal Naza'ir Al Bin Nujaim/145)

☆ Whereas Maulana Ruhul Amin has this to say in this matter:

- a) If the breaking of the dam brings safety the settlement at work and there is no risk of damage to life or property to any settlement then the breaking of the dam is permissible under the clause of "loss that can be averted".
- b) If the risk of damage to the next settlement is theoretical and the risk posed to the former settlement is factual then the breaking of the dam is permissible.
- c) Even if damage to the next settlement is most likely but the damage is estimated to be little then the breaking of the dam should be permissible because
الأشد يزال بالضرر الأخف

10- The limit to benefitting from common water resources

Question 10: To what extent can citizens and individuals utilize seas, rivers, public wells, springs and government lakes?

All the authors share the opinion that man can utilize lakes, rivers, public wells, springs and government ponds to fulfil his needs. No specific person can claim ownership over these. The only conditions are that the one's use isn't against the public interest [Mufti Rashid Hussain Nadvi], excess and squandering are avoided [Maulana Abrar Hasan Nadvi] and

that one's doing so does not enroach upon other people's rights to the same water [Maulana Muhammad Usman Bastwi].

Proofs:

(١) "المسلمون (وفى بعض الروايات) الناس شركاء فى ثلاث: فى الماء والكأ والنار

(Abu Dawood: 3477)

[Papers: Maulana Abrar Hasan Nadvi, Mufti Rashid Hussain Nadvi, Maulana Muhammad Mustafa Qasmi, Mufti Baqir ArshadQasmi]

(٢) "اعلم أن الماء أربعة أنواع: الأول: ماء البحار، وكل أحد فيها حق الشفة وسقى الأراضى، فلا يمنع من الإنتفاع على أى وجد شاء، والثانى: الماء الأودية العظام كسيحون، وللناس فيه حق الشفة مطلقاً وحق سقى الأراضى إن لم يضر بالعامه، ولثالث: ما دخل فى المقاسم أى المجارى المملوكة لجماعة مخصوصة وفيه حق الشفة، والرابع: المحرز فى الأوانى ينقطع حق غيره عنه وتماه فى الهداية، وحاصله أن لكن أحد فى الأوليين حق الشفة ولسقى لأرضه وفى الثالث حق الشفة فقط ولا حق فى الرابع لأحد"

(Radd Al Muhtar 5/311, Refer to Hidayah 4/387)

[Papers: Mufti Rashid Hussain Nadvi, Maulana Khursheed Anwar Azmi, Maulana Muhammad Huzaifa Dahoodi, Maulana Ruhul Amin]

(٣) "الثانى ماء الأودية العظام، كجيجون وسيهون ودجلة والفرات والنيل، للناس فيها حق الشفة على الإطلاق وحق سقى "الأرض بأن أحيا واحد أرضاً ميتة وكرى منها نهراً يسقيها إن كان لا يضر بالعامه ولا يكون النهر فى ملك أحد ولهم نصب الأرحية والدوالي إن كان لا يضر بالعامه وإن كان يضر بالعامه فليس له ذلك، لأن دفع الضرر عنهم واجب، وذلك بأن يميل الماء إلى هذا الجانب إذا انكسرت صفته فتغرق القرى والأراضى وكذا شق الساقية والدالية"

(Radd Al Muhtar 5/311, Refer to Hidayah 4/387)

(Fatawa Al Hindiya 5/390, refer to Al Mausuat Al Fiqhiya 26/129, Badai' Al Sanai' 6/192)

[Papers: Maulana Muhammad Huzaifa Dahoodi, Mufti Baqir Arshad Qasmi, Qazi Muhammad Kamil Qasmi, Mufti Shahid Ali Qasmi]

٤) "الأنهار العظام كالندجلة والفرات غير مملوكة ولكن أن يسقى أرضه ويتوضأ به ويشربه وينصب الرحي عليه ويكرى منها نهر إلى أرضه إن لم يضر العامة"

[Maulana Khursheed Anwar Azmi] (Kanz Al Dhaqaiq/355)

٥) "ماء الأنهار العامة: وهو الذى يجرى فى مجار العامة غير مملوكة لأحد، وإنما هى للجماعة، مثل النيل وندجلة والفرات ونحوها من الأنهار العظيمة وحكمه (نهاية المحتاج) أنه لا ملك لأحد فى هذه الأنهار، لا فى الماء ولا فى المجرى، بل هو حق لجماعة كلها، فلكل واحد حق الانتفاع بها، بالشفة (سقى نفسه ودوابه) والشرب (سقى زرعه وأشجاره) وشق الجداول منها، ونصب الآلات عليها لجر الماء لأرضه، ونحوها من وسائل الانتفاع بالماء، وليس للحاكم منع أحد من الانتفاع بكل الوجوه إذا لم يضر الفعل بالنهر أو بالغير أو بالجماعة، كما هو الحكم المقرر بالانتفاع فى الطرق أو المرافق العامة، فإذا أضر، فلكل واحد من المسلمين منعه أو الحد من تصرفه لإزاله الضرر، لأنه حق لعامة المسلمين، وإباحة التصرف فى حقهم مشروطة بانتفاء الضرر، كالانتفاع بالمرافق العامة، "إذ لا ضرر ولا ضرار"، والدليل على كون هذه الأنهار غير مملوكة لأحد، وإنما الحق فيها مشاع لجميع: قوله ﷺ: الناس شركاء فى ثلاث: فى الماء والكلا والنار، وفى رواية "الملح" وشركة الناس فيها شركة أباحه، لا شركة ملك، لعدم إحرازها، منهم سواء فالانتفاع بها ومنها الماء العام،" فيثبت لهم حق الشرب"

(Al Fiqh Al Islami Wa-adilltuhu 6/4665-4666) [Papers: Maulana Syed Abdul Rahim Hasani, Mufti Tanzeem Alam Qasmi]

٦ "والمياه المباحة من الأودية كالنيل والفرات والعيون في الجبال ونحوها
يستوى الناس فيها لخبر الناس شركاء في ثلاث: الماء والكأ والنار"
(Nihayatul Muhtaj 5/352) [Paper: Dr. Bahauddin Nadvi]

☆ Maulana Ruhul Amin has enumerated the following categories:

- a) Every person has the right to take sea water, feed to animals and irrigate crops with. Every manner of utilization of sea water is permitted.
- b) Water from lakes, big rivers and natural springs can be taken and fed to animals, although if using that water for irrigation causes problems for other users then it is not to be done.
- c) From public wells and springs that are owned by a specific community water according to ones needs may be used as is customary. Even animals can be fed water from it but irrigation from that purpose without permission is not allowed.

State owned ponds also fall under this category because they serve a specific area. They may be utilized in manners that are authorized and specified under their use.

Water which is considered rightfully drinkable is that which can be drunk, used to cook, perform ablutions and bathe with. Similarly it can be used to fulfil the needs of animals.

"في الدر: والشفة شرب بنى آدم والبهائم، (قال الشامي) هذا أصله
والمراد استعمال بنى آدم لدفع العطش أو للطبخ أو للوضوء أو الغسل
أو غسل الثياب ونحوها كما في المبسوط، والمراد في حق البهائم
الاستعمال للعطش ونحوه مما يناسبها"

(Dur-ma- Al Shami 10/12)

An almost exact categorization has been presented by Mufti Shahid Ali Qasmi.

- ☆ Maulana Muhammad Huzafa Dahoodi says while elaborating upon this issue that every person has the right to utilize water from large rivers and lakes and everybody can use water from these bodies for personal or animal related exigencies. Similarly everybody can utilize the water of public wells, springs and government ponds. Although if irrigative uses cause problems to for others then this particular use is not allowed.
- ☆ Maulana Muhammad Mustafa Qasmi and others are of the view that if there is water left after one's uses are fulfilled then it should be left for other people's needs.
"وإذا كان لرجل نهر أو بئر أو قناة فليس له أن يمنع شيئاً من الشفة والشفة الشرب لبني آدم والبهائم"
(Hidayah 4/468)
- ☆ Maulana Rehmatullah Nadvi says if the water is owned by somebody then care should be taken while using it and if the water is collectively owned then its used must be done by judicially and justly distributing it.
- ☆ Hafiz Kalimullah Umri writes that water resources that have been leased out by the state on the basis of tenders will be considered special, in they may not be used for everyday purposes.
- ☆ Maulana Shahjahan Nadvi is of the opinion that if using the water of public wells, non proprietary springs and state owned ponds for irrigation depletes the water that is used for drinking then the irrigative use is permitted.
- ☆ Mufti Baqir Arshad Qasmi and Maulana Aamir Zafar Ayyubi say that state owned ponds by consideration of

their ownership status should not be used without the consent of the state. Doing so without permission would be improper.

11- Limits to utilizing a stream that passes through:

Question 11: If a stream flows adjoining various areas and people's farms then to what extent are those people entitled to utilize the water of that stream for irrigation or consumption?

On this topic the authors share the view that in a stream passing in front of one's land may be used for its water on the basis of priority by proximity. This water can be consumed personally, fed to one's animals and also used for irrigation. The following passages have been presented in support:

Proofs:

(١) "عن عبد الله بن الزبير أنه حدثه أن رجلاً من الأنصار خاصم الزبير عند النبي ﷺ في شراج الحرة التي يسقون بها النخل فقال الأنصاري: سرح الماء يمرّ، فأبى عليه فاختصما عند النبي ﷺ، فقال رسول الله صلى الله عليه وسلم: اسق يا زبير ثم أرسل الماء إلى جارك، فغضب الأنصاري فقال: إنه كان ابن عمك، فتلّون وجه رسول الله ﷺ ثم قال: اسق يا زبير ثم احبس الماء حتي يرجع إلى الجدر"

(Bukhari' 1/317) [Papers: Maulana Muhammad Mustafa Qasmi, Mufti Sher Ali Gujrati, Maulana Aamir Zafar Ayyubi]

(٢) "أن النبي ﷺ قضى في شرب النخل من السيل: أن الأعلى يشرب قبل الأسفل ويترك الماء إلى الكعبيين ثم يرسل الماء إلى الأسفل الذي يليه وكذلك حتى تنقضي الحوائط أو يفنى الماء"

(Ibn Majah, Masnad Ahmad) [Paper: Mufti Tanzeem Alam Qasmi]

٣) "وينتفع الناس بماء الأمطار أو السيول أو النهر الصغير الذى يزدحم الناس فيه بأن يبدأ بالأعلى فيسقى أرضه حتى يصل إلى الكعب (النهاية) ثم يرسله إلى من يليه فيسقى ويحبس الماء حتى يصل إلى كعبه ثم يرسله إلى من يليه فيفعل كذلك"

(Al Fiqh Al Islami Wa-adilltuhu 5/599) [Paper: Mufti Tanzeem Alam Qasmi]

٤) "فإن أراد قوم سقى أرضهم منها فضايق الماء سقى الأعلى فالأعلى وحبس كل واحد الماء حتى يبلغ الكعبين"

(Tukhfat Al Muhtaj) [Dr Bahauddin Nadvi]

٥) "قال أبو عبيد: كان بالمدينة واديان يسيلان بماء المطر فيتنافس الناس فيه فقضى رسول الله ﷺ للأعلى فالأعلى".

(Fath Al Bari 5/45) [Paper: Maulana Muhammad Mustafa Qasmi]

٦) "عن عبد الله بن أبي بكر أنه بلغه عن رسول الله ﷺ قال فى مسيل مهروز ومذنيب: يمسك حتى الكعبين ثم يرسل الأعلى على الأسفل" [Paper: Maulana Muhammad Mustafa Qasmi] (Mua'ta Imam Malik/311)

Allama Badruddin Aini (R.A.) states:

"إن ماء الأودية التى لا تستنبط بعمل فيما مباح، ومن سبق إليه فهو أحق به، وفيه أن أهل الشرب الأعلى يقدم على من هو أسفل منه ويحبس الأول الماء حتى يبلغ إلى جدار حائطه ثم يرسل الماء إلى ما هو أسفل منه فيسقى كذلك ويحبس الماء كذلك ثم يرسله إلى من هو أسفل منه وهكذا، وفي حديث الباب احبس الماء حتى يرجع إلى الجدر وفى حديث عبد الله بن عمرو الذى أخرجه أبو داوود وابن ماجه من رواية عمرو بن شعيب عن أبيه عن جده: أن رسول الله ﷺ قضى فى سيل المهروز أن يمسك حتى يبلغ الكعبين ثم يرسل الأعلى إلى الأسفل.... وقال الرافعى: لا مخالفة بين التقديرين لأن الماء إذا بلغ الكعب بلغ أصل الجدار وقال أبو الحسن الماوردي ليس التقدير بالبلوغ إلى الكعبين على عموم الأزمان والبلدان لأنه يدور بالحاجة،

والحاجة تختلف باختلاف الأرض وباختلاف ما فيها من زرع وشجر
وبوقت الزراعة ووقت السقي، ألخ"

(Umdat Al Qari 12/285, Maktaba Abbas Al Baz)
[Maulana Ruhul Amin]

☆ Maulana Muhammad Huzaifa Dahoodi has detailed out the rulings in context to rivers. These are mentioned now:

- a) If the stream flowing by the land or farm is public, i.e, not held by a specific people, not is it under some special use by the government then it can be used to fulfil any human or animal needs. Similarly irrigation of ones fields and orchards is also permitted with this water but in a way that does not affect others negatively, because if that happens then the permission for irrigation is lifted. (Durar Al Ahkam Sharh Majallat Al Ahkam 10/266)
- b) If the stream belongs to other people and is not public then taking water for human needs is permitted under all circumstances. Animals may also be fed from that water but on condition that the animals do not negatively affect the stream negatively. However irrigation without the permission of the owners is not allowed. (Fatawa Hindiya 5/391 and also in Durar Al Ahkam Sharh Majallat Al Ahkam 10/285-288, Al Durar Al Mukhtar Ma' Al Radd 10/13)
- c) If the stream has been released for the purpose of fulfilling human and animal needs like drinking, for cooking, ablution and bathing, washing of clothes etc then the people adjacent to it can utilize it for any purpose and in under any circumstances. But irrigation from that water is not possible. However if the water

can be used for irrigation, and if doing so will not pose difficulties to other people then doing so is also permissible on condition that it is not prohibited by the government. (Fatawa Hindiya 5/391 Durar Al Ahkam Sharh Majallat Al Ahkam 10/279)

- d) And if the stream has been provided for irrigation by the state then its use for irrigation and also all animal and human needs is rightfully accorded to the people of the farms and adjacent areas. Although the state can not prohibit the use of this water to fulfil basic human and animal needs, yes, if it feels like it, the state can selectively chose to prohibit the use of this water for irrigation by some people it reserves the right to do so. This type of stream is like a public well and the ruling for public wells states this. (Takmilah Fath Al Mulhim 1/292, Kitab Al Khiraj/95)

The right to irrigate fields and concerned rulings:

- ☆ Qazi Abdul Jaleel Qasmi has put up this restriction that one may hold back an amount of water that is required for farming without completely restricting the flow of the stream. And according to Maulana Muhammad Mustafa Qasmi the restriction of the stream so that water does not flow forward is considered a nefarious act according to the sharia.
- ☆ Maulana Aamir Zafar Ayyubi says that no person has the right to hoard this water till the boundaries of the fields after the purpose of irrigation has been completed.
- ☆ Maulana Rehmatullah Nadvi opines that the right to the water of the stream shall depend on the area of the person's

land and this distribution shall begin from the top of the stream.

- ☆ Mufti Tanzeem Alam Qasmi says that if the current of the stream is low and if water seems to be flowing at a lesser pressure than usual then the farm owner must irrigate his fields without collecting the water and must directly release water for the people further down.
- ☆ Mufti Rashid Hussain Nadvi and Mufti Shahid Ali Qasmi opine that in case irrigation and other utilizations from government streams is taking place then adherence to the rules and regulations of the Ministry of Agriculture is a must. [Refer to Paper: Maulana Khursheed Anwar Azmi]
- ☆ Maulana Ruhul Amin and Maulana Muhammad Huzaifa Dahoodi say that:

Jurisprudents have ascertained in the light of the Hadiths that water can be filled to the brim of the boundaries of the field. This has been described as “حتى يرجع إلى الجدر” or as “حتى يبلغ الكعبين”. Furthermore Allama Abul Hasan Mawardi (R.A.) states that the restriction are not common for all eras and all areas but instead are situational and can differ on the basis of the situation of the land, the adjacent fields or the time at which irrigation is done.

Therefore while keeping away from excess in using water and not encroaching upon other users’ rights the water of such streams can be utilized.

"ليس التقدير بالبلوغ إلى الكعبين على عموم الأزمان والبلدان، لأنه يدور بالحاجة، والحاجة تختلف باختلاف الأرض وباختلاف ما فيها من زرع وشجر وبوقت الزراعة ووقت السقى"

(Umdat Al Qari 12/203, also refer: Takmilah Fath Al Mulhim 4/505, Radd Al Muhtar 10/12, 21, 22 Fatawa Hindiya 5/396, Durar Al Ahkam 10/292)

☆ Maulana Muhammad Khursheed Dahoodi writes:

In the system of arrangements referring to customs is practical. If it is customary to begin irrigation from the top most and edge portion then this is what must be done. After this the person falling under this portion irrigates his land. And if the norm is to begin irrigation from the bottom end then this is what must be followed. And if alternating between the two is the established practice then this must be followed. In this manner each manner will attend to his fields' requirements and then accommodate the person next in line.

Although if no prior practice exists then most certainly a new pattern can be devised by means of mutual agreement. The decided manner of irrigation can start from the edge onwards or from the opposite direction or rotation on a day wise basis. But if no concord is reached then the practice by default shall be to start from the top and from the edge and then moving rightfully downwards. (Faidh Al Bari Sharh Sahi Al Bukhari 3/562 Umdat Al Qari Sharh Al Bukhari 12/203, Fath Al Bari 5/48, Al Fiqh Al Islami Wa-adilltuhu 5/599)

12- Conditions to the ownership of water

Question 12: Under what circumstances does water become private property?

Situations which prove the attainment will also prove ownership of water. Attainment would refer to successfully containing water in a specific place or object or that if it is captured, in which case ownership over it would be proven. All the authors concede over this much.

١- "قال النبي ﷺ: يرحم الله أم إسماعيل لو تركت زمزم أو قال: لو لم نعرف من الماء لكان عيناً معيباً وأقبل جرهم فقالوا: أتأذنين أن ننزل عندك؟ قالت: نعم، ولا حق لكم في الماء، قالوا: نعم"

(Bukhari 1/319)

٢- "قال الخطابي: فيه أن من انبط ماء في فلاة من الأرض ملكه ولا يشاركه فيه غيره إلا برضاه، إلى أنه لا يمنع فضله إذا استغنى عنه، وإنما شرطت هاجر عليهم أن لا يملكوه"

(Umdat Al Qari 9/81, Fath Al Bari 5/53)

٣- "عن السمر بن مضر قال: أتيت النبي ﷺ فبايعته فقال: من سبق إلى ماء لم يسبقه إليه مسلم فهو له قال: فخرج الناس يتعادون يخاطون"

(Abu Dawood 4/137)

٤- "الماء في الأصل خلق مباحاً لقول النبي ﷺ: "الناس شركاء في الثلاث: الماء والكلا والنار" والشركة العامة تقتضي الإباحة إلا أنه إذا جعل في إناء وأحرزه به فقد استولى عليه وهو غير مملوك لأحد فيصير مملوكاً للمتولي كما في سائر المملوكة"

(Badai' Al Sanai' 5/275)

٥- لو أحرزه في جرة أو حبّ أو حوض مسجد من نحاس أو صفر أو جص وانقطع جريان الماء فإنه يملكه"

(Radd Al Muhtar 10/13)

٦- "وكل من أحرز شيئاً مباحاً كان مالكاً له مستقلاً فلو تناول الماء من نهر بيده أو بوعاء كالعلبة فإنه يملكه بإحرازه وحفظه في ذلك الوعاء وليس لغيره أن ينتفع به وإذا أخذه آخر بدون إذنه واستهلكه كان ضامناً"

(Sharh Al Majalla 1/680)

☆ Various authors have pointed out different situations in which ownership over water is attained. These are mentioned now:

- a- If water is stored in utensils or tanks.
- b- If it is secured in ponds, water tanks or containers.
- c- If a utensil is kept to capture rainwater and it fills up with this water.

- d- If boring is done or a machine put up to extract water then such water will be considered property.
- e- Water from a publically shared stream which enters ones land.
- f- Water extracted from a well will be considered property even if it be in a barren place.
- g- Procuring a water connection from the government for ones home or owned land proves ownership.
- h- Ownership is established after purchase of water.
- i- Companies that setup water supply plants will be considered owners of that water.

For proof refer to:

Al Mausuah Al Fiqhiya 25/376, 26/129, Sharh Al Majalla 10/276, Al Fiqh Al Islami Wa-adilltuhu 5/604, 6/4661, Takmilah Fath Al Mulhim 1/521, I'la Al Sunan 14/157, Fatawa Hindiya 5/391, Muhit Burhani 19/69, Shami 7/258, 10/12, Kitab Al Kharaj/95, Al Mabsut 23/158, Al Hidayah 7/269, Badai' Al Sanai' 5/274, Al Sharh Al Kabir 11/81, Al Bayan Fi Madhab Al Imam Al Shafi 2/503.

[Papers: Maulana Muhammad Usman Bastwi, Maulana Muhammad Huzaifa Dahoodi, Maulana Abrar Hasan Nadvi, Maulana Muhammd Mustafa Qasmi, Maulana Abu Sufyan Miftahi, Mufti Syed Baqir Arshad Qasmi, Mufti Shahid Ali Qasmi, Mufti Zaheer Ahmad Kanpuri]

13- The issue of trading in water

Questing 13: Under circumstances in which a person can claim ownership to water, is trading of water held under ownership allowed? –it should be noted that in present times trading in water has become an important and profitable activity.

Some authors are of the opinion that after water has been subjugated, contained and procured, man becomes its owner. Therefore trade of this water and selling it for profit becomes a permitted activity. The following gentlemen ascribe to this viewpoint:

[Mufti Sher Ali, Maulana Muhammad Shahjahan Nadvi, Qazi Muhammad Kamil Qasmi, Mufti Abdullah Kawiwalla, Qazi Abdul Jaleel Qasmi, Maulana Aamir Zafar Ayyubi, Maulana Rehmatullah Nadvi, Maulana Tauqir Badr Qasmi, Maulana Abu Sufyan Miftahi, Hafiz Kalimullah Umri, Maulana Muhammad Mustafa Qasmi, Mufti Rashid Hussain Nadvi, Maulana Muhammad Huzaifa Dahoodi, Maulana Khursheed Anwar Azmi, Mufti Zaheer Ahmad Kanpuri]

Proofs:

١- "وله بيعه لأنه بالإحراز، فصار كالصيد والحشيش" (Fatawa Hindiya 5/391)

[Paper: Maulana Muhammad Shahjahan Nadvi, Qazi Muhammad Kamil Qasmi]

2- Upon encouragement from the Prophet (PBUH) Hazrat Usman (RA) bought the Roman well and donated it to the public. (Nayl Al Awtar 5/146) [Papers: Mufti Tanzeem Alam Qasmi, Maulana Muhammad Mustafa Qasmi]

٣- "أما الأول فهو ماء مملوك لصاحبه لا حق لأحد فيه، لأن الماء فإن كان مباحاً في الأصل لكن المباح يملك بالاستيلاء إذا لم يكن مملوكاً لغيره كما إذا استولى على الحطب والحشيش والصيد فيجوز بيعه كما يجوز بيع هذه الأشياء، وكذا السفائون يبيعون المياه المحروزة في الظروف، جرت العادة في الأمصار وفي سائر الأعصار من غير نكير"

(Badai'Al Sanai' 6/188) [Papers: Qazi Muhammad Kamil Qasmi, Mufti Abdullah Kawiwalla,

MaulanaAamir Zafar Ayyubi, Mufti Rashid Hussain Nadvi, Maulana Muhammas Usman Bastwi]

٤- "أن رسول الله ﷺ نهى عن بيع الماء إلى ما حمل منه" (I'la Al Sunan 14/166)

[Mufti Tanzeem Alam Qasmi]

5- Maulana Zafar Ahmad Usmani has quoted the following consensus attributed to Maulana Ashraf Ali Thanawi regarding the permissibility of selling water.

"وعلى ذلك مضت العادة في الأمصار ببيع الماء في الروايا والخطب والكلا من غير تكير قلت وهذا مما يؤيد ما رواه أبوبكر عن المشيخة فإن عمل الأمة من غير تكير يتنز منزلة الإجماع"

(I'la Al Sunan 14/166)

[Paper: Mufti Tanzeem Alam Qasmi]

٦- "لا ينتفع به إلى بإذن صاحبه لملكه بإجرازه فله بيعه ملتقى" (Radd Al Muhtar 5/312)

[Paper: Mufti Rashid Hussain Nadvi]

٧- "أما من حاز في قريته أو إنائه فذلك غير المذكور في الحديث وهو بمنزلة سائر المباحات إذا حازها إلى ملكه ثم أراد بيعها كالخطب والكلا والملح قد قال النبي ﷺ لأن يأخذ أحدكم حبلاً فيأخذ حزمة من حطب فيبيع فيكف الله بها وجهه خير له من أن يسأل الناس أعطى أو منع"

(Bukhari, Zad Al Ma'ad Li Ibn Al Qayyim 4/259, Al Mughni La Ibn Qudamah 6/146) [Papers: Maulana Ruhul Amin, Maulana Khursheed Anwar Azmi]

٨- "عن عائشة قالت: نهى رسول الله ﷺ عن بيع الماء، قال أبو يوسف: تفسير هذا عندنا -والله أعلم- إنه نهى عن بيعه قبل أن يحرز"

(Kitab Al Kharaj/105) [Paper: Maulana Khurheed Anwar Azmi]

Some other perspectives:

☆ Streams, ponds and wells only allow procurement not ownership because the right of the public is retained in this

water. Therefore its sale is not acceptable. [Maulana Khursheed Anwar Azmi, Maulana Abrar Hasan Nadvi, Maulana Muhammad Usman Bastwi, Mufti Syed Baqir Arshad Qasmi, Maulana Syed Abdul Rahim Hasani]

- ☆ Mufti Tanzeem Alam Qasmi says that among the Hanafis the sale of well water before it is procured is not considered correct. However if it is first collected in a utensil then after determining its quantity selling it is permissible. [Paper: Maulana Aamir Zafar Ayyubi]
- ☆ Maulana Ruhul Amin thinks that from the various hadiths that talk of against the sale and purchase of water it is clear that this act is not an appreciated one.
- ☆ Mufti Zafar Ahmad Kanpuri says that if the sale of water in large quantities leads to a strong possibility of shortage in that area or is hampering the fulfilment of the citizens' basic needs then the government can rightfully stop such activity.
- ☆ Mufti Shahid Ali Qasmi hints towards the the stance that the prohibitions on water being sold are only to the extent of considering this an act disliked.
(Fath Al Bari 5/39) "قال الخطابي: والنهي عند الجمهور للتنزيه"
For proof refer to:
Al Mabsut 23/158, Majalla Al Buhuth Al Fiqhiyya (Saudi Arab)/86, Sharh Al Majalla/669, I'la Al Sunan 14/168, Fatawa Hindiya 5/478, Al Fiqh Al Islami Wa-adilltuhu 5/596
- ☆ Maulana Sabahuddin Malik Qasmi recommends two things in this regard:
First: The state should promote the preservation of the natural sources of water instead of selling these and should

keep a check and balance over elements that prove detrimental to this effort.

Second: If the natural sources prove inadequate and if citizenship requires the establishment of water supply systems then the government should bear these costs incurred as a welfare scheme. If this is not possible then it should set a charge on the water.

14- The issue of making settlements in low lying areas

Question 14: An aspect of the spread of urban populations is that in low lying areas (where ponds are essential) plotting is done and these are then sold to make settlements. On the one hand this leads to the water being divided among the people and also affects rainwater harvesting. As a whole this results in depletion of the water table and causes shortage for the entire population. Is reclamation of land under ponds to create settlements justified? What are the ruling in case the government lays objections to this or otherwise?

The plotting of and sale of lands in low lying areas covered by ponds for the purpose of establishing settlements is not acceptable as the possibility of common harm lies in it despite what the state has to say in this regard. (Ibn Majah) “لا ضرر ولا ضرار”. This opinion is held by the following authors:

[Maulana Syed Abdul Rahim Hasani, Hafiz Kalimullah Umri, Maulana Aamir Zafar Ayyubi, Mufti Syed Baqir Arshad Qasmi, Maulana Abrar Hasan Nadvi, Maulana Khurshed Anwar Azmi, Maulana Muhammad Mustafa Qasmi, Maulana Rehmatullah Nadvi, Mufti Abdullah Kaviwalla, Mufti Sher Ali, Mufti Zaheer Ahmad Kanpuri, Maulana Muhammad Huzaifa Dahoodi]

Proofs:

١- "لا يجوز أيضا (الإحياء) محل عدل عنه ماء الفرات ونحوه كدجلة والشط وغيرها، وإذا احتل عود الماء إليه، لحاجة العاملة إلى كونه نهراً، وإن لم يحتل عود الماء إلى مكانه جاز إحيائه لكونه ملحفاً بالموات"

(Majallat Al Ahkam/688)

٢- "إذا نضب الماء عن جزيرة في دجلة فليس لأحد أن يحدث فيها شيئاً لا بنائاً ولا زرعاً لأن مثل هذه الجزيرة إذا حصنت وزرعت كان ضرراً على أهل المنازل والدور"

(Kitab Al-Kharaj/99)

Conditional Permissibility:

- ☆ Mufti Zaheer Ahmad Kanpuri says that if land is more of an issue than the availability of water and sufficient reserves are present then in such a case bringing the land under ponds to habitation can be allowed. And in such a situation looking past the state's prohibition on doing so is also acceptable.
- ☆ Maulana Muhammad Huzaifa Dahoodi opines that if the surrounding areas are not affected by the establishment of the settlement and if the water is made to course in a manner that it does not affect the settlement then building over a pond is acceptable.
- ☆ Maulana Khursheed Anwar Azmi opines that if the government sees no harm in plotting the land then it can do so, but if it observes to the contrary then even it can not allot the land to any person.

Justifications for allowing settlements:

Certain authors feel that man possesses the right to dispose of any property in a manner he sees fit and plotting on

low lying lands and creating settlements over them is acceptable under the sharia if doing so is not prohibited by the government and does not spell harm to others. Those in agreement with this view are:

[Maulana Abu Sufyan Miftahi, Qazi Abdul Jaleel Qasmi, Mufti Rashid Hussain Nadvi, Mufti Tanzeem Alamn Qasmi, Maulana Ruhul Amin]

Proofs:

١- "لا يمنع الشخص من تصرفه في ملكه إلا إذا كان الضرر بجاره ضرراً
بيناً فيمنع من ذلك، وعليه الفتوى"

(Tanweer Al Absar M'a Al Durar Al Mukhtar 8/152)

٢- "كل يتصرف في ملكه كيفما شاء، لكن إذا تعلق حق الغير به فيمنع
المالك من تصرفه على وجه الاستقلال"

(Majalla Al Ahkam Madh/1192, Durar Al Ahkam
3/210)

٣- "تصرف الإنسان في خالص حقه إنما يصح إذا لم يتضرر به سواء وفي
لفظ تصرف المالك في ملكه لا يتقيد بشرط السلامة"

(Mausuat Al Qawaid Al Fiqhiya 4/309, with reference
to Al Mabsut)

However Maulana Shahjahan Nadvi says that since there is no quantification of the harm that may be incurred the government can place restrictions over establishing settlements in light of general harm because it is appointed as the representative of the public. An almost similar opinion is expressed by Mufti Rashid Hussain Nadvi, Mufti Tanzeem Alam Qasmi, Maulana Ruhul Amin and Maulana Muhammad Usman Bastwi.

"إن الذين يخالفون القانون الذي يحفظ الحقوق ويقر العدل ويطبق ميزانه
هوؤلاء يعتبرون شرعاً مخالفين للدين نفسه لأن الدين يأمر بطاعة مثل
هذه القوانين التنظيمية ما دامت بالمعروف وفي غير معصية"

(Fatawa Muasirah: Dr. Yusuf Qardhawi 1/597) [Paper: Mufti Tanzeem Alam Qasmi]

"والحنفية والشافعية يرون أن الفعل مشروع في أصله، واحتمال الضرر لا يصلح دليلاً على الضرر المتوقع فلا يمنع حق لمجرد احتمال الضرر"

[Al Fiqh Al Islami Wa-adilltuhu 5/522) [Paper: Maulana Ruhul Amin]

☆ Mufti Shahid Ali Qasmi has enumerated the following situations in this context:

- a- If plotting on the land does not lower the water table then the landowners can proceed with the process.
- b- Those areas in which the shortage of water is acute and plotting on the land poses a serious risk to the water table -and also if the government has prohibited the plotting of lands in low lying areas- it would be obligatory upon land owners that they refrain from plotting the land and violation of the prohibition is not allowed.
- c- If the situation is such that plotting on the lands at a lower altitude shall affect the water table but not as much to cause harm to the public, i.e. there are adequate provisions to source water from elsewhere, then in such cases plotting of the land is allowed.

15- The supply of water is the state's responsibility:

Question 15: The charter of the government states that it shall provide the citizens with water for drinking and other uses. Even rural areas are covered under this order in developed countries. Is the supply of water then an obligation of the government and is it every citizen's right to demand it?

If the government then sets a charge on water would it stand correct in demanding a price and would it be entitled to cessation of supply in case of non payment of charges from the Islamic point of view?

All the authors concur in relation to this question that it is one of the state's liabilities that it ensure water supply to its citizens and it is every citizen's right to demand the same. Although some difference exists regarding whether some sort of payment or charge in lieu of this is appropriate. Most authors lean towards the view that since establishing a supply system means that the state incurs costs; the levying of some charge in return is a valid move under the sharia and in case of non-payment of the charge the state is authorized to cut supply. This opinion is held by:

[Qazi Abdul Jaleel Qasmi, Maulana Abu Sufyan Miftahi, Maulana Sabahuddin Malik Qasmi, Mufti Shahid Ali Qasmi, Maulana Ruhul Amin, Mufti Tanzeem Alam Qasmi, Mufti Rashid Hussain Nadvi, Mufti Abdullah Kawiwalla, Maulana Muhammad Shahjahan Nadvi, Maulana Muhammad Mustafa Qasmi, Maulana Khursheed Anwar Azmi, Mufti Syed Baqir Arshad Qasmi, Maulana Abdul Rahim Hasani, Hafiz Kalimullah Umri]

Proofs:

١- "ولو احتاجت هذه الأنهار إلى الكرى فعلى السلطان كراها من بيت المال، لأن منفعتها لعامة المسلمين، فكانت مؤنتها من بيت المال، لقوله عاليه السلام: الخراج بالضمان، وكذا لو خيف منه الغرق فعلى السلطان إصلاح مسناته من بيت المال"

(Badai' Al Sanai' 5/280)

٢- "النهر العظيم الذى لم يدخل فى المقاسم كالفرات ودجلة وجيحون وسيحون والنيل، إذا احتاج إلى الكرى وإصلاح شطه يكون على السلطان من بيت المال"

(Fatawa Hindiya 5/381)

٣- "إن إدارة المرافق العامة فى الإسلام كالمساجد والمدارس والمساقى والجسور والبريد والدفاع والعشور والري وتوريد المياه ونحوها تلتقى مع الطريقة المتبعة الآن، وهى طريقة الاستغلال المباشر ومقتضاها أن تقوم الدولة نفسها بإدارة المرافق العامة مستعينة بأموالها وموظفيها ومستخدمه فى ذلك وسائل القانون العام"

(Al Fiqh Al Islami Wa-adilltuhu 8/6276)

The issue of halting water or not:

- ☆ If the person is so poor and destitute that he cannot pay for the service of being supplied water then it is necessary that the government provide water gratis. If there is no other means of procuring water then the government would be wrong in halting supply.
[Maulana Muhammad Usman Bastwi, Mufti Tanzeem Alma Qasmi, Maulana Abrar Hasan Nadvi, Hafiz Kalimullah Umri]
- ☆ Maulana Huzaifa Dahoodi says that the state should undertake the supply from its own pockets and should not charge for it. If the state treasury facilitates it then the state is not correct in charging for the supply of water nor can it halt supply in case payment of the charge is not possible.
- ☆ Maulana Rehmatullah Nadvi is of the opinion that under the Islamic point of view the state does not have the right to halt supply in case of non-payment. Instead some other form of punishment or warning should be adopted.
- ☆ Mufti Rashid Hussain Nadvi is of the view that in areas where traditionally the order is to procure water by one's

own self, there the state is not responsible for the supply of water.

- ☆ Maulana Aamir Zafar Ayyubi says that the supply of water is not one of the state's obligations but in fact only the protection of water sources is. Also, this demand can not be made of the state.

16- The establishment of drainage is the state's responsibility:

Question 16: The same questions arise in the case of used or dirty water and its drainage for which the government has laid out a sewage system. Not only are the interests of the population linked to drainage, the health of the entire settlement is tied to it. From a sharia perspective, will drainage then be considered a duty of the government and a right of the citizens?

In the context of this question all the authors share the same opinion that the expulsion of used and dirty water through the creation of a drainage system so that the health of the citizens is maintained is a duty of the state under the sharia's perspective and this can be demanded from the state.

Proofs:

١- "ونلاحظ بأن إصلاح الأنهار والمساقى والمصارف العامة على الخزينة العامة (أى بيت المال) أو وزارة المالية، لأن منفعتها للناس فكانت مؤونتها من بيت المال"

(Badai' Al Sanai' 6/192)

٢- "فكل ما يرى ولى الأمر فعله أقرب إلى الصلاح للرعية وأبعد عن الفساد فله أن يفعله بل قد يجب عليه"

(Fatawa Muasirah 1/583)

٣- حق المسيل هو تصريف الماء الزائد عن الحاجة أو غير الصالح إلى المصارف والمجارى العامة بواسطة مجرى سطحي" أو أنبوب مستور

سواء من أرض أو دار أو مصنع وتجب نفقات إصلاح المسيل
على المنتفع به إذا كان في ملكه أو “في ملك غيره، فإن كان في أرض
عامة فنفقة الإصلاح على بيت المال

4- (Al Fiqh Al Islami Wa-adilltuhu 5/606)

Some other perspectives:

- ☆ If the state incurs expenditure in the setup of a drainage system, then the citizenry is to tolerate any such expenditure. “لأن الحق لهم والمنفعة تعود إليهم، ولأن الغنم بالغرم.”
[Maulana SyedAbdul Rahim Hasani, Mufti Syed Baqir Arshad Qasmi, Mufti Zaheer Ahmad Kanpuri]
- ☆ The costs shall be imposed upon the citizens. [Mufti Abdullah Kawiwalla]
- ☆ It is the moral duty of every person to dispose off dirty water in such a way that it doesn't pollute the air of his neighbours, the neighbourhood or the area. [Maulana Ruhul Amin]



Critical Analysis

Water Resources and Related Sharia Rulings

Questions: 1 to 5

Mufti Rashid Hussain Nadvi ¹

One of the topics of importance raised at the 20th seminar of the Islamic Fiqh Academy was “Water Resources and Related Sharia Rulings”. The total number of questions related to this topic is 16. The Academy has delegated the duty of addressing and summarizing the answers to questions 1 to 5 upon this author. The academy received a total of 21 entries on this topic. The summaries of the first 5 are presented as follows:

The first question on this topic is that “What rulings does the sharia list out pertaining to the use of water?”

First Ruling:

In answering this question almost all the authors have talked about the purity of water unless it gets contaminated. As substantiating evidence the authors have mentioned the following proofs:

1- Many authors have mentioned these verses:

(a) "وأنزلنا من السماء ماءً ظهوراً" (Al Furqan: 48)

(b) "وينزل عليكم من السماء ماء ليطهركم به" (Anfal: 61)

٢- يا أيها الذين آمنوا إذا قمتم إلى الصلاة فاغسلوا الآية

¹ Madarsa Zia Ul Uloom Rae Bareilly, U.P

٣- "ولا تقربوهن حتى يطهرن" [Maulana Khursheen Anwar Azmi]

٤- "أن الماء طهور لا ينجسه شيء" [Hafiz Kalimullah Umri]

٥- "أجمع العلماء على أنه جميع أنواع المياه مطهرة لغيرها"

[Hafiz Kalimullah](Bidayat Al Mujtahid)

(Bidayatul Mujtahid)(Hafiz Kalimullah)

Second Ruling:

Most authors have written that extravagance while using water is prohibited. The proofs for this are:

١- "كلوا واشربوا ولا تسرفوا" (A'raf: 31)

٢- "أنه سيكون في هذه الأمة قوم يعتدون في الطهور وادعاء"

٣- "إن النبي صلى الله عليه وسلم يتوضأ بالمد ويغتسل بالصاع إلى خمسة

أمداد" (Bukhari)

[Dr. Bahauddin Nadvi, Rashid Hussain Nadvi, Maulana Muhammad Huzaifa Dahoodi, Maulana Naeem Akhtar Qasmi, Maulana Khursheed Anwar Azmi, Maulana Tanzeem Alam Qasmi]

٤- "إن المبذرين كانوا إخوان الشياطين"

[Maulana Muhammad Usman Bastwi, Maulana Ruhul Amin, Mufti Sabahuddin Malik Qasmi, Dr. Shahjahan Nadvi, Maulana Khursheed Anwar Azmi]

٥- "ما هذا السرف يا سعد!"

[Maulana Abrar Hasan Ayyubi Nadvi, Maulana Ataullah Qasmi, Thesis Writer, Jamia Arabia]

٦- "هذا من النعيم الذي تسئلون عنه" [Mufti Abdullah Kaviwalla]

Third Ruling:

The authors have written that polluting water is not allowed. Proofs for this are mentioned now:

١- "لا يبولن أحدكم في الماء الدائم الذي لا يجري ثم يغتسل فيه"

[Maulana Abu Sufyan Miftahi, Maulana Ruhul Amin Hansut, Dr. Shahjahan Nadvi, Maulana Khursheed Anwar Azmi, Rashid Hussain Nadvi]

٢- "لا يغتسل أحدكم في الماء وهو جنب"

[Maulana Abu Sufyan Miftahi, Maulana Huzaifa Dahoodi, Maulana Abrar Hasan Ayyubi Nadvi, Maulana Muhammad Usman Bastwi, Mufti Tanzeem Alam Qasmi, Rashid Hussain Nadvi]

٣- "إذا أستيظ أحدكم من نومه فلا يغمس يده في الإناء" (Al Hadith)

[Maulana Abu Sufyan Miftahi, Maulana Muhammad Huzaifa Dahoodi, Maulana Khursheed Anwar Azmi]

Fourth Ruling:

Nobody has a monopoly over water; therefore the creation of such reserves that encroach upon somebody's right to water is also not correct:

١- "المسلمون شركاء في ثلاث في الماء والكلا والنار" (Al Hadith)

٢- "أن الماء إلى الكعبين لا يحبس الأعلى على الأسفل" (Al Hadith)

[Maulana Ruhul Amin, Maulana Sher Ali, Mufti Tanzeem Alam Qasmi, Thesis Writer Jamia Sadia Arabia]

Mufti Baqir Arshad Qasmi however has first quoted the linguistic and sharia connotations of the word "شرب" and then mentioned the rulings in this regard. He then goes on to establish the various types of water in terms of purity and impurity after an in-depth examination of pure water. A similar breakdown has been presented by Mufti Zaheer Ahmad Kanpuri and a particularly detailed discussion has been done by Mufti Rehmatullah Nadvi.

The second question was that what situations would constitute prodigality and what does the sharia declare in their regard?

Adressing the first segment of this question the authors have written that one situation which would constitute prodigality would be using water in permissible activities in amounts greater than has been ascribed, for example washing the parts that come under ablution more than thrice. Another situation is letting water run off without any reason. This can happen in a variety of situations, for example letting a tap run without reason or misuse water in the bath house or toilet. The authors have quoted the following provisons in this regard:

١- "إن رسول الله صلى الله عليه وسلم مَرَّ بِسَعْدٍ وَهُوَ يَتَوَضَّأُ فَقَالَ: "مَا هَذَا السَّرْفُ" (Al Hadith)

[Mufti Tanzeem Alam Qasmi, Maulana Khursheed Anwar Azmi, Mufti Sabahuddin Malik Qasmi, Maulana Sher Ali, Maulana Zaheer Ahmad Kanpuri, Maulana Syed Baqir Arshad Qasmi Bangalori, Mufti Kamil Qasmi, Maulana Abrar Hasan Ayyubi Nadvi, Maulana Naeem Akhtar Qasmi, Maulana Huzaifa Dahoodi, Maulana Abu Sufyan Miftahi, Maulana Kalimullah Umri, Rashid Hussain Nadvi]

٢- قوله تعالى: "وَكُلُوا وَاشْرَبُوا وَلَا تُسْرِفُوا" وقوله تعالى: وَلَا تُطِيعُوا أَمْرَ الْمُسْرِفِينَ قوله تعالى: "وإن المسرفين هم" "أصحاب النار

[Maulana Rehmatullah Nadvi, Mufti Usman Bastwi, Mufti Syed Baqir Arshad Bangalori, Mufti Muhammad Huzaifa Dahoodi, Maulana Kaliullah Umri, Mufti Abdullah Kawiwalla]

٣- "إن النبي صلى الله عليه وسلم كان يتوضأ بالمد ويغتسل بالصاع"

[Maulana Khursheed Anwar Azmi, Mufti Abdullah Kawiwalla, Maulana Muhammad Huzaifa Dahoodi, Dr. Bahauddin Nadvi, Maulana Kalimullah Umri]

٤- "فمن زاد على هذا أو نقص فقد تعدى وظلم" (Al Hadith)

[Maulana Huzaifa Dahoodi, Hafiz Kalimullah Umri, Rashid Hussain Nadvi]

٥- "لا تسرف، لا تسرف" (Al Hadith)

[Maulana Ruhul Amin, Maulana Huzaifa Dahoodi, Hafiz Kalimullah Umri]

٦- "إنه سيكون في هذه الأمة قوم يعتدون في الطهور والدعاء"

[Maulana Muhammad Huzaifa Dahoodi]

As far as the second segment of the question regarding the sharia's view on excess is concerned, the writers have presented three points of view:

The first opinion is that in light of the above proofs prodigality is prohibited or unacceptable. This opinion is held by:

Hafiz Kalimullah Umri, Maulana Abu Sufyan Miftahi, Maulana Huzaifa Dahoodi, Maulana Naeem Akhtar Qasmi, Maulana Abrar Hasan Ayyubi Nadvi, Mufti Abdullah Kaviwalla, Mufti Syed Baqir Arshad Qasmi, Maulana Rehmatullah Nadvi, Mufti Sabahuddin Malik, Maulana Khursheed Anwar Azmi, Mufti Tanzeem Alam Qasmi.

The second opinion is that prodigality is absolutely unacceptable because in "ولا تسرفوا" the verb is not on the sensory. This opinion is expressed by Maulana Ataullah Qasmi.

The third opinion is that if the profusion is on personally held water then it is considered detestable and if it is on water that is public or jointly held then considered haram. This opinion is held by:

Maulana Muhammad Kamil Qasmi, Maulana Muhammad Usman Bastwi, Maulana Ruhul Amin, Maulana Sher Ali, Dr. Shajahan Nadvi, Rashid Hussain Nadvi, Thesis writer Jamia Sadia Arabia.

These gentlemen have used jurisprudential passages like this one to substantiate their reasoning:

"الإسراف ومنه الزيادة على الثلاث لو بماء النهر والمملوك له، أما الموقف على من يطهور ومنه ماء المدارس فحرام"

(Al Durr Al Mukhtar, Kitab Al Taharat) [Dr. Shahjahan Nadvi, Malulana Kamil Qasmi, Maulana Huzaifa Dahoodi, Rashid Hussain Nadvi]

Then some other gentlemen have inferred from Allama Shami's argument that the correct interpretation of the makruh prohibition is only to be read as disliked while some have read it as being absolutely detestable.

The third question is about procedures outlined in the sharia to protect against water pollution and is following them obligatory or simply ethical in value?

While answering to the first part of the question the authors have mentioned the following rulings:

- 1- If one wakes up then before washing ones hands thrice he may not put his hands in a utensil according to the Prophet (PBUH):

"إذا أستيقظ أحدكم من نومه فليغسل يده ثلاثا قبل أن يدخلها الإناء"

[Hafiz Kalimullah Umri, Maulana Huzifa Dahoodi, Maulana Naeem Akhtar Qasmi, Maulana Abrar Hasan Ayyubi, Maulana Rehmatullah Nadvi, Maulana Ruhul Amin Hansut, Mauana Sher Ali, Mufti Shahjahan Nadvi, Maulana Khursheed Anwar Azmi]

- 2- Urinating into still water has been prohibited: (Al Hadith) "لا يبولن أحدكم في الماء الدائم"

[Maulana Kalimullah Umri, Rashid Hussain Nadvi, Maulana Muhammad Huzaifa Dahoodi, Maulana Naeem

Akhtar Qasmi, Maulana Abrar Hasan Ayyubi Nadvi, Maulana Ataullah Qasmi, Maulana Abdullah Kaviwalla, Qazi Kamil Qasmi, Mufti Syed Baqir Arshad Qasmi, Mufti Muhammad Usman Bastwi, Mufti Zaheer Ahmad Kanpuri, Maulana Rehmatullah Nadvi, Maulana Ruhul Amin Hansut, Maulana Sher Ali, Mufti Sabahuddin Malik Qasmi, Mufti Shahjahan Nadvi, Maulana Khursheed Anwar Azmi, Maulana Tanzeem Alam Qasmi, Thesis writer Jamia Sadia Arabia]

- 3- Urinating in water that is flowing is also not permitted:
 (Al Hadith) "نهى رسول الله صلى الله عليه وسلم فى الماء الجارى"
 [Maulana Muhammad Huzaifa Dahoodi, Mufti Muhammad Usman, Maulana Tanzeem Alam Qasmi]
- 4- Consumables should be kept covered because the hadiths narrate:

"وأوكوا الأسقية وخمروا الطعام والشراب"

[Maulana Kalimullah Umri, Rashid Hussain Nadvi, Maulana Muhammad Huzaifa Dahoodi, Mufti Abdullah Kaviwalla, Maulana Ruhul Amin, Maulana Sher Ali, Maulana Shahjahan Nadvi]

- 5- Urinating and faecating in the watercourses is not permitted:

"أتقوا الملاعن الثلاث: البراز فى الموارد" (Al Hadith)

[Rashid Hussain Nadvi, Mufti Muhammad Usman, Maulana Abrara Hasan Ayyubi Nadvi, Maulana Rehmatullah Nadvi, Maulana Ruhul Amin, Mufti Shahjahan Nadvi, Mufti Tanzeem Alam Qasmi]

- 6- Even in a state of sexual impurity bathing in water that is still is not allowed as is narrated by the Prophet (PBUH): "لا يغتسل أحدكم فى الماء الدائم وهو جنب"

[Maulana Huzaifa Dahoodi, Maulana Naeem Akhtar Qasmi, Maulana Khursheed Anwar Azmi, Mufti Tanzeem Alam Qasmi]

- 7- Urinating in the washroom is not permitted: (Al Hadith)
”لا يبولن أحدكم في مستحمه“

[Maulana Huzaifa Dahoodi]

- 8- Polluting water with snot, saliva etc is not permitted as is mentioned in Shami:

"والقاء النخامة والامتخاط في الماء"

[Maulana Ruhul Amin, Maulana Huzaifa Dahoodi, Maulana Khursheed Anwar Azmi, Mufti Tanzeem Alam Qasmi, Thesis writer Jamia Sadia Arabia]

- 9- Maulana Abrar Hasan Ayyubi has written that diverting the water from factories and workshops into rivers and ponds is haram. Those hadiths which mention البراز في الموارد. Many jurists have pointed towards this interpretation.

- 10- Maulana Ruhul Amin Hansut has also included drinking water by touching waterskins to the mouth under this because the hadith say: “نهى أن يشرب من في” and Hafiz Ibn Hajr has also mentioned the contamination of water as a reason for the ban.

As answer to the second segment of the question regarding whether these rulings are obligatory or moral some authors have deemed them absolutely obligatory and have also deemed non compliance haram. These gentlemen are:

Maulana Abu Sufyan Miftahi, Maulana Naeem Akhtar Qasmi, Maulana Ataullah Qasmi, Mufti Abdullah Kawiwalla, Mufti syed Baqir Arshad Qasmi, Mufti Muhammad Usman Bastwi, Mufti Zaheer Ahmad Kanpuri, Maulan Sher Ali, Mufti

Sabahuddin Malik, Maulana Khursheed Anwar Azmi, Thesis writer, Jamia Sadia Arabia

On the other hand some authors have distinguished between these rulings calling some obligatory, some moral and some merely discouraged. For instance the ruling against urinating in a small amount of still water is obligatory whereas if this act is committed in a large volume of still water is discouraged/disliked. These gentlemen have also quoted details from jurisprudential books and their names are:

Rashid Hussain Nadvi, Maulana Muhammad Huzaifa Dahoodi, Maulana Abrar Hasan Ayyubi, Mufti Shahjahan Nadvi, Maulana Rehmatullah Nadvi, Maulana Ruhul Amin, Mufti Tanzeem Alam Qasmi.

The fourth question was that through chemical processes dirty and contaminated water can be made fit for use. Will water treated so be considered pure?

Most authors have mentioned in this regard that such water shall be considered pure according to the sharia. These people are:

Hafiz Kalimullah Umri, Dr. Bahauddin Nadvi, Maulana Abu Sufyan Miftahi, Maulana Naeem Akhtar Qasmi, Mufti Abdullah Kaviwalla, Maulana Syed Baqir Arshad Qasmi, Mufti Zaheer Ahmad Kanpuri, Maulana Ruhul Amin, Mufti Sabahuddin Malik, Mufti Tanzeem Alam Qasmi, Thesis writer Jamia Sadia Arabia, Mufti Shahjahan Nadvi.

Moreover some among these have even specified that the water shall be pure only when the impurity is actually removed from it, colour, smell and taste are changed. Otherwise only masking the impurity shall not deem the water pure. [Dr. Bahauddin Nadvi, Mufti Abdullah Kaviwalla,

Maulana Shahjahan Nadvi, Mufti Tanzeem Alam Qasmi,
Thesis writer Jamia Sadia Arabia and others]

These gentlemen have substantiated their claim using
these provisions:

١- "إذا كان الماء المتنجس كثيراً، وزالت أوصاف النجاسة عنه لونا وطعماً
وريحاً صار طهوراً ألخ"

(Fatawa Al Lajnah Al Daa'imah Fatwa: 3022) [Hafiz
Kalimullah Umri Mufti Sabahuddin Malik]

٢- "فإن زال تغيره بنفسه أو بماء أو بمجاور وقع طهر لزوال سبب
التنجس"

(Tuhfat Al Muhtaj 1/87) [Dr. Bahauddin Nadvi]

3- Since there has been an alteration in its nature the water
shall be considered pure

[Maulana Abdullah Kaviwalla, Maulana Ruhul Amin,
Mufti Sabahuddin Malik, Mufti Shahjahan Nadvi,
Mufti Zaheer Ahmad Kanpuri]

٤- "فبعد ما تغير أحد هذه الأوصاف وحكم بنجاسته لا يحكم بطهارته ما لم
يزل ذلك التغير بأن يرد عليه ماء طاهر حتى يزول ذلك التغير"

(Fatawa Tatarkhaniya) [Maulana Syed Baqir Arshad
Bangalori]

5- The hadith mention: "إلا ما غير لونه أو طعمه أو ريحه" so if
this fault is eliminated then the water shall be
considered pure [Mufti Tanzeem Alam Qasmi]

6- The Fiqh Academy of Makkah rulings p.17 declares
such water pure

[Mufti Tanzeem Alam Qasmi, Maulana Syed Baqir
Arshad Qasmi etc.]

Meanwhile some authors opine that chemical processes
can purify still or running water because they alter the cause of
the impurity and if the impurity is removed then the water is

purified however it won't be completely pure because even after the process the cause of contamination is still mixed in the water unless it is let into running water and separated or put into a large amount of running water and then treated. Maulana Huzaifa Dahoodi has consulted a large number of jurisprudential books and also consulted the Islamic Fiqh Academy of Makkah rulings to weave his case. The following gentlemen also express the same opinion:

Maulana Sher Ali, Rashid Hussain Nadvi, Maulana Abrar Hasan Ayyubi Nadvi.

The proofs they have presented are:

- 1- Maulana Abrar Hasan Ayyubi has presented passages from Ibn Taimiyyah and Ibn Al Qayyim. He has also used this jurisprudential rule "الحكم إذا ثبت بعلّة زال بزوالها".
- 2- The writer Rashid Hussain has written that this process does not completely transmute but instead decomposes to gradually therefore would not be pure if slightly stagnant.
- 3- Maulana Sher Ali has used this passage to bolster his case:

"حوض صغير تنجس ماءه فدخل الماء الطاهر فيه من جانب وسال ماء الحوض من جانب آخر (إلى) يحكم بطهارة الحوض" (Hindiya)

Whereas Maulana Muhammad Usman has stated that according to the Imam Muhammad's point of view such water would not be pure. However according to the Three Imams and Imam Abu Yusuf it shall be purified. This rests on the view of Imam Muhammad but in times of need it can be used according to Imam Abu Yusuf. These are cited from Majmu'at Rasa'il Lucknawi p. 51.

Considering the decisions of the Fiqh Academy, Maulana Nizamuddin (R.A) and Maulana Khalid Saifullah Rehmani Maulana Rehmatullah Nadvi writes that if the constituency is such that water outweighs the impurity and there is no alternative at hand, only then may the water be considered pure.

Maulana Khursheed Anwar Azmi decrees that such water will be considered pure in areas where there is a scarcity of water. As proofs he presents the following:

١- "المشقة تجلب التيسير، إذا ضاق الأمر اتسع"

2- Allama Shami states:

"قد اعتيد في بلادنا إلقاء زبل الدواب في مجاري الماء (إلى) وفي ذلك حرج عظيم إذا قلنا بالنجاسة ولحرج مدفوع بالنص"

(Radd Al Muhtar 1/336)

The fifth question that the academy posed was whether the government had the right to impose restrictions on certain uses of water in light of shortages and whether it was obligatory to follow such directives by the state.

While certain authors have not addressed this question at all others have said that restriction on using water more than there is need shall be considered justified and it is obligatory to follow them. However many authors have specified that imposing such restrictions shall only be allowed if there is an actual shortage. Others have mentioned additional requirements. For instance, Maulana Huzaifa Dahoodi mentioned two more conditions:

- 1- The use of water should not be linked to essential needs of man.
- 2- It should not be linked to any sharia directive.

Many authors have also said that this restriction should not conflict with any sharia directive. (Maulana Ruhul Amin

Hansut, Maulana Rehmatullah Nadvi and Maulana Naeem Akhtar Qasmi)

Whereas Mufti Sabahuddin Malik Qasmi has put a condition stating that the restriction should not be rooted in discrimination. The authors have used the following texts as corroboratives:

١- "يا أيها الذين آمنوا أطيعوا الله وأطيعوا الرسول وأولى الأمر منكم"
(Quranic Verse) (Rashid Hussain Nadvi, Maulana Muhammd Usman Bastwi)

٢- "لا طاعة لمخلوق في معصية الخالق"
(Al Hadith) (Maulana Kalimullah Umri)

3- The Sahih Muslim states:

"إنكم ستأتون غداً إن شاء الله عین تبوک (إلى) فمن جاء منكم فلا يمس من ماءها شيئاً حتى آتى"

From this hadith Allama Baji has argued that in view of interests the authority can put restrictions on the use of common goods like water and grass. (Maulana Ruhul Amin Bastwi)

٤- "طاعة الإمام في غير المعصية واجبة"
(Radd Al Muhtar, Kitab Al Qidha) (Mufti Shahjahan Nadvi)

5- Maulana Khursheed Anwar Azmi has deduced this from the the fact that Prophet Yusuf ordained the management of the flow of water according to need and jurists allowed taxation in special cases. Also, banning the sale of cantaloupes during cholera outbreaks was also allowed.

٦- "وان أضربا لنهر فلكل واحد من المسلمين منعه"
(Badaiih the same is in Al Hindiya and other books)
(Rashid Hussain Nadvi, Maulana Syed Baqir Arshad Bangalori and Mufti Zaheer Ahmad Kanpuri)

7- There is concession for the sake of public interest here.
(Mufti Tanzem Alam Qasmi, Maulana Muhammad Usman Bastwi, Maulana Naeem Akhtar Qasmi, Maulana Abrar Hasan Ayyubi Nadvi, Maulana Rehmatullah Nadvi and others)

٨- "لا يمنع أحد من التصرف في ملكه مالم يكن فيه ضرر فاحش للغير"

(Durar Al Ahkam 10/220) (Maulana Huzaifa Dahoodi)

٩- "إذا اجتمعت البليتان فاختر أهونهما" (Maulana Sher Ali Gujrati)

١٠- "إذا كان فعل الإمام مبيناً على المصلحة فيما يتعلق بالأمر الامة لم ينفذ أمره شرعاً إلا إذا وافقه"

(Al-Ashbaah) (Maulana Ruhul Amin Hansut)



Water Resources and Related Sharia Rulings Questions: 6 to 10

Mufti Zaheer Ahmad Kanpuri¹

I received a total of 20 entries on this topic. I was presented with questions 6 to 10 for analysis.

Regarding the first segment of question 6 which concerned the ownership of groundwater, 18 authors presented their views: Of this two views are:

- 1- Water situated under the premissis of owned land is to be considered the property of the land owner.

The following gentlemen ascribe to this opinion:

Hafiz Sheikh Kalimullah Umri, Maulana Abu Sufyan Miftahi, Mufti Rashid Hussain Nadvi, Mufti Sher Ali, Mufti Abdullah Kavi, Mufti Syed Baqir Arshad Qasmi, Maulana Usman Bastwi, Mufti Rehmatullah Nadvi, Maulana Sabahuddin Malik Qasmi, Mufti Tanzem Alam Qasmi.

Proofs:

☆ "كل يتصرف في ملكه كيفما شاء أى أنه يتصرف كما يريد باختياره لا يجوز منعه من التصرف من قبل أى أحد"

(Sharh Majallat Al Ahkam 11/210)

☆ "وكان البئر أو العين أو الحوض أو النهر في ملك رجل له أن يمنعه من يريد الشفة من الدخول في ملكه إذا كان يجيد ماء آخر يقرب من هذا الماء"
(Hidayah 4/486)

¹ Jami' al-'Ulum, Patkapur, Kanpur

☆ "وله من أجزاء الأرض مركب عينها ولا مؤنة في سائر الاجزاء فكذا في هذا الجزء"

(Hidayah 1/200)

Mufti Tanzem Alam Qasmi has considered water above mineral deposits found under owned property.

2- Second opinion: That water under the ground is nobody's property.

Those who ascribe to this view:

Mufti Muhammad Huzaifa, Maulana Naeem Akhtar Qasmi, Maulana Abrar Hasan Nadvi, Maulana Ataullah Qasmi, Maulana Ruhul Amin, Maulana Muhammad Shahjahan Nadvi, Maulana Khursheed Anwar Azmi and Mufti Zaheer Ahmad Kanpuri

Proofs:

☆ "الماء تحت الأرض لا يملك"

(Durr, Ma' Al Radd 10/9 same is in Al Radd 10/7, Al Miyah Al Jariyat Taht)

☆ "المياه الجارية تحت الأرض ليست بملك أحد"

(Durar Al Ahkam Sharh Majallat Al Ahkam 10/265)

☆ "الماء تحت الأرض غير مملوك لاحد"

(Mabbsut Al Sarakhsi 22/153, Al Naas Shurakau Fi Al Thalatha Al Maa wa Al Kala wa Al Nar Al Hadith)

☆ "الماء الجاري تحت الأرض ليس بملك أحد"

(Majallat Al Ahkam Al Adliyah Ma Sharah 1/676)

Section 2 of question 6 asked whether the government can prohibit a landowner from boring on his land for water.

Three points of view emerged on this matter:

- 1- Almost all the authors have written that the state can prohibit boring for water in light of the public interest. Also following such an order is required by the sharia.

This opinion is expressed by:

Sheikh Kalimullah Umri, Maulana Abu Sufyan Miftahi, Mufti Rashid Hussain Nadvi, Maulana Naeem Akhtar Qasmi, Maulana Abrarh Hussain Ayyubi Nadvi, Mufti Abdullah Kavi, Maulana Muhammad Usman Bastwi, Mufti Baqir Arshad Bangalori, Maulana Ruhulamin, Maulana Sabahuddin Malik Qasmi, Maulana Muhammad Shahjahan Nadvi, Maulana Khursheed Anwar Azmi, Mufti Tanzem Alam Qasmi and Mufti Zaheer Ahmad Kanpuri

Proofs:

☆ “لا ضرر ولا ضرار” (Ibn Majah 233) “يتحمل الضرر الخاص لأجل دفع الضرر العام” (Al Ashbah wa- Al Nazair La Ibn Nujaim 1/143-144)

☆ “الانتفاع بالمباح انما يجوز اذا لم يضر بأحد” (Durar Ala Al Radd 5/282)

“يجوز لكل واحد الانتفاع لكنه بشرط أن لا يضر بالعامه فان أضر فلكل واحد مسلما كان أو ذميا منعه”

(Majallat Al Ahkam Al Adliyah p.681 article 1254)

“يا ايها الذين آمنوا اطيعوا الله واطيعوا الرسول و اولى الأمر منكم”

(Surah Nisa)

“لا يمنع أحد من التصرف فى ملكه مالم يضر فيه ضرر فاحش للغير”

(Article 1197)

“فمن أراد أن يحفر فى حريمها منع منه لئلا يؤدى إلى تفويت حقه والاخلال به”

(Al Bada’i/481)

☆ “لا يمنع الشخص فى تصرفه فى ملكه الا اذا كان بجاره ضرراً بيناً”

(Radd Al Muhtar 559/2 the same is in Al Mughni 7/52)

The second opinion:

Neither can the government stop one from boring on one's land, nor is obedience to such a decree required under the sharia.

The sole proponent of this perspective is Maulana Huzaifa Dahoodi.

Proof:

This passage from Durar Al Ahkam Sharh Majallat Al Ahkam:

"لو حفر أحد بئرا في ملكه وأخرج ماء ها ثم حفر آخر في ملكه في قرب تلك البئر فجذبت ماء البئر الأولى فليس لصاحب البئر الأولى منعه لأن ذلك الشخص لا يعتبر متعديا لتصرفه في ملكه كما أن المياه تحت الأرض ليست بملك أحد" (10/265)

The third opinion:

Mufti Muhammad Rehmatullah Nadvi says if the state provides an alternative then it can prohibit boring on one's land, otherwise not.

Question 7: In this matter there are two opinions:

- a) The government can order the demarcation of an area of an individual's house as cachement area and adherence is required. Those who ascribe to this opinion feel that although the management and preservation of cachements of running water is the government's responsibility, under special circumstances it can delegate this duty to the people. The people are also responsible at an intermediate level.

Proponents:

Hafiz Kalimullah Umri, Maulana Abu Sufyan Miftahi, Mufti Rashid Hussain Nadvi, Dr. Bahauddin, Mufti

Muhammad Huzaifa, Maulana Ataullah Qasmi, Mufti Syed Baqir Arshad Bangalori, Mufti Muhammad Usman Bastwi, Mufti Rehmatullah Nadvi, Mufti Ruhul Amin, Maulana Sabahuddin Malik Qasmi, Maulana Muhammad Shahjahan Nadvi, Maulana Khursheed Anwar Azmi, Maulana Naeem Akhtar Qasmi and Mufti Zaheer Ahmad Kanpuri.

Proofs:

The proofs presented by the abovementioned gentlemen are as follows:

☆ "إذا كان فعل الإمام مبنياً على المصلحة فيما يتعلق بالأمور العامة لم ينفذ حكمه شرعاً إلى إذا وافقه إطاعة الامام في غير المعصية واجبة"

(Al Ashbah wa Al Nazair La Ibn Nujaim p.18)

"وإن لم يكن سعة في بيت المال وامتنع الناس عن تطهيره بطيب أنفسهم فيجبر الناس على تطهيره فلولى الأمر الناظر على منافع ومصالح العامة أن يجبرهم على ذلك "

(Durar Al Ahkam 1/349)

"وعلى السلطان كراء هذا النهر الأعظم ان أحتاج إلى الكراء لأن ذلك من حاجة عامة المسلمين ومال بيت المال معد لذلك فانه مال المسلمين أعد للصرف إلى مصالحهم "

(Mabsut Al Sarkhsi 23/168)

"كرى النهر غير المملوك وإصلاحه على بيت المال فان لم يكن في بيت المال سعة يجبر الناس على كريه"

(Majallat Al Ahkam Al Adaliyah p.705)

"ولو احتاجت هذه الأنهار إلى الكرى فعلى السلطان كراها من بيت المال لأن منفعتها لعامة المسلمين فكانت مؤنتها من بيت المال"

(Bada'i/280)

- b) The government can not order individuals to allocate a specific area of their homes towards water conservation and neither is it obligatory to follow such an order.

Proponents:

Mufti Abdullah Kavi, Mufti Sher Ali, Maulana Abrar Hasan, Mufti Tanzem Alam Qasmi.

Proofs:

These gentlemen say that an order of this nature will be a burden to the populace. Mufti Ali says that finding drinking water is an issue in itself and there is talk of making cachements in the homes. Mufti Tanzem Alam Qasmi and Maulana Abrar Hasan say that the government can not order such a task on the citizens although it can be done as an incentive, asking them for their contribution.

Question 8: In response to this question nearly all the authors feel that with regard to the construction of dams, the government can force the inhabitants of the area to relocate with certain conditions in mind. Under extreme urgency and with adequate compensation the Imam of the time and the state can order relocation. Whereas in Mufti Syed Baqir Arshad Bangalori's opinion without the permission of the residents there can be no movement. Permission from the residents is on top of the earlier condition of adequate compensation.

Proofs:

Those authors who feel that resettlement is a valid option have presented the following proofs:

"تو خد أرض ودار وحانوت بجنب مسجد ضاق على الناس بالقيمة
كرها.... لما ضاق المسجد الحرام أخذوا أرضين بكره من أصحابها بالقيمة "
(Shami Kitab Al Waqf 3/421)
"إذ له التصرف في حق الكافة فيما فيه نظر للمسلمين فإذا رأى فيه ذلك
مصلحة لهم كان له أن يفعله من غير أن يلحق ضررا بأحد" (Shami
10/472)

"يتحمل الضرر الخاص- لدفع الضرر العام" (Sharh Al Qawaid p.197)

"دفع الضرر العام واجب بإثبات الضرر الخاص" (Al Qawaid Al Fiqhiya p.385)

"أشترى دورا وهدمها ووسع بها المسجد" (I'la Al Sunan 13/203, 206)

"إن للإمام ولاية عامة وله ان يتصرف في مصالح المسلمين"
"الضرر الاشد يزال بالضرر الأخف" (Radd Al Muhtar 6/298)

The main proof presented by the authors who reject the validity of forceful evictions is this verse:

"يا أيها الذين آمنوا لا تاكلوا اموالكم بينكم بالباطل إلا ان تكون تجارة عن تراض منكم"

Question 9: This issue has resulted in three points of view emerging:

- a) In such a situation breaking the dam would not be the right thing to do since putting another in harms way to save one's own self is not correct.

Proponents:

Maulana Abu Sufyan Miftahi, Mufti Syed Baqir Arshad, Mufti Muhammad Huzaifa, Maulana Abdullah Kavi, Maulana Muhammad Shahjahan Nadvi, Mufti Tanzem Alam Qasmi.

Proofs:

"لا ضرر ولا ضرار", "لا يؤمن أحدكم حتى يحب لأخيه ما يحب لنفسه", "الضرر لا يزال بالضرر", "رجل سقى أرضه فتعدى الماء إلى أرض جاره...إن كانت أرضه في صعدة وأرض جاره في هبطة ويعلم أنه لو سقى أرضه يتعدى إلى أرض جاره يضمن"

"إذا اجتمع المباشر ولمتسبب أضيف الحكم إلى المباشر" (Al Hindiya 5/824-83)

"وعلى كل واحد من النهرين طاحونة وذلك يضر بالطاحونة الأخرى لم يكن له ذلك، لأنه يريد دفع الضرر عن نفسه بالإضرار بغيره"

(Muhit Burhani 19/97)

"لأن هذا دفع الهلاك عن نفسه بإهلاك غيره لا بقصد إهلاكه وهذا لا يجوز" (Badai' Al Sanai' 5/274)

- b) That action which causes least damage to all should be considered since putting another in danger to save oneself is not correct at all. This point of view is similar to the first.

Proponents:

Hafiz Kalimullah, Mufti Rehmatullah Nadvi, Mufti Ruhul Amin, Mufti Rashid Hussain Nadvi, Maulana Abrar Hasan Nadvi, Maulana Muhammad Usman Bastwi, Dr. Bahauddin and Mufti Zaheer Ahmad Kanpuri.

Proofs:

"إذا تعارضت مفسدتان روى أعظمهما ضرراً برتكاب أخفهما"
"الضرر لا يزال بمثله ولا باكثر منه بالأولى إذا يشترط بأن يزال الضرر بلا إضرار بالغير إن أمكن وإلا فباخف منه"

(Durar Al Ahkam Sharh Al Majallat article 25)

"اليقين مقدم على الظن والظن مقدم على الشك"

Essentially in both these point of view breaking the dam to save one's own self only is not considered correct.

- c) Breaking the dam to protect one's own life is justified even if it means putting the one's further down at risk because the intention here is not to cause harm but self preservation.

Proponents:

Maulana Khursheed Anwar Azmi, Mufti Sher Ali,
Maulana Sabahuddin Malik Qasmi.

Proofs:

"إن الظلم لا أسوة فيه ولا يلزم أحدى أن يولج نفسه في ظلم مخافة أن يوضع الظلم على غيره، والله تعالى يقول: إنما السبيل على الذين يظلمون الناس ويبيعون في الأرض فساداً بغير الحق، ورايت في بعض المنقولات نحو هذا عن يحيى بن عمر: أنه لا بأس أن يطرحه عن نفسه مع العلم بأنه يطرحه على غيره إذا كان المطروح جوراً بيناً " (Al Muwafqaat 2/351)

"وذكر عبد الغنى في المؤتلف والمختلف عن حماد بن أبى أيوب قال قلت لحمد بن أبى سليمان إني أتكلم فترفع فإذا رفعت عني وضعت على غيري فقال: إنما عليك أن تكلم في نفسك فإذا رفعت عنك فلا تبالي على من وضعت " (Al Muwafqaat 2/352)

Question 10: In the case of this question almost all the authors are concordant that water from rivers, lakes, public wells, ponds and springs may be used to fulfil all just needs according to their requirement like consumption, washing of clothes, for one's animals and to irrigate one's fields on condition that there is no wastage of this water and one's use should not cause discomfort to others who depend on the same water. However Mufti Sher Ali deems the permission of the government necessary if one is to create a rivulet from a river. Similarly Maulana Naeem Akhtar Qasmi leaves the discretion of fixing the amount of water one may use with the government.

Proofs:

"الثانى ماء الأودية العظام للناس فيها حق الشفة على الإطلاق وحق سقى الأرض إن كان لا يضر بالعامّة وإن كان يضر بالعامّة فليس له ذلك"

(Al Hindiya 5/390-391)

"(إن لم يضر بالعامه) فإن أضر بأن يفيض الماء ويفسد حقوق الناس أو ينقطع الماء عن النهر الأعظم أو يمنع جريان السفن فلكل واحد مسلماً كان أو ذمياً أو مكاتباً منعه"

(Shami 5/311)

"لا سقى دوابه إن خيف تخريب النهر لكثرتها ولا سقى أرضه وشجره وزرعه ونصب دولاب ونحوها من نهر غير وقناته وبئرته إلا بإذنه"

(Radd Al Muhtar 10/13)

"وإن أراد رجل عن يكرى نهراً في أرضه من هذا النهر الأعظم فإن في ذلك ضرر في النهر الأعظم لم يكن له ذلك ولم يترك يكره وإن لم يكن فيه ضرر ترك يكره"

(Kitab Al Kharaj p. 105)



Water Resources and Related Sharia Rulings Questions: 11 to 16

Maulana Khursheed Anwar Azmi¹

I am honoured at being presented the opportunity to critically assess questions 11 to 16 at the 20th jurisprudential seminar of the Islamic Fiqh Academy, Delhi titled “Water Resources and Related Sharia Rulings” held at the locus of knowledge and learning in Rampur, the Jamia Al Uloom. 21 papers were received on the topic and these papers are laudable for their comprehensiveness, in-depth understanding of the subject matter and overall excellence. They show the awareness and concern of the various authors. Their names are:

Hafiz Kalimullah Umri, Maulana Abu Sufyan Miftahi, Mufti Rashid Hussain Nadvi, Dr. Bahauddin Nadvi, Mufti Muhammad Huzaifa Dahoodi, Maulana Naeem Akhtar Qasmi, Maulana Abrar Hasan Ayyubi, Maulana Ataullah Qasmi, Mufti Abdullah Kaviwalla, Qazi Muhammad Kamil Qasmi, Mufti Baqir Arshad Qasmi, Maulana Muhammad Usman Bastwi, Maulana Zaheer Ahmad, Maulana Rehmatullah Nadvi, Maulana Ruhul Amin, Maulana Sher Ali, Maulana Sabahuddin Malik Qasmi, Maulana Shahjahan Nadvi, Maulana Tanzem Alam Qasmi, Maulana Aamir Zahoor Ayyubi and the present author Khursheed Anwar Azmi.

¹ Head, Madarsa Jamia Mazharul Uloom, Benaras

Question 11: If a stream flows adjoining various areas and people's farms then to what extent are those people entitled to utilize the water of that stream for irrigation or consumption?

Mufti Rashid Hussain Nadvi feels that with regard to such streams utilization in accordance to the guidelines set by the government will be permissible. Maulana Naeem Akhtar Qasmi agrees with him and has counted this issue as dependent on reconciliation. Dr. Bahauddin Nadvi said: everybody has the right to use public streams and lakes. If due to this some people are discomforted then they must use it successively. He presented this passage from Tuhfat Al Muhtaj as backing to his argument: فإن أراد قوم سقى أرضهم منها فضاق الماء سقى الأعلى فالأعلى وحبس كل واحد الماء حتى يبلغ الكعبيين. Qazi Muhammad Kamil Qasmi quoted the following from Fatawa Alamgiri:

مايجرى على نهر خاص لقرية فلغيرهم فيه شركة في الشفة “ (5/391) and a similar passage from Badai’ 6/189 and said all uses are permitted from such streams to those whom the stream has been made special. Mufti Baqir Arshad Qasmi also expressed his opinion based on the above passage and said that the people through whose fields these streams flow have a right to the water. Maulana Ataullah Qasmi feels that if there is a lot of water then unrestricted use is allowed but if it is less then it can be used after letting it accumulate. He quoted from the Ahkam Al Sultania:

“والضرب الثاني أن يستقل ماء هذا النهر ولايعلو للشرب إلا بحبسه فلأول من أهل النهر أن يبتدئ بحبسه ليسقى أرضه حتى تكتفى منه وترتوى ثم يحبسه من يليه حتى يكون آخرهم أرضا آخرهم حبسا”

(p. 180). Maulana Aamir Zafar Ayyubi used the hadith of “يا زبير اسق ثم أحبس الماء” to say that one can irrigate

judiciously from streams passing in front of one's fields but if water is less then it is preferable to leave it for others. Other uses may also be extracted from it if it is not an issue to others. Maulana Rehmatullah Nadvi said that the share shall be proportional to land holding and distribution shall begin from the the upstream or other established customs. Maulana Abrar Hasan Ayyubi Nadvi feels that if the stream is public then all used within the limits of excess and harm to others are allowed and if it is owned by a select group then as per their land sizes. He presents this passage from Al Mughni:

"وإن كان حق الشرب من نهر أو جدول واحد ثانياً لأناس كثيرين كان عليهم توزيع الماء بينهم توزيعاً عادلاً بنسبة مقدار ما يملك كل منهم"

(5/533) and a similar one from Mabsut (23/165) as proofs. Maulana Huzaifa Dahoodi further adds that if the stream is owned by a specific few then taking water for human needs is permitted. Feeding to one's animals comes under this if it does not affect the stream but permission is required before irrigation from it. In case of public streams provided for human or animal use, all such use is freely permitted. Permission to irrigate from such streams depends of the capacity of the stream and if the stream is for irrigation then all sorts of uses like feeding and drinking as well as irrigation are allowed. He provided Durar Al Ahkam Sharh Majallat Al Ahkam 266-279-285-288, Hindiya 5/391, Durr Al Mukhtar 10/13-14, and Takmilah Fath Al Mulhim 1/491 as corroboratives. The rest of the authors believe that from streams passing in front of one's fields use as per need is permitted as long as it doesn't encroach over another's right, causes harm to another or the stream itself. Maulana Muhammad Usman Bastwi said that

drawing water till the ankles is allowed and over that would encroach on another's share hence it is not allowed. Hafiz Kalimullah Umri using "الأقرب فالأقرب" and Mufti Tanzeem Alam Qasmi using the prophetic saying "اسق أرضك إلى أن يبلغ" "الجزر" express that people closest to the stream have a stronger right over it.

Question 1 2: Under what situations is ownership acquired?

In answering this question all the authors agree that if water is somehow stored in a utensil or other container then ownership over it is established and other people's right to it is nullified. The authors have substantiated using the following jurisprudential arguments:

- "لو أحره في جرح أو حب أو حوض مسجد من نحاس أو صفر أو جص وانقطع جريان الماء فإنه يملكه"

(Radd Al Muhtar/13)

- "أما إذا أحرز الماء في حب أو جرة أو قربة فهو مملوك"

(Mabsut 23/269)

- "الماء الذي في الظروف والأواني فهو مملوك لصاحبه ولاحق لأحد فيه"

(Badai' 5/274)

- "كل من أحرز شيئاً مباحاً كان مالكا له مستقلاً فلو تناول الماء من نهر بيده أو بوعاء كالعلبة فإنه يملكه باحرازه و حفظه في ذلك الوعاء، وليس لغيره أن ينتفع به وإذا أخذه آخر بدون إذنه واستهلكه كان ضامناً"

(Sharh Al Majalla 1/620)

However Maulana Ruhul Amin, Maulana Sabahuddin Malik Qasmi, Maulana Rehmatullah Nadvi and Maulana Abu Sufyan Miftahi add that even if one digs a well or constructs a tube well on one's land, ownership over that water shall be established because monetary and human effort is involved.

The others though, feel that in this case no ownership shall occur since obtainment is not observed and ownership over the free requires obtainment. Allama Ibn Nujaim clearly writes in Al Bahr Al Raiq:

"لأن الأنهار و الآبار والحياض لم توضع للاحراز والمباح لا يملك بالاحراز"

(Al Bahr Al Raiq 9/392)

Question 13: Under circumstances in which a person can claim ownership to water, is trading of water held under ownership allowed? –it should be noted that in present times trading in water has become an important and profitable activity.

Upon this all the authors agree that trading in one's owned property is allowed and those hadiths that prohibit trade of water consider the state prior to obtainment. They have presented the following quotes in substantiation:

- "لا بأس ببيع الماء إذا كان في الأوعية هذا ماء قد أحرز فإذا أحرزه في وعائه فلا بأس ببيعه"

(Kitab Al Kharaj: 95)

- "أما إذا أحرز الماء في حب أو جرة أو قرية فهو مملوك له حتى يجوز بيعه وليس لأحد أن يأخذ شيئاً منه إلا برضاه"

(Al Mabsut 23/158)

- "أما ما يجوز من الماء في انائه أو يأخذه من الكلاء في حبله أو يحوزه في رحله أو يأخذه من المعادن فإنه يملكه بذلك وله بيعه بلا خلاف بين أهل العلم"

(Al Mughni 6/145)

- "وله بيعه لأنه ملكه بالاحراز فصار كالصيد والحشيش"

(Fatawa Alamgiri 5/391)

Maulana Ruhul Amin however considers the trade of water undesirable since the virtues of providing water to

drinks have been mentioned in the hadith. Imam Ahmad also says: “لا يعجبني بيع الماء ألبتة” (Al Mughni 6/145). Similarly, Maulana Usman Bastwi also considers refrain from wanton purchase and selling in water preferable. Mufti Zahir Ahmad said that if large scale trade in water is likely or most certainly likely to cause shortage in some area or if trade in water is causing difficulties in the day to day usage of people then the government has the right to put an end to this practice.

Question 14: An aspect of the spread of urban populations is that in low lying areas (where ponds are essential) plotting is done and these are then sold to make settlements. On the one hand this leads to the water being divided among the people and also affects rainwater harvesting. As a whole this results in depletion of the water table and causes shortage for the entire population. Is reclamation of land under ponds to create settlements justified? What are the ruling in case the government lays objections to this or otherwise?

Maulana Naeem Akhtar Qasmi says that issues like this one can be considered matters of reconciliation and can be left to the discretion of the government in power. Mufti Zahir Ahmad says that if the creation of settlements over ponds can cause shortages of water and the area requires water then this creation is not allowed under the sharia since the pond is created for this purpose itself. Although permission can be granted if there is a shortage of living space and water is adequately available. Maulana Sabahuddin Malik Qasmi, Maulana Abu Sufyan Miftahi, Maulana Shahjahan Nadvi and Maulana Tanzem Alam Qasmi feel that creating a settlement in such an area is alright unless expressly prohibited by the

state in public interest. These authors corroborate using يتحمل الضرر الخاص لدفع الضرر العام، لا ضرر ولا ضرار، الضرر الأشد يزال بالضرر الأخف. Maulana Rahid Hussain Nadvi feels that if that land is owned then a settlement can be created over it but the state can still prohibit in public interest and it must be kept in mind. Mufti Muhammad Huzaifa Dahoodi says the same quoting from Durar Al Ahkam's (1/220) لا يمنع أحد من التصرف في ملكه مالم يكن فيه ضرر فاحش للغير كل نهر له منفعة أكثر فلا ينبغي للامام أن يهدمه ولا يتعرض له (94) that if the establishment of a settlement affects the needs of the people the state can prohibit this and it must be obeyed compulsorily according to the sharia. Maulana Muhammad Usman Bastwi says that if that land is not individually owned then since the rights of the people in the area are tied to it there can be no settlement over it.

(لأن الانتفاع بالمباح إنما يجوز إذا لم يضر بأحد فإن أضر بأن يفيض الماء ويفسد حقوق الناس (فلا يجوز)).

(Durr Al Mukhtar). And if the land is privately owned then sale is allowed but if the state objects then no settlement may be made. Maulana Ruhul Amin also says almost the same thing. Maulana Abdullah Kawiwalla, Maulana Abrar Hasan Nadvi, Maulana Rehmatullah Nadvi, Maulana Aamir Zafar Ayyubi, and Hafiz Kalimullah Umri think that inhabiting ponds is not correct irrespective of state prohibitions. These gentlemen have presented:

يتحمل الضرر الخاص لأجل لدفع الضرر العام، الضرر الأشد يزال and this passage from Sharh Al Majallah: (688) الأراضى القريبة من العمر، تترك للأهالى مرعى وبيدرا ومحتطبا ويقال الأرضى المتروكة as corroboratives. The author here himself agrees because such places hold great utility and their

demolition can cause public discomfort. Hence, it is better if they are preserved. It is written in Kitab Al Kharaj:

"وإذا نضب الماء من جزيرة في دجلة والفرات وكان بحذاء منزل رجل وفنائه فاراد أن يصيرها في فنائه ويزيدها فيه فليس له ذلك ولا يترك ذلك"

(100). However if the state deems fit it can permit the parceling of the pond.

Question 15: The charter of the government states that it shall provide the citizens with water for drinking and other uses. Even rural areas are covered under this order in developed countries. Is the supply of water then an obligation of the government and is it every citizen's right to demand it? If the government then sets a charge on water would it stand correct in demanding a price and would it be entitled to cessation of supply in case of non payment of charges from the Islamic point of view?

In response to this question Maulana Sabahuddin Malik Qasmi and Maulana Aamir Zafar Ayyubi say that not the supply of running water but ensuring the availability of water and according to Maulana Aamir Zafar protection of the sources of water is the government's responsibility. The rest of the authors are concordant that provision of water to the populace is required of the government and this is a right of every citizen wick he or she may demand. The proofs presented are below:

- أن يباشر بنفسه مشاركة الأمور وتصفح الأحوال لينهض بسياسة الأمة وحراسة الملة

(Al Fiqh Al Islami Wa-adilltuhu 6/701)

- وعلى الإمام كرى هذا النهر الأعظم الذى لعامة المسلمين إن أحتاج الى كرى وعليه أن يصلح مسناته إن خيف منه

(Kitab Al Kharaj 105)

- كرى نهر غير مملوك من بيت المال لأن ذلك لمصلحة عامة وبيت المال
معد لها

(Al Bahr Al Raiq 9/394)

Regarding compensation in lieu of supply Maulana Muhammad Huzaifa Dahoodi feels that if the state treasury can bear it then the government can't take a fee or halt supply but in other situations it can demand a fee and halt supply on non payment of the same. The rest of the authors condone the charging of payment for direct to home supply on the basis of "الغنم بالغرم" and also on the basis of (Al Madkhl Al Fiqhi Al aam 2/1035) "إن التكليف والخسارة التي تحصل من الشيء تكون على من " "يستفيد منه شرعا". Regarding cessation of supply on non payment of fees, Maulana Rehmatullah Nadvi says that the state doesn't have the right to do so and should exact some other form of punishment while all the other authors have said that the government has the right to stop supply as mentioned in this passage from the Radd Al Muhtar:

إن للبائع حسب المبيع حتى يستوفى كل الثمن..... جاز له الحبس إن بقي
منه درهم (7/93)

Although, Maulana Abrar Hasan Ayyubi Nadvi, Maulana Tanzem Alam Qasmi, Maulana Rashid Hussain Nadvi, Hafiz Kalimullah Umri and Maulana Muhammad Usman Bastwi have specified that the poor and destitute may not be charged this fee and it is the government's responsibility to provide them water. The Prophet (PBUH) said: "أنا ولي من لا " "ولى له"

Question 16: The same questions arise in the case of used or dirty water and its drainage for which the government

has laid out a sewage system. Not only are the interests of the population linked to drainage, the health of the entire settlement is tied to it. From a sharia perspective, will drainage then be considered a duty of the government and a right of the citizens?

In response to this all authors agree that it is the government's responsibility to provide drainage and ensure the health of the people since it is every citizen's right because the establishment of public amenities is one of the government's obligations. Fatawa Muasirah states:

فكل من يرى ولى الأمر فعله أقرب إلي الصلاح للرعية وأبعد من الفساد
فله أن يفعله بل قد يجب عليه (1/583)

Since the drainage of used water is also an issue from the cohort of public interest its responsibility falls on the government's shoulders. It is written in Al Fath Al Islami Wa-adilltuhu:

"حق المسيل هو تصريف الماء الزائد عن الحاجة أو غير الصالح إلي
المصارف والمجارى العامة بواسطة مجرى سطحى أو أنبوب مستور
سواء من أرض أو دار أو مصنع والمسيل قد يكون مملوكا للمنتفع
به أو لصاحب الأرض التى يمر فيها وقد يكون فى مرفق عام
وتجب نفقات إصلاح المسيل على المنتفع به إذا كان فى ملكه أو فى ملك
غيره، فإن كان فى أرض عامة فنفقة الإصلاح على بيت المال"
(5/606-607)

And if due to non drainage filth increases and there is risk to the public's health then the state's responsibility is even greater. All governments have strived to work for their people throughout time; it is also imperative upon the citizens to assist the state in its endeavours.

هذا ما عندى والله أعلم بالصواب



Water Resources: Issues and solutions

Maulana Khursheed Anwar Azmi¹

Water is one of the essential needs of man. It's uses are manifold and occur in a multitude of occurrences daily. Allah says while referring to the bounty of his gifts:

"هو الذى أنزل من السماء ماءً لكم منه شراب ومنه شجر فيه تسيمون،
ينبت لكم به الزرع والزيتون والنخيل والأعناب ومن كل الثمرات ان فى
ذلك لآيه لقوم يتفكرون"

(AL Nahl 10-11)

(He is such that has made water rain from the skies for you so that you may drink and there may be vegetation from it which you can use to graze. So that you may have fields, olives, dates, grapes and all kinds of fruits. Verily, there is proof in this for those who seek.)

This is why water is common to all. Normally, nobody can monopolize it and neither can people be stopped from reaping its benefits. Every man has the right to use it according to his needs.

1- General guidelines in the sharia about the use of water:

Water is used for consumption and cooking. Similarly it is also used for purification. About the purification of clothes Allah has said:

"وثيابك فطهر والرجز فاهجر" (Al Muddassir 4-5)

¹ Head, Madarsa Jamia Mazharul Uloom, Benaras

(And keep your garments clean and shun impurity)

Hazrat Ibn Abbas, Ibn Zaid, Hasan Basri and Ibn Sirin have elaborated upon this verse:

"أغسلها بالماء ونقها من الدرن القذر" (Al Binayah 1/701 Ruhul Ma'ni 29/118)

Wash them with water and keep them free from dirt and impurity.

Allah says about ablution and bathing:

"يا ايها الذين آمنوا إذا قمتم إلى الصلوة فاغسلوا وجوهكم وأيديكم إلى المرافق وأمسحوا برؤوسكم وأرجلكم إلى الكعبين وإن كنتم جنباً فاطهروا" (Al Ma'ida:7)

(O ye who believe when you wake for prayer wash your mouth and hands till your elbows and your forehead and your feet till the ankles and if you have had intercourse then wash completely)

Similarly regarding the prohibition of intercourse with a menstruating woman the Quran says:

"ويسألونك عن المحيض قل هو أذى فاعتزلوا النساء في المحيض ولا تقربوهن حتى يطهرن"

(Al Baqarah: 222)

(And if they ask you of menstruation, say that it is impurity so stay away from women as long as they do not become pure again)

Nafie, Abu Amru, Ibn Kathir, Ibn Amir and Asim have read (according to Hafs reading) "يطهرن" with an unvoicedness ط and conjoined با while Hamza, Kasai', Mufaddal and in the narration of Abu Bakr, Asim has read the same with doubled consonant (tashdeed and with Fatha vowel). Allama Tabari has considered the latter the superior reading. Tafsir Al Qurtubi says:

"رجح الطبرى قراءة تشديد الطاء وقال هى بمعنى يغتسلن لاجماع الجميع على أن حرام" الرجل أن يقرب امرأته بعد انقطاع الدم حتى تطهر" (Tafsir Al Qurtubi 3/86)

Tabari has deemed the Mushaddad b pronunciation superior and says that it is the concensus that the meaning of يغتسلن entails that it is forbidden for the man to approach a woman once menstruation begins insofar as she is pure again.

These and many more instances regarding the uses of water are present in the Holy Quran and hadith.

2- The issue of excess in spending water

Moderation is greatly preferred in the Islamic sharia over excess in any situation. This tenet is also applicable to using water. Use must be according to the need and use in excess of set limits is against the sharia, hence not allowed. Abdullah Bin Amr is narrated to have said:

"فقال افي الوضوء إسراف قال: نعم وإن كنت على نهر جار"

(Ibn Majah: 34)

The prophet (PBUH) said to Sa'd when he was performing ablution,"What is this excess?" Sa'd replied, "Is there excess in ablution as well?", To this the Prophet said, "Certainly! Even if you are sitting at the bank of a river."

An example of moderation was the Prophet himself who would perform ablution in one (mudd) and bathe with a (sa') of water. Hazrat Jabir (r.a) narrates:

"أن النبى ﷺ كان يتوضأ بالمد ويغتسل بالصاع فقل له: إن لم يكفنا فغضب وقال: لقد كفى من هو خير منكم وأكثر شعرا"

(Bukhari, Badai' Al Sana'i 1/144)

“The Prophet would perform ablution in one mudd and bathe with a sa’ of water. It was said to Jabir (r.a): What if this much is not enough to which he responded angrily, “It was enough for one better than you and with more hair”.

Allama Badruddin Aini has specified regarding this hadith in the Umdat Al Qari that it displays dislike of wastage in water.

"وفيه كراهية الإسراف في استعمال الماء" (2/13)

The scholars have echoed the sentiment of the ummah in disliking wastefulness. The Bazl Al Majhud states:

"وقد أجمعت الأمة على كراهة الإسراف في الطهور وضوءاً أو غسلاً أو طهارة عن النجاسات وإن على شط نهر جار كما ورد في الحديث"

(Bazl 1/247)

The unanimity of dislike for wastefulness in water is clear be it for ritual ablutions, bathing, cleaning of impurities of any kind etc. even it be near a river as narrated in the hadith.

Allama Shami has clarified that the excers Islamically means to use water more than the required need to. He writes:

(Radd-Al Muhtar1-852)

Hence, washing of body parts during ablution more than thrice or not performing the intended prayer after ablution and then repating the ablution are considered excesses. (Radd Al Muhtar 1/241, 1/258).This excess is considered almost forbidden (Radd Al Muhtar 1/258). Allama Nuvi in Al Minhaj Sharh Sahih Muslim Bin Al Hajjaj considers this categorization correct:

"واجمع العلماء على النهي أم الإسراف في الماء ولو كان على شاطئ البحر، والأظهر أنه مكروه كراهة تنزيه وقال بعض أصحابنا: الإسراف حرام" (4/227)

The consensus of the scholars is against wastefulness of water even near a river. It is obvious that it is near illegal. Some gentlemen have said: wastefulness is illegal.

3- Sharia guidelines to protect water from contamination

Islam has always emphasized the need to protect water since it is essential to life. The Prophet (PBUH) goes to the extent of saying that if something is doubtfully impure even then it should be kept away from water so that water should not be impure. He said:

"إذا أستيظأ أحد كم من نومه فلا يغمس يده في الإناء حتى يغسلها ثلاثا فإنه لا يدرى أين باتت يده"

(Sahih Muslim 1/71)

When a man wakes he must wash his hand thrice before touching water because he is not aware of the places it has been at night.

Allama Kasani adds:

"لو كان الماء لا ينجس بالغمس لم يكن للنهي والاحتياط لوهم النجاسة معنى"

(Badai' Al Sanai' 1/217)

If water would not become impure by touching it then over doubt of contamination the precautions would be rendered useless.

However there is still some difference in opinion over unintentional dipping of hands in water. Despite that nobody who strives for cleanliness will appreciate this act and will avoid it personally. Mufti Taqi Usmani has quoted Abul Walid Al Baji Maliki:

"In this matter the opinion of the Iraqis is better, that this ruling is for cleanliness and not so much for cleaning. Meaning that even if the possibility of the hand being impure

does not exist, putting one's hands in water without washing is against the sense of cleanliness and the two go hand in hand in the sharia. (Dars Timridhi 1/230)

Similarly the Prophet forbade urinating in stagnant water:

"عن جابر عن رسول الله ﷺ أنه نهى عن ببال في الماء الراكد"

(Sahih Muslim 1/178)

Allama Nawavi says while talking about this hadith in more detail that if the quantity of water is large then according to the contrary meaning of Hadith it is not haram to urinate in it but it must be avoided. And if running water is scarce then according to one school it is disliked and the majority is that it is haram. And if the stagnant water is a lot then it is just disliked. Calling it farbidden would not be a stretch either. And if the amount of stagnant water is little then the majority considers it forbidden or haram barring a few who consider it disliked because it makes the water impure and renders it invalid for use. (Al Minhaj Sharh Sahih Muslim 1/179)

He added:

قال أصحابنا وغيرهم من العلماء: و التغوط في الماء كالبول فيه وأقبح وكذلك إذا بال في إناء ثم صبه في الماء وكذا إذا بال بقرب النهر بحيث يجرى إليه البول فكله مذموم قبيح منهي عنه على التفصيل المذكور قال العلماء: ويكره البول والتغوط بقرب الماء وإن لم يصل إليه لعموم نهى النبي ﷺ عن البراز في الموارد ولما فيه إيذاء المارين ولما يخاف من وصوله إلى الماء

(Al Minhaj Sharh Sahih Muslim 1/179)

Our companions and scholars say that defecating in water is worse than urinating in it. Also, urinating in a pot and

then releasing it into water, or urinating near a river so that it flows into it, these are all evil things in light of the above mentioned details and are forbidden.

Scholars say: urinating and defecating near water such that it doesn't reach it is disliked. The Prophet (PBUH) forbade doing so near embankments as it can pollute the water and cause discomfort to passers by.

Similarly discharge of seminal fluids into stagnant water is also prohibited.

"لا يغتسل أحدكم في الماء الدائم وهو جنب" (Sahih Muslim/180)

None of you should wash in still water while in a state of sexual impurity.

Durr Mukhtar also states that phlegm and nasal discharges should not be released into still water. (1/360)

Thus from the abovementioned texts it is clear that water is to be protected from contamination.

4- On chemically treating water to make it usable

Water's purity and cleanliness has long been an issue of concern for jurists. The books state that if an invisible contaminant enters running water then unless there is a change in the color, taste or smell the water is deemed pure. In case of visible contaminants like dead animals for example, if a majority of the water flows over the contaminant then it is impure and vice versa. And if half or slightly less than half of the water flows over the impurity then it may be speculatively pure but largely considered impure. There is difference over the question of stagnant water.

Observers say that the appearance of impurity will not render water impure under any situation.

Other scholars feel that if it is less it will be contaminated and not is it is a lot. Regarding a mid value there is difference. Imam Malik feels that if there is a change in the taste, smell or color then the amount is small, otherwise it is a large. The Hanafis feel that if one section of the water can flow towards the other then it is a small amount else a large one. (Badai' Al Sanai' 1/216-217)

If modern chemical practices can rid water of impurities then the phenomenologists see no issue at all in it since their criteria for water, ie, fluidity and liquidity are satisfied. The possibility of considering water pure if it can be treated also appears in the Maliki school. Allama Ibn Qayyim in his book "I'lam al Muwaqqieen" considers the Hijazi view valid and says:

"هذا الماء والطعام كان طيبا لقيام الصفة الموجبة لطيبية فإذا زالت تلك الصفة وخلفتها صفة الخبث عاد خبيثا فإذا زالت صفة الخبث عاد إلى ماكان عليه وهذا كالعصير الطيب إذا تخمر صار خبيثا فإذا عاد إلى ماكان عليه عاد طيبا والماء الكثير إذا تغير بالنجاسة صار خبيثا فإذا زال التغير عاد طيبا"

(I'lam al Muwaqqi'een 1/392)

This food and water is pure because of the presence of attributes in this favor. When these disappear and attributes of impurity appear then it too will be impure. When those too disappear then it will revert to its previous condition. It is like pure juice which when fermented becomes impure and when it becomes juice again is purified. Similarly water in contact with a foreign object becomes impure and upon its removal it is pure again.

Shafi'I scholars believe that mixing a pitcher of water into a jar of impure one makes the whole quantity pure. Allama Nawavi writes in the Sharh Muhazzab:

"ولو أضيفت قلة نجسة إلى قلة نجسة عادتا طاهرتين عندهم فإن فرقنا بعد ذلك فهما على طهوريتها"

(Ma'rif Al Sunan 1/223)

If you mix unclean water into unclean water the whole will be pure and shall remain so after the water is separated again.

According to the Hanafis if a single attribute of flowing water changes due to an additive then it will become impure but if pure water is added so that the attribute is reversed then the water is purified. The Fatawa Alamgiri states:

"والماء الجارى بعد ما تغير أحد أوصافه وحكم بنجاسته لا يحكم بطهارته
مالم يزل ذلك التغير بأن يرد عليه ماء طاهر حتى يزيل ذلك التغير"

(Alamgiri 1/10)

A portion on water deemed impure shall not be pronounced purified as long as the object of impurity is not removed from it. This shall be when enough pure water flows over it to remove it.

The reason for these quotes is to show that there is a possibility for impure water to be considered pure and in light of chemical processes the primal reaction is to consider the water purified. However according to jurisprudence impurity can be addressed via transmutation or evidence which in this case is not present. The writer feels that in places of scarcity people with access to chemical treatments should consider the water resulting from them pure. This is to avoid hardship which the sharia means to eradicate. See the following jurisprudential order: "المشقه تجلب التيسير" and "إذا ضاق الامر اتسع" are examples of this. As is apparent from the issue "طرح زبل فى", Shami writes:

"قد اعتيد في بلادنا إلقاء زبل الدواب في مجارى الماء إلى البيوت لسد خلل تلك المجارى المسماة بالقساطل فيرسب فيها الزبل ويجرى الماء فوقها فهو مثل مسئلة الجيفة وفي ذلك حرج عظيم إذا قلنا بالنجاسة ولحرج مدفوع بالنص" (Radd Al Muhtar 1/336)

It is common in our country that dung is found in the rivulets leading to the homes so that the cracks in these pipelike streams are closed. The dung seeps below and the water flows above it. This is like the matter of dead animals and if we call it impurity then there is great hardship. And hardship has been removed by the clear text of Islamic Shariah.

5- On the state restricting certain uses of water

If some area is facing water shortages and the state feels that if unregulated use prevails then problems may arise for the citizens, in such a case it is one of the state's responsibilities to restrict such usage of water and do all it can to protect them from future harm. Just like how Yusuf (r.a) was anointed ruler of Egypt and harvested grain for seven years which he then sold during the seven year famine at a fixed rate. (Footnote of Usmani on the translation of Quran by Sheikh Al Hind/321)

Although the government cannot set food prices it has the authority to step in to regulate if the traders start demanding exorbitant prices.

The Kanz Al Daqaiq states:

"لا يسعر السلطان إلا أن يتعدى أرباب الطعام عن القيمة تعدياً فاحشاً"

(Kanz Al Daqaiq: 352)

The ruler may not set the prices insofar as the traders exceed greatly in their demands

The state should order restrictions of the scale like those in times of cholera which prohibit the sale and consumption of cantaloupes. Mufti Taqi Usmani elaborates:

“Jurists have written that during cholera outbreaks the state can forbid the sale and consumption on cantaloupes till further notice. During this time it shall also be forbidden under the Sharia.” (Islam and Modern Trade and Economy/41)

6- Ownership of water on private land

Subterranean water is not anybody's property regardless of the ownership of the land being private or public. Saleem Rustam Baz Lebnani writes in the Sharh Majallah article 1235:

"الماء الجارى تحت الأرض ليس بملك لأحد" (1/676)

Water running underground is nobody's property. If the state forbids boring on private land due to its effects on the water table then following the order is required under the Sharia. The Sharia forbids using one's resources if they become cause for harm to one's neighbours.

Shami writes:

"لايمنع الشخص فى تصرفه فى ملكه إلا إذا كان بجاره ضررا بينا"

(Radd Al Muhtar 2/559)

Man shall not be advised against utilizing his property unless it causes harm to his neighbor.

"ليس للرجل التصرف فى ملكه تصرفا يضر بجاره":

Ibn Qudammah has written while citing

"أو يحفر بيرا إلى جانب بئر جاره يحتذب مائها" (Al Mughni 7/52)

As if you take your neighbour's water by digging a well close to him.

This is why the Prophet (PBUH) ordained a sanctum for wells and forbade overlapping of these while making wells. And if overlapping occurs then they must be bridges. The sole purpose is to mitigate harm to any person. Similarly if the state forbids the boring of land under consideration of public welfare then it is the populace's duty to implement the order efficiently.

7- On government orders to create water catchments in one's home

If the government relegates this responsibility on the citizens then it is completely in the right because the government knows best the condition of the country and the people. Therefore when faced with crises it knows best in what manner to deal with them. The state is in the end responsible for dealing with the problems of day to day life. The Caliph Umar Faruq felt that the states responsibility extended to:

"لو مات كلب على شاطئ الفرات جوعاً لكان عمر مسئولاً عنه يوم القيامة"

(Taufiq Al Rahman: 34)

If a dog dies on the banks of the Euphrates starving, on the day of resurrection Umar would be questionable for it.

This is why Jurists feel that if the action of the ruler is based on reconciliation and is in step with the sharia it shall be implemented. Ibn Nujaim writes in Al Ashbah Wal Nadha'ir:

"إذا كان فعل الإمام مبنياً على المصلحة فيما يتعلق بالأمور العامة لم ينفذ"

أمره شرعياً إلا إذا وافقه فإن خالفه لم ينفذ" (Al Ashbah: 189)

If a ruler decrees on an issue of public interest it shall only be implemented if it agrees with the sharia otherwise not.

The state can maintain catchments on its own or ask the citizens to do it. It is alright under the sharia and if the state

wants people to allocate a section of their homes to this act then it can tell them to do so.

8- Relocation of population to create cachements

If the state wants to create water cachements on a large scale for the public and this program requires a large area of land upon which people are living then those people can be moved from their location on payment of a compensation considering the scale of public welfare involved. This is because the government represents the people. The Radd Al Muhtar attribute to Zayla'i:

"إن للإمام ولاية عامة وله أن يتصرف في مصالح المسلمين" (Radd Al Muhtar 6/298)

The Imam is the representative of the people and must act in the interests of the Muslims.

It is written in Al Qawaidul Fiqhiya Page No. 1/10 under the heading that no one can take the wealth of any person without the shariah rison.

"السبب الشرعى ماجعله الشرع سببا للملك وجواز التصرف كالبيع والهبة والإرث والوصية، وفي شرح السير ٢٧٤/٢ قال رسول الله ﷺ: لا يحل مال امرء مسلم إلا بطيبة نفس منه - نعم مواضع الضرورة مستثناة، وفي ٢٤٥/٢: وللأَم أن يأخذ مال الغير عند الضرورة بشرط الضمان" (١١٠)

Legitimate reasons are those which the sharia approved for disposing of land and other means like sale, gifting and inheritance. Sharh Al Siar 6/274 mentions that the Prophet (PBUH) said: No man's property is halal to you except with his permission. Situations of dire need are exception to this. See Sharh Al Siar 2/245: In times of need another's property may be taken after giving a guarantee.

These passages make clear that the state can move people from their locations provided that it gives compensation equal to the value of the land and home or provides a substitute to save them from hassle. The state should try to provide the best substitute in lieu of moving the people from their homes to assuage the emotional and psychological attachments to their properties.

9- The issue of breaking the dam to save oneself

If an area has constructed a dam to control flooding but the rising level of water poses danger to them and the only option is to break the dam to ease the pressure of the water – but doing so would risk the areas further down in the course of the water – then the people may break the dam to bring themselves out of harm's way. Allama Shatbi writes in the Muwafaqat while debating the topic of deriving benefits and reducing risks:

"إن الظلم لا أسوة فيه ولا يلزم أحدا أن يولج نفسه في ظلم مخافة أن يوضع الظلم على غيره والله تعالى يقول: إنما السبيل على الذين يظلمون الناس ويبغون في الأرض بغير الحق
ورأيت في بعض المنقولات نحو هذا عن يحيى بن عمر أنه لا بأس أن يطرحه عن نفسه مع العلم بأنه يطرحه على غيره إذا كان "المطروح جوراً بيناً" (Al Muwafaqat 2/351)

There is no empathy in danger. Nobody will put himself in danger knowing that otherwise someone else might face the same. Allah says: harm comes to those who harm others and are unnecessarily arrogant.

I have seen in certain reports attributed to Yahya bin Umar that there is nothing wrong with ridding yourself of danger knowing that he is advertently putting somebody else in danger. The condition being that the danger is an apparent one.

Writes in this regard:

"وذكر عبد الغنى فى المؤلف والمختلف عن حماد بن أبى أيوب قال:
قلت لحماذ بن أبى سليمان: أنى أتكلم فترفع عن النوبة فإذا رفعت عنى
وضعت على غيرى، فقال: إنما عليك أن تكلم فى نفسك فإذا رفعت عنك
فلا تبالى على من وضعت" (Al Muwafaqat 2/352)

Abdul Ghani mentions in Al Mu'talaf Wal Mukhtalf that Hammad Bin Abi Ayyub said to Hammad bin Abi Sulaiman that when I speak such that the harm is shifted from me to another and You replied: it is your responsibility to speak for yourself. When harm is lifted from you you shouldn't care on whom it's dropped.

Similarly Imam Izzaldin Abdussalam writes in Qawaid Al Ahkam:

"وإذا اجتمعت مصالح ومفاسد فإن أمكن تحصيل المصالح ودرء
المفاسد فعلنا ذلك امتثالاً لأمر الله تعالى: فاتقوا الله ما استطعتم (التغابن:
١٦) وإن تعذر الدرع والتحصيل فإن كانت المفسدة أعظم من المصلحة
درأنا المفسده ولا نبالى لفوات المصلحة قال تعالى: يسألونك عن الخمر
والميسر قل فيهما إثم كبير ومنافع للناس وإثمهما أكبر من نفعهما"
(Al Mujtama, no. 1919, Shawwal 1431)

In terms of benefits and risks and the acquiring of the former and warding of the latter, we do this in compliance with Allah's command "Fear Allah as much as you can". And if the risk is more than the gain then we shall ward off the risk and not mourn the loss of the gain. Allah says: When they ask you of alcohol and gambling tell them that they are great sins. There is some gain in them but the sin outweighs it greatly. Allah has banned these because the profit in them is little compared to the harm.

This is also apparent that the cause for breaking the dam is just self preservation and not intentional harm to another. Allama Shatbi in his book “Al Muwafaqat” defines and elaborates upon this saying:

"إن إضرار الغير في المسائل المتقدمة والأصول المقررة ليس بمقسود في الإذن وإنما الإذن لمجرد جلب الجالب ودفع وكونه يلزم أنه إضرار أمر خارج عن مقتضى الإذن" (Al Muwafaqat: 352)

In the previous case and the rule regarding it there is no intention of causing harm to others. This permission is just to prevent harm. If harm befalls others because of this then it is outside of the requisites of this order.

10- The limit on using public sources of water

Ibn Abidin Shami in his book Radd Al Muhtar mentions four kinds of water and the extents to which they may be used in great detail:

"إعلم أن المياه أربعة أنواع، الأول: ماء البحار ولكل أحد فيها حق الشفة وسقى الأراضي فلا يمنع من الانتفاع على أى وجه شاء ، والثاني: ماء الأودية العظام كسيحون، وللناس فيه حق الشفة مطلقا وحق سقى الأراضي إن لم يضر بالعامّة، ولثالث: ما دخل في المقاسم أى المجارى المملوكة لجماعة مخصوصة وفيه حق الشفة، والرابع: المحرز فى الأواني ينقطع حق غيره عنه" (Radd Al Muhtar 10/12)

It should be known that there are four types of water: the first is seawater any person may use for any purpose without restriction. The second is from large rivers from which everybody may drink and feed their animals but only use for irrigation does not encroach on other people's rights. The third is water from channels owned by somebody. From these you may drink and feed. The fourth is water contained in pots and utensils. This establishes ownership.

The above mentioned passage makes clear that water for personal uses may be taken from lakes and rivers. It may be fed to one's animals, water wheels may be put upon it, irrigation may also be done from it. The creation of streams is also allowed on condition that it is detrimental to others. Kanz Al Daqaiq mentions:

"الأنهار العظام كالذجلة والفرات غير مملوكة ولكل أن يسقى أرضه ويتوضأ ويشربه وينصب الرحي عليه ويكرى منها نهرا إلى أرضه إن لم يضر بالعامّة" (Kanz Al Daqaiq: 355)

Rivers like the Tigris and Euphrates are nobody's property. Every man has the right to irrigate from it, put water wheels on it, use it for ablution and also to bring a channel from it to his fields provided it is not causing harm to other people.

Harm would constitute wastage of water, obstruction of flow, or encroachment on other's share to the water or even reduction in water level. All these situations grant others the right to object. This condition is only for rivers and not for seas which are open to general use. (Radd Al Muhtar 10/13)

Water from wells, reservoirs and springs is allowed to all whether they be on public or private land. It may be freely drunk and fed to animals but not irrigated with when they are owned by others as hinted at by this passage from Durr Mukhtar

"لا سقى دوابه إن خيف تخريف النهر لكثرتها ولا سقى أرضه وشجره وزرعه ونصب دولاب ونحوها من نهر غيره وقناته وبيره إلا بإذنه"

(Rad Al Muhtar 10/13)

If the drinking of water by your animals poses risk to somebody's stream or rivulet then do not do so. Also do not irrigate from them or put up machines on them. From this it

can be induced that in case of public water sources these actions would be allowed as long as they do not affect others or are in contrast with government directives.

11- Benefit from streams crossing various areas

Streams that flow in front of various farms and places are public in nature and are provided to address the various water related needs of people in the area. Therefore these may be used as per ones need keeping in mind that other users are not inconvenienced and there is the use within the scope of legal uses approved by the state. Your use should not disrupt any other legitimate use attached to the water body. Kitab Al Kharaj mentions:

"وإن أراد رجل أن كرى نهراً في أرضه من هذا النهر الأعظم فإن في ذلك ضرراً في النهر الأعظم لم يكن له ذلك ولم يترك يكره وإن لم يكن فيه ضرر ترك يكره" (105)

If a man digs a rivulet from a stream to fields and it is found to affect the main stream then he shall be stopped. Otherwise he can do so.

12- The issue of ownership of water

Water is a public amenity and everybody may use it equally. However, if somebody manages to contain water then it will become his. Badai'Al Sana' states:

"الماء في الأصل خلق مباحاً لقول النبي ﷺ: "الناس شركاء في ثلاث: الماء والكلاء والنار" و الشركة الامة تقتضي الإباحة إلا أنه إذا جعل في إناء واحرزه به فقد استولى عليه وهو غير مملوك لأحد فيصير مملوكاً للمستولى كما في سائر المباحات الغير المملوكة" (Badai'Al Sanai' 5/275)

Water has been created free according to the Prophet (PBUH) who said that "All people are shareholders in three

things: water, grass and fire”. Communality makes access free to all unless the water has been contained in some utensil when it shall become the property of the person who owns the container just like with other objects.

Containment brings water into the realm of private property. Radd Al Muhtar states:

"لو أحرزه في جرة أو جب أو حوض مسجد من نحاس أو صفر أو جص وأنقطع جريان الماء فإنه يملكه" (10/13)

If somebody manages to hold water in a copper jar, bronze pot or in the plastered reservoir in a mosque such that the flow of the water is cut off then he becomes its owner.

The Sharh Al Majallat also says:

"وكل من أحرز شيئاً مباحاً كان مالكا له مستقلاً فلو تناول الماء من نهر بيده أو بوعاء كالعلبه فإنه يملكه بإحرازه و حفظه في ذلك الوعاء وليس لغيره أن ينتفع به وإذا أخذه آخر بدون إذنه و استهلكه كان ضامناً" (1/680)

Whoever contains a free object shall become its owner. So if somebody fills a waterskin with water from a river then that person becomes its owner and nobody else may use that water without the owner's permission else he shall be responsible for it.

Al Bahr Al Ra'iq also addresses this clearly:

"يوصب ماء رجل كان في الحب يقال له أملكاً الإناء لأن صاحب الحب مالك للماء وهو من ذوات الأمثال فيضمن مثله" (Al Bahr Al Ra'iq 1/122)

If somebody wastes water kept in a pot then that person becomes responsible to the owner or the pot for the water inside it and must provide replacement.

Thus from these instances it is clear that although originally free, if water is contained it becomes property and the rights of the masses over it are nullified.

13- The issue of selling water

The Prophet (PBUH) spoke against selling water but only when it was in a free state. When owned there is no issue in selling water as a commodity. Imam Abu Yusuf elaborates in the Kitab Al Kharaj:

"عن عائشة قالت نهى رسول الله ﷺ عن بيع الماء، قال أبو يوسف: تفسير هذا عندنا - والله أعلم- أنه نهى عن بيعه قبل عن يحرز" (Kitab Al Kharaj/105)

Aisha said that the Prophet (PBUH) did not approve of the sale of water. Abu Yusuf said: we interpreted it as – and Allah knows best – being a prohibition before it has been captured.

Ibn Al Qayyim in the Zad Al Ma'ad writes:

"أما من حاز في قريته و إنائه فذلك غير المذكور في الحديث وهو بمنزلة سائر المباحات إذا حازها إلى ملكه ثم أراد بيعها كالحطب والكأ والملاح قد قال النبي ﷺ لأن يأخذ أحدكم حبلا فيأخذ حزمة من حطب فيبيع فيكف الله بها وجهه خير له من أن يسأل الناس أعطى أو منع رواه البخاري" (Zad Al Ma'd 4/259)

The water that somebody collects in his waterskin or utensil does not fall under the discussed hadith. This is among salt, grass and wood which is brought under ownership then intended for sale. The Prophet said: if one of you makes a bundle of wood with a rope and sells it, he would fare better in front of Allah compared to asking people for it and being refused otherwise.

Kefayah while interpreting "الناس شركاء في الثلاث: الماء" goes on to say:

"والمراد بالماء الذي في الأنهار و الآبار أما إذا أخذه وجعله في وعاء فقد أحرزه فجاز بيعه" (Kefayah Sharh Hidayah 3/97)

The hadiths talk of water in the rivers. When water is captured and contained in utensils then its sale is permissible.

It is written in Mabsut Al Sarakhsi that:

"أما إذا أحرز الماء في حب أو جرة أو قربة فهو مملوك له حتى يجوز بيعه فيه وليس لأحد أن يأخذ شيئاً منه إلا برضاه" (Al Mabsut 22/164)

If water is contained in a skin, pot or utensil it is property, it may be sold and no one may take it without permission.

Kitab Al Kharaj:

"لا بأس ببيع الماء إذا كان في الأوعية هذا ما قد أحرز فإذا أحرزه في وعائه فلا بأس ببيعه" (p. 103)

If water is in a utensil then it may be sold. This is contained water and there is no harm in selling it.

The same rulings apply to any man made reservoir. Imam Abu Yusuf has addressed this angle as well:

وإن هياً له مصنعة فاستقى فيها بأوعيته حتى جمع فيها ماءً كثيراً ثم باع من ذلك فلا بأس إذا وقع في الأوعية فقد أحرزه وقد طاب بيعه (Kitab Al Kharaj/103)

If a reservoir was constructed and filled with water then the sale of that water is not dubious and completely permissible.

Radd Al Muhtar also addresses this issue:

ومثله المحرز في الصهاريج التي توضع لإحراز الماء في الدور (Radd Al Muhtar 10/14)

Similar to the waterskins are those reservoirs constructed in homes to collect water.

In conclusion, it is clear that containment will constitute ownership and permissibility for sale. Allama Kasani says that

this sort of trade in water has been occurring over the ages.
(Badai' Al Sanai' 6/188)

14- On populating ponds

Ponds of varying sizes are found near cities and these are essential to a lot of people's need. Filling them up to create settlements would cause public discomfort and is therefore not allowed. Those in power can not allocate these areas of public interest to anybody. Badai'al Sanai' states:

"ما كان خارج البلدة من مرافقها محتطبا لأهلها أو مرعي لهم لا يكون
مواتا حتى لا يملك الإمام أقطاعها، لأن ما كان من مرفق أهل البلدة فهو
حق أهل البلدة كفناء دارهم وفي الإقطاع إبطال حقهم"

(Badai' Al Sanai' 5/283)

The place right outside the city limits like pastures which the people use to graze their animals may not be allotted by the government since they are akin to the citizen's courtyards and their rights over it will be impinged in doing so. It is written in the Kitab Al Kharaj:

إذا نصب الماء عن جزيرة في دجلة - مثل هذه الجزيرة التي بحذاء
بستان موسى وهذه الجزيرة التي من الجانب الشرقي - فليس لأحد أن
يحدث فيها شيئا لا بنائاً ولا زرعاً لأن مثل هذه الجزيرة إذا حصنت
وزرعت كان ضرراً لأهل المنازل والدور (p.99)

If the peninsula of the Tigris was to dry up that would not mean that people can construct over that land because if that land were to be put to use it would cause discomfort to the people of the surrounding areas.

Imam Abu Yusuf has further written:

وإذا انضب الماء عن جزيرة في دجلة و الفرات و كانت بحذاء منزل
رجل وفنائه فأراد أن يصيرها في فنائه و يزيدها فيه فليس له ذلك
ولا يترك ذلك (Kitab Al Kharaj/100)

If the peninsulas of the Tigris and the Euphrates were to dry up and one's home was right there, one may not do as much as extend his courtyard into that land.

And if there is no risk involved in parceling the land then the state may do so otherwise even it does not have this authority. And any disobedience to this law will be dealt with. It is written in the Kitab Al Kharj that:

الجزائر التي ينصب عنها الماء في مثل الفرات ودجلة فلا إمام أن يقطعها إذا
لم يكن في ذلك ضرر على المسلمين فإن كان في ذلك ضرر لم يقطعها ومن
أحدث فيها حدثا و كان فيه ضرر ردت إلى حالها الأولى (p.101)

If the water from the peninsulas of the Tigris and the Euphrates were to recede and there was no potential risk involved then the land could be allotted by the Imam. Otherwise the Imam can not do so and if there was any activity going on while risk was ascertained then it would be removed completely.

15- The state's responsibility with regard to providing water to the population

It is among the government's primary duties to attend to the population's needs. According to the Prophet (PBUH), "كلكم راع وكلكم مسئول عن رعيته" makes this clear. The provision of water is also among these responsibilities. That's why the upkeep and construction of water sources is the incumbent ruler's responsibility. Imam Abu Yusuf elaborates:

وعلى الإمام كرى هذا النهر الأعظم الذي لعامة المسلمين ان أحتاج إلى
كرى و عليه أن يصلح مسناته إن خيف منه (Kitab Al Kharj/105)

If this river which belongs to all Muslims need to be made deeper, it is the responsibility of the ruler. And if the dam needs repairs then that too is his responsibility.

“Umar (r.a) established a special department for the upkeep of water ways, their construction and the maintenance of a stable water supply to all areas. Allama Maqrizi writes that within Egypt 120000 workers were employed all year round at the (Baitul Maal) state’s expense to ensure a smooth waterworks. (Al Faruq 2/56 with reference to Maqrizi 1/76)

Every citizen deserves what is accorded in his rights. If an area is facing shortages in water for human consumption and also for the animals’ or farming needs then those people can ask the state for redressal.

“There is an incident regarding the Abu Musa River which is 9 miles long. Once a deputation reached Umar (r.a) and he asked them one by one what their problem was. Among them Hanif Bin Qais narrated in a speech that can be found in books verbatim that Basra was akin to Shorestan (Sandy Place) and one had to walk 6 miles to fetch water. Umar immediately sent a letter to Abu Musa Ashari to carry an order to draft a 9 mile draft from the Tigris for Basra.” (Al Faruq 2/87 with reference to Fath al Buldan 356-357)

Nowadays the state provides water by first containing it and then supplying it to people. There are costs involved in this and the state can recover them by asking a price in cash or kind for the water which if it does not get from somebody it can stop that person’s supply. It has a right to do so since it is providing a service. Mufti Rasheed Ahmad replied to a question:

“By virtue of water entering the pipeline the person became it’s owner and has a right to stop its supply” (Ahsan Al Fatawa 8/464)

16- The issue of drainage

The sharia has made the government responsible for the citizens' needs. Ibn Abbas attributes to the Prophet (PBUH) that he said:

"من ولى شيئاً من أمر المسلمين لم ينظر الله فى حاجته حتى ينظر فى حوائجهم" (Majmah Azzawaid 5/112)

If a person takes responsibility of any of the Muslims' needs then Allah will take responsibility of his need as long as he holds the responsibility.

Just like is supply, the drainage of water is also the state's responsibility. It is written in the Badai' Al Sanai':

"ولو احتاجت هذه الأنهار إلى الكرى فعلى السلطان كراه من بيت المال لأن منفعتها لعامة المسلمين فكانت مؤنتها من بيت الماء لقوله عليه الصلاة والسلام: الخراج بالضمنان" (Badai' Al Sanai' 5/280)

If the river needs to be deepened then it shall be done by the king from the state coffers because the work is for the people's welfare so that state must fund it. The Prophet (PBUH) has said: Taxation is in lieu of responsibility.

And if lack of drainage causes health hazards then the state's responsibility is even greater. Governments in all ages have tried to work for public benefit. It is also the citizens' responsibility to aid such work. والله اعلم بالصواب



Issues Related to Water Resources

Mufti Rashid Hussain Nadvi¹

The lexical definition of “Water”:

Water in Arabic is called “ماء”. Tracing this lexically, Fairuzabadi says:

"الماء و الماء والماءة: وهمزة الماء منقلبة عن هاء، وسمع اسقنى "ما"

بالقصر، جمعه امواه ومياه" (Bab Al Hal Fasl Al Mim)

“الماءة”, “الماء”, and “الماء” are three forms. In the first the *hamza* is replaced with a *Ha* and it is said as: “استقنى ما” (make me drink water) and from the restricted *alif* come the latter two.

A similar but more detailed definition is found in Lisan Al Arab. (Lisan Al Arab, article “موه”)

The importance of water:

Water is essential to the needs of humans, animals and plants. Allah has therefore made water bountiful and available to all. Allah himself hints at the importance of water when he says:

"وجعلنا من الماء كل شيء حيّ أفلا يؤمنون" (Al Ambiya/30)

(And we made every living thing from water, do you still not believe)

Maulana Shabbir Ahmad Usmani elaborates:

“Meaning that all living creatures are directly or indirectly made from water”

(Commentary on the above verse)

¹ Madarsa Zia ul Uloom, Rae Bareilly

Nature all around us is dependent on water for sustenance and the Quran mentions this repeatedly:

"وما أنزل الله من السماء من ماء، فأحيا به الأرض بعد موتها" (Al Baqara/164)

And in water which Allah sent down from the heavens, which revives the earth after it had dried up

"وأنزل من السماء ماءً فاخرج به من الثمرات رزقا لكم" (Al Baqara/22)

(And from the skies He rained down water and revealed its fruits for you)

Verily Allah has created a magnificent system for the provision of water. Men have tried to extract water from the sea and experienced the difficulties in filtration, transportation and storage. However, the very presence of heat at sea causes vapor formation and a natural separation of salinity. The winds carry this vapor to places and at a certain temperature it pours as rain, filling the various water bodies on land and becomes of use to animate beings. It also seeps underground and forms glaciers thereby forming a natural water supply system. Pointing to it He speaks:

"وأرسلنا الرياح لواقح فأنزلنا من السماء الماء في فأسقينكموه وما انتم له بخازنين" (Al Hijr/22)

And we sent water to the clouds which then poured down from them and gave you to drink. You couldn't have collected it yourself.

"ماءً بقدر فأسكنناه في الأرض" (Al Muminun/18)

And we poured water from the skies and stored it underground in appropriate amounts.

While pointing towards the boons Allah has also talked of the system:

"أفرأيت الماء الذى تشربون، ء أنتم أنزلتموه من المزن أم نحن المنزلون
لو نشاء جعلنا أجاجاً أفلا تشكرون" (Al Waaqia/ 68 to 70)

Tell us then if it is you or us who pours water from the
skies. If we wanted to we would turn it sour. Then why aren't
you grateful.

"قل ارئيتم أن أصبح مائكم غوراً فمن يأتاكم بماء معين" (Al
Mulk/30)

So ask them that who among them can revive water if it were
to seep below and disappear?

In any case, Allah has made water available to soothe
everybody's need and easy to access. However in some areas
due to man's faults there are at times droughts or some areas
are hit by floods. As mentioned above water is essential to all
living creatures. Some thinkers fear that the nature of survival
might result in the third World War being fought over water.
The potboiler of India's disputes over water with Nepal,
Bangladesh and Pakistan ofteh makes headlines. Similar
disputes are also present internally. These conflicts raise some
pertinent questions which we shall now address under the light
of the sharia.

1- The general sharia guidelines regarding water

Cleansing properties:

Allah while enumerating the benefits of water talks of
its cleansing properties:

وينزل عليكم من السماء ماء ليطهركم به" (Al Anfal/11)

(And He made water rain from the heavens to purify
you)

And the hadiths say that when the Prophet (PBUH) was
asked about seawater, he said:

"هو الطهور ماءه"

(Riwayah Malik: 12, Timridhi: 69/11, Nasa'i: 59, Ibn Majah: 386, Mishkaat: Kitab Al Taharat, Chapter: Ahkam Al Miyah/51)

(This water purifies)

Scholars have included wells, springs and ponds etc in the scope of this hadith. Hidayah adds:

"الطهارة من الأحداث جائزة بماء السماء والأودية والعيون والآبار والبحار"

(Hidayah, Kitab Al Taharat, chapter: Al Maa Al Lazy Yajuz Bihi Wudu Wa Ma La Yajuz Bihi 1/33)

(Purity may be achieved from the water of rain, rivers, springs, wells and seas)

Water has also been made necessary for baths and ablutions. No other liquid is unanimously approved for. Although in the absence of water *Tayammum* has been provided:

"فإن لم تجدوا ماء، فتيمموا صعيداً طيباً" (Al Mai'da/6)

(And if you do not find water then use clean earth for tayammum)

And if some physical impurity is to be removed then any suitable liquid may be used:

"وبكل مانع طاهر يمكن إزالتها به كالخل وماء الورد ونحو ذلك" (Hidaya, Taharat, 1/71)

(The removal of physical impurity can be done with any suitable liquids like vinegar or rose water)

Profusion in using water:

Allah says in the Quran against squandering:

"وكلوا واشربوا ولا تسرفوا" (Al A'raf/31)

(And eat and drink within limit. Verily, Allah does not appreciate those who commit excess)

The hadith say:

"عن عبد الله بن مغفل عن رسول الله ﷺ قال: إنه سيكون في هذه الأمة قوم يعتدون في الطهور والدعاء"

(Abu Dawood, Kitab Al Taharat Fi Al Israf Fi Al Wudu: 96)

Abdullah bin Mughaffal attributed to the Prophet (PBUH) that: Soon a people shall come who will indulge in excess in purification and supplication

Excess refers to crossing set limits like more than three repetitions while doing wudu. The Bazl Al Majhud states:

قد أجمعت الأمة على كراهة الإسراف في الطهور وضوء كان أو غسلًا
أو طهارة عن النجاسات وإن كان على شط نهر جار كما ورد في الحديث

(Bazl Al Majhud 1/884, Tahqiq Dr. Taqiuddin Al Nadvi
Hadith: 96)

(Excess while purifying is disliked unanimously. Be it bathing or ablution even near a river like in the hadiths)

The Prophet's way of ablution and bathing:

"عن انس رضي الله عنه أن النبي ﷺ يتوضأ بالمد ويغتسل بالصاع إلى خمسة أمداد"

(Bukhari: Kitab Al Wudu, Chapter: Al Wudu Bil Mudd,
Hadith no: 201, Muslim: Kitab Al Haiz, Chapter: Al Qadr
Al Mustahab Min Al Maa Fi Ghushl Al Janabat: 325)

Anas narrates that the Prophet (PBUH) would perform ablution with a mudd of water and bathe with 5 mudds to a sa' of water.

A mudd is 2 ratls and a sa' is 4 mudds. Indian scholars place a sa' at 3.941 kg and 4.761 litres. Therefore a mudd is 787.023 grams and 1.130 litres.

From this we can induce that modern day toilets and the uses of water that they permit are in violation of these quantities and thus in excess.

The prohibition of relieving oneself in water:

☆ "عن أبي هريرة عن النبي ﷺ: لا يبولن أحدكم في الماء الدائم الذي لا يجري ثم يغتسل فيه"

(Bukhari: Kitab Al Wudu, Chapter: Bab Al Baul Fi Al Maa Al Daim: 229, Muslim: Kitab Al Taharat, Chapter: Al Nahi An Al Baul Fi Al Maa Al Rakid: 282)

According to Anas, the Prophet said: none of you may urinate in water that is stagnant and then use it.

☆ "وعنه: لا يغتسل أحدكم في الماء الدائم وهو جنب، قالوا: كيف يفعل يا أبا هريرة؟ فقال: يتناوله تناولاً"

(Muslim: Kitab Al Taharat, Chapter: Al Nahi An Al Ightesal Fi Al Maa Al Rakid: 283)

(None of you may wash in stagnant water in a state of sexual impurity. They replied: O' Hurairah what may we do. He replied: take that water and then use it.)

2- Excessive spending of water

Islam prefers moderation in all aspects of life. Be it in spending wealth or water. Concerning question no. 1 the hadiths and the opinion of the author of Bazl al Majhud is concordant. The latter while defining excess says:

"وهنا يتحقق إما بالزيادة على الثلاث في غسل الأعضاء أو بإراقة الكثير من الماء"

(Bazl Al Majhud, Tahqiq Dr. Taqi Al Din Al Nadvi 1/584)

Here excess would constitute exceeding the order of thrice while removing the impurity of letting a lot of water run away.

This quote brings out two types of excesses:

The first is exceeding any set limit like washing during ablution four times would be considered excess because the hadith say:

عن عمرو بن شعيب عن أبيه عن جده قال: جاء اعرابي إلى النبي صلى الله عليه وسلم يسأله عن الوضوء فأراه ثلاث ثم قال: هكذا الوضوء فمن زاد على هذا فقد أساء وتعدى وظلم

(Narrated by Al Nasai' and Ibn Majah and Abu Dawood, Mishkaat: Chapter: Sunan Al Wudu 1/47)

Amr Ibn Shuaib narrates that an arab once came to ask the Prophet about ablution and he showed him thrice and said that this was the way to do it and if somebody appended it then he was committing excess and sin as well.

The second type of excess apparent is sticking to the prescribed repetitions but wasting water while performing them as happened widely nowadays when taps are left running as ablutions is performed. This too is excess and the hadiths say:

عن عبدالله بن عمرو بن العاص أن النبي صلى الله عليه وسلم مر بسعد وهو يتوضأ فقال: ما هذا السرف يا سعد: قال: أفى الوضوء سرف؟ قال: نعم! وإن كنت على نهر جار

(Narrated by Ahmad Ibn Majah, Mishkaat Sunan Al Wudu 1/47)

Abdullah bin Amr reported that once the Prophet (PBUH) crossed Sa'd and asked him: O, Sa'd what is this profusion. Sa'd replied: Is there profusion in ablution also? And the Prophet said: Yes! Even if you are near the banks of a river

Mullah Ali Qari explains in the commentary:

"فإن فيه إسراف الوقت وتضييع العمر وتجاوزاً عن الحد الشرعى"

(Mirqat 2/122, chapter: Al Sunan Al Wudu Al Fasl Al Thalath, Faisal Publications)

(Because that includes wastage of time and life is not to be wasted but spent ascribing to the sharia)

The following passages show that wastage of water is detestable and is a makruh tanzih. As specified in the Mukhtar:

"ومكروهه.....والإسراف، ومنه الزيادة على الثلاث فيه تحريما ولو بماء النهر والمملوك له، أما الموقوف على من يتطهر به ومنه المدارس فحرام"

(Al Durr Al Mukhtar and a footnote in Radd Al Muhtar: Kitab Al Taharat 1/79, Faisal Publications)

(And in ablutionexcess is makruh, and the greater makruh is exceeding the order of thrice if the water is from a river or is personally owned doing the same in water which has been donated as Waqf is haram. Water from madarsas is also included here (because the water of Madrasas id generally of Waqf).

However Imam Shami has argued and concluded that in personally owned water excess would be makruh tanzih or one that is discouraged but he upholds the outright ban in case of public water. (Radd Al Muhtar 1/97, 98)

What is understood then is that in water that is owned excess is mostly held disliked greatly at ranges from makruh tehrimi to tanzih for some. Even the Prophet has repeatedly spoken against it. In case of of public water however it is completely haram. And Allah knows best.

3- Polluting water is forbidden

In response to question 1 it was found that there is a prohibition on urinating in water in a manner that makes clear

that the intention is not moral but actual prohibition. Therefore this is also prohibited by scholars clearly. Fatawa Hindiya states:

"البول فى الماء الجارى مكروه كذا فى الخلاصه، ويكره البول فى الماء الراكد وهو المختار" (Hindiyah 1/25)

(Urinating in stagnant water is greatly disliked and Al Khulasah also mentions this. Urinating in the river is also disliked as in it is.)

And the Shami says:

"فحينئذ إذا ذكرُوا مكروها فلا بد من النظر فى دليله، فإن كان نهياً ظنياً يحكم بکراهة التحريم، إلا لصارف للنهى عن التحريم إلى النذب، فإن لم يكن الدليل نهياً، بل كان مفيداً للترك الغير الجازم فهى تنزيهية" (Radd Al Muhtar 1/79)

(When jurists are talking of some sort of makruh it is important to look at the arguments they are presenting. If the argument is speculatively prohibitive then the classification will be of tehrimi or greatly disliked. And if the evidences use non perfect logic then the classification will be tanzihî or discouraged).

Thus we find that here the reference is towards the greatly disliked (makruh tehrimi).

Another ruling is that utensils containing water be kept covered:

"خمرُوا الآنية، أو كَأْ الأَسْقِيَة"

(Narrated by Bukhari, Muslim, Mishkaat: Chapter: Taghtiah Al Awani, p. 372)

(Keep utensils covered and the mouths of waterskins tied)

The third ruling is against breathing into utensils:

"عن ابن عباس قال: نهى رسول الله ﷺ: أن يتنفس في الإناء أو ينفخ فيه"

(Narrated by Abu Dawood Ibn Majah, Mishkaat: Chapter: Al Ashribah p.371)

(Ibn Abbas (r.a) narrates that the Prophet forbade blowing into or breathing into a utensil.)

Among the various restrictions for bodily discharges is to not release them where water flows. The reason is generally understood to be the inconvenience of others but is also to prevent contamination.

"عن معاذ قال: قال رسول الله ﷺ: أتقوا الملاعن الثلاثة: البراز في الموارد وقارعة الطريق والظل"

(Narrated by Abu Dawood no. 28, Ibn Majah no. 328, Mishkaat: Kitab Al Taharat, Chapter: Aadab Al Khalaah/355)

(Moaz narrates that the Prophet (PBUH) said: Avoid three cursed places: where water flows, the middle of the road and shade [with regard to releasing stool and urine])
And from the passage quoted from Shami the sharia ruling should be of greatly disliked and at minimum discouraged.

4- Rulings regarding chemically filtered water

Impurity by its nature cannot accept purification. There is no way to purify alcohol and urine. The only possibility is if alcohol undergoes a transformation and reverts to vinegar and blood to musk. It is written in Shami:

"وكذا يطهر محل نجاسته، أما عينها فلا تقبل الطهارة (قوله أما عينها)... ولا يرد طهارة الخمر بانقلابها خلا، والدم بصيرورته مسكا، لأن عين الشيء حقيقته، وحقيقة الخمر والدم ذهب، وخلقتها أخرى، وإنما يرد ذلك لو قلنا ببقاء حقيقة الخمر والدم مع الحكم بطهارتها"

(Shami, 1/240, Maktaba Faisul Quran Deoband)

(This way the impure place is purified. But impurity does not accept purity by its very nature.....and when alcohol turns to vinegar and blood to musk then there is no claim of impurity since the identity of alcohol and blood had been replaced by a new identity. Objection could be made only when the original identity of blood or alcohol remained).

Therefore filtration processes applied to urine or faeces would not result in purification. Maulana Nizamuddin says this in response to a question regarding the filtration of water:

“What this leaves us with is just the removal of harmful and putrid components in urine. What’s left is still by nature a component of urine and thus inherently unclean and shall remain so. They do not possess any transformative qualities in their natural substance”. (Muntakhabat Nizam Al Fatawa 1/62,72)

All these arguments apply to water filtration except that water is not essentially impure like urine. This passage from Badai’ substantiates impure water’s inherent purity:

"أما غسالة النجاسة الحقيقية، وهي ما إذا غسلت النجاسة الحقيقية ثلاث مرات فالمياه الثلاث نجسة (إلى) وهل يجوز الانتفاع بالغسالة فيما سوى الشرب والتطهير (إلى) لأنه لما لم يتغير دل أن النجس لم يغلب على الطاهر، والانتفاع بما ليس بنجس العين مباح في الجملة"

(Badai’: Kitab Al Taharat Ahkam Al Nijasat 1/206, same is in Al Nahdiah 1/19 Kitab Al Taharat Chapter 3: Fi Al Miyah Al Fasl Al Thani)

This makes clear that water is variably impure and in certain situations can be made pure:

☆ Shami while discussing a certain issue says:

"لأن الماء النجس لا يطهر بتغيره بنفسه إلا إذا جرى بعد ذلك بماء صاف"

(Shami 1/139, Chapter: Al Miyah)

(Because water by undergoing variation does not become pure by itself, the condition is that it then carries along pure water)

☆ The surface of the earth has a lot of impurities which are absorbed and in a way naturally filtered, mixing into the water underground which is then extracted via boring. If its taste, smell and color aren't affected it is considered pure rationally and according to the sharia.

☆ If other liquids are polluted, the jurisprudential books contain detailed processes for their purification.

"ويطهر لبن ودبس يغلى ثلاثا قوله: ويطهر لبن وعسل ألخ) قال فى الدرر:
لو تتجس العسل فتطهره ألخ" (Etc.)

(Milk, honey and molasses will be purified if boiled thrice. (قوله ويطهر ألخ) It is mentioned in Al Durar: and boiled till they were etc.)

Earlier there was no way of removing impurities from water hence no precedent to this issue can also be found unlike today when modern processes are available. However these too only remove the malodour and hazardous particles. A complete transformation does not occur hence under my knowledge the same argument presented by Maulana Nasiruddin will apply as urine would still remain in the water. According to Shami purity would be achieved when pure water flows through it and this does not require the need of a filter.

Summary:

Filtration methods do not render water pure. The exception would be any technique which can completely remove all traces of urine from water. This would deem it pure because its nature is not essentially impure and like milk, oil and honey it can be purified.

5- Government restrictions on certain uses of water

- 1) If the concerned uses are cause of harm to the public or present apparent risk to do so then the state is in the right.

"فكان كل أحد بسبيل من الانتفاع لكن بشرط عدم الضرر بالنهر كالانتفاع بطريق العامة، وإن أضر بالنهر فلكل واحد من المسلمين منعه، لما بينا أنه حق لعامة المسلمين، وإباحة التصرف في حقهم مشروطه بانتفاع الضرر كالتصرف في الطريق الاعظم"

(Badai' Al Sanai': Kitab Al Shurb 5/2792, Maktaba Zakariya, Hidayah 4844, 485 Kitab Ahya Al Muwat, Fasul Fi Masail Al Shurb, Radd Al Muhtar 5/311, Kitab Ahya Al Mawat Fas Al Shurb)

(And from large rivers every person has the right to benefit without causing harm and if there is harm imminent to the river then all muslims may be stopped from using it since this right is awarded to the muslims. Benefit is permitted only when no harm is done.)

- 2) If the state is Islamic then this verse can also be used:

"يا أيها الذين آمنوا أطيعوا الله وأطيعوا الرسول وأولي الأمر منكم"

(Al-Nisa: 59)

(O ye, who believe follow Allah and His Messenger and those who govern you)

- 3) If the state is non Islamic then also by virtue of citizenship one must obey the rules and also under the Quranic guidelines. Disobedience may result in punishment and personal disgrace as a muslim.

6- On privately held water

Water found on one's property is considered one's own to use as need be. Irrespective of whether it is a well, lake or from bore wells. Shami says:

"اعلم أن الماء أربعة أنواع.....والثالث ما دخل في المقاسم أى المجارى المملوكة بجماعة مخصوصة وفيه حق الشفة، والرابع المحرز فى الأوانى ينقطع حق غيره عنه وتمامه فى الهداية وحاصله.....وفى الثالث حق الشفة فقط ولاحق فى الرابع لأحد"

(Radd Al Muhtar 5/311, Kitab Ihyaa Al Mawat, Fasl Al Shurb)

Know that there are four types of water.....and the third is that which enters canals owned by a specific group. You may drink from it and the fourth is water contained in pots which eliminates the right of others over it.

And then in the Hidayah:

"ولو كان البئر أو العين أو الحوض أو النهر فى ملك رجل له أن يمنع من يريد الشفة من الدخول فى ملكه"

(Hidayah: Kitab Ahyaa, Al Mawat, Fsul Fi Masail Al Shurb 4/486)

(And if the well, spring or reservoir is owned by somebody then the right to refuse a thirsty person entry rests with him)

However if experts determine that certain uses pose hazard to the public then the state can prevent these uses till a time when the risk goes away. The following arguments are presented:

"القاعدة الخامسة: الضرر يزال، أصلها قوله عليه السلام لا ضرر ولا ضرار أخرجه مالك فى الموطأ.....و يبتنى على هذه القاعدة كثير من أبواب الفقه، فمن ذلك: الرد بالعيب وجميع أنواع الخيارات والحجر بسائر أنواعه على المفتى به والشفعة فإنها للشريك لدفع ضرر القسمة وللجار لدفع ضرر الجار ألخ"

(Al Ashbah Wa An Nadhair Al Ibn Nujaim, Al Fan Al Awwal, Al Qaidah Al Khamisah p.139)

(Fifth rule: harm will be removed. The Prophet (PBUH) said: Harm must not be dealt or born. Imam Malik has narrated

this in the Muattah.....This principle is the basis of many jurisprudential chapters like that of returning defected goods etc. This is a sign of survivorship since ill fate is granted only to overcome it)

"يتحمل الضرر الخاص لأجل دفع الضرر العام.....ومنها وجوب
نقض حائط مملوك مال إلى طريق العامة على مالكيها دفعاً للضرر
العام.....الخ" (Ibid p.142 and 143)

(Personal harm shall be suffered in the cause of the greater good.....the wall that leans over a public road must be broken down by the owner to avoid harm to the public.....etc.)

"إذا تعارض مفسدتان روعى أعظمهما ضرراً بارتكاب أخفهما"
p.145)

(If two harms are under consideration the greater shall be addressed)

7- Whose responsibility is the supply of water?

Small scale gathering of water is a personal duty from sources available nearby. Even old records of Islamic states like Medina show that the provision of door to door water supply was not the state's responsibility. Things like digging wells and cleaning rivers etc are mentioned in the official records. Large scale efforts to secure water are not possible individually therefore the state must undertake efforts like reservoir construction, cleaning up of rivers digging of bore wells in areas where the water table is extremely low etc. The following passage substantiates:

"ولو احتاجت هذه الأنهار إلى الكرى فعلى السلطان كراها من بيت
المال، لأن منفعتها لعامة المسلمين، فكانت مؤنتها من بيت المال لما قلنا"
(Badai' 5/280 Kitab Al Shurb)

(If rivers need to be deepened or cleaned then the ruler should so it from the treasury since this is deepening is

required for the public. The argument for this has been presented before)

The Hidayah says:

"فالأول كرهه على السلطان من بيت مال المسلمين فإن لم يكن فى بيت المال شئ فالإمام يجبر الناس على كرهه"

(The deepening of the river is to be done by the ruler from the state coffers of the Muslims and if they are empty then he can force the public to deepen it)

If due to a drought year some region is in such dire need to create water reserves that not doing so will be harmful to the entire country then the first responsibility falls on the state. However if the state feels its efforts won't be enough then it can certainly relegate this responsibility onto the people themselves and they must obey compulsorily. Proofs have been presented earlier. A new passage from the Ashbah Wa Al Nadhair Al Ibn Nujaim:

"إذا كان فعل الإمام مبنياً على المصلحة فيما يتعلق بالأمر العامة لم ينفذ حكمه شرعاً إلى إذا وافقه، فإن خالفه لم ينفذ (قال الحموى) قوله فإن خالفه لم ينفذ، قال المصنف فى شرح الكنز نقلاً عن أئمتنا: إطاعة الإمام فى غير المعصية واجبة، فلو أمر الإمام بصوم يوم وجب"

(Al Ashbah Ma' Sharh Al Hamwi: Al Fan Al Awwal, Al Qaidat Al Khamisah, p.981)

If the ruler decrees in the public interest it shall only be valid if in compliance with the sharia otherwise not. (Al Hamwi says in the commentary: The author of the Kanz writes regarding the Imams that their orders are valid and must be obeyed except when they call to sin. So you must fast if they decree so.

In conclusion, the state can give such orders and they must be obeyed. Large scale water preservation is in principle

the state's responsibility but under special circumstances it can be deffered to the people.

8- On forcing people to relocate

No state has the right to take away land or other property from any person under normal circumstances.

"قال الإمام أبو يوسف فى كتاب الخارج من باب أحياء الموات: "وليس للإمام عن يخرج شيئاً ممن يد أحد إلى بحق ثابت معروف"

(Al Ashbah Al Ibn Nujaim: Al Fan Al Awwal, Al Qaidat Al Khamisah Tasraf Al Imam Alay Al Rait Manut Bal Maslihat p.189)

Imam Abu Yusuf says in Kitab Al Kharaj in Bab Ahyaat Al Muwat that no ruler may appropriate anything that he can not prove his claim to.

But if an object of public benefit like a road or dam is to be made then property can be taken from people involuntarily. The following passage bolsters this argument:

"تؤخذ أرض ودار وحائوت بجانب مسجد ضاق على الناس بالقيمة كرها
(قوله بالقيمة كرها) لما روى عن الصحابة رضى الله تعالى عنهم لما ضاق
المسجد الحرام أخذوا أرضين بكره من أصحابها بالقيمة"

(Shami 3/421 Kitab Al Waqf)

The homes, shops and land next to the mosque will be taken forcefully when the mosque becomes insufficient because according to the Companions they too took the lands and homes forcefully when the Masjid Al Haram became cramped.

9- The ruling regarding opening the dam

If there is risk of the dam breaking and opening the floodgates will save the area, preventing loss of life and

property here but at the same time putting a distant people most certainly under risk then doing so is not valid. “الضرر لا يزال” applies here and certain jurisprudential narrations also affirm this.

(١) "خرب رجل ضفة نهر، والماء في ذلك الوقت منقطع، ثم وصل الماء فوصل من موضع التخريب في أرض رجل فأضر بالارض أو أفسد زرعاً في الأرض قال: ينظر، إن جرى الماء بنفسه يضمن المخرب إذا كان النهر للعامة لأنه مسبب متعد"

(Hindiyah: Kitab Al Shurb, Al Bab Al Thalith 5/400)

A man once polluted a stream when the flow of water was erratic. When it resumed it went and seeped into another man's land and destroyed the crops. If the stream is public and the water flows naturally then in this case the polluter shall be responsible because he is the causative agent.

(٢) "في فتاوى أبي الليث رحمه الله تعالى: نهر عظيم لاهل قرية، يشعب منه نهران، وعلى كل واحد من النهرين طاحونة، فخربت إحدى الطاحونة فاراد صاحبها أن يرسل الماء كله في النهر الآخر الذي عليه الطاحونة الأخرى حتى يعمر طاحونته، وذلك يضر بالطاحونة الأخرى لم يكن له ذلك، لأنه يريد.....دفع الضرر عن نفسه بالإضرار بغيره" (Ibid)

It is written in the fatwas of Abu Al Laith: In is a settlement with a large lake from which two rivers are fed. At every second stream there is a water wheel and one broke down. The owner of the wheel wanted to divert the water to the other stream with the water wheel so that he could undertake repairs but this would pose risk to the other water wheel. In this case he is not permitted to pose harm to others for his benefit.

However if specialists confirm that opening the dam will cause lesser harm than not opening it then the state can consider this to protect the population. Ashbah mentions:

"إذا تعارض مفسدتان روعى أعظمهما ضرراً بتركها أخفهما"

(Al Ashbah Al Ibn Nujaim: p. 145)

If two evils present themselves then the greater shall be addressed first over the smaller.

10- Limitations to using public water sources

Drinking from lakes, rivers and springs is allowed unanimously. Irrigation via constructing channels from rivers is allowed as long as it is not against public interest:

"(قوله في كل ماء لم يحرز) إعلم أن الماء أربعة أنواع: الأول: ماء البحار، ولكل أحد فيها حق الشفة وسقى الأراضي فلا يمنع من الانتفاع على أى وجه شاء، والثاني: ماء الأودية العظام كسيحون وللناس فيها حق الشفة مطلقاً وحق سقى الأراضي إن لم يضر بالعمامة والثالث: ما دخل في المقاسم أى المجاري المملوكة لجماعة مخصوصة وفيه حق الشفة، والرابع: المحرز فى الأواني ينقطع حق غيره عنه وتماحه فى الهداية وحاصله أن لكل أحد من الأوليين حق الشفة والسقى لأرضه وفى الثالث حق الشفة فقط ولاحق فى الرابع لأحد"

Shami 5/311)

Know that there are 4 types of water. First: seawater which all may drink and use for irrigation without restraint. Second: you may drink freely and also irrigate if it is not objected to. Thire: reservoirs or owned canals. You may drink from these. Fourth: water stored in utensils which no other may claim. Details are in Hidayah. The jist is that all may drink and irrigate from the first two, drink from the third and no rights over the last.

(قوله إن لم يضر بالعمامة) فإن أضر بأن يفيض الماء ويفسد حقوق الناس أو ينقطع الماء عن النهر الأعظم أو يمنع جريان السفن تتار خانية، فكل واحد مسلماً كان أو ذمياً أو مكاتباً منعه بزازيه (Shami 5/31)

(The words of the author that if the public isn't harmed it means) that if harm is such that the reduction of water impinges on rights, the flow of water or the sailing of boats causes hinderance then each single person has the right to stop this -Muslim or otherwise.

When drinking from special streams is allowed then in effect so drinking is from public ones. Lakes may be irrigated from if it is customary and if people aren't affected streams for irrigation may be drawn from rivers. And following the same logic if there are adverse affects stopping at all levels is allowed.

"الناس شركاء في ثلاث: الماء والكلا والنار"

(Abu Dawood: Hadith: 3477 its chain is Sahih, Ahmad Fi Al Musnad 5/364, Ibn Majah Hadith: 2472)

(People share three things: water, pastures and fire)

Another hadith:

(Muslim, Chapter: Tehrim Fadhl Al "لا يمنع عن فضل الماء"
Maa)

(Do not prevent unnecessarily from water)

And another:

"ما الشئ الذى لا يحل منعه قال: الماء"
3476)

(The Prophet (PBUH) was asked: what thing may one not be prevented from? He replied: water)

On this basis it is mentioned in Bazl:

"أى إذا لم يكن فى الأوانى والصحاريح والحياض، وأما إذا كان فيها فهو
مملوك له يحل منعه"

(Bazl Al Majhud 1/485, Tahqiq Dr Taqiuddin Al Nadvi)

(This order is when water is not contained in utensils.
When it is contained, the owner has the right to refuse)

11- Conditions to benefitting from rivers and other bodies

The conditions and jurisprudential rulings regarding rivers and other bodies have been mentioned in response to question 10. Streams are also provided for irrigation purposes the rules for these are also the like those for rivers.

In contemporary times though, the network of streams and rivers is controlled by government departments who survey fields and charge accordingly for irrigation. As an upstanding Muslim one must obey all rules and restrictions concerning waterbodies. The various minutiae regarding this have been discussed earlier.

12- When does water become personal property

When water from rivers and other water bodies is transferred into personally owned utensils, reservoirs or other containers it becomes property. Evidences have been presented in earlier answers.

"أما الأول (وهو الماء الذى يكون فى الأوانى والظرف فهو مملوك
لصاحبه لاحق لأحد فيه، لأن الماء وإن كان مباحا فى الأصل، لكن
المباح يملك بالاستيلاء إذا لم يكن مملوكاً لغيره كما إذا استولى على
الحطب والحشيش والصيد"

(Badai' Al Sanai' Kitab Al Shurb 5/274, Maktaba Zakariya)

As far as the first kind (water in utensils and vessels) then it is considered property. Even though it is free to all, this changes when it is captured just like firewood, grass or game that has been hunted.

13: The rule regarding the sale of water

Once the condition towards ownership is fulfilled the person is allowed to transact in water. Right after the passage above the author in the Badai' says:

"فيجوز بيعه كما يجوز بيع هذه الأشياء، وكذا السقاؤون يبيعون المياه المحروزة في الظروف، به جرت العادة في الأمصار وفي سائر الأعصار بغير نكير، فلم يحل لأحد أن يأخذ منه فيشرب من غير إذنه"

(Badai' Kitab Al Shurb 5/274, Maktaba Zakariya)

Similary the sale of water is allowed like other objects. It has been done since time immemorial by waterskin bearers and no one may drink from that water without their permission.

Shami mentions:

"لا ينتفع به إلا بإذن صاحبه لملكه بإجرازه فله بيعه ملتقى"

(Shami 5/312, Kitab Ahya Al Muwat. Fasl Al Shurb, Maktaba Faiz Al Quran)

It may not be used without his permission (قوله لملكه) (باجراه) so he may sell it.

14.The rule regarding populations in low lying areas

The owner of the land may do as he pleases and if the owner of the land wants to parcel it he can do so without overstepping the sharia.

Although if experts report that doing so poses a general risk to all then the state in light of this can stop from parceling and the order must be followed. The reasons for this are:

- 1) Proofs presented in lieu of question 7 and 8.
- 2) Disobedience poses the risk of police action or jail and this must be avoided.

15. Whose responsibility is the supply of water

This issue is among those which have changed over time and so have the rulings regarding them. Even today –like in earlier times– in swathes of rural Indo-Pak the responsibility is of the individual to assure his/her water supply. Wells and

handpumps have been taking care of this and in these areas one must fulfil their drinking needs like they must their dietary needs.

With regard to areas where handpumps and wells will not suffice and large scale projects are required which only a government can maintain, like in the metropolitan areas of India where populations are huge and individual efforts are not possible to ensure water supply, the jurisprudential rulings regarding large rivers can apply. All the sources affirm that their maintenance lies with the state and its treasury and if it lacks funds then it may supervise the citizens in this effort.

In areas of large population ensuring systems of water supply is the state's responsibility and in case of negligence the citizens can demand action.

And because the state incurs expenditure in providing a constant supply it can rightfully demand compensation under the logic of "الغنم بالغرم". It may have other more important uses for these resources.

Although under answer 10 charging for water in this manner is not allowed, the charge here is in lieu of constancy of supply and costs incurred in providing it.

And in extension of the waterskin bearer's example the state too can withhold supply if prices are not paid. Although it is preferable it provides a couple of free taps in the neighbourhood to assuage the poor and those who do not pay on ideological grounds.

Even in the areas where the responsibility is individual the governments have taken upon themselves to provide clean water and amenities, going so far as to declare it a human right.

In such a case residents of remote areas should also demands inclusion in such schemes.

16-The issue of drainage

This issue has also changed over the course of time and now individual maintenance of drainage is not possible as large scale operations are required. Hence in light of answers 15 and 7 the issue of drainage also falls under the responsibilities of the state.

The importance of drainage cannot be understated. If it is not present then diseases become rife, roads blocked, the health of the population will suffer greatly and life as a whole will become insufferable. Hence the government must ensure proper drainage.

والله اعلم بالصواب



Water resources and Sharia Rulings

Maulana Rehmatullah Nadvi¹

The various types of water and respective rulings:

Jurists have classified water on the basis of impurity and non-redressal into the following:

- 1- Pure water or water that is inherently pure (this water has the capacity to purify and no use of this water is harmful)
- 2- Pure, purifying but disliked (itself pure, can purify but its use is disliked)
- 3- Pure but not purifying (in itself pure but can't purify others)
- 4- Impure water

An additional category among the Hanafi:

- 5- Dubious water (meaning that its purity is certain but capacity to purify is dubious)

The rulings regarding each one of these now follow:

First type (Pure water):

Definition: Water that is true to its state as determined by Allah:

Rule: The rule regarding this water is that it dispels impurities and dissolved particles. It can be used for cleansing, ritual ablutions and bathing. This water is divided into two types:

¹ Professor, Dar ul Uloom Nadwat ul Ulama, Lucknow

- 1- Water that pours down from the skies or from melting hail and snow.
- 2- Water that has accumulated in the ground like in rivers, lakes, springs etc.

Second type (Pure and purifying but disliked):

There is great difference in opinion regarding its definition among Jurists.

- a- The Hanafis believe this is water that is pure but comes into contact with animals that are associated with impurities like cats, cows, fowl, birds of prey like eagles etc.

A similar condition is attached to people who have consumed alcohol and this much time has passed that saliva has returned to their mouths and they have drunk water from the utensil.

Rule: this water is considered pure according to the Hanafis but if other water is present then it may not be used for ablution. And if a substitute is already present then using this water is not wrong but preferably avoided.

- b- According to many Shafi'is this type of water is that which has been stored in metal utensils other than those of gold and silver and kept in the sun. this is because it is believed the heat of the sun corrodes and releases the metal into the water and it can cause leprosy. However, non ingestive use is not makruh.

Third kind (Pure by nature but non-purifying):

The following sub categories are present here:

- a) Used water, b) water that has changed due mixing with an impure object and keeping water safe from this is possible c) pure fluids (other pure liquids).

- a) Among the Hanafis and Shafi'is Imam Al Haramain while talking of "used" water refers to that which has been used to purge of an incident or for ritual purification. Although cleansing from some condition is not required since it can also be water used to renew ablution or water used during the second and third repetitions of ablution.

According to them the cause for use is expulsion of an event or proximity to Allah, reason being the water which was used with the intention of achieving proximity and if the person then prays that water will be counted as that which expunges something.

- b) Among the Shafi'is and Hanafis Imam Zafar considers this water to be that which removes impurity or clears an incident.

According to them the purpose of use is to clear away or redress impurity and when it is separated then purity is achieved.

Water used in additional cleansing, ablution or bathing will, according to these gentlemen's judgement remain pure because the condition of removal of impurity has not been met. This use is akin to washing a clean piece of cloth.

If water is used over the set amount like a fourth repetition during ablution then it is unanimously purifying.

The ruling regarding second hand water/ used water:

Most scholars agree on the issue that second hand water from ritual ablutions is pure given that the person's body parts are clean although there is difference in opinion with regard to ablution under impurity.

- a) According to Hanafi thought it is essentially pure and can provide purity because it possesses the ability to rid of impurity.

- b) Among the Shafi'is used water is pure but not purifying as it is not absolute and can't purge impurities.

Various hadiths are evidence to this. (Refer to Fiqh Al Taharat pages 19 to 21)

Ibn Arabi writes in the Ahkam Al Quran:

"إن الماء المستعمل في رفع الحدث لا يجوز الوضوء به مرة أخرى لأن المنع الذي كان في الأعضاء انتقل إلى الماء"

(Hanafis and Shafi'is say that ablution for water used to cleanse of an incident is not allowed since the impurity from the body is transferred to the water) (Ahkam Al Quran Al Ibn Arabi 3/438)

Fourth kind (Impure water)

Definition:

If an impurity falls into water and alters the color, taste or smell of water even the smallest scale it is rendered impure regardless of quantity.

Certain jurists have used this hadith from Abu Umama Al Bahli:

"إن الماء لا ينجسه شيء، إلا ما غلب على ريحه وطعمه ولونه"

(Akhraj Al Nasai, Ibn Majah, Al Baihaqi, Al Daraqutni, Al Tabarani, Al Hakim, Sahih)

(Nothing can pollute water except when it overcomes its taste, smell and color)

If something falls into water and no change occurs then in case of large amounts water will not become impure since that requires a change.

And if the amount is small then most consider it pure. This includes Hanafis, Shafi'is and a large number of Hanbalis. Imam Malik also affirms this and certain Malikis also follow.

A majority has also differentiated between small and large amounts of water.

Definitions of large and small amounts:

Hanafis describe small amounts as those which if used may also involve using the impurity. Here the impurity becomes embedded into the water.

Furthermore, according to them the impurity would embed the water only through animation and if it is determined that it is not possible for the impurity to completely transform itself into the amount of water then it is considered a large amount else a small and impure one.

Shafi'is have written inferring from the Qullatyn that an amount of two pots worth or more would be considered a large amount and would require a change to become impure. An amount smaller than Qullatyn would be considered a small amount which will be impure irrespective of change.

The rule regarding impure water:

The use of this water for purification, drinking or unnecessarily in cooking is absolutely haram.

Fifth type (Suspicious water)

Hanafis believe that if a donkey or mule drinks from a small amount of water then it is suspect (in terms of capacity to purify and not its inherent purity). Therefore it can't be said conclusively if it is impure hence it will not purify an impurity nor contaminate a pure object,

Reason for suspicion:

The cause for suspicion is the occurrence of hadith affirming and prohibiting the use of such water. For a person

seeking purification It is best to avoid this water if a substitute is present and if not then it may be used for ablution or tayammum or even spilled onto the ground for just tayammum.

This type is only found among the Hanafis. The majority (Shafi'is included) consider such water to be pure but not purifying.

Which impurities do not render water impure?

1- Impurity which can't be seen

If the impurity is indistinguishable to the eye, is so small that although contrasting it is not apparent on one's clothes, or is very small like a fly sitting on water after sitting on impurity, a drop of urine flying or dust from dung then it is allowed to pass among the Hanafis and Shafi'is. Any amount of water is safe and so are clothes since it is difficult to ascertain and requires effort to remove. And the sharia is sent to relieve. Allah says:

"ما جعل عليكم في الدين من حرج"
over you in religion)

Another cause for this exemption is that inherent purificative nature of water. As far as cloth is concerned, its impurity is at a low level. Therefore, negligible impurities like mosquito's blood, a little pus etc. are exempt.

2- Non breathing organism

If an insect which does not rely on blood flowing in its body to breathe (like flies, bees etc) falls into a small amount of water, flowing water or food then it shall not become impure. This is backed by the following hadith narrated by Abu Huraira:

"إذا وقع الذباب بإثاء أحدكم فليغمسه كله ثم لينزعه فإن أحد جناحيه داءٌ وفي الآخر دواءٌ"

(Narrated by Bukhari and Abu Dawood and Nasai' Ibn Majah)

"وإنه يتقى بجناحه الذى فيه الداء"

(If a fly falls into your utensils then dip it completely and then remove it because one wing has the disease and the other its cure. Abu Dawood Sharif details this much.)

This rule applies to all such beings by extension of their shared natural characteristics.

Another hadith comes from Salman Farsi to whom the Prophet said:

"يا سلمان! أيما طعام أو شراب ماتت فيه دابة ليس لها نفس سائلة، فهو الحلال أكله وشربه ووضوئه"

(Tirmidhi Dar Al Qutni) (O Salman! If a being in whose body blood does not flow, dies and falls in food or drink it shall not become unfit for consumption.)

The Shafi'is believe that like all other dead things these too are impure but if they fall into water or a liquid then due to the general definition they won't become impure.

If they are put into water post mortem then impurity is established. Same goes for when insertion brings about any change.

Hanafis feel that they are pure and death does not result in impurity hence the ruling is same for both scenarios.

3- Those water oraganisms that do not rely on blood.

The types of animals:

Those animals which are deemed halal, like fish etc are pure in death or life. Narrated by Abu Huraira: (Seawater is pure

and so are its organisms) “هو الطهور ماؤه الحل ميتته” is proof of this hence this water if mixed into other pure water shall not spoil it.

Those organisms whose death is not licit (excluding humans) like land animals which may or may not be eaten. If they fall into small amounts of water after death then the water becomes impure as they become impure post mortem.

Regarding amphibians like frogs there is a difference in opinion.

- a) Hanafis and some Shafi'i's feel that they won't make water impure because by nature of being water beings “هو الطهور ماؤه الحل ميتته” applies to them as well. Hanafis believe that beings that are born in water will not dirty it upon death as they are devoid of blood like essence. This is evident when what they have for blood turns white in the sun instead of black like usual blood.
- b) Established Shafi'i thought and among the Hanafis Imam Abu Yusuf considers small amounts of water impure and larger ones so if change occurs. This is because they are non-consumable and thus like land animals which become impure post mortem. Also because they rely on blood hence are akin to aquatic birds.

Those animals which are born on land and then live in water like ducks and other aquatic birds will render small amounts of water impure if they die in it. (Translation and summary of Fiqh Al Taharat by Abdul Wahhab Abdus Salam p. 14-45 and also Fiqh Al Islami Wa-adilltuhu 1/262-280)

The types of water and their rulings:

The jurists have addressed water related issues under the Kitab Al Shurb. They have tried also to encompass all the various angles and perspectives to these issues.

In dictionary “النصيب من الماء” (Taking share and benefit from water) mentions that Allah via the Prophet’s Saleh mouth says: (Shuara: 155) “قال هذه ناقة لها شرب ولكم شرب يوم معلوم”

This verse lends credence to divisions of water. Under the sharia a traditional division is for drinking and for irrigation. Dr. Wahba Zuhayli writes:

In the sharia there are two uses. *النصيب من الماء لسقى* (Division of water for irrigation of plants and trees) and this is agreed upon by most jurists as being used for in times of need for irrigation.

Types of water:

On the basis of entitlement to drinking and benefit:

- Water stored in utensils
- Water in wells, reservoirs and springs
- Water in small streams or canals owned by specific groups
- Water in large streams or major rivers like the Oxus, Yaxartes, Pyramus, Euphrates or Tigris, or in India rivers like Ganga, Yamuna etc which are open to all.

The rulings regarding each are as follows:

Water in the first category:

It is the property of the person who stores it and no other has right over it. Although essentially free, when captured and stored water becomes property like wood, pasture or game which has been hunted. Thus the sale of this water is also allowed and has been done since time immemorial in all cities. Therefore no person may take this water without the owner’s permission.

But if a person is thirsty and close to dying and sees that a person has water that he is refusing to share then confronting the person is not allowed if the amount of water is small because that would be akin to saving yourself and putting another in harm's way. Although, if the quantity of water is large then weaponless confrontation to take water is permitted. Similarly in the case of food that one has in excess and does not wish to share with one in dire need. Dr. Wahba Zuhayli writes:

The first kind is that in which water is stored in utensils, reservoirs, wells, tanks etc. similar storage by large companies or states that supply water in pots is also included here. This water may not be taken without permission. A person who fears death may take exert some force in taking such water from the owner to save himself if the owner has more than he needs and there is no alternative. He must still pay for the water because under the logic of “لا اضطرار لا يبطل حق الغير” eventaking by force does not eliminate the right to compensation.

Second category:

This kind of water is not owned by anybody be it on public or private land. However, in case of owned land there are some special considerations because water essentially is common to all under the hadith: “الناس شركاء في ثلاث الماء والكلأ والنار” (People share three things: water, pasture and fire). Public partnership depends on legal permissibility, the condition being that the water is free and is not already stored in some container making it private property.

This water can not be sold without storing it since the nature of selling requires ownership of the object being sold. Similarly people may not be stopped from drinking this water

of feeding it to their animals. A hadith mentions: “أن رسول الله “ (نبيع البئر) where “نبيع البئر” refers to surplus water from wells which emerges from them.

One may object to another irrigating from this water because it can theoretically encroach on his right.

Although if the well is on somebody's land then that person can refuse entry to his property if there is an alternative provided and people are not under distress. This is to prevent harm to his property. And if there people are under duress then the landowner will be told to let them pass or provide water himself. If that fails then weaponry force may be exerted to extract enough water for survival. The same scenario applies to modern handpumps and tube wells.

This demonstrated in an incident where a group of people went to get water and the well operators refused. The people asked for one load's worth of water and even that was refused. They humbly explained that they were close to death with thirst but the operators still refused. When news reached Umar (r.a) he said: “هل وضعتهم فيهم السلاح” (Why did you not slay them?) (Badai' vol. 6, Al Fiqh Al Islami Wa-adilltuhu 6/5663, Kitab Al Kharaj by Abu Yusuf/105)

Third category:

The rulings regarding these are as enumerated below. Some are regarding water, some regarding drinking it and others regarding streams.

Regarding this water the ruling is that it is not owned by anybody and becomes property once stored. If somebody says get me water from such and such stream today and I will

get you water from such and such stream some other day then that is wrong because it has taken the shape of a transaction and of water for water or drink for drink and both are invalid.

The owner of the stream can't stop people from drinking from it or feeding water to their animals. Yes, he may forbid irrigation of fields etc from it because that would negate his right over the water as everybody would rush to take the water. If he personally agrees though, then there is no issue as he himself voids his right over it.

Regarding drinking the rule is that water may not be made available for sale because the right to water does not distinguish between sale and purchase. Such water is owned by a specific group and no one may dispose of it without their permission irrespective of the nature of the action. Thus if somebody wants to create a streamlet from the main body and dig it till his fields to draw some water he can not do so without the owner's permission as the digging process constitutes transformative action and requires permission else it can be stopped. The same goes for an intention of adding to the stream by drawing another channel from the main river and adding to this one without the permission of the shareholders.

And if a water wheel is to be built and you own the land upon which it is to be built then it is fine otherwise if the land is public or there is need to draw water and then return it back then this is not allowed as it is encroaching upon the shareholders' right by delaying their water supply like drawing a channel to your field and then returning it to the main body. The stream can't be bridged because that would constitute change to both banks. And if the stream is owned by two people and it connects to the larger river via 5 channels and one

person who has land along the upper bank wants to close some channels he must obtain permission from the one on the lower bank because otherwise he would be putting that person at risk in an effort to pull himself out of it and this is not allowed. And if he wants to stop the flow for a duration then also consent is required. If both agree to it for a while and the one placed lower wishes to annul the agreement he may do so because mutual consent is placed on objects that can't be owned and it is conciliatory and non binding.

If the stream is owned by two people and runs on several channels and a stranger comes and builds another channel into it and draws water from it to his fields and this goes on for sometime before one of the two wishes to close the concerned channel then that person has the right to do so because loans are not permanently binding. And if they die then the heirs of the two owners also have the right to close it.

If a stream is collectively owned by a group and each member draws water from it via a smaller channel and some have two channels while others have more etc. In this case if somebody downstream complains to a person upstream that the amount of water he receives is lower because the pressure and flow is greater upstream and the two decide to come to an agreement for some period of time – they are not permitted to do so and the stream shall be left as is. This is because ownership is over the stream and not the water. If he wants to deepen the lower portion of the stream he can but he can't increase the width because the channel is within the whole of the stream and through its shareholding he has ownership of the channel.

And if there is a stream which feeds off the largest stream which is owned by a few and they fear its flooding and are desirous of strengthening it but some members are in opposition then if the flooding is expected to cause public harm those in opposition may be coerced into agreement. But if there is no such harm to the general public then they may not be coerced. Coercion would be allowed in case of intended risk because it is to eradicate that risk and maintain the status quo of benefit. If there is no risk then the coercion is just to increase benefit and this is not permissible.

Fourth category:

The big rivers are not any individual's property neither is the land under them. All men have a right to using their waters for drinking, feeding to cattle, irrigation and even drawing streams from them to their fields. As long as doing so does not affect the river no person may object, not even the ruler.

Waterwheels and mills may also be constructed upon these rivers since these are not controlled by any single person and are the common property of all. As long as they don't affect the river nobody may object to them and if they do then every individual has the right to object in order to protect the common property because any use of public property is subject to eradication of discomfort. (For more details refer to: Badai' Al Sanai' Al Kasani 6/285 to 291 Kitab Al Shurb)

If these rivers need maintenance or repairs of any sort then these will be done from the state treasury as they are intended for the public's benefit. A hadith mentions: “الخراج بالضمنان” (Taxes are in lieu of warranty). Similarly if there is

risk of flooding etc, then also the dam shall be from state funds and this is the responsibility of the ruler.

Dr. Wahba Zuhayli decrees the ruling regarding public rivers:

"لاملك لأحد في هذه الأنهار، لافى الماء ولا فى المجرى بل هو حق للجماعة كلها، فكل واحد حق الانتفاع بها بالشفة (سقى نفسه ودوابه) والشرب (سقى زروعه وأشجاره) وسق الجداول منها، ونصب الآلات عليها لجر الماء لأرضه، ونحوها من وسائل الانتفاع بالماء وليس للحاكم منع أحد من الانتفاع بكل الوجوه، إذا لم يضر الفعل بالنهر أو بالغير أو بالجماعة كما هو الحكم المقرر بالانتفاع فى الطرق أو المرافق العامة"
(Al Fiqh Al Islami Wa-adilltuhu 6/4665)

(No person owns these rivers; not the water or the bodies themselves. They are owned by the entire community hence everybody may take water for himself, his animals and also irrigate his fields. All sorts of machines to draw water may be built and other means of drawing water are also allowed. And as long as no other person, the river as a whole or the right of the community is not harmed then even the ruler has no right to restrict usage as in the case of other public facilities and roads.)

Rulings regarding the right to drink and other uses:

These are some general guidelines regarding using water. These are mentioned below along with their limitations:

- 1- Surveillance of the well, spring or bank: if the person taking water does not take care of this the owner of the property can forbid usage to avoid harm coming to him. A hadith says: “لا ضرار ولا ضرار” (Do not fall into harm’s way nor cause harm). The risk here is water seeping into neighbouring land which would constitute encroachment.

According to the Hanafis if somebody waters his land and then it goes into the neighbour's land or field and floods it, in that case the person is held responsible but encroachment will only constitute if it is found that he was irrigating his field irregularly and won't be if it is found he was irrigating it according to the practice for that land.

- 2- It is compulsory to create paths for water through public land if it is possible. Otherwise it is obligatory for the landowner to give consent to somebody who wants to create a waterway through his land for his use. This is affirmed in a hadith when Dhahab Bin Khalifa complained regarding this situation to Umar (r.a) about Muhammad Bin Salamah. Umar said: "والله ليمرن به، ولو على بطنك" (Al Fiqh Al Islami Wa-adilltuhu 6/7664 with reference to Tanwir Al Halak Sharh Al Mu'ta 2/812) (natural water will certainly go, albeit over your stomach)
- 3- The right to drink is inheritable and can be included in the will even among the Hanafis who do not consider rights and profit inheritable unless an exception is made. This right is tied to the sale of the land and is not separate from it because its value is not known and sale would mean exploitation and also because Hanafi texts show that rights do not hold value. Hence they can't be counted separately during sale, gifting, charity. According to Dr. Wahba Zuhayli greater preference is accorded to opinions other than those of the Hanafis. He writes:

"والأولى الأخذ برأى غير الحنفية القائلين بجواز التصرف في الحقوق والمنافع، لأنها أموال متقومة، في عرف الناس" (ibid)

(Firstly consider the opinion of those other than the Hanafis as they are in favor of distribution of rights and benefits because rights are customarily considered valuable)

- 4- When water is owned singularly any use from it is permitted. If water is owned collectively then it must be distributed justly and fairly. Either periodic ownership of the water or proportionally on the basis of the area of the land or fields of each person. The Shafi'is also share this opinion.

And when water is owned by a community and there is a dispute then division shall be made on the basis of the people's land sizes as the purpose is irrigation irrespective of the passageways as their only purpose is transportation. Their openness or crampedness will not be considered.

In step with fairness and justice, no change in the order shall be made without the consent of all the shareholders. This includes all sorts of constructions, modifications to the flow patterns, changes in the distribution patterns of the water or in the methods of distribution. This is because the established order shall remain to prevent harm to others and there is potential harm in expansion.

- 5- And if there is no land a claim to drink can still be resented according to the Hanafis because this is a desirous act and without land a hereditary claim can still be made and sometimes only the land is sold and not this right so even then a claim with proof can be made to expunge harm from oneself.
- 6- In the case of rainwater or a stream which is small and congested the process is that beginning from the top the person whose fields are topmost will stop the water and divert it into his fields till ankle depth and then release it again into the stream after his whole field is irrigated and then the person after him will do the same as long as all the

fields aren't irrigated or the water finishes. This hadith from Ubadah (r.a) is evidence:

"أن النبي ﷺ قضى في شرب النخل من السيل: أن الأعلى يشرب قبل الأسفل، ويترك الماء إلى الكعبيين ثم يرسل الماء إلى الأسفل الذي يليه، وكذلك حتى تنقضي الحوائط، أو يفنى الماء"

(Narrated by Ibn Majah and Abu Dawood)

Abdullah Bin Zubair narrates:

"أن الزبير ورجلاً من الأنصار تنازعا في شراج الحرة، التي يسقى بها النخل، فقال الأنصار للزبير سرح الماء، فأبى الزبير، فاختصما إلى رسول الله ﷺ فقال رسول الله ﷺ للزبير: اسق أرضك، ثم أرسل الماء إلى جارك، فقال الأنصاري: أن كان ابن عمك يا رسول الله، فتلون وجه رسول ﷺ، فقال: يا زبير! اسق أرضك إلى أن يبلغ الجدر"

(Hadith Sahih Agreed upon by Bukhari and Muslim and narrated by Malik in Muattah)

(Hazrat Zubair and an Ansari man fell into a quarrel when he asked Zubair to release water from the canals that he irrigated his date palm gardens orchards from and Zubair refused. The Ansari went to the Prophet (PBUH) with his case and the Prophet said to Zubair: irrigate your fields and release the water to your neighbor. The Ansar said to the Prophet: O' Prophet of Allah you've decreed in your paternal cousin's favor. The Prophet's expression changed and he said: O' Zubair! Irrigate your fields till the boundaries of your fields)

The issue of deepening and maintaining streams:

The expenses incurred during maintenance work of rivers, their banks and bridges constructed on them shall be determined on the nature of the rivers. Of this there are 3 types:

1) Public streams which are not owned by anybody:

All maintenance work on these streams shall be funded by the state treasury via taxes. If there is no money in the treasury then the ruler can force the people to work in maintenance projects if they refuse because the nature of the work concerns public good. Hazrat Umar says concerning this case: “لو تر كنتم لبعث أولادكم” (If you leave this work I will sell your children). What this means is that the responsibility of the work will be deposited to the wealthy among the citizens and the normal people will work under their employment.

2) Streams which are owner in sharing or by a specific community

These shall be tended to by the people who hold shares in it because in a way they are the ones who have the strongest claim to reaping its benefits and if one of them refuses then the others can coerce him to mitigate risk.

3) Privately owned streams

Maintenance of streams owned by a small number of people will be done by them itself because they are collecting its profits. And if all of them refuse to do so the ruler may not force them because they shall be responsible for all outcomes – profit or loss.

Sharia ruling regarding prodigality in water:

The first explanation of ruling comes from Mufti Muhammad Shafi quoting the commentary and interpretation of the verse “كلوا واشربوا ولا تسرفوا أَلْخ”. Mufti Shafi writes:

“Eating and drinking are a compulsory under the sharia and if a person stops eating or drinking and becomes so weak

that he can't fulfil his obligations, or dies, then he shall have committed sin in Allah's eyes. Therefore, eating as per one's needs is compulsorily required but excess is not permitted. Excess constitutes consuming more than need be. The various situations under this are:

First, that a person overlooks the halal and starts consuming haram things. The haram nature of this is obvious.

Second, considering things ordained halal to be haram and avoiding them. Unnecessarily avoiding the halal is a great sin against Allah's order. (Tafsir Ibn Kathir, Tafsir Mazhari, Ruh Al Maani)

Similarly eating or drinking more than required is also considered excess. This is why jurists have written against this. (Ahkam Al Quran etc.)

Also among excess is eating or drinking less than required or need so that one becomes weak and is unable to attend to obligations.

The aim in eating should be moderation. Abu Nuaim quotes Umar (r.a):

"إياكم والبطننة من الطعام والشراب فإنها مفسدة للجسد مورثة للسقم
مكسلة من الصلاة وعليكم بالقصد فيها فإنه أصلح للجسد وإبعد من
السرف وإن الله تعالى ليبيغض الحبر السمين وإن الرجل لن يهلك حتى
يؤثر شهوته على دينه"

(Umar Faruq said: Refrain from excessive eating because it harms the body, makes you lazy instead practice moderation which is better. And added: Allah does not like fat bodies and then said that man shall not die as long as he does not put his baser desires above religion)

(Ruh 4/349)

The earlier Ulama have also also included the condition that man eats and drinks so much that it appears as if feeding is the only purpose in life.

The Prophet (PBUH) also counted in excess a state in which one fulfils every desire as it emerges. (Ibn Majah) (Ma'rif Al Quran 3/445)

The eminent jurist Dr. Wahba Zuhayli writes while elaborating upon "كلوا واشربوا ولا تسرفوا الخ":

"الإسراف: تجاوز في الحد في كل شيء، والله تعالى يحب إحلال ما حل، وتحريم ما حرم، وذلك العدل الذي أمر به، فلا يصلح تجاوز الحد الطبيعي كالجوع والعطش والشبع والرئ، ولا المادى بأن تكون النفقة بنسبة معينة من الداخل لاتستأصله كله، ولا الشرعى فلايجوز تناول ما حرم الله من الميتة والدم ولحم الخنزير وما ذبح لغير الله والخمر إلا للضرورة الخ " (Al Tafsir Al munir 7-8/184)

(Extravagance means exceeding limits in anything. Allah has ordained things halal or haram and the order must be maintained in physical and natural limits like hunger, thirst, convenience and should not be exceeded. The same for material and economic limits like overspending and also for sharia limits. Allah has forbidden dead beings, swine, alcohol and animals slaughtered in some other deity's name so there is no need to alter these restrictions unnecessarily)

Allama Tabari writes regarding كلوا واشربوا الخ:

"وظاهر هذا يقتضى الأكل والشرب في المأكولات والمشروبات إلا أن يخطره دليل أن لا يكون مسرفاً فيما يأتيه من ذلك فإنه أطلق الأكل والشرب على شرط أن لا يكون مسرفاً فيهما..... والإسراف مذموم، ونقيضه الإقتار وهما مذمومان، والاقتصاد والتوسط هو المشروع، ومنه قيل دين الله تعالى بين المقصر والغالى، وقد قال تعالى: "والذين إذا أنفقوا لم يسرفوا ولم يقتروا وكان بين ذلك قواماً"،.....ومن الإسراف

فى الأكل، الأكل فوق الشبع، وكل ذلك محظور " (Ahkam Al Quran / Al Tabari 3-4/138)

The cause for this ruling is the eating and drinking of consumables which is allowed as long as no evidence to the contrary emerges and there is no excess in it. Excess is damaging and its counter, which is stinginess is also damaging. Moderation is optimal and Allah says religion is between extremeness and falling short. He says, "My people are those who spend in moderation and not too much or too little". Excess in food also means eating more than is convenient.

Ibn Al Arabi writes on this issue in the Ahkam Al Quran:

"الإسراف تعدى الحد، فنهاهم عن تعدى الحلال إلى الحرام، وقيل ألا يزيدوا على قدر الحاجة وقد اختلف فيه على قولين: فقيل: هو حرام، وقيل: هو مكروه، وهو الأصح فإن قدر الشبع يختلف باختلاف البلدان والأزمان والأسنان والطعمان، وقد ثبت فى الصحيح أن النبى ﷺ أمر لرجل كافر بحلاب سبع شياه، فشربها ثم آمن، فلم يقدر على أكثر من حلب شاة، قال النبى ﷺ: " المؤمن يأكل فى معنى واحد، والكافر يأكل فى سبعة أمعاء " (متفق عليه) وذلك أن القلب لما تنور بالتوحيد نظر إلى الطعام بعين التقوى على الطاعة، فاخذ منه قدر الحاجة، وحين كان مظلماً بالكفر كان أكله كالبيهيمت ترتع حتى تنلظ"

(Al Ahkam Al Quran / Ibn Al Arabi 3/190)

(Excess means overstepping limits. Allah has forbidden for people to move from halal to haram. Also that prohibition lies on making changes to set limits)

Because of differing opinions there are two thought to the concept of excess:

One perspective is of prohibition and the other more common view is of dislike. This is because differences in

countries, era, age and food can affect comfort. The Sahih hadith mentions that the Prophet (PBUH) once ordered the milk of seven goats for an infidel man. He drank all of it and accepted Islam. After that he couldn't drink more than one goat's milk. The Prophet said: the believer feeds one intestine, the unbeliever seven. When the light of Allah's oneness enters the heart nourishment is required only to bolster once obedience hence he eats as per need and not wantonly like animals that eat till they shit.

This is supported by the verse: “ياكلون كما تاكل الأنعام والنار” (The unbelievers eat like animals and hellfire is their destination)

Maulana Abdul Majid Daryabadi writes:

“Extravagance is spending without limit and the trusted limits are those set in the sharia, and after them those of logic. Not the limits of the body or emotion. Hence “لاتسرفوا” is taken to refer to eating and drinking within the limits of excess and frugality. (Tafsir Majidi 2/150)

The author writes in the commentary to the hadith in Timridhi Chapter Majaa Fi' Al Wuzu Thalatha Thalatha:

“العمل على هذا عند عامة أهل العلم أن الوضوء يجزى مرة مرة، مرتين أفضل، وأفضله ثلاث، وليس بعده شيء”

The consensus is that running water once is enough for ablution, twice is better and thrice is optimal, (There is no more) meaning that after thrice there is no additional merit but added sin instead.

Abdullah Bin Al Mubarak says: “لا آمن إذا زاد في الوضوء” (If somebody dispenses water more than thrice during ablution then I am not certain on his verdict as a sinner)

Imam Ahmad and Ishaq say: “ لا يزيد على الثلاث إلا رجل ” (Only a person plagued mentally can add to the order of thrice) (Refer to: Al Ahwazi / Al Mubarak Kapuri 1/131, hadith no. 44)

Imam Nawawi says that among Muslims there is consensus that for washing the limbs once is required and thrice is sunnah. There are evidence backed hadiths confirming variously orders for once, twice or thrice or thrice for some and twice for other parts. Also that once is economical and thrice is optimal.

There is no doubt that Muslims are prohibited against imitating or defending those who waste in excess: “ ولا تطيعوا أمر ” (Quran:Shura: 151). “المُسْرِفِينَ”

Once instance strongly affirms: “ وإن المُسْرِفِينَ هم أصحاب ” (Ghafir: 23) (The prodigal shall find place in hell). “النار”

It is thus learnt that wastefulness is not accepted or desirable under any circumstances. It is also seen that man wastes water more than other things. Man wastes water as excessively as Allah has made it bountiful. The wastage of water is a common sight everywhere.

Imam Abu Yusuf’s opinion regarding the trade of water:

قال: ولا بأس ببيع الماء إذا كان في الأوعية، وهذا ماء قد أحرزته في وعائه فلا بأس ببيعه..... وإن كان في بئر أو عين يزداد ويكثر أو لا يزداد ولا يكثر فلا خير في بيعه ولو باعه لم يجز البيع
قال: وحدثنا العلاء بن كثير عن مكحول قال: قال رسول الله صلى الله عليه وسلم “لا تمنعوا كلاً ولا ماء ولا ناراً فإنه متاع للمقوين، وقوة للمستضعفين (Al Kharaj /Imam Abu Yusuf /103)

Concerning the sale and purchase of water Imam Abu Yusuf details in his exalted “Kitab Al Kharaj”:

“There is no objection to sale of water which is stored in pots because their state is confirmed.....the water in wells however, which keeps fluctuating, its sale is not permitted or appreciated”.

He says that Alaa Bin Kathir narrated that the Prophet (PBUH) said, “Don’t prevent from giving grass, water and fire since these are essential to people in the forests and nurturing to the poor”.

Forest dwellers, travelers and the poor depend on these extensively and so do the rest of us.

The ruling regarding filtered urine:

Urine shall remain impure despite filtration.

If urine is made to go through a filtration device and emerges waterlike what will it’s status be. And is it capable of inherent transformation? Maulana Nizamuddin Azmi has addressed these questions with great precision and clarity after indepth research. He says:

“The only result from this process is urine fro which the putrid and harmful aspects have been removed. No transformative quality has been observed in urine. Since by virtue of essence it is impure the distilled product will also be impure. No core transformation has occurred, just an expulsion. A transformation at the core would imply a new nature with not trace of the old, a new name, new properties, new characteristics and effects. Like turning alcohol into vinegar”. (Muntakhabat Nizam al-Fatawa 1/26)

An extension is the question of cooking urine to extract salt and whether this salt may be used. The Mufti further writes:

Urine is inherently impure with or without its salinity and may not be drunk. Thus even after cooking no part of it may be used since what is impure remains so. Although, if urine spills into a salt mine and becomes salt then under the logic of “الخلط استهلاك” it may be consumed and it won’t be considered urine”. (ibid/25)

Maulana Khalid Saifullah Rehmani is a leading figure in this context. He writes:

“A change in the inherent nature of an object and a change by removal of certain components are two different things. If an inherent change occurs, the rules regarding it also change. Faecal matter when burned to ash becomes pure and when salt is added to alcohol it turns to vinegar. These are inherent changes. If some scientific process eliminates malodour from it it will not mean that it has become pure.

Filtered urine does not change inherently. Only some malodorous aspects of it are removed, hence it will remain impure and may not be used. Any body part it touches will also become impure”. (Jadid Fiqhi Masail 1/108)

The ruling regarding filtered drain water:

The fifth ruling of the 11th seminar of the Al Majma’ Al Fiqhiya, Mecca is quoted in this regard:

A question in the seminar was posed as to whether drain water could be purified for use and if impurities could be removed from it?

Experts in chemical purification of water were consulted and they said that the process was fourfold. First, the water was collected to allow sedimentation of impurities. Second, the water from the top was filtered away. Third, the

bacteria in the water were chemically killed. Fourth, chlorination was done to prevent relapse of bacteria. After this there was no trace of impurity in the taste, smell or color of the water. These experts were muslims, reliable and trustworthy.

Under this light the Majma' Al Fiqhiya decided that if by a similar process water was rid of impurities in taste, color and smell then under the guidelines of purity such water would become pure and would possess purifying properties. (Jurisprudential decision –Mecca 226)

This decision was ratified by Allama Abdullah Bin Abdulaziz Bin Baz (President, Fiqh Academy, Makkah), Dr. Abdullah Umar Nasif (Vice President) and others like Dr. Yusuf Al Qardhawi, Sheikh Mustafa Ahmad Al Zarqaa, Sheikh Muhammad Bin Abdullah Bin Sabil (Imam Holy Mosque) among other important members of the seminar.

Permitted uses of the purified drainwater:

Regarding the permissible and sharia bound uses of such water Sheikh Abu Zaid, a member of the Majma Al Fiqhiya. Mecca says:

“Drainage is providing for disposal of impurities and maintenance of physical and spiritual purity.

Modern resources have provided methods to purify drain water and give clean and sweet water for drinking, irrigation etc.

In light of this progress it is necessary to examine the reasons and causes behind the prohibition of certain or all uses of drain water. The following faults in drain water emerge:

First: impurities that have taste, odour or color.

Second: waste matter from diseases and concentrated medicinal atreifacts.

Third: impurities that originate in the drains and also due to insects in these drains are obviously and also in the sharia's view, impure. Post purification it is necessary to determine to what extent these impurities have been removed.

This is because mere change in taste, odour or color does not mean that these other faults have also been removed.

Agriculture departments regularly warn against irrigating field which grow crops that are eaten raw with reclaimed water. How then will direct consumption of this water be? Safeguarding the body is important to Islam. Just as hazardous objects are banned for religious causes so to must those of bodily harm be avoided.

Even if these impurities be removed from it it shall remain impure because it has been filtered from urine and faeces to bring into acceptable use.

According to the Shafi'is and the Hanbalis they can't be transferred like purity after transformative change has occurred. This they substantiate with a hadith prohibiting riding animals that feed on waste or milking them. It is narrated by the author in Sunan and others.

This is also clear that the difference in opinion between jurists is on specific points and with certainty they have excluded drains which have impurities and carry medical waste in them from the possibility of transferrable purity. Besides, there is present need to consider such drastic steps as using this water for purification or drinking. Unlike the unbelieving countries that have lost better judgement due to their sins we do not consider this an achievement. We possess alternatives like filtration of seawater and increasing of water prices to an extent that makes wastage unviable". (Jurisprudential decision, Makkah 227 to 229)

I too agree completely with this opinion. Allah has presented us with innumerable blessings and if some area has no substitute to drains then under forced necessity there shall be approval.

Core transformations and the Fiqh Academy, India:

There has been mention of core transformations in the previous pages therefore, it shall be appropriate that two recommendations of the Islamic Fiqh Academy (India) which organized a seminar related to the issue be presented below:

- 1- Those objects which have been deemed haram and are disliked for their essential impurity, if their essence is changed via some human, chemical, nonchemical or circumstantial action the rules applying to them will also change irrespective of whether they are essentially impure or not.
- 2- Core transformations refer to changes in the components which are linked to the essence of the object. If those components which do not affect the essence of the object remain unchanged there is no issue. (Decisions and recommendations of The Islamic Fiqh Academy India)

The issue of plotting low lying areas:

There is no doubt that the plotting of low lying areas and their population divides the water among the people and also affects water harvesting in the region causing a loss to people.

Therefore it is not permitted. If the state forbids it then it is obvious but if there is no clear prohibition or approval then

permission to parcel the land and inhabit it will only be given when alternative means of drainage and water cachement are provided.

Imam Abu Yusuf says:

فأما إذا نصب الماء عن جزيرة في دجلة.....فليس لأحد أن يحدث فيها شيئاً لا بناء ولا زرعاً، لأن مثل هذه الجزيرة إذا حُصنت وزرعت كان ذلك ضرراً على أهل المنازل والدور وقال: ولا يسع الإمام أن يقطع شيئاً من هذا، ولا يحدث فيه حدثاً (Kitab Al Kharj Imam Abu Yusuf/99)

(If an island on the Tigris were to dry out there can be no construction on that land because if that land is parceled and constructed upon then the people who live there will face harm.

And added: The ruler also has no right to parcel or give away land for inhabitation from here.)

Sharia guidelines to protect water from contamination:

Water is an essential requirement of all life on earth. It is one of Allah's gifts and the Islamic sharia emphasizes the protection of water from contamination or avoiding situations where water transmits contamination. Most of the rulings regarding this are obligatory while some are moral. For want of space, only a few hadiths are mentioned below:

عن أبي هريرة أن رسول الله ﷺ قال: إذا أَسْتَيْقِظَ أَحَدُكُمْ مِنْ نَوْمِهِ فَلَا يَغْمَسْ يَدَهُ فِي الْإِنَاءِ حَتَّى يَغْسِلَهَا ثَلَاثًا، فَإِنَّهُ لَا يَدْرِي أَيْنَ بَاتَتْ يَدُهُ (Bukhari&Muslim)

(The Prophet (PBUH) said to Abu Huraira, "When one of you wakes up from sleep, be sure to wash your hands thrice before touching utensils holding water because you do not know where the hand has been while you slept)

The order specified will be obligatory if it is estimated or observed that contact with impurity inducing objects has

occurred while sleeping. If there was a short nap and there is no sign of the hand touching such objects then the order is moral.

This must also be noted that if there is impurity it will be cleansed upon one washing. Thrice is a moral order.

This hadith attributed to Abu Huraira: “ لا يبولن أحدكم في ” الماء الدائم ثم يغتسل منه (Most certainly none of you may urinate in still water and then bathe from it) appears as “ لا يغتسل فيه من ” under certain narrations.

The author of the Awn Al Mabud writes:

فيه صراحة في المنع من كل واحد من البول والاعتسال فيه على “ (In this hadith there is distinct prohibition on urinating in water and bathing from it)

Some narrations mention “تم يتوضأ منه”. The author in the Tuhfat Al Ahwazi writes in the commentary to this hadith:

”نقل عن مالك أنه حمل النهي على التنزيه فيما لا يتغير، وهو قول الباقيين في الكثير، وقال القرطبي يمكن حمله على التحريم مطلقاً على قاعدة سد الذريعة لأنه يفضي إلى تحليل الماء انتهى“

(Imam Malik has interpreted this prohibition as one which is simply disliked (tehrimi) and other scholars also agree on this for large amounts of water if there is no change observed. Allama Qurtubi says: the interpretation of this order as being simply disliked is possible under the preventive because this act brings water close to impurity)

Thus it is clear that rulings regarding water are not merely moral but obligatory because even if even the act is not directly contaminating, under preventive action is prohibited because it causes impurity.

Ma’z Bin Jabl narrates that the Prophet said: “ اتقوا ” (refrain from the melaen al-thalath: البراز في الموارد، وقارعة الطريق والظل

defecating near three places that bring damnation: banks and water courses, roads and shade)

The point here is that the prohibition comes becomes doing so can be cause for contamination.

An analysis of the Quranic verse: “وَأَنْزَلْنَا مِنَ السَّمَاءِ مَاءً طَهُورًا” reveals that Allah has described water as “طهور” and created it so. طهور means that which is inherently pure and can purify. Hence all activities which can alter the state of water from its intended one are prohibited.

Maulana Khalid Saifullah Rehmani elaborates:

“One should not relieve oneself at places where doing so causes discomfort to people. Roads are means of travelling, places of shade are necessary for weary travelers and water bodies too are bebeneficiary for the public hence relieving oneself at these and other places of gathering is disliked” (Halal Wa Haram/ 86-96)

Our co-operation with state obligations:

Our religion not just teaches but emphasizes participation and cooperation in activities of progress and benefit. It urges and encourages to put the development of the land, of life and society above personal needs and also to take part in refinement of society from evils. Allah says: “تَعَاوَنُوا عَلَى الْبِرِّ وَالتَّقْوَىٰ وَلَا تَعَاوَنُوا عَلَى الْإِثْمِ وَالْعُدْوَانِ” (Come together on issues of piety and righteousness and not in sin and transgression).

Allah also ordains: “أَطِيعُوا اللَّهَ وَأَطِيعُوا الرَّسُولَ وَأُولَى الْأَمْرِ مِنْكُمْ” (Obey Allah, the Prophet and those who lead you). These leaders should be obeyed in subjects of righteousness irrespective of how they are. A hadith says, “عليكم السمع والطاعة” (It is obligatory you listen to him, if a

Negro slave is made your ruler) other narrations mention a ruler without a nose and minute eyes i.e. ugly.

But if those responsible or the ruler ordains against Allah then there will be absolutely no obedience of that order, the hadiths have made this clear: “لا طاعة لمخلوق في معصية الخالق” (No obedience to a creature in disobedience to the Creator). The hadith mention “الدين النصحية” (Religion embodies loyalty) the implication here is to be cordial with everybody. When asked about loyalty and to whom by the Companions, the Prophet said to them “ولأئمة المسلمين وعامتهم” (to the leaders of the muslim and the common folk). Therefore it is the state’s responsibility to ensure all the citzens are rovided for, their rights, safety and social order are secure and maintained. The provision of necessities, eradication of harm, maintainance and ensuring order are among the state’s responsibilities.

Similarly obeying all rules and orders in accordance to the sharia is obligatory on all citizens to ensure the smooth functioning of the state.

Conclusion:

Water is one of the essential needs of humans. On one hand it quenches thirst and on the other it is the best eradicator of impurity. Allah has spoken numerous times about this invaluable gift and has used the word “ماء” for water in 58 instances. Therefore, respecting, preserving and being thankful for water is essential. Allah says regarding thankfulness:

“أفرأيتم الماء الذي تشربون، أنتم أنزلتموه من المزن أم نحن المنزلون، لو نشاء لجعلناه أجاجا فلو لا تشكرون” (Al Waqia: 68-70)

(Have you not seen the water pour from the skies. Is it your doing or ours? And if we want we can turn it salty. Why then are you not thankful)

In one instance He says while talking of the purificative purpose of water:

"وأنزلنا من السماء ماءً طهوراً" (Quran : Al Furqan: 48)

(We poured clean and cleansing water from the skies)

And in Surah Anfal:

"وينزل عليكم من السماء ماء ليطهركم به" (Quran: Anfal: 11)

(He pours water from the skies to cleanse you)

Answers to the questionnaire prepared by the Islamic Fiqh Academy on the topic "Water Resources and Their Solutions in the Sharia" are now presented in conclusion:

- 1- Water has been created free to all and it has cleansing properties. Drinking and irrigation are among its uses. According to the sharia it should be used in manners that prevent wastage and it should be safeguarded from impurity. Once stored in utensils it becomes property and may be dispensed as per will and may even be sold.
- 2- Excess shall constitute any use of water which is more than what is required or in quantities larger than those specified. It is considered makruh (disliked) by most and haram in one ruling.
- 3- All those activities which directly contaminate water are prohibited. This order is considered obligatory under most accounts and under certain situations moral.
- 4- Modern chemical processes can remove impurities and malodour from water. Such water shall be fit for use only if the essences of water overpower those of the impurity, if there is no alternative available to the people and the situation demands it.

If the impurities are not overcome, an alternative is present or if there is no urgency of situation then

according to this author this water shan't be purified and its use won't be valid as Allah has created other reserves for this very important substance. The earth itself is 3/4th water.

Also, it should be noted that no chemical process of filtration purifies urine since no inherent transformation is observed.

- 5- In special circumstances the state restricts some uses of water in certain areas or prohibits them completely. This is done to prevent harm to the general public or in the face of risk of general harm. Such orders need be followed under the sharia and doing so is a duty and considered proper.
- 6- The water found on one's land is to be considered his property, exceptions being some areas customarily considered common to all or other exceptions in which they are the state's property. Any prohibition on digging borewells will only be implemented if an alternative is provided. If after this there is a prohibition in light of public interest then such orders must be followed.
- 7- The building of water reserves is essentially the state's responsibility but the citizens too are party to helping in this. If the government orders the allocation of a portion of individual houses for water cisterns then it must be obeyed because the state can function only in harmony with the people.
- 8- Settlements can be displaced for the creation of large scale water reserves or dams provided that alternative land is provided to the people.

9- Breaking the dam to avoid damage is only allowed if there is no public harm in doing so or if there is no population in the course of the water. If there is population further down and it is lesser than where the dam is to be broken then harm to a few over many will be considered.

Or if the place further downstream in such a way that expects risks during monsoon then the dam may be broken because it is not fit to populate these areas.

"لا تلفوا بأيديكم إلى التهلكة"

10- If water is owned individually then any use within the limits of excess is permitted. If it is owned commonly like in public streams, wells, lakes etc. then ownership may be shared periodically in turns, with one person owning it for a specific time or by means of sharing the canals that spread the water on the basis of land holdings. Any division which is agreed to by all and doesn't cause conflicts is allowed.

11- If there is a stream that goes through various areas and fields then its sharing shall be such that beginning from the top the first person uses the water then sends it forward to his neighbour and so on as long as all have used it. This is when there is a simultaneous need. But if the custom dictates bottom to top then so be it. Sharing may be done according to location or land size as long as accord is maintained.

12- If the well, stream or tube well is on one's land or if that water is originally free but when stored in a container it becomes private property and may be used in any manner.

- 13- The sale and purchase of water is allowed. It is an acceptable means of livelihood and has been observed over the ages. Nowadays it is quite lucrative as well.
- 14- Parceling of land in low lying areas (when it is bound to affect the water table and water reserves, considered to pose harm to the people and this no order to the contrary) is not permissible. This is irrespective of the government prohibiting this or not. If it does prohibit then the emphasis is even greater.
- 15- The supply of water is the state's responsibility and moreso when it is outlined in its directives. It may demand compensation in lieu of providing water since it owns it and incurs expenses in the supply process. In the Islamic perspective non payment should not mean halting of supply but instead some other form of punishment should be considered.
- 16- The establishment and operation of a system of drainage to ensure a healthy populace and standard of living is the state's responsibility. This is what I understand, and Allah knows best.



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Water Resources: The Sharia Perspective

Maulana Muhammad Shahjahan Nadvi¹

Allah has ordained such that 3/4th of the Earth's mass is covered by water and the same is found in man's body. He has made life on land dependent on water and Himself says:

"وجعلنا من الماء كل شيء حي" (Quran: Al Anbiya: 30)

(And it was us that gave birth to every living thing from water)

He has made water such that it is pure and can purify. He says: "وأنزلنا من السماء طهورا"

(Al Furqan :47) (And we sent pure water from the skies)

And He linked activities like prayer to water. It is only through water that man achieves purity and dispels impurity from himself, his clothes etc.

In summary, no life can continue without water. This is why islam emphasizes on the protection of water from contamination to ensure continuity of human life and society.

The answers to the questions now follow:

1- General guidelines in the sharia regarding the use of water

Water should be used in moderation and not more than quantities specified for various tasks. A hadith narrated by

¹ Professor of Hadith and Fiqh, Jamia Islamia, Shantapuram, Kerala

Abdullah Bin Amru Bin Al Aas that once when the Prophet (PBUH) passed Hazrat Sa'd while the latter was performing ablution and asked:

"ما هذا السرف يا سعد؟ قال: أفي الوضوء سرف؟ قال: نعم، وإن كنت على نهر جار"

(Musnad Ahmed, hadith: 7065, Commentators say that its lineage is weak. Also see: Sunan Ibn Majah, hadith: 425. Busiri says in the Al zawa'id that the lineage of this hadith is weak but the hadith coming up supports this one which is why all scholars agree on the prohibition on excess)

Hazrat Abdullah Bin Maghffal narrated to his son while praying, "O' Allah! I seek a white palace on the right in heaven" and then told his son to seek heaven from Allah and protection from hell because he heard the Prophet (PBUH) say:

"إنه سيكون في هذه الأمة قوم يعتدون في الطهور والدعاء"

(Sunan Abi Dawood, hadith: 94, Mustadrik Al Hakim, hadith: 579 and this hadith is Sahih)

(There will be some among the followers who will indulge in excessive purity and prayer)

Unwarranted use of water should not be made. The hadith mention that the Prophet (PBUH) would bathe with one Sa' of water and perform ablution with one mud (Sunan Abi Dawood Hadith: 92, from Aisha (r.a), Musnad Ahmed hadith: 24898 and this is a Sahih hadith) and at times bathed with even less. (Sahih Muslim hadith: 321)

Hazrat Ibn Abbas was once inquired by a man: How much water may I use for ablution? He said: One Mud. The man said: How much for a bath? Ibn Abbas said: One sa'. The man then asked: What if that is not enough? He replied: May death

befall your mother! It was enough for the Prophet of God, a man far greater than you. (Musnad Ahmed, hadith: 2628)

Jabir Bin Abdullah (r.a) also replied similarly to this question of what if, and added, “and who had more hair than you” (Sahih Al Bukhari, hadith: 253)

Do not contaminate water. The Prophet (PBUH) also forbade urinating in water. (Sahih Muslim, hadith: 281, from Jabir)

2- The lexical meaning of “extaravagance” is: “مجاورة الحد” which means overstepping limits and moderation.

It is said: “أسرف في ماله”, i.e. he overstepped in his spending and “أسرف في الكلام وفي القتل” meaning, he exceeded in speech or murder. The Quran says:

”ومن قتل مظلوماً، فقد جعلنا لوليه سلطاناً فلا يسرف في القتل“ (Bani Israel: 33) (And that aggrieved man who has been slain, we grant his successor the right to blood money, but let him not excess in slaying)

And at another place in the Quran: “ولا تسرفوا، إنه لا يحب” (Al An’am: 141) (waste not by excess, Allah does not appreciate those who do.)

And the “excess” in Islamic terminology means: “صرف” (Radd Al Muhtar, Kitab Al Faraiz, 10/494, Dar Al Kutub Al Ilmiyah, Beirut, 1415 A.H/1994)

(Using some thing at one spot which is apt, but the quantity of use is in excess of set limits)

Tahtawi writes:

”الاسراف في صب الماء: الإسراف، العمل فوق الحاجة الشرعية، في فتاوى الحجة: يكره صب الماء في الوضوء زيادة على العدد المسنون والقدر المعهود“

(Hashiya Al Tahtawi /Maraqi Al Falah, 1/53, Bawlaq, Egypt 1318 A.H)

(Author's view: letting water run constitutes exceeding limits. Spending more than the sharia stipulated amount is excess. Fatawa Al Hujjah mentions: exceeding the amounts and repetitions set for ablution is disliked).

It is written in the Durr Al Mukhtar:

"والإسراف" ومنه الزيادة على الثلاث، (فيه) تحريماً لو بماء النهر والمملوك له، أما الموقوف على من يتطهر به، ومنه ماء المدارس، فحرام"

(Al Durr Al Mukhtar Ma Radd Al Muhtar, Kitab Al Taharat 1/258) (And profusion is in exceeding the order of thrice. On owned and river water it is disliked and in other public water which has been donated as Waqf like that of Madrasas, it is haram)

Shami writes:

"قوله: "ومنه" أى من الإسراف الزيادة على الثلاث، أى فى الغسلات مع اعتقاد أن ذلك هو السنة لما قدمناه من أن الصحيح أن النهى محمول على ذلك، فإذا لم يعتد ذلك، وقصد الطمأنينة عند الشك، أو قصد الوضوء على الوضوء بعد الفراغ منه، فلا كراهة...إلى أن قال: "قد تقدم أن النهى عنه فى حديث "فمن زاد على هذا أو نقص، فقد تعدى وظلم" محمول على الاعتقاد عندنا كما صرح به فى الهداية وغيرها، وقال فى "البدائع": إنه الصحيح، حتى لو زاد أو نقص واعتقد أن الثلاث سنة لا يلحقه الوعيد، وقدّمنا أنه صريح فى عدم كراهة ذلك: يعنى كراهة تحريم، فلا ينافى الكراهة التنزيهية"

(Radd Al Muhtar, Kitab Al Taharat 1/258-259)

(And the author writes: "and from it" meaning exceeding thrice which is excess. The prohibition on exceeding while washing despite having faith thrice is sunnat rests on proofs presented earlier. And if there is doubt and to sate that doubt he exceeds in renewing ablution over ablution then

there is no dislike towards it. Ibn Abideen then said: this issue has occurred earlier in the hadith “and he who exceeds or falls short of this set amount, he has transgressed and done injustice” our opinion is to hold faith like said in the Badai’ and elsewhere. Insofar as he adds or subtracts believing in the sunnat of thrice there is no warning. And we have mentioned earlier that it is clear in its not being makruh tanzihī so this dislike is not contradictory to lightly disliked)

And at another instance in the Radd Al Muhtar:

"فإذا لم يؤد به عمل مما هو المقصود من شرعيته كالصلاة وسجدة التلاوة ومس المصحف ينبغي أن لا يشرع تكراره قربة، لكونه غير مقصود لذاته، فيكون إسرافاً محضاً" إلى أن قال: "لكن ذكر سيدي عبد الغني النابلسي أن المفهوم من إطلاق الحديث مشروعيته، ولو بلا فصل بصلاة أو مجلس آخر، ولا إسراف فيما هو مشروع أما لو كرره ثلاثة أو رابعاً فيشترط لمشروعيته الفصل بما ذكر، وإلا كان إسرافاً محضاً"

(Radd Al Muhtar, Kitab Al Taharat 1/241)

(If is ablution is performed without intention for tasks linked to it like prayer, submission, recitation etc, then to ordain it as nearing in proximity won't be licit. (After this Ibn Abidin said): But our teacher, Shaikh Abdul Ghani Nabulsi mentioned that the purposes of ablution are understood through the hadith and there mustn't be a demarcation on the basis of prayer or other assemblies and there is no excess in permissibles. If thrice or four times is ordained then its permissibility shall be conditional to the activity under question, otherwise purely excessive).

The hadith Allama Nabulsi points refers to is: “من توضأ: ”على طهر كتب الله له عشر حسنات (Sunan Abi Dawood, hadith: 62, Sunan Timridhi, hadith: 59, Sunan Ibn Majah, hadith: 512, and its lineage is weak) (Allah shall award ten good deeds to he who performs ablution despite purity)

Therefore the following conditions emerge from the above quoted passages:

- 1- Washing bodyparts during ablution for a fourth or fifth time without knowing that thrice is sunnat is excessive and greatly disliked.
- 2- While performing ablution in mosques, letting the tap run loose leading to water running uncontrollably is haram.
- 3- Performing ablution for a third or fourth time without an intention to perform activities linked to it is greatly disliked if done from owned water and forbidden if from common water.
- 4- While bathing pouring water over the entire body more than thrice is greatly disliked or makruh tehrimi.

Ibn Abidin describes squandering as: “صرفه فيما لا ينبغي”

(Radd Al Muhtar, Kitab Al Faraiz 10/494), (squandering is spending at an inappropriate place).

Therefore all such situations where water is spent unnecessarily and wasted only are haram.

- 5- Unnecessary expense of water in amounts greater than required is greatly disliked.

3- The sharia mentions the following rules to protect water from contamination:

1- Prohibition of urinating and defecating in water reserves:

Urine and faeces are dangerous contaminants as they can cause diseases like typhoid, cholera, inflammation of the stomach and liver etc. The Prophet hence said:

"اتقوا الملاعن الثلاث: البراز في الموارد، وقارعة الطريق والظل"

(Sunan Abi Dawood, from Ma'z Bin Jabal, hadith: 26, Sunan Ibn Majah, Hadith: 328, Al Mustadrik Al Hakim, hadith: 594, Musnad Ahmad from Ibn Abbas, hadith: 2715, this hadith is

Hasan) (Refrain from three cursed places: 1- from defecating at the water bank, 2- defecating on the paths and 3- defecating in places of shade).

And the Prophet (PBUH) added:” لا يبولن أحدكم في الماء ”الدائم أى لا يجرى، ثم يغتسل فيه (Sahih Al Bukhari, hadith: 239 from Abi Hurairah, Muslim, hadith: 282) (none of you may urinate in water that is still and then bathe in it)

As still water is prone to contain more impurities it has been specifically mentioned. Otherwise urinating in flowing water is also not correct. No sane person can do this when they are themselves dependent on this water and even common sense considers this wrong. Imam Nawavii writes:

”وفإن كان الماء كثيراً جارياً لم يحرم البول فيه لمفهوم الحديث، ولكن الأولى اجتنابه، وإن كان قليلاً جارياً، فقد قال جماعة من أصحابنا: يكره، المختار أنه يحرم، لأنه يقذره وينجسه على المشهور من مذهب الشافعي وغيره، ويغير غيره، فيستعمله مع أنه نجس وإن كان الماء كثيراً راکداً، فقال أصحابنا: يكره ولا يحرم، ولو قيل يحرم لم يكن بعيداً، فإن النهي يقتضى التحريم على المختار عند المحققين والأكثر من أهل الأصول، وفيه من المعنى أنه يقذره، وربما أدى إلى تنجيسه بالإجماع لتغير، أو إلى تنجيسه عند إلى حنيفة ومن وافقه فى أن الغدير الذى يتحرك طرفه بتحرك طرفه الآخر ينجس بوقوع نجس فيه، وأما الراكد القليل فقد أطلق جماعة من أصحابنا أنه مكروه، والصواب المختار أنه يحرم البول فيه، لأنه ينجسه ويتلف ماله ويغير غيره باستعماله”

(Sharh Al Nawavi of Sahih Muslim 3/192, Muassat Al Mukhtar, Cairo, first edition 2001)

(If water is large in amount and flowing then because of the hadith’s subject it is not haram but precaution is better. If water is less but flowing so according to some Shafi’is it is disliked and more widely haram because according to Imam Shafi it would contaminate and dirty the water and could be

used by somebody else by mistake. If water is a lot but stagnant then the Shafi'i scholars say it will be disliked, but calling it haram won't be too far from it because the makruh is widely considered (tehrimi) because it results in impurity or iscausative of it. Imam Hanafi and those close to him believe that defecation in a lake where activity in one corner unsettles the water at the other end shall render water impure. Regarding water that is little and stagnant, among the Shafi'is a school believes that it would be disliked but the concensus is that it is urinating in it is haram since it renders it impure, unfit to purify and can cause harm to another who is unaware of its impurity).

From a medical perspective also, urinating in water can cause Bilharzia, especially in stagnant water. These germs evolve into living organisms and upon ingestion cause liver inflammation and other diseases. (Dr. Izzeldin Faraj "Al Islam Wa Al Waqaya Min Al Amraz" p.85, Dr. Muhammad Ali Al Baz "Hal Hanak Tib Nabwi" p.289)

In light of thses details the emphasis of the sharia regarding the safeguard of water is as follows:

- 1- If the water is little, below less than 9 inches deep and stagnant then urinating in it is haram.
- 2- If there is a lot of water, 9 or more inches deep and stagnat then urinating in it is also haram.
- 3- If water is flowing but little then urinating in it is greatly disliked.
- 4- Urinating in a river is discouraged.
- 5- Urinating in the seas is against the first.
- 6- Urinating in the sea out of necessity during travelling is possible.

Relieving onself near wells, reservoirs etc. knowing is a possibility that germs may be transmitted is greatly disliked.

Najah Halabi writes: “يكره التخلّى فى الماء الراكد.....وكذلك “ (Fiqh Al Ibadaat Ala Al Mazhab Al Hanafi 1/28)

(Defecating in stagnant water is disliked....so is defecating near wells and streams)

2- The prohibition of inserting one's hand into water right after awaking from sleep:

One of the ways outlined by the sharia to protect water from contamination is the prohibition on people who rise from sleep from touching water unless their hands are washed thrice. Abu Hurairah narrated that the Prophet (PBUH) said:

"إذا أستيقظ أحدكم من منامه، فلا يغمس يده حتى يغسله، فإنه لا يدري أين باتت يده"

(Sahih Al Bukhari, hadith 162, Sahih Muslim, hadith: 278 and Musnad Ahmed, hadith: 9996)

(When anyone of you wakes up, do not dip your hand in water unless you've washed it because you never know where it has been).

This means that in a sleeping state the hands can touch any part of the body and cause the spread of germs.

This order is a recommended one since there is only a possibility of contamination and according to the hadiths the action is only discouraged. However Hasan Basri, Ishaq Bin Rahway and Muhammad Bin Jarir Tabri narrate it as being obligatory. And if the hand is not washed after a night's sleep then the water will become impure. An attribution to Imam Ahmed says that touching water after a night's sleep without washing is disliked greatly while after daytime sleep it is discouraged. Dawood Zahiri also agrees. (Refer: Badai', Kitab

Al Taharat, Matlab Fi Ghasl Al Yadain 1/20, Dar Al Kutb Al Ilmiyah, Beirut, Third edition, 1406 A.H/1986, Sharh Al Nawavi of Sahih Muslim 3/184-185)

3- Covering the drinking utensil:

In order to protect the health of the individual the Islamic sharia encourages covering drinking utensils. Jabir Bin Abdullah narrates having heard the Prophet (PBUH) say:

"غطوا الإناء، واو كوا السقاء فإن في السنة ليلة ينزل فيها وباء، لا يمر بإناء، ليس عليه غطاء، أو سقاء ليس عليه وكاء، إلى نزل فيه من ذلك الوباء"

(Sahih Muslim, hadith: 2014, Musnad Ahmad, hadith: 19829) (Cover your utensils and tie the waterskins because there is anight in the year when epidemic befalls and those utensils and skins which aren't tied or covered are affected)

And another narrartion attributed to the Prophet via Jabir:

"غطوا الإناء وأوكوا السقاء، وأغلقوا الباب واطفئوا السراج، فإن الشيطان لا يحل سقاء، ولا يفتح بابا، ولا يكشف إناء، فإن لم يجد أحدكم إلا أن يعرض على إنائه عودا ويذكر اسم الله، فليفع"

(Sahih Muslim, hadith: 2012)

(Cover your utensils, tie the waterskins, close your doors and put out the lamps because the Devil can't affect them and if any of yo can't find anything then cover your utensil with a block of wood and take Allah's name)

And in another hadith from Aisha, the Prophet said: “ لا تشربوا إلا فيما أو كى عليه ” (Musnad Ahmad, hadith: 24433) (Drink from those waterskins whose mouth has been tied)

This order is a recommendation since the possibility of contamination exists. Nawavi writes:

"فامر عليه وسلم بهذه الآداب التي هي سبب سلامة من إيذاء الشيطان"
 (Sharah Al Nawavi of Sahih Muslim 13/191) (The Prophet commanded manners that would protect from Satan's handiwork)

4- Prohibition of breathing into a utensil:

Another method to protect water is prohibition on breathing into it as this dirties it and transmits disease. Abu Qatada (r.a) narrates that the Prophet "نهى أن يتنفس في الإناء" (Sahih Al Bukhari, hadith: 5630, Sahih Muslim, hadith: 268, Musnad Ahmad, hadith: 22522) (forbade breathing into a pot).

Since here too there is only a possibility, hence this order too is a recommendation. Nawavi writes:

"قال العلماء: والنهي عن التنفس في الإناء هو من طريق الأدب، مخافة من تقييره وتنته وسقوط شيء من الفم والأنف فيه ونحو ذلك"

(Sharah Al Nawavi of Sahih Muslim 3/164) (Scholars say that this order is based on manners because of the possibility of impurity from the nose or mouth falling into water and so on).

5- Prohibition from putting the waterkin or other utensils to the mouth:

The Prophet (PBUH) has prohibited putting the utensil or waterskin to one's mouth to protect from the spreading of germs. Abu Saeed Khudri narrates: "نهى عن إختناث الاسقية: أن "يشرب من أفواهها" (Sahih Al Bukhari, hadith: 5625, Sahih Muslim, hadith: 20332, Musnad Ahmad, hadith: 11026)

(The Prophet (PBUH) forbade drinking from the mouth of the waterskin. "إختناث" means: turning the mouth of the waterskin upside out and then drinking from inside)

Allama Aini quotes from the Mahlab and writes: “معنى ” هذا النهي - والله اعلم - على وجه أدب (Umdat Al Qari 14/623, Dar Al fikr, Beirut, first edition 1418 A.H/1997) (This prohibition – and Allah knows best - is for propriety).

Nawavi writes:

"واتفقوا على أن النهي عن أحتثائها نهى تنزيه لاحتريم، ثم قال: سببه أنه لا يؤمن أن يكون في السقاء ما يؤذيه، فيدخل في جوفه ولا يدري، وقال: لأنه يقدره على غيره، وقيل: أنه ينتنه أو لأنه مستقذر"

(Sharah Al Nawavi of Sahih Muslim 13/199)

(Scholars agree that the prohibition discourages and does not dislike drinking by putting to the mouth as this can cause transmission of germs which may cause harm when ingested. Also because this way somebody else's right is encroached, and this method makes water foul and that drinking this way is considered bad).

4- If chemical treatments completely remove malodorous imputities from water then it is pure and can be used to purify. If there is no risk to health it may even be drunk but it is best to refrain from it as a health precaution. The scholars say "استحاله النجس إلى طاهر" (The transformation of the impure to pure). Therefore I feel that it is best to first determine the lexical and idiomatic meaning of "transmutation" and then present the concerned scholarly text. The dictionary defines it as: the bending of something after straightening. It is said:

"حال الشيء واستحال: أى تغير أن الأسواء إلى العوج" (this means changing from straight to bent. "Transmutation" means "to change" from one state to another). (Lisan Al Arab 4/274)

Idiomatically transmutation means: “انقلاب حقيقة إلى حقيقة” (Radd Al Muhtar, Kitab Al Taharat, Chapter: Al Anjas 1/519) (the change of one reality into another)

Jurisprudential views:

- 1- The Imams Hanifa, Muhammad and other Hanifis and Malikis feel that the transformation of an impure thing shall render it pure whether the thing is impure by its nature or due to external cause. The Zahiriyah and a school of the Hanbalis led by Ibn Taimiyah also adhere to this. Ibn Taimiyah while enumerating things that purify mentions the condition of those that change their nature. He writes:

"وإن كان في غيره - أي الخمر - كالخنزير والميتة تقع في المملحة فتصير ملحاً يؤكل، والسارقين والعذرة تحترق فتصير رماداً تطهر عند محمد خلافاً لأبي يوسف، وضم إلى محمد أبا حنيفة في المحيط، وكثير من المشائخ أختاروا قول محمد، وفي "الخلاصة": وعليه الفتوى، وفي "فتح القدير": أنه المختار، لأن الشرع رتب وصف النجاسة على تلك الحقيقة، وتنفي الحقيقة بانتفاء بعض أجزاء مفهومها، فكيف بالكل؟ فإن الملح غير العظم واللحم، فإذا صار ملحاً ترتب حكم الملح، ونظيره في الشرع: النطفة نجسة، وتصير علقة، وهي نجسة، وتصير مضغة فتطهر، والعصير طاهر فيصير خمراً، فينجس، ويصير خلا فيطهر، فعرفنا أن استحالة العين تستتبع زوال الوصف المرتب عليها"

(Al Imam Zain Al Din Ibrahim Alias Ibn Nujaim Al Misri Al Hanafi (970 A.H) “Al Bahr Al Raiq” Kitab Al Taharat, Chapter: Al Anjas 1/394, Published in India)

(And if a core transformation occurs in objects other than alcohol, like swine or dead animals that fall into a salt mine and turn into salt, then that salt may be eaten. If dung and faeces are burned to ash then they are pure. Imam Muhammad

agrees to this while Imam Yusuf differs. And in “Al Muhit” Imam Hanifa is with Imam Muhammad. Most agree with Imam Muhammad and “Khulasa” gives Fatwa according to it and “Fath Al Qadir” consider this view the dominant one. Since the sharia describes impurity based on its nature, when this nature is negated, because salt is separate from bone and flesh, the rule applicable is also that of salt. Similarly in the sharia, semen is impure, when it turns to a clot of blood it is still impure and when it becomes flesh it is pure. Juice is pure but when it turns to alcohol it is impure which in turn becomes pure when it becomes vinegar. Thus we learn that transformation means the expulsion of attributes). And in the Radd Al Muhtar elaborates that Imam Abu Hanfa is mentioned in the Al Zakhira with Imam Muhammad) (Radd Al Muhtar, Kitab Al Taharat, Chapter: Al Anjas 1/534)

- 2- Among the Malikis that which changes towards righteousness is pure, like milk and that which changes to corruption is impure like food once it has stayed in the stomach, i.e. vomit. (Muhammad Bin Ahmad Al Rasooqi Al Maliki (1230 A.H) Hashia Al Dasooqi, Kitab Al Taharat, Fasl Bayan Al Aa’yan Al Tahira 1/1381-139)

And Hatab says that the waterskin is pure since it is free from the attributes of blood. (Muhammad Bin Muhammad Al Ma’ruf Bi Hatab Al Ra’ini (954 A.H) “Mawahib AL Jalil sharh Mukhtasar Al Khalil”, Kitab Al Taharat Fasl: Al Tahir Mayyetun Ma la dema lahu 1/138, Dar Alam Al Kutub, Beirut, 2003)

- 5- The Radd Al Muhtar mentions: “طاعة الإمام في غير معصية” (Radd AL Muhtar, Kitab Al

Qadha, Matlab: “Ta’at Al Imam Wajibatun” 8/18)
(Obedience toward the Imam in righteousness is obligatory.
If he ordains a fast then observing it on the particular day is
obligatory).

Therefore the state has the right to curb some uses in
light of strain and obedience is obligatory under the sharia.

Water found on private land is nobody’s property
because the hadith mentions:

”الناس شركاء في ثلاث: الماء، والكأ، والنار”

(Musnad Harith, Hadith No: 631, Abu Dawood, 3177,
with the words: “المسلمون شركاء في ثلاث: في الماء، والكأ، والنار” and
this is a sahih hadith) (People share three things: water, pasture
and fire).

Hazrat Abu Hurairah narrates that the Prophet (PBUH)
said: “ثلاث لا يمتنع: الماء، والكأ، والنار” (Sunan Ibn Majah, hadith:
2473, and Busiri says in the Al Zawail that this hadith is Sahih)
(There is no barring in three things: water, pasture and fire)

Since water becomes property only by obtaining it, it is
said in Hindiya:

”والرابع ما أحرز في حب ونحوه فليس لحد أن يأخذ منه شيئاً بدون إذن
صاحبه، ولو بيعه لأنه ملكه بالإحراز، فصار كالصيد والحشيش”

(Al Hindiya 5/391, Bulaq, Egypt, second edition 1310
A.H) (And the fourth kind is water stored in pots which may
not be taken without the permission of the owner since by
storage it became his property and he may sell it like grass or
hunted game).

Since the ruler is the representative he can ordain in the
public interest. It is a jurisprudential rule that: “يتحمل الضرر
” (Ali Haider: Durar AL Ahkam Sharh

Majallat Al Ahkam 1/36, article: 26, Dar Al Kutb Ilmiyah, Beirut) (To alleviate public harm, individual harm shall be tolerated). And in the Radd Al Muhtar: “أن له ولاية عامة يصح أمره” (Radd Al Muhtar, Kitab Al Ghasab, Matlab Fi Luhuq Al Ijazat Lil Itlaf Wa Al Af'al 9/289) (The ruler being the public representative, is right in ordaining alleviation of the public from harm).

From this it is known that the state can forbid bore welling to protect the water table and it is obligatory to obey it.
7-

- a) It has already been discussed that obeying the state in the righteous is required. Hence it can legally demand the dedication of a portion of the house for water conservation purposes.
- b) Since the state is to look after the people's issues, provision of water is also its responsibility. However, ensuring personal supply is also the individual's responsibility as jurists have mentioned with regard to streams –special and owned. It is written in the Hedaya':

"فالأول: كربه على السلطان من بيت مال المسلمين، لأن منفعة الكرى لهم، فتكون مؤنته عليهم، ويصرف إليه من مؤنة الخراج والجزية، دون العشور والصدقات، لأن الثاني للفقراء، والأول للنواب، فإن لم يكن في بيت المال شيء، فالإمام يجبر الناس على كربه إحياء لمصلحة العامة، إذ هم لا يقيمونها بأنفسهم، وفي مثله قال عمر رضي الله عنه لو تتركتم لبعتم أولادكم، إلى أنه يخرج له من كان يطيقه، ويجعل مؤنته على الميسير الذين لا يطيقونه بأنفسهم"

(Sheikh Al Islam Abul Hasan Ali Bin Abi Bakr Al Rashdani Al Marghinani (593 A.H) "Al Hidaya Sharh Bidaya Al Muftadi" 4/389, Dar Ihya Al Turath Al Arabi, Beirut)

(And if the larger stream (before its water enters a smaller, owned stream) need be dug up then it is to be done from the public coffers since it is a public work and money will be deducted from the taxes and not the Ushr and charity because the latter is for the poor and the former for emergencies. If the state doesn't have resources it can force the people to work on it because it is in their benefit and they must be cajoled. Umar (r.a) said that, "If you were left to your device you would sell your children". And those who can work will be employed at the behest of those who have the wealth but not the strength to work).

Thus we learnt that creation of reserves is also the state's responsibility.

In the Radd Al Muhtar with reference to "Al Qahutani":

"في العام: لو امتنع عنه كلهم أو بعضهم يجبرون عليه ، وفي الخاص : لو امتنع الكل لا يجبرون إلا عند بعض المتأخرين، ولو امتنع البعض أجبر على الصحيح كما في الخزانة"

(Radd Al Muhtar, Kitab Ihya Al Mawat, Fasl Al Shurb 10/17) (In a large stream with 100 or more shareholders, if some refuse to participate in its repairs, they may be forced. In a stream with less than 100 shareholders if all refuse to attend to repairs they may not be forced (except according to some thinkers) and if only a few refuse then they may be forced as written in the "Khazana").

Thus we learn that this responsibility can be deferred to the people as well.

- 8- According to the sharia the state can relocate people from their homes it will provide compensation, replacement land and construction costs and if there is no injustice meted out

while doing so. This is because the state represents people and the construction of dams and reservoirs is in public interest. Also, as per the jurisprudential rule:

(Durar Al Ahkam, article 26) “ يتحمل الضرر الخاص لدفع ضرر ” عام

- 9- Breaking the dam under risk of flooding and releasing the water is not allowed. Such people should gather their valuables and move to a safe place.

"وإن أكره على قتل غيره بقتل لم يرخص ولم يسعه أن يقدم عليه،
ويصبر حتى يقتل، فإن قتله كان أثماً"

(Al Hindiya, Kitab Al Ikrah, Chapter: Al Thani 5/39)

(Even under threat of being murdered there is no concession to kill. He must bear it, even if killed and if he kills the other then he has sinned)

And at another instance from the same source:

"ولهم نصب الأرحية والدوالي إن كان لا يضر بالعامه، وإن كان يضر بالعامه، فليس له ذلك، لأن دفع الضرر عنهم واجب، وذلك بأن يميل الماء إلى هذا الجانب، إذا أنكسرت ضفته، فتغرق القرى والأراضي"

(Al Hindiya, Kitab Al Ashrub, Chapter: Al Awwal Fi Tafsir/391) (Water wheels may be put up if they do not cause harm to the people and if they do it must be addressed. Harm could come if water accumulates here and breaks the bank and submerges land).

"الضرر لا يزال بالضرر" is a jurisprudential rule. (Al Ashbah / Ibn Nujaim p.87) (Harm will not redress harm) and Ibn Nujaim wrote: “ ولا يأكل المضطر طعام مضطر آخر، ولا شيئاً من ” بدنه (Al Ashbah p.87) (A distressed person may not take food away from another who is distressed, nor anything else from his body).

- 10- It is written in the Hidayah:

"والثاني: ماء الأودية العظام: كجیحون، وسیحون، ودجلة، والفرات، للناس فيه حق الشفة على الإطلاق، وحق سقى الأراضى، فإن أحيى واحد أرضاً ميتة، وكرى منها نهراً ليسقيها، كان لا يضر بالعامّة، ولا يكون النهر فى ملك أحد له ذلك؛ لأنها مباحة فى الأصل، إنقهر الماء يدفع قهر غيره، وإن كان يضر بالعامّة، فليس له ذلك، لأن دفع الضرر عنهم واجب، وذلك فى أن يميل الماء إلى هذا الجانب، إذا انكسرت صفته، فيغرق القرى والأراضى، وعلى هذا نصب الرعى عليه، لأن شق النهر للرعى كشقه للسقى به "

(Al Hidayah 4/387-388) (Another category is a water from valleys like Pyamus, Seyhun, Tigris and Euphrates. Such water may be drunk freely and used to irrigate. If a person inhabits an empty plot and wants to draw a streamlet for irrigation, he may as long as the river is not owned and the public is not discomforted. Since water is free, by dominating it he eliminates others. But if there is public discomfort then he can't do so. Public harm could occur if the bank breaks and water floods the land, breaking the bank. Similar is the case of placing water wheels).

Therefore, with regard to rivers, lakes, public wells and springs, drinking, feeding water to animals, irrigation and construction of water wheels, extinguishers etc is allowed as long as it is not cause of discomfort to the public and does not take away water for general drinking, which is when irrigation is not allowed.

- 11- If a stream which is not public passes various places then all the people can drink and irrigate from its waters and if it is owned then the others may simply drink and feed their animals. Fatawa Alamgiri states:

"والثالث ما يجرى على نهر خاص لقريبة، فلغيرهم فيه شركة فى الشفة، وهو الشرب وسقى الدواب "

(Al Hindiya 5/391) (The third kind is water is streams owned by somebody. From it the right extends to drinking and feeding your animals).

12- The Hidayah states:

"والرابع: الماء المحرز فى الأوانى، وانه صار مملوكاً له بالإحراز وانقطع حق غيره عنه كما فى الصيد المأخوذ"

(Al Hidayah 4/388) (The fourth kind is water contained in pots which by virtue of containment becomes the pot owner's property just like captured game after hunting).

From this we learn that containment in a vessel brings ownership.

13- Fatawa Alamgiri states: "وله بيعه؛ لأنه ملكه بالإحراز" (Al Hindiya 5/391) (water secured in pots can be sold since containment brings ownership). Hence, trade of owned water is allowed.

14- Tanwir Al Absar and Durr Al Mukhtar state:

"ولا يمنع الشخص من تصرفه فى ملكه إلا إذا كان الضرر بجاره ضرراً بينا فيمنع من ذلك، وعليه الفتوى"

(Tanwir Al Absar and Durr Al Mukhtar, Kitab Al Qadha, Masail Shatta 8/152) (A man may not be stopped from dispensing from his wealth unless it directly harms his neighbour. This is the rule).

And in the Radd Al Muhtar with reference to Fath Al Qadir:

"والحاصل أن القياس فى جنس هذه المسائل أن يفعل المالك ما بدا له مطلقاً، لأنه متصرف فى خالص ملكه، لكن ترك القياس فى موضع يتعدى ضرره إلى غيره ضرراً فاحشاً، وهو المراد بالبين، وهو ما يكون سبباً للهدم، أو يخرج عن الانتفاع بالكلية، وهو ما يمنع الحوائج الأصلية،

كسد الضوء بالكلية، واختاروا الفتوى عليه، فأما التوسع إلى منع كل ضرر ما، فيسد باب انتفاع الإنسان بملكه كما ذكرنا قريباً "

(Radd Al Muhtar 8/153)

(In summation regarding these issues logic dictates that the owner can dispense with them as he pleases but this analogy is abrogated if these is cause for great harm to another. And visible harm is that which is apparent and can cause demolition of a building, or render use or benefit impossible. The sheikhs have delivered rulings on this. As far as prohibiting all kinds of harm is concerned, this will jeopardize the possibility of benefit from one's property, as mentioned before).

And the Majallat Al Ahkam states:

"كل يتصرف في ملكه كيفما شاء، لكن إذا تعلق حق الغير به فيمنع المالك من تصرفه على وجه الاستقلال"

(Majallat Al Ahkam, article: 1192)

(A person may dispense of his property as he wished but if it harms another then he will be permanently stopped from doing so).

And in the Durar Al Ahkam:

"كل يتصرف في ملكه المستقل كيفما شاء أى أنه يتصرف كما يريد باختياره أى لا يجوز منعه من التصرف من قبل أى أحد، هذا إذا لم يكن فى ذلك ضرر فاحش للغير"

(Durar Al Ahkam 3/210)

(A person may use his permanent property as he pleases, without interference from any body as long as his use does not pose abnormal risk to another).

- a) From this we learn that the plotting of land for sale in low lying areas and filling up a lake to create a

settlement over it or for sale is allowed and the risk involved in it is underminable.

- b) Also, if the state sees risk in the inhabitation of some area it can prohibit it because it is the representative of the people. Also under the rule: “يتحمل الضرر الخاص لدفع” (Majallat Al Ahkam, article: 26) (Harm to the individual shall be tolerated over harm to the public).

However it is necessary that the state tries to come up with a solution instead of outright prohibition.

15- Hidayah states:

"فالإمام يجبر الناس على كربه إحياء لمصلحة العامة، إذ هم لا يقيمونها،
وفى مثله قال عمر - رضي الله عنه -: لو تركتم لبعتم أولادكم"

(Al Hidayah 4/389) (And the Imam can force the people to work on a stream that they do not own because it is the general interest and people can not address this themselves. Umar (r.a) said in this regard, “You would sell your children if it were left to you”).

- a) Thus we learn that the alleviation of public concerns is the state’s responsibility hence the provision of running water is also the state’s task and every citizen can demand it.
- b) However door to door provision of water is compulsory upon the state. It can demand remuneration in lieu of this service and can halt supply under the sharia due to non payment of supply even when a free public alternative is not available.

16- In extension of the previous point the provision of a system for drainage is also the state’s responsibility so that the citizens’ right to a healthy life is realized.

Conclusion:

- 1- The Islamic sharia places great emphasis on the cleanliness and protection of water from impurities. It provides rules regarding this, certain among these are obligatory and certain are recommendations.
- 2- Alleviation of the public's issues and troubles is the state's responsibility.
- 3- Apart from orders to sin, following all orders given by the government is obligatory under the sharia.
- 4- Issues of public concern outweigh issues of an individual nature.
- 5- Trade in owned water is permitted.

والله اعلم بالصواب، علمه أتم وأحكم

