

Overview of islamic water law

SS Indigenous peoples knowledge
IWRA XVIIIth World Water Congress

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Outline

- I. Introduction
- II. Water is a common good
- III. Water as a private good
- IV. Conclusion

I. Introduction

Water central element in Islam *(mentioned 63 times in the Quran, and in various hadiths)*

Basis of life:

“We made from water every living thing....”

«And Allah has sent down the water from the sky and therewith gives life to the earth»

Purifying function: important for washing before a prayer

I. Introduction

Islam born in Arabia ⇨ arid environment
Water is scarce and precious

Water considered a community resource

⇨ It is part of the common goods (*mubah*) with grass and fire

Islamic law developed precise and sophisticated rules to allow the access and supply of water to all

Note: charia: «the path to the water» → water law ⇨ islamic law



I. Introduction

Objective of islamic rules for water:

- ensure the access to water to the whole ommunity,
- avoid the control of water by an individual causing harm to the Community

→ while allowing private ownership of water



II. Water is a common good (*mubah*)

- Cannot be the object of any transaction ⇒ *mubah* goods do not belong to anyone, everyone has the right to a *fair* share, and can dispose of them freely with no charge, they are part of the goods out of trade
- The following water categories are considered as *mubah*:
 - water flowing underground
 - wells that were not digged by a specified person
 - oceans and great lakes
 - rivers of the public domain

Two fundamental rights: the right of thirst (*right of chafa*) & the right of irrigation (*right of chirb*)



II. Water is a common good (*mubah*)

The right of thirst

“juridically the right to take water to quench one’s thirst or to water one’s animals” (Caponera)

→ Water for all

- Pertains to **all** persons (Muslim or not)
- To the animals: according to the Islamic tradition, one must not leave animals dye of thirst, and water which remains after quenching one’s thirst should be given to them
- On all waters of the public domain (common good)

II. Water is a common good (*mubah*)

Right of thirst can also be exercised on private property *only when*:

No other water available → the owner *has* to offer water, or to allow the thirsty person to enter its property. If not, the thirsty person can enter the property without being allowed, at the condition not to cause any damage

Cattle can also access if small number

Right of thirst represents an absolute right, slightly tempered by the right of property



II. Water is a common good (*mubah*)

The right of irrigation (*right of chirb*)

⇒ the right to irrigate crops and to water its own animals

- Limited to public domain
 - No access to private property
 - Construction of irrigation canals allowed, provided no harm is caused
- permanent consideration in islamic law: the exercise of an individual right does not harm the right of the community

→ *Irrigation canals transmitted in Spain (acequias) , and introduced into the American Southwest (New Mexico, Colorado)*

II. Water is a common good (*mubah*)

Deriving rules:

Water belongs to the community (*including future generations*):

➤ Use must be in the best manner and preserve the resource

Water should be conserved ⇔ in quantity but also in **quality**

Quantity

Supply is fixed, cannot be infinitely increased

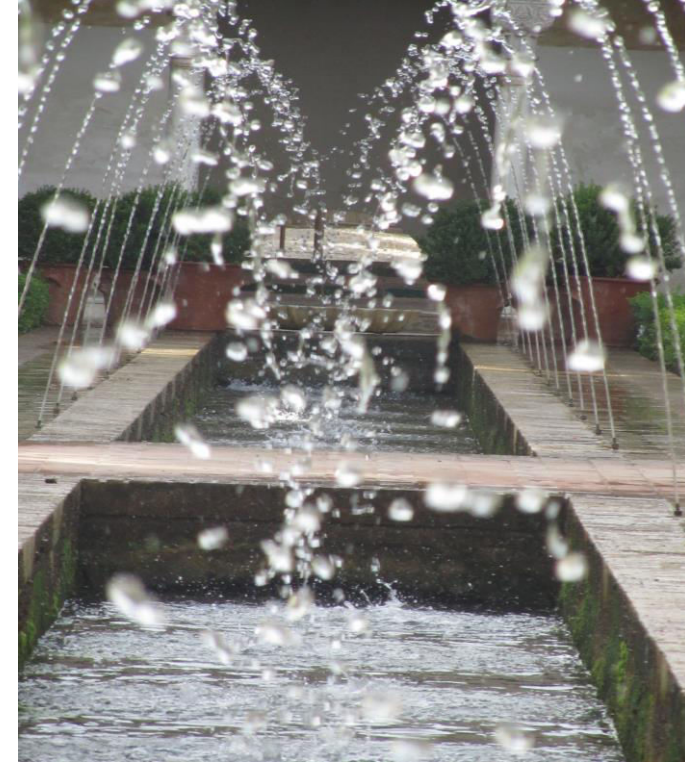
« *And we sent down water from the sky in fixed measure* »

➤ demand needs to be managed

Water should not be wasted ⇒ it can be used for sustenance, but in moderation, even when it seems plenty

« O Children of Adam! ...Eat and drink: But waste not by excess... »(*Quran*)

« Do not waste water even if performing ablution on the bank of a fast-flowing river » (*hadith*)



II. Water is a common good (*mubah*)

Quality

No specific rule, except a hadith saying it is forbidden to urinate in stationary or running water

But :

God's message: Humans are the mere inheritors of Earth and thus should not irreparably degrade it.

Water common good + right of thirst: continuous supply of potable-quality water must be ensured, and also to future generations.



III. Water as a private good

Water can become a private good in 2 cases:

1st case Water as an *acquired* private good:

In limited and clearly defined conditions water can become privately owned:

- Clear intention
- Flow interrupted

Ex: water collected in a jar

Rainwater collected unintentionally, water from a well which seeps \Rightarrow water remains a common good, *even if the container or the well is private property*

Case of a cistern which regulates the flow of water (*the quantity of water which enters is the same as the quantity which comes out*) \Rightarrow water cannot be owned

III. Water as a private good

2nd case Water related to land ownership

Only surface water is concerned, GW is always a common good

a. River flowing through private lands and continues on the public domain

→ water remains a public good

b. Rivers flowing on private lands

→ the bed of the river is privately owned

→ water privately owned

➤ Same logic : water entirely collected by lands, and the flow is interrupted

Restricted property ⇒ right to thirst

IV. Conclusion

Equity and social justice at the core of Islamic rules

Islamic water law:

➤ priority to the community over the individual

Access to water for all, but with conditions: not to cause harm (no waste, no pollution)

Has tried to concile with right of property; private property possible, but remains restricted → access always possible for drinking water purposes

➤ overall framework with two main and strong basic principles

Has allowed the survivance of all local customs (*still alive*) as long as these basic principles are respected

Silent on priorities of water uses and on sharing of water among irriguants → rules developed in local customs

Silent on institutions: overall idea: water managed by the community

→ Believers «conduct their affairs by mutual consultation... » ***including women***



IV. Conclusion

Principles have remained in the mentalities and the culture
→ mainly not refusing water to a thirsty person
→ tradition of the public fountain in Arab medinas (as-sabil)

Survivance of local customs

IV. Conclusion

Way forward/ food for thoughts:

Comparison islamic water law/human right to water

Priority of the community : What is the place of the community over the individual right in our modern world? And in relation to the global agendas (SDGs)?

Thank you for your attention