

Answer to Question

The Shar'i Principles for Dealing with Rivers

Question:

Are there Shar'iyah principles in respect to dealing with rivers, whether their origin to their mouth (end-point) are within the Khilafah state, or they pass through the state and into another? Jazaakum Allah Khairan.

Answer:

Islam has solutions for every problem that has happened, is happening or will happen in the future. That is because Allah (swt) has perfected this Deen:

﴿الْيَوْمَ أَكْمَلْتُ لَكُمْ دِينَكُمْ وَأَتَمَمْتُ عَلَيْكُمْ نِعْمَتِي وَرَضِيْتُ لَكُمُ الْإِسْلَامَ دِينًا﴾

"This day I have perfected for you your religion and completed My favour upon you and have chosen for you Islam as a Deen" [Al-Maa'idah: 3].

And He Ta'Aalaa has made it obligatory upon us to refer to the Shar'a of Allah for judgment in respect to every minor and major issue. He (swt) said:

﴿وَأَنِ احْكُم بَيْنَهُم بِمَا أَنْزَلَ اللَّهُ وَلَا تَتَّبِعْ أَهْوَاءَهُمْ وَاحْذَرْهُمْ أَنْ يَفْتِنُوكَ عَنْ بَعْضِ مَا أَنْزَلَ اللَّهُ إِلَيْكَ﴾

"And judge, [O Muhammad], between them by what Allah has revealed and do not follow their inclinations and beware of them, lest they tempt you away from some of what Allah has revealed to you" [Al-Maa'idah: 49].

The word 'ما' (what), as is known, is from the general form (*Siyagh Al-'Umoom*). Consequently, Allah (swt) has made it obligatory to rule by Islam in every matter without exception i.e. without taking parts at the expense of parts: ﴿وَاحْذَرْهُمْ أَنْ يَفْتِنُوكَ عَنْ بَعْضِ مَا أَنْزَلَ اللَّهُ إِلَيْكَ﴾

"And beware of them, lest they tempt you away from some of what Allah has revealed to you".

Therefore, Allah Al-'Azeez Al-Hakeem has not left a single problem that people will be exposed to within the life of this world except that it has been solved by Islam, by a Shar'i text or through *Istinbaat* (deduction) in accordance to the Usool Shar'iyah principles. Allah Ta'Aalaa created us and explained to us that which is suitable and correct for our affairs as He (swt) is Al-Lateef Al-Khabeer: ﴿أَلَا يَعْلَمُ مَنْ خَلَقَ وَهُوَ اللَّطِيفُ الْخَبِيرُ﴾ **"Does He who created not know, while He is the Subtle, the Acquainted?" [Al-Mulk: 14].**

For that reason, there are indeed Shar'iyah principles for dealing with rivers, equally whether they are in the Khilafah state or they pass through it and into other countries. I will mention some of these matters in a summarized manner and it will be explained in full at the time of the establishment of the Khilafah state, Inshaa Allah, the state that we supplicate to Allah to be established soon and Allah is 'Azeezun Hakeem:

1. The major rivers are public property (*Mulkiyah 'Aammah*) and they fall under two types of the public property. From one angle, they fall under the collective amenities which are indicated to within his speech (saw): «الْمُسْلِمُونَ شُرَكَاءُ فِي ثَلَاثٍ: فِي الْكَلْبِ، وَالْمَاءِ، وَالنَّارِ» **"The Muslims are partners in respect to three (matters): The pasture lands, water and fire"** (Narrated by Abu Dawud). They are also from the types, which by the nature of their formation, prevent individuals from exclusively taking them into their possession. That is based on the Hadeeth of Prophet (saw): «مِنَى مَنَاحٌ مَنْ سَبَقَ» **"Mina is the resting place of the one who reaches it first"** (Narrated by At-Tirmidhi). Further details can be found in the book, *Funds in the Khilafah State* and in the book, *The Economic System in Islam* to be referred to.

2. The Muslims understood from the time of the Prophet (saw) until our current time, that the major rivers like the Tigris, Euphrates and the Nile are public property which nobody can take

exclusive ownership of or exclusively attain the benefit from. The state used to enable the people to attain the benefit from the major rivers for drinking, domestic utility, feeding the livestock (which is known as *Ash-Shaffah*), to water the agricultural lands (which is called *Ash-Shirb*) and for travel and transportation... It used to undertake layout of the banks and cleaning the rivers (which is called *Bakriy Al-Anhaar*) so that the people could benefit from them... All of that is clear when reviewing the books of history and Islamic Fiqh... I will mention some of the Fiqhi texts that guide to the concern that the Muslims had with the subject of the major rivers so that the benefit from them can be facilitated:

- The following was mentioned in the book 'Tuhfat ul-Fuqahaa' by Samarqandi (deceased around 540 AH)

"... (In regards to) the major rivers like the Euphrates, the Tigris and Gihon amongst others, then no one has a right over exclusivity. Rather, they are the right of the masses. So, everyone who is able to water his lands from them, then he has the right to do that, just as he has the right to set up mills, waterwheels and what is similar to that. That is as long as it does not negatively impact the major river. If it (i.e. the usage or activity) does have a negative impact upon the river, then the person is prevented from that. In addition, the digging i.e. maintenance of the great rivers is a duty upon the authority (ruler) to undertake from the wealth of the Bait ul-Maal. That is because their benefit returns to the general public and consequently the funding of that is found within the public funds and that is the funds of the Bait ul-Maal...) End.

- The following was mentioned in the Kuwaiti Fiqhi Encyclopedia:

"Al-Karyu means: Extracting the clay (sediment) from riverbed, digging and fixing its banks. The funding of the Karyu (maintenance) and all that the river requires in terms of fixing and rectifying is taken from the Bait ul-Maal (State Treasury) of the Muslims, because it is for a general interest (Maslahah 'Aammah). If there is nothing available within the Bait ul-Maal (treasury) then the Haakim (ruler) compels the people to restore and maintain the rivers because their refraining from that brings about a harm and because it realises the public interest..."

The Karyu (maintenance) of the public rivers like the Nile, Tigris and Euphrates is the responsibility of the Sultaan (ruler/authority) to be taken from the Bait ul-Maal. That is because the benefit of the maintenance is for the Muslims in general and consequently its funding is from the Bait ul-Maal. That is due to the statement of the Prophet (saw):

«الْخَرَجُ بِالضَّمَانِ... وَلَوْ خِيفَ مِنْ هَذِهِ الْأَنْهَارِ الْغُرْقُ فَعَلِمَ السُّلْطَانُ إِصْلَاحَ مَسَنَاتِهَا مِنْ بَيْتِ الْمَالِ»

"The Kharaaj is by guarantee ... and if submerging is feared from these rivers then it is the duty of the Sultaan (ruler) to fix or rectify its dams from the Bait ul-Maal".

- The following was mentioned within the book 'Darar Al-Hukaam Fee Sharh Majallat ul-Ahkaam':

* [(Article 1238) Non-owned public rivers]

Article (1238) – (The public non-owned rivers, and these are the rivers that have not been included in Muqaasim i.e. in the runnings of the collective ownership, are also Mubaahah (permissible) like the Nile, the Tigris, Danube and Tonga Rivers). The public unownable rivers, and these are the rivers that have not been included in Muqaasim i.e. in the runnings of the collective ownership, do not fall under the ownership of anyone. That is like the seas and lakes. Rather they are Mubaahah (permissible). For that reason, everyone can seek benefit through them upon the condition that it is not harmful (or detrimental) to the general public as has been explained in Article (1254). The person can open up a stream or conduit and run water from it to his land and irrigate his land, set up a mill, water scoop and water hole.

If, however, that was harmful (or detrimental) to the 'Aammah (public), where the water overflows and ruins the rights of the people or prevents the movement of boats, then all of the people have the right to prevent it. This is relation to the rivers. As for the sea, then benefit is sought from it even if it harms. This is what Al-Quhustaani stated (clearly) and this issue will be examined in the explanation of the Articles (1263 and 1264).

In respect to these rivers, all of the people have the right to Ash-Shaffah (feeding livestock, domestic utility and drinking), whether that is harmful to the public or unarmful. In regards to the unownable public rivers like the river Nile that flows in the Egyptian region, the river Euphrates which flows in Iraq, the Tigris (Dijla) (which is read with a Kasrah on the Daal and a Fat'hah), the Shatt-ul-Arab (which is the result of the convergence of the Tigris and Euphrates), the Danube, a part of which lies in the lands of Romania, the Tunca River which is also called the Maritsa River which runs through the town of Edirne, all of these major rivers are not anyone's property because the ownership according to Article 1249 occurs through acquirement and placing the hand over it. This acquirement and placing one's hand over it is not possible in respect to these rivers. As long as these rivers cannot be taken possession of and acquired then they remain shared amongst the people according to Article 1234 and the right for all the people to attain benefit from it is affirmed in accordance to Article 1265 (The enlightenment and refuting the bewilderment in respect to the beginnings of Ash-Shurb and Az-Zayla'iy in respect to Ash-Shirb).

[(Article 1265) Everyone has the right to irrigate his lands from non-ownable rivers].

Article (1265) – Everyone has the right to irrigate his lands from the unownable rivers and he has the right to open up a stream or conduit to irrigate his lands and to set up a mill. However, it is stipulated that others are not harmed. For that reason, if the water overflows and is harmful to the creation or it interrupts the rivers water completely or blocks the passage of boat then that is prevented (or forbidden)).

Everyone has the right to Ash-Shirb and the right of Ash-Shaffah in respect to the unownable rivers which means that he can irrigate his lands. That is if someone has revived barren land close to the designated river. He can open up a stream or conduit and let the water run from the designated river to his land that he has revived. (The explanation of Al-Majma' in respect to the Shirb). That is if the place that the spring has been opened up from is a property of his. It is also the right of anyone to drink the water from the designated river, to perform Wudoo' from it, wash clothes and to open up a stream or conduit within his owned property or the barren lands from anew or in increase, to irrigate his lands and he has the right to set up a mill. This would be like when the spring has three conduits; he protects it and makes four or five conduits for it (Al-Hindiyah in the second chapter from the Shirb).

Similarly, if it was a large unownable river close to the vineyards of someone and the owner of the vineyard wanted to set up irrigation equipment upon the river to irrigate his vineyards and there was no harm to others in doing that, then the owners of the vineyards and irrigation equipment located under his vineyard have no right to prevent him from doing that through claims of it being against their consent.

And you are no doubt aware that the Majallat ul-Ahkam was applied in the Uthmani State i.e. that these mentioned Ahkam (rulings) above were applied by the state and relied upon (or adopted). All of that guides to the manner of how the Islamic state dealt with benefiting from the major rivers...

3. If the major river was located, in its entirety from its beginning to end within the authority of the Islamic state then there are no problems in respect benefiting from its waters and travelling in them in accordance to the Shar'iyah rulings, some of which we have mentioned above... There is no harm for the river to run in many of the Wilaayat (provinces) because all of the provinces are within the authority of the state whilst their division according to specific geographic borders is only an administrative matter... If acquiring benefit of the major rivers requires arrangements being made between the different Wilaayat then the Khalifah will undertake the necessary administrative coordinative management that ensures the attainment of the benefit from the different provinces in the best and easiest manner...

4. If the regulation of the usage of the major river and benefiting from its waters requires the state to intervene by putting down detailed regulation for that, then the state will put in place administrative systems that will organize the matters related to irrigation, movement, transport and other than that... In light of the current material technological advancements, then it is most probable that it will be the state that undertakes the organization of the irrigation, delivery of water to the houses and farms, the travel movement and transportation within the rivers... The

state can place fees for the usages and benefits acquired from them upon the condition that the profits resulting from that return to the Bait ul-Maal of the Muslims within the public property revenues section.

5. If parts of the major river flow outside of the authority of the Islamic state, then the state will convene, if necessary, bilateral agreements or treaties with the state that it is related to, in accordance to the (dictates of the) Ahkam Ash-Shar'iyah. That is in order to organize the utilization of the river without affecting the interests of the Islamic state detrimentally and it is done in accordance to the Ahkam Ash-Shar'iyah related to the public properties... If an act of aggression or hostility occurs from another state by preventing the flow of water of the major river from reaching the Islamic state or by its exploitation in a manner that harms the interests of the Muslims, then the state will take the political, economic and military measures that enable it to remove the harm brought about by the other state, even if the matter reaches the point of war against the aggressing state to take back the Haqq (right).

6. I will draw attention to the point that throughout history, the states that are upon the shores of the major rivers did not used to prevent each other from benefiting from the waters of the major river (the international river). Indeed, all of the states located upon the rivers benefited from the rivers without that being problematic... Problems related to the international rivers did not arise until the age of western colonialism which took them as a means for colonialism and exerting political and economic pressures upon other states.

7. The right in respect to the public property belongs to the subjects of the Islamic state and not to other states. As such, the state imposes fees upon other states' usage of the rivers located under the authority of the Islamic state. It can also sell them its water, electricity that results from the water and what is similar to that ... It will then place the profits realized from that within the Bait ul-Maal to spend upon that which the Ahkam Ash-Shar'iyah has permitted.

8. In respect to the organizational procedures that the state puts into place for the beneficial utilization of the major rivers; dividing its waters and organizing movement or transportation within them, it pays attention and consideration to the rivers not drying up, the flow being interrupted or impeded, the pollution of its waters or to any other harm that can befall them. Just as it makes effort directly to remove any harm that happens unintentionally... It adopts water policies characterized by justice in respect to the division of water shares (or quotas) and at the same time it is characterized in respect to preserving these water sources in the best manner possible ... All of this is not detached from the economic policies and the general environment that the state sets.

9. Attached to what has been mentioned previously is the regulation of the state of the benefit from the fishing treasure in the major rivers and enabling the people to fish and so on...

I hope that this summarized answer is sufficient... and its completed explanation will happen at its time Inshaa Allah.

12th Safar 1438 AH

Corresponding to 12/11/2016 CE