

Water Law in Ancient India



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Abstract

Water has been the driving force of every civilization from time immemorial. In ancient India we do not have any formal laws on water and its management but these are found in different religious texts, customs and written codes. Although we do not find any specific codes for water management in the Indus Valley civilization but it was known for its water management. The well planned cities having high standard structures of drainage, water supply, sewage and storage implies a great concern for the exploitation and management of water resources. But legal norms in respect of water use began to emerge with the inception of Vedic social order, where Dharma became the test stone. In ancient period one witnesses the existence of legal regime of water management but it is impracticable to compile various rules, regulations and customary practices because during that time the socio-economic system was maintained through small republics with self-sufficient and autonomous villages. The problem gets further complex for lack of efficient literature on agrological aspects, thus hindering the process of even a single sociological compilation of corpus juris of water for any social group in India for that period.

Keywords: Water Resources, Water Management, Exploitation, Dharma, Religious Text.

Introduction

Water has been the driving force of every civilization from time immemorial. In ancient India we do not have any formal laws on water and its management but these are found in different texts and evolved through customs. People attached great importance to an adequate supply of water for different purposes like agriculture operations, cooking, drinking, washing etc. They were aware of the medicinal and therapeutic value of water. Depending upon the chemical and physical properties and also on a few other factors our ancients had classified water into several groups. They had also made a thorough study of various effects of conserving water belonging to different conditions.¹ The Water law in ancient India is found in the religious texts, customs and written codes.

Aim of the Study

In ancient India we do not have any formal laws on water and its management but these are found in different texts and evolved through customs. The importance of water and effective water management can be realized while examining various literature and administration of states that existed in Vedic and post-Vedic periods which is of great relevance in the current scenario of looming water crisis.

Indus Valley Civilization

The Indus Valley Civilization flourished around 2500 B.C. It flourished along the banks of river Indus and other parts of western and northern India and had the most well developed urban water supply and sewage systems in the World. In addition to wells, archaeologists have also found remains of giant reservoirs for water storage. The concern for the management of water resources is evident from the system of great baths along with well-defined drainage, jabarbad and nalas.² The people of this civilization worshipped the nature and prayed to the rivers every day. They had given divine status to the rivers. The Indus Valley Civilization was known for its water management. Most of the excavations have been found around the areas of the cities of Harappa, Mohanjodaro and Dholavira. They were known for their obsession with water.³

The Mohenjodaro and Harrapan ruins have thrown light on the fact that people of even that early period had given importance to proper water supply for domestic purposes, irrigation and public baths. The big houses had their own wells and other wells would serve groups of smaller houses.⁴ The most important structure in the city was the Great Bath which had water channels leading to and from it.⁵ The Great Bath is undoubtedly the earliest public water tank in the ancient world located at archaeological

site of Mohenjodaro used for various domestic purposes by the people of the valley. A series of rooms are located along the eastern edge of the building and in one room is a well that may have supplied some of the water needed to fill the tank. Rainwater also may have been collected for these purposes, but no inlet drains have been found.⁶ Each street and lane had one or two drainage channels, with brick or stone covers which could be lifted to remove obstructions in the drains.⁷

Mohenjodaro could boast of an excellent water supply. Almost every house had its own brick lined well. Some of those wells have been reclaimed and they are giving fresh sweet water even now.⁸ Ablution places were set immediately adjacent to the latrines, thus conforming to one of the most modern of sanitary maxims. Where baths and latrines were located on the upper floor, they were drained usually by vertical terra-cotta pipes with closely fitting spigot joints, set in the building wall.⁹

Public rubbish bins were also provided at convenient places.¹⁰ The drainage system of Mohenjodaro is so elaborate that "the like of which has not yet been found anywhere in the world in any other city of the same antiquity."¹¹

The Harappan town also had very good drainage and sanitary system. The main drain was associated with each and every house ensuring the proper dumping of the waste materials. The drains were covered and connected to the bigger sewerage outlets, which ensured the channel of dirt out of the city. The kind of efficient system of Harappans of Dholavira, developed for conservation, harvesting and storage of water speaks eloquently about their advanced hydraulic engineering given the state of technology.¹² A very good example of water harvesting system is found about 130 km from Pune along Naneghat in the Western Ghats. The largest of the reservoirs had three flights of steps leading to the bottom and the others had two flights. The staircases were to enable people to walk down and fetch water as the water level went down. Indeed, a beautiful stepped well was carved out of rock-bed in the eastern reservoir.¹³

The quality of municipal town planning in Indus Valley indicates that these clearly placed a high priority on accessibility to water. The well planned cities having high standard structures of drainage, water supply, sewage and storage implies a great concern for the exploitation and management of water resources. But legal norms in respect of water use began to emerge with the inception of Vedic social order, where Dharma became the test stone, though not always for all laws for their validity.¹⁴

Ancient scriptures and secular literature most of which are dated long after the disappearance of the Indus Valley Civilization refer to the construction and improvement of water control works as activities beneficial to peoples' welfare and deserving to be supported and promoted by kings.¹⁵ In ancient India water was used in all religious rituals and ceremonies because it was believed that pure, well provided water conveys offerings to gods.

Vedic era

According to Hindu jurisprudence each creature is made of parts and is a part of the community and the cosmos. Harmony is achieved when human actions or *Karma* match the nature of human. Human actions are governed by *Dharma* that is enshrined in the sacred books of the Hindus- the Vedas, which include *Shrutis* and *Samritis*.¹⁶ The laws of Manu addressed issues related to the regulation of water such as water pollution and its impact on health.¹⁷

The ancient religious text commentaries and stone inscriptions provide references to governing principles such as ethical, moral, spiritual, social and ecological which were applied to water management during pre-colonial Hindu and Muslim rule in India.¹⁸ Since ancient times deficiencies of rainfall were overcome by means of one or the other form of artificial reservoirs, ponds, canals, lakes, tanks, wells, etc. In Ramayana the country of Kosala is praised as *adevamatrka* i.e. not solely depending on rainfall.¹⁹ In Mahabharata Narada asks *Yudhishtra* if tanks, lakes etc. are built throughout the realm at proper distance for the purpose of agriculture.²⁰

In Vedic culture rivers are worshipped as deities.²¹ The Vedic seers in several hymns invoked water, the purifying agent to be gracious with mankind, to purify man and to remove all physical defilements. They believed that water consumed by men gives strength and becomes an auspicious drink within the stomach. Hence they prayed "*May the waters be pleasant to our taste, be free from diseases, sin and sickness, be the remover of fear of death, be full of divine qualities and be the strength of eternal laws*".²² The hymns invoking waters and the prayers directed to Lord Varuna, the deity of water, reveal that even as early as that of Vedic period, people took precautions to use only water free from all sought of impurities. Of all the Aryan gods Varuna was considered so pure and holy that the mere performance of sacrifice would not ensure his favour, for he abhors sin. Not only did Varuna punish the sins of the individual but he visited the sins of the ancestors upon him and his ubiquity ensured that there was no escape for the sinner.²³

The Vedic period (or Vedic age i.e. from 1500 to 500 BCE) was the period in Indian history during which the Vedas, the oldest scriptures of Hinduism were composed. It is well accepted that Dharma, the universal, transcendent and immutable is essentially a rule of interdependence, founded on hierarchy corresponding to the nature of the things and necessary for maintenance of social order.²⁴ In Vedic system the powers were exercised by the King. Dharma was maintained by the royal commands which were backed by the sanctions. Water regulation management, control and exploitation were exercised by the royal Kings and by the community in some cases. During the regime of Chandragupta Maurya, Harshvardhana and Guptas there was a Hindu Vedic society and the country united with a centralised bureaucracy and brought under one rule.²⁵ The Rig Veda highlights the hydrologic cycle: the water which gets divided in minute particles due to the heat of sun

is carried by wind and after conversion into cloud it rains again and again.²⁶ It says that Sun is the cause of rainfall and water (“*AdityatJayateVrishti*” or the Sun gives rainfall).²⁷ In Vedic texts water is referred to as *Apahor* literally the waters. Water is considered to be purifying in the spiritual context.²⁸

Rig Veda describes the sanctity of water as, Hail to you, Divine, unfathomable, all purifying waters²⁹ The Rig Veda identifies the waters as the first residence or *Ayana* of *Nara*, the eternal being and therefore water is said to be *pratishta*, the underlying principle or the very foundation of this universe. Water is considered to be the most common medium of purification. It is considered to have an intrinsic purity and the capacity to absorb pollution and carry it away.³⁰

Thus water was an extraordinary and omnipresent element in Rig Veda. It was the upholder of all lives and the saviour of everything living or dead on earth. Not only Rig Veda but the societies existing even prior to it in the ancient world practiced spiritual veneration for water.³¹ Likewise the Yajur Veda and also Sam Veda clearly speaks about the hydrologic cycle. In Atharva Veda (II, 3.1), it is stated that rivers originating from the snow-clad mountains will keep on flowing in summer also, all the major rivers flowing from the Himalayas were perennial since they were fed by rains during the monsoon and snow melt during summer.³²

The Atharva Veda (II, 23.1) quotes thus on water management : Water of rivers, wells, ponds etc. if used and managed efficiently will reduce the intensity of drought and water scarcity. The need for water conservation to overcome water scarcity problems was well understood by them.³³ It states *in the heart of waters, O king Varuna*³⁴, *your golden home is built.*

Even though it is said in our ancient texts like Carak Samhita that entire water is ultimately of one kind, water was broadly classified into two sorts: *divya* and *bhauma*. *Divyais* that which falls from the sky. This is again of four type viz. *dhara*, *kara*, *tusara* and *haima*. *Dhara* is the rainwater which drops from the sky continuously, *kara* is hailstones, *tusarais* snow water and *haimais* the water from the due.³⁵

Code of Manu

The most important document relating to water law are those contained in the Manav Dharma Shastra or the Code of Manu. The Laws of Manu provide indications of the water law of the time. Water was considered indivisible. Manu Samriti provides that it is the King's duty to build the irrigation works.³⁶ King should protect public water and collect fees for crossing waters. Diversion or obstruction of waters was discouraged and the laws provide a system of punishment for those who polluted, stole or diverted the water. Destruction of embankments was illegal. The law encouraged the use of water bodies as boundaries between villages to ensure that as many villages as possible had access to water. Water bodies of enemies however could be destroyed in times of war.

According to Rig Veda belief, the Goddess Saraswati gave birth to rivers. Chapter II Sect. 151 of

the Code States, “Let him not entertain a *sradda*(dinner)... he who diverts water courses and he who delights in obstructing them. In Chapter IV, Sect. 226 reads, “... a rich man must always without avoiding it and with faith, do charitable works as constructing a reservoir or a well or building a public fountain...,” and Sect 229 states “He who gives water obtains satisfaction.” This provision is similar to the Waqf or religious endowment developed in Islamic Law. Chapter IX Sect 219 provides the concept of public waters-“water” along with other things is declared to be indivisible. The king used to collect rights of way for crossing rivers (Chapter VIII Sect 404). Special obligation was placed on the king with respect to public water such as to organise vigilance and guards, both stationary and patrolling, and spies ...” on waters and on houses where water is distributed” (Chapter IX, Sect. 264-266). There is a moral sanction to “consider water as a matter for exclusion from society of good people the sale of consecrated reservoir (Chapter VII, Sect. 61 and 69), the obligation to punish with death “ he who breaks the dam of a reservoir and causes loss of water by drowning him in the water or have his head cut off. “ The offender” may repair the damage but he shall have to pay the highest fine (Chapter IX, Sect. 279). But he “who shall take away the water, must be made to pay the first (or lowest) fine (Chapter IX, Sect. 281).³⁷ The unlawful appropriation of the water of well or cistern shall be punished by lunar penance (Chapter XI Sect 164). Waters were also considered as an element of purification, as well as means to ascertain culpability of a person for certain crimes. Special ceremonials had to be performed for purification.³⁸ The control over water utilisation and distribution was under the responsibility of a powerful water administration headed by a water superintendent. This high official was vested with full and undisputed powers on all questions relating to water.³⁹

Out of the eighteen heads of disputes mentioned by Manu one relates to boundaries between villages. The law book of Manu provides that boundaries between two villages should be determined by tanks, ponds, channels, and other sources of water. This is naturally with a consideration of inter- village water supply so that constant flow of water between two such units could be maintained.⁴⁰ Manu laid down that anyone who destroys embankments of a tank should either be drowned or put to death by beheading.⁴¹ Similarly Vishnu Sutra also provides that a King should give capital punishment to one who destroys embankments. Also there are heavy fines for destruction of water channels by raising embankments or unauthorised use of tank built for the common good of the people.⁴²

Arthashastra

Arthashastra is a book written by Kautilya, the chief advisor to Chandragupta Maurya(321-297 B.C) on politics and statecraft. Kautilya provides that at the time of formation of new villages, the King is expected to construct reservoirs set up with continuous water supply or with water drawn from some other sources.⁴³ In Kautilyan period *Arthashastra* indicated that

users had to pay a water tax for the use of water taken from the rivers, lakes or springs.⁴⁴ It also provides a detailed account of governance in Kautilyan period. Kautilya says that the King should construct reservoirs (setu), and fill them with water, either perennial or from some other source.⁴⁵ Or he should provide with sites, roads, timber, and other necessary things to those who construct reservoirs of their own accord. Whoever stays away from such kind of cooperative construction should send his servants and bullocks to carry on his work and should share the expenditure, but he should have no claim to the profit. Kautilya says that the state should not only construct reservoirs of water but also should give necessary support for private contractors who undertake to build such reservoirs. The Nagaraka (Govt. Superintendent of City) shall make daily inspection of water reservoirs. Though private ownership of water works were encouraged, the ownership of a tank will be lost if it is not used for five years, except in times of distress, and it was possible for a person to sell or mortgage his tank. Kautilya suggests not to destroy the unused tanks and waterless tanks.⁴⁶

The *Arthashastra* discussed the use of water for the development of water works, irrigation, and transport, specifying that all water belonged to the King and that users were to pay water tax to withdraw water for irrigation systems installed by the king. For building or improving irrigation facilities exemptions were granted from payment of water taxes. The taxes were to be paid for use of water for cultivation. The use of water from water works built by the King and manually transported were charged 1/5th of the produce. The water carried by bullocks was taxed at the rate of 1/4th of the produce and the water lifted by mechanism into channels was taxed at the rate of 1/3rd of the produce. The water from natural reservoirs used for irrigation was taxed at the rate of 1/4th of the produce.⁴⁷

A prohibition was placed on causing damage to the ploughed or sown field of another by a person irrigating his field from tank or reservoir. Prohibition was also placed on:

1. Letting water out of dam out of turn;
2. Obstructing through negligence the rightful use of water by others;
3. Obstructing a customary water course in use;
4. Making a customary water course unusable
5. Building a dam or well on land belonging to someone else; or
6. Selling or mortgaging, directly or indirectly, a bund or embankment built and long used as a charitable public undertaking except when it is in ruins or has been abandoned.⁴⁸

The taxes that owed to the king were specified in detail and these were collected by the Chief Superintendent of Crown lands.⁴⁹ The *Arthashastra* stated that in irrigating one's own field, no harm is to be caused to the others. It prohibited release of water from dams without legitimate reason, the obstruction of legitimate use of water by others, obstruction or diversion of the water course and building of water works on the land belonging to

someone else. Where damage was caused to other party as a result of overflowing waters, compensation was owed to the other party. The *Arthashastra* provides a list of damage type and corresponding compensation or penalty due. This included death penalty. The water routes could be used for purposes of transport and trade.⁵⁰

From the *Arthashastra* it is evident that the farmers knew about the soil characteristics, rainfall pattern and irrigation techniques. The state rendered help for the construction of irrigation sectors. The village community had a major role to play apart from king's role in water management at that time.

Other Religious Texts

The Dharma sutra (aphorismic form of teaching imparted by a master to his disciples) of Apstamba, an authority on civil and criminal law lays down that one who has taken the property of another unintentionally shall be reprimanded if the property be, among other things, water. But if the same is done intentionally his garments shall be taken away.⁵¹ As per other Sutra the King, as a sovereign, has immunity from consequences of such acts, he could take or receive water from any place without it being considered as theft.⁵²

There were many other rules emphasizing the religious value of water. It provided self-restraint or sanctions to be observed by its users. The Dharmashastra of Vashistha in its Chapter V maintains that intellect of a man perishes who urinates in water. Such dictates observed as religious custom in effect, even today in some parts of the country, demonstrate the need for preserving water quality of purifying everything.⁵³ The essential element of water laws in ancient times consist of certain forms of practices and self-restraining rules for protection and conservation of water.

Vedic philosophy thus bestows a sacred character on water, which is then identified as a medium to attain spiritual enlightenment. Understanding the primary meaning and force of water was considered to supersede all rituals and rights. The Vedas identify water as the very essence of spiritual sacrifice or the first door to attain the divine order. After examining various Hindu texts relating to water regulations the following principles may be laid down. Water was considered indivisible. Those who could were obligated to develop water works for the benefit of others. King should protect public waters and collect fees for crossing water. Diversion or obstruction of waters was discouraged. Laws imposed a system of social reprimands and punishments for those who polluted the water or who stole or diverted. Destruction of embankments was illegal. The law encouraged the use of water bodies as boundaries between villages to ensure that as many villages as possible had access to water. Water bodies of enemies however could be destroyed in times of war. A water controller was in charge of water administration.⁵⁴

Post Vedic Era

In contrast to the notion of spiritualism in early Vedic texts, *Samritis* or post Vedic literature constructed the notion of ritualism. Water governed

the ritualistic or bodily purification of human existence. Ritualism was related to construct of Dharma or moral law. *Dharma* persists steadfastly in Hindu society. Between 500BCE and 300 BCE, the large food surpluses implied no real shortage of water and supported trade development along water channels.⁵⁵

At this time Jainism and Buddhism were born as counter religious forces to promote conservation of natural resources. Mahavir Jain and Gautam Buddha promoted right conduct and belief, and respect for fellow creatures. After the war of Kalinga, the victorious emperor Ashoka himself embraced Buddhism and preached non-violence to his people. Ashoka also called on his officers to build reservoirs and plant trees.⁵⁶ Around 400 CE, there was a decline in Buddhism and Jainism and this was accompanied by a decline in agriculture production-possibly because of water shortages, decline in soil fertility, and /or the growth of human population.⁵⁷

During the reign of Guptas and thereafter until about 1000 CE, the lack of resources lead once more to worshipping individual animals and trees and a focus on conservation. This was a period of low trade and urbanisation. From around the ninth century, the development of new tank technologies and improved dams and canals in South India paved the way for development of large scale agriculture.⁵⁸ During the regime of Chandragupta Maurya, Harshvardhana and Guptas there was a Hindu vedic society and the country united with a centralised bureaucracy. One example of highly organised bureaucracy was in charge of administration during Maurya period was *Agronomoi* with duties inter alia to supervise irrigation. The concerned officer superintended rivers and inspected sluices through which water was let out from branches, so that everyone could get equal supply. The construction of reservoirs, tanks, canals and wells were regarded as a part of state function. Similarly there are also instances of regulation of water transport and levy of tolls for goods carried through water routes. The sanctions like stoppage of goods etc. were stipulated for non-compliance of those regulations. Further as a process of recognition of King's rights in water in post Gupta times the practice of land grants gave ownership to available water resources.

Conclusion

In this way in ancient period one witnesses existence of legal regime of water management but it is impracticable to compile various rules, regulations and customary practices because during that time the socio-economic system was maintained through small republics with self-sufficient and autonomous villages. The problem gets further complex for lack of efficient literature on agrological aspects, thus hindering the process of even a single sociological compilation of corpus juris of water for any social group in India for that period.⁵⁹ The task becomes even more difficult given the vastness of the country and its political and demographic divisions.

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