

Customary Rights and their Relevance in Modern Tank Management: Select Cases in Tamil Nadu

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ABSTRACT

Key Words: *Ayacut*, Custom, Community, Customary Rights, Encroachment, Fishery, Governance, *Pattadar*, Tank Management, Law, Usufructs

Village tanks occupy a significant position in irrigation and in local ecosystem in the semi-arid and arid regions of Tamilnadu. The tanks play a vital role as an important water resource for the livelihood of the rural communities. These unique and indigenous water harvesting and storage systems and their management have been declining in recent years. The major reason being the centralization of the tank administration. Such a move led the local communities to alienate from these important water resources and they restrained themselves from taking up collective efforts towards the betterment of tanks. Both the state and the community are facing a critical situation through the deteriorating tanks, forcing the marginal and small farmers into a cycle of deprivation and debt, as also leaving them increasingly at the mercy of the vagaries of monsoon. The tanks have multiple other uses, such as a drinking water resource for livestock, for fish culture, recharge of ground water etc. and multiple stake holders, starting from the village community, local bodies and academia to the international development agencies & organizations. Therefore equitable and sustainable use and management of natural resources like tanks require an appropriate, conceptual, functional and creative governance framework to accommodate the interests and activities of the multiple stakeholders involved.

Natural resource use in India and its associated technologies, institutions and law have their origin in a much earlier and entirely different jurisprudential base. People used to follow the traditional Indian jurisprudence. Custom constituted a source of law, independent from all other known sources. The co-existence of the dual framework of custom and formal law is often fraught with tension and contradictions, with adverse impact, not only on societal relationships but also on the natural resource base. This paper, in a similar context, explores the relevance of customary rights in the management of minor irrigation tanks, one of the vital water resources in Tamil Nadu and presents a synopsis of a few cases of conflict on sharing usufruct rights, encroachment eviction and water sharing among tanks, along with the way forward to resolve them, based on the importance of water reforms for the overall development of these small scale water bodies.

1.0 Introduction

In India, the use of natural resources and their associated technologies and laws have their origin from very early period and they are in many instances having their own jurisprudential base. The governance of important natural resource such as village water resources was decentralized and was having its legal basis almost entirely in Custom. Custom is a law not written but established by long usage and consent of our ancestors (The Law Lexicon). In the legal sense, custom means a long established practice considered as an unwritten law. In another sense, custom depicts a long practiced usage having the force of law. Custom mostly takes the place of law and regulates the conduct of men in the most important concerns of life. At times customs too die away or are abolished or suspended by statutory law. Nevertheless, custom has been a source of law independent from known sources, namely religious or ethical doctrine, texts or royal decrees, as far as traditional Indian jurisprudence is concerned. We can observe that these customary practices are even now in vogue in land holding patterns, traditional water technologies, forest use, agriculture & fisheries. The legal frameworks based on customs provide a wealth of information on sustainable resource use and management.

Food security plays a crucial role in addressing the needs of a growing population and it is inextricably linked to poverty alleviation. Water as a timely rainfall or irrigation is a crucial input for enhancing crop production and providing food security. Minor irrigation tanks seen in plenty over the nation and especially in the Deccan Plateau have been supplying the rain water for agriculture by effectively harvesting monsoon rains. Indeed, they have been traditionally managed by the local communities who have, over the years, evolved certain regulations for distribution and integrated management of water. Those regulations adapted by the community to suit the changing situations over the years have become the customary rights in tank management.

In India, the central government passed the 73rd and 74th amendments to the constitution in 1992, thereby requiring the state governments to create a statutory three tier local self-government structure down to the village level. Several natural resources including tanks and ponds were brought under the jurisdiction of these bodies. The Indian government also passed a Panchayat Raj (Extension to Scheduled Areas) Act (PESA) in 1996, which empowered the gram sabhas in the 5th scheduled areas to have the right to decide upon or veto development projects within its jurisdiction (Lele, 2005). Therefore, the practices followed by the community from time immemorial over water bodies fall under the scope of custom and customary practices.

DHAN Foundation's grass roots experience in conservation and development of small scale water bodies like tanks and ponds through community institutions, made us to examine the customary practices and rights traditionally held by the users of tanks, as a research study with the guidance and support of Development Centre for Alternative Polices (DCAP), New Delhi. The authors present the findings on the customary rights and their relevance in tank management by reviewing select cases in Tamil Nadu.

1.1 Brief Account of DHAN Foundation's activities in Tank Programme

Irrigation tanks, one of the very important water resources for the rural community in Tamil Nadu occupy a significant position in agricultural economy, by way of supporting livelihood for 1/3rd of gross cultivated area under it owned mostly by the rural poor. They have also played a crucial role in safeguarding the local ecosystems. In the context of management of tanks in India, one could notice that the local management systems developed and practiced for centuries have served the multiple needs of the rural community. Nevertheless, after independence, the continuous neglect of these unique indigenous tank systems due to various reasons has resulted in their deterioration and several small scale water resources have even become extinct. The decline in tankfed agriculture has been more rapid in the past four to five decades. This situation has led the affluent farmers in the tank command areas *ayacuts* to go in for wells, leaving the small and marginal farmers in the lurch. Many of the *ayacut* lands of tanks situated along the outskirts of large towns and cities have been converted into house sites due to the urbanization, and the tanks were further neglected. They became dumping grounds for wastes and lost their storage capacity.

This situation led to encroachments in the common lands of the tank complex, particularly in the tank bed and along the feeder channels. Tank system has a special significance to the marginal and small farmers as most of them are depending on them for their livelihood through irrigation, domestic water use and inland fishing. It is in this context, true to its mission of livelihood improvement of the poor and down trodden, that since 1992, DHAN Foundation has been undertaking rehabilitation and restoration of small scale water bodies in rural areas. This activity is undertaken by building social capital and bringing back local management as one of its thematic poverty alleviation programmes named "*Vayalagam* Tankfed Agriculture Development Programme". Under this programme which has multiple development components, a number of tanks systems have been rehabilitated by the tank associations comprising the rural communities, with the techno managerial support of DHAN Foundation, in selected blocks in the South Indian states of Tamilnadu, Pondicherry, and Karnataka & Andhra Pradesh.

2.0 Customary Rights in Tanks

Customary Rights to tank water and other associated usufructs have been exercised from time immemorial by farming as well as non-farming villagers, according to the norms evolved with their consensus. DHAN Foundation felt it necessary to understand the prevailing customary rights indigenously developed and practiced by the community, how over a period of time other interventions have changed them and the implications of such changes on the community as well as on the resources themselves. The study of customary rights made during 2003-04, was based on the available records as well as through intensive field studies, mainly to document the present pattern of intra and inter tank management systems. The study undertaken with the support of Development Centre for Alternative Policies, (DCAP), New Delhi, had the following objectives:

- i. To investigate historical and still existing customary rights in tank systems in Tamil Nadu and their relation to past and present customary management of tanks.
- ii. To review the current irrigation law and policy of the State in relation to institutions and management processes, including review of the institutionalization of irrigators under the official modern tank management strategies and through non-government organisations' initiatives.

The study was conducted in the tanks situated in the southern districts of Tamil nadu. Archival and public records and other literature, Government Orders and Court verdicts were reviewed for a proper understanding of the problems in general and specific to the study areas. Selected individual farmers were interviewed through standarised interview schedule.

2.1. Customary Irrigation Rights: A Recorded Mamul Nama in Vellore District

In the early years irrigation rights in tanks were largely governed by custom and local practices. But many of them were not in a proper recorded form. It is quite interesting to observe the recorded irrigation rights of pattadars of 188 tanks of Vellore Taluk in 1815 A.D. under the heading "Water *Mamul Namas*". These were printed by the British in the year 1907. The *Mamul Namas* have been written in Tamil and signed or attested with thumb impression by the "Karnam" (Accountant in Village) and the important farmers of the village. (Source: An English version of the *Mamul Nama* extracted from G.O.No.660 I; dated 8th February 1918 and cited by Sivasubramanian K., 1995). It is astonishing to note how meticulously the *Mamul Namas* have been written, recording the period in which the tanks got water supply, the quantity of water available in particular months, the area that could be cultivated, when the tanks got full supply and during the distress period, the mode of irrigation, the permissible number of wells that could be sunk in the ayacut, the crops that could be cultivated in the area etc.

Even though many of the irrigation rights and practices were not recorded, they were meticulously observed by the ryots and the community from time immemorial. However, some customary rights could be ascertained from the "A" register maintained by the revenue department and the old settlement records. These customary rights along with *Kudimaramath* systems were followed with high dedication and vigil by the ryots and villagers during *Zamindari* system and even under East India company rule for some time. But after the introduction of *Ryotwari* settlements by the middle of 19th century, the effectiveness of the traditional system deteriorated progressively, with the result the tanks were not maintained well in the country.

2.2. Fishery Rights in Tank

Under *Ryotwari* system, when the irrigation tanks were transferred to the Panchayat Unions for maintenance, they had the right to the fishes in those tanks wherever the tanks have been transferred. This is facilitated by Section 84 of Tamil Nadu Panchayat Act 1958. But there is no such section in amended Tamil Nadu Panchayat Act 1994. Wherever fish *patta* has been granted to individuals or institutions, the Panchayat Union will have no right to the fishery until the *patta* is cancelled. Moreover, the fishery right in tanks can be granted only by public auction and not by any other means.

3.1. Custom that prevailed in Water Scarce Area in Tank and Drinking Water Pond

Ramanathapuram district in South Tamil Nadu is renowned for customs in the management of tanks and ponds. Being a water scarce district in a drought prone region, coupled with saline ground water, the surface water bodies remained lifelines and as it is well understood by the people, the customs are strictly adhered to and any change in this led to conflicts and communal disharmony.

Mudukulathur big Tank is located in Mudukulathur taluk of Ramanathapuram district. The tank irrigates an ayacut area of more than 40 ha and the farmers who live in the surrounding villages of Thoori, Ettiseri, Kadambankulam and Selvavinayapuram own the land. Traditionally, Thoori villagers were maintaining and managing the Mudukulathur big tank. Till mid 1980's, the villagers from Thoori used to invite ayacutdhars from the other remaining three villages for mobilizing voluntary labour to clean up the feeder channel from its original source Rangunatha Cauvery which is a tributary of Gundar river.

After 1980s, the practice has been changed to mobilizing money rather than mobilizing labour from the same villages for the cost equal to their labour. This happened because of the behaviour of one or two villagers who did not send adequate number of labourers. This practice had also collapsed in the mid 1990s. During 1999, Thoori villagers had spent Rs.25000 to clean the supply channels and filled the Mudukulathur big Tank. They vehemently refused to release any water even after the Public Works department engineers tried to open the sluices. Thoori farmers put forth the argument, "No payment for the clearing of channel and hence No water". After lot of tension and arguments, two villagers paid Rs.10,000 and Rs.6000 respectively and got their share of water. These types of custom enforced tank management issues are common in such drought prone arid plains of South Tamil Nadu.

The alluvial formations in a few pockets and in proximity of the Gulf of Mannar coast are attributed to salinity in ground water in Ramanathapuram district. It is always a custom that the villagers in many parts of the district used to fill their *Ooranis* (drinking water ponds) from the tanks. This happens at the beginning of the rainy season (September), and again at the end of the season (December) and once again during summer (June). This has been the way of life and the source of their drinking water which they could not separate from irrigation tanks for ages. It is also enforced and practiced that nobody should pump or bail the water below the sill level of the sluice outlets of the irrigation tanks.

3.0 Synopsis of Cases on Customs and Customary Rights in Tank Management

Customary rights on the use of water have always been recognized by law; but this customary right is not an absolute right and is subject to the paramount right of the state to regulate and control the supply of water for irrigation purpose. The customary right of the ryots has also undergone a change after the enactment of Madras Irrigation Tanks (Improvement) Act 1949 and the Constitution of India.

In Indian Law, the state possesses the right to regulate the supply of water in public streams, to mobilize it to the best advantage. The rights and the obligations as between the state and ryots in India in the matter of irrigation, rest largely on unrecorded custom and practice. Whenever customary rights were violated, courts did not approve the violations and awarded compensation to the ryots who suffered due to such violation.

By the Tamil Nadu Land Encroachment Act 1905, the government assumed full ownership and control over the water bodies. Along with this, Tamil Nadu Irrigation Tanks (Improvement) Act 1949 empowered the government to increase the capacity of the tanks, through appropriate activities. Legal suits against such actions were also barred under section 4 of the Act. Therefore in all the decisions of the court, the customary right against Government was not upheld but the customary irrigation right against the individuals was recognized by the courts. Also the customary rights in case of enjoying the benefits from usufructs from tanks were upheld by the higher courts after long and tiring legal battles against the villagers as a collective. The following paragraphs capture a few such cases in Tamil Nadu in ensuring the management of tanks through customary rights by community after legal tussle.

3.1. Prevailing Usufructory Rights from Tanks in Dindigul district

Athoor is a traditional *zamin* village bound by its heritage and cultural practices of a multi-caste community in Southern Tamil Nadu. It is situated 20 km south west of the district head quarter, Dindigul. Athoor Village Committee was established even before 1900 with a view to help the village to gain certain benefits from the then government. Late Savarimuthu Pillai was active in the welfare of Athoor and Sempatti villages and he was considered to be a charismatic leader. He is reported to have laid the foundation for the Athoor *Pattadhars'* (Land owners) Committee (APC). It was registered in the year 1993. The Executive Committee consisted of 4 office bearers namely President, Vice President, Secretary and the Treasurer and 13 Executive Committee members who constituted the apex body in the decision making process.

Athoor village comprises a series of tanks, namely Pulvettikulam Karunkulam and Pagadaikulam. These tanks are all situated in a line from east to west of the village. They receive water supply from the rainfed non-perennial river Kundaar. The ayacut area commanded by these tanks is given in Table 1.

Table 1: Tanks in Athoor Village

Tank	Water Spread Area (ha)	Ayacut Area (ha)	Cultivated Area (ha)
Pulvettikulam	68.750	165.505	156.005
Karunkulam	20.030	34.075	31.520
Pagadaikulam	33.085	88.480	81.580
Total	121.865	288.06	269.105

These lands belong to 703 farmers .Of them about 73 per cent belong to marginal farmers' category and only 1.5 per cent belong to big farmers while the remaining are small farmers.

Water had to be distributed by the agreed (customary) rules formed by the APC. They are:

- *Maniams* have to distribute the water in an orderly manner sequentially (Head to Tail end)
- If any one needs water beyond the requirement they have to request the APC only, which in turn will suitably instruct the concerned *maniam*.
- During the periods of scarcity, water delivery time will be fixed on the basis of availability and certain prefixed norms to provide equitable distribution.

Fishing rights from these tanks are as per custom under which the villagers auction the fishing rights. The returns from the auction are used for temple and tank related purposes only. All the religions get their share of revenue for their respective religious festivals and it is made known to all the villagers. They have been adhering to this norm for more than forty years.

The customary rights followed by a consensus based decision making process of APC were

- Irrigation rights as per the(customary) rules formed
- Appointment of *Maniams* for irrigation
- Fishing rights
- Segment (*Kandam*) based Watch and Ward system through appointment of guards.
- Cattle rearing and Recreational activities
- Auctioning right over the use of Threshing floor (*KALAM*) at the time of harvesting.

3.2. Dispute on Fishery Usufructs: Loss of Rights

Way back in 1946, the government tried to cancel the fishery rights of the APC by levying a tax called *meenpasi* (Fish tax). But the then president, Thiru I.Savarimuthu Pillai fought against it in courts and finally a stay was awarded by the Madras High Court stopping the take over of the tank fishery rights from the villagers.

Again in mid 1980s, the Tamil Nadu Government brought the tanks under the Fish Farmer Development Agency Act and declared the tank as one of the pilot tanks where fishery was proposed to be promoted. In 1988 the Assistant Director of the Fisheries Department, Dindigul requested the Tahsildar to cancel the APC's customary right to fishery. The APC put up more than ten years of legal battle in the court of law. But in the year 1998 the High Court announced that the right to fishing from the tank has been vested with the Assistant Director, Fisheries Department, Dindigul. So, the APC lost its enjoyment of fishing rights from 1998 onwards.

Like Athoor, Sithayankottai Town Panchayat situated 20 km southwest of Dindigul lost its customary fishing rights enjoyed by Village Farmers Protection Sangham over five decades, to fishery department during the year 1998. In this village even now the mainstay of the people, namely agriculture is practiced under two rainfed tanks, Thamaraiikulam and Puliyanikulam and also in the direct ayacut area of Thamaraiikulam Rajavaikkal. The direct ayacut of Rajavaikkal and two tanks command a total area of 471.065 ha.

In this village, Mr.N.Abdul Khader (who was later elected as Rajyasabha M.P.) organized the farmers and started a formal association namely Sithayankottai Grama Vivasagal Pathukappu Sangam. This sangam undertook following tank related activities from 1980 onwards.

- Clean the Rajavaikkal every year
- Regulate water distribution
- Purchase a land for Puliyanikulam Tank Farmers Association building construction
- Fish rearing activities in the tank.

Such a well performing *sangam* which has been traditionally enjoying all the usufructory rights including fishery in the tanks, witnessed the problem with fishery department during the year 1988. The association approached the Madras High Court to pass order in favour of the sangam due to their customary practices since ages. While the case against the fishery department was pending with the High Court, the association continuously enjoyed the rights using the injunction granted by the court. During 1998, the fishery department invited contractors for fishing in the tank, but no one came forward to apply for the contract fearing that the Sangam and villagers would not allow any fishing which was much against the prevailing customary practice. Presently the case stands dismissed, and the Govt. right to fishing is upheld. Annexure 1 provides the legal issues on which the *sangam* fought the case.

3.3. Encroachments and the Rights of Cultivators : A case of Rasingapuram village in Theni District

Rasingapuram is one of the village panchayats in Bodinaickanur block of Theni district. It is a multicasite village wherein more than 12 caste people are residing with traditional and cultural bondage. This village is situated 23 km south west of Theni. Total geographical area of the village panchayat is 2618.28 ha with around 1640 households. The total population of the village is 6426 (Male 3272 and Female 3154). The main village Rasingapuram is surrounded by four hamlets within its Panchayat jurisdiction. *Kurumba goundar* is the dominant caste in the village.

There is a tank called Goundankulam in the village fed by a non perennial stream. This village was one of the front liners in getting electricity in late 50's. This combined with free electricity and agricultural credit to sink wells in early 70's led the villagers to sink more than 250 wells. Ruthless mining of ground water from the wells made the farmers to dig 100 feet bore wells inside the open well of 80-100 feet depth. Because of their over dependence on wells coupled with state ownership of tanks, the farmers neglected the tank. Using this opportunity, a few power centric and greedy farmers encroached

the feeder channel and also ploughed the tank bed, sunk two wells and got electricity supply by unfair means and were cultivating crops and coconut trees. They enjoyed the benefits over twenty long years. The villagers' continued effort to vacate the encroachments failed to yield any positive result in favour of villagers. By the year 1997 the total water spread area of 5.17 ha of tank bed has been reduced to around 1.20 ha with complete dismantling of the bund. The villagers who owned lands in the *ayacut* as well as others tried to protect the water spread area since 1985, but they failed.

Totally 10 farmers have encroached the land as given in Table 2.

Table – 2: The encroachments declared as legitimate patta

Sl. No	Name of the encroacher	SF No	Patta No	Extent of encroachment (ha)
1	Krishnasamy.S	346/1	45	0.445
2	Ramuthai.K	346/2	1553	0.515
3	Kariappan.C	346/3A1	139	0.230
4	Srinivasan.S	346/3A2	2148	0.040
5	Keppammal.S	346/3B1	2149	0.035
		346/3B2	348	0.220
6	Malarkodi.S	346/4	-	0.230
		346/5	-	0.295
7	Ondiveeran	346/6	-	0.300
8	Thangamani	346/6	-	0.300
9	Perumal.O	346/6	-	0.300
10	Subramani.P	346/6	-	0.800
Total				3.700

During the year 1996, the farmers had approached DHAN Foundation, Madurai to help them to remove encroachments and revive the tank. The farmers were interested in restoring and reclaiming the tank through eviction. They felt that their efforts so far had not been successful and so the organizations like DHAN would guide them properly to get rid of the encroachment problem. They formed a formal Tank Farmers Association (TFA) and arrived at a consensus for making contribution to the rehabilitation works of the tank.

The villagers then approached the District Collector for funding the project and they got the funds. The works to the value of Rs.88,000 has been allotted to the TFA under Namakku Name Scheme (Self Help Project). After a great deal of struggle in 1997 a land survey was organized by the Tahsildar and the boundary was established for the tank at least on paper by the villagers. They have done the reconstruction of the tank bund after removing the encroachments in an area of 0.485 ha under the S.F.No. 346/3A1, 346/3B1 and 346/1. However, the encroachers were continuously making threats as well as taking legal steps to stop the revival of the tank through any means. Since a part of the tank was revived, many wells in the vicinity got rejuvenated by next year (during 1998) and many villagers started pressing for the complete eviction of all encroachers.

The villagers again tried to get funds from the Panchayat Union for reviving the rest of the tank. This time they evicted around 1.00 ha of encroached land using force and coercion and spent Rs.1.80 lakhs on tank work. Then the encroachers joined together and consulted lawyers and filed a case against the Collector for illegal eviction of their lands. The village farmers were agitated a lot and jointly decided to evict all the encroachments at any cost and collected Rs.25,500. Using this as their contribution they got a sanction order for water harvesting work for an amount of Rs.1.02 lakhs under Village Self Sufficiency Scheme. This time they formed a stable and big bund around the revived water spread area. Also they completely evicted the supply channel encroachers by clearing it using coercive means. By this exercise, they have encircled the entire area of the tank bed. The encroacher sitting in the middle of the tank bed went on an all out offensive against the villagers. He was successful in getting an interim injunction to the works sanctioned by the Government. Now the case is pending in the High Court, Chennai.

Presently the villagers are confronted with the question whether the retrieved tank bed land will remain as common property in the court battle. In case the court upholds the Patta given to the encroacher in the eighties, what would be the fate of the tank. Their efforts to get impleaded in the court case has also not met with success because of the Government Pleader's assertion that it is not necessary for them to get impleaded in the case.

Annexure 2 contains the time line of the encroachment and the tireless tussle between the villagers and encroachers.

4.0 Learnings

4.1 Customary Practice in Vogue:

The rural communities had their own norms inherited from their ancestors regarding the management of irrigation tanks and various related issues. The tank management by and large still remains with the villagers. Their informal/formal associations take care of such functions. More important is the water acquisition in the chain of tanks which is dealt with by the villagers, and the Government authorities stay away from this activity.

The above cases stress the importance of collective action of the villagers by organizing committees with stipulated roles and responsibilities. The TFAs also follow routine operation and maintenance works either by appointing water guides/*Maniams* for irrigation or contributing labour or money for cleaning of channels and surplus courses.

4.2. Revenue from Usufructs

In all the selected villages, the farmers reported that they were earlier enjoying full rights over irrigation water from tanks and they had power to utilise the usufructs as desired by them. However in recent years, such use of the usufruct revenues by them is objected to by the government authorities-mainly the Revenue department and not by the Public Works department or the local Panchayats.

The Revenue department collects the tax for 2 C *patta* based on the type of trees planted and recognizes the right of individuals who planted and guarded the trees and allows them to get monetary benefit from them. However, the tank users of present times want to generate some form of revenue from the tanks as a matter of right rather than resorting to “illegal” means. Moreover the villagers as a forum demand that the customary rights to usufructs which they were enjoying earlier be restored to them and the Panchayats can over see that the funds are utilized for the maintenance of the village tanks rather than undertaking illegal practices.

4.3. Encroachments in tank system

One of the challenges faced in storing rainwater in the tanks upto their designed capacity, is the encroachments being made along the supply and surplus channels and tank waterspread areas. Such encroachments constrain the carrying capacity of the channels resulting in only partial inflow of runoff into tanks from their catchment areas. The encroachments also induce the encroachers to willfully break the surplus weirs or tank bunds in order to protect their standing crops in the encroached tank bed area from damage. The low storage of tanks caused by such encroachments deprives the poor from having access to the tank water. The existing laws to evict the encroachments are long drawn and are only partially effective. In government, there exists a rule that no water body could be encroached upon by any individual organization and no *patta* right be given to any one to use such land for any purpose other than for conservation of the water body. This rule has also been, in recent times, upheld both by Madras High Court and by the Supreme Court. Yet this is not strictly followed in all cases.

5.0 Way forward

As a way forward, the existing laws need a thorough review in order to make them much more stringent so that customary rights of village communities as well as small village water resources, namely, tanks and ponds could be conserved before they become extinct. Like the Reserved Forest Protection Act, the framing of acts to conserve all traditional village water bodies from social evils require to be introduced in the Parliament by the law as well as policy makers.

In the globalization era, for achieving Millennium Development Goals with water as a tool to alleviate poverty, the government has the responsibility to take up legal as well as policy reforms in favour of Community Managed Natural Resources. It is always beyond doubt that native water wisdom exists over many decades developing the rural economy. These infrastructures need rehabilitation to their design standards to ensure water and food security in the coming years. Adequate policies and resource allocation empowering village communities to own, maintain and manage these small scale tank systems similar to ‘*Kudimaramath*’ and/or “*syndicate agricole*” (followed by the French in Pondicherry) made as a new law. The Central government should try the protection of water resources in the nation by bringing them under ‘Concurrent list’ of constitution if that can prevent encroachments. In addition, the resources allocated for the revival of these vital village water resources to harvest the water and manage the

demand of water by multiple stakeholders effectively, need to be increased manifold. Last but not the least, there is need for similar action based grass root research studies to identify successful customary practices across South India. DHAN Foundation expresses its readiness to take part in such studies related to tank management in the coming years.

References:

1. DHAN Foundation (Jan.2004); “Study on Customary Rights and their relation to modern tank management in Tamil Nadu, India” (Madurai, Dhan Foundation: 2004)
2. Gurunathan.A and Shanmugham.C.R.; “Customary Water Rights and Jurisprudence in Tank management: Case studies from a community Livelihood Perspective”, (Lead paper presented in the workshop on Law and Administrative Practices in Water and Related Issues addressing access to safe and Adequate water for the poor in South India, Organized by at National Law School of Indian University, Bangalore)
3. Lele, Sharachchandra, A.K.Kiran Kumar and Pravin Shivashankar, 2005, “Joint Forest Planning and Management in the Eastern Plains Region of Karnataka: A Rapid Assessment,,: CISED Technical Report Bangalore.
4. Sivasubramanian.K (1995), “Irrigation Institutions in Two large multi-village Tanks of Tamil Nadu, Ph.D Thesis”, MIDS, Adayar, Chennai
5. Vani.M.S., (April 2002) “ Customary Law and Modern Governance of Natural Resources in India – Conflicts, Prospects for Accord and Strategies”, Paper submitted for the Commission on Folk Law and Legal Pluralism XIII International Congress, Chiang Mai University, Thailand

Annexure: 1

The issue raised in the Case are as follows (Para 3.2 of the paper)

The Petitioner Sangam consists of the farmers making a livelihood from the tanks for ages:

1. The farmers are the right holders of the water and government is only doing tax collection recognizing our rights. PETITIONER SANGAM is having the Fishing rights for ages and spending the proceeds for the benefit of the tanks and the village. No single individual gets the benefits of the Fishery. The revenue resettlements have also confirmed the rights of the PETITIONER SANGAM.
2. The proceeds from the fishery is only marginal compared to the stakes on water and agriculture. Therefore the PETITIONER SANGAM will always give priority to farming and will use the entire water even if the proceed from fishery is going to be fully affected for want of Agriculture production in the village. This can not be the case if the FFDA appointed contractors come into picture. 9344056559 pandiyarajan
3. FFDA has only been in existence to promote inland fishery in the district from the water resources. The modern fishery may affect the customary practice of fish farming and not suitable for agricultural areas and tank because the use of chemicals and others may affect the agriculture, sanitation and hygiene.
4. The right of the fishery is a natural or common law right vested with wetland owners and cannot be taken away by the state. Such taking away of the natural and common rights infringes the fundamental rights of the petitioners.
5. Right of fishery is vested with the petitioner from time immemorial and is inseparable from agrarian and irrigation rights. Such a right of occupation, trade or business can not be taken way from the citizens with executive orders without due process of law.
6. The fishery contractor may not provide the water at times of the water scarcity foregoing his losses in scarcity years. Considering the Paddy production and their value to be put in risk for the sake of fishery production it is not work a economic exercise. No data is made available of such losses to the villagers in such eventualities. No consultation is made before taking away the rights.
7. When the Government is collecting Mean Pasy from the Petitioner, how can it give the same rights to the FFDA for the same activity.
8. The common interest of the village will get affected and the unity and integrity and communal harmony of the villagers will get affected by such action by the government.
9. When the Government still focuses on Agricultural production for basic need fulfillment how can an enterprise like Fishery be made out at the cost of the Agriculture. Since the Fishery production sets out certain quantity of water at the cost of Agriculture.

After ten years of waiting for the courts' decision, the Association was unable to continue the legal battle for want of finance. Therefore the court dismissed the case as not pressed and upheld the Govt's. right over fishing in the tank.

The timeline of the encroachments and the legal battle: (Para 3.3 of the paper)

- ✓ During the 1800's (under Zamindari system). Goundan kulam was maintained by the ryots with the support of the zamin. The map published by the British in the early 1800's clearly depicts the size of the tank and its sources without any doubt. The tank existed in SF No.776 of the village and the total extent of tank water spread was marked as 5.17 ha. the map had been recored from the archives and used as an evidence in the court case by the villagers. However, the subsequent maps published in the 1980 does not show the extent fully because of the *Pattas* issued in the middle of the tank.
- ✓ During the time of the Zamindars the land tax was collected by Avildhar from the farmers and much of it was used for the maintenance activities. These are narrated and remembered by some of the villagers.
- ✓ After Zamindari system was abolished, the water body was brought under the list of Panchyat Union tanks of the Bodinaickanur Panchayat union. This tank is presently maintained by the GDO of the Panchayat Union. For all practical purposes the BDOs office has to represent the the case for eviction of encroachments. But they hardly do so because of their indifference or lack of particulars.
- ✓ This tank was used for ground water recharge after the 1950's and hence more than 60 wells sprung up in the command area benefiting around 200 acres. The functioning of the tank was reduced form the direct source to an indirect source rendering the tank bed vacant most of the time. The encroachers then started their act because of the farmers' indifference and neglect. A complete neglect by the villagers had resulted after the intense well irrigation in the 1960's. all works attended by the villagers such as clearing of the supply channels, protecting the tank from the encroachments were given up.
- ✓ More number of wells were dug for irrigation in the later years and depth has been continuously increased and reached around 120 feet, making agriculture economically unviable.
- ✓ Most of the wells dried in the late eighties due to over exploitation of ground water resulting from the poor status of recharge capacity. By then, the tank water spread area was steadily encroached by the fore shore farmers. The encroachers started to cultivate the land and paid land tax with penalty which is a meager amount compared to the realization. There were 10 encroachers cultivating 3.70 ha of land in a intensive manner. They also dug wells inside the tank for irrigation purposes and got electric by using illegal means for pumping water.
- ✓ The survey number 776 of the older settlement of Nineteenth Century got changed into S.F No.346 in the year 1981 after the re-survey. The fragmentation of the tank bed was marked without giving any notice to villagers and hiding from the knowledge of the ayacutdhars. This has resulted in the encroachers getting *Patta*.
- ✓ The new realization by the farmers had come after a series of failures of their wells. They started working for eviction and sending petitions to various officers and none of them worked. They organized themselves into a formal group as Tank Farmers Association in the year 1997 and got it registered and approached the issue with a militant attitude.
- ✓ They secured funds from DRDA, Panchayat Unions and other sources and evicted the encroachers by themselves without any formal support from the lower level bureaucracy. In the same way they cleared the supply channel through coercion, threats and bribing the local officials.
- ✓ Presently the last and final battle to retail what they have revived is held up at the High Court. No one is sure about what would happen there.

The efforts of the villagers for evicting the encroachments

Sl No.	Date	From	To	Purpose	Outcome
1.	23.12.85	MLA, Bodi (after several pleas from the villagers)	Chief Minister, T.N	For tank renovation and encroachment eviction	No action was taken
2.	24.01.86	EE, PWD	MLA, Bodinaickanur	Intimation on estimate preparation	Estimate prepared for the rehabilitation by PWD and sent to the 'Government'.
3.	23.12.87	Ex. Village Panchayat President	SE, PWD, Madurai	Request for encroachment eviction and tank rehabilitation	No action was taken
4.	July 97	Tank Farmers Association	District Collector and special officer for Theni	Request for encroachment eviction and tank rehabilitation	Considered for funding
5.	23.08.97	DRDA, Theni	Pradan, Madurai, EE, DRDA, Theni	Order issued for part of the tank Works. No formal efforts were made to evict the encroachers by the administration	The Tank Farmers Association completed the work by recovering a part of the tank bed by convincing and coercion but major part remains encroached.
6.	June 98	Village Panchayat President	District Collector	Request for funds to do a complete rehabilitation work for the tank revival	A part of the works sanctioned and done by the Tank Farmers Association using local coercion.
7.	07.01.99	TFA, President	District Collector	Regarding action against the culprits involved in damaging the check dam in the Suthagangai Odai.	No action was taken
8.	22.02.00	DRDA, Theni	EE, DRDA, AEE, DRDA, Pradan, Madurai	A part of rehabilitation works ordered using DRDA funds.	Partial works done

9.	05.03.02	DRDA, Theni	BDO, Bodi, EE, DRDA, Theni	Order issued for a new check dam construction in the Suthagangai feeder channel to divert water to the tank	The works were completed after a lot of haggling and threats
10.	07.06.02	Encroachers's Advocate	District collector, The Tahsildar, Panchayat Union Commissioner	Notice to stop action against illegal eviction of encroachments of his clients	No reply from the Government and work was progressing because of the farmers' insistence.
11.	05.07.02	Encroachers	District collector, Thasildar, Union Commissioner	Intimation of a stay order	No action
12.	08.07.02	TFA, President	RDO, Uthamapalayam (UPM) Division	Request for action against the persons who resist the works in the channels and check dams	No action
13.	11.07.02	District Federation of Tank Farmers	RDO, UPM	Requesting for supply of records to face the encroachers in court	The court notice and the injunction were given to the farmers. A suitable reply was prepared by the villagers and sent to the Government Pleader in the name of the BDO for reply in the High court.
14.	19.08.02	TFA, President	Chief Minister, Chennai	For restoration of the tank area from encroachers	No action
15.	06.09.02	The Tank Farmers Association	The Commissioner, Bodi Union	Complaining about the breach on the tank bund by three encroachers	No action
16.	06.09.02	TFA, President	The Village Panchayat President	Information on tank bund damage by group and seeking for action	Letter sent to the commissioner, Bodi, regarding the damages. No action
17.	17.10.02	District Farmers Federation	Superintendent of Polic, Theni	Request for action against the encroachers	No action