

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



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Customs and their Importance in Water Resources Management

- **Custom means a long established practice and considered as an unwritten law**
- **At times customs too die away (or) abolished (or) suspended by statutory law**
- **Custom and their practice are even now in vogue in land holding patterns, traditional water technologies, forest use, and fisheries.**

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Customs and their Importance in Water Resources Management

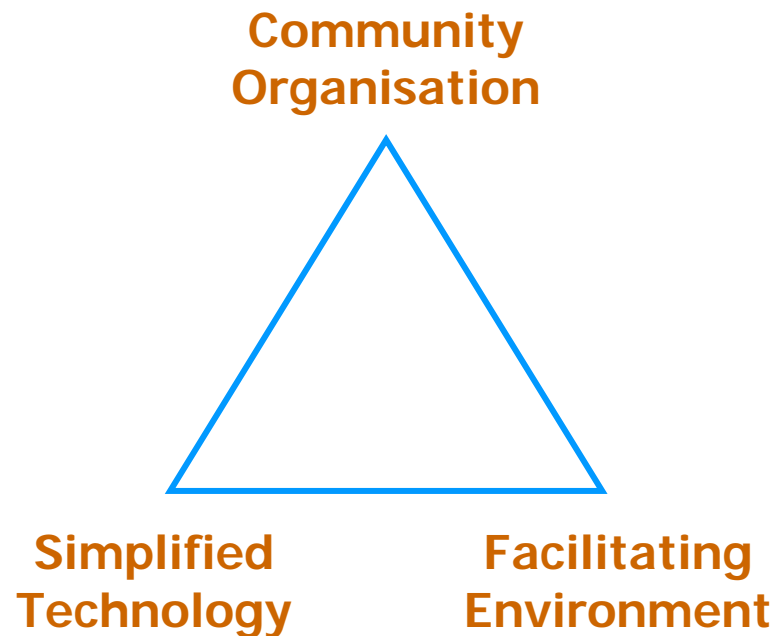
- **Tanks are very important water resources in India traditionally managed by the local community**
- **Local communities evolved certain rules and regulations in tank management and they have been adapted over many decades emerging as customary rights.**

DHAN's Vayalagam (Tankfed Agriculture) Development Programme

Goal

Poverty Reduction of Village Communities through Revival of Small Scale Water Harvesting Systems

Approach



Reach and Achievements (Over a period of 14 years)

States : Tamilnadu, Andhra Pradesh, Karnataka & Pondicherry

Districts	21
Blocks / Mandals	35
Families covered	Around 90,000
No. of Vayalagams promoted	1132
No. of Watershed Associations	76
No. of Federations	11
No. of Water Resources Revived	850

Customary Rights Study in Tanks in Tamilnadu

- **An action research was undertaken by DHAN with Development Centre for Alternate Policies (DCAP), New Delhi during 2003-2004**
- **Methodologies include review of records, intensive field studies, documenting inter and intra tank management systems, review of Government Orders and court verdicts**

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Customary Rights Study in Tanks in Tamilnadu

■ Study objectives:

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

Observations made by the study

- Customary rights on the use of water have been recognised by law, but they are not absolute rights
- Customary rights of the ryots had undergone change after Madras Irrigation Tanks (Improvement) Act 1949 and Constitution of India.
- Government acquired control over tanks through Tamilnadu Land Encroachment Act 1905 and Tamilnadu Irrigation Tanks (Improvement) Act 1949

Case on Customary Irrigation Rights

- Irrigation rights of farmers of 188 tanks in Vellore taluk recorded in 1815 A.D under “Water Mamul Namas”
- British published these records in 1907
- Accountant in Village (Karnam) and important farmers signed (or) put thumb impression
- Information in Mamul Nama records include period in which the tank got water supply, quantity of water available in particular months, area that could be cultivated, mode of irrigation during normal and distress periods, permissible wells that could be sunk and the crops that could be cultivated.

Fishery Rights in Tanks

- **The Customary fishery rights were being enjoyed by village communities until 1912.**
- **Sec. 84 of Tamilnadu Panchayat Act 1958 conferred the fishing rights and right to auction the fish in the tank to the people**
- **Right to auction was taken away from the People's as per the Tamilnadu Panchayat Act 1994.**

Customs Prevailed in Water Scarce Areas Case of Mudukulathur Big Tank

- **The tank is situated in Mudukulathur block of Ramanathapuram district**
- **Command area farmers live in surrounding villages of Thoori and three others**
- **Thoori villagers used to maintain and manage till mid 1980s**

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Customs Prevailed in Water Scarce Areas Case of Mudukulathur Big Tank

- **They also mobilised money equal to the cost of labour to maintain feeder channel diverting water from Ragunatha cauvery river during October-December when monsoon flow occurred**
- **Two villages refused to pay in 1999. Thoori farmers refused to release tank water to these villages**
- **Argument put forth, “No payment for clearing the channel and hence no water for irrigation”**
- **Finally the two villages paid and got their share of water**

Customary Rights on Usufructs in Tanks and Conflicts : A Case of Athoor Pattadhar Sangham (APS)

- Athoor tank farmers enjoyed usufructory rights through their village committee even before 1900
- Three tanks in series namely Karunkulam, Pagadaikulam and Pulvettikulam were then under customary management of village committees

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Customary Rights on Usufructs in Tanks and Conflicts : A Case of Athoor Pattadhar Sangham (APS)

- **Customary rights followed by APS were:**
 - ✓ Irrigation rights as per the (customary) rules framed
 - ✓ Appointment of *Maniams* for irrigation
 - ✓ Fishing rights were enjoyed
 - ✓ Segment (*Kandam*) based Watch and Ward system established through appointment of guards.
 - ✓ Cattle rearing and recreational activities practiced
 - ✓ Auctioning right over the use of Threshing floor (*Kalam*) was exercised at the time of harvesting.

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Customary Rights on Usufructs Tanks and Conflicts

- The Government through its Assistant Director Fishery cancelled customary rights enjoyed by APS through Tahsildar during 1988
- APS lost its legal battle in Madras High Court after 10 years of its struggle during 1998
- Similar case was filed by Sithayankottai village farmers sangham in Madras High Court
- The case was dismissed and the government stand was upheld.

Encroachment & Right of Cultivators

A Case of Rasingapuram Tank in Theni District

- **Rasingapuram is a village panchayat in Theni district. It has a tank with a water spread area 5.17 ha**
- **Ten farmers encroached 3.70 ha from 1985 onwards**
- **DHAN Foundation facilitated promotion of Tank Farmers Association (TFA) Rasingapuram in 1999**
- **1.485 ha of encroached land was vacated by the TFA with the co-operation of district administration 1999-2000**
- **Remaining encroachers got interim injunction from Madras High Court during 2002 as the collector as the guardian of the tank could not attend the Court when called.**

Learnings

- Customary practices are still in vogue
- Customary Rights helped villagers to get revenue from usufructs
- Tank is a communal property and the state authorities are trustees to hold them for the benefit of community
- Encroachments in tank system is a serious offence and deserves to be seriously dealt with.
- The state cannot allow any act or omission which will infringe the right of the community

Way forward

- Existing laws and procedures to evict encroachments are cumbersome and need to be modified on the lines of reserved forest protection act
- Turnover of tank systems for local management by the community is imperative
- Customary usufruct rights enjoyed earlier by the local community need to be restored to enable the farmers to maintain the tanks effectively

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Way forward

- There is need for taking up similar grassroots research studies to identify successful customary practices and provide legal support for them.
- *Kudimarath* (Community *shramdan*) is expected to be revived as people will become the stake holders

Thank You