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# A Critical and Comparative Study on Encroachment Laws in India with special reference to Tamilnadu

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## ABSTRACT

*Encroachment on water bodies and poramboke lands has become a pressing socio-legal and ecological issue in Tamil Nadu. Tanks, lakes, and their feeder systems—once central to the State's water management—are increasingly occupied for residential, commercial, or agricultural purposes, leading to ecological imbalance, urban flooding, and water insecurity. This paper critically examines the historical evolution and constitutional validity of encroachment laws in Tamil Nadu, with special emphasis on the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007. Through an analysis of statutory provisions, key judicial pronouncements, and case studies, the paper highlights the tension between the right to livelihood of encroachers and the public trust doctrine obligating the State to protect commons. A comparative study with the Karnataka Lake Conservation and Development Authority Act, 2014 demonstrates differing institutional frameworks, penalty structures, and accountability mechanisms. The research concludes that while Tamil Nadu's legislative framework is adequate, its effectiveness is undermined by weak implementation, selective eviction practices, and lack of survey accuracy. The paper suggests preventive governance measures, officer accountability, ecological zoning, and rehabilitation safeguards to ensure sustainable protection of tanks and water bodies in Tamil Nadu.*

**Keywords:** *Encroachment, water bodies, lake conservation, ecological zoning, conservation and development.*

## I. INTRODUCTION

*“Thousands have lived without love,  
not one without water.” – W. H. Auden.*

The quote that is mentioned above connects in the way that I am here to explain how the Encroachment of tank land areas affects the people and the environment in the long run. Due to the over population, migration and other lower economical classes, people occupy in many of the

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unauthorised places such as mandaveli, meichakkal (for grazing purpose) and in other poramboke lands such as tank bund lands, lakes and around the other water bodies areas. This paper describes about the unauthorised occupancy in tank bund lands. The number of canals or lakes or reservoirs have been reduced in Tamil Nadu due to the unauthorised occupancies of the people.

On 2<sup>nd</sup> December 2015 Chennai flood was a remarkable incident that declared Chennai as disaster area, due to rainwater flooding all over Chennai. The majority people who lost their house, life and live hood are the ones who occupied near the canals and tank bund lands. Such incidents took only because of house site constructed in those places.

## **II. HISTORY AND CONSTITUTION VALIDITY OF LAND ENCROACHMENT LAWS IN TAMIL NADU**

During the colonial era, the British established many land revenue methods all over India; in Tamil Nadu (where Madras was the Presidency town), the **Ryotwari system** was primary. In this system, the individual landlord had a straight relationship with the state land revenue, and the state also reserved ownership rights. This set the base work for the latest land records and their categorization.

The land reforms led to certain developments post-independence, such as the abolition of zamindars, allocation of abundant land, and prevention of land grabbing and unauthorized occupation.

The Tamil Nadu land encroachment act 1905 was first established, to prevent the government land (poramboke land) to be unauthorizedly occupied, where it was said that any such barred occupation will be considered illegal, in such a case the respective authorities can serve a notice to those encroachers to evict from the said government land also fines or penalties may also be imposed on those encroachers if required. Such eviction procedure can also be done forcefully after the due procedure is carried out.

Succeeding the above, the Tamil Nadu Public Premises (Eviction of Unauthorized Occupants) Act, 1975 was introduced where it focused on the occupants if are in any of the government offices or in housing or in any other building and other public premises shall be asked to evict from the same and it applies specially only if the public property is involved.

Later, The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007 was established for the grounds to secure the water bodies like tanks and lakes from unauthorised encroachment. This act gave distinctive power to eliminate the encroachment from water

bodies that is said to be ecologically sensitive.

However, these encroachments laws should be consistent with the constitution principles. Laws like 1905 are said to be held valid as they are legalized by the legislature and give the due procedure, in case, if the eviction is done without proper chance to be heard or without any said procedure to be followed, then according to Article 300A – Right to Property (“**No person shall be deprived of his property save by authority of law.**”) it can be pulled over to court. It is to be noted that if there is any eviction on the selective base or under any discriminatory it can be challenged in court as it is violating Article 14 -Right to Equality. Thus, the supreme court in the case *Olga Tellis V Bombay Municipal Corporation* (1985) held that the encroachers also shall have the right to be heard before evicting them.

### III. LAND ENCROACHMENT ACT, 2007

This act enacted for the purpose of protection of tank from illegal encroachment and the eviction of illegal encroachment which comes under the control of Public Works department in the state of Tamil Nadu.<sup>2</sup>

#### A. Definitions under the Tamil Nadu land encroachment

Ayacut areas, means that such encroachment cannot take place near any kind of water resources that paves way for irrigation.<sup>3</sup> Field channel defines if any, is constructed on the areas that is meant for already existing or to be newly constructed for the purpose of distributing water resources respectively.<sup>4</sup> Field Drainage means that disposal of discarded water or the water that is superfluous.<sup>5</sup> Foreshore area defines that the place above the top level of the tank area.<sup>6</sup> Full Tank Level defines that peak level of water that is stored up to the cap of the excess wall.<sup>7</sup> Land defines that profit that is received from the earth or anything that is fastened forever which is not distant to the earth.<sup>8</sup> Supply Channel means that the channel that obtain water from the water sources and provide to the lower down tank.<sup>9</sup> Surplus weir defines that a mechanism that direct away the additional water not necessary to be in the tank and directs it to the river lower tank.<sup>10</sup> Tank Sluice defines that a emit that helps to provide for

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<sup>2</sup> The TamilNadu Protection of Tanks and Eviction of Encroachment Act 2007 (Preamble).

<sup>3</sup> The TamilNadu Protection of Tanks and Eviction of Encroachment Act 2007,s. 2(a).

<sup>4</sup> The TamilNadu Protection of Tanks and Eviction of Encroachment Act 2007,s. 2(b).

<sup>5</sup> The TamilNadu Protection of Tanks and Eviction of Encroachment Act 2007,s. 2(c).

<sup>6</sup> The TamilNadu Protection of Tanks and Eviction of Encroachment Act 2007,s. 2(d).

<sup>7</sup> The TamilNadu Protection of Tanks and Eviction of Encroachment Act 2007,s. 2(e).

<sup>8</sup> The TamilNadu Protection of Tanks and Eviction of Encroachment Act 2007,s. 2(g).

<sup>9</sup> The TamilNadu Protection of Tanks and Eviction of Encroachment Act 2007,s. 2(i).

<sup>10</sup> The TamilNadu Protection of Tanks and Eviction of Encroachment Act 2007,s. 2(k).

the supply of water from the tank.<sup>11</sup>

### **B. Power, appointment and reports of the Survey Officer**

A Survey can be done, according to Government, by the records that are available in the Revenue Department in regard to tanks in all districts for the cause of determining the limits for respected area and such that will be done with appropriate charts and registers, be arranged with accurate setting of the channel and all tank boundaries and other marks with all other subject required for the point of identifying such limits.<sup>12</sup> A Taluk Surveyor is also Survey officer who is appointed by the Government or any other officer who have the authority to appoint one such for the purpose for surveying the tanks in that particular precise local limit.<sup>13</sup> The Survey Officer will thus survey the tanks as its prescribed along with the assistance of officers from Public Work Department to have control above such tanks.<sup>14</sup> To Survey the tanks the Survey Officer along with assistance officers have the complete authority to enter into any land and to perform obligatory act.<sup>15</sup> Once the Surveying of Tanks is completed, the Survey Officer shall prepare the chart and register in respect to the tanks and submit such reports including the charts and register to officer from Public Work Department ensuring who have the control over the tanks, with all the mandatory marks required for the boundary specifications in regard to tanks must be clearly specified, also the respective officer to whom the report were handed over must, within a period of one month should publish a notice in respect to the tanks pointing out the boundaries limit.<sup>16</sup>

### **C. Eviction by Surveyor**

If the officer from the Revenue Department has the opinion that the any person has encroached the land belonging to the tank boundaries shall issue a notice to that respected person to evacuate, by calling the concerned person to evict the encroached area before the date mentioned the notice.<sup>17</sup> The respective officer with the help of Police assistance can eliminate the encroachment and take possession of the land belonging to the tanks and the Police Department are also obligated to provide the officers such assistance, only in the case if the person who encroached the tank land the refuse to evict.<sup>18</sup> If any crops or any other products are grown or raised up on the land belonging to the tank's or any building is

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<sup>11</sup> The TamilNadu Protection of Tanks and Eviction of Encroachment Act 2007, s. 2(n).

<sup>12</sup> The TamilNadu Protection of Tanks and Eviction of Encroachment Act 2007, s. 3.

<sup>13</sup> The TamilNadu Protection of Tanks and Eviction of Encroachment Act 2007, s. 4(1).

<sup>14</sup> The TamilNadu Protection of Tanks and Eviction of Encroachment Act 2007, ss. 4(2), (3).

<sup>15</sup> The TamilNadu Protection of Tanks and Eviction of Encroachment Act 2007, s. 5.

<sup>16</sup> The TamilNadu Protection of Tanks and Eviction of Encroachment Act 2007, ss. 6(1), (2), (3).

<sup>17</sup> The TamilNadu Protection of Tanks and Eviction of Encroachment Act 2007, s. 7(1).

<sup>18</sup> The TamilNadu Protection of Tanks and Eviction of Encroachment Act 2007, s. 7(2).

constructed or erected and anything deposited by the encroacher in the tank's land, such encroachment is not removed by the respective person even after the notice, then in such a case will be liable as forfeiture.<sup>19</sup>

#### **D. Encroacher offences and penalty:**

Any person whomsoever, without any lawful authority enter the land area in a water spread and at the foreshore areas or perform any crop cultivation or raise any plantation crops or cause damage to the tank's structure or interrupts the officers to perform their duty or block the way for passage of water to supply channels that lead to tanks by encroaching canal poramboke lands or do any act that damages the allocation and control structures of field channel or perform any damage that hinders the flow to field drainage system or use the water from the tank for cultivation by means of any electronic or mechanical device, are held to be convicted of offences and are punishable with imprisonment for a period of three months or fine of rupees five thousand or with both.<sup>20</sup>

#### **E. Protection for Encroacher:**

If a person is considered that he has done anything in good faith or proposed to be done in pursuance of this Act will be protected against suit, prosecution or any other legal proceedings.<sup>21</sup>

#### **F. Government power in the tank land encroachment:**

If the Government faces any difficulties to act in relation with the provisions under this Act, the Government shall publish in Tamil Nadu Government Gazette that such provision that seems to be not contradictory with provisions of this Act, as emerge to them to be compulsory or practical for removing the difficulties, also from the date of commencement of this Act there will not take place any order. Provided that no order shall be made after the expiry of a period of two years from the date of commencement of this Act. The State Government can also alienate any part of the poramboke land of the tank in good faith which is under the control of the Public Work Department for public interest but without disturbing the storage capacity of the tank. Thus, the State Government has the power to make rules for the purpose of tank and to carry out the same. Such rules and notifications made by the State Government will be published in the Tamil Nadu Government Gazette, once its published it comes into force. The rule or order or notification that issued will be thus comes to the Legislative Assembly table as soon as possible, ensuring it reaches the Legislative Assembly table before

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<sup>19</sup> The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act 2007, s. 7(3).

<sup>20</sup> The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act 2007, s. 8.

<sup>21</sup> The Tamil Nadu Protection of Tanks and Eviction of Encroachment Act 2007, s. 9

the session expires, where on the end of the session on which day it was placed or on the next succeeding session, any modifications to be done or to be accepted or not be accepted or to be annulled or such rules or order or notification should not be made or not to be issued will be discussed and it will be finalized leading to take effect or not and this take place with no prejudice of any act done according to the previous rules or order or notifications.

#### **IV. CASES RELATED TO LAND ENCROACHMENT IN TAMILNADU**

In the case *K.Lakshmanan v The District Collector*, it was held that the petitioner has filed writ against the Collector for ordering him to evacuate from his residing area, as many other localities have occupied the same land but only it was ordered only to him to evacuate who is living in a small space for his live hood. The Additional Government Pleader, Counsel for the respondent contented that the writ petition cannot itself be maintained as the notice to the petitioner was passed by following the procedures as mentioned in the Tamilnadu Encroachment Act 1905. The part of the land that the petitioner has encroached is classified as “Sakkilikutai”, said to be a water body and as per the judgments of the court, there cannot be any encroachment on any water body and water resources. Thus, the court ordered the respondent The District Collector to take position of such encroached land under its control by issuing notice / circulars/ instructions to all the concerned officials to take immediate action to evict all the encroachers in

Government Pormboke Lands, water bodies and water resources under his jurisdiction by following the rules and procedures according to the Tamilnadu Encroachment Act 1905 or Tamilnadu Protection of Tank and Eviction of Encroachment Act 2007.<sup>22</sup>

As well in the case *T.S.Senthilkumar v The Government of TamilNadu* February 10, 2010 a writ petition has been filed by the petitioner stating to declare null and void of Section 4,5,6,7,8,9 and 10 of the Act as it is contrary to Article 14 of the Indian Constitution and also to cancel or repeal the order passed by the Water Resources Organization and Public Work Department. In this case, it was said that the petitioner's side was not heard before issuing the eviction notice by the Executive. The respondent counsel mentioned that as cited in the case *L.Krishanan v State of Tamilnadu* AIR 2005 Madras 311, right to water is a part of right to life which is guaranteed under Article 21 of Constitution of India and if at all any encroachment upon such water bodies create any act that can make cost that will be distressing to life of the people. Thus, tanks and other tank poramboke lands will surely

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<sup>22</sup>*K.Lakshmanan v The District Collector* 2019, <https://indiankanoon.org/docfragment/57781911/?formInput=tamil%20nadu%20land%20encroachment%20act%20%20doctypes%3A%20judgments>.

require protection from encroachment. As such, to have a development in the economy, without compromising the natural resources of the earth such development must evolve for future generation. Finally, the court held that the State Government have the full power and authority to remove the encroachers from encroachment but at the same time to follow the procedures as mentioned in the Act. It was also stated that the principle of natural justice was not excluded and it is not mentioned in any part of the Act the encroachers need not to be heard or they have no right to be heard. The collectors of the respective jurisdiction are put under strict rules to be followed, that to take necessary steps to prevent and protect the water bodies and its land areas in order to promote village. Therefore, it is the duty of every citizen to no to encroach such tank poramboke land areas. Also, the state will make sure that the tank poramboke land will not be taken away for the public interest as mentioned Section 12 of this Act. The state must hold high weightage in protection of the water bodies and its tank land areas instead of permitting house sites or any other buildings to come up. The court also stated that when the notice issued by officers of the Public Work Department, the notice should also be given to the encroacher if any part by him has been encroached. Once the notice is issued the encroacher must give a reply notice within the period of two weeks if any objections from the date of notice issued. Therefore, after considering the objections, the authorities shall take appropriate actions and shall pass the order to the encroacher to remove the encroachment.<sup>23</sup>

## V. COMPARATIVE STUDY ON LAND ENCROACHMENT ACT

When we look into The Karnataka Lake Conservation and Development Authority Act, 2014; Section 14- ***Acts prohibited in lakes*** of the act says that no person, institution, organizations, company, firm, association, government departments, corporation, any local, or other authority and their agents or employees or anybody on their behalf shall not use the lake for any other purpose other than storing water or to incarnate the water. It is to be noted that even any form of construction of structures on the land or any occupancies of the lake land or a part of such land which might affect the normal and natural ingress and egress of water flow shall be forbidden.

If any commercial or any industrial activity or any house construction is to be constructed and carry on such kind of land, then it need to be done so only after informing the government and with a certain distance from the lake land or the bund. Dumping debris, municipal solid waste, mud or earth, soil, or liquid pollutants into the lake with the help of vehicles shall not be encouraged. It is forbidden to dispose of any kind of untreated sewage directly or indirectly

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<sup>23</sup> <https://leap.unep.org/en/countries/in/national-case-law/ts-senthil-kumar-vs-government-tamil-nadu>.



into the lake. Even for the future development process, any form of road or bridges likewise structures, are banned in such lake lands. On the other hand, this act shall not prohibit people from using the water from lakes for drinking or for irrigation purpose or for any other human consumption, also this act shall not ban for stocking fish seeds and for development of fisheries.

Section 15 – Protection of Lakes: The Authority can direct any officer of the government or any other local authority who are the custodian or the one who is in control of the lake permanently to restrict and to take necessary measures as it requires at their own cost to remove any encroachment or any occupation to prevent its habitation. Thus, the Authority may also by order specify any lake as a heritage lake or bio-conservation lake or protected lake, or conserve it for any special purpose in view of its historical, ecological or environmental importance and protect from being put to any other alternate use and may specify its application, if needed.

Section 16 - Seizure of property liable for confiscation: It is also said that if there is any reason to believe that there exists a reason which is offence and punishable under this Act, which include any instrument, implement, machinery, device, tool, boat, vehicle or any other material or object then the designated officer can seize the same. Such offender will be produced before the Magistrate of the respective jurisdiction to try the offence for which the seizure is made.

Section -25. Penalty for contravention of section 14, in order if any one contravenes section 14, he shall be imprisoned for a period of not less than 3 years, which can also extend up to 5 years and also with a fine up to ten thousand, which may also extend up to twenty thousand.

Section 27 Penalty for failure to report unlawful occupation of lake. - If the respective officer or the authorized person who is in charge of such poramboke lands if fails to report to the Government about the unauthorized occupation, he shall be imprisoned for a period of one year with a fine of rupees ten thousand.

## **VI. CONCLUSION**

The research was started for the study of the Laws, Rules, Cases related protection of tanks and the Eviction of Encroachment of tank lands. While seeing each part of the laws under the Encroachment Act, it is clear that the State has given the obligatory power to the authorities who are in charge of or the one under whose control such tank lands are to be saved, maintained, and protected for future welfare. The Tamil Nadu State Government has given the Revenue Department to perform their duty with no disturbance, if any, from the side of

encroachers, or if any, the Revenue Department can proceed with their duty or action with the help of the Police Department.

## **VII. SUGGESTION**

- 1) The State laws although strict with evacuating the encroachers if they encroach any tank land, steps can be taken to ensure there can be no initiation to do such acts, such as a regular inspection by the Government Officials like VAO and RI have to regulated in each of the jurisdictions.
- 2) If such Officers suspect that there is any encroachment on the said lands, they shall ask the Government Surveyor to measure the same within certain periods.
- 3) The Local Authorities, such as the President or the Chief of the Grama Panchayat or municipality, or the corporation, must have a regular site visit and must give awareness about not occupying the tank lands.
- 4) It should be laid down that any unauthorized occupancy either as building or as cultivation or any other form by the encroachers has been spotted out and if the Authorities or Officials (President or VAO or RI) haven't taken action against it to save the tank lands within due excuse time, a Law must be enacted stating that, such Authorities will be removed immediately from their positions and De-barred from further two elections and the Officials will be suspended for 3 year with fine.
- 5) If the Surveyor measured the land inaccurately, he shall also be suspended for one year with fine.

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