
THE JURISPRUDENCE AND IMPLEMENTATION OF THE TAMIL NADU LAND ENCROACHMENT ACT, 1905: A CRITICAL ANALYSIS WITH SPECIAL REFERENCE TO WATER BODIES

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The statutory landscape governing the protection of public lands and hydrological commons in Tamil Nadu is anchored in a century-old legislative framework that has evolved from a revenue-centric colonial instrument into a vital tool for contemporary environmental conservation. The Tamil Nadu Land Encroachment Act, 1905 (originally the Madras Land Encroachment Act, 1905), remains the primary legal mechanism for defining state ownership and the summary eviction of unauthorized occupants from government-held territories. This legislation, while venerable, operates within a complex ecosystem of subsequent laws, administrative manuals, and a robust body of judicial precedents that have increasingly prioritized the "Public Trust Doctrine" over individual possessory claims. The following analysis provides an exhaustive examination of the implementation of the 1905 Act, with a specific focus on its application to waterbodies—tanks, rivers, lakes, and channels—which have become the front line of legal and ecological battles in the state.

Historical Evolution and the Legal Ontology of State Property

The enactment of the Tamil Nadu Land Encroachment Act, 1905, was a response to the legal ambiguities surrounding the state's power to check unauthorized occupation. Before 1905, the government relied on penal assessments to discourage encroachers, but judicial decisions like *Madathapu Ramaya v. The Secretary of State for India in Council (1904)* questioned the validity of such assessments as a form of land revenue. Consequently, the 1905 Act was drafted to provide a statutory basis for declaring state ownership of all lands not held under private title and to establish a summary procedure for eviction.

Section 2 of the Act serves as the foundational declaration of property rights. It vests in the government all public roads, streets, lanes, paths, bridges, and critically, the "bed of the sea

and of harbours and creeks below high water mark, and of rivers, streams, nalas, lakes and tanks". This vesting is absolute, save for lands held under specific tenures such as ryotwari, or those belonging to zamindars and inamdars—tenures that have largely been abolished and converted into ryotwari holdings through post-independence reforms.

Statutory Provision	Subject Matter	Functional Impact on Waterbodies
Section 2(1)	Declaration of Property	Explicitly includes beds of rivers, lakes, and tanks as government property.
Section 2(2)	Local Authority Vesting	Deems roads and streets vested in local authorities as property of the Government for Act purposes.
Explanation to Section 2	High Water Mark	Defines the highest point of ordinary spring tides, setting the boundary for coastal state property.
Section 3	Levy of Assessment	Authorizes the collection of revenue from unauthorized occupants without conferring title.
Section 7	Notice Requirement	Mandates a show-cause notice before any summary eviction proceeding can commence.

The legal definition of the "High Water Mark" provides a precise hydrological boundary for state jurisdiction, ensuring that the interface between land and sea—or riverbanks—remains under public control. However, the Act acknowledges that this state ownership is subject to all rights of way, natural easement rights of other landowners, and legally subsisting customary rights. This duality creates a tension between the state's role as a proprietor and its duty as a trustee of the commons.

Administrative Framework and the Lifecycle of an Encroachment

The implementation of the 1905 Act is a multi-stage process involving officials from the village level to the district collectorate. The practical application of the Act relies heavily on the "B-Memo" procedure and the instructions contained in Revenue Standing Order (RSO) 26.

The Role of the Village Administrative Officer and the B-Memo

The detection of an encroachment typically begins with the Village Administrative Officer (VAO). When the VAO identifies an unauthorized occupation of government land, they are required to book a "B-Memo". This memo serves as the primary intimation to the Tahsildar

regarding the encroachment. It details the survey number, the extent of the land occupied, the nature of the occupation (residential, agricultural, or commercial), and the identity of the encroacher.

The B-Memo system, however, has become a double-edged sword. While intended as a tool for revenue collection from trespassers, the continued payment of penal assessments (as recorded in B-Memos) is often misinterpreted by occupants as a sign of government recognition or a pathway to eventual regularization. Courts have repeatedly clarified that the issuance of a B-Memo and the subsequent payment of penalties confer no proprietary rights, no right to patta, and do not extinguish the state's power to evict.

Procedural Due Process: Sections 7 and 6

The 1905 Act provides for a summary eviction procedure, but this must adhere strictly to the principles of natural justice. Section 7 requires the authorized officer to serve a notice specifying the land occupied and calling on the occupant to show cause why they should not be proceeded against under Section 6.

Procedure Phase	Responsible Officer	Legal Action
Initiation/Notice	Revenue Inspector / Tahsildar	Serving Section 7 notice and receiving the show-cause response.
Final Order	Tahsildar / Deputy Tahsildar	Passing a reasoned order for eviction under Section 6 after considering the response.
Physical Eviction	Revenue Subordinates / Police	Summary removal of the occupant and forfeiture of structures or crops.
Inquiry into Resistance	Collector / Authorized Officer	Conducting a summary inquiry if the eviction is obstructed, with powers of arrest.

A critical insight into the failure of the Act’s implementation is found in the administrative delays. The summary procedure was intended to be swift, but the manual verification of boundaries, the requirement for reasoned orders, and the potential for prolonged litigation in the High Court under writ jurisdiction often stymie the process. Furthermore, audit data suggests that the lack of coordination between the Revenue Department—which holds the

records and handles the eviction—and other departments (like the Public Works Department or Highways) that physically manage the land leads to a state of systemic paralysis.

Hydrological Governance: The 2007 Act as a Specialized Instrument

The 1905 Act is a general law applicable to all types of government land. However, the specific ecological sensitivity and public importance of water storage systems led to the enactment of the Tamil Nadu Protection of Tanks and Eviction of Encroachment Act, 2007. This Act was designed to complement the 1905 Act by providing more rigorous mechanisms for identifying and protecting tanks under the control of the Public Works Department (PWD) or Water Resources Department (WRD).

The Distinction in Scope and Authority

While the 1905 Act covers all waterbodies generally, the 2007 Act focuses specifically on "tanks" and their associated infrastructure, including supply channels, surplus weirs, and tank bunds. A primary innovation of the 2007 Act is the mandatory involvement of a "Survey Officer" to delineate tank boundaries using original revenue records.

The 2007 Act requires the Survey Officer to prepare a chart and register of the tank, which is then handed over to the PWD/WRD. Within one month of receiving this report, the department must publish a notice regarding the tank boundaries. This structured transparency is intended to prevent the "creeping encroachment" that often occurs when boundaries are ill-defined or unmarked.

Jurisdictional Conflicts and Statutory Gaps

Despite the introduction of the 2007 Act, implementation has been hampered by jurisdictional ambiguity. WRD officials have argued in exit conferences with audit bodies that they lack independent powers to evict encroachers from rivers, as the 2007 Act is technically restricted to "tanks". For rivers like the Adyar and Cooum, the department must rely on the 1905 Act, necessitating a coordinated effort with the Revenue Department and the police—a collaboration that frequently fails to materialize.

The 2017 CAG Performance Audit highlighted that while 69% of sampled tanks were found to be encroached, the department had completed the survey for only 35% of the total tanks in

the state. This "knowledge gap" is a primary enabler of unauthorized occupation; if the state cannot define the limits of its own property, it cannot effectively challenge those who trespass upon it.

Judicial Interventions and the Rise of Environmental Constitutionalism

The Madras High Court has been a pivotal force in reshaping the application of the 1905 Act, moving it away from a simple property-management statute toward a tool for upholding the fundamental right to life and a healthy environment under Article 21 of the Constitution.

The Public Trust Doctrine

The judiciary has increasingly invoked the "Public Trust Doctrine," which posits that the state is not a mere owner of natural resources but a trustee for the public. In the landmark case of *L. Krishnan v. State of Tamil Nadu (2005)*, the court emphasized the imperative to protect waterbodies from encroachment to maintain ecological balance. This reasoning was further solidified in *T.K. Shanmugam v. State of Tamil Nadu (2015)*, where a Full Bench ruled that even waterbodies that have lost their original hydrological characteristics cannot be regularized or granted patta.

The court's analysis in *T.K. Shanmugam* directly challenged the government's attempts to provide one-time regularization schemes for residential encroachers. The court held that such Government Orders (G.O.s) violated the state's duty to preserve natural resources for future generations and potentially exacerbated the state's chronic water scarcity.

Summary of Key Judicial Precedents

Case Law	Core Legal Principle	Practical Implication
<i>L. Krishnan v. State of TN</i>	State's duty to protect waterbodies.	Mandatory restoration of waterbodies to their original survey state.
<i>T.K. Shanmugam v. State of TN</i>	Non-regularization of waterbody lands.	Struck down G.O.s allowing patta for encroachments on dried-up tanks.
<i>Jagpal Singh v. State</i>	Protection of	Authorized eviction of even long-standing

Case Law	Core Legal Principle	Practical Implication
<i>of Punjab</i>	communal/common lands.	encroachments on public commons.
<i>T.S. Senthil Kumar v. Govt of TN</i>	Mandatory Survey and Demarcation.	Directed the state to identify and restore water resources as per the 1923 survey.

The judiciary has also taken a firm stance against the interference of civil courts in waterbody evictions. In several Public Interest Litigations (PILs), the High Court has directed that no civil court shall entertain suits or grant injunctions that prevent the removal of encroachments from waterbodies, urging that any grievances be addressed through administrative appeals as provided under the Act.

Administrative Performance and Systemic Failures: Audit Insights

The Comptroller and Auditor General (CAG) of India has conducted several performance audits that reveal a stark disconnect between the statutory framework of the 1905 Act and its practical efficacy.

The 2015 Floods and the "Man-Made" Disaster

The 2015 Chennai floods served as a catastrophic validation of implementation failures. Audit reports indicated that significant portions of the Adyar and Cooum riverbanks were encroached, reducing the rivers' carrying capacity. For instance, at the Maraimalai Adigalar Bridge, 9 out of 12 vents were obstructed by encroachments during the floods, causing the river to overflow.

River System	Bank Encroached	Length	Population / Families Affected	Audit Observation
Adyar River	30.2 km (36%)		9,539 families	Encroachments reduced width and carrying capacity.
Cooum River	22.7 km (28%)		14,257 families	Negligible eviction progress despite post-flood drive.

The 2017 Audit Report (General and Social Sector) provided even more granular data on the state's inability to reclaim land. Between 2011 and 2016, only 5,302 hectares (9.8%) of

encroached land were retrieved out of a total 54,401 hectares identified under encroachment in eight sampled districts. Waterbody encroachments accounted for 49% of all "objectionable" encroachments, yet the High-Level Committee at the state level—tasked with monitoring clearance—had not met since February 2010.

The Paradox of Utility Provisioning

A major hurdle in the implementation of the 1905 Act is the state's internal contradiction: while the Revenue Department issues eviction notices, other government agencies provide the encroachers with roads, electricity, water supply, and ration cards. This "tacit support" legitimizes illegal settlements in the eyes of the occupants and makes physical eviction politically and socially difficult. Furthermore, government agencies themselves have been identified as encroachers, constructing public buildings on grazing lands or waterbodies instead of undertaking the formal process of land acquisition.

Socio-Legal Dimensions: Resettlement and Human Rights

The eviction of thousands of families from riverbanks and waterbodies is not merely a legal procedure but a massive social undertaking with significant human rights implications. The 1905 Act's focus on "summary eviction" does not account for the modern state's obligation toward resettlement and rehabilitation (R&R).

The TNUHDB and Resettlement Policies

The Tamil Nadu Urban Habitat Development Board (TNUHDB), formerly the Slum Clearance Board, is responsible for rehabilitating evictees. The state has introduced several policies, including the "Tamil Nadu Affordable Urban Housing and Habitat Policy (2020)," which aligns with the central government's *Pradhan Mantri Awas Yojana* (PMAY).

Standard Resettlement Package for Waterbody Evictees:

- **Housing:** Allotment of tenements in resettlement sites like Perumbakkam, Navalur, or Keerapakkam.
- **One-time Grant:** ₹5,000 as resettlement assistance.
- **Livelihood Support:** ₹2,500 per month for one year.

- **Utility Assistance:** ₹2,500 for electricity connection grants.

The Human Rights Critique

Despite these provisions, academic and NGO studies have highlighted severe violations of the rights of the urban poor. The remote location of resettlement sites (often 20-30 km from the original site) leads to massive livelihood loss for those employed in the unorganized sector. Education is also impacted; studies found a 16% school dropout rate in resettlement colonies due to inadequate local school facilities.

The Madras High Court has intervened to ensure that evictions are humane. In *T.K. Shanmugam*, the court observed that while the state must protect waterbodies, it must also bring out schemes to rehabilitate the poor and downtrodden rather than simply condoning their trespass or leaving them destitute. Recent government directives (such as G.O. Ms No. 64 dated 08.02.2022) have established State and District Level Steering Committees to monitor both the removal of encroachments and the compliance with R&R protocols.

Specialized Conflict Zones: Temple Lands and Grama Natham

The implementation of the 1905 Act faces unique challenges when dealing with lands historically associated with religious institutions or communal habitation.

Temple Poramboke vs. Temple Site

Under Section 2 of the 1905 Act, "temple sites" are generally exempted from being declared government property for the purpose of the Act. However, a critical legal distinction exists between a "Temple Site" (the actual building and its appurtenances) and "Temple Poramboke" (land earmarked for the temple's use or festivals).

Courts have held that "Temple Poramboke" continues to be a category of poramboke property under government control and is thus amenable to the provisions of the 1905 Act. This allows the state to evict individuals who have encroached on land classified as temple poramboke, even if they have worshipped there or paid penalties for years. The Hindu Religious and Charitable Endowments (HR&CE) Department is often the primary actor in identifying these encroachments, although they frequently rely on the Revenue Department for physical eviction.

Religious Property Issue	Legal Resolution	Statutory Authority
Encroachment on Water body Bund	Temples built on bunds are not immune; Places of Worship Act (1991) does not protect trespass.	TN Local Bodies Act / 1905 Act.
Influential Encroachers	230 identified on Karur temple land, including 27 govt officers and 49 industrialists.	Contempt proceedings in Madras HC.
Decline in Land Extent	State temple lands reduced by ~47,000 acres between 1986 and 2009.	HR&CE Policy Notes.

Grama Natham: The Non-Vesting Exception

Another significant area of conflict involves "Grama Natham" lands—historical village residential sites. The High Court has consistently held that Grama Natham lands do not vest in the government and are not subject to the 1905 Act. Because the government does not own these lands in proprietary right, it cannot invoke summary eviction procedures under the Act. However, this exemption is strictly limited to residential use by the landless poor; the use of Grama Natham for commercial purposes or by those already possessing property is treated as a violation of Revenue Standing Orders, potentially leading to eviction.

Integrated Restoration Projects and Future Trajectories

To move beyond reactive evictions, the Government of Tamil Nadu has initiated large-scale river restoration projects, such as the "Integrated Cooum River Eco-Restoration Project" and the "Adyar River Restoration Project". These projects are coordinated by the Chennai Rivers Restoration Trust (CRRT) and involve multiple "line departments".

Project Components and Implementation Status

The restoration projects attempt to combine the summary powers of the 1905 Act with modern environmental engineering.

Work Component	Responsibility	Status (2021-2022)
Desilting / Baby Canals	WRD / PWD	~100% complete in many stretches.
Interceptors / STPs	CMWSSB	Multiple modular STPs under construction (65%-92% complete).
Fencing / Waste Removal	GCC / Local Bodies	Over 23 km planned; ~50%-70% completion in many zones.
Resettlement	TNUHDB	~12,300 of 14,257 identified families resettled from Cooum.

The future of encroachment management in Tamil Nadu lies in the digitization of land records through the Digital India Land Records Modernization Programme (DILRMP). By linking digitized maps with ground surveys and satellite imagery, the state aims to create a "tamper-proof" record of its waterbodies. However, the audit reports warn that technology alone is insufficient without a supportive legal and administrative framework that ensures "B-Memos" are booked accurately and that eviction notices are followed through with physical recovery and protection of the land (e.g., through fencing or green buffers).

Conclusion: The Path to Systemic Reform

The Tamil Nadu Land Encroachment Act, 1905, remains a robust and necessary piece of legislation, yet its implementation is currently caught in a cycle of administrative inertia and judicial correction. The transformation of the Act from a revenue-collecting device into an environmental-protection tool has been largely driven by the Madras High Court's insistence on the Public Trust Doctrine.

To achieve meaningful restoration of waterbodies, the state must move beyond ad-hoc evictions and address the following systemic gaps:

1. **Mandatory Survey and Demarcation:** The survey requirements of the 2007 Act must be extended to all waterbodies, including rivers, and boundaries must be fixed with permanent markers to prevent re-encroachment.
2. **Unified Command:** The jurisdictional friction between the Revenue and Water Resources Departments must be resolved, possibly through a single authority

empowered to manage and protect all state hydrological assets.

3. **Digital Transparency:** Public access to land records and encroachment data can act as a check on local-level corruption and the "tacit support" provided by utility agencies to illegal occupants.
4. **Humane Urbanism:** Resettlement policies must prioritize the retention of livelihoods and access to essential services, ensuring that the poor are not disproportionately burdened by the state's ecological priorities.

In the face of increasing urban flooding and water scarcity, the rigorous and fair implementation of the 1905 Act is no longer merely a legal requirement; it is a fundamental pillar of the state's climate resilience and hydrological security.