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Although it is commonly believed that tradition and custom governed the ancient irrigation system and the methods of cultivation under each tank, historical findings from ancient times show the contrary:

The "Kondovattana" pillar inscription describes certain basic instructions laid down by the King which all farmers had to adhere to. Certain 10th century scripts like the "Wevelkotiya" slab and the "Horabora" pillar inscriptions also prove that instructions were given regarding water management and cultivation methods. This goes to prove the point that the farmers had to adhere to certain laws laid down by the King or the Chieftains. The adherence to these laws, from generation to generation, resulted in the birth of customs and traditions. All this gave ancient irrigation systems a discipline which the people continued to follow up to the British times.

It was Mr Bailey who identified the ancient irrigation system in the country, as well as the customary laws, and suggested that the system be immediately revived. As a result of submissions made by him the British Government took an interest in drafting the first Irrigation Ordinance of this country which was passed in 1856 described as "an Ordinance to facilitate the revival and the enforcement of ancient customs regarding irrigation and cultivation of paddy lands".

The main object of this enactment was:-

- (a) To revive the enforcement of ancient customs regarding irrigation and
- (b) To remedy the defects and remove delays in the settlement of differences and disputes among cultivators relating to water rights etc.

This Ordinance, for the first time in this country, recognized the rights of the proprietors of paddy lands. This law also made provision for proprietors in each Korale to appoint a Committee of five persons at a duly attended Meeting, and this Committee was given the Authority to draw

up a set of Rules which embodied the customs of each Korale. There was also established a Village Council presided over by the Assistant Government Agent which had the power to impose a fine for all irrigation offences. As a result of these two, paddy cultivation in this country underwent a dramatic change, in bringing tradition into law. Both under this law and under subsequent amended irrigation laws, each Korale duly Gazetted its set of Rules for paddy cultivation. It is ironic that these Rules passed as far back as the 1890s still form the basis for ordinary paddy cultivation in this country.

The first Paddy Cultivation Ordinance was amended in 1867 in order to extend its operations. This was followed by another amending Ordinance in 1889 which was termed as an "Ordinance relating to the irrigation and cultivation of paddy, No. 23 of 1889". This Ordinance is important because it laid down and expanded some of the principles enunciated by the earlier acts, namely:

- (a) The creating of an Irrigation Board, and an Irrigation Fund;
- (b) The demarcation of Irrigation Districts and the drawing up of Irrigation Rules;
- (c) The appointment of the Irrigation Headmen and the powers and duties of such Headmen;
- (d) The establishment of Village Councils to enforce the irrigation rules;
- (e) The construction, repair and improvement of irrigation works, and the procedure for recovery of costs for such expenditure incurred;
- (f) The Government Agent was empowered to implement the provisions of the law relating to the obstruction of channels, water courses, ponds and tanks.
- (g) The Government Agent was empowered to seize and sell land, crops, produce and movables in case of default.

As one would notice, this Act actually enunciated in a perfect manner the basic Irrigation Law of this country and the subsequent amendments to this Ordinance, in 1901 and 1917, were more to elaborate the provisions laid down in this law. In fact, the amending Irrigation Law of 1901 was described as: "an Ordinance to amend the

Irrigation and Paddy Cultivation Ordinance of 1889 and 1892" and was also to be construed and read as one with the Ordinance of 1889 and 1892. The 1901 Ordinance did one important change in interpreting the appropriate words to include "the cultivators" and also the actual persons on such land, and it went on to define such person as "any person nominated by the Government Agent to represent the Crown when Crown lands are benefited by such irrigation works", thus providing persons in occupation of colonization lands also to be defined as "proprietors". This Act also provided for the utilization of funds for the erection, construction, completion and restoration and maintenance of irrigation works which benefit Crown land. Any person who willfully or maliciously encroaches or obstructs any irrigation tank, canal or water course or damages its pond would be guilty of an offence and also all persons who waste water conserved by irrigation works or illegally draws water from such irrigation works, if found guilty, is liable to a punishment of 06 months rigorous imprisonment or a fine of Rs.100/- or both. There was also provision to impose a double water rate on people who waste water.

The 1917 Ordinance, once again, elaborated some of the above clauses and made the punishments for offences more effective. One important aspect of punishing persons for irrigation offences at the earlier Village Councils or the subsequent Village Tribunals was that no lawyers were allowed to appear before these Courts. The Ordinary man was, therefore, not at the mercy of lawyers but would get a fair hearing from the officials who not only enforced law but often provided the remedial action to solve the problems of the peasants.

The role of the irrigation Headman who replaced the original "gamarala" in the ancient system was one of the keynotes of the new Irrigation Ordinance. The irrigation Headman was a peasant elected by the proprietor and duly approved by the Government Agent. His powers and duties were clearly laid down under law. For any omissions on his part he was also liable to punishment. He was the king-pin of the village irrigation system under tank cultivation. He was also respected but at the same time the proprietors had the right to petition against him to the Government Agent for misconduct and inefficiency.

The tank files in the N.C.P. show many instances where the Government Agent, after due inquiry, had removed the "Vel Vidane" and allowed the proprietor to elect a new person. With the decline of this institution one could see the bureaucratic element replacing the village leaders, and most "Vel Vidanes" came to be appointed by the Government Agent even without reference to the proprietors.

The Amending Act of 1956, once again, consolidated the law relating to irrigation. The most outstanding features of this Act are as follows:

- 1) The establishment of District Agricultural Committees (D.A.Cs). These Committees were set up for each administrative district under the Chairmanship of the Government Agent. The other Members of these Committees consisted of Government officials in the District connected with Agricultural development, like for example: the Director of Irrigation, the District Agricultural Extension Officer,

Assistant Commissioner of Co-operative Development, the Assistant Commissioner of Agrarian Services, the Assistant Commissioner Marketing, etc. and representatives of such interests pertaining to agriculture.

- 2) The establishment of Advisory Committees for each Scheme.
- 3) The definition of powers of Irrigation Headmen.
- 4) Matters relating to the construction and maintenance of irrigation works, and the protection of such irrigation works.
- 5) Offences pertaining to the above which could be taken to Rural Courts under the Rural Courts Ordinance. The Rural Courts were also given added powers regarding the prosecution of persons for irrigation offences.

The changes that were brought after 1956 like, for example, the introduction of the Paddy Lands Act of 1958 and the social changes connected with the new Government, including the implementation of the Paddy Lands Act, brought about an

impact on the Irrigation Ordinance for, this Act eliminated the post of "Vel Vidane" (Irrigation Headman) and established Cultivation Committees in its place. The Cultivation Committees were farmer-elected organizations and all activities connected with the maintenance of irrigation works, and the implementation of Irrigation Rules came to be vested in these new organizations. As we are now aware, the Cultivation Committees had to face many problems, both legal and other, and this resulted in a breakdown in the rural irrigation sector. The Irrigation Headmen were not there and the new organizations (Cultivation Committees) could not replace the Irrigation Headmen for some time. However, in 1961 some of the major legal defects of the Irrigation Ordinance were overcome. It was also found that there existed a number of contradictions between the Paddy Lands Act and the Irrigation Ordinance of 1956. The only way to overcome these contradictions was to amend the Irrigation Ordinance, and, once again, this was done in 1968. However, before the amended Irrigation Ordinance of 1968 was passed the Government, in order to overcome some of the defects, Gazetted the Emergency (Irrigation Ordinance Modification) Regulations under Section 5 of the Public Security Ordinance.

For nearly two years the Irrigation Ordinance operated under the Public Security Ordinance and with the lifting of the Public Security Ordinance, the Act of 1968 was formally passed. The new Irrigation Act included in it a major part of the law pertaining to many irrigation schemes.

One of the main changes under this law is the power given to the Commissioner of Agrarian Services to supervise and control Government Agents in the exercise and discharge of their duties and powers under the Irrigation Ordinance. The Commissioner of Agrarian Services was put in charge of the Paddy Lands Act and the purpose of granting this power to him was to co-ordinate the activities of the two Acts. The new Ordinance also provided for the grant of special powers to Cultivation Committees and their agents in all matters connected with irrigation. The irrigation agents appointed by the Cultivation Committees took over the powers of the Irrigation Headmen under the earlier Act.

In 1972 the Paddy Lands Act of 1958 was completely taken off the Statute Book and in its place was introduced the Agricultural Productivity Act of 1972, and the Agricultural Lands Law of 1973. In place of the Cultivation Committees the Agricultural Productivity Committees came into being. The concept of the new laws was different from that of the original Paddy Lands Act and this resulted, once again, in a number of contradictions between the new laws and the Irrigation Ordinance of 1968. As a result of these problems the Irrigation Ordinance, again, failed to rise up to solve the problems connected with the maintenance of irrigation works and the punishment of defaulters for any offences.

Also, another change took place somewhere in 1975 when the Rural Courts came to be abolished and all jurisdiction under them was passed over to the Magistrates Courts. This created further problems for the farmers and officers concerned with irrigation matters: Instead of settling most problems at the village level they now had to go before a Magistrate and retain lawyers which made the exercise difficult and costly. In the meantime, there was a complete breakdown in rural areas, and the Government started drafting a new Irrigation Ordinance to fit into this new situation.

A new Irrigation Ordinance was drafted and was almost tabled before Parliament in 1977 when Parliament was prorogued and this Act therefore lapsed.

With the new Government coming in in 1977, the Agricultural Lands Law was replaced and the Agricultural Productivity Law replaced by the Agrarian Services Act of 1979. With the new changes under the Agrarian Services Act, the Agrarian Services Committees replaced the Productivity Committees and with this, further complications have arisen in the rural sector. The original Irrigation Ordinance of 1968 is still valid. The institutions in that Act such as Cultivation Committees and the powers of the Agrarian Services Commissioner pertaining to irrigation are no longer valid or useful. The time has now come for the need for a new Irrigation Ordinance to replace the earlier Acts based on the new thinking and the institutional changes that have taken place in this country since 1977.