Ganesh Idol Immersion & Water Pollution in the State of Maharashtra: an Action Plan

Chapter 1:
Water is the most essential necessity of life. It surpasses any other single commodity in general use by the mankind. It is considered that human life cannot be sustained longer than a fortnight without water.

Water is strength of the plant and a source of energy for living organism. One of the ancient description of water is "Jeevan" It means life.

Due to rapid urbanization, municipal bodies face many problems like collection treatment and disposal of water waste, solid wastes, biomedical waste, plastic waste etc. Most of the waste water generated by local bodies is disposed of either on land or into surface water. Land Disposal causes ground water pollution whereas the disposal into surface water affects aquatic life. The article focused on the main pollution which is caused by the Plaster of Paris Ganesh idols & chemicals paint by Ganesh idol Immersion during Ganesh festival in Maharshtra Rivers & make alternative arrangement & river pollution.

About 42% of the state's pollution (9.69 crores) lives in urban areas. There are now 22 Municipal corporations, 221 Municipal Councils and seven Cantonment Boards in the State of Maharashtra. The volume of water effluent generated from Municipal Corporations is approximately 45, 62,680 m/ day.

II. Objective
1. To critically analyse the Legislative provision on water pollution in India.
2. To study the Judicial Decisions relating to water pollution
3. To study the problem of Ganesh idol Immersion during Ganesh Festival in Maharashtra rivers & make alternative recommendations.

III. Methodology:
The research study is based on doctrinal method. This is widely in legal research. Doctrinal research asks what the law is on a particular issue. This research mostly focused on the study of law and legal authority.

IV. Scope
The article is based on the critical analysis of legislation relating to prevention & Control of Water Pollution. The research study discusses the effect of Ganesh idol immersion on water & made recommended the action plan to prevent & control of water pollution.

Chapter 2: - Legislative framework in India to prevention & control Water Pollution
D. Ancient India
E. Pre-Independence Legal Approach
F. Post-Independence Legal Approach

The Legislative Approach to control water pollution can be divided into three stages:
A. Ancient India
B. Pre-Independence Legal Approach
C. Post-Independence Legal Approach

A. Ancient India
Water, first appeared on the globe before any living organism. Like air, water is strength of life for every living organism. According to Manusmriti (ancient Indian Scriptures) “Water is ‘Jeevan’ means life and it condemns throwing urine, night soil, any dirty substance, blood or poisonous substance in water.” In a way, it dictates maintaining purity of water, which is strength of life on the earth.

In modern times, river is held to be a life-line. Civilian activities grew intensively and extensively in river valleys. Rivers are also used as the means of transportation. This has gradually promoted river pollution.

The Ancient concept “Water is Jeevan; is accepted in Constitution of India under Article 21 “Right to life & Personal liberty”. Right to life includes right to clean drinking water.

B. Pre-independence Legal Approach
i. Indian Penal Code, 1860
For the purity of water and environment generally is evident from Sec 277 and Sec 278 of IPC, 1960. Sec 277 lays down that whoever voluntarily corrupts or fouls the water of public spring or reservoir will be punished with imprisonment of term which may extend to 3months, or with fine which may extend to five hundred rupees or with both.

Sec 278 lays down that voluntarily vitiating the atmosphere in any place so as to make it noxious shall be punished with fine which may extend to five hundred rupees.

ii. Common Law Remedies
The origin of water pollution control law in India can be traced to the common law remedies introduced in the courts by British in the three Presidency Towns of Calcutta, Madras and Bombay. These Common law remedies were of three categories:

i. Liability for Escape of Noxious Object
The Strict Liability on a person for the damage caused by the escape of a dangerous or noxious object can be traced back to the famous rule in Rylands v. Fletcher wherein justice Blackburn observed:

“We think that true rule of law is that the person, who for his own purposes, brings on to his lands, and collects and keeps there, anything likely to do mischief if it escapes, must keep it there at his own peril and if he does not do so he is prima facie answerable for all the damage which is the natural consequence of its escape.”

Careless Use of Noxious article or Pollutant
The careless use of noxious article or pollutant could give rise to an action in law of negligence, as also in the law of nuisance.

The Infringement of Property Rights in Water
Every riparian owner enjoys a natural right to the flow of water in his stream, substantially in quality and quantity. In this head it is interesting to note that under the Easement Act, every owner of land has a natural...
right that within his own limits, the water, which naturally passes or percolates by, over or through his land shall not, before so passing or percolating, be unreasonably polluted by other persons.

C. Post Independence Legal Approach
1. Factories Act, 1948:
Section 12 provides for effective arrangements for disposal of water and effluents by factories.

2. Criminal Procedure Code, 1973
Under Section 133 the magistrate has been given powers to remove any unlawful constructions.

3. The Water (Prevention and Control of Pollution) Act, 1974
The Water (Prevention and Control of Pollution) Act, 1974 is the first all India statute relating to the control of pollution in India. Water is a state subject in the distribution of legislative powers in the constitution. However, states felt the need for a national legislation on pollution of water. A few states requested the Central Government to exercise its powers under Article 252 of the constitution and pass such a law. Accordingly Parliament enacted the water (Prevention and Control of Pollution) Act, 1974.

The purpose of the legislation is not only the prevention and control of water pollution but also maintenance and restoration of the wholesomeness of water. The legislative measure is to tackle one facet of environmental pollution. Its main objectives are:

1. To provide for the prevention and control of water pollution and maintaining or restoring of wholesomeness of water;
2. To establish Central and State Boards for the prevention and control of Water Pollution;
3. To provide for conferring on and assigning to such Boards power and functions relating thereto and for matters connected therewith;
4. To provide penalties for contravention of provisions of the act; and
5. To establish Central and State water testing laboratories to enable the Board to assess the extent of pollution, lay down standards and establish guilt or default.

Sec 2(e) of the Act defines pollution as follows:
“Water Pollution” means such contamination of water or such alteration of physical, chemical or biological properties of water or such discharge of any sewage or trade effluent or of any liquid, gaseous or solid substance into water (whether directly or indirectly) as may or is likely to, create a nuisance or render such water harmful or injurious to public health or safety, or to domestic, commercial, industrial, agricultural or other legitimate use, or to the life and health of animals or plants or of aquatic organism.

Critical analysis-
Lack of Public involvement: Under the existing enactment the affected group could not go to the court directly without the sanction of the board. This is major defect in implementing the provision of the act and stanza against achieving the declared goals.

Offences & Punishment: Offences are not specifically defined and the punishments prescribed are not applicable for all possible violations. The punishments mentioned are not such as to give a deterrent effect. Punishment is provided only if the violation is done Knowingly. It is not provided for Negligent acts.

4. Constitution of India & Environment
The Constitution which talks about environment protection like:

Article 51A (g) imposes obligation on State and individual to protect and improve environment and to have
Article 47 is one of the Directive principles of State Policy which aims to raise standard of living and public health of people and public health of people can not be achieved with good environment and it is the responsibility of the State to promote measures which protects environment.

Article 48 comprehensively states that the State shall protect the environment.

Article 21 of the Constitution of India talks about the Right to life and Right to live in pollution free environment and this is only possible when the environment protection is given staple priority and steps are being taken in order to provide Sustainable Development to the coming generations.

The Right to livelihood also comes under Article 21 and it is a right of a person to earn livelihood and if a person is displaced due to some inimical policies of the government then such rights stands violated.

Chapter 3: Judicial Approach
In M.C. Mehta. Union of India, the Supreme Court dealt with pollution of Ganga water due to the negligence of the tanneries on its bank in establishing primary treatment plants.

MC Mehta v. Union of India, is a continuation of the case which empowered municipalities and the pollution control board to take immediate steps of remedying the problem.

Ajay Construction v Kakateeya Nagar Co-Op Housing Society Ltd, is a case relating to improper drainage resulting in pollution of water.

In MC Mehta v. State of Orissa, the Orissa High Court dealt with the same question of providing sewage system when a medical college complex took its shape.

In Vijayayanagar Education Trust v. KSPCB, Bangalore, the Karnataka High court adverted to the concept of "Deemed consent" in the Water Act and permitted competition of a medical college hospital, without the board's actual consent.

In Mandu Distilleries Pvt. Ltd. V MP Pradushan Nivaran Mandal, Bhopal, the indore bench of the Madhya Pradesh High Court is of the view that the direction to close a polluting industry without notice cannot be sustained.

In AP Pollution Control Board v. MV Nayudu, the S.C. devised the means of effectively preventing location of a polluting industry on the banks of lakes supplying drinking water to the city.

In Attakoya Thangal v. UoI, H.C. held that, "The right to sweet water and the right to free air are attributes of the right to life, for these are the basic elements which sustain life itself."

In Subhash Kumar v. State of Bihar, "The right to life enshrined in Art- 21 includes the right to enjoyment of pollution free water and air for the full enjoyment of life. If anything endangers or impairs the quality of life, an affected person or a person genuinely interested in the protection of society would have recourse to Art. 32."

Chapter 4 Ganesh Idol Immersion & Water Pollution: Action Plan

Ganesh Chaturthi is the Hindu festival of Lord Ganesha. While celebrating all over India, it is most elaborate in Andhra Pradesh, Maharashtra, Karnataka, and Goa. Outside India, it is celebrated widely by Hindus in the
United States, Canada and Singapore. There are no strict rules; usually the Ganesh Visarjan ceremony depends on family tradition. Symbolically, Lord Ganesha visits the home on Ganesh Chaturthi day and it is family to decide when they want to give him the farewell. There are several families that perform the Ganesh Visarjan ceremony on the very next day after Vinayak Chaturthi. Other dates that are chosen for Ganapati immersion are 3rd, 5th, 6th, 7th and 10th (the Ananta Chaturdasi day after Ganesh Chaturthi).

II. Water Pollution due to Ganesh Idol Visarjan
The Main Pollution is caused by the Plaster of Paris Ganesh idols and the Chemical paints used in them.

1. Plaster of Paris is not a naturally occurring material and contains gypsum, sulphur, phosphorus and magnesium. The idols take several months to dissolve in water and in the process poison the waters of lake, ponds, rivers and seas.

2. The Chemical Paints used to decorate the Ganesh idol contain mercury, lead, cadmium and carbon and this increases the acidity and heavy metal content water.

3. Several accessories used during the Ganesh Puja like Thermocole, plastic flowers, cloth, incense, camphor and numerous other materials dumped carelessly adding more strain to the already polluted rivers and lakes.

4. Careless immersion of Ganesh Idols in Water bodies blocks the natural flow of water. This results in stagnation and breeding of mosquitoes and other harmful pests.

5. In many areas, the same polluted water gets pumped into homes.

Effect of Ganesh Idol immersion
1. Such pollution caused damage to eco system:
   a. Killing the fishes
   b. Damaging the plants
   c. Blocking the natural flow of water and causing stagnation

2. Such pollution damages health by polluting drinking water sources causing:
   a. breathing problem
   b. Blood diseases
   c. Skin diseases

III. Action Plan to Prevention & Control of Water Pollution
Precautionary Measures:
Precautionary principle is a tool for environmental protection. In order to protect Environment, the precautionary approach shall be widely applied by states according to their capabilities.

To prevent the water pollution from Ganesh Idol immersion the precautionary principle needs to adopt. Following precautionary steps needs to be taken to tackle the problem of Ganesh Idol immersion which causes water pollution.

1. Appointment of Committee
The State government shall appoint the committee which is known as “Prevention & Control of Water pollution due to Ganesh Idol immersion Committee” with assistance of Chairman of State Pollution Control Board (established under the Water pollution Act, 1974) for a term of one year. The committee shall be appointed in each Distinct & at Taluka level which shall consist of the following members:

   i. Chairman, being a member of Municipal Corporation of Environment & health department having special
knowledge of environment protection. &
ii. Not more than three members to be nominated by the State Government with consultation of Local authorities who have knowledge of Law, society, health, environment.
iii. One member shall be amongst the member of State Pollution Control Board.
iv. The chairman & other members shall hold the office for a term of 1 year from the date of appointment.

2. Powers of Committee:-
a) Power to obtain Information from manufacturer & consumers of Ganesh idol so that the committee may take steps to control of water pollution.

b) Power to Give Directions in writing & make regulations:-
The committee shall make rules & regulations in writing directing the disposal of waste & immersion of Ganesh Idol.

c) Power to issue licence to manufacturers to manufacture Ganesh idols. For that purpose the Committee shall exercise the following powers &ndash;

1. The committee shall issue the license within 10 days from the date of filing the application for license.

2. On rejection of license application manufacturer can make an appeal within thirty days from the decision of committee to the State Pollution Control Board & the decision of State Pollution Control Board is final.

3. Manufacturer of Ganesh Idol shall fill the form & submit it to the municipal corporation in which jurisdiction he is manufacturing the Ganesh idol. The application form shall consist of following information:
a) Name of the manufacture
b) Address of manufacturer
c) The details of material & color used to manufacture the Ganesh idol.
d) Number of Ganesh idol manufacture
e) Signature of manufacturer.

4. The committee shall maintain all this record in the registrar.

d) Renewal of Licence
The licence is valid for a year only. Every Licence holder can renew his licence after one year from the committee.

e) Power to appoint volunteers & other sub-committee:- To perform the powers under this action plan the committee has power to appoint sub-committee.

3. Punitive measures: -
Whoever will found:-

i. Careless immersion of Ganesh Idols in Water bodies shall be punished with fine which shall be double the prize of Ganesh Idol or Rs 3,000 whichever is higher.
ii. Using the Chemical Paints to decorate the Ganesh idol shall amount to cancellation of license.

v. Knowingly cause or permit any poisonous, noxious or polluting material matter or dumping several accessories used during the Ganesh Puja like Thermocol, plastic flowers, cloth, incense, camphor and numerous other materials dumped carelessly adding more strain to the already polluted rivers and lakes shall be liable to fine of Rs 500/-
Principle of Sustainability

The Committee with the assistance Municipal Corporation shall establish the water tank in sufficient numbers & encourage the people to immerse the Ganesh idol in water tank. It will help to maintain the balance between environment protection & traditional practice to immerse the Ganesh idol in water.

No manufacturer of Ganesh idol shall use the plaster of Paris while manufacturing Ganesh Idol. He shall use any other alternative which would not cause water pollution.

The committee shall make a map directing the people towards Ganesh Idol immersion tanks & which needs to be published in local area fifteen days prior to the Ganesh farewell day.

It is also duty of the municipality to establish Garbage bin to dump several accessories used during the Ganesh Puja like Thermocole, plastic flowers, cloth, incense, camphor.

Assistance of Police:
Municipal Corporation as well as Committee shall take the assistance of Police officers to ensure that the Ganesh Idol are not immerse into River or Well.

Assistance of Ganesh Mandal:
Municipal Corporation as well as the Committee shall take the assistance of Ganesh Mandal to ensure that the Ganesh Idol are not immerse into River or Well.

Responsibility shall be imposed on Ganesh Mandals to control & prevention of water pollution due to Ganesh idol immersion in the particular area.

Public Awareness: - To create public awareness & change the attitude of people is the most important action which is required to be taken to prevent water pollution.

Involvement of the pubic and its active participation in the implementation of environmental programme is a must for success of pollution control.

Power of Court: - The Metropolitan Magistrate or a Judicial Magistrate of First class shall take the cognizance of offence under this action plan on complaint made by any person or by Board or by the committee.

Conclusion
Making recommendations under this research paper does not violate Article 25 of the Indian constitution which guarantees freedom of conscience and free profession, practice and propagation of religion. Because no religion says to celebrate, practice or profess religious practice which will affect the environment.

Recommendation made under this research paper regarding license for Ganesh idol manufacturers does not violate fundamental right to trade & practice guaranteed under Art 19(g) of the constitution of India as it is considered as "reasonable Restriction"; No individual carry o business which will affect the environment & public health.

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The  author can be reached at: ypatil@legalserviceindia.com