**Supreme court**

**Court on its own Motion Vs. Union of India & Ors.**

**[Suo Motu Writ Petition (Civil) No. 284 of 2012]**

Decided by Swatanter Kumar, J.

Topic : Number of Deaths occurred during Amarnath Yatra, thus its violation of Article 21 of Constitution of India

**Facts:**

1. Taking notice of the persistent press reports dealing with the poor arrangements and number of deaths that occurred during the yatra in the year 2012 to the holy cave of Amarnathji, the Court took suo motu action and issued notice to the Union of India, State of Jammu and Kashmir and the Chairman/President of the Amarnathji Shrine Board vide its order dated 13thJuly, 2012. It will be appropriate to reproduce the said order at this stage itself:-"Today's 'The Times of India' and 'Hindustan Times' reports 67 deaths of pilgrims mostly because of the cardiac arrests as well for other reasons. As per these reports, this has happened in 17 days. Last year 105 persons died during the 45 days' yatra. Thus, this year it appears to be on the rise. In our considered view, the pilgrims have a constitutional right under Articles 21 and 19(1)(d) to move freely throughout the territory of India, free of fear, with dignity and safety and to ensure enforcement of such right is the primary obligation of the State and the Central Governments. Where it is a matter of common knowledge that the yatra to the 'Holy Cave of Amarnath' is an occasion of privilege and pride for a devotee, there it is also a matter of great concern for the Government of India, the Government of the State of Jammu & Kashmir and the Amarnath Shrine Board. Some of the events that have been widely reported in the newspapers compel us to take a judicial notice of the lack of necessary facilities, essential amenities and the risk to the lives of the yatris, en route and around the "Holy Cave of Amarnath". On 3rdJuly, 2012, it was reported in the Hindustan Times, Delhi Edition, that two more pilgrims died of cardiac arrest on Sunday, taking the toll to 22. Both the pilgrims were stated to be in their mid-thirties. One pilgrim was on her way to the holy shrine while the other was returning to Pahalgam Base Camp (Names: Ms. Anita Chourasia and Sadhu Ram). The same daily on 2nd of July, 2012 had reported that there were deaths of five more devotees as a result of cardiac arrest at the Pahalgam and Baltal Base Camps. These were the deaths reported to have occurred between 25thJune, 2012 to 2ndJuly, 2012 on the twin tracks of Baltal in Ganderbal and Pahalgam in Amarnath. This daily also reported that nearly 1.20 lakh pilgrims had so far paid obeisance to the shivalingam at the holy cave. This newspaper also showed the path and the weather conditions to which the yatris to the Holy Cave were exposed and the amenities that were available at the glacier. The Times of India, New Delhi Edition on 29thJune, 2012 had reported that there was an unidentified body of 55-year old pilgrim which was recovered along the Pehalgam cave route in Anantnag district. Similarly, on 28th June, 2012, the Hindustan Times, while referring that the Management had directed increase of security at the yatri base camps to maintain proper schedule, had reported that the death toll within the first three days of the commencement of the yatra was six. The same newspaper dated 27thJune, 2012 had shown a photograph of the passage that more than 18000 pilgrims had visited the holy cave, which is at the height of 3,880 metres, in three days. It showed one of the passages leading to the holy cave. From this picture itself, it is clear and even otherwise it is a matter of common knowledge that the path leading to the holy cave is not only very small but is even unprotected. The photographs also show that hardly any amenities are available for the yatris in and around the holy cave, though thousands of people who throng the holy cave have to wait for hours and days for having the darshan. It has also been published in other papers that in the initial days of the yatra, one person had died because of the fall from the height as there was no support or protection on the path leading to the holy cave. The path somewhere is stated to be even less than six feet and does not have any grill or protection (like pagdandi), which could prevent the people walking on these constricted paths/passages from falling. All the palkis, horses and even the yatris walking on foot, travel on the same path at the same time, thus causing complete jams on the already tapered paths leading to the holy cave. With the passage of time, the things have hardly improved. We may refer to what was the situation was in the year 2011, as per the newspaper reports of the relevant/concerned year. The Indian Express while reporting the commencement of the yatra in its newspaper dated 29th June, 2011 reported that nearly 2.5 lakh pilgrims had registered themselves for the annual pilgrimage with the Amarnath Shrine Board till the aforesaid date and 2000 pilgrims had already left the State of Jammu for the yatra. It also reported a very unfortunate incident where a person named Rajinder Singh, aged 55 years, resident of Jaipur had died due to cardiac arrest at Baltal base camp in Ganderbal district of Kashmir. Again on 1st July, 2011, the same paper reported that a group of men and women, young, elderly and children with their backpacks walked up the winding steep gradient of the road to the cave shrine. In this report reference was made to the statement of the public that there were no vehicles and it was very difficult for the pilgrims to travel and walk such long distances. From Baltal route, 13,000 pilgrims left while 9000 pilgrims left from Chandanwari for darshan to the holy cave. With the increase in the number of pilgrims coupled with the poor management, it appears that there was a sharp increase in the casualty rate. In the Indian Express dated 6thJuly, 2011, it was reported that 18 yatris had died within a week of the commencement of the journey. This included elderly people as well as young victims. One Mr. Vikram Rathore, who died, was only aged 25 years. It appeared from this report that constraints on the availability of medical aid and medical examination is writ large. The same newspaper on 8thJuly, 2011 reported that three more pilgrims died during the yatra raising the toll to 27. Even a constable namely Inderjeet Singh posted with 28 Battalion, Central Reserve Police Force (for short 'CRPF'), Srinagar, died of heart attack while returning from the cave. Another person aged about 54 years hailing from Gujarat also died of cardiac arrest at Sangam top much ahead of the shrine. Still another detailed article appeared in the Times of India dated 18th July, 2011 detailing the lack of facilities, referring to the rush of the pilgrims at the base points as well as at the holy cave. A pilgrim from Guwahati stated: "Half-an- hour after starting out for the shrine from Panchtarni, which is a place 6 km from the holy cave, we were trapped in a jam for close to two hours. There was not an inch of space on the path. There was pushing and shoving as yatris got restless. A sudden movement or a horse or commotion in a section of the crowd could have caused a big stampede". Referring to the statement of an officer, the report stated that the pilgrims had to be regulated from the base camps and there was very little that the members of the Forces could do at the narrow pathways or the holy cave to control the situation. Nearly 22,000 pilgrims visited the shrine daily while the limit, as per the administration itself, was reported to be 3,400 per day only. It is again a matter of great regret that obviously because of lack of proper aid and amenities, the death toll had gone upto 85 on 21st July, 2011, as was reported in "The Hindu" of the even date. All these reports clearly showed disregard to the human life. Lack of facilities at the shrine and on the paths leading to the shrine is evident from all the afore stated articles and the photographs published therein. This Court has repeatedly held that in terms of Article 21 of the Constitution of India, a person has a right to live with dignity and not be subjected to inhuman treatment, particularly in such places where large number of people are bound to visit because of their faith. It can also be hardly disputed that huge revenue is generated as a result of visit of large number of pilgrims to the Holy Cave. The Amarnath Shrine Board receives huge amount of money not only by way of offerings but also from the charges/fee it takes from the pony-owners, palkiwallahs as well as the helicopter services available between Baltal and Panchtarni. It is also evident that there is a complete lack of adequate essential amenities and facilities for the yatris who come to pay their tribute at the 'Holy Cave at Amarnath'. Lack of medical facilities and limitations of the officers/officials of the Forces are some other facets which need to be considered by the concerned authorities. It also appears to be a very sensitive place from the environmental point of view and in terms of the provisions of the Environment Act, 1986 and the constitutional obligation placed upon the concerned authorities, it is expected that proper measures be taken to prevent such high death rate, controlling pollution and providing the requisite facilities and improving the services required for successful completion of such yatras. It is expected of a Government and the concerned authorities to devote more attention and provide appropriate amenities and facilities to protect the life of the individuals, the environment as well as ensure to make the yatra effective and successful, preferably without any human casualty. The authorities cannot shirk from their responsibility of providing minimum essential facilities including medical assistance, roads and other necessary infrastructure. Visit of lacks of people to the State of Jammu & Kashmir generates revenue for the State, in fact, for the residents of that State and add to the need for better tourism facilities. The authorities are also expected to better equip the Forces posted at the holy cave, base points and en route to the holy cave. It is a settled canon of constitutional law that the doctrine of sustainable development also forms part of Article 21 of the Constitution. The 'precautionary principle' and the 'pollutor-pays principle' flow from the core value in Article 21.

**Summary of Discussion:**

"From the above narration it is clear that the Union of India, its various Ministries, the State of Jammu and Kashmir and the Amarnathji Shrine Board were ad idem in regard to the contents and implementation of the report submitted by the SHPC. During the course of hearing of the petition, applications for intervention were filed, which have also been considered. The interveners and all other stake holders were heard at great length. During the course of hearing, certain further suggestions were made, which were found to be useful and in general public interest. The scheme under the Indian Constitution unambiguously enshrines in itself the right of a citizen to life under Article 21 of the Constitution. The right to life is a right to live with dignity, safety and in a clean environment. The ambit of Article 21 of the Constitution has been expanded by judicial pronouncements consistently. The judgments have accepted such right and placed a clear obligation on the part of the State to ensure meaningful fulfillment of such right. Article 21 of the Constitution, with the development of law has attained wide dimensions, which are in the larger public interest. Furthermore, Article 19(1)(d) gives a citizen the right to move freely throughout the territory of India. This right, of course, like any other right is not absolute in terms or free of restrictions. This right, of course, like any other fundamental freedom is neither absolute in terms nor is free from restrictions. Article 19(5)subjects this right to imposition of reasonable restrictions which the State by law may enact. Such restriction has to be in the interest of general public or for the protection of interest of any Scheduled Tribe besides being reasonable and within its legislative competence. Article 25deals with the Right to Freedom of Religion, subject to public order, morality, health and other provisions stated in Part III. All persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion. Of course, again this right is subject to reasonable restrictions within the ambit of Article 25(2) of the Constitution. In light of these three Articles, now we have to examine which rights of the citizens are being violated and what is the scope of the present proceedings before the court and what directions, if any, the court can issue within the four corners of law. It has undoubtedly and indisputably come on record that the rights of yatris to the holy shrine enshrined under Article 21 of the Constitution of India, are being violated. There is admittedly lack of basic amenities and healthcare. The walking tracks are not only deficient but are also not safe for the pedestrians. The management and arrangements for the yatris at the glacier and near the Holy Shrine are, to say the least, pathetic. Keeping in mind the number of yatris who come to pay their homage at the Holy Shrine every year, the management suffers from basic infirmity, discrepancies, inefficiency and ill-planning. The Government of India, State of Jammu and Kashmir and the Shrine Board are under a constitutional obligation to provide free movement, protection and health care facilities along with basic amenities and proper tracks to be used by the yatris. Now, we may examine the dimensions of the rights protected under Article 21 of the Constitution of India. The socio-economic justice for people is the very spirit of the preamble of our Constitution. 'Interest of general public' is a comprehensive expression comprising several issues which affect public welfare, public convenience, public order, health, morality, safety etc., all intended to achieve the socio-economic justice for people. In the case of Consumer Education and Research Centre v. Union of India (1995) 3 SCC 42, this Court while noticing Article 1 of the Universal Declaration of Human Rights, 1948 (for short 'UDHR') asserted that human sensitivity and moral responsibility of every State is that "all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood." The Court also observed "the jurisprudence of personhood or philosophy of the right to life envisaged under Article 21,enlarges its sweep to encompass human personality in its full blossom with invigorated health which is a wealth to the workman to earn his livelihood, to sustain the dignity of person and to live a life with dignity and equality. "Not only this, there is still a greater obligation upon the Centre, State and the Shrine Board in terms of Article 48A of the Constitution where it is required to protect and improve the environment. Article 25(2)of the UDHR ensures right to standard of adequate living for health and well-being of an individual including housing and medical care and the right to security in the event of sickness, disability etc. The expression 'life' enshrined in Article 21 of the Constitution does not connote mere animal existence or continued drudgery through life. It has a much wider meaning which includes right to livelihood, better standard of living, hygienic conditions in the workplace and leisure. The right to life with human dignity encompasses within its fold, some of the finer facets of human civilization which makes life worth living.

From the analysis of the above, it is clear that the appropriate balance between different activities of the State is the very foundation of the socio-economic security and proper enjoyment of the right to life. In the present case, as already noticed, there is hardly any dispute. In fact, all the parties are ad idem on the issue that much is required to be done before the State can claim that it has discharged its constitutional obligation in the larger public interest. In fact, the report of the SHPC has accepted the existence of lack of facilities, non-availability of proper health care, need for proper management, providing of proper passage/walking tracks and finally the basic amenities. The report proceeds on the basis that much is required to be done by the State and the Shrine Board. The State and the Shrine Board under the umbrella of the Union of India has to act in tandem, with great cooperation, coordination and objectivity so as to ensure protection of rights on the one hand and discharge of its obligations on the other. With the passage of time and passing of each yearly yatra, the pilgrims' mortality rate has increased. Greater difficulties are faced by the pilgrims in relation to health care, public amenities and sanitation arrangements. Besides this, dire need exists for improvement of the walking tracks to the Shrine and proper management of separate one-way routes for horses and palk is as one unit and pedestrians as the other unit. With the passage of time, the number of yatris has increased. In the recent yatra held in the year 2012, nearly 18,000 pilgrims have paid their homage at the Shrine. It is a very complex issue comprising various facets. Steps are required to be taken including development of the area but with due regard to the environmental and forest issues. The SHPC had held various meetings, deliberated on various aspects and problems and after considerable deliberation and efforts, have submitted the report dated 6thSeptember, 2012. Under Chapter IX of this report, the SHPC has submitted the summary of recommendations.

**Held**

It is in the discharge of this duty that the IRC was constituted by the Government of India with a view to obtain its recommendations after an in-depth study of the problem in order to implement them by suitable executive directions till proper legislation is enacted. The report of the IRC has been given to the Government of India but because of certain difficulties in the present context, no further action by the executive has been possible.