

Court On Its Own Motion vs Union Of India & Ors on 13 December, 2012

Equivalent citations: AIRONLINE 2012 SC 649

Author: Swatanter Kumar

Bench: Swatanter Kumar, B.S. Chauhan

REPORTABLE

IN THE SUPREME COURT OF INDIA
CRIMINAL ORIGINAL JURISDICTION

SUO MOTU WRIT PETITION (CIVIL) NO. 284 OF 2012

COURT ON ITS OWN MOTION

...Petitioner

Versus

UNION OF INDIA & ORS.

....Respondents

J U D G M E N T

Swatanter Kumar, J.

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 13th July, 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 yatis, en route and around the "Holy Cave of Amarnath".

On 3rd July, 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 25th June, 2012 to 2nd July, 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 yatis to the Holy Cave were exposed and the amenities that were available at the glacier.

The Times of India, New Delhi Edition on 29th June, 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 27th June, 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 yatis 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 yatis 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 6th July, 2011, it was reported that 18 yatis 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 8th July, 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 yatis 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 aforestated 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. The Supreme Court in its judicial dictum in the case of *Glanrock Estate Pvt. Ltd. vs. State of Tamil Nadu* (2010) 10 SCC 96 has held "forests in India are an important part of the environment. They constitute a national asset and intergenerational equity is also part of the Article 21 of the Constitution and cautioned that if deforestation takes place rampantly, then intergenerational equity would stand violated.

Right to life is enshrined under Article 21 of the Constitution which embodies in itself the right to live with dignity. The State is not only expected but is under a constitutional command to treat every citizen with human dignity and ensure equal treatment to all. In our considered view and as demonstrated by these newspaper reports, inhuman, unsafe and undesirable conditions are prevailing at the base camps and en route to the holy cave. The yatris do have a right and the State is under constitutional obligation to provide safe passages, proper medical aid, appropriate arrangement and at least some shelter to the thousands of yatris visiting the holy cave every day. They are also expected to equip the forces deployed with appropriate equipments facilities and the authorities should ensure that no untoward incident occurs at the holy places. In our view, the following questions arise for consideration of the Court: -

1. Whether there exists proper medical facilities to prevent human casualties. Further to provide emergency medical aid in the event of these yatrīs falling sick because of cardiac and other related problems.?
2. What steps are being taken and have been taken to protect the environment in that area?
3. What essential amenities have been provided at the base camps and en route to the holy cave keeping in view that lakhs of people are visiting the shrine every day.
4. What measures are being taken and methods being adopted for collection and disposal of the waste including domestic and human waste generated by the yatrīs en route and around the holy cave?
5. What are the facilities and equipments available, particularly for protecting or treating conditions such as dyspnoea, cardiac arrest and other heart related problems.
6. What is the cause for such high casualty rate and whether there exists the required medical equipments to ensure that in future such casualties can be avoided?
7. What measures and means are available with the authorities on ground for handling such huge crowd and why seven times the requisite number of people coming to visit the cave per day are being permitted and if so, whether there is requisite infrastructure at the site for handling such huge crowd?

The time intervening the previous and the current year clearly demonstrates that the authorities have not taken any effective and appropriate measures for protecting the life of thousands of devotees who visit the holy cave during this limited period, despite the print media repeatedly bringing this to the notice of all concerned. Thus, within the constitutional mandate of Article 21, this Court would have no option but to pass appropriate directions.

All these aspects need to be taken care of by the concerned authorities certainly with greater emphasis and they cannot escape their obligation to provide minimum essential facilities including roads as an approach to the holy cave. They are expected to equip their Forces posted in an around the cave so as to have complete human dignity for the persons working there as well as for the pilgrims coming to the holy cave. They are also expected to make appropriate arrangements for darshans at the holy cave so as to avoid health hazards and injuries, provide proper paths and one-way system passages to the pilgrims to the Holy Cave. Therefore, taking suo motu notice of the articles which are placed below and to appropriately deal with this serious subject, answer the above questions and evolve solutions within the framework of law, we require the following to appear and answer before this Court:

1. Union of India, through its Secretary.

2. Ministry of Environment and Forests, through its Secretary
3. State of Jammu and Kashmir, through its Chief Secretary.
4. Chairman/President of the Amarnathji Shrine Board.

Issue notice, returnable within a week. Dasti.”

2. The notice was served upon the concerned respondents. The respondents filed their respective replies by way of affidavits on record. Vide order dated 20th July, 2012, when the petition was called on for hearing, the Court, after hearing the counsel appearing for the parties at some length, while noticing the lack of public amenities, facilities, health care and particularly the high rate of mortality and the need to take immediate and effective steps to remedy the same, constituted a Special High Powered Committee (for short ‘SHPC’). This SHPC consisted of representatives from different Ministries of the Union of India, Chief Secretary and other officers of the State of Jammu and Kashmir, Director Generals of the Border Security Force and the Border Roads Organizations etc. The SHPC was expected to visit the site and make its recommendations in the form of a Report to the Court inter alia, on the following points: -

- “1. Construction of proper passages, wide enough and with due support on both sides, for the traffic of pedestrian yatris, or horses and by palkis from Panchtarni to the Holy Cave.
2. Providing one-way passage with separate tracks, one for pedestrians and other for horses, carriages and palkis near the Shrine.
3. Providing of health check-up facilities on both the passages from baltal and Panchtarni to the Holy Cave.
4. Providing of proper public amenities and facilities on way and at the lower end of the glaciers near the Holy Cave.
5. All such other steps which are required to be taken for preventing unfortunate deaths of the yatris, going on yatra, to the Holy Cave.
6. Deployment of more forces and to provide better conditions of service for the members of the forces, posted on way and at the Holy Cave.
7. Environmental Impact Assessment.
8. The manner and methods to be adopted to attain the above, with least damage or interference with the environment of the entire zone right from Baltal to the Holy Cave from different routes.

9. Deployment of more medical teams, at regular distance on all the passages leading to the Holy Cave.

10. Registration of yatris at Jammu, Srinagar, Baltal and Panchtarni.

11. It should also consider the possibility of limited number of yatris being released from Srinagar to Baltal to ensure better management, hygiene, healthcare and betterment of the yatris, who stay there overnight.

12. Medical examination at the time of registration and on way.”

3. Thereafter, in the order dated 23rd July, 2012, the Court also noticed that within three days the mortality rate had gone up from 84 to 97 which was a matter of great worry for all concerned.

4. The report of the SHPC was submitted along with the affidavit dated 6th September, 2012, sworn by Sh. Madhav Lal, Chief Secretary to the Government of Jammu and Kashmir. This report made its recommendations under eight different heads.

5. Besides dealing with the issues of health, environment, registration, access control & security, track conditions and other public amenities, the Report stated its recommendations under the head ‘Summary of Recommendations’.

6. The counsel appearing for the parties, including for the State of Jammu and Kashmir and the Shrine Board, submitted before the Court that by and large, the recommendations of the SHPC were acceptable. In fact, they even assured the compliance of the recommendations, subject to statutory clearance from the different authorities. The Court noticed that the recommendations of the SHPC could be divided into two different classes:

Short-term perspective and Long-term perspective. Short-time perspective involved the steps which the Government and the Shrine Board were to proceed to take forthwith and which required immediate attention of all the stakeholders. Long-term perspective included steps where the larger element of planning was involved and their compliance was likely to take some time. In that very order, the Court had directed immediate compliance of certain works at Baltal and surrounding areas. They related to sewage system (STP) at Baltal and widening of passage from Baltal to the holy shrine. The Chief Secretary of the State of Jammu and Kashmir and the Shrine Board were directed to take appropriate steps for planning of matters relating to medical facilities, registration and other ancillary works including deployment of force and one way passage at the Shrine during the next yatra.

7. Vide his letter dated 4th December, 2012, the Ministry of Environment and Forests, Government of India, informed the Additional Solicitor General that the affidavit of the State of Jammu and Kashmir had been perused in compliance with the orders of this Court and that the environmental issues had been correctly reflected therein, in accordance with the final report prepared by the

SHPC and the Ministry was in agreement with the contents of the affidavit. Similarly, the Ministry of Health and Family Welfare, Government of India, vide its letter dated 3rd December, 2012 had also informed the Additional Solicitor General that a meeting was held by the Union Health Secretary with the Government of Jammu and Kashmir and the Chief Executive Officer of the Shrine Board to decide the further course of action on health issues in terms of the report of the SHPC. The issues also related to the States and the Union Territories, identifying the institutions for medical certification and augmenting manpower to support the efforts of the State Government. Inter alia, the points for attention were stated as follows:

“(i) Identify Chief Medical Officer/Medical Superintendent/Block Medical Officer/other Government doctors authorized by the State Government for issuance of compulsory health certificate.

(ii) Provide list of private medical institutions authorized by the State Governments to issue compulsory health certificate and

(iii) Make available services of Specialists and General Duty Medical Officers to supplement the efforts of the Govt. of Jammu & Kashmir.”

8. 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.

9. 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 25 deals 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 yatis 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 yatis at the glacier and near the Holy Shrine are, to say the least, pathetic. Keeping in mind the number of yatis 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 yatis.

10. 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."

11. 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. The expanded connotation of life would mean the tradition and cultural heritage of the persons concerned. In the case of *Consumer Education & Research Centre (supra)*, the Court discussing the case of *C.E.S.C. Ltd. v. Subhash Chandra Bose* [(1992) 1 SCC 441] stated with approval that in that case the Court had considered the gamut of operational efficacy of human rights and constitutional rights, the right to medical aid and health and held the right to social justice as a fundamental right. The Court further stated that the facilities for medical care and health to prevent sickness, ensure stable manpower for economic development and generate devotion to duty and dedication to give the workers' best performance, physically as well as mentally. The Court particularly, while referring to the workmen made reference to Articles 21, 39(e), 41, 43 and 48-A of the Constitution of India to substantiate that social security, just and humane conditions of work and leisure to workmen are part of his meaningful right to life.

12. Security to citizens by the State is also a very sensitive issue. The State has to draw a careful balance between providing security, without violating fundamental human dignity. In the case of *In Re : Ramlila Maidan Incident* (2012) 5 SCC 1, the Court observed “the primary task of the State is to provide security to all citizens without violating human dignity. Powers conferred upon the statutory authorities have to be, perforce, admitted. Nonetheless, the very essence of constitutionalism is also that no organ of the State may arrogate to itself powers beyond what is specified in the Constitution.”

13. In *Bhim Singh v. Union of India* (2010) 5 SCC 538, while referring to the obligations of the State and its functions, the Court held:

“53....it is also settled by this Court that in interpreting the Constitution, due regard has to be given to the Directive Principles which has been recorded as the soul of the Constitution in the context of India being the welfare State. It is the function of the State to secure to its citizens "social, economic and political justice", to preserve "liberty of thought, expression, belief, faith and worship" and to ensure "equality of status and of opportunity" and "the dignity of the individuals" and the "unity of the nation". This is what the Preamble of our Constitution says and that is what which is elaborated in the two vital chapters of the Constitution on Fundamental Rights and Directive Principles of the State Policy.”

14. Where it is the bounden duty of the State to protect the above rights of the citizen in discharge of its constitutional obligation in the larger public interest, there the law also casts a duty upon the State to ensure due protection to the forests and environment of the country. Forests in India are an important part of the environment. They constitute a national asset. We may, at this stage, refer to the concept of inter-generational equity, which has been treated to be an integral part of Article 21 of the Constitution of India. The Courts have applied this doctrine of sustainable development and precautionary principle to the cases where development is necessary, but certainly not at the cost of environment. The Courts are expected to drive a balance between the two. In other words, the onerous duty lies upon the State to ensure protection of environment and forests on the one hand as well as to undertake necessary development with due regard to the fundamental rights and values.

15. 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.

16. 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.

17. 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 palkis 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 6th September, 2012. Under Chapter IX of this report, the SHPC has submitted the summary of recommendations. These recommendations read as under :

“SUMMARY OF RECOMMENDATIONS 9.1 Through its various Orders, the Hon'ble Supreme Court has referred to several issues connected with the Amarnathji Yatra and directed the SHPC to make recommendations in regard thereto.

While the SHPC's recommendations, issue-wise, are summarized in the paragraphs below, these may be read in conjunction with the context, observations and rationale discussed in detail in Chapters 1- 8.

9.2 HEALTH ISSUES 9.2.1 The following issues were required to be examined by the SHPC:

- a) Providing of health check-up facilities on both the passages from Baltal and Panchtarni to the Holy Cave.
- b) All such other steps which are required to be taken for preventing unfortunate deaths of the yatris, going on yatra to the Holy Cave.
- c) Deployment of more medical teams, at regular distance on all the passages leading to the Holy Cave.

9.2.2 The SHPC has made the following recommendations vis-avis the issues listed above:

9.2.3 The SHPC endorses the requirement of every Yatri furnishing a Health Certificate while seeking Registration for the pilgrimage. It also considers it necessary that the format of the Compulsory Health Fitness Certificate should be revised to specifically reflect the existing ailments from which applicant-Yatri may be suffering.

9.2.4 An Expert Medical Committee (three Medical Specialists to be nominated by Union Health Ministry and one Medical Specialist to be nominated by the Government of Jammu and Kashmir) should review the format of the existing

Compulsory Health Certificate and suggest suitable modifications therein, as required. State Health Secretary shall serve as the Convener of this Committee which will also prescribe a check-list for issue of the Certificate and its standard format.

9.2.5 There is need to reconsider the authority competent to issue the Compulsory Health Certificate, which is currently being done by any Registered Medical Practitioner. The same should now be issued by the Chief Medical Officer/ Medical Superintendent I Block Medical Officer/ Government Doctors authorized by the concerned State Government Health authorities. State Governments and Union Health Ministry will also provide lists of reputed Private Medical Institutions, located in areas within their respective jurisdictions, which may be authorised to issue Health Fitness Certificates. CEO, SASB, shall compile State-wise lists of such authorized institutions and arrange to provide the widest possible publicity to such lists through all possible means.

9.2.6 The medical facilities should be rationally dispersed and relocated on the basis of critical assessments. A Committee comprising the State Secretary Health, CEO SASB, Director Health Services (Kashmir) and one senior officer each from Army, BSF, CRPF and ITBP should review the existing locations of all Medical Aid Centres (MACs) and rationalize the location of MACs and, wherever necessary, increasing the number of MACs to ensure that these are located at regular intervals/ distances from each other and not in a cluster. Well equipped and staffed MACs should be set up at Sangam and in Holy Camp Lower Camp area.

ITBP (which has considerable experience of organizing medical aid for Mansrovar Yatra) should be asked to set up at least two MACs in the lower Holy Cave and Sheshnag areas. They could perhaps set up more MACs in subsequent years.

9.2.7 There is need for establishing a well organised MAC, along with adequate number of Rescue Volunteers, in the Lower Cave and Sangam Top areas and also at other locations like Kalimata Top, Railpathri, Nagakoti, Wavbal etc. 9.2.8 Keeping in view that a fair percentage of pilgrims prefer Indian Systems of Medicine (ISM), an increased number of ISM medical camps could be provided at suitable locations along both the routes.

9.2.9 The Union Health Ministry and the States (particularly those from where a relatively larger number of pilgrims arrive) should be moved to provide the services of Specialist doctors, as well as GDMOs, to supplement the efforts of the State Government.

9.2.10 The Union Health Ministry should facilitate timely arrangements for appropriate training in High Altitude Sickness Management being provided to doctors and paramedics of the J&K Health Department who are to be deployed on Yatra duty.

9.2.11 The Union Health Ministry should enable experienced Specialists to advise the State Health authorities regarding the medicines, medical equipments etc. which should be provided in MACs

located in the high altitude areas. The Union Health Ministry should also supplement the efforts of the State to provide the required equipments/medicines, particularly in regard to the provision of portable Hyperbaric Chambers for on- the-spot decompression of sick Yatris at identified Medical camps.

9.2.12 The possibility of providing special insulated tents or Prefabricated Huts or completing the pucca structures to house medical facilities therein should be timely explored and the needful done by the State Health Department with the required support, as needed, from the Union Health Ministry.

9.2.13 The MACs at Holy Cave, Sangam, Panjarni, Sheshnag and Poshpathri should be housed in larger tents/structures in which temperatures at 25-26 degrees can be maintained for effective patient care. The State Health Department should procure suitable tents/ prefabricated huts for this purpose.

9.2.14 A Committee comprising CEO, SASB (Convenor), one High Altitude Medicine Specialist (to be nominated by the Union Health Ministry) and one Medical Specialist (to be nominated by the State Health Department) will prepare an appropriate food menu which shall be adhered to by the Langar Organizations. All other food items/ junk food should be banned and not allowed to be served on the Yatra route.

9.2.15 The SASB should make the Yatris better aware of the challenges and the medical problems they are likely to face when they embark on an arduous trek and devise a suitable communication strategy in this regard. The support of the Union Information and Broadcasting Ministry should be sought for creating enhanced awareness among the pilgrims through airing and screening of Documentaries, Public Interest Messages (of both short and long duration) on AIR and Doordarshan National and Regional Channels and besides, through private radio/TV channels.

9.2.16 The SASB should publish pamphlets in other regional languages, in addition to Hindi and English, since a good number of pilgrims hail from States which have different languages. It would be useful for the SASB to also arrange broadcast of public interest messages in regional languages through television, radio and print media.

9.2.17 More Mountain Rescue Teams (MRTs) should be deployed at identified points along both the Yatra routes, in future pilgrimages. J&K Police should deploy about 6 MRTs in the Yatra area in the next three years and Union Ministry of Home Affairs should provide the necessary resources/ support for arranging specialised training and the latest equipments for the MRTs.

9.2.18 Principal Secretary, Home, J&K, will convene a meeting of all Security Forces, at least two months before the Yatra, to prepare a detailed SoP for the immediate evacuation of ill/injured pilgrims, with the help of the resources available with State Disaster Management Authority, Air Force and SASB. This meeting should also explore the possibility of providing the facility of air ambulance to evacuate critically ill/injured persons who need to be shifted most immediately.

9.2.19 CEO SASB could explore involving identified NGOs I private players to provide the required assistance to unattended sick I injured pilgrims, at both the Base Camps. This would relieve the personnel at the MACs who can then devote better attention to the other sick patients.

9.2.20 The SASB should examine the possibility of the Indian Red Cross Society'being involved in enlarging awareness and sensitization of pilgrims. Some of their volunteers could also be engaged for rendering useful health related services.

9.3 ENVIRONMENTAL ISSUES 9.3.1 The following issues were required to be examined by the SHPC

a) Providing of proper public amenities and facilities on way and at the lower end of the glaciers near the Holy Cave.

b) Environmental Impact Assessment

c) The manner and methods to be adopted to attain the above, with least damage or interference with the environment of entire zone right from Baltal to the Holy Cave from different routes.

9.3.2 The SHPC makes the following recommendations vis-a- vis the issues listed above:

9.3.3 While recognising that the SASB has been cognizant of-the vital need to protect the integrity of the environment and has undertaken several measures in this regard, the SHPC notes that it is essential to strengthen these measures through environmental impact assessments and studies being undertaken at regular intervals, on different aspects of the Yatra, to examine, inter-alia, the impact of the flow of several lakh pilgrims, sanitation and solid waste management, quality and availability of water etc. The SHPC also reiterates that statutory Environmental Impact Assessment shall be conducted whenever so mandated.

9.3.4 Keeping in view the low temperature which prevails in the Yatra area and the need to maintain adequate distances from the nearest water bodies, to avoid any contamination of the waters, CEO, SASB, would need to consult experts to identify the most appropriate technological designs and solutions for the functioning of an optimal number of toilets in the Holy Cave area. CEO, SASB may also explore the possibility of using bio-

digester based toilets developed by DRDO for Army camps in the high altitude areas. As tourist arrivals have also been increasing progressively, it would be profitable if Secretary Tourism, Secretary PHE and CEO, SASB coordinate efforts to identify the best available technology options. Such a collective approach would also contribute towards the required investments being cost effective.

9.3.5 The SHPC is of the opinion that the STPs at the Baltal and Nunwan Base Camps need to be technically evaluated and, upgraded as required. In this context, the SHPC was informed about the implementation of the "Recommendations of the Study on the Technical Evaluation of the STPs" which was conducted (in August 2012) by scientists from Centre for Science and Environment (CSE), New Delhi, at the instance of SASB. This study recommends, inter alia, that the existing capacity of the STPs should be enhanced to improve the retention time of the waste disposal system and to ensure effective treatment of waste.

9.3.6 The SHPC also recommends the need to find an urgent appropriate solution for the treatment of the Langar waste, which is high on grease and biological material.

9.3.7 The SHPC recommends that the State Public Health Engineering Department should provide the infrastructure to ensure regular water supply at suitable identified locations, wherever feasible, on the route of the Yatra Camps to enable SASB to set up toilet facilities for the convenience of Yatris. CEO SASB would need to ensure that all toilets have waste disposal systems and are duly covered under SASB's Sanitation Contract, so that the facilities are maintained in a hygienic and environmentally safe manner. It would be useful to increase the number of toilet facilities which service the Langars located along the Yatra route.

9.3.8 To counter the ever increasing use of plastic in the Yatra area, the SHPC recommends the following:

- a) The State Government should direct the concerned law enforcement agency(ies) to take all required steps, on a time bound basis, to enforce the current statutory ban on the use of plastic.
- b) SASB should progressively arrange facilities for drinking water filters being set up at Camps and Langar sites to discourage the use of water bottles in the Yatra area. The aim should be to provide a viable alternative to plastic water bottles in due course.

The SASB could also consider introducing a "deposit amount" scheme under which the deposit is returnable when the beverage bottle is brought back to the disposal site.

c) Pictorial signage (in place of the existing signage in Hindi and English) should be used at all prominent places. This would be helpful in also educating the Yatris about the need to keep the Yatra area free from plastic materials.

d) The SASB should suitably revise the existing Terms and Conditions of the permissions given to Langar Organisations to ensure that no plastic material is used for serving food and beverages to the Yatris. There should be adequate monitoring of the implementation of these conditions and all cases of non-adherence must be penalised severely.

9.3.9 All biological waste should be disposed off in compost pits, which should be built in the Langar areas. The LangarOrganisations must be made fully responsible for ensuring the segregation and safe disposal of wastes. Further, no Langar site should be cleared without the availability of mandatory facilities for waste segregation and disposal. SASB should establish a suitable monitoring mechanism in this regard. The Terms and Conditions of the permission given to theLangarOrganisations must be revised to include the aforesaid conditions as also a provision for the imposition of stringent penalties in the case of any default.

9.3.10 The SHPC suggests that an increased number of garbage bins, with pictorial signage for segregating bio- degradable waste from non bio-degradable ones, would further reduce littering in the Yatra area.

9.3.11 The concerned District Administrations must identify the sites and create this infrastructure expeditiously as per the Municipal Solid Waste Rules, in consultation with the SPCB. This infrastructure is vital, not only for the Yatra, but also for the growing number of tourists and other business visitors in the larger area.

9.3.12 It must be ensured that after the dismantling of Yatra Camps and Langers, consequent to the conclusion of the Yatra, all solid waste is collected and properly disposed off by the relevant authorities. CEO, SASB, should in consultation with SPCB, put in place an appropriate monitoring mechanism in this regard.

9.3.13 The State R&B Department should urgently upgrade the road from RangaMorh to Domail so that it is able to withstand the very heavy traffic during the Yatra period and the problem of dust and mud is controlled.

9.3.14 The SPCB should conduct analytical studies every year to monitor the quality of water in Lidder and Sindh rivers and share the findings, along with actionable suggestions, with SASB and the State Government. The SPCB also needs to early upgrade its own testing facilities.

9.4 REGISTRATION, ACCESS CONTROL & SECURITY 9.4.1 The following issues were required to be examined by the SHPC

a) Registration of yatris at Jammu, Srinagar, Baltal and Panchtarni.

b) It should also consider the possibility of limited number of yatris being released from Srinagar to Baltal to ensure better management, hygiene, healthcare and betterment of the yatris, who stay their overnight.

c) Medical examination at the time of registration and on way.

d) It should be examined by SHPC in its meeting if a transparent device made of glass, fiber or any other material, which is scientifically permissible, be placed at the Cave where iron grills have been fixed as of now. The iron grills serve no required purpose. Firstly, - it obstructs the view of the yatris

during darshan and secondly, they are not safe and even pass the human heat which results in early melting of the Shivalingam.

9.4.2 The SHPC makes the following recommendations vis-a- vis the issues listed above:

9.4.3. The SASB will continue to determine, from year to year, the maximum number of pilgrims to be allowed to embark on the tracks, after taking into consideration the weather condition and forecasts, track conditions, infrastructure available in the enroute Camps and at the Holy Cave (which would include the handling capacity at the Shrine), other required facilities etc. Once the required decisions have been communicated by the CEO, SASB, the Police shall ensure that the number of pilgrims who are allowed to cross over the Access Control Gates possess valid Yatra Permits for that date and route.

9.4.4 CEO, SASB, should arrange the widest possible publicity of all registration related matters, particularly in the States from where larger numbers of pilgrims arrive.

Further, Public Interest Messages would also need to be broadcast through radio, television and print media, particularly in the regional languages.

9.4.5 On-Spot registration of pilgrims at Srinagar and Base Camps of Baltal and Nunwan should be discouraged. A pilgrim seeking advance registration, in his home State, provides a useful opportunity to educate him about the difficulties involved in the journey, health related precautions, Do's and Don'ts, basic minimum clothing I accessories required etc. Further, the period after registration and before commencement of the Yatra would enable the pilgrim to prepare himself suitably to proceed on a difficult pilgrimage.

9.4.6 As in the case of advance registrations, On-Spot registrations should also specify a specific date and route for the applicant to commence his journey. The pilgrim may be allowed to commence his Yatra on the same day only if the number of pilgrims registered for that particular date is below the registration ceiling prescribed by the SASB.

9.4.7 There should be strict compliance of allowing only those pilgrims who possess valid Yatra Permits for that date and route to cross the Control Gates. To facilitate the Police personnel deployed at the Access Control Gates in determining whether the Yatri possesses a valid Yatra Permit for the given date and route the SASB may adopt colour coding of Yatra permits i.e. the Yatra Permit would be of a given colour for each day of the week.

9.4.8 Effective enforcement at the Access Control Gates would be crucial for securing satisfactory Yatra management. The District Magistrate and the District Police will be responsible for enforcing effective Access Control.

9.4.9 The pilgrims should be released in batches, reasonably spread out over a specified period in the day, to avoid any congestion on the tracks. The SHPC also suggests that SASB may consider indicating the "reporting time" on the Yatra Permits, along with the date and route of the pilgrimage.

9.4.10 The SHPC recommends that the J&K Police and Central Armed Police Forces should enlarge the provision of basic requirements like tents, bedding, toilets etc. to their personnel deployed on Yatra duty, in order to provide them better working conditions.

9.4.11 Regarding the matter related to provision of a transparent device made of glass, fiber etc, the SHPC is of the considered opinion that the SASB is the right forum to decide any issue related to the preservation of the Ice Lingam in the Shrine and taking all required steps for providing satisfactory Darshans.

9.5 TRACK CONDITIONS 9.5.1 The following issues were required to be examined by the SHPC

a) Construction of proper passages, wide enough and with due support on both sides, for the traffic of pedestrian yatris, on horses and by palkis from Panchtarni to the Holy Cave.

b) Providing of one-way passage with separate tracks, one for pedestrians and other for horses, carriages and palkis near the Shrine.

c) The manner and methods to be adopted to attain the, above, with least damage or interference with the environment of entire zone right from Baltal to the Holy Cave from different routes.

9.5.2 The SHPC makes the following recommendations vis-a- vis the issues listed above:

9.5.3 Keeping in view the need to provide safe and smooth passage to the Yatris, particularly during the peak Yatra period, when there is acute congestion on the tracks due to simultaneous movement of pedestrian Yatris and those on ponies/ palkis in the limited space that is available, and also keeping in view the environmental concerns, the Committee recommends that the following works should be approved and taken up for implementation on a fast track basis:

- Improvement of critical stretches of the existing track from Baltal to Holy Cave as per the preliminary details presented in Annex. - 4, to be implemented by the State PWD, with the assistance, as may be required, from other organizations such as Border Roads Organisation (which can mobilise in the area quickly).

- Provision of one-way passage with separate tracks, one for the pedestrians and other for the horses/ palkis, near the shrine to be implemented by the Pahalgam Development Authority.

- Improvement of existing track from Panjtarni to Holy Cave as per the preliminary details presented in Annex. - 4 to be implemented by the Pahalgam Development Authority.
- Proposal of Pahalgam Development Authority to improve the track from Chandanwari Base Camp to Panjtarni.

9.5.4 While it would have been an ideal situation if it were possible to complete the upgradation works before the commencement of the Yatra 2013, the SHPC is conscious of the fact that a two month working period would be available in the current year, after which the entire area would be snow bound/inaccessible. Furthermore, in 2013 also, very little time would be available for carrying out works after the snows melt around mid to end June, and till the time the Yatra commences.

It is also to be kept in view that, at some places, areas under

forests, wildlife sanctuaries or eco-sensitive zones may be involved, and clearances under relevant protection/conservation laws may be required, which may also take time. The SHPC, therefore, recommends early implementation of these works with as much as possible progress during the current working season and before the commencement of next Yatra (2013) and ensuring that these are completed before the working season of 2013 is over. The State Government should provide the required funds for the above listed four works. Wherever clearances are required under the related Environment laws, the matter should be processed on a time bound basis by all concerned authorities, to ensure the completion of all the aforesaid works before the end of October, 2013.

9.6 OTHER PUBLIC AMENITIES 9.6.1 For Yatra 2012, Temporary Transit Camps had been set up for the overnight stay of Yatris at Qazigund and Mir Bazar (Anantnag District) and at Manigam and Yangoora (Ganderbal District). If these facilities are placed on a firm footing and suitably upgraded, they can be profitably utilised to meet the growing demands of tourism, and for other suitable purposes, before and after the annual Yatra. The SHPC recommends that all required facilities, viz. shelter, toilets, water, power supply, etc should be provided at the aforesaid and other Transit Camps before commencement of Yatra 2013.

9.6.2 The Department of Telecommunications should be moved to take all necessary steps for providing inter-connectivity in the Yatra area so that the Yatris having non-BSNL mobile connections do not face any difficulty during Yatra 2013.

9.6.3 For Yatra 2013, the number of Automatic Weather Stations should be augmented to cover Chandanwari, Pahalgam and Baltal and a Doppler Radar should be set up at IMD Campus, Srinagar, on urgent basis as this facility will be able to provide accurate weather forecasts round the year in the entire Valley.

9.6.4 The State Government has provided funds to the State Public Health Engineering Department for laying underground water supply lines at Baltal Base Camp. This work should be completed before the commencement of Yatra 2013.

9.6.5 The State Animal Husbandry Department should register only an, assessed number of ponies to ensure against overcrowding on the tracks. Likewise, the Labour Department should assess the number of Palkis/Dandis to be allowed to operate on the tracks, route-wise, every year.

9.6.6 While noting the useful arrangements which are being assisted/ provided by the various concerned State Government Departments for the smooth conduct of the annual Yatra, the SHPC is of the view that the Yatra requirements require to be reviewed from time to time. In this context, the SHPC notes that the High Level Committee (HLC), which is convened by CEO, SASB, and chaired by State Principal Secretary Home, has served a useful purpose in 2012 and recommends that the HLC should continue to function, to overview the problems of future Yatras, with similar or modified terms of reference, as may be necessary. The HLC should prepare an Annual Action Plan, immediately after the Yatra is over, which clearly indicates the gap to be filled, the implementing agency, requirement of funds and the time frame for implementation. The SHPC also recommends that all the recommendations made by this HLC in 2011 be fully implemented before the commencement of Yatra 2013.

9.6.7 A Committee to be chaired by the concerned District Magistrate should be set up to grant permissions for the setting up of tents and shops at each Camp location, taking into account the overall availability of space, the number of tents/shops which are required to be set up, ensuring that the tents, beddings etc are of the specified quality/standard.”

18. The learned counsel appearing for the parties have made submissions and suggestions, while taking the above report to be the very foundation of their submissions. In other words, attempts were made before the Court to improve upon the recommendations in order to make them more effective. One of the points, on which submissions were made before the Court related to improvement of medical facilities. Firstly, it was suggested that each State in the country should identify the medical institutions/hospitals, run by or under the control of the State Governments, to issue ‘health certificates’ upon examining the persons who are desirous of going for yatra to the Holy Cave in the future. Secondly, it was suggested that specified medical officers of these hospitals should be required to give the said health certificates. Lastly, the States, particularly the neighbouring States like, Haryana, Punjab, Himachal Pradesh, Rajasthan and Uttar Pradesh, should be requested to send teams of doctors on temporary duty to the State of Jammu & Kashmir to be posted at Srinagar, Baltal or en route to the Holy Shrine. It will be desirable that such team of doctors be acclimatized before being deputed to the higher altitudes. It is suggested that they ought not to be posted at very high altitudes.

Deployment of the medical teams at Panchatarni, Baltal and Srinagar and enroute to the Shrine shall serve the interest of health care and public interest. We make it clear that deployment of medical teams en route should be at regular distances, with a gap not exceeding two kilometres. There shall be greater number of doctors from the State of Jammu and Kashmir that should be deployed at and around the holy Shrine and they shall be provided with complete equipment, medicines and all other infrastructure to ensure rendering of proper medical assistance to the people who suffer from any health issue at that point. These issues, to some extent, have been discussed in the report of the SHPC. However, we are only clarifying their final aspects.

19. The passages or the walking tracks, besides being widened require rough surface so as to prevent slipping and falling of the pilgrims. It is conceded before us that presently the width of the track is very less to accommodate palkis, horses and pilgrims moving at the same time. More often than not, jams are noticed which spread over furlongs. The uncertainty of weather, exposes the pilgrims, particularly, the pedestrians, to rain, chilly winds and sudden fluctuations in temperature and thus they fall ill. Due to high altitude, many of them also suffer from hypoxia. Thus, there has to be a regular width of the track which in any case should not be less than 12 feet and may be wider than that if so recommended by the Committee concerned. These tracks should duly provide protection or any other support towards the open sides. It may be by iron grills, supporting walls etc. as may be considered appropriate by the Committee. This may include realignment of the passage, construction of retaining wall/railing. We must not be understood to have ordered directly or indirectly, construction of any motorable metalled road in place of walking tracks. However, we hasten to clarify that it is not only improvement of the road at critical portions but the entire track needs to be improved, particularly from Panchtarni to the Holy Cave.

20. STPs are intended to be constructed at various places, particularly at Baltal. We were informed that the clearance from various departments is awaited. However, the learned Advocate-General appearing for the State of Jammu Kashmir had informed us that the matter is pending in the High Court of Jammu and Kashmir and they will be able to get permission for raising construction shortly. We make it clear that all Government departments shall fully coordinate and grant such permissions as are required in accordance with law and expeditiously. We further make it clear that pendency of any proceedings before the High Court would not come in the way of construction of STPs in any manner whatsoever. It is for the reason that this is absolutely essential for maintaining proper sewage system and cleanliness in the areas where large number of persons come and stay overnight or even for a longer period. It was commonly conceded before us that the Shrine Board would provide fabricated toilets and if necessary even the pre-fabricated pathway at and around the Holy Shrine.

21. In its report, the SHPC at para 7.18 has noticed that quality of tents existing at various camps and sites needs improvement. The existing tents were found deficient in all respects. One of the applicants before this Court, M/s. Piramal Healthcare Pvt. Ltd. (In I.A. No. 4 of 2012), had volunteered to provide any help at a large scale that may be required by the State of Jammu and Kashmir and the Board to facilitate the travel, living and darshan of the pilgrims. It was offered that they could provide even pre-fabricated tents and toilets which will help and provide convenience not only to the pilgrims but even to all the persons, including the officials on duty. We find this request

to be reasonable and, therefore, give liberty to them to approach the Shrine Board with a request to provide such pre-fabricated material at large scale. We are hopeful that the Board would consider the request sympathetically and objectively.

22. All these matters require greater attention of all the stakeholders and they need to make their plans well in advance and to fully equip themselves to meet any challenge. Thus, we are of the opinion that the process afore-indicated and as stated in the report, be completed in a timely and expeditious manner.

23. We, therefore, have no hesitation in accepting the report of the SHPC dated 6th September, 2012 in its entirety but with additions as afore- indicated. The report shall be complementary to the directions of the Court and not in derogation thereof.

24. The next question that arises is as to what directions generally and particularly in the cases of the present kind, the Court is competent to issue.

25. In the case of *M.C. Mehta v. Union of India* [(1987) 1 SCC 395], the Court, while discussing the ambit and scope of Article 32 of the Constitution, held as under :

“We have already had occasion to consider the ambit and coverage of Article 32 in the *Bandhua Mukti Morcha v. Union of India* and we wholly endorse what has been stated by one of us namely, Bhagwati, J. as he then was in his judgment in that case in regard to the true scope and ambit of that article. It may now be taken as well settled that Article 32 does not merely confer power on this Court to issue a direction, order or writ for enforcement of the fundamental rights but it also lays a constitutional obligation on this Court to protect the fundamental rights of the people and for that purpose this Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce the fundamental rights. It is in realisation of this constitutional obligation that this Court has in the past innovated new methods and strategies for the purpose of securing enforcement of the fundamental rights, particularly in the case of the poor and the disadvantaged who are denied their basic human rights and to whom freedom and liberty have no meaning.

We are also of the view that this Court under Article 32(1) is free to devise any procedure appropriate for the particular purpose of the proceeding, namely, enforcement of a fundamental right and under Article 32(2) the court has the implicit power to issue whatever direction, order or writ is necessary in a given case, including all incidental or ancillary power necessary to secure enforcement of the fundamental right. The power of the court is not only injunctive in ambit, that is, preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a breach of the fundamental right already committed vide *Bandhua Mukti Morcha* case. If the court were powerless to issue any direction, order or writ in cases where a fundamental right has already been violated, Article 32

would be robbed of all its efficacy, because then the situation would be that if a fundamental right is threatened to be violated, the court can inject such violation but if the violator is quick enough to take action infringing the fundamental right, he would escape from the net of Article 32. That would, to a large extent, emasculate the fundamental right guaranteed under Article 32 and render it impotent and futile. We must, therefore, hold that Article 32 is not powerless to assist a person when he finds that his fundamental right has been violated. He can in that event seek remedial assistance under Article 32. The power of the court to grant such remedial relief may include the power to award compensation in appropriate cases. We are deliberately using the words “in appropriate cases” because we must make it clear that it is not in every case where there is a breach of a fundamental right committed by the violator that compensation would be awarded by the court in a petition under Article 32.”

26. In the case of *Vishaka v. State of Rajasthan* [(1997) 6 SCC 241, this Court held as under :

“Each such incident results in violation of the fundamental rights of “Gender Equality” and the “Right to Life and Liberty”. It is a clear violation of the rights under Articles 14, 15 and 21 of the Constitution. One of the logical consequences of such an incident is also the violation of the victim's fundamental right under Article 19(1)(g) “to practise any profession or to carry out any occupation, trade or business”. Such violations, therefore, attract the remedy under Article 32 for the enforcement of these fundamental rights of women. This class action under Article 32 of the Constitution is for this reason.

A writ of mandamus in such a situation, if it is to be effective, needs to be accompanied by directions for prevention, as the violation of fundamental rights of this kind is a recurring phenomenon. The fundamental right to carry on any occupation, trade or profession depends on the availability of a “safe” working environment. Right to life means life with dignity. The primary responsibility for ensuring such safety and dignity through suitable legislation, and the creation of a mechanism for its enforcement, is of the legislature and the executive. When, however, instances of sexual harassment resulting in violation of fundamental rights of women workers under Articles 14, 19 and 21 are brought before us for redress under Article 32, an effective redressal requires that some guidelines should be laid down for the protection of these rights to fill the legislative vacuum.

15. In *Nilabati Behera v. State of Orissa* a provision in the ICCPR was referred to support the view taken that “an enforceable right to compensation is not alien to the concept of enforcement of a guaranteed right”, as a public law remedy under Article 32, distinct from the private law remedy in torts. There is no reason why these international conventions and norms cannot, therefore, be used for construing the fundamental rights expressly guaranteed in the Constitution of India which embody the basic concept of gender equality in all spheres of human activity.

16. In view of the above, and the absence of enacted law to provide for the effective enforcement of the basic human right of gender equality and guarantee against sexual harassment and abuse, more particularly against sexual harassment at workplaces, we lay down the guidelines and norms

specified hereinafter for due observance at all workplaces or other institutions, until a legislation is enacted for the purpose. This is done in exercise of the power available under Article 32 of the Constitution for enforcement of the fundamental rights and it is further emphasised that this would be treated as the law declared by this Court under Article 141 of the Constitution.”

27. In the case of Vineet Narain v. Union of India [(1998) 1 SCC 226], the Court held as under:-

“There are ample powers conferred by Article 32 read with Article 142 to make orders which have the effect of law by virtue of Article 141 and there is mandate to all authorities to act in aid of the orders of this Court as provided in Article 144 of the Constitution. In a catena of decisions of this Court, this power has been recognised and exercised, if need be, by issuing necessary directions to fill the vacuum till such time the legislature steps in to cover the gap or the executive discharges its role. 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. The study having been made by a Committee considered by the Government of India itself as an expert body, it is safe to act on the recommendations of the IRC to formulate the directions of this Court, to the extent they are of assistance. In the remaining area, on the basis of the study of the IRC and its recommendations, suitable directions can be formulated to fill the entire vacuum. This is the exercise we propose to perform in the present case since this exercise can no longer be delayed. It is essential and indeed the constitutional obligation of this Court under the aforesaid provisions to issue the necessary directions in this behalf. We now consider formulation of the needed directions in the performance of this obligation. The directions issued herein for strict compliance are to operate till such time as they are replaced by suitable legislation in this behalf.”

28. In the case of University of Kerala v. Council of Principals of Colleges, Kerala & Ors. [(2010) 1 SCC 353], this Court held as under :

“32. It may be noted that this Court has on several occasions issued directions, directives in respect of those situations which are not covered by any law. The decision in Vishaka v. State of Rajasthan is one such instance wherein a three-Judge Bench of this Court gave several directions to prevent sexual harassment of women at the workplace. Taking into account the “absence of enacted law” to provide for effective enforcement of the right of gender equality and guarantee against sexual harassment, Verma, C.J. held that guidelines and norms given by the Court will hold the field until legislation was enacted for the purpose. It was clarified that this Court was acting under Article 32 of the Constitution and the directions “would be treated as the law declared by the Court under Article 141 of the Constitution”. (para 16)

33. Similarly, the Supreme Court issued directions regarding the procedure and the necessary precautions to be followed in the adoption of Indian children by foreign adoptive parents. While there was no law to regulate inter-country adoptions, Bhagwati, J., (as His Lordship then was) in *Laxmi Kant Pandey v. Union of India*, formulated an entire scheme for regulating inter-country and intra-country adoptions. This is an example of the judiciary filling up the void by giving directions which are still holding the field.”

29. The above stated principles exhibit the scope and width of the power of this Court under Article 32 of the Constitution. There is a clear mandate of law for this Court to protect the fundamental rights of the citizens. Infringements of rights would certainly invite the Court’s assistance. The limitation of acceptability to justice will not come in the way of the Court to extend its powers to ensure due regard and enforcement of the fundamental rights. The absence of statutory law occupying the field formulating effective measures to check breach of rights is the true scope of proper administration of justice. It is the duty of the Executive to secure the vacuum, if any, by executive orders because its field is coterminous with that of the Legislature and where there is inaction even by the Executive, for whatever reason, the Judiciary must step in, in pursuance of its constitutional obligation to provide solution in any case till the time the Legislature addresses the issue. The courts have taken precaution not to pass orders even within the ambit of Article 142 of the Constitution that would amount to supplanting substantive law but at the same time these constitutional powers cannot in any way be controlled by any statutory provision. The absence of law and a vacuum or lacunae in law can always be supplied by judicial dictum. In some cases, where the jurisdiction is invoked to protect the fundamental rights and their enjoyment within the limitation of law, the Court has even stepped in to pass orders which may have the colour of legislation, till an appropriate legislation is put in place. The directions of the Court could be relatable to a particular lis between the parties and even could be of a generic nature where the facts of the case called for. There can be cases like the one in hand where there is no infringement of a specific legislation or even where no legislation is in place but are purely cases of infringement of fundamental rights and their violation. The directives are needed to protect them and to ensure that the State discharges its obligation of protecting the rights of the people as well as the environment. The deficiencies in the aforementioned fields are not deficiencies simpliciter but have far reaching consequences of violating the fundamental protections and rights of the people at large. It is the obligation of the State to provide safety, health care, means to freely move and to profess the religion in the manner as they desire insofar as it is within the limitations of law.

30. Certainly some development projects would have to be undertaken but without infringing on the protection to the forests or the environment. These are ecologically and climatically sensitive areas. It must be ensured that development does not impinge upon the purity of the environment beyond restricted and permissible limits. The doctrine of sustainable development and precautionary principle would be the guiding factors for the courts to pass such directions. We had the advantage of having an Expert Committee Report before us, which recommends the various steps, development programmes and precautions that can be undertaken by the Government and the Shrine Board to the advantage of all stakeholders, particularly the pilgrims. Thus, the directions we contemplate to issue under this order are in conformity with these legal maxims and are likely to

cause no practical issues.

31. Applying these principles to the facts of the present case, it is apparently the constitutional obligation of this Court to issue specific directions in addition or which are to be read mutatis mutandis to the Report of the SHPC. In the above background, it is axiomatic for us to issue the following directions :

- 1) The report of the SHPC is hereby accepted in terms of this judgment.
- 2) The recommendations contained in the report shall be read, construed and applied in aid to the directions of this Court and not in derogation thereto.
- 3) All the recommendations contained in the report shall be implemented under two different heads, i.e., 'short-term measures' and 'long-term measures'. This categorization shall be made by the Sub-Committee consisting of the following :
 - a. Chief Secretary of the State of Jammu and Kashmir;
 - b. Secretary, Home, State of Jammu and Kashmir; and c. CEO of the Amarnathji Shrine Board.
- 4) Steps in relation to health care, improvement of walking tracks, providing of pre-fabricated toilets, tents, pre-fabricated walking path/mats, construction of STPs and providing of one way tracks shall be treated as short-term measures.
- 5) We hereby direct the Chief Secretary of every State to notify the hospitals and medical officers in those hospitals who shall issue health certificates to all the persons who are desirous of going for yatra henceforth. The authorities shall place such notification in the public domain and give it due publicity. These certificates shall be issued free of cost.
- 6) We direct the Chief Secretary and Secretary, Health of each respective State, particularly, the State of Uttar Pradesh, Haryana, Punjab, Rajasthan, Himachal Pradesh and Union Territory of Chandigarh to depute such number of doctors during the relevant period to the State of Jammu and Kashmir for ensuring due health care of the pilgrims, as may be necessary.
- 7) The State of Jammu and Kashmir shall write to the Chief Secretaries/Secretaries, Health of each State by 30th of April of every year, making requisition for the number of doctors and the area of specialization from which such doctors are required. The concerned State shall inform the Chief Secretary/Secretary, Health and the Director General of Health Services of the State of Jammu and Kashmir by 30th May of the year, the names with specialization of the doctors who have been deputed for the yatra period at the State of Jammu and Kashmir and actually direct and inform the

concerned doctors of their 'temporary duty', in public interest, with the State of Jammu and Kashmir.

8) The medical teams shall be deployed en route to the Holy Cave at a regular distance not exceeding two kilometers.

9) The State of Jammu of Kashmir and the Shrine Board shall provide infrastructure, equipment, medicines and all other ancillary items thereto to the medical teams to ensure that the pilgrims can be provided adequate treatment without any loss of time. Largest number of medical teams shall be deputed at the glacier and the passage near the Holy Shrine.

10) The State of Jammu and Kashmir shall make due provision for providing lodging and boarding to doctors on 'temporary duty' and ensure that they are not put to any inconvenience, in any respect, whatsoever.

11) The State of Jammu and Kashmir and the Shrine Board shall make due provision for registration of the yatris as proposed in the report and preferably at Srinagar, Baltal, Chandanvadi, Panchtarni, etc.

12) The STPs shall be constructed at all places, particularly at Baltal. Clearance for that purpose shall be granted by all the concerned departments expeditiously and in accordance with law.

This direction of the Court shall be complied with notwithstanding the pendency of any litigation before any Court, including the High Court of Jammu and Kashmir.

13) The request of the applicant M/s. Piramal Healthcare Pvt. Ltd. (In I.A. No. 4 of 2012) for providing pre-fabricated tents or toilets or such other material which they may chose to offer or desired by the authorities, shall be considered by the Shrine Board in its discretion. However, we observe that the request of the applicant should be considered sympathetically and objectively.

14) The walking track/passages should be widened and railing and retaining walls be provided. The extent of width of the passage and manner of providing the railing (thick iron cables supported by wooden blocks or cement and stone) shall be in the discretion of the Sub-Committee afore-constituted. But, we make it clear that width of no passage shall be less than 12 feet, particularly, that of the track leading from Panchtarni to the Holy Shrine.

15) Neither have we directed nor should we be understood to have implicitly directed that there should be mettled motorable road in place of the walking tracks/passages.

16) There shall be provided separate one way passage for palkis and horses as one unit and the pedestrians as the other, near to and at the passages leading to the Holy Shrine. Preferably on this passage pre-fabricated walking path/matting should be provided.

17) All other walking tracks from various other points, like Baltal, Panchtarni and Chandanvadi may be covered either by pre-fabricated rough cement tiles or such other material, which in the opinion of the SHPC, would be most appropriate for the benefit of the pilgrims.

18) Attempt should be made to construct shelters on the passage/walking paths at regular intervals. Temporary/pre-fabricated shelters should certainly be provided near the Holy Shrine where large number of persons collect and have to wait for long hours for darshan.

19) At the Holy Cave, the existing grill should be replaced by 100 per cent transparent fiber or any other material to ensure that the darshan to the shivlingam is not visually obstructed. In the alternative, the iron grills, as installed can be permitted, but the gaps between the parallel bars, which are perpendicular to the earth, should not be less than 12 inches, as they would help in giving a clear visual darshan of the shivlingam and the shiv parivar.

The implementation of the above suggestion should be left to the wisdom of the Sub-Committee.

20) The Sub-Committee constituted under this order shall be at liberty to consult or obtain opinion of any expert body, as it may deem fit and proper, in the facts and circumstances.

21) All the above directions and the recommendations made in the report of the SHPC should be carried out by all concerned without demur or protest and expeditiously. We make it clear that any officer of any State irrespective of his position in the State hierarchy shall personally be held liable and proceeded against in the event of default and/or violation of the above directions/recommendations of the SHPC.

22) The Chief Secretary, Secretary, Health of the State of Jammu and Kashmir and the CEO of the Shrine Board shall personally be responsible and answerable for strict compliance of the recommendations of the report of SHPC and/or directions as contained in this judgment. Since we are holding the Sub-Committee personally liable for compliance of the order of the Court, we grant liberty to this Sub-Committee to seek clarification, if any, at any time.

23) The Sub-Committee is also given liberty to bring to the notice of this Court if any authority/officer/the Government fails to render the required help or take desired action and/or is instrumental in violating the orders and directions of the Court.

32. We will be failing in our duty if we do not place on record our appreciation for the valuable assistance rendered by various counsel appearing in the case as well as for the positive and progressive approach adopted by the State of Jammu and Kashmir as well as the Shrine Board. We must also place on record, our special commendations, for the echt efforts made by the SHPC with utmost tenacity and verve and also for its expeditious recommendations under the Chairmanship of the Governor of Jammu and Kashmir.

33. Before we part with the file, we express a pious hope that this judgment shall serve a larger public purpose. It will provide a fair opportunity to the pilgrims to complete their yatra to the Holy

Cave with human dignity, safety to their lives and with basic amenities being provided to them. We have no doubt in our mind that the State of Jammu and Kashmir and the Shrine Board shall endeavour their best to implement this judgment in its true spirit and substance in the larger interest of public as well as to uphold the rule of law.

34. The petition is accordingly disposed of.

.....J. (Dr. B.S. Chauhan)J. (Swatanter Kumar) New
Delhi, December 13, 2012