

# Santhara: suicide or a way to attain moksha

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**Abstract-** Santhara is an age-old practice prevalent in India in Jainism and was first adopted by Mahavira. Jainism has 3 sects namely Murti Pujak, Śvetāmbara Sthānakavāsī and Śvetāmbara Terāpanthī. Mostly Santhara is adopted by Sthānakavasis but over the period of time, after Mahavira there were not many instances of adoption of Santhara. The one major instance of adoption of Santhara was by Chandragupta Maurya, who took and implemented the Santhara vow, is archaeologically depicted by ASI Bengaluru Circle 2005; the commemorative Brahmddev pillar at Shravan Belagola of 974 AD.

The core of Jainism is to let go of *Moh, Maya, Lobh, Krodh* and follow Ahimsa, Acharya, Celibacy, Aparigraha, and Abstain from lying. The challenging of the adoption of Santhara has been questioned in the court of law on the ground that it is similar to suicide and that it is against the norms of the Indian laws and that article 25 of the constitution has certain restrictions. Whereas the supporters claim it as a way to attain *Moksha* and an “essential” religious practice. The Rajasthan high court ruled against this practice so it is still pending before the Supreme Court.

The author in this research paper has analysed the case of Nikhil Soni and put forth her points both in favour as well as against the religious practice and given a solution as to what can be done for the conservation of the religious practice without violation of the Indian laws. As India is a country, well known for its ethnic and religious diversity and religion is something that is made up of religious rites but at the same time with the evolution of the law the things need to change, so instead of fully scrapping away a practice the author puts forth a unique solution as to how it be practiced without being a harm to the society or the Indian laws. The author is of a neutral stand about the same.

**Key words:** Santhara, Jainism, Nikhil Soni Judgement

## Introduction and Facts of the Case:

Santhara, which literally means death fast, is a Jain practise performed by the Shvetambara community. According to the petitioner, it is a religious fast to death under the premise that the Santhara would acquire *Moksha* when all of life's purposes have been fulfilled or when the body is unable to serve any further purposes (salvation). After taking the Santhara vow, a person avoids eating and even drinking water and waits for death. The Santhara, it is claimed, is religious philosophy that has no place in the law of the land. The Indian Constitution ensures the **Right to Life** and protects an individual's life

It is argued that a voluntary fast to death is an act of self-destruction, akin to suicide, which is a criminal offence punishable under Section 309 IPC by simple imprisonment for a term not exceeding one year, a fine, or both. Abetment of suicide is also punishable under section 306 IPC, which carries a maximum sentence of ten years in prison and a fine. Suicide is defined as the intentional killing of oneself. Every act of self-destruction by a human being subject to discretion is described in common usage as suicide if it is an intentional act committed by a party who is aware of the likely consequences of what he is going to do. Suicide should never be assumed. Section 309 of the IPC requires intent as a legal requirement.

According to reports, the Shvetambara Jain sect believes that the Santhara is a path to *Moksha*. The entire community assists a person adopting the Santhara in ceremonially designing it. People come to see the individual for *Darshan* and to observe the event with devotion. Such a person's home becomes a pilgrimage site. On the premise that the soul never dies, the entire deed is deemed a brave and sensible act.

Right Foundation, an NGO, filed a writ petition in the public interest against the Sangha and the Union of India before the High Court of Rajasthan, claiming that Santhara should be declared illegal because it violated several provisions of the Constitution, and that the Court should investigate the practise and prosecute it appropriately. Furthermore, it was alleged that facilitating the activity is also considered a criminal conduct.

## Matter

In this writ petition filed in the public interest under Article 226 of the Indian Constitution, the petitioner, a practising lawyer at the Rajasthan High Court's Jaipur Bench, has requested that the Union of India, through Secretary, Department of Home, New Delhi-respondent no.1, and the State of Rajasthan, through Secretary, Department of Home, Secretariat, Rajasthan, Jaipur-respondent no.2, treat SANTHARA or SALLEKHANA as illegal and punishable under the law and that the allegations in the pleadings should be investigated and prosecuted appropriately, with abetment being treated as a criminal offence.

Article 25 of Part III-Fundamental Rights guarantees religious freedom, however it is subject to public order, morality, and health, as well as the other articles of this Part, including Article 21. Everyone has the right to religious freedom, including the freedom to profess, practise, and propagate religion. A practise, no matter how ancient it may be to a specific faith, cannot be allowed to violate an individual's right to life. The petitioner has provided various examples of the Santhara to demonstrate that it is not an ancient and forgotten ritual but is still done routinely today. <sup>1</sup>

<sup>1</sup> Nikhil Soni vs Union Of India & Ors. ,D.B.Civil Writ Petition No.7414/2006

**Issues raised <sup>2</sup>**

The special leave petition filed by the petitioner is not maintainable before this Hon'ble Court;  
 The Tradition of Santhara is not valid against the touchstone of Article 21 of the Indian Constitution;  
 Santhara is not an essential religious practice and does not need any protection under article 25 of the Indian constitution;

**Decision rendered by the High Court**

The writ petition is allowed with directions to the State authorities to stop the practice of 'Santhara' or 'Sallekhana' and to treat it as suicide punishable under section 309 of the Indian Penal Code and its abetment by persons under section 306 of the Indian Penal Code. The State shall stop and abolish the practice of 'Santhara' and 'Sallekhana' in the Jain religion in any form. Any complaint made in this regard shall be registered as a criminal case and investigated by the police, in the light of the recognition of law in the Constitution of India and in accordance with Section 309 or Section 306 IPC, in accordance with law.

**2 sides of the same coin: Authors point of view****In favour of Santhara**

The religion of Jainism says every individual soul is pure and perfect with knowledge power and bliss but is always associated with *Karma* matter and hence is subjected to birth and rebirth the supreme objective of Santhara is to help the person liberate from bondages of Karma.

The Jain religion believe in birth and rebirth and that the *Karmas* decide what a person will be next life. Every living being is responsible for its own activities and one cannot escape from one's *Karma* accepted by experiencing their consequences whether good or bad.

The vow of Santhara is often taken after discussing it with one's Guru who is a religious preceptor. The Jain scripture say that Santhara basically means to became the strength of body and put an end to bodily existence but without consciously convicting death by fasting it is under taken when either a person is old , has faced and unavoidable natural calamity or severe drought or incurable disease. It is a healthy desire for elevation of life and self-realisation. And move to *Nirvritti from Prvritti* by complete detachment from sensory systems. It is an exercise for self-purification and has been practiced since antiquity

The practice of Santhara constitutes an essential religious practices for the Jain community as the basis of the Jain religion is Tyaga, Daya , Ahimsa so thus the vow of Santhara is taken to leave the worldly pleasure also the practice of Sanathara has been practiced since hoary antiquity and is a custom in the religion with reasonableness, consistency and certainty. It is a welcome to death of a person that helps in accomplishing the feelings of self-actualization and spiritual liberation. Also Article 25 and 26 of the Constitution of India gives complete autonomy to the religious denomination to manage their own religious affairs. This contention was observed in the landmark case<sup>3</sup> in which the Court held that "Under Article 26(b) therefore a religious denomination enjoys complete autonomy in the matters of deciding as to what rites and ceremonies are essentials according to tenets of religion and no outside authority has the jurisdiction to interfere with its decision in such matters".

In the case of *Shirur Mutt*<sup>4</sup> an international case of *Adelaide Company of Jehovah's Witnesses Inc. v. Commonwealth*<sup>5</sup> was considered and it was held "A religion undoubtedly has its basis in a system of beliefs or doctrines which are regarded by those who profess that religion as conducive to their spiritual well-being, but it would not be correct to say that religion is nothing else but a doctrine or belief. The guarantee under our Constitution not only protects the freedom of religious opinion but it protects also acts done in pursuance of a religion and this is made clear by the use of the expression "practice of religion" in Article 25".

Jainism is a religion seeking happiness in renunciation i.e. Tyag, Aparigraha and Veetragta. This is the core of religion on which its whole doctrines and beliefs are based upon. Destroying the core is destroying the religion itself. In the matter of *Commr. Of Police v. Acharya Jagdishwarananda Avadhuta*<sup>6</sup> it was observed that "Protection guaranteed under Article 25 and 26 of the Constitution is not confined to matters of doctrine or belief, but extends to acts done in pursuance of religion. What constitutes an integral and essential part of religion has to be determined with reference to its doctrines, practices, tenets, historical background etc."

The practices such as Samadhi, where food and water are renounced for equanimity with God and similar practices. In fact in the case of *Maruti Satpathy Dubal v. State of Maharashtra*<sup>7</sup>, the court acknowledges that "the attitude of the Hindu and Jain religions depicted in the writings of the Dharmashastras shows that though ordinarily suicide was disapproved, in certain circumstances it was tolerated, condoned at, accepted and even acclaimed depending upon the person and the particular circumstances". There are no provisions expressly prohibiting, controlling, restricting or prevent the practice of Santhara.

Section 309 and 306 of IPC which makes "Attempt to commit suicide" and "Abetment to commit suicide" punishable is a restraint to perform Santhara which is clear violation of petitioner's Article 25 which is a Fundamental Right under the Constitution of India. Santhara is conceptually different from suicide as this vow is not taken either in passion or in anger, deceit etc. but it is a conscious process of spiritual purification where one does not desire death but seeks to live his life whatever left in a manner so as to reduce the influx of *Karmas*. So it is erred in equating the practice with suicide so as to attract the provisions section 309 and 306

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(Public Interest Litigation)

<sup>2</sup> ibid

<sup>3</sup> Digyadarsan Rajendra Ramdassji v. State of Andhra Pradesh and Anr., 1970 AIR 181: 1970 SCR (1) 103

<sup>4</sup> Commr of Hinduu religious endowment v. Sri Lakshmindra Thirta Swaminar of Shirur Mutt, 1954 SCR 1005: AIR 1954 SC 282 (1943) 67 CLR 116: 1943 HCA 12

<sup>5</sup> (2004) 12 SCC 770

<sup>6</sup> (2004) 12 SCC 770

<sup>7</sup> (1986) 88 BOMLR 589

of IPC. Also when a denomination has right to manage its own affairs then it cannot be cut short by any laws. It was held in a judgment of *Raitala Pranchand Gandhi v. The State of Bombay*<sup>8</sup> in which the learned Court held that, “The rights to manage religious affairs cannot be abridged by any law”. So, the Sections 306 and 309 of the law i.e. Indian Penal Code can't restrain the pious and religious practices.

Also mixing Santhara with suicide or Euthanasia or Sati is incorrect. Santhara is a way of mastering the art of death as much as the art of living.

The people of the Jain community dislike that Sati and Euthanasia are being compared with Santhara. Euthanasia is killing which is offered and by a doctor when a person is immensely suffering. Here there is a need of another person to help the person get rid of his body pain. Whereas Santhara is a sacred practice, euthanasia is a fast and the quick process that leads to immediate death but Santhara is slow and gradual process where one person leaves his life slowly and submit himself to the God. The person adopting Santhara can anytime move back and give away Santhara. Santhara is a bold spiritual decision to face death in the final stage of life after a person has completed all his responsibilities and can only be taken by sensible person with permission of his dependents and his Guru. It is natural and a peaceful way to say goodbye to the materialistic world simply by way of fasting. It is a way to exit life cycle with dignity Santhara results in feeling of fulfillment containment and detachment from Karma oriented world where as suicide is cowardly in nature. Also the motive of both the practices is different in nature. People often commit suicide when they are fed up of their life or our mentally disturbed. Whereas Santhara requires tremendous strength and it is about uniting one with *Antaryami*, it is not about dying. Santhara is when a man lets his life ebb away with bravery and stoicism. And all the negativity, depression, despair, hopelessness, exhaustion, frustration, anxiety, tension which are all a part of suicide are missing and also, *himsa*, which is the essential ingredient of suicide of which the Jains are against is also missing. Sati was something which was forced upon women upon the death of her husband where Santhara is something which a man takes on his own without any pressure.

### **Can a person be arrested merely on intention to adopt Santhara?**

If a person is arrested merely on the basis of intention to take Santhara and convicted under Section 309 of IPC, such an arrest is arbitrary.

Also the practice of Santhara has been followed for time immemorial and the right of individual to practice Sanatana is protected by right of privacy. The practice of Sanatana has been recognized by Privy Council in the year 1863 to be prevalent from time immemorial. In the matter of Muni Badri Prasad who practiced Santhara, the Hon'ble Supreme Court in 1987 did not even consider the case fit for admission, where it was equated to suicide.

In view of the fact that Jainism which is premised on the philosophy of non-violence and which abjures all forms of violence including violence to one's own self it is wholly unjustified in linking a sacred practice of the Santhara with a suicide - an inherently violent act.

### **The other side of the same coin: against point of view of the author**

It is submitted that practice of Santhara amounts to attempt to suicide (section 309 IPC) also article 25 clause 2 states that freedom of religion shall not affect the operation of any existing law or prevent the state from making any law. The rituals and religious practices are protected under essential practices of religion to the extent that they are within the limits of article 25 and 26 of the constitution.<sup>9</sup>

In *Shirur Mutt*<sup>10</sup>, while giving freedom under clauses (a) and (b) of Article 26, made it clear that what is protected is only the “essential part” of religion or, in other words, the “essence of practice” practiced by a religious denomination and, therefore, before any religious practice is examined on the touchstone of constitutional principles, it has to be ascertained positively whether the said practice is, in pith and substance, really the essence of the said religion.

In any of the scriptures, preaching, articles or the practices followed by the Jain ascetics, the Santhara has not been treated as an essential religious practice, nor is necessarily required for the pursuit of immortality or *Moksha*. Even though Santhara is an old Jain practice, it is against constitutional norms that was similarly held in *Young lawyers association vs UOI*<sup>11</sup> in which the court held “in matters of religious affairs, it is observed that the same is also not sacrosanct as there may be many ill-practices like superstitions which may, in due course of time, become mere accretions to the basic theme of that religious denomination. And declared the centuries old Hindu religious practice was illegal and unconstitutional.”

In a landmark judgement of *Durgah Committee Ajmer v. Syed Hussain Ali & Ors*<sup>12</sup> it was held that “sometimes there are practices, even secular ones, usually considered as part of the religion, that might actually be superstitious and not essential to the religion, and hence excluded from the protection of the Constitution”. The requirement of constitutional conformity is inbuilt and if a custom or usage is outside the protective umbrella afforded and envisaged by Articles 25 and 26, the law would certainly take its own course. The constitutional legitimacy, naturally, must supersede all religious beliefs or practices.<sup>13</sup>

Furthermore, the right given to a person under 25(1) can be curtailed or regulated if the exercise of that right would violate other provisions of Part III of the Constitution, or if the exercise thereof is to in consonance with public order, morality and health. The

<sup>8</sup> AIR 1953 Bom 242, (1953) 55 BOMLR 86, ILR 1953 Bom 1187

<sup>9</sup> Madras v. Shri Lakshmindertirtha Swyamiyar of shri shirur mutt, 1954 AIR 282, 1954 SCR 1005

<sup>10</sup> ibid

<sup>11</sup> 2018 SSC Online SC 1690

<sup>12</sup> 1961 AIR 1402, 1962 SCR (1) 383

<sup>13</sup> Adi Saiva Sivachariyargal Nala Sangam and others v. Government of Tamil Nadu and others W.P (Civil) No. 354 of 2006, (Supreme Court)

general law made by the government contains provisions relating to public order, morality and health; these would have to be complied with, and cannot be violated by any person in exercise of his freedom of conscience or his freedom to profess, practice and propagate religion.<sup>14</sup>

Section 309 of IPC is not violative of religious norms under article 25 of constitution. In the case of *Hanif Qureshi v. State of Bihar*<sup>15</sup> on the question that whether ban on sale of cattle for slaughter is unconstitutional. The Bihar Preservation and Improvement of Animals Act, 1956 imposed a total ban on the slaughter of all categories of animals belonging to the species of bovine cattle. Also in case of *Ramji Lal Modi V State Of Uttar Pradesh*<sup>16</sup> the Supreme Court held that section 295A IPC is not inconsistent with article 25 and 26 and it imposes restriction in interest of public order. In case of *Acharya Jagdishwaranand v. Commissioner of Police, Calcutta*<sup>17</sup> it was held that the tandav dance was not a religious practice and also it was violative of section 144 CrPC and 144 IPC which says prohibits carrying illegal weapons. Thus proving that certain religious practices that are against the constitution were banned.

Henceforth, voluntary fasting is nothing but a performance in self-destruction, by any reasonable construction, fasting ought to be considered indistinguishable from an act specifically aimed at ending one's own life. Putting an end to life cannot be an essential practice if a religion which aims to prevent Ahimsa. Since Santhara is a way to *Moksha* but it is not the only way to *Moksha* therefore it cannot be constitute as something "essential".

Moreover, it is submitted that people aiding for Santhara or supporting someone to perform the same will fall under the ambit of Section 306 of IPC which talks about Abetment to commit suicide. In the case of *Queen v. Mohit*<sup>18</sup>, the persons who followed a woman preparing herself to be sati on the pyre of her husband and chanted Rama-Rama were held guilty of abetment by instigation to lead the woman to commit suicide. Same was observed in *Emperor v. Ram Lal*<sup>19</sup>, in case with at most similar facts. Therefore the practice of santhara is not consistent with the provisions of what mentioned in article 25 of the constitution also it is not in agreement with public morality hence falling under the ambit of Section 309 and Section 306 IPC.

Basically Santhara is a notorious abhorrent and tribal practice in name of religion and must be stopped as in certain cases a person is forced to fulfil is Oath of Santhara and complete the practice and he has to go through inhuman and intolerant conditions. In the present times there have been instances where person is tied to the chair and bed or any other objects and not allowed to drink or eat even if he wants to give away the vow. A person who adopted Santhara is surrounded by Bhajan and Keertan and made to lose his conscience and forcefully accept the process of death full stop it is nothing less than killing a person. Hence proving that in today's time these practices that were voluntary are now forceful thus becoming obsolete and need to be banned as they are against the core belief itself of the religion that is Ahimsa. Forcing someone to complete his/her vow is basically himsa and similar to sati where women were forced to sit on the pyre of the dead husband.

When the state of Rajasthan can prevent Sati and stop Sati and also punish for its abetment then Santhara is no different as it is also process to commit suicide in name of her religion as in case of Sati. Santhara in which fasting is done with the name to achieve death is nothing but suicide under the umbrella of religious belief, leaving behind all his family responsibility and running away from them. If such a practice is allowed by the court then each and every person would use this as a tool to commit suicide and escape away from all his responsibilities. The Supreme Court in *Gyan Kaur v/s State of Punjab*<sup>20</sup> said that section 309 is valid and does not violate article 21 of the constitution and the right to life does not include the right to die. Santhara is not something which is practised and adopted regularly. It is only adopted occasionally by certain individuals and it is not an essential religious practice as well and banning it will not destroy the core of the community rather preserve.

### **Now the question arises that can a person be arrested for mere intention to take Santhara?**

If the person has the mens rea to commit the crime then an arrest can be made also taking one's life in name of religion is suicide and is against the public order. Every act of self-destruction by a human being subject to discretion is, in common language described by the word suicide provided it is an intentional act of a party knowing the probable consequence of what he is about to do. A voluntary fast unto death is an act of self-destruction, which amounts to Suicide, which is a criminal offence and is punishable under section 309 IPC with simple Imprisonment for a term which may extend to one year or with fine or with both.

The Mens rea or intention is one of the essential elements of the offence of attempt to commit suicide<sup>21</sup>. Intention means, to have in mind a fixed purpose to reach a desired objective, so it indicates that a man is consciously shaping his conduct so as to bring about a certain event. Intention is the purpose or design with which an act is done. In matter of *C A Thomas Master v. Union of India*<sup>22</sup>, the Kerala High Court held that suicide is to be based on intention as an essential ingredient and is never to be presumed. This means that a person can be held guilty under Sec. 309 only if it is proved that the person had the intention to die. Also, suicide required an intention on the part of a person to kill himself, also that he knew what he was doing and was aware of the probable consequences of his act.<sup>23</sup> unless the statute clearly or by necessary implication rules out mens rea as a constituent part of a crime

<sup>14</sup> T.M.A.Pai Foundation & Ors vs State Of Karnataka & Ors (2002) 8 SCC 481: AIR 2003 SC 355

<sup>15</sup> 1958 AIR 731, 1959 SCR 629

<sup>16</sup> 1957 AIR 620, 1957 SCR 860

<sup>17</sup> 1984 AIR 512, 1984 SCR (1) 447

<sup>18</sup> 3 N.W.P. 316

<sup>19</sup> L.& C. 161

<sup>20</sup> 1996 AIR 946 1996 SCC (2) 648 JT 1996 (3) 339 1996 SCALE (2)881

<sup>21</sup> Nathu Ram v. MP, AIR 1960 MP 174, 1960 CriLJ 832, 1960 (1) FLR 476, (1960) ILLJ 784 MP.

<sup>22</sup> 2000 CriLJ 3729.

<sup>23</sup> Re Davis (1968) 1 QB 72.

a person should not be found guilty of an offence against the criminal law unless he's got a guilty mind.<sup>24</sup> And in this case the statute nowhere rules out that mere intention is not punishable.

The religious practices, which violate public order, morality and health and in which public order will include violation of the provisions of the Indian Penal Code (IPC) have been rejected to be protected under Article 25 by the Supreme Court in various pronouncements. The right to freedom of religion under Article-25 in Part-III-Fundamental Rights, is subject to public order, morality and health and to the other provisions of this Part, which includes Article 21. In *Jagdishwaranand Avadhuta Acharya v. Police Commissioner, Calcutta*<sup>25</sup>, the Supreme Court upheld the power of the police to prohibit deleterious practices, such as the sacrifice of human beings in the name of religion, or to direct the exhumation or removal of graves or interred corpses for the purpose of detection of crime or for preventing breach of the peace between fighting communities or to prohibit performance of the 'tandava' dance by the Ananda margins in the public streets or places. Reference was made on the decision in *Gulam Abbas v. State of UP*<sup>26</sup>. The restrictions as are desired or found necessary on the grounds of public order, health and morality is inbuilt in Articles 25 and 26 of the Constitution of India<sup>27</sup>][<sup>28</sup>]. The meaning of word public order is a thing which disturbs the current of life of the community and does not really affect the individual only it will amount to disturbance of public order.<sup>29</sup> And killing one self has been identified as a major public health issue. Exposure to this is far more pervasive than previously considered and might be associated with significant adverse outcomes.<sup>30</sup>

### What should the Supreme Court do?

In the point of view of author India is a country having diverse ethnicity as well as diverse religions with in these religions there are multiple religious practices some good some bad.

Author feels that these religious practices should not be fully given up as this is what makes our country diverse and ethnic in nature, but just like with time the law evolves so should these religious practices since these were nothing but the laws of the ancient time to regulate the human conduct so thus higher courts should with the help of experts (in this case the learned scholars of Jain religion) devise ways to conserve the practice as well as uphold the norms of the constitution.

As far as Santhara is concerned, a doctrine should be evolved to classify when can a practice be actually termed as Santhara and when can it not be. The doctrine should be evolved with the help of the learned Jain scholars, later on it will be the duty of the gurus, the preachers, the learned scholars or the teachers(who would scrutinize whether a person who is wanting to adopt Santhara is actually falling within the norms laid by the doctrine along with the registry with the court and only then be allowed to adopt Santhara and where in all cases he would be allowed to leave or break the vow of Santhara if the person is not prepared to do the same.

In this way the author feels that the religious practice would be conserved and also the law of the land would be upheld.

### CONCLUSION:

Santhara being a religious practice has both positive and negative effects, the laws and the decision should be such that it is beneficial for the society as a whole.

<sup>24</sup> State of Maharashtra v MH George, 1965 AIR 722, 1965 SCR (1) 123.

<sup>25</sup> AIR 1984 SC 51.

<sup>26</sup> 1981 AIR 2198, 1982 SCR (1)1077.

<sup>27</sup> N.Adithayan v. Travancore Devaswom Board, ((2002) 8 SCC 106).

<sup>28</sup> Javed & ors. v. State of Haryana & ors, ((2003) 8 SCC 369).

<sup>29</sup> Rev Stainslus v. State of Madhya Pradesh 1977 SCR (2) 611.

<sup>30</sup> World Health Organization Geneva 2002.