

“SUICIDE IS SIN ,SANTHARA IS RELIGION”

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INTRODUCTION

Religion is the system under which people follow their spiritual faith right from the birth until death. Although religion is merely the traditions and beliefs what had been followed by the ancestors, currently the legal system based on its rituals and its codifications determine marriage, divorce, succession, adoption and so on. Each religion slowly started adopting its own customs and institutions such as temples or mosques or churches started interpreting the manner in which one should lead their life. The human civilization is considered to attain its driving force from religion and it is supposedly incomplete without them.

Of these religions, Jainism is one such ancient Indian religion which is built upon the belief that the body and soul are two different entities. “Ahimsa, Satya, Asteya, Bhramacharya & Aparigraha” are the major 5 vows of Jainism which mean as “Ahimsa or Non violence, Satya or Truth, Asteya or NonStealing, Bhramacharya or Chastity and Aparigraha or Detachment from material property”.¹ All these five vows are the basic morals on which Jainism works upon. The major belief in Jainism is of Reincarnation which according to this religion is mainly dependent and decided from the acts and

activities performed by the concerned person in his current existence. The attainment of “Moksha” or “Total Liberalisation” from the Birth-Death Cycle is the sole and main motive of Jainism as with Utter Liberalisation, the Soul will completely live in the state of happiness and the body will be free from the cycle of birth and rebirth. The state of “Moksha” is achieved when the person has done all the good things with good faith in the present life.

JAINISM AND SANTHARA

Santhara is one such religious practice performed by Jains for the attainment of this ulterior motive i.e. “Moksha”. It is a custom based practice which is almost 2500 years old and yet followed by some people of Jain Community. A spiritual personage who leads a noble life and has performed all his worldly duties and responsibilities or a person who is in a vegetative state or is terminally ill and has no chances of survival or feels that his body has already reached a tattered state, and would not last long, undergoes through this practice of achieving “Moksha” while living for achieving a peaceful and a dignified death. “Santhārā literally means a bed of hay: the practice derives the name Santhārā because when the death approaches, the aspirant or performer sits or lies down on a bed of hay, renouncing all passions, attachment and intake”². It is mainly a practice of voluntary death by reducing the intake of food day by day.

¹The Five Maha-Vrata of Ascetics, JAINA, <http://www.jaina.org/?page=FiveMahaVratas>

² DR. D. R. Mehta, Dr. K. C. Sogani, DR. Kusum Jain and S. Bothra, SANTHĀRĀ / SALLEKHANĀ, International School for JainStudies.pg1



The main reason behind Santhara is to attain “*Moksha*” as in the religious books and teachings of Jainism. Sallekhana, Samadhi-marana or Sanyasana-marana, are all different names of Santhara. From the ancient times the practice of Santhara has been in the religious books of Jainism. Santhara word is also mentioned in “*Acharanga Sutra*” which is the principal sutra of Jains.

Jainism is divided into two major sects defining different meanings. Digambara (Sky Clad) is one of the sects and the other is Shwetambara (White clad) sect. Sallekhana is the synonym of Santhara and is defined as a proper procedure to surrender Subsistence and Water. Mainly the terms Santhara and Sallekhana are both used by Shwetambara’s but digambara’s use the term Sallekhana only. Sallekhana is been further divided into two more segments-

- Niyam Sallekhana – In this a person leaves all the things with the passage of time and in this type the death can be after many years.
- Yama Sallekhana – In this type the person is about to die in some days.

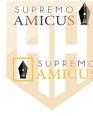
Santhara is performed by the persons own voluntary consent and no one can force the person to perform this practice. Mainly the people who perform this practice have a strong religious belief and are true followers of Jainism.

Santhara is indeed a very essential spiritual practice under Jainism. This is a belief in which when a person feels, that he is at the fag end of his life, he voluntarily and also with the consent of his family members

decides to pass his last moments of life in complete peace of mind and quietude through this practice, in which he renounces from every other thing and just starts believing and devoting time to God for attaining a good death and afterlife. Santhara cannot be just practised by one’s own consent only, the consent of Family members, Friends, Teachers & Frair is also required to follow the path of Santhara. With the consent of all the persons to whom the person was attached, the person has to surrender all his relations with all the people as well as his passions and truly indulge in religious practice and reciting mantras as all this helps the person in getting a dignified death. The person concerned prays pardon from all the people he was connected for any of his misdoings which he did in life.

Many of the religious texts of Jains (such as *Tatwartha Sutra*, *Sarvartha Siddhi*, *Bhagwati Aradhna*, *Ratankarand Shrawakachara*, *Acharang Sutra*, etc) lays down the details of the method for performing Santhārā /Sallekhanā as follows:-

- 1) A person makes up one's mind to practice Santhara and proclaims it publically.
- 2) He apologizes to everyone for any hurt caused to them by his actions in his lifetime. This practice is also known as *Michhami dukkadam*.
- 3) He takes pledge of Santhara after a discussion of his present condition with a saint.
- 4) He then starts meditation and tries to look inside his soul.
- 5) Further, He slowly and gradually restrains himself from food and water.
- 6) Eventually, His soul leaves from his body and attains “*Moksha*”.



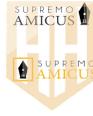
The essential condition required for Santhara is that the person performing it should not cling to life and also should not have a desire for early death. He should be a true follower of Jainism and perform this practice in a very peaceful manner. In such a state of intense mental peace and salvation, he reflects the fact that he is not afraid of death as it is a part of life and every person has to go through this stage of life at one point or the other, hence we cannot run away from it endlessly. The main objective of Santhara is that when the body has become too weak to be of any good for anybody, one should not cling to such death-bedded body. Santhara is nothing but an experiment of getting rid from such attachments of life. As, our greatest attachment is towards our body which according to the Jain religion is not the ultimate meaning of life. The essence of life according to Jainism is to get rid of one's karma so that they may end this cycle and the ultimate goal of Jainism is *Achieving Moksha*. Once this goal is achieved they believe that their soul has attained all knowledge and is at peace and therefore the soul rests in the heavens forever (Nirvana). It is believed by the Jain community that the practice of Santhara is a voluntary process of soul cleansing where one does not aspire death but rather decides to live his or her life, whatever is left of it, in such a way so as to decrease the influx of karmas, thereby a way to achieve the ultimate goal of their religion. It is a way to achieve proper salvation by detaching the body from the, there would be no affection either for body or for food, and thus will lead to better reincarnation

according to Jainism. It is a rational or reasonable practice as the very purpose of human existence is to overcome all obstructions that come in between its progress towards attaining *Moksha*. Everybody has an imminent fear of death and this is one such major hindrance towards attaining salvation and Santhara thereby helps in overcoming this hindrance. In the book of Dr.Colonel D.S.Baya³, which talks about almost all aspects of this religious practice by the Jains across the world, Santhara has been defined as a very essential part of the religion of Jains. He explained in the book that by going through this practice of Santhara one attains the ultimate form of peace and overcomes his greatest fear, i.e. death.. It is a noble form of death, which does not use any violent means to die in a fit of moment and it is perfectly non-violent as it causes no injury to the self or the other. The practice has been a tradition of Jain religion since a very long time and it has been practiced by the Jain followers since the time of *Bhagwan Rishabhadeva* to the present age. It was finally concluded in the book that it is a noblest way to die in the pursuit of immortality

RAJASTHAN HIGH COURT DECISION AND ANALYSIS

The current legal position of Santhara in India is still not settled and has given rise to massive socio-political issues. It all started in the year 2006 when, Adv. Nikhil Soni(a Jaipur-based-lawyer) filed a public interest litigation to seek directions under Article 226 regarding the religious practice of Santhara,

³ D S BAYA, TATTVARTHA SUTRA(1ST Ed. 2004)



i.e. the fast unto death practiced by Jains, as illegal and punishable.⁴ He contended that this practice of Santhara is a form of suicide and comes within the ambit of IPC under S306 and, therefore is a crime; the PIL also sought prosecution of those supporting the practice for abetment to suicide under S309 of IPC. This has given rise to debates on the validity of this practice and whether it is moral or not and has thrown open a legal issue of Santhara being similar to the act of suicide under IPC. The petitioner argued that the practice of Santhara was not a fundamental right that is guaranteed under Article 25 (freedom of conscience and free profession, practice and propagation of religion) of The Indian Constitution, because it is not an essential religious practice and also as it violates the right to life guaranteed under Article 21. It also argued that religious freedom guaranteed under Article 25 is subject to public order, morality and health. While the Jain community in their defence argued that Santhara/Sallekhana is an ancient and essential religious practice of their religion which aimed at soul-purification. It is only practiced with full consent of family members and when all purposes of life have been served. It is not the giving up of life, but dying with dignity and peace. The Rajasthan High Court after listening to both sides on August 10, 2015 allowed the writ petition and made the practice of Santhara illegal giving the following directions:

“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”⁵

The court asked the state to stop the practice of Santhara, and also opined that any complaint made in this regard to be registered as a crime under Section 309 (attempted suicide) or Section 306 (abetment to suicide) of the IPC.

The Jain community protested against the order in a non-violent manner. They bombarded the streets with protest and rallies in several cities all over India., saying suicide was sin, whereas Santhara is a very essential part of their religion. Hence, immediately after the order of the Rajasthan High court was passed a SLP (Special leave petition) was brought under of the Apex court of India topped off by Akhil Bharatvarshiya Digambar Jain Parishad. The Supreme Court without taking any time granted stay on the order of the Rajasthan High court. The decision is still under challenge before the Supreme Court of India. ⁶The following questions of law have to be adjudicated by The Apex court in the aforementioned case:-

⁴ Nikhil soni v.Union of India, 2015 CriLJ 4951

⁵ Supra Note 4,Para 43

⁶ Nikhil soni v.Union of India, 2015 CriLJ 4951



1. Whether the practice of Santhara amounts to suicide under S309 and S306 of IPC?
2. Whether Right to life under A21 of The Indian Constitution includes “Right to die”
3. Whether Santhara is similar to euthanasia?
4. Whether the practice of Santhara is protected under A25 of the Indian constitution

While the decision is still under challenge, a number of jurists and social-activists have criticised the decision of the Rajasthan High Court and this is what makes this issue an open field for exploration and analysis through research. The authors will be dealing with the above mentioned questions of law and analyze the same.

1. Whether the practice of Santhara amounts to suicide under S309 and S306 of IPC?

The whole society as well as some of the jurists consider the practice of Santhara similar to that of Suicide which is not true, Jain texts draws a line of difference between Santhara and Suicide. Suicide is basically a voluntary act of ending one’s own life. It is mainly committed due to emotional reasons such as Depression, Anxiety, Stress, and Pressure.

In a Bombay High court case it was held that—
“It is estimated that about one third of the people who kill themselves have been found to have been suffering from mental illness requiring psychiatric

*treatment. Depressive illness with a feeling of worthlessness and despair and a wish to die accompany most of the mental disorders. But even in this condition the urge to commit suicide varies. Schizophrenia which is one of the other major mental disorders also takes an above-average toll of suicides. Most of the rest have unstable and vulnerable personalities. Abnormal personalities with aggressive tendencies show increased liability to suicide. Frustration, loss of social status, social isolation, inability to cope up with the stress and strain are still other factors of the like nature responsible for suicides.”*⁷

Justice Tukol, a retired judge of Karnataka High Court and also a Scholar of repute, in his book “Sallekhanā is not Suicide” addresses as under⁸

“I cannot agree with the view that this omission to take food is an act under the section (309 IPC) because one of the principles of interpretation of a criminal statute is that it should be strictly construed. Section 32 of IPC lays down the rule of interpretation of sections in Penal Code. It lays down “In every part of this Code, except where a contrary intention appears from the context, words which refer to acts done extend also to illegal omissions”. What is illegal is indicated in section 43 of Penal Code: (1) everything which is an offence, or (2). which is prohibited by law, or (3) which furnishes ground for civil action, or (4) omission to do

⁷ Maruti Shripati Dubal vs State Of Maharashtra, 1987 (1) BomCR 499, (1986) 88 BOMLR 589

⁸ Justice T. K. Tukol, Sallekhanā Is Not Suicide (1976)



whatever he is legally bound to do so". Law requires every individual to conduct himself so as not to injure others. An act becomes an injury, when it causes harm to another in body, mind, reputation or property. There is no law which casts an obligation on every individual not to fast because fasting is sanctioned by the most of the religions in India as conducive both to physical and mental health, besides providing an opportunity for worship and meditation. A fast undertaken on religious grounds causes no pain or harm to anybody. Since, such fast is not directed against anybody, so as to cause him mental pressure or anxiety, it cannot be regarded as a harmful act. Every fast which is spiritually motivated exudes an atmosphere of tranquillity, peace and piety about it".⁹

Justice Tukul further said that "facing death in a war, knowing full well that death is the likely result, is, applauded as heroism or *Vīrāraṇa*. Dying for religion is called *Martyrdom*. Facing death for a noble cause earns the title of a national hero or Saviour. It cannot therefore be disputed that death for a noble cause or end has always been hailed by all nations, though under different designations."¹⁰

Thereore, Santhara is totally different from Suicide as Santhara is a voluntary death process which is done with the consent of

other people and also because Santhara is not practised under any force or due to any emotional or mental stress. The sole reason to perform Santhara by the people is to attain "Moksha". Suicide is considered to be the worst form of death as according to hindu mythology it gathers bad karmas, on the other hand it is believed in Jainism that Karmas play a major role in deciding where the soul will go after death. Santhara or Sallekhana is a religious way of dying with diligence and Dignity and on the contrary Suicide is based on anger and dejection so it is totally immoral.

2. Whether Right to life under A21 of the Indian Constitution includes "Right to die"

Right to life under A21 of The Indian Constitution states as under

"No person shall be deprived of his life or personal liberty except according to procedure established by law."¹¹

Art. 21 provides a person with a right to live a meaningful life with dignity. The sole objective of this article is to prevent the state from restricting any individual from living a dignified life except according to procedure established by law.

This article according to the Supreme Court of India does not primarily includes "right to die" for every individual, but it certainly gives this right to people who are terminally ill or has been suffering from an incurable form of disease. These are the cases which fall within the meaning of "Right to die" with dignity as according to the court these are not

⁹ *Ibid* at pages 320-324.

¹⁰ *Supra* Note 8

¹¹ INDIA CONST. art. 21



cases of extinguishing life but only of accelerating the process of natural death which has already commenced.

The Supreme Court of India in *Gian Kaur V. State of Punjab*¹² opined that-

“A question may arise, in the context of a dying man, who is, terminally ill or in a persistent vegetative State that he may be permitted to terminate it by a premature extinction of his life in those circumstances. This category of cases may fall within the ambit of the ‘right to die’ with dignity as a part of right to live with dignity, when death due to termination of natural life is certain and imminent and the process of natural death has commenced. These are not cases of extinguishing life but only the accelerating conclusion of the process of natural death which has already commenced. The debate even in such cases to permit physician assisted termination of life is inconclusive. It is sufficient to reiterate that the argument to support the view of permitting termination of life in such cases to reduce the period of suffering during the process of certain natural death is not available to interpret Article 21 to include therein the right to curtail the natural span of life”

Similarly as in the case of Santhara which according to Jainism can only be practiced by individuals who are terminally ill or in old

age, having no meaning of life left with them and whose death due to termination of natural life is very certain in nature, hence has a right to voluntarily end their life with dignity as under A21 of The Indian Constitution.

3. Whether Santhara is similar to euthanasia?

Euthanasia also known as assisted suicide or mercy killing is a mode of painless killing of a person who is suffering from an incurable disease or is in a vegetative state from a very long period of time. Euthanasia is of two types:-

1. Active euthanasia- ‘A mode of ending life in which the intent is to cause the patient's death in a single act (also called mercy killing).’¹³
2. Passive Euthanasia- ‘A mode of ending life in which a physician is given an option not to prescribe futile treatments for the hopelessly ill patient’.¹⁴

Passive euthanasia is legal in India. The Honb’le Court in the case of *Aruna Ramchandra Shanbaug v. The Union of India* said emphatically stated that **euthanasia is one of the most perplexing issues, which the courts and legislatures all over the world are facing today.**¹⁵ **The court in the same case held that** it is legal for doctors to withdraw life support from patients who have no hope for survival or are in a vegetative state.

¹² *Gian Kaur v. The State Of Punjab*, 1996 AIR 946

¹³ Euthanasia;Active and Passive Euthanasia, BBC, http://www.bbc.co.uk/ethics/euthanasia/overview/activepassive_1.shtml

¹⁴ Euthanasia;Active and Passive Euthanasia, BBC, http://www.bbc.co.uk/ethics/euthanasia/overview/activepassive_1.shtml

¹⁵ *Aruna Ramachandra Shanbaug v. Union of India*, (2011) 4 SCC 454



The religious practise of Santhara which is followed by Jains is being referred to as similar to Euthanasia by many jurists which is not true as Santhara is totally different from Euthanasia. Religious texts also clearly defines that Santhara does not include the concept of Euthanasia. Santhara is old and spiritual practise which is going on from thousands of years. It is a practise which is performed by a person who is either Old or terminally ill and further the person who performs Santhara or Sallekhana has completed all his worldly duties and responsibility whereas Euthanasia is mainly recommended by doctors to the people who are terminally ill. The process of Euthanasia is all the way fast and the death under this process can happen all of a sudden too, on the other hand Santhara is a process in which the person dies slowly and his soul rests in the lap of the divine god. Also, the motive behind performing both of these practices are very different, Santhara is practiced to attain "Moksha" while euthanasia is performed to end the suffering of a terminally ill patient.

4. Whether the practice of Santhara is protected under Art. 25 of the Indian constitution

Fasting till death is an age old practice which is prevalent in not only Jainism but also in other religions. The traditional ritual of "Prayopavesa" (fasting of a terminally ill person unto death) which is practiced by hindu and "Sokushinbudhsu" which is practiced by the budhist monks in which they undergo ascetism unto death and then mummified alive) are some of the examples

of such religious practices similar to that of Santhara. These are ancient practices which are being practiced from time immemorial and which are an essential part of their cultures and religions.

A25 of The Indian Constitution guarantees to every citizen to practice and profess any religion freely as under-

"25. Freedom of conscience and free profession, practice and propagation of religion

*(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion"*¹⁶

In the case of Madras v/s Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, The Hon'ble Supreme Court laid down as under:-

"Religion is a matter of faith with individuals or communities and it is not necessarily theistic. There are well known religions in India like Buddhism and Jainism which do not believe in God or in any Intelligent First Cause. A religion undoubtedly had 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 will not be correct to say that religion is nothing else but a doctrine or belief. A religion may not only lay down a code of ethical rules for its followers to accept, it might prescribe rituals and

¹⁶ INDIA CONST. art. 25,cl.1



observances, ceremonies and modes of 12 worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress. The guarantee under the Constitution of India 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”¹⁷

The practice of Santhara as contested by many jurists therefore does not interfere with public order, health or morality as it is a form of glorified death practiced by people having a lot of faith in their religion, neither does it harm anybody else nor is it against morality as it is a way of attaining peace and “Moksha” in true sense. The Hindu Code defines such custom and usage followed by different religions as –

“Any rule which, having been continuously and uniformly observed for a long time, has obtained the force of law...in any local area, tribe, community, group or family, if it is certain and not unreasonable or opposed to public policy.”¹⁸

The validity of a custom can be ascertained from its reasonableness. However, every custom cannot be founded on reason. The reasonableness of a custom depends on many factors like religion, mindset of people, social values etc. Hence, a custom is reasonable or

not can only be checked by analysing the values and beliefs of that particular society or religion and also from where it originated. The unreasonableness of a custom in today’s time cannot affect its validity if the court is satisfied that it has a reasonable origin.

“It is settled that a religion not only lays down a code of ethical rules but may also prescribe rituals and observances, ceremonies and modes of worship. These, when they constitute an integral/essential part of the religion is protected under Article 25 and Article 26 of the Constitution.”¹⁹

It is a said principle that the rights of an individual which are protected under Part III of The Constitution, overrides any other law and thereby cannot have the sanctity of law. Santhara being an essential religious practice as it is a way of attaining the ultimate goal of life according to Jainism (i.e. Moksha) is protected under Art. 25 of The Constitution of India hence cannot be challenged under penal code or any other identical law.

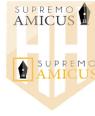
CONCLUSION

The authors through these findings on Santhara have drawn the conclusion that Santhara is truly a religious and spiritual practise and not illegal. The allegations made against Santhara are all wrong. According to the religious texts of Jains the comparison of Santhara with Crimes such as Suicide and Euthanasia is in itself a Sin because Santhara is a very ancient as well as prestigious and

¹⁷ The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar, 1954 AIR 282

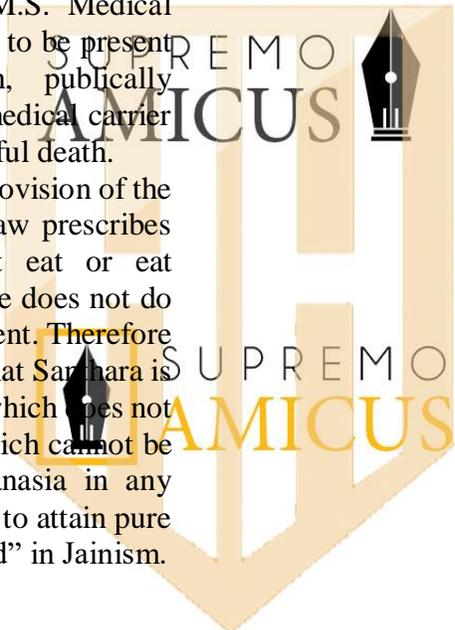
¹⁸ The Hindu Marriage Act, 1955, No. 25, Acts of Parliament, 1955(India)

¹⁹ Indian Young Lawyers Association v. State of Kerala, 2006 Writ Petition (Civil) No. 373

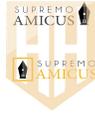


renowned ritual while the practise of Suicide is highly immoral , against our culture and also unconstitution. Therefore, Jainism has the most stringent standards for permitting of ending your life and only come into play when the inalienable bond between life and death has ceased to exist as in the case of Ācārya Hastimallji, who was a great Jain Acharya and was suffering from terminal illness. He undertook Santhara in early 1991 and died after 11 days. Again the kind of serenity written large on space was beyond compare. One of the senior most Physian Dr. S.R. Mehta. (Principal of S.M.S. Medical College, Jaipur) who happened to be present at the time of his death, publically commented that in his entire medical carrier he had never seen such a peaceful death.

It may also be argued that no provision of the Constitution or any ordinary law prescribes any act that a person must eat or eat adequately and further that if he does not do so, he will be liable to punishment. Therefore the authors are of the opinion that Santhara is an essential religious practice which does not violate any right or law and which cannot be compared to suicide or euthanasia in any manner whatsoever. It is a way to attain pure bliss, referred as “Anand Anand” in Jainism.



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