
A CRITICAL ANALYSIS OF SANTHARA AND SALLEKHANA: THE LEGAL, RELIGIOUS, AND CONSTITUTIONAL DEBATE

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ABSTRACT:

The Jain practice of Santhara or Sallekhana, a religious fast unto death, sparked national debate after the Rajasthan High Court in Nikhil Soni v. Union of India & Ors². equated it with suicide and made it punishable under Sections 306³ and 309⁴ of the Indian Penal Code (Hereinafter referred as IPC). The decision brought to the forefront a complex intersection of religious liberty under Article 25⁵ and the right to life under Article 21⁶ of the Constitution of India. This article analyses the judicial, constitutional, and philosophical implications of this decision, distinguishing the practices of Santhara and Sallekhana, and examining arguments from both sides.

LEGAL POSITION:

On 09.05.2006, a writ petition (D.B. Civil Writ Petition No. 7414/2006) was filed by Nikhil Soni before the Hon'ble High Court of Judicature for Rajasthan at Jaipur before a division Bench, Jaipur, seeking declaration that the practice of "Santhara" or "Sallenkhana" practiced in the Jain community as illegal. Finally, the writ petition was decided on 10th August, 2015. The Hon'ble court held that the practice of Santhara/ Sallenkhana is punishable under section 309⁷ of the Indian Penal Code, i.e., Suicide which is punishable with simple imprisonment which may extend upto one year or fine or both & also u/s 306⁸ of IPC i.e., "Abetment to suicide", which is punishable for a sentence upto 10 years & also liable to fine.

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² Nikhil Soni v. Union of India, 2015 SCC OnLine Raj 2042.

³ Indian Penal Code, § 306, No. 45, Acts of Parliament, 1860 (India).

⁴ Indian Penal Code, § 309, No. 45, Acts of Parliament, 1860 (India).

⁵ INDIA CONST. art. 25.

⁶ INDIA CONST. art. 21.

⁷ HASTINGS, supra note 3.

⁸ HASTINGS, supra note 2.

This case was further challenged before Supreme Court, wherein on 30th August, 2015, The Supreme Court put interim stay on the Rajasthan High Court order.

SANTHARA & SALLEKHANA MEANING:

The term “*Sallekhana*” is etymologically derived from the words “*sat*” and “*lekhna*”, wherein “*sat*” denotes “*samyak*” which means rationality or truth & “*lekhna*” signifies the gradual weakening of passions & desires. Accordingly, *Sallekhana* refers to a disciplined spiritual practice through which an individual endeavours to renounce worldly attachments, diminish the influence of karmic bonds, and progress towards the attainment of eternal liberation (*moksha*). It is not an isolated act but rather the logical culmination of a lifelong adherence to the principles of renunciation and restraint, as prescribed in Jain philosophy. The final stage or ultimate expression of this practice is referred to as *Santhara*.

The practice of *Sallekhana* refers to the preparatory austerity undertaken with the objective of overcoming all forms of karmic bondage through disciplined renunciation and self-restraint. The act of accepting death, whenever it naturally occurs, with a composed and equanimous state of mind, is referred to as *Samadhimaran* or *Santhara*. *Santhara* is therefore abstinence from eating food, water and renouncing all forms of worldly attachments, relations till death awaits. The pre-condition of *Santhara* is seeking permission from all family members and after discussing it thoroughly with one’s guru (religious preceptor).

KEY ISSUES:

- 1) Whether *Santhara* or *Sallekhana* is an essential religious practice (ERP) protected under Article 25⁹, 26¹⁰ and 29¹¹ of Constitution of India
- 2) Whether *Santhara*/*Sallekhana* amount to abetment to suicide and suicide punishable under IPC, Sec. 306¹² and 309¹³ respectively?

PETITIONER’S ARGUMENTS: RELIGIOUS PRACTICE OR GLORIFIED SUICIDE?

The petitioner, Nikhil Soni, argued that *Sallekhana* is a glorified form of suicide and therefore a punishable offence under IPC. He contended that allowing such religious practices would

⁹ HASTINGS, supra note 4.

¹⁰ INDIA CONST. art. 26.

¹¹ INDIA CONST. art. 29.

¹² HASTINGS, supra note 2.

¹³ HASTINGS, supra note 3.

undermine the fundamental right to life and set a dangerous precedent for normalizing suicide in the name of religious salvation.

Relying on anecdotal evidence, Soni pointed to recent cases where individuals underwent Santhara and were publicly glorified through media, family, and religious groups. He argued that such glorification imposes psychological pressure on the elderly, terminally ill, and socially vulnerable persons within the Jain community to adopt the practice against their free will.

The petitioner emphasized that suicide, whether by poison or starvation, remains a punishable offence. He criticized the state's inaction and argued that Sallekhana should not be shielded by religious freedom when it infringes on the right to life, which forms the foundation of all other rights under the Constitution.

RESPONDENTS' ARGUMENTS: RELIGIOUS FREEDOM AND ESSENTIAL RELIGIOUS PRACTICE:

The respondents, representing various Jain associations and individuals, asserted that Sallekhana is a voluntary spiritual vow rooted in Jain philosophy. They claimed the practice is protected under Articles 25¹⁴, 26¹⁵, and 29¹⁶ of the Constitution of India and has been followed for centuries by both Digambara and Shwetambar sects.

They submitted that Sallekhana is not an act of death-seeking, but of renouncing of desires, attachments (moh-maya). The intention is not to die, but to purify the soul and welcome death as a natural transition. In contrast to suicide, which stems from emotional distress, Sallekhana is an exercise of inner peace, rationality, and self-control.

The respondents argued that the court erred in applying the "Essential religious practice" test narrowly. They contended that not all followers need to adopt a practice for it to be essential, and religious doctrines should be interpreted by those within the faith, not by secular courts.

They also cited *Justice T.K. Tukol's* seminal work "Sallekhana is not Suicide," in which he distinguishes Sallekhana from suicide through doctrinal, procedural, and ethical frameworks.

¹⁴ HASTINGS, *supra* note 4.

¹⁵ HASTINGS, *supra* note 9.

¹⁶ HASTINGS, *supra* note 10.

COURT'S RATIONALE- DECLARING SALLEKHANA AS SUICIDE:

In *Nikhil Soni v. Union of India*¹⁷, the Rajasthan High Court held that Sallekhana or Santhara does not constitute an essential religious practice protected under Article 25¹⁸ of the Constitution. The court declared that the practice amounts to suicide under Section 309¹⁹ of the IPC and abetment under Section 306²⁰. The judgment directed the State to prohibit and penalize the practice.

The Court emphasized that although Article 25²¹ guarantees religious freedom, it is not absolute and must yield to considerations of public order, morality, and health. The Court drew parallels with *sati*, arguing that social approval or ritualistic significance cannot legitimize a practice that leads to death.

Referring to *Gian Kaur v. State of Punjab*²², the Court reiterated that the right to life under Article 21²³ of Constitution of India does not include the right to die, except under strictly defined exceptions such as passive euthanasia in terminal illness cases.

THE CONSTITUTIONAL DILEMMA:

This case lays bare the tension between Article 21²⁴ (right to life) and Article 25²⁵ (freedom of religion) of Constitution of India. While the High Court viewed Sallekhana as a violation of Article 21²⁶, respondents argued that the right to die with dignity is itself part of life's dignity, as recognized in *Aruna Shanbaug*²⁷ and later in *Common Cause v. Union of India*²⁸.

The application of the “essential religious practice” test has drawn criticism. Courts have often struggled to define what is essential, relying on inconsistent standards. For example, in *Sardar Syedna Taher Saifuddin v. State of Bombay*²⁹, the Supreme Court held that courts must defer to religious communities' beliefs about what is essential to their faith.

¹⁷ HASTINGS, supra note 1.

¹⁸ HASTINGS, supra note 4.

¹⁹ HASTINGS, supra note 3.

²⁰ HASTINGS, supra note 2.

²¹ HASTINGS, supra note 4.

²² *Gian Kaur v. State of Punjab*, (1996) 2 SCC 648.

²³ HASTINGS, supra note 5.

²⁴ HASTINGS, supra note 5.

²⁵ HASTINGS, supra note 4.

²⁶ HASTINGS, supra note 5.

²⁷ *Aruna Ramachandra Shanbaug v. Union of India*, (2011) 15 SCC 480.

²⁸ *Common Cause v. Union of India*, (2023) 14 SCC 131.

²⁹ *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay*, 1957 SCC OnLine SC 82.

Furthermore, Article 25³⁰ of constitution of India allows for propagation and practice unless such practices violate public health, morality, or order. Sallekhana, by its voluntary nature and peaceful execution, arguably does not disturb public order or health in the same manner as violent or coercive practices like *sati* or *honour killings*.

THE APPEAL BEFORE THE SUPREME COURT:

In response to the High Court's decision, a Special Leave Petition (SLP) was filed in the Supreme Court by the *Akhil Bhartiya Digambar Jain Parishad*, which challenged the validity of the Rajasthan High Court's order. The Supreme Court granted an interim stay, halting the penalization of Sallekhana and Santhara until a final decision.

The SLP highlighted procedural and substantive defects in the High Court's ruling. It emphasized that the Digambar Jain sect, a major stakeholder was not adequately represented. It also criticized the lower court for failing to engage with the theological and doctrinal aspects of Sallekhana, treating it instead as a purely legal matter divorced from religious nuance.

The appeal brought to attention that the philosophical foundation of Sallekhana lies in the Jain concept of *ahimsa* (non-violence), which extends to one's own body and actions. Thus, equating Sallekhana with suicide, an inherently violent act, contradicts the very premise of Jain belief.

JURISPRUDENTIAL AND COMPARATIVE PERSPECTIVES:

Globally, legal systems have begun recognizing the right to refuse medical treatment and to die with dignity in certain cases. *In Re Quinlan*³¹ and *In Re Conroy*³² the United States courts acknowledged the right of patients in terminal conditions to decline life-prolonging treatment.

Similarly, Pope John Paul II stated that when death is inevitable, it is morally acceptable to refuse extraordinary or disproportionate medical means for prolonging. These positions align more closely with the Jain perspective of Sallekhana than with Western notions of suicide.

Indian legal discourse too has evolved to include passive euthanasia under the *Common Cause*³³ judgment, which allows individuals to make living wills and refuse life-sustaining treatment

³⁰ HASTINGS, supra note 4.

³¹ Quinlan, In re, 70 NJ 10 : 355 A 2d 647 (1976).

³² Conroy, In re, 98 NJ 321 : 486 A 2d 1209 (1985).

³³ HASTINGS, supra note 26.

under certain conditions. This recognition of autonomy and dignity in death supports the Jain view that Sallekhana is not suicide but spiritual liberation.

CONCLUSION:

The *Nikhil Soni* judgment reflects a profound misreading of religious doctrine and constitutional protection. While the protection of life is paramount, so too is the preservation of religious liberty. The conflation of Sallekhana with suicide neglects the practice's historical, philosophical, and religious context.

Rather than criminalizing a millennia-old religious discipline, a more constitutionally sound approach would be to regulate and protect it under strict safeguards against coercion or abuse. A blanket ban, as imposed by the High Court, not only undermines religious freedom but also ignores evolving global and domestic jurisprudence on death with dignity.

Ultimately, Sallekhana must be understood not as a violent escape from life, but as a dignified culmination of spiritual practice. It is not the negation of life but the affirmation of transcendence.

