

SANTHARA: A CRUEL END OR DIGNIFIED ENDING?

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ABSTRACT

India is a secular State. The idea of secularism is implicit in our Preamble which ensures every citizens “liberty of thought, expression, belief, faith and worship”. Article 25 and 26 of the Indian Constitution ensures the Freedom of free profession, practice and propagation of religion.

However, Article 25(1) imposes restrictions on its freedom. It says that no act in the name of religion can be done which is against public order, morality and health of the public.

India, being a land of various religions, the practices followed in every religion should be in accordance to the law and the laws should not be biased against any particular religion. The paper starts with the introducing Santhara that is being practiced by the various followers of Jainism. This practise has always been challenged and compared with Suicide which is regarded as “an illegal act” and is subjected to punishment. The paper uses Rogerian method to analyse the argument and considers cross fires between both the sides of the argument. The paper reverts the original definition of “essential practice doctrine” as visualised by Dr. B.R. Ambedkar in the Constituent Assembly debates determining whether the practice of the religions is considered to be “essential” or not. There should be a clear distinction between the religious act and a secular practice. In order to distinguish between the two, the judiciary should intervene and stop any such practice which is hampering the societal and any right guaranteed by the Constitution.

Keyword: Secular, Religion, Santhara, Suicide, Essential practice

INTRODUCTION

According to Jain Philosophy, the universe consists of six substance which is indestructible. Jiva (soul) and Ajiva (matter) is most important amongst those six substances. Jainism believes that the soul is either bounded or liberated. The soul could only be liberated by the rightful conduct that a person does during his life. Mortification of the soul or Penance occupies the major role in Jaina religion. The supreme object of ethical code of Jainism is to show the way for liberation of the soul from the bondage of Karma by cultivating the three jewels (ratna-traya), namely Right faith, Right knowledge and Right Conduct, which constitute the path to it.¹ The most elevated significance in Jainism is connected to passionlessness. It educates the specialty of delightful living as well as the craft of biting the dust an honorable demise which means that they celebrate death as happily as the birth is celebrated. In Jainism, the practice of Santhara is the form of sacred vow, is a rightful conduct that is undertaken in order to achieve the penance which slowly liberates the soul. It is a kind of voluntary death which is adopted by a person when living a normal life isn't possible by such person as in the wake of achieving old age or by agony from any fatal ailment from which demise seems approaching, on the off-chance that there is any trouble to perform any type of bodily functions, in the event that the individual has satisfied every one of his obligations towards his family, one needs to get liberated of wrongful karma that he has conferred amid his lifetime. The process of Santhara involve suppressing of all the worldly pressures and desires that a person has in himself and gradually involved abstaining from food and water and by concurrent medication on the real nature of self until the point that the spirit parts from the body. The practice of Santhara is not performed in isolation but requires proclamation of it in public. He apologizes to everybody for any hurt caused to them by his activities in his lifetime. This practice is otherwise called "michhami dukkadam". He takes vow of Santhara after consulting it with a saint, teachers or preachers of Jainism which requires the consent from the members of family and relatives. By completing the above process the soul exit the body. The death of the people taking the vow is celebrated publicly in the community.

¹ T. K. TUKOL, SALLEKHANA IS NOT A SUICIDE 4 (L. D. Institute of Indology, 1976)

DEFINING THE ESSENTIAL RELIGIOUS PRACTICE DOCTRINE

Article 25 of the Constitution starts with “subject to public order, morality and health of the public” the court shall grant autonomy in the practice of any such religion. The test of essential practice has been used by the courts in various cases. The test enables the Court to start a legal enquiry into regardless of whether an upbraided religious practice is an "essential practice", regardless of what the religion's followers themselves say in regards to it. It was first mentioned by Dr. B. R. Ambedkar in the assembly debates which the framers of the Constitution were going through while framing the Constitution. He mentioned this phrase by stating that “The religious conceptions in this country are so vast that they cover every aspect of life, from birth to death. There is nothing which is not religion and if personal law is to be saved, I am sure about it that in social matters we will come to a standstill. I do not think it is possible to accept a position of that sort. There is nothing extraordinary in saying that we ought to strive hereafter to limit the definition of religion in such a manner that we shall not extend beyond beliefs and such rituals as may be connected with ceremonials which are essentially religious. It is not necessary that the sort of laws, for instance, laws relating to tenancy or laws relating to succession, should be governed by religion.”²

Ambedkar’s concern was related to the demarcation of the ‘religious activities’ with that of ‘secular activities’ related to the practice of different religion. The beliefs and the practice of the religions and cultures has taken over almost every action that a man does. Ambedkar had a concern that Article 25 could restrict the legislature and judiciary to intervene in the religious matter and thereby hamper the progress of the society. Any secular activity could have taken place in the name of religion to which the judiciary would have stayed numb. Therefore, the word “essential” plays a major role in distinguishing between what is religious and what is secular.

A religion may have many secular activities, it may have secular aspects, but these secular activities and aspects do not constitute religion as understood by the Constitution. There are religions which bring under their own cloak every human activity. There is nothing which a man can do, whether in the way of clothes or food or drink, which is not considered a religious

² Constituent Assembly Debates, Volume VII, available at https://cadindia.clpr.org.in/constitution_assembly_debates/volume/7/1948-11-22

activity. But it would be absurd to suggest that a Constitution for a secular State ever intended that every human and mundane activity was to be protected under the guise of religion, and it is therefore in interpreting religion in that strict sense that we must approach arts. 25 and 26.³

The Constitution (42nd Amendment) Act, 1976 inserted the word “secular” in our Preamble thereby, ensuring the equal protection of every religion before State (Sarva Dharma Sambhava). The State does not regulate the relation between the men with any spiritual power. Rather, it is more practical and regulates the relation among men in the society. The State is neutral towards all the religions. It neither favours any particular religion nor is against any such religion. There has to be “principled distance” of state from the intervention in religious practice unless it is against public order, morality and health of the public as guaranteed by Article 25 and 26 of the Constitution.

The term “religion” has not been defined anywhere in the Constitution of India. It is through the various precedents that the term “religion” got its definition. “Religion is certainly a matter of faith with individuals or communities and it is not necessarily theistic.”

In the case of **S. R. Bommai v. Union of India**⁴, Justice P. B. Sawant distinguished between that which is religious and what is secular. He expressed that despite the disposition of the state towards any religion, religious organisations or groups, religion couldn't be blended with any secular activity of the state. He additionally expressed that a person's freedom of religion extends to the activity done by him in quest for his spiritual life which is dissimilar from secular life. The activities done in quest for the spiritual life will go under the exclusive domain of the issues of the state. The word 'essential' was used to draw the thin line amongst secular and religious. Indian Courts have on numerous occasions endeavoured to figure out what practices and exercises have been or are essential to a religion. Such undertakings by the court appeared as a doctrine and subsequently named "essential practice doctrine". The religions like Jainism and Buddhism don't believe in the existence of God. A religion undoubtedly has its basis in a system of beliefs or doctrines that are regarded by those who profess that religion as conducive to their spiritual wellbeing, but it would 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

³ Ratilal Panachand Gandhi v. State of Bombay, 1953 ILR, Bombay, 1187, at 1193.

⁴ S. R. Bommai, AIR 1994 SC 1918

followers to accept, it might prescribe rituals and observances, ceremonies and modes of worship which are regarded as integral parts of religion, and these forms and observances might extend even to matters of food and dress.⁵ A religion may not set out a code of moral lead for its followers to acknowledge, yet may recommend rituals and observances, ceremonies and worship which are viewed as indispensable parts of religion.

The doctrine of ‘essential practice’ was first used in the case of **Shirur Mutt**⁶, the Supreme Court held that “what constitutes the essential part of a religion is primarily to be ascertained with reference to the doctrines of that religion itself. If the tenets of any religious sect of the Hindus prescribe that offerings of food should be given to the idol at particular hours of the day, that periodical ceremonies should be performed in a certain way at certain periods of the year or that there should be daily recital of sacred texts or oblations to the sacred fire, all these would be regarded as parts of religion and the mere fact that they involve expenditure of money or employment of priests and servants or the use of marketable commodities would not make them secular activities partaking of a commercial or economic character; all of them are religious practices and should be regarded as matters of religion within the meaning of Article 26(b).”

There is a restriction imposed on any outside authority to judge whether any practice is essential to any religion as laid in the case of **Ratilal Panachand v. The State of Bombay and others**.⁷ Further it was held that no unconditional right was vested with any of the authorities of the state to discard, restrict or limit any religious practice that they consider beneath the pretence of administering a verity estate.

However, it has been witnessed that there has been a shift in the outlook of the doctrine which is now used as a parameter to determine the importance of the practice within that religion. In the case of **Sri Govindlalji v. State of Rajasthan**⁸ and **Yagnapurushdasji v. Muldas**⁹, it was stated that the relevance of the practice within that religion along with determining a practice as religious or secular will always have to be decided by the court. There has been a series of

⁵ Commr. H.R.E. v. L. T. Swamiar, AIR 1954SC 282 at p. 290; S.P. Mittal v. Union of India, AIR 1983 SC 1

⁶ Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Shri Shirur Mutt, AIR 1954 SC 282

⁷ Ratilal Panachand, AIR 1954 SC 388

⁸ Sri Govindlalji, AIR 1963 SC 1638

⁹ Yagnapurushdasji, AIR 1966 SC 1135

changes with the interpretation of this doctrine as a result of which the doctrine is losing its essence. The court should not question the nature of the practice rather should look into the sincerity of that practice being followed by the practitioner provided the practice is mentioned in scriptures, preachings, articles or the practices followed within that religion and is not contrary to any provision of the law.

SANTHARA: CRUEL END OR DIGNIFIED ENDING

The practice of Santhara has often been questioned and compared with Suicide. There are various definitions of Suicide given by different scholars which concur with or is contradicting with the elements of Santhara. Before jumping into any conclusion, let us look into the concept of suicide.

Suicide, in a raw sense, means voluntary killing of oneself by means employed by oneself. It is a natural instinct of every individual to preserve and protect himself from any odds or any situation that can hamper its well-being. Facing failures and disappointments is a part of life and one must need to let it go and cherish life. In modern times, the virtue of tolerance and ethical conduct is deteriorating among the people. Disappointments, frustrations and unstableness in the private life and business are the major grounds for committing suicide. Kautiliya has mentioned some of the causes of suicide in his Arthashastra: "All kinds of sudden deaths centre round one or the other of the following causes: offence to women or kinsmen, claiming inheritance, professional competition, hatred against rivals, commerce guilds and any other legal disputes, is the cause of anger; anger is the cause of death." "If a man or a woman under the infatuation of love, anger or other sinful passions commits or causes to commit, suicide by means of ropes, arms, or poisons, he or she shall be dragged by means of rope along the public road by hands of a candala. For such murders as above, neither cremation rites nor any obsequies, usually performed by the relatives shall be observed"¹⁰

"Sociologists have put forward numerous explanations in their suicide-notes, but they are anything but reliable, as they are rationalisations covering up powerful impulses. Abnormal grief accruing from the loss of a loved one, mutual jealousy, mental difficulties, infidelity,

¹⁰ Arthashastra of Kautilya by Shama Satry, Chap. VII, p. 248

desertion, family discord, pride, remorse and shame are the symptoms of difficulty in personal adjustment. The forces of fear and anxiety, feelings of inferiority, hatred, aggressiveness, revenge, guilt and other mental disorders are such that they prevent people from attaining emotional maturity. This emotion immaturity has probably been the most powerful factor compelling a man choose suicide as the only solution to seemingly insurmountable difficulties.”¹¹

Merriam Webster defines Suicide as “an act or an instance of taking one’s own life voluntarily and *intentionally.” In the case of **Salorano v. Bristow**, Justice Bustamanta of Court of Appeals of New Mexico wrote, “Suicide as a voluntarily, deliberate, and intentional self-destruction by someone of sound mind.” Emilie Durkheim says that the term suicide is applied “to all cases of death resulting directly or indirectly from a positive or negative act of the victim himself, which he knows will produce result.”¹² This means that if there should be an occurrence of suicide, the demise is sudden, the psychological condition isn't typical and the methods used to achieve passing are questionable. There was a contradicting view of another sociologist Esquirol who states, “That man does not kill himself who is obeying some noble and generous sentiments, throws into peril, exposes himself to inevitable death and willingness sacrifice his life in obedience to the laws, to keep pledged faith of his country’s safety.” He says “suicide shows all characters of mental alienation.” There is an exception if the suicide is committed if religion or country demand for it.

The reports of WHO (World Health Organisation) on Suicide states that thousands of people in the world commit suicide every day. The most common grounds for such commission is depression, idea of guilt, feelings of exhaustion or vague pains and fear of insanity.

In India, the Indian Penal Code does not define suicide. Section 309 prescribes punishment for a person committing suicide or a person who attempts to commit suicide. It lays down: “Whoever attempts to commit suicide and does any act towards the commission of such offence, shall be punished with simple imprisonment for a term which may extend to one year or with fine, or with both.” Many of the commentators are in view that the phrase “any act” in the section also includes the sight of “fasting” or “refraining from taking bodily sustenance.” I

¹¹ History of Suicide in India by Upendra Thakur, p. 19

¹² Suicide by Durkheim, Introduction p.2

partially agree with the view. Section 32 of the Penal Code lays down the rule for interpretation of any criminal provision. 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." Illegal is defined under section 43 of the Penal Code which says: "The word "illegal" is applicable to everything which is an offence or which is prohibited by law, or which furnishes ground for a civil action." There is no law which 'specifically' restricts a person from fasting.

In order to compare Santhara with suicide, let us examine the physical, psychological and sociological aspect of Santhara on the basis of (1) intention, (2) situation, (3) the means adopted, and (4) the outcome of the action or its consequence

As already discussed the intention behind Santhara is to attain the ultimate salvation or penance. The Jain scriptures says that this vow of Santhara is for the purification of the soul. The person adopting from the vow is liberated from all the bondage of Karma which has been responsible for all the ills in world. The situation in which the vow is adopted is the religious duty or during a calamity, severe famine, old age or illness. The mental condition while adopting the vow is normal. There is no violent means adopted in order to fulfil the vow. This is completed by abstaining oneself from all the passions in the words which brutally includes abstaining from intake of food and water and with deep meditation the soul leaves the body. This is not a fast process and slowly leads to the death of a person. The consequences in which Santhara is adopted is by the consent of all the family members, relatives or teacher. The death of the person adopting the vow is celebrated rather than mourned upon. The death of the person is treated as a religious festival with bhajans and religious mantras. It gives the feeling of inspiration and devotion to the other followers of the religion.

"The main psychological and physical features of suicide are: (1) the victim is under an emotional stress; (2) He or she is overpowered with a feeling of disgrace, fear, disgust or hatred at the time when suicide is resorted to; (3) The main intention of committing suicide is to escape from the consequences of certain acts or events; disgrace, agony, punishment, social stigma or tyranny of treatment etc. (4) The kind is far away from religious or spiritual considerations (5) The means employed to bring about the death are weapons of offence or death; (6) The death is sudden in most cases unless the victim is rescued earlier; (7) The act is committed in secrecy (8) it causes misery or bereavement to the kith and kin."

Thus keeping the above points in mind, it can be proved that the practise Santhara can be distinguished from Suicide as these exist no desire to put an end to life immediately through some violent or objectionable means. There is no emotional or mental breakdown because of which a person takes the vow of Santhara or there doesn't exist ant intent to harm others by the act and the method employed to practice such vow isn't harmful.

Speaking in the suicidal context, the arguments laid in **Nikhil Soni v. Union of India**¹³, shows that the concept of Santhara as illegal and punishable under the law. It was asserted that practice with regards to Santhara sums to self-destruction and in this way is inside the limits of suicide under Section 309 of the IPC and is additionally violative of 'right to life' of a person since 'right to die' isn't guaranteed under part III by the Constitution of India. The petition was filed in 2006 and after the issue of notice to the concerned authorities in the year 2006; the issue was heard on April 24, 2015. The court having heard both the sides passed its decision on August 10, 2015 that:

The practice of 'Santhara' or 'Sallekhana' does not falls under the purview of an "essential practice doctrine" of Jains so as to be saved by article 25, 26 or 29 of the Constitution of India and the practice of santhara amounts to 'suicide' punishable under section 309 of the IPC and its abetment is punishable under section 306 of the IPC. The Court held:

"We do not find that in any of the scriptures, preachings, articles or the practices followed by the Jain ascetics, the Santhara or Sallekhana has been treated as an essential religious practice, nor is necessarily required for the pursuit of immortality or moksha. There have been numerous opinions expressed on the fact that such traditions i.e., practices akin to santhara¹⁴ are not confined to Jains but they form a part of Indian ideology and culture as such and have existed from time immemorial.

¹³Nikhil Soni v. Union of India & Ors. (2015) cri LJ 4951

¹⁴ the finding of the court with regard to section 309 of IPC and no comment is made on the finding of the court that 'santhara does not form the essential religious practice' among the Jains and this is because it is a question of fact which will again be taken up before the apex court and there are serious doubts on these findings because all over the nation this case has invited criticism³ and there have been numerous opinions expressed on the fact that such traditions i.e., practices akin to santhara⁴ are not confined to Jains but they form a part of Indian ideology and culture as such and have existed from time immemorial.

CONCLUSION

The hundreds of years old custom of Santhara has been under scrutiny since 2006, when the instance of 93-year old Keila Devi Hirawat from Jaipur welcomed worldwide discussion on whether there was wherever for such custom inside modern times. Today, Santhara remains as an exemplary case of the test that each religious society faces due pressure placed upon them to take after modern and secular standards. Every person has liberty to practice his/her religion but at the same time that practices involved while preaching those religion should not be in contrary to any law of land or should not hurt any sentiments of any other religious group. The test of “essential practice” doctrine should always be put forth when any practice of religion is questioned and the decision on should be made accordingly. Individuals should think in a more pragmatic manner with the passing years. They ought to comprehend that the situation of present is not quite the same as that of hundred years back. As the same time, judiciary should consider while bringing down any religious practice of whether such practice is hampering societal modifications, causing any societal inequality or is violating any individual’s right.