CASE COMMENT

***NIKHIL SONI* v. *UNION OF INDIA* (2015)**

2015 Cri LJ 4951

(Decided on August 10, 2015)

Udit Raj Sharma[*]

THE RECENT judgment passed by the Jaipur Bench of Rajasthan High Court[1] has spurred up the debate on the law of suicide in the country and has thrown open a legal issue having massive socio-political consequences that whether the practice of *Santhara* in Jain tradition amounts to suicide under section 309 of the Indian Penal Code, 1860 (hereinafter IPC) and whether the persons who are propagating the practice and worshipping the person who vowed for *Santhara* are 'abettors of suicide' under section 306 of IPC. This decision has shown a huge socio-political impact across the nation and the Jain community across the nation has resented to the decision of the court. The decision is now under challenge before the Supreme Court of India and stay has been granted on its enforcement while no adjudication on merits has yet been done. The question that 'whether the practice of *Santhara* amounts to suicide' would again become open before the apex court of this country and would require the perusal of the existing legal position and the debate over 'right to die' would again come to the forefront in somewhat unprecedented context again. The decision would not only be of interest to the Jain community but to almost all religions in the country since all religions have some or the other practice in such nature and have a belief in salvation of the soul and more importantly it questions state intervention on the basis of freedom of religion. While the decision is under challenge, a number of thinkers, experts of law, jurists, social-activists and other learned persons have expressed opinions criticising the decision of the Rajasthan High Court and this is what makes this issue an open field for exploration and analysis through research.

[*] LL.M 2 year (ILI) 2015-2017.

[1] Civil Writ Petition No. 7414/2006. Decided by Sunil Ambwani, C.J. and Veerender Singh Siradhana, J.

The case arose out of a public interest litigation filed by a lawyer Mr. Nikhil Soni, praying for directions to the Union of India through Secretary, Department of Home, New Delhi and the State of Rajasthan through Secretary, Department of Home, Secretariat, Rajasthan, Jaipurto treat the Jain practice of "SANTHARA" or "SALLEKHANA" as illegal and punishable under the law of the land and that the instances given in the pleadings, be investigated and subjected to suitable prosecution of which, the abetment be also treated as criminal act. It was claimed that practice of *santhara* amounts to self-destruction and therefore is within the confines of suicide under section 309 of the IPC and is also violative of 'right to life' of an individual since 'right to die' is not guaranteed under part III by the Constitution of India. The petition was filed in 2006 and after the issue of notice to the concerned parties in the year 2006; the matter was finally heard on April 24, 2015. The court having heard both the sides passed its verdict on August 10, 2015 with the findings that:

- The practice of '*Santhara*' or '*Sallekhana*' is not an essential religious practice 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.

And the writ petition was allowed giving the directions:[2]

> 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.

'Religion', being a significant aspect of the lives of people in India, any decision affecting religious freedoms attracts huge public attention and response across the nation and it is one of

[2] *Supra* note 1, para 43.

the similar cases where role of state is questioned as intruder to religious affairs of a particular community. The Impugned verdict also holds that the practice of *santhara* is not an 'essential religious practice' to the Jain religion and therefore constitutional protection under the 'religious freedoms' cannot be afforded to it. However, the research confines its scope to the claim of practice of *santhara* as 'suicide' (leaving the issue of essential practices). Having witnessed the judgment of the *Nikhil Soni* case, it becomes relevant to keep in mind the following considerations:

- Whether the Rajasthan High Court was justified in declaring the Jain practice of Santhara as a criminal offence under section 309 of the IPC and its propagation and practices by others an offence under section 306 of the IPC?
- Whether the existing precedents which answer questions about 'right to die' in context of suicide and euthanasia are sufficient to answer the question of 'right to die' in case of Santhara also?

The aforementioned questions are only with regard to 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 criticism[3] and there have been numerous opinions expressed on the fact that such traditions *i.e.,* practices akin to *santhara*[4] are not confined to Jains but they form a part of Indian ideology and culture as such and have existed from time immemorial. '*Santhara*' or '*Sallekhana'* is a practice among Jains, which is a religious fast unto death, on the pretext that when all purposes of the life have been fulfilled, or the body is unable to serve any purpose of life, through Santhara 'Moksha' is attained. And the person undertaking *santhara*, renounces eating and even drinking water and waits for the death to arrive

[3]*Available at*: http://www.deccanherald.com/content/498213/court-verdict-santhara-triggers-huge.html (last accessed- 24-02-2016); Also See http://timesofindia.indiatimes.com/india/Protest-against-ban-on-Santhara-gaining-momentum/articleshow/48550161.cms (last visited on Feb. 20, 2016)

[4]Practices such as Moksha, Samadhi where food and water are renounced for equanimity with the God are similar practices. In fact in the case of *Maruti Satpathy Dubal* v. *State of Maharastra* (1986) 88 BOMLR 589, the court acknowledges that "the attitude of the Hindu and Jain religions depicted in the aforesaid writings of the Dharmashastrakaras shows that though ordinarily suicide was disapproved, in certain circumstances it was tolerated, condoned connived at, accepted and even acclaimed depending upon the person and the particular circumstances." And in the same judgment, the court also made a mention of Sallekhana practice of the Jains.

(however it is emphasized that one taking *santhara* is under guidance of the Jain gurus and has the option of retracting back from the vow of *santhara*). Among Jain community, it is a greatly respected practice of renouncing of all passions and desires and taking the death in its own stride. Although, there is no mention of a particular age for undertaking *santhara*, since it requires all purposes of life to be over, it is taken by old aged people only.

These are few of the observations of the author commenting on the aforesaid verdict

The IPC, a colonial legislation has been framed as per the reasoning and cultural ideologies of the Anglo-Saxon philosophy. It is because the British Indian Statutes (civil or criminal, substantive & procedural) have been enacted without owing their origin to the institutes, texts or their commentaries of the pre- British India or to the post-Plassey text books of Hindu or Mahomedan laws.[5] Moreover, the law commissions employed to draft the laws did not employ Indians as commissioners and the law of England was used as a basis.[6] Considering this fact, it is not difficult to believe that the laws framed on the basis of Anglo-Saxon philosophy cannot encapsulate the customs and traditions of an entirely foreign land especially a land like India which has a much ancient and diverse culture than the rest of the world. Notably, there is a great difference in the Indian philosophy and Christian philosophy about 'death'.

'Suicide' as generally understood means the act of taking one's own life[7] which is also called 'self-killing', self-slaughter, self-destruction or self-murder but such a loose and vague definition cannot be used for all purposes especially under the IPC for prosecuting a person. The meaning has to be interpreted keeping in mind the nature and the intention with which the act is done, mere literal interpretation would not serve useful in this case since the general meaning takes into sweep of giving up life without considering the reasoning, the context and the background in mind. In the instant case, there were contentions describing the nature of suicide to distinguish it from the practice of *santhara* and those points are

"*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*

[5] K N Chandrashekharan Pillai and Shabistan Aquil, "Essays on the Indian Penal Code", 34 (Indian Law Institute, 2005).
[6] *Ibid*
[7] Black's Law Dictionary (Seventh edn.) at1447.

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."

And this poses a significant question before the law that whether the practice of *santhara* which differs starkly from the psychological and physical features of suicide be considered to be an offence under section 309 of the penal code merely because it comes within the wide ambit of the expression "an act of taking one's life". The manner in which suicide has been understood till now is as an unnatural termination or extinction of life and this is not just on the basis ofcommon understanding but also on the basis of precedents that have elaborated the law on 'right to die' and 'suicide'. Even after the judgments of *Gian Kaur*[8] (in which the Constitution bench of the Supreme Court upheld the constitutional validity of section 309 IPC by overruling *P. Rathinam's* case and holding that article 21 of the Constitution does not include the 'right to die' or the 'right to be killed') and *Aruna Ramchandra Shambhaung*[9](where a petition was filed under article 32 of the Constitution of India by the next friend of the petitioner to seek allowance for the termination of the life who was in a permanent vegetative state for a long time), there still exists a vacuum which needs to be filled regarding the concept of suicide and the 'right to die'. *Gian Kaur* which invalidates the unlawful termination of life while *Aruna Shambhaung* only recognizes passive euthanasia[10] but in both the cases, death in questionwas preferred due to escapism from life and out of remorse and evasion of life. Where one deals with the cases where out of remorse and dissatisfaction with life, a person makes a sudden decision to end the life and the latter deals with a situation where out of continuous and unbearable pain and suffering, it is believed that death would be a relief rather than continued existence in this manner and that too

[8]*Gian Kaur* v. *State of Punjab* (JT 1996(3) SC 339).
[9]*Aruna Ramchandra Shanbaug* v. *Union of India* (2011) 4 SCC 454).
[10]Euthanasia is of two types: Active and Passive. The former involves the use of a lethal substances or forces to kill a person (e.g. a lethal injection given to a person with terminal cancer who is in terrible agony) while the latter entails withholding of medical treatment for the continuance of life (e.g. withholding of antibiotics where without giving it a patient is likely to die, or removing the heart-lung machine). The difference is that in one, something is done to end the patient's life while in the other something is not done that would have preserved the patient's life; See Ratanlal & Dhirajlal, *The Indian Penal Code*, 1789 (Lexis Nexis Publication 32nd edn., 2013).

only through passive means and not by actively terminating the life. The case with *santhara* does not fall in either of the two spheres because here nor the decision to terminate life is a sudden decision to evade life out of dissatisfaction and neither it is on account of continued and unbearable pain and suffering that decision is taken *i.e.*, it is not a case of 'mercy killing'. It is a situation where the person who believes that all his worldly tasks are over and not he/she must celebrate death also and accept death in its own stride.[11] The judgment often uses the expression 'equanimity with the death' as contended by the respondents in the matter and it would not be appropriate to treat this concept akin to the practice of suicide and what needs to be done is to realize the vacuum and there is a need for the apex court of India to consider all aspects of the matter especially on the question that whether such practices amount to suicide as an offence envisaged under section 309 of the IPC. There are few questions which still need to be pondered upon; few of which are - whether the rationales in the precedents on the law of suicide suffice for this case also or this is a unique aspect with a unique background and context, which is a novelty before the judiciary and requires it to rethink the law on suicide in light of the peculiar circumstances of the case and to inquire whether the meaning of 'suicide' as interpreted in the previous case laws is wide enough to encapsulate the practice of '*santhara*' within its ambit?

One more interesting fact which has come to light is that what would be the validity of this judgment when it is almost the time when section 309 has been decided to be deleted from the penal laws of the country to humanise them. There are questions on the practical tenability of the verdict. The contemporary development in the country reflect that the provision is on the threshold of disappearance since the Indian Minister of State for Home Affairs, H. P. Chaudhary has confirmed this in Rajya Sabha and the decision is backed up by 18 states and four union territories.[12] It is only a matter of formality that the provision still finds place.

The comparison between '*Santhara*', 'Sati', 'Suicide' and 'Euthanasia' needs to be more clear and elaborate. The judgment fails to clearly explain the idea of *santhara* itself and its comparison

[11]One of the cases in which a similar kinds of logic was presented before the Court is when in the matter *C.A. Thomas Master* v. *Union of India* 2000 CrLJ 3729 (Ker), and the petitioner claimed that all the purposes of his life are over and he has led a successful life and he wishes to terminate his life which was rejected by the Court. But such a question has not been open before the apex court.

[12] *Available at*: https://www.opendemocracy.net/openindia/renjini-rajagopalan/need-to-decriminalise-attempted-suicide-in-india, Last Accessed- 28/09/2015.

with the practice of 'sati' seems inappropriate since the voluntariness of the decision to undertake '*santhara*' is completely ignored while comparing it with the coercive practice of 'Sati'(in most cases it was obligatory on the widow to comply with the tradition irrespective of her will). Shiv Visvanathan comments that the Court seems more worried about the debates on euthanasia and sati rather than looking at *santhara* with its own repertoire of meanings[13]. It would have been appreciable if the court would have attempted to define *santhara* in its true sense and then taken stricter view on the deviations of the practice.

Anyway, the matter is again open before the apex court of the country and the whole county is keenly observing what interpretation of *santhara* is taken by the court and whether the alleged vacuums in the impugned judgment are filled by the apex court.

[13] Shiv Vishvanathan, "A reductive reading of Santhara", *The Hindu*, Aug. 24, 2015.