Rajasthan High Court
Nikhil Soni vs Union Of India & Ors. on 10 August, 2015

IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

D.B.Civil Writ Petition No.7414/2006
(Public Interest Litigation)

Nikhil Soni V/s Union of India & ors.

Date of Order::- 10.8.201

PRESENT

HONBLE CHIEF JUSTICE MR.SUNIL AMBWANI
HONBLE MR.JUSTICE VEERENDR SINGH SIRADHANA

Mr.Madhav Mitra with)
Mr.Nishant Sharma)
Mr.Veerendra Singh)-for the petitioner.
Mr.Abhishek Naithany)

Mr.P.C.Bhandari with)
Mr.Rakesh Chandel)
Mr.Abhinav Bhandari)
Mr.Dinesh Pareek)
Mr.S.K.Gupta,Addl.Advocate General)
Mr.J.K.Singh,Sr.Counsel assisted by)-for the respondents.
Mr.Anuroop Singhi)
Mr.Saurabh Jain)
Mr.Ajeet Bhandari)
Mr.Sunil Nath)
Mr.Uday Sharma)
Mr.Vimal Choudhary)

ORDER

(Reportable) BY THE COURT (Per Hon'ble Sunil Ambwani, Chief Justice)

1. In this writ petition filed under Article 226 of the Constitution of India in public interest, the petitioner, a practising lawyer at Jaipur Bench of the Rajasthan High Court, has prayed for directions to 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, to treat 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.

2. The Santhara, which means a fast unto death, is a practice prevalent in Shvetambara group of Jain community. According to the petitioner, it is a religious fast unto death on the pretext that when all purpose of life have been served, or when the body is unable to serve any purpose of life, the Santhara will obtain Moksha (salvation). A person, after taking vow of Santhara stops eating and even drinking water and waits for death to arrive. It is submitted that the Santhara is religious thought, which has no place under the law of the land. The Constitution of India guarantees right to life, and protects the life of an individual. 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. All persons are entitled to freedom of conscience and the right freely to profess, practice and propagate religion. A practice, however, ancient it may be to a particular religion, cannot be allowed to violate the right to life of an individual.

3. It is submitted that 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 abetment of suicide is also punishable under section 306 IPC with imprisonment of the term which may extend to ten years and also liable to fine. Suicide means an intentional killing of oneself. 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. Suicide is never to be presumed. Intention is the essential legal ingredient under section 309 IPC.

4. It is submitted that Shvetambara group of Jain religion believes that the Santhara is a means to attain moksha. A person adopting the Santhara is helped by the entire community in designing it ceremoniously. People visit the person for his/her darshan and to witness the occasion with reverence. The house of such person becomes a place of pilgrimage. The entire act is considered to be an act of courage and rational thinking on the pretext that soul never dies. They glorify the act and its eventuality. The petitioner has given several examples of the Santhara to show that it is not an age old and forgotten practice and that it is being practiced even now regularly. Some of the instances of Santhara have been given in paragraph 4 of the writ petition as follows:-

(i) Sohan Kumariji administered the vow of SANTHARA, on 7th Oct.1993. Her fast lasted for 20 days.

(ii) Premji Hirji Gala in Nov.1994. Fasted uptil 212 days.

(iii) Jethalal Zaveri fast lasted for 42 days in 1997.

(iv) Nirmalananda (illustration taken from the Deccan Herald Jan.10, 1997) the fast lasted for three weeks.

(v) Haraklalji Bhairulalji Mehta in Oct.2000 Ahmedabad. Fast lasted for 23 days. He hails from Mahendra Garh near Bhilwara, Rajasthan.

(vi) Sadhvi Nerbhay Vani. Fasted for 20 days, 24th May 2003 at Jain Temple Gohana Town and Muni Matiryaji Maharaj, Fasted for 35 days belonging to Terapanth Dharam Sangh at Udasar near Bikaner, Rajasthan.

5. An additional affidavit was filed bringing on record the adoption of the Santhara by late Vimla Jain, who was given the status of Sadhvi and her fast unto death was widely publicized by her family members with her photographs in the obituary columns for having adopted the Santhara. The decorated photograph of her dead body was also published in the newspaper. The newspaper report publicized the religious meetings and glorified the act of late Vimla Devi raising the status of the family in the community. Though it was an offence under section 309 IPC for which the entire family and the community abetted, no action was taken by the police as the Administration in Rajasthan accepts the act as a part of religious practice.

6. Notices of the petition were issued on 22.9.2006 also calling upon the Superintendent of Police (East), Jaipur to do the needful if the petitioner approaches him with a complaint. On the next date fixed on 21.12.2006, a large number of individuals sought intervention, to which an objection was taken by the petitioner that they are not true representatives of the Jain community. The Court observed that if all the sundry are formally impleaded as respondents and allowed to file their respective replies, it would make the exercise difficult and cumbersome and thus, allowed intervention by bodies/associations and they were added as respondents and individual intervenors to be heard.

7. On 2.5.2007, the Court permitted Shri Man Singh Mehta to intervene in the matter as an individual as others were also allowed to intervene.

8. The matter has, thereafter, been on voyage on the cause list from 6.8.2008 for seven years until it was heard on 23.4.2015. The cause of the petition for the last nine years has been a subject matter of curiosity by the general public, and a lot of concern of the Jain community. The matter was argued and defended with passion. The petitioner is advocating modern thought and thinking, and has relied heavily upon the Constitution of India to be the governing law of the land. The respondents on the other hand are represented by Shri Mr.P.C.Bhandari with Mr.Rakesh Chandel, Mr.Abhinav Bhandari and Mr.Dinesh Pareek as lawyers and members of the Jain community and Mr.S.K.Gupta, Addl.Advocate General representing the State of Rajasthan. Mr.J.K.Singhi, Sr.Counsel, Mr.Anuroop Singhi, Mr.Saurabh Jain, Mr.Ajeet Bhandari, Mr.Sunil Nath and Mr.Uday Sharma participated in the hearing with curiosity and concern.

9. The response of the State to the prayers made in the writ petition is mixed with respect and reverence for the religion, and protection of ancient and rich culture of Jain community, which has economic dominance in the State of Rajasthan. Out of the confusion and protectionist attitude arises a curious plea by the State that the right of individual practising Santhara or Sallekhana is protected as a religious practice under the Constitution. It is stated in the reply that the petitioner is seeking relief to declare the Santhara or Sallekhana as illegal, which is a religious practice or religious feeling followed by the Society of Jain since times immemorial. The basis of the writ petition is that under section 309 IPC, such practice amounts to an offence, however, the petitioner has failed to

substantiate as to how this public interest litigation is maintainable for declaring the religious activity punishable under criminal law. He has failed to place on record any sort of evidence or particular instance, which falls within the ambit of Section 309 IPC and thus, the petition deserves to be dismissed as baseless. It is further stated that the delayed investigation of such instances is meaningless and for which the writ petition is not maintainable at all. The petitioner has placed on record some clippings of the newspaper, but in absence of matters falling within the ambit of Section 309 IPC and as no complaint has been filed in the Police Station, the investigation is not permissible in law. It is stated that the petitioner has not carried out any research and has also failed to go through the Article 25 of the Constitution of India, which gives right to freedom of religion. The petitioner has not placed on record any such facts or material, which may demonstrate glorifying of Sati, which is an offence under the law and in no religion glorifying of Sati Pratha is religious activity or religious faith or amounts to belief in God.

10. The State Government has relied on a study carried out by Justice T.K.Tukol, former Vice-Chancellor, Bangalore University, who has written a book published from Ahmedabad, namely, Sallekhana is not suicide in which a lot of research work and instances have been given and which provides the procedure, stage, situation for the person, who wants to adopt or follow the religious path known as Sallekhana. It is submitted on behalf of the State that it is not in public interest to entertain such petition. In paragraph 5 of the reply, affirmed by Shri Om Prakash Sharma, Addl.S.P.(East), Jaipur, it is stated that the petitioner has not placed on record any example in which the practice of Santhara amounts to offence under section 309 IPC, whereas commonly and religiously it is known as religious activity or faith in Jain religion like other religions. He has failed to submit on record that the practice of Santhara/Sallekhana is practised under force or compulsion and does not amount to religious activity, whereas it is sufficient to state at this stage that this religious practice or activity or faith is nowhere defined as illegal or criminal act and as such, the same is neither punishable nor subjected to investigation unless any specific complaint is received by the police authorities. The writ petition is without any research work in the field and thus, liable to be dismissed at the threshold.

11. A reply has been filed by Shri Vimal Chand Daga, Secretary of Stanakvasi Jain Shravak Sangh, Jaipur impleaded as respondent no.3. It is stated in the reply that the petitioner is a busy body and thus is not entitled to maintain the writ petition in public interest on the law developed by Hon'ble Supreme Court. He is a meddlesome interloper, at whose instance the issue may not be raised nor is justiciable. The issue is justiciable when it can be resolved through judicial process. The present litigation is neither bonafide nor for public good. It is a cloak for attaining private ends by a member of the Hindu Society against a religious minority community known as Jain, which is a section of the citizens. In Appeal No.9575/2003 decided on 21.8.2006, the Supreme Court held that Jain religion is undisputedly not a part of Hindu religion. The pronouncement of law does not appear to be acceptable to some of the members of the Hindu community and thus, the petitioner be directed to deposit security of Rs.one lac as payment of cost in case the writ petition is dismissed.

12. The reply defends the practice of Santhara/Sallekhana as an exercise of self purification and a popular religious practice through out the history of Jainism. It is known as voluntary vow with meditation till the person lives by abstaining from food, water and every kind of nourishment to the

body when one is approaching the end of life. It is stated that Sallekhana is not giving up life, but it is very much taking the death in its own stride. Jainism believes in rebirth and so the consequences of our Karmas are dependent upon own good and bad thoughts, words and deeds. In order to appreciate the reply given defending Santhara/Sallekhana, which according to the answering respondent no.3 is saved by Articles 25, 26 and 29 of the Constitution of India, it will be necessary to reproduce the contents from paragraphs 2 to 8 of the reply as follows:-

2. That the contents of para (2) of the writ petition are not admitted. The allegations are false and not well founded. The answering respondents respectfully submit that petitioner is completely ignorant of the Vrat of Santhara or Sallekhana. It is absolutely wrong to say that Jain community is divided into two groups. Digambaras and Shwetambaras are not two groups of Jain community. Santhara or Sallenkna is prevalent in the entire Jain community. Santhara is not adopted in order to obtain Moksha. It is not admitted that Santhara is a voluntary suicide. Sallekhna is the key to attain salvation in the least possible number of birth and death cycles ahead by consciously toiling to purge the soul from karmas.

According to Jainism, every individual soul, by its nature, is pure and perfect, with infirm perception, knowledge power and bliss. But from eternity, it is associated with Karmic matter and has therefore become subject to birth and rebirth in numerous forms of existence. The supreme object of religion is to show the way for liberation of the soul from the bondage of Karma. The true path of liberation lies in the attainment of Right Faith, Right Knowledge and Right conduct in complete union and harmony.

The basic concept underlying the vow is that man who is the master of his own destiny should face death in such a way as to prevent influx of new Karmas even at the last moment of his life and at the same time liberate the soul from bondage of Karmas that may be clinching to it then.

Santhara According to Jain scriptures, Santhara means to weaken the strength of body and passion for putting an end to the bodily existence without consciously coveting death by fasting. It is undertaken when one is faced with an unavoidable natural calamity, severe drought, old age or an incurable disease. Prior to the adoption of the vow, one is required to give up all feelings of love, hatred, companionship and worldly attachments with a pure all humanity at the same time forgiving them sincerely. It is also desired that one may undertake the great vow of Santhara after discussing it throughly and frankly with one's guru (religious preceptor).

It is interesting to find that in Jain Religion there is a tradition of a typical systematic fasting, which is known as Sallekhna. It is absolutely misconstrued as a step to end life or fast unto death. It is a Code of Right Conduct and self discipline practiced with a healthy desire for elevation of life and self realization akin to shifting to one's own house from a rental house (the body). It leads to the inward path of Nirvriti from Pravriti by complete detachment form the sensory system. Santhara is an exercise for self-purification. This religious act known as Sallekhna-Santhara has remained very popular through out the history of Jainism. It is mostly known for a voluntary vow meditation till the person lives: (Santhara) by abstaining from food, water and every kind of nourishment to the body when one is approaching the end of life. Sallekhna is not giving up life but it is very much

taking the death in its own stride.

Jainism believes in rebirth and so the consequences of our Karmas are dependent upon our own good and bad thoughts, words and deeds. Every living being is responsible for its own activities the consequences of which work out automatically. One cannot escape from one's Karmas except by experiencing their consequences, good or bad. The Karmas bear fruit and are therefore responsible for our Karmic bodies. Depending on the nature of the individual's Karma, the next life may be human or otherwise.

In Ratna-Karanda Sravakacara for Sallekhna it is stated as under:-

The holy men say that sallekhna is giving up the body (by fasting) when there is an unavoidable calamity, severe draught, old age or incurable disease, in order to observe the discipline of religion.

It is emphatically denied that Santhra is a voluntary suicide. Sallekhna (Santhara) is arbitrarily equated with the offence of suicide or Sati or euthanasia in the PIL. 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 inmost 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.

The basic concept underlying the vow of Santhara is that a man who is the master of his own destiny should resolve himself to follow the best method of leaving the body. A Jain resolving to undergo Santhara knows it well that he has eaten a lot of food to sustain his body during his life. Now, when the body does not cooperate to help in living meaningfully any more, the person should resolve for Santhara. During Santhra one must not wish to live on or desire sensual pleasures but equally he must not seek for death to come swiftly.

3. That the contents of para (3) of the writ petition are not admitted. The allegations made against the Jain community are wild and derogatory making the petitioner liable for an offence of defamation. It appears that the petitioner is completely ignorant about the Vrata of Santhara or Darshan or Sallekhna as already explained above. It is denied that Santhara or Sallekhna violates the provisions of Indian Penal Code or the Constitution of India. It is further submitted that the petitioner has taken the liberty of making wild allegations against the entire Jain Community but has failed to implead the Jain community in the writ petition as laid down in the Code of Civil Procedure. It is thus submitted that the allegations made in para (3) should be eschewed from consideration in the absence of Jain community as party to the PIL and the petition may kindly be dismissed with heavy costs as it is a case of nonjoinder of necessary party.

4. That the contents of para (4) may be true. From para (4) it appears that the petitioner has taken the information from the Internet. But he speaks lie as in his affidavit while supporting the writ

petition he says that the contents of para (4) are true and correct to the best of his personal knowledge.

In this para it is submitted that the petitioner has given some of the instances of Santhara which is pinnacle of glory of life and death from 1993 to 2003. It is prevalent in the Jain community for more than 2000 years or say since time immemorial by the followers of the worlds oldest Jain religion. Justice T.K.Tukol, former Vice-Chancellor, Bangalore University in his book Sallekhna is not suicide has given complete history. In Chapter 3 under title Sallekhna in practice, he has given various instances of Sallekhna prevalent in the country in Jain community. It reflects culture of Jain community and proves that Sallekhna was prevalent in the Jain community as a custom or practice or ritual and has been recognized as a culture of the community as art of living. Jains are the only community who celebrates birth and death both. It may be mentioned that culture is a collective name for the material, social-religious and artistic achievements of human growth including traditions, customs and behavioural patterns all of which are unified by a common place and values. Since India is a secular state the State is not to associate with religion and is not to interfere with it. The way in which the writ petition has been filed amounts to making mockery of Jain religious practice and the right of Jain to manage their own affairs in the matter of religion as guaranteed by Article 25, 26(b) and 29 of the Constitution.

It is an admitted case of the petitioner that the practice of Santhara is being followed as part of customary and religious practice. It is thus clear that Santhara is religious practice or ritual and as such can be performed as per religious tenets, usages and custom. Before appreciating upon the propriety of Santhara practice one has to understand the metaphysical ethical and social concepts of Jainism which are different from other religion. Jain metaphysics divides the Universe into eternally co-existing but independent, categories, One Jiva-the soul-second Ajiva-the non-soul. The body is the non-soul. Soul is the central theme in Jaina system. The ultimate goal of a human life in Jainism is the realization of the soul viz- Atma Darshan after its emancipation from the entanglement of non-soul of the body.

5. That the contents of para (5) of the writ petition are emphatically denied.

6. That the contents of para (6) of the writ petition appears to have been not interpreted properly. Under Section 309 IPC punishment has been provided for attempt to suicide. In a changing society, notions of what is objectionable have always been changing. Prevention or punishment of particular conduct is dependent upon the scope and the purpose of the criminal law that is in force for the time being. A crime predominantly is dependent upon the policy of the State. It may be mentioned that some time back Law Commission in its report has recommended for abolition of Section 309 IPC. A Division Bench of the Hon'ble Supreme Court had held Section 309 IPC as violative of Article 21 of the Constitution of India. Though the said judgment of the Division Bench stands over ruled but the Constitution Bench has recognized that the right to life including the right to live with human dignity would mean the existence of such a right upto the end of natural life which means right to a dignified life up to the point of death including a dignified procedure of death. In other words this may include the right of dying man to also die with dignity when his life is ebbing out.

7. That the contents of para (7) of the writ petition are not admitted. It appears that the learned petitioner has not correctly appreciated the judgment of the Constitutional Bench of the Hon'ble Supreme Court in Smt.Gyan Kaur Vs. State of Punjab (JT 1996(3) SC 339). The Supreme Court in Gyan Kaur has declared the law as under:-

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 of 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.

Every man as per Hindu religion lives to accomplish four objectives of life (1) Dharma (2) Artha (3) Karma and (4) Moksha. When the earthly objectives are complete, religion would require a person not to clinch to the body. Thus a man has moral right to terminate his life, because death is simply changing the old body into a new one.

Our mythology is full of incidents when our Gods have terminated their life. Lord Ram took Jalsamadi in river Saryu. Lord Mahavir and Lord Budha achieved death by seeking it. In recent days Shri Vinoba Bhave met his end by undertaking fast. So was the case of Swami Ram Krishna Param Hans. Ma-Anandmai. The folk deity of Rajasthan 'RAMDEOJI has taken living samadhi. India Saints every year willingly relinquish the body which is called 'Samadhi Maran'. Instances are there where Jain munis have terminated their lives by going on fast that is, by adopting the practice of Santhara. Shri Raichand Bhai, religious guru of Mahatma Gandhi took Samadhimaran at the age of 33 years.

Santhara may fall within the category of cases which may fall within the group of right to die with dignity as a part of life with dignity when death is certain and imminent and the process of natural death has commenced. There is long tradition of Santhara in Sharamanic culture which is an expression of fearless towards death. It is rising above all bodily pains and sufferings. It is a process of painlessness and becoming a Stith Progya.

8. That the contents of para (8) of the writ petition have no relevancy with the case in hand. It is a case of different circumstances. There are lots of cases where Anglo-British Courts have permitted the withdrawal of the life supports.

Some cases came up for hearing before the Supreme Court of New Jersy, where a question was raised as to whether a person can direct the physician to terminate his life support viz respirator. G-tube (Gastrostomy tube) etc., or whether he has an absolute right to control the course of his medical treatment. In Re Quinlan 70 N.J.10 and in Re-Conroy, 486 A, 2nd 1209 the patient was in a

vegetative state. In the former case he was unconscious and in the latter case he was though awake and conscious but his mental and physical functioning was permanently impaired. In the both the case the Court permitted the withdrawal of the life supports. In Re-Quinlan the life support was withdrawn with the consent of the patient's family. In McKay Vs. Bergstedf on a petition being filed in the Court for removal of life support the Court permitted disconnection of his respirator. The Supreme Court of Nevada affirmed the Court's decision in appeal. The Court held that desire of the patient for withdrawal of his respirator did not amount to suicide. Similar approach may be seen in Bouvia Vs Superior Court (225 Cal.Reporter 297) (CT App 1986) and Barting Vs. Superior Court (209 Cal Reporter 220 (CT App 1984). The House of Lords has ruled in Airedale NHS Trust Vs. Bland, 1993 All ER 821 (859) that euthanasia is permissible in law.

In a recent case which it occurred in March, 2005 the Court allowed the removal of the feeding tube. It was a case of Terrie Schiavo. Terri Schiavo is now dead. She remained unconscious for more than 15 years on account of some tragedy rendering brain death. She was kept on feeding tube. Her husband applied to the Court for removal of the feeding tube. Her parents opposed to it. The Court allowed the removal of feeding tube. The matter went up to an Appellate Court. The Court also declined to interfere. The Federal Appeals Court however agreed to consider an emergency motion requesting a new hearing on the request of her parents on the question whether to reconnect their severely brain damaged daughter's feeding tube. In requesting the new hearing, a plea was raised that a Federal Judge in Tempa should have considered the entire State Court record and not whether previous Florida Court''s ruling met legal standards under State law. It also stated that Allanda Federa Appellate Court did not consider whether there was enough clear and convincing evidence that Terri Schiavo would have chosen to die in her current condition. However, before hearing was done Terri died. Once her feeding tube was removed at the behest of her husband no course was left but for Terri to die a lingering death. The question is whether she was allowed to die with dignity. Again a debate has come up as to whether right to life includes right to a peaceful and willing death. The question requires to be decided as to who decides the right to die.

9. That the contents of para (9) of the writ petition are misplaced. No analogy can be demonstrated between Santhara and offence under Sati Prevention Laws. In Sati Prevention Law it is the glorification which has been made an offence. The act of Sati has been held to be immoral.

10 . That the contents of para (10) of the writ petition are not admitted. Under the law of the country nobody can be forced to eat or drink against his/her will. The case of hunger strike is quite different. In the case of hunger strike if the demand is made the person concerned would automatically withdraws the fast. As such the case of Santhara is quite different. Further, as already submitted above, the practice of Santhara has become part of the culture of Jain community. It is a part of religious practice for the persons who voluntarily takes vow of Santhara. It is not suicide as contemplated under the provisions of the India Penal Code. The true idea of Santhara is only this that when death does appear at last one should know how to die, that is, one should die like a Monk and not like a beast bellowing and panting and making vain efforts to avoid the unavoidable. The Jain Sallekhna leaves ample time for further reconsideration of the situation as the process which is primarily intended to elevate the will is extended over a period of days and is not brought to an end at once.

It would be legally wrong and morally insupportable to categorize death by Sallekhna as a suicide which is sudden self-destruction due to emotional and neurasthenic upsetment. Suicide causes harm to the person committing it as also to the society whose concern it is to ensure the safety of its member. Umasvami has defined himsa (violence) as 'severance of vitalities out of passion' (pramatta-yogat pramavyaparopanaim himsa). A person actuated by passion is pramatta. The activity of such a person is pramatta-yoga. Amrtacandra Suri has expressed similar views; He who injures the real nature of Jiva commits himsa. Any injury whatsoever to the material or conscious vitalities caused through passionate activity of mind, body or speech is undoubtedly himsa. Himsa is sure to result, if one acts carelessly under the influence of passions. Even where there is injury to the vitalities, there is no himsa if the man is not moved by any kind of passion and is carefully following Right Conduct. Thus, it is only when a person puts an end to his own life due to his passionate activity that there is suicide.

It has already been explained that in the observance of the vow of Sallkhana, there is complete absence of passion and the conduct is directed to liberate the soul from the bondage of karma. When such individual advances himself spiritually by his austerities and meditation, his life elevates the community of devotees and other onlookers by purifying the mind of every individual and by creating an awareness in him or her of the inherent potentialities of the self. The conquest of all passions and full detachment from worldly desires and possessiveness visible in the conduct of the ascetic or the householder evoke our reverence for him. His quiet and joyful death makes us conscious of what is good for the individual and the community at large. His path of absolute renunciation and his march towards self-realization enables and enlightens the society at large. Such death is not suicide and cannot be categorized as such either according to law or morals. The Saints and sages of India are known for defiance of death. When they realize the futility of their perishable body or when they achieved their goal for seeking the love of life, they voluntarily invoke death. They have risen above life and death. In the brahamic it is called living samadhi. To treat it as suicide, amounts to ignorance of the Indian culture.

The constitutions of democratic countries guarantee freedom to practice, propagate and preserve one's own religion. This right is subject to interests of public order, morality and health. Every citizen has right to profess and practice his religion freely. It is one of the cardinal principles of Jaina religion that the noblest or the most spiritual way of meeting death is to resort to the vow of Sallekhna when, due to circumstances already mentioned, a person is unable to live up to his religion and maintain the purity of his mind and heart. Even if the Indian Penal Code does not refer to this freedom of religion enshrined in Article 25 of the Constitution the Constitution overrides the law in the Penal Code or other identical provisions in any other law. The implications of the constitutional guarantee are that acts sanctioned by religion and termed in accordance with the prescribed rites would not be punishable under any law of the land. Any law which curtails the freedom guaranteed by the Constitution cannot have the sanctity of law and as the same would be unenforceable by any authority or in any court of law.

The practice of Sallekhna does not interfere with public order, health or morality. Sallekhna is pinnacle of glory of life and death. It is not an immolation but promotion of soul. It is in no way a tragedy. Jainism speaks of death very boldly and in a fearless tone to impress that death should be

well welcomed with celebrations. Sallekhana is a retreat to peace in true sense, to be yourself entirely free from all distractions for pure contemplation and introspection.

The right of individuals practice Sanllekhana or Santhara is protected by right of privacy. The practice of Santhara has been recognized by Privy Council in the year 1863 to be prevalent from time immemorial. The right of privacy has been recognized in the case of alleged suicide by Acharya Vinobabhave in a well known judgment. In the case 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.

Article 26 lays down that every religious denomination or any section thereof shall have the right to manage its own affairs in the matter of religion.

It is submitted that practice of Sanllekhana is impossible for each and everybody to adopt the vow of Sallekhna because it requires the devotee to possess an unshakeable conviction that the soul and the body are separate, that the body is the result of accumulated karmas and that liberation from karmas is possible only by an austere life of supreme conduct founded on right faith and knowledge.

The right is also protected under Article 29 of the Constitution of India. It cannot be denied that Jains have their own culture and therefore any section of the citizens residing in the territory of India having culture of its own has the right to conserve the same. The Jain community is a religious minority community and also it is a cultural minority and therefore it is the mandate of the constitution that the State shall not impose upon it any other culture which may be local or otherwise. The state has no authority to force feed a Sadhak who has taken the vow of sanllekhna.

In the PIL Sallekhna that is Santhara in complete ignorance is equated with the offence of suicide, sati custom and euthanasia. It is outlandish notional and ultra-vires. By no stretch of imagination Santhara can be termed or confused with any one of the aforesaid offences at all, strictly prohibited in Jainism itself. The difference between Santhara and suicide has been vividly explained in many articles by the Scholars. The answering respondent shall be submitting the same at the time of making submissions.

By fasting is meant voluntary abstinence from all food. It is the oldest method of cure in disease even animals resort to it instinctively.

11. That the contents of para (11) are not admitted and in reply to the allegations made therein the answering respondent would like to reiterate what has been submitted in the foregoing paragraphs. It is again reiterated that Santhara is not suicide.

12. That the contents of para (12) of the writ petition are neither relevant nor correct. If necessary, the answering respondents reiterate what has been submitted above.

PRELIMINARY OBJECTIONS

1. The petitioner has no locus-standi to file this writ petition as Public Interest Litigation. The petitioner is neither a scholar in Jainism nor he has studied the practice of Sanllekhana or Santhara. In this regard he appears to be a busy body or meddlesome anteloper.

2. That in the petition hypothetical question has been raised without any material particulars. The petition thus is not maintainable. The petitioner has neither made the ladies who had taken Santhara as parties to the petition nor the Jain community. It is by way of additional affidavit that their names have been disclosed. It is settled law that no amount of evidence can be looked into for which there are no pleadings.

3. That the writ petition suffers from the defect of multifariousness. Neither the necessary parties have been impleaded nor the petition disclose the cause of action. The answering respondents fails to understand as to why Union of India or the State of Rajasthan has been impleaded as a party to this writ petition. However, one thing is certain that they have been impleaded as party because the petitioner was aware of the fact that without impleading them no writ petition is maintainable against Jain community such as Stanavwasi Jain Sangh and Shreemal Sabha. It is not maintainable otherwise as the writ petition is not maintainable against private persons who have no public duty to discharge.

4. That Stanakvasi Jain Shravak Sangh and Shreemal Sanbha are not legal persons. They are private persons. They are merely representative institutions of private persons. No writ petition is maintainable against them.

5. That the writ petition is addressed to Jain community as such the Jain community should have been impleaded as party. The writ petition therefore is liable to be dismissed on this count in the absence of the necessary party.

6. That the writ petition is not maintainable as prima-facie it violates principles of natural justice as the entire Jain community has been condemned without being heard.

7. That the practice of Santhara is saved by Articles 25, 26 and 29 of the Constitution of India as already discussed above.

8. That as the State is unable to guarantee an individual life and freedom of expression implies freedom of silence, the right to die voluntarily is a right of privacy and self termination of life should not come between an individual and his/her conscience. One has the subtle discriminative power to discern the matter from the eternal. It caused annoyance to the entire Jain community when Smt.Vimla Devi, Kamla Devi and Keladevi were threatened with police action and legal implications in this land of Rishis, Munis and Thrithankaras, when it is the only community practicing righteousness and believes in Ahimsa It is, therefore, prayed that the writ petition of the petitioner may kindly be dismissed with special costs.

13. The petitioner has described the practice of Santhara as abhorrent to modern thinking. He submits that no religion howsoever historical, pure or revered, can permit or allow a person to

commit death by choice. The fast until death is nothing but a self-destruction in whatever form and belief it may be, and that fundamental right to freedom of religion cannot protect a criminal act as it is subject to public order, morality and health. The guarantee given by the Constitution under Article 25 is that every person in India shall have the freedom of conscience and shall have the right to profess, practice and propagate religion, subject to restrictions imposed by the State on the grounds (i) public order, morality and health; (ii) other provisions of the Constitution; (iii) regulation of non-religious activity associated with religious practice; (iv) social welfare and reform; (v) throwing open of Hindu religious institutions of a public character to all classes of Hindus. No practice or belief or tenet, which is abhorrent to public order, morality and health and violates other provisions of the Part-III, namely, Article 21, can protect the religious practice.

14. It is submitted that the freedom of conscience is not necessary to be connected with any particular religion or any faith in God. It also implies the right of a person not to be converted into another man's religion or to bring to any religion at all. A knowledge or sense of right or wrong, moral judgment that opposes the violation of previously recognized ethical principles and that leads to feelings of guilt if one violates such a principle. The freedom of conscience as defined in Webster's New World Dictionary has been encircled with the public order, morality and health and the right to life and the rights of other persons guaranteed under Part III of the Constitution of India.

15. It is submitted that religious practices, which are violative of 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. In Jagadishwaranand Avadhuta Acharya, V/s Police Commissioner, Calcutta (AIR 1984 SC 51), 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 margis in the public streets or places. Reference was made on the decision in Gulam Abbas V/s State of UP (AIR 1983 SC 1268).

16. Reliance has been placed on the decision of the Supreme Court in Church of God (Full Gospel) in India V/s K.K.R.Majestic Colony Welfare Association ((2000) 7 SCC 282), in which the Supreme Court observed that in a civilized society in the name of the religion, activities which disturb old or infirm persons, students or children having their sleep in the early hours or during day time or other persons carrying on other activities cannot be permitted.

17. Reliance has also been placed on the decisions in N.Adithayan V/s Travancore Devaswom Board ((2002) 8 SCC 106) and Javed & ors. V/s State of Haryana & ors. ((2003) 8 SCC 369) in which it was observed that the right of the State to impose such 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. The religious practice which forms an essential and integral part of religious is protected. A practice may be a religious practice but not an essential and integral part of the religion.

18. It is submitted that religion is a social system in the name of God laying down the code of conduct for the people in society. It is a way of life in India and an unending discovery into the unknown world. People living in society in which they are born or by choice have to follow some sort of religion. It is a social institution and society accepts religion in a form which it can easily practice. Faith in religion influences the temperament and attitude of the thinker. Religion includes worship, faith and extends even to rituals. Jain religion has been found to be a distinct social system with its individuality and purpose. It cannot, however, claim a practice ancient it may be, as an essential part or belief or tenet, which is violative of the public order and morality accepted by the State under the provisions of law including in section 309 IPC. The right to his/her death cannot be treated as part of the tenet of the religion, as religion which takes life cannot be allowed to advocate that the taking of life in however purified form is a way of life, which is also an essential tenet of religion.

19. The petitioner appearing in person has tried to demonstrate that adoption of Santhara, an act with criminal content, has become a means of climbing social ladder. Any person adopting Santhara is not allowed to go back on his vow, and the entire family and community forces him/her to complete the process in which he has to go through inhuman and intolerant conditions. He/she is some times tied to the chair or bed and is not allowed to eat and drink, even if he/she wants to come out of the vow or suffers from pain on the ground of criticism. A person adopting Santhara is surrounded by the groups singing Bhajan and Kirtan and he/she is made to loose conscience and drawn by religious fanaticism, to accept the process of death. It is nothing but killing a person, who may or may not have in the religious belief vowed to adopt Santhara as a means to end his/her life. It is submitted that this notorious, abhorrent and tribal practice in the religion must be stopped at all costs and the State Government should not be allowed to protect the practice in order to protect Jain religion, which has the economic dominance in the State of Rajasthan. When the State of Rajasthan can stop Sati and those abetting Sati are treated as offenders, in which case, the investigations are carried out and punishment is awarded, the Santhara is no different and it is also a process to commit suicide in the name of religion as in the case of Sati. There is absolutely no need to protect the practice of Santhara by the State.

20. Learned counsel appearing for the respondents have passionately defended the Santhara as an inseparable tenets of Jain religion. They have tried to connect it with the way of life and source to attain moksha, which is the ultimate purpose of Jain religion. Shri P.C.Bhandari has explained to us in great detail as to how the Santhara is practiced reciting the Mantras and narrating the stages of attaining the Santhara with reverence. He submits that it is a highest order in Jain religion. He has explained to us the manner in which the vow of Santhara is taken and has recited the slokas in a loud voice in the Court, to the amusement of the general public sitting in the Court. It is submitted by him that Article 25 has no application to an essential religious practice and has relied upon the decision in Gian Kaur V/s State of Punjab (JT 1996(3) SC 339), in which the Supreme Court has protected the right to die by a person, who is terminally ill or in persistent vegetative state to terminate his life and though setting aside the declaration of law in P.Rathinam/Nagbhusham Patnaik V/s Union of India (JT 1994(3) SC 394), raising a doubt in the case of terminally ill or for a person in persistent vegetative state to be permitted physician assisted termination and keeping the argument open, which was tried to be addressed by the Supreme Court in Aruna Ramchandra Shanbaug V/s Union of India & ors. ((2011) 4 SCC 454).

21 In this writ petition filed in public interest, we are concerned with the short question as to whether the practice of Santhara/Sallekhana practised by the Shvetambaras group of Jain religion is an essential tenet of the Jain religion protected by the right to religion under Article 25 of the Constitution of India.

22. Shri Madhav Mitra, learned counsel appearing for the petitioner submits that the Jain community is divided into two groups of Digambara and Shvetambara. The Santhara, a religious fast unto death, is prevalent in Shvetambara, whereas a similar kind of fast called Sallekhana in the Digambara. The Santhara is a kind of self-emulation, wherein the person adopting it starts fast to achieve the goal of death in which he stopped consuming food, water and medicines. It is nothing but suicide under the garb of religious beliefs. No individual has a right to take his own life. The Supreme Court in Gian Kaur Vs. State of Punjab (supra) held that Section 309 IPC is valid and not violative of Article 21 of the Constitution of India. The right to life does not include the right to die. The right to human dignity does not include the right to terminate natural life and it has over-ruled the previous judgment of its own Court in P.Rathinam V/s Union of India (supra).

23. It is submitted that in Aruna Ramchandra Shanbaug V/s Union of India & ors. (supra), the Supreme Court held that both euthanasia and assisted suicide are not lawful in India. The right to life does not include the right to die and that euthanasia could be lawful only by legislation. Both the abetment of suicide under Article 306 IPC and attempt to commit suicide in Section 309 IPC are criminal offence. Section 309 IPC is constitutionally valid. It was held in Gian Kaur's case (supra) that the debate to permit physician-assisted termination of life is inconclusive. The euthanasia is of two types; active and passive. The active euthanasia entails the use of lethal substances or forces to kill a person. The passive euthanasia entails withholding of medical treatment for continuance of life, withholding of antibiotics where without giving it a patient is likely to die, or removing the heart lung machine, from a patient in coma. Both the methods are illegal without legislature, provided certain conditions and safeguards are maintained. Generally, the euthanasia may be voluntary and non-voluntary. The voluntary euthanasia is where the consent is taken from the patient, whereas non-voluntary euthanasia is where the consent is unavailable, when the patient is in coma, or is otherwise unable to give consent. In voluntary passive euthanasia a person, who is capable of deciding for himself decides that he would prefer to die which may be for various reasons including unbearable pain or that he does not have the money for his treatment. He consciously and out of his free-will refused to take life saving medicines. The Supreme Court held that in India, if a person consciously and voluntarily refuses to take life saving treatment, it is not a crime, but whether not taking food consciously and voluntarily with the aim of ending one's life is a crime under section 309 IPC is a question, which need not be decided in the case. After considering the question of non-voluntary passive euthanasia, the Supreme Court laid down certain guidelines for the procedure for permitting death, under certain conditions. The Supreme Court laid down a procedure detailing the conditions for such action till the Act is enacted by the Parliament. The procedure provides for a decision to be taken by the patients to discontinue life support or the spouse or other close relatives and in their absence by a person next or by the doctors attending the patient. The decision must be bonafide and thereafter, approval must be sought from the High Court by filing a petition under Article 226 of the Constitution of India. The High Court in such case acts as parens patriae. The matter should be decided by atleast two Judges. The Bench will constitute a

Committee of three reputed doctors after consulting such medical authorities/medical practitioners, preferably comprising of a Neurologist, Psychiatrist and Physician. The report of the Committee is to be made available to the patients and his close relatives to obtain their views and thereafter, the High Court should give its decision assigning reasons, keeping in view the best interest of the patient.

24. It is submitted that although in Aruna Ramchandra Shanbaug V/s Union of India (supra), the Supreme Court left the question as to whether not taking food consciously and voluntarily with the aim to end one's life is a crime, the substance of the judgments in Gian Kaur (supra) and Aruna Ramchandra Shanbaug (supra) is that no person has a right to take his own life consciously, as the right to life does not include the right to end the life voluntarily.

25. It is submitted on behalf of the petitioner that even the act committed with the consent of the individual to end his/her life is punishable under the Indian Penal Code. The offence of murder under section 300 IPC prohibits exception, which goes to show that such an act may not amount to murder, but would be termed as culpable homicide. Section 92 precisely relates to medical practitioners wherein the act done in good faith for the benefit of a person, without consent has also been made a criminal act punishable under the law of the land.

26. It is submitted that the religious belief of the Jain community is not protected under Article 25 of the Constitution of India, as the freedom of conscience and free profession, practice and propagation of religion is subject to public order, morality and health and to the other provisions of this Part, which includes Article 21 guaranteeing right to life and which cannot be taken away either voluntarily or involuntarily. The underlying principle is that if a person cannot give life, he has no right to take life as himself or of others.

27. It is submitted that the 'Santhara ' or 'Sallekhana' is not a religious practice adopted regularly. It is adopted occasionally by the individual and instigated by others to achieve the salvation. No religion propagating salvation permits taking the life of any individual, which includes the persons taken their own life. The 'Santhara' is also not protected under Article 25 or 29 of the Constitution of India, inasmuch as, it in no manner protects the freedom of religion or the interest of minorities. The persons professing Jain religion though in religious minority, do not have any special status nor does the interest of minority permits taking life and gives a constitutional right.

28. The Advocates belonging to the Jain community have filed bulky written arguments to support the Santhara as a religious practice, quoted from scriptures and preaching of Jain religion, which is not by way of taking one's life for attaining any status or relief from pain. They state that adopting Santhara is not suicide. It is a death with equanimity in pursuit of immortality. It is a victory over death or rather the fear of death. Persons taking vow of Santhara face it bravely and boldly whenever death becomes to them. They are spiritual aspirants, who retain their equanimity in the face of death and their death does not remain fearful but becomes peaceful. Such peaceful death is called Samadhimarana. It is practiced by those inveterate spiritual aspirants, who are in eternal pursuit to immortality. Jainism is known for many a unique spiritual practice and accomplishment since its propounding by the first Lord Prophet Rsabhadeva, centuries ago at the beginning of time cycle. The

antiquity of Jain religion and Santhara is unquestionably proven by its mention in the ancient scriptures. It is equally modern and rational in its philosophy and approach. It is modern in the sense that spiritual aspirants, in the pursuit of immortality, undertake this practice. It is rational in the sense that the very purpose of human existence in its spiritual evolution to perfection and to overcome all impediments that hinder its progress towards this noble goal. The fear of death is one such hindrance and in that sense, the Santhara overcomes this hindrance and paves the way for spirit's attainment of perfection. It not only enables the spiritual aspirant to overcome the fear of death but also highlights the indomitable human spirit that would not stop short of achieving its goal whatever may be in the say. Reference has been made to the book of Dr.Colonel D.S.Baya, which covers almost all aspects of this spiritual practice by the Jainas across the sectarian divisions and across the world. The book justifies the Santhara as religious practice, which is essential to the religion of Jain. Quoting from the Jain scriptures and using a research methodology including literary, field research and research finding, it was concluded in the book that embracing voluntary peaceful death by fasting unto death after a preparatory penance is the ultimate form of penance that culminates in a fearless death in a state of equanimity of mind. It is a noble form of death, which does not use any violent means to die in a fit of the moment and it is perfectly non-violent as it causes no injury to the self or the other. The Santhara is perfectly peaceful, calm and quiet and is distinct from the voluntary death practiced by the followers of the other faiths in that it uses no violent means to die and that there is no desire to die associated with it. It is simply a noble way to voluntarily discard and worn out and diseased body that does not remain spiritually productive any longer. The practice has been a tradition with the Jain ever since the dawn of civilization and it has been practiced by the Jain ascetics and lay followers since the time of Bhagwan Rsabhadeva to the present age. The Jain scriptures, rock inscriptions and media report amply bear evidence to the facts. It cannot be compared with suicide, Sati or any other form of honour deaths and it attracts no provisions of law against it. Justice T.K.Tukol opined that omission to take food is not an offence under section 309 of the Indian Penal Code which deals with suicide and that it is not an offence because it does not injure others. It was finally concluded in the book that it is a noblest way to die in the pursuit of immortality.

29. In the written arguments filed by Shri Vimal Choudhary, Advocate, Shri Sunil Nath, Advocate appearing for respondent no.3, Shri Anuroop Singhi, Advocate settled by Shri J.K.Singhi, Senior Advocate, Shri Vivek Dangi/Vijay Choudhary, Advocates settled by Shri Virendra Dangi, Senior Advocate, Shri Ajit Maloo, Advocate settled by Shri N.K.Maloo, Senior Advocate, Shri Hemant Sogani/Himanshu Sogani, Advocates appearing for the applicant-Veerendra Kumar Jain and Shri Ajit Bhandari, Advocate appearing for the respondent no.4, reliance has been placed on various books and articles and references have been made to the religious scriptures including the opinions of Shri Swami Samantbhadra Acharya, Shrimadacharya Pujyapad, Shri Acharaya Uma Swami and Shri Dhyan Sagar Ji Maharaj and articles of Justice T.K.Tukol and Justice N.K.Jain. Reliance has also been placed on various studies carried out by the scholars including the scholars of Jain Vishva Bharathi University, in support of the argument that the Santhara or Sallekhana is not by way of suicide, but for attaining the moksha and it is accepted form of death in the Jain religion for salvation.

30. References have also been made to the Acharanga Sutra (pages 421, 432, 438, 439 and 444) and preaching of Jain Muniji Maharaj. References have also been made to Sutra 122 Ratnakaranda Sravakacara, Shree Bhagwati Sutra from Death with Equanimity (Para 0.2.06), Jnata Dharma Kathanga Sutra, Rai Paseniya Sutra, Acharanga Sutra, Sthnang Sutra, Acharanga Sutra (page 252 to 255) and Acharanga Sutra (pages 262 to 267).

31. In all the written arguments, reliance has been placed on the judgments of the Supreme Court in Gian Kaur (supra) and Aruna Ramchandra Shanbaug (supra), in which the debate of voluntary death by a peaceful method was left inconclusive.

32. In written arguments providing details of references to the religious scriptures and the opinions of monks as well as the research articles, it is sought to be advocated that the Santhara or Sallekhana is not suicide, which is punishable under section 309 of the Indian Penal Code. It is accepted form of voluntary death taken step by step to achieve moksha, with full wisdom and insight. It is not a violent method of death and is permissible in the Jain religion. All the counsels appearing for the respondents in their oral and written arguments have tried to impress the Court to dismiss the writ petition, as the old-aged practice of Santhara or Sallekhana is protected by Article 25 of the Constitution of India.

33. In Onkar Singh etc. etc. V/s State of Rajasthan (RLR 1987 (II) 957), a Division Bench of this Court in a celebrated progressive judgment considered the challenge to the Rajasthan Sati (Prevention) Ordinance, 1987, on the ground of violation of Articles 25, 26, 174, 213 and 51A of the Constitution of India. After referring to the Rig Veda Mantras, Atharva Veda and various scriptures, in which the practice of Sati was alleged to have been accepted; referring to the practice of Sati allegedly religious practice referred to in the Vishnu Purana Shastra prevalent in various sects of Punjab, Orissa and Bengal; referring to the studies by Professor Kane and Cromwell in the book Raja Ram Mohan Rai his era and ethics; referring to the judgments in Ramdaya V/s Emperors (AIR 1914 All.249), Emperor V/s Vidyasagar (AIR 1928 Pat.497) & Kindarsingh V/s Emperor (AIR 1933 All 160), in which the abetment of Sati was held to be an offence and sentences were inflicted, the Division Bench observed that in all the ages, the Rajas, Maharajas, Jagirdars and Emperors have made efforts to stop, ban and punish those persons, who abet and propagate the glorification of Sati. It was declared an offence in the year 1987 and cannot be said to be protected by the Constitution of India in any way. The challenge to the Ordinance was dismissed except for Clause 19 of the Ordinance, which was held to be ultra vires being violative of Articles 13, 14, 21, 25 and 51-A(e) of the Constitution of India, providing for the continuance of ceremonies in the temples in connection with the Sati constructed prior to the commencement of the Act. The landmark judgment is a piece of great legal work, which reaffirmed the rule of law in the State of Rajasthan, in which the sections of people glorified the practice of Sati as a religious practice protected by Article 25 of the Constitution of India.

34. In Sardar Syedna Taher Saifuddin Saheb V/s State of Bombay (AIR 1962 SC 853), a Constitution Bench of the Supreme Court held that Articles 25 and 26 embody the principles of religious toleration that has been the characteristic feature of the Indian civilization from the start of history. They serve to emphasize the secular nature of the Indian Democracy, which the founding fathers

considered, should be the very basis of the Constitution. In paras 40, 44 and 57, the Supreme Court held as follows:-

Where an excommunication is itself based on religious grounds such as lapse from the orthodox religious creed or doctrine (similar to what is considered heresy, apostasy or schism under the Canon Law) or breach of some practice considered as an essential part of the religion by the Dawoodi Bohras in general, excommunication cannot but be held to be for the purpose of maintaining the strength of the religion. It necessarily follows that the exercise of this power of excommunication on religious grounds forms part of the management by the community, through its religious head of its own affairs in matters of religion guaranteed under Article 26(b). The impugned Act makes even such excommunication invalid and takes away the power of the Dai as the head of the community to excommunication even on religious grounds. It, therefore, clearly interferes with the right of the Dawoodi Bohra community under cl.(b) of Art.26 of the Constitution.....

The right under Art.26(b) is subject to cl.(2) of Art.25 of the Constitution. The impugned Act, however does not come within the saving provisions embodied in cl.(2) of Art.25. Quite clearly, the impugned Act cannot be regarded as a law regulating or restricting any economic, financial political or other secular activity. The mere fact that certain civil rights which might be lost by members of the Dawoodi Bohra community as a result of excommunication even though made on religious grounds and that the Act prevents such loss, does not offer sufficient basis for a conclusion that it is a law providing for social welfare and reform within Art.25(2). As the Act invalidates excommunication on any ground whatsoever, including religious grounds, it must be held to be in clear violation of the right of the Dawoodi Borha community under Art.26(b) of the Constitution.

As the right guaranteed by Art.25(1) is not confined to freedom of conscience in the sense of the right to hold a belief and to propagate that belief, but includes the right to the practice of religion, the consequences of that practice must also bear the same complexion and be the subject of like guarantee. It is not as if the impugned enactment saves only the civil consequences of an excommunication not interfering with the other consequences of an excommunication falling within, the definition. On the other hand, it would be correct to say that the Act is concerned with excommunication which might have religious significance but which also operate to deprive persons of their civil rights.

35. In Gian Kaur V/s State of Punjab (supra), the Supreme Court disagreeing with the reasons given in P.Rathinam's case (supra) observed in paras 21 to 25 as follows:-

21. From the above extract, it is clear that in substance the reason for that view is, that if a person has a right to live, he also has a right not to live. The decisions relied on for taking that view relate to other fundamental rights which deal with different situations and different kind of rights. In those cases the fundamental right is of a positive kind, for example, freedom of speech, freedom of association, freedom of movement, freedom of business etc. which were held to include the negative aspect of there being no compulsion to exercise that right by doing the guaranteed positive act. Those decisions merely held that the right to do an act includes also the right not to do an act in that

manner. It does not flow from those decisions that if the right is for protection from any intrusion thereof by others or in other words the right has the negative aspect of not being deprived by others of its continued exercise e.g. the right to life or personal liberty, then the converse positive act also flows therefrom to permit expressly its discontinuance or extinction by the holder of such right. In those decisions it is the negative aspect of the right that was invoked for which no positive or overt act was required to be done by implication. This difference in the nature of rights has to be borne in mind when making the comparison for the application of this principle.

22. When a man commits suicide he has to undertake certain positive overt acts and the genesis of those acts cannot be traced to, or be included within the protection of the 'right to life' underArticle 21.The significant aspect of 'sanctity of life' is also not to be overlooked.Article 21is a provision guaranteeing protection of life and personal liberty and by no stretch of imagination can extinction of life' be read to be included in protection of life'. Whatever may be the philosophy of permitting a person to extinguish his life by committing suicide, we find it difficult to construeArticle 21to include within it the right to die' as a part of the fundamental right guaranteed therein. 'Right to life' is a natural right embodied inArticle 21but suicide is an unnatural termination or extinction of life and, therefore, incompatible and inconsistent with the concept of right to life'. With respect and in all humility, we find no similarity in the nature of the other rights, such as the right to freedom of speech' etc. to provide a comparable basis to hold that the 'right to life' also includes the 'right to die'. With respect, the comparison is inapposite, for the reason indicated in the context ofArticle 21.The decisions relating to other fundamental rights wherein the absence of compulsion to exercise a right was held to be included within the exercise of that right, are not available to support the view taken in P. Rathinam quaArticle 21.

23. To give meaning and content to the word 'life' inArticle 21, it has been construed as life with human dignity. Any aspect of life which makes it dignified may be read into it but not that which extinguishes it and is, therefore, inconsistent with the continued existence of life resulting in effacing the right itself. The right to die', if any, is inherently inconsistent with the right to life' as is death' with life'.

24. Protagonism of euthanasia on the view that existence in persistent vegetative state (PVS) is not a benefit to the patient of a terminal illness being unrelated to the principle of 'sanctity of life' or the right to live with dignity' is of no assistance to determine the scope ofArticle 21for deciding whether the guarantee of right to life' therein includes the right to die'. The right to life' including the right to live with human dignity would mean the existence of such a right upto the end of natural life. This also includes the right to a dignified life upto the point of death including a dignified procedure of death. In other words, this may include the right of a dying man to also die with dignity when his life is ebbing out. But the 'right to die' with dignity at the end of life is not to be confused or equated with the right to die' an unnatural death curtailing the natural span of life.

25. 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 of 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 interpretArticle 21to include therein the right to curtail the natural span of life.

36. In Gian Kaur's case (supra), the Supreme Court repelled the challenge based on Article 14 of the Constitution to the right to life under Article 21 and reaffirmed retaining the Section 309 in the Indian Penal Code. The Supreme Court held that abetment of attempt to commit suicide is outside the purview of Section 306 and it is punishable only under section 309 read with section 107 IPC. The assisted suicide and assisted attempt to commit suicide are made punishable for cogent reasons in the interest of society. Such a provision is considered desirable to also prevent the danger inherent in the absence of such a penal provision. The abettor is viewed differently, inasmuch as he abets the extinguishment of life of another persons and punishment of abetment is considered necessary to prevent abuse of the absence of such a penal provision. It also held that assisted suicides outside the category of physician assisted suicide or euthanasia have no rational basis to claim exclusion of the fundamental principles of sanctity of life. The argument that right to die is included in Article 21 of the Constitution and is protected as a religious practice has no substance and is not acceptable.

37. In Javed and ors. V/s State of Haryana & ors. (supra), the Supreme Court rejected the argument that Article 21, which has to be read alongwith the Directives Principles and Fundamental rights, includes the right to procreate as many children as one pleases. The freedom under Article 25 is subject to public order, morality and health. The protection under Articles 25 and 26 of the Constitution is with respect to religious practice, which forms an essential part of the religion. A practice may be religious but not an essential and integral part of practice of that religion. The latter is not protected by Article 25. A statutory provision casting disqualification on contesting for, or holding, an elective office is not violative of Article 25 of the Constitution. The Supreme Court relied on M.Ismail Faruqui (Dr.) V/s Union of India ((1994) 6 SCC 360) and the judgments in Sarla Mudgal V/s Union of India ((1995) 3 SCC 635), Mohd.Ahmed Khan V/s Bhah Bano Begum ((1985) 2 SCC 556) and Mohd.Hanif Qureshi V/s State of Bihar (AIR 1958 SC 731).

38. In State of Gujarat V/s Mirzapur Moti Kureshi Kassab Jamat & ors. ((2005) 8 SCC 534), a Constitution Bench considering the Bombay Animal Preservation (Gujarat Amendment) Act, 1994 restricting the bulls and bullocks below the age of 16 years could not be slaughtered, repelled the challenge on the ground that slaughtering of cows on BakrI's is neither essential nor necessarily required as apart of the religious ceremony. An optional religious practice is not covered by Article 25(1). On the contrary, it is common knowledge that the cow and its progeny i.e. bull, bullocks and calves are worshiped by Hindus on specified days during Diwali and other festivals.

39. In order to save the practice of Santhara or Sallekhana in the Jain religion from the vice of criminal offence under section 309 IPC, which provides the punishment for suicide and Section 306 IPC, which provides punishment for abetment of suicide, the argument that Santhara or Sallekhana

is an essential religious practice of the Jain religion, has not been established. 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 is no such preaching in the religious scriptures of the Jain religion or in the texts written by the revered Jain Munis that the Santhara or Sallekhana is the only method, without which the moksha is not attainable. There is no material whatsoever to show that this practice was accepted by most of the ascetics or persons following the Jain religion in attaining the nirvana or moksha. It is not an essential part of the philosophy and approach of the Jain religion, nor has been practiced frequently to give up the body for salvation of soul. It is one thing to say that the Santhara or Sallekhana is not suicide as it is a voluntary act of giving up of one's body for salvation and is not violent in any manner, but it is another thing to say that it is permissible religious practice protected by Articles 25 and 26 of the Constitution of India.

40. The Constitution being governing law and fountain head of the laws in India, guarantees certain freedoms as fundamental rights and also provides for constitutional rights and duties and statutory rights under the laws made under it. It does not permit nor include under Article 21 the right to take one's own life, nor can include the right to take life as an essential religious practice under Article 25 of the Constitution.

41. Article 25 of the Constitution of India guarantees freedom of conscience and free profession, practice and propagation of religion under the heading Right to Freedom of Religion, subject to public order, morality and health and to the other provisions of this Part, which includes Article 21. No religious practice, whether essential or non-essential or voluntary can permit taking one's own life to be included under Article 25. The right guaranteed for freedom of conscience and the right to freely profess, practice and propagate cannot include the right to take one's life, on the ground that right to life includes the right to end the life. Even in extraordinary circumstances, the voluntary act of taking one's life cannot be permitted as the right to practice and profess the religion under Article 25 of the Constitution of India.

42. The respondents have failed to establish that the Santhara or 'Sallekhana' is an essential religious practice, without which the following of the Jain religion is not permissible. There is no evidence or material to show that the Santhara or Sallekhana has been practiced by the persons professing Jain religion even prior to or after the promulgation of the Constitution of India to protect such right under Article 25 of the Constitution of India. The over-riding and governing principles of public order, morality and health, conditions the right to freedom of conscience and the right to freely profess, practice and propagate religion. The right under Article 25 is subject to the other provisions of this Part, which includes Article 21. We are unable to accept the submission that the practice of 'Santhara' or 'Sallekhana' as a religious practice is an essential part of the Jain religion, to be saved by Article 25 or Article 26 or Article 29 of the Constitution of India.

43. 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.

44. Before parting with the matter, we thank learned counsels appearing for the parties for their valuable assistance given to Court in deciding the matter.

(VEERENDR SINGH SIRADHANA),J. (SUNIL AMBWANI),CJ.

Parmar

Certificate:
All corrections made in the judgment/order have been incorporated in the judgment/order

Parmar, PS