

# Santhara in the eyes of the law

The Rajasthan High Court judgment which criminalised the Jain ritual of fasting unto death unwittingly bared the cultural divide between disparate end-of-life concepts

Shekhar Hattangadi

When Samuel P. Huntington coined the phrase “clash of civilisations” it’s unlikely that the American political scientist was thinking of an emaciated Jain *muni*, peacefully awaiting death on a bed of dry grass after weeks of starvation. But the angst that has gripped the Jain community following the Rajasthan High Court’s verdict on Monday [Aug.10] against *Santhara* — the centuries-old Jain practice of starving to death — reflects just such a conflict.

The court’s ruling on a 2006 public interest litigation petition against *Santhara* held that it would henceforth be treated as “suicide” and made punishable under Section 309 (attempt to commit suicide) and Section 306 (abetment of suicide) of the Indian Penal Code (IPC). In its directive to the State — that the latter shall “stop and abolish” the practice “in any form” and register any complaint against it “as a criminal case” — the court made its rejection of the Jain philosophy underlying the practice unequivocally clear. It also unwittingly bared the cultural divide between disparate end-of-life concepts.

## Desperation vs renunciation

During the five year research for my documentary, *Santhara: A Challenge to Indian Secularism?*, I met several members of the Jain clergy, lay adherents of the faith and scholars who had studied the philosophy of Jainism. Without exception, they were all at pains to point out the fallacy of characterising *Santhara* as a form of suicide. True, both acts culminate in the self-extinguishment of human life, but the motivations of the actors are poles apart.

Whereas suicide is an act of extreme desperation fuelled by anguish and hopelessness, a *Santhara* practitioner, relinquishing food and drink voluntarily, has arrived at that decision after calm introspection, with an intent to cleanse oneself of karmic encumbrances and attain the highest state of transcendental well-being. *Santhara*, for him, is an act of spiritual purification premised on an exercise of individual autonomy.

Dietary abstinence as religious ritual



**RITUAL BANNED:** *Angst has gripped the Jain community following the Rajasthan High Court’s verdict against Santhara.*

— PHOTO: SHEKHAR HATTANGADI

**Unlike a Christian believer who looks upon the human body as a God-given ‘temple of the human soul’, a devout Jain views that same body as a ‘prison of the human soul’**

is not unique to Jainism. But none of the others takes fasting to the point of starvation and ultimately death as does *Santhara*. Since any kind of eating or drinking would result in a disruption (however minimal) of and add a burden (however small) to the ecology around them, orthodox Jains consider zero-consumption — i.e. starvation unto death *a la Santhara* — to be the high-point among the traditions of austerity and self-denial, and therefore the truest real-world act of *ahimsa* or non-violence, the fundamental tenet of Jainism.

## Alien governance

Disregard, for a moment, the radical extremism of the act itself. And contrast its broader theological rationale — which is more or less common to Eastern religions, and which resonates nice-

ly with the basic theory of *karma* — with the ecclesiastical values prevalent in the cultures that brought us the forms of governance we presently live with.

A conspiracy of history, circumstance and expedient decision-making has resulted in our law-making and law-administering bodies being structured on the Westminster model of our colonial rulers, not to mention our judicial machinery and its key statutes — notably, criminal laws — remaining largely untouched since the time they were first designed by the British and written with their colonial feather-pens. Even the bulk of our Constitution, was derived from the Government of India Act, 1935 and arguably its most important articles (those enshrining our Fundamental Rights) were inspired by the American Constitution. The concept of suicide associated with religion is a repugnant one for the mainstream Anglo-Saxon West, whose Judeo-Christian beliefs would denounce such an act as antithetical to the moral and ethical principles espoused by Christianity. The IPC, which forms the bulwark of our criminal jurisprudence, bears an 1860 vintage (it came into force two years later) and was drafted by Thomas Macaulay, a devout Christian. It would appear the administrator put forth a code which reflected his own

deeply held convictions about right-and-wrong and good-and-evil.

The IPC set the ball rolling for a fundamental, albeit seldom articulated, discordance between the Western ideologies that created the institutions and procedures of the Raj, and the Eastern philosophies that shaped the worldview of the people those institutions were meant to serve. Instead of the earth, the meek religions of the sub-continent have thus inherited an ill-fitting legal template forged in the smithies of the West. And the *Santhara* case serves to emphasise the seemingly irreconcilable difference in perspective on the specific issue of “suicide.” In contrast to a Christian believer who looks upon the human body as a God-given “temple of the human soul” and therefore, beyond the realm of willful and deliberate destruction by any human being, a devout Jain views that same body as a “prison of the human soul,” the fulfillment of whose needs corresponds to the accumulation of bad *karma*.

This basic contradiction between a statute founded largely on a Christian-inspired bioethic and the essentially Eastern variant of the idea of spiritual advancement through abstinence and renunciation, rears its head whenever a religious practice like *Santhara* collides with contemporary law. Are countries such as those in Europe, which enforce a strict separation between religion and governance faring any better, having painstakingly achieved the Church-State divide?

Although the conventional idea of secularism in western democracies largely keeps religion out of governance, the influx of immigrants of various faiths in recent times and their assertive — even militant — stance on their rights of religious practice has made these countries confront the problem anew. The issue of burqa-wearing in France manifests the same law-religion conflict. The unease over *Santhara* may well be part of a global discontent.

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