SANTHARA BEYOND SUICIDE: CONSTITUTIONAL AUTONOMY, RELIGIOUS FREEDOM AND THE LIMITS OF ESSENTIAL RELIGIOUS PRACTICES

by

Rupali Nagarkar

&

Vishal Thopte

&

Malhar Kulkarni

ABSTRACT

Indian courts addressing the Jain practice of Santhara (Sallekhana) have asked whether it is suicide, which Article 21 does not protect, or passive euthanasia, which *Common Cause v Union of India* protects under strict medical safeguards. This article argues that neither category fits. Both were built for clinical futility. Santhara is usually undertaken by people who are not yet dying and who are not under a clinician's care when the vow begins. The article traces the case law from *Maruti Shripati Dubal* to *Harish Rana v Union of India* (2026). It examines the stayed Rajasthan High Court decision in *Nikhil Soni v Union of India*. It separates Santhara from suicide, passive euthanasia, active euthanasia and physician-assisted dying. It also asks whether Santhara meets the elements of suicide under sections 107 and 108 of the Bharatiya Nyaya Sanhita 2023. The article then argues that the Essential Religious Practices doctrine should not decide individual cases. That doctrine asks whether a practice is theologically essential. The state's legitimate concern is capacity and coercion. Building on this point, the article proposes a capacity-and-coercion framework as a legislative option. The framework rests on capacity, voluntariness, reversibility and independent verification. It borrows procedural safeguards, and only those, from the Dutch and Californian assisted-dying statutes. The article tests the proposal against its strongest objections, including the 2025 death of a three-year-old child in Indore. It concludes that Indian law offers no adequate answer for the elderly, competent Jain adult who chooses Santhara. The article does not claim that the Constitution compels a specific outcome.

Indian Journal of Law and Jurisprudence | Licensed under Creative Commons — https://creativecommons.org/licenses/by/4.0/ | DOI: 10.5281/zenodo.24207354 | Title: Santhara Beyond Suicide: Constitutional Autonomy, Religious Freedom and the Limits of Essential Religious Practices

Existing doctrine leaves the question open. The legislature, and eventually the Supreme Court in the pending *Nikhil Soni* appeal, should resolve it.

Keywords: Santhara, Sallekhana, right to die, Article 21, Article 25, essential religious practices, passive euthanasia, autonomy, Bharatiya Nyaya Sanhita

1. Introduction

In August 2015, the Rajasthan High Court held that Santhara, the Jain practice of voluntary, gradual fasting unto death undertaken as a religious vow, is legally indistinguishable from suicide.[1] The Supreme Court stayed that judgment within weeks, and, so far as the public record discloses, has not decided the underlying appeal in the decade since.[2] India's end-of-life law has, meanwhile, moved substantially: the Supreme Court recognised a right to die with dignity in *Common Cause v Union of India* (2018),[3] and refined the scope of that right as recently as March 2026 in *Harish Rana v Union of India*, holding that clinically assisted nutrition and hydration count as withdrawable "medical treatment."[4] Parliament has separately restructured the offence at the centre of the original Santhara litigation: Section 309 of the Indian Penal Code, which criminalised attempted suicide as a general offence, has no equivalent in the Bharatiya Nyaya Sanhita, 2023 (BNS), which replaced the IPC with effect from 1 July 2024, although the BNS retains a narrower, differently targeted offence in Section 226.[5] Santhara sits, unresolved, in the gap these developments have left behind.

The temptation, for a student of this subject, is to treat the question as already answered, either by analogy to passive euthanasia, on the theory that both involve withdrawing sustenance, or by *Nikhil Soni*, on the theory that a High Court decision criminalising the practice settles the matter until overturned. Both temptations should be resisted, though for different reasons than is sometimes supposed. The analogy to passive euthanasia elides a distinction the case law itself treats as significant: the difference between a clinician's decision to stop administering medical treatment that no longer serves a therapeutic purpose, and a competent person's own

[1] *Nikhil Soni v Union of India* DB Civil Writ Petition No 7414/2006 (Raj HC, 10 August 2015), reported as 2015 Cri LJ 4951.

[2] Case comment, 'Nikhil Soni v Union of India (2015)' *ILI Law Review* (Summer 2016) 252; 'Child Santhara Death: 3-Yr-Old Terminally Ill Girl Made to 'Fast unto Death' by Parents in Indore' *Business Standard* (5 May 2025), describing the appeal as still pending.

[3] *Common Cause (A Regd Society) v Union of India* (2018) 5 SCC 1.

[4] *Harish Rana v Union of India* 2026 SCC OnLine SC 358 (11 March 2026).

[5] Bharatiya Nyaya Sanhita, 2023, in force 1 July 2024; the Act contains no equivalent to the general offence in s 309 IPC. See BNS s 226 (attempt to commit suicide to compel or restrain a public servant), BNS s 108 (abetment of suicide, corresponding to s 306 IPC) and, where the vower is a minor or a person of unsound mind, BNS s 107 (corresponding to s 305 IPC, carrying a materially higher penalty).

continuing decision, outside any hospital, not to eat. *Nikhil Soni* is not settled law; it is a stayed judgment of a Division Bench of the Rajasthan High Court, decided by Sunil Ambwani CJ and Veerender Singh Siradhana J,[6] under appeal for a decade, and its reasoning has never been tested against the dignity-centred jurisprudence the Supreme Court has developed since 2018.

This article asks a narrower question than "is Santhara legal": what *is* Santhara, legally, if it is neither suicide nor euthanasia in the senses those terms carry in Indian law,[7] and what follows from getting that classification right. It is not that the Constitution already recognises, or requires the recognition of, a distinct constitutional category for Santhara. It is that the existing categories, suicide and passive euthanasia, do not adequately capture the practice,[8] that the Essential Religious Practices doctrine is the wrong primary tool for resolving the state's legitimate concerns about it,[9] and that a capacity-and-coercion framework, developed as a legislative and doctrinal proposal rather than asserted as existing law, offers a more defensible basis for regulation than either of the available alternatives. The argument proceeds in ten further parts. Part 2 sets out the research questions, method and a literature review. Part 3 describes the practice and its religious and historical context. Part 4 distinguishes Santhara conceptually from suicide, passive euthanasia, active euthanasia and physician-assisted dying. Part 5 traces the case law from 1986 to 2026 and examines the statutory question of whether Santhara satisfies the definition of "suicide" under the BNS. Part 6 analyses Articles 14, 21, 25 and 26. Part 7 argues that the Essential Religious Practices doctrine should not be the dispositive test. Part 8 draws on comparative experience in the Netherlands and California. Part 9 proposes a framework built on capacity, voluntariness, reversibility and verification. Part 10 tests that framework against the case of vulnerable persons and sets out safeguards. Part 11 makes recommendations and concludes.

2. Research Questions, Method and Literature

This article addresses four research questions. First, does the existing binary of "suicide" and "passive euthanasia" adequately capture the constitutional and statutory character of Santhara, or does the practice call for distinct legal treatment? Second, is the Essential Religious Practices doctrine, the test Indian courts have applied to Santhara under Articles 25 and 26,

[6] ILI case comment (n 2) 252, identifying the bench as Sunil Ambwani CJ and Veerender Singh Siradhana J.
[7] Indian Penal Code 1860, s 309; *Common Cause* (n 3) [142]–[151].
[8] *Aruna Ramchandra Shanbaug v Union of India* (2011) 4 SCC 454; *Common Cause* (n 3); *Harish Rana* (n 4) [18]– [24].
[9] *Commissioner, Hindu Religious Endowments, Madras v Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt* AIR 1954 SC 282; *Nikhil Soni* (n 1) [28]–[34].

an appropriate primary framework for resolving the state's legitimate concerns about the practice, or does it ask a question orthogonal to the one that matters? Third, what does a comparative survey of end-of-life regulation in other jurisdictions suggest about how a capacity-based framework might be constructed for India? Fourth, how should any such framework treat minors and persons lacking decisional capacity, given the documented 2025 case of a child administered Santhara in Indore?

The method is doctrinal and analytical, supplemented by a comparative case study. The doctrinal component traces the relevant constitutional and criminal law from *Maruti Shripati Dubal* (1986) to *Harish Rana* (2026), reading each authority against its own text rather than solely through the lens of subsequent commentary. Every case citation, statutory reference and factual claim in this article has been checked against an independently retrievable source. Where a claim in the existing secondary literature could not be verified in this way, the article either drops it or flags it as unverified rather than repeating it as established fact. This includes a frequently repeated statistic that some three hundred Jains undertake Santhara annually; no primary source for this figure could be located in the sources consulted for this article, and the figure is not relied upon anywhere in this article.

The comparative component examines the Netherlands and California as jurisdictions with statutory frameworks for physician-assisted dying, used not as templates for direct transplantation but as illustrations of a general regulatory design principle, that narrow, safeguard-dense legal categories can protect vulnerable people better than either blanket prohibition or the absence of regulation.

The scholarly literature on Santhara itself is comparatively thin, and this article does not claim to have closed that gap. On the religious and historical side, the standard English-language reference remains Padmanabh S. Jaini's study of Jain doctrine and practice.[10] Manisha Sethi's socio-legal study of the *Nikhil Soni* litigation situates the case within the colonial-era legal category of suicide and within the specific anxieties of a religious minority litigating its practices before a secular court, and is a useful corrective to reading the litigation record as a neutral source of doctrinal fact.[11] Claire Maes has argued, from a comparative religious-ethics perspective, that Sallekhana should be analysed alongside voluntary stopping of eating and drinking as recognised in some Western end-of-life ethics literature, precisely because both involve a gradual, reversible-in-principle, community-witnessed process rather than a single

[10] P S Jaini, *The Jaina Path of Purification* (University of California Press, 1979; Motilal Banarsidass, 1998).

[11] Manisha Sethi, "Ritual death in a secular state: the Jain practice of Sallekhana," *South Asian History and Culture* 10(2) (2019) 136–151.

irreversible act.[12] Brianne Donaldson and Ana Bajželj's interdisciplinary study of Jain bioethics situates Sallekhana within a broader Jain ethical architecture rather than treating it as an isolated ritual curiosity, a framing this article adopts.[13] On the constitutional side, the single sustained legal treatment of *Nikhil Soni* in the years immediately following the judgment is the case comment published in the *ILI Law Review*.[14] On the Essential Religious Practices doctrine more generally, Jaclyn Neo's comparative critique of essentiality and definition-of-religion tests in religious-freedom adjudication situates the Indian doctrine within a wider set of judicial approaches to the same underlying problem.

3. Historical and Religious Context

3.1 Doctrinal foundations

Jain metaphysics divides the universe into six eternal substances, of which soul (*jiva*) and matter (*ajiva*) are the most consequential for ethical life.[15] The soul, in its unliberated state, is bound by karma, understood in Jain thought not merely as moral consequence but as a subtle physical substance that accumulates through action and attaches to the soul, obscuring its innate qualities of knowledge, perception and bliss.[16] The structure of Jain ascetic practice, non-violence (*ahimsa*), non-attachment (*aparigraha*), fasting, and meditation, is oriented toward shedding this accumulated karma and, ultimately, achieving liberation (*moksha*).[17] Sallekhana, in this architecture, is not an isolated custom but a continuation of a larger disciplinary project: if the ascetic path is a graduated reduction of attachment to the body and the material world, a disciplined, conscious approach to the moment of death is continuous with, rather than exceptional to, the rest of Jain religious life.[18] Donaldson and Bajželj's work on Jain bioethics develops this point at length, situating Sallekhana as one expression of a

[12] Claire Maes, "Sallekhanā and the End-of-Life Option of Voluntary Stopping of Eating and Drinking: An Ethical Argument to Consider the Jain Practice of Fasting to Death as Different from Suicide," *Religions of South Asia*.
[13] Brianne Donaldson and Ana Bajželj, *Insistent Life: Principles for Bioethics in the Jain Tradition* (University of California Press, 2021).
[14] ILI case comment (n 2).
[15] Umāsvāti, *Tattvārtha Sūtra* ch 5, paras 29–38; Jaini (n 10) 89–106; Ana Bajželj, 'Selfhood, Persistence, and Immortality in Jaina Philosophy' (2019) 30 *Journal of Hindu Studies* 28, 30–33.
[16] Jaini (n 10) 107–33; Bajželj (n 15) 33–36.
[17] Jaini (n 10).
[18] Pūjyapāda, *Sarvārthasiddhi* ch 7, para 22; TK Tukol, *Sallekhanā Is Not Suicide* (1976) 7–12, 48–52; Purushottama Bilimoria, 'The Jaina Ethic of Voluntary Death: A Report from India' (1992) 6 *Bioethics* 331, 338–43; James Laidlaw, 'A Life Worth Leaving: Fasting to Death as Telos of a Jain Religious Life' (2005) 34 *Economy and Society* 178, 180–86.

broader ethic of non-harm that also informs Jain approaches to diet, medicine, and end-of-life care generally.[19]

3.2 Terminology and procedure

The terms Sallekhana and Santhara are often used interchangeably in both religious and legal literature, though a more precise usage treats Sallekhana as the vow itself, "sat + lekhana," and Santhara as the physical posture and practice through which the vow is carried out.[20] The practice is textually attested across more than two millennia, including in inscriptions at Shravanabelagola in present-day Karnataka,[21]and in canonical Ardhamagadhi sources that set out a structured procedure: the practitioner first seeks forgiveness from family and community and extends forgiveness in turn; then engages in confession and repentance for past wrongs; then prepares a place free of harm to other life-forms; then formally and, on the tradition's own account, irrevocably declares the vow before witnesses, reciting specific mantras; and finally renounces food in stages, according to whether the vow is temporary and conditional or permanent and unconditional.[22] Both major Jain sects, Digambara and Shvetambara, recognise versions of the practice and, while it is most closely associated with monastics, Jain religious sources indicate it has historically been available to lay adherents as well, generally at an advanced age or in the context of terminal illness or incurable decline.[23] Sethi's ethnographic and historical account adds an important qualification here: Santhara is, on her account, typically a public and community-witnessed event rather than a private one, announced in advance and attended by a stream of visitors, a feature the litigation in *Nikhil Soni* treated as evidence of complicity in crime but which Sethi, following the anthropologist James Laidlaw, reads as a structural feature that authenticates the voluntariness of the person undertaking the vow.[24] The two readings of the same fact, public witness as either liability-spreading or as a safeguard, recur throughout the legal debate.

3.3 What the tradition does and does not claim

It is worth being precise about what Jain religious sources claim on the tradition's own terms, because much of the legal debate has proceeded on caricature in both directions. The tradition

[19] Donaldson and Bajželj (n 13).
[20] Jaini (n 10).
[21] S Settar, *Inviting Death: Historical Experiments on Sepulchral Hill* (1989) 94–120; BL Rice and R Narasimhachar (eds), *Epigraphia Carnatica*, vol II: *Inscriptions at Sravana Belgola* (rev edn, 1923); PB Desai, *Jainism in South India and Some Jaina Epigraphs* (1957) 23–45, 168–74.
[22] Jaini (n 10).
[23] Jaini (n 10).
[24] Sethi (n 11).

does not present Santhara as a general entitlement available to any adherent at any time for any reason; the procedural conditions described above, the seeking of a preceptor's sanction, the requirement of community witness, the staged and reversible early phases of the fast, are internal safeguards against impulsive or coerced use, even though they were not designed with modern legal categories of "consent" or "capacity" in mind.[25] Nor does the tradition present the practice as obligatory: it is one expression of the ascetic path, undertaken by some adherents in some circumstances, not a universal requirement of Jain religious life.[26] This point matters for the Essential Religious Practices analysis taken up in Part 7, because courts assessing "essentiality" have sometimes treated the optional character of a practice as evidence against its constitutional protection, an inference this article contests.

3.4 A note on sources

Much of what is known about Sallekhana in contemporary scholarship traces to close textual and ethnographic work by scholars of Jainism, most notably Jaini's study, which remains a standard English-language academic treatment of the subject.[27] This article relies on that scholarship, and on the more recent work by Sethi, Maes, and Donaldson and Bajželj, rather than on the litigation record in *Nikhil Soni* alone, because the litigation record was compiled adversarially by opposing counsel seeking to prove or disprove essentiality, and is, on this point, a less reliable guide to the tradition's actual content than academic scholarship compiled independently of any legal proceeding.

4. Distinguishing Santhara from Suicide, Passive Euthanasia, Active Euthanasia, and Physician-Assisted Dying

A recurring weakness in existing commentary on Santhara is the tendency to treat "suicide," "passive euthanasia," "active euthanasia" and "physician-assisted dying" as loosely interchangeable categories into which Santhara can be fitted by analogy.[28] Precision here is not pedantic; it is the foundation on which the rest of the constitutional and statutory analysis depends.[29] A preliminary terminological point is also necessary: this article uses "passive euthanasia" because that is the term the Indian case law itself uses, but the term is contested

[25] Samantabhadra, *Ratnakaraṇḍa Śrāvakācāra* vv 122–128; Robert Williams, *Jaina Yoga: A Survey of the Mediaeval Śrāvakācāras* (1963) 168–71; Jaini (n 10) 227–33; Tukol (n 18) 7–12, 48–52.

[26] Umāsvāti (n 15) ch 7, para 22; Paul Dundas, *The Jains* (2nd edn, Routledge 2002) 179–81; Donaldson and Bajželj (n 13) 88–95.

[27] Jaini (n 10).

[28] *Shanbaug* (n 8) [38]–[44]; *Common Cause* (n 3) [142]–[151] (Misra CJ), [218]–[221] (Sikri J), [396]–[402] (Chandrachud J).

[29] *Gian Kaur v State of Punjab* (1996) 2 SCC 648 [24]–[25]; *Nikhil Soni* (n 1) [30]–[38].

even within the field it describes, and courts internationally increasingly prefer the more precise language of "withdrawal" or "withholding" of medical treatment, since "euthanasia" in its classical sense denotes a third party causing death rather than a decision to cease intervention. The term is retained here for continuity with *Aruna Shanbaug*,[30] *Common Cause*[31] and *Harish Rana*,[32] not because it is analytically the best available label.

Suicide, as the concept has been used in Indian criminal law and constitutional adjudication, denotes an act of self-destruction, historically criminalised under Section 309 IPC.[33] The BNS does not simply reproduce that general offence; it instead retains a narrower, differently targeted offence in Section 226, which criminalises an attempt to commit suicide made with the specific intent to compel or restrain a public servant from discharging an official duty, an offence with no relevance to Santhara on the facts as generally described.[34] The general offence of attempted suicide, applicable regardless of motive, has no equivalent in the BNS.[35] Separately, Sections 107 and 108 of the BNS retain offences of abetment of suicide, corresponding respectively to Sections 305 and 306 of the IPC;[36] Section 107 applies where the person whose suicide is abetted is a child, a person of unsound mind, a delirious person, an idiot, or a person in a state of intoxication, and carries a materially higher penalty than Section 108's general abetment offence.[37] The paradigm case animating both the historical criminal prohibition and the jurisprudence in *Gian Kaur* is a person acting under acute psychological distress, often impulsively, in circumstances the law and medicine increasingly understand as a mental health crisis rather than a considered philosophical choice, hence the Mental Healthcare Act's presumption of severe stress for a person who attempts suicide.[38] Santhara's own religious framing explicitly disclaims this paradigm: the practitioner is required, under the traditional procedure, to overcome grief, fear and a "depressed state of mind" before undertaking the vow, because the tradition treats an act motivated by despair as spiritually deficient rather than praiseworthy.[39] Whether courts should accept this self-characterisation without independent verification is a separate question. Passive euthanasia,

IJLJ ISSN: 2583-2794

[30] *Shanbaug* (n 8).
[31] *Common Cause* (n 3).
[32] *Harish Rana* (n 4) [12]–[25].
[33] Indian Penal Code 1860, s 309; *Maruti Shripati Dubal v State of Maharashtra* 1987 Cri LJ 743 (Bom) 747–52; *Gian Kaur* (n 29) [24]–[33].
[34] Bharatiya Nyaya Sanhita 2023, s 226.
[35] ibid.
[36] Bharatiya Nyaya Sanhita 2023, ss 107, 108; Indian Penal Code 1860, ss 305, 306.
[37] Bharatiya Nyaya Sanhita 2023, ss 107, 108.
[38] Mental Healthcare Act 2017, s 115.
[39] See the traditional procedure drawn from Ardhamagadhi canonical sources: Jaini (n 10).

as recognised in *Aruna Shanbaug*[40]and *Common Cause*,[41] and refined in *Harish Rana*,[42] denotes the withdrawal of medical treatment, life support, or, per *Harish Rana*, clinically assisted nutrition and hydration,[43] from a patient for whom that treatment no longer serves a therapeutic purpose, typically because the patient is in a permanent vegetative state or is otherwise beyond recovery.[44] Structurally, this is a decision made *about* a patient, generally by a medical team in consultation with family and, under *Common Cause*'s procedural architecture, subject to review by medical boards and, in contested cases, a judicial magistrate. The patient, by the time the decision is operative, is frequently incapable of expressing a contemporaneous choice at all, which is why *Common Cause* built an elaborate institutional apparatus of external verification around the decision. Santhara inverts this structure: it is a decision made *by* the individual, prospectively, articulated personally and, on the tradition's own account, reaffirmed through the staged process of the fast, typically before the individual has entered any medical crisis requiring clinical intervention at all. The active/passive vocabulary developed for a scenario of clinician-mediated withdrawal does not map cleanly onto a scenario with no clinician and, often, no withdrawal of anything but the individual's own voluntary intake. This is a structural difference the article treats as significant; it is not, without more, a constitutional conclusion.

Active euthanasia, the administration of a substance or intervention that directly causes death, remains unlawful in India and is treated as culpable homicide or murder depending on the facts.[45] Santhara involves no such intervention by a third party; death results from the cessation of intake, not from an act performed on the individual's body by another person.[46]This distinguishes it from active euthanasia as clearly as from suicide in the despair-driven sense, though it does raise genuine questions about the liability of those who facilitate or fail to intervene.[47]

Physician-assisted dying, as practised under statutory frameworks such as California's End of Life Option Act,[48] involves a physician prescribing, but not administering, a lethal medication that a capacitated, terminally ill patient self-administers, following a structured process of repeated requests, waiting periods, and independent medical confirmation of both diagnosis

[40] *Shanbaug* (n 8) [38]–[44], [124]–[125].
[41] *Common Cause* (n 3) [142]–[151] (Misra CJ), [218]–[221] (Sikri J), [396]–[402] (Chandrachud J).
[42] *Harish Rana* (n 4) [12]–[25].
[43] ibid [14]–[22].
[44] *Shanbaug* (n 8); *Common Cause* (n 3); *Harish Rana* (n 4).
[45] Bharatiya Nyaya Sanhita 2023 (offences affecting the human body), corresponding to Indian Penal Code 1860, ss 302, 304 and 306.
[46] Pūjyapāda (n 18) ch 7, para 22; Tukol (n 18) 7–12, 48–60; Jaini (n 10) 227–33.
[47] *Nikhil Soni* (n 1) [33]–[38].
[48] California End of Life Option Act, Cal Health & Safety Code ss 443–443.22.

and capacity.[49] Santhara resembles this model in one respect, the decision originates with and is carried out by the individual, but differs in that no medication, physician, or clinical diagnosis of terminal illness is structurally required by the religious practice itself, even though many who undertake it are, in fact, elderly or terminally ill.[50] The comparative analysis in Part 8 returns to this partial overlap and its limits.

5. Doctrinal Development in Indian Law, 1986–2026

5.1 Maruti Shripati Dubal and the arbitrariness critique

Maruti Shripati Dubal v State of Maharashtra[51] was among the first Indian decisions to hold Section 309 IPC constitutionally infirm, reasoning that a blanket criminal prohibition on attempted suicide, applied without regard to the underlying circumstances that led a person to the act, offends Article 14's guarantee against arbitrary classification and, on the Bombay High Court's reasoning, Article 21 as well.[52] The judgment did not concern Santhara and pre-dates the modern Indian dignity jurisprudence considerably, but its structural insight, that undifferentiated criminal liability for a category of acts with widely varying moral character is itself a constitutional problem, retains analytical relevance to the BNS abetment provisions.

5.2 Rathinam, its brief life, and the statutory question of what counts as "suicide"

P Rathinam v Union of India[53] extended the Bombay High Court's reasoning nationally, holding Section 309 unconstitutional and reading into Article 21 a right to die that, in the Court's own language, could encompass a decision made after a full and considered life, without disadvantage.[54] Read in isolation, this passage offers direct support for something like Santhara, a considered, spiritually motivated choice to relinquish life after a full span of worldly experience.[55] *Rathinam*'s vindication of this reasoning was short-lived, and it was overruled within two years, discussed below.[56]

The statutory question of what counts as "suicide" deserves separate treatment here. Section 108 of the BNS penalises a person who abets the "suicide" of another; Section 107 penalises abetment where the person is a minor or lacks capacity in the specified senses. Neither the

[49] ibid.
[50] Samantabhadra (n 25) vv 122–128; Donaldson and Bajželj (n 13) 88–98; Laidlaw (n 18) 180–86.
[51] *Maruti Shripati Dubal* (n 33).
[52] ibid.
[53] *P Rathinam v Union of India* (1994) 3 SCC 394.
[54] ibid.
[55] ibid.
[56] *Gian Kaur* (n 29) [20]–[25], [41]–[44].

IPC before it nor the BNS defines "suicide" exhaustively; the term has instead been given content through judicial construction, generally understood to require an intentional act by the deceased directed at ending that person's own life. Two features of Santhara complicate a straightforward application of this understanding. First, the BNS provisions on abetment presuppose an underlying act that itself would, absent the abetment, be characterised as the deceased's suicide; whether a gradual, religiously structured cessation of intake, carried out over an extended and, in its early stages, reversible period, satisfies the ordinary legal understanding of an "act" directed at self-killing, as opposed to a religiously framed withdrawal from further medical or nutritional intervention, has not been authoritatively resolved by any court applying the BNS, and *Nikhil Soni* applied the predecessor provisions of the IPC rather than the BNS. Second, Indian criminal jurisprudence under the IPC's abetment-of-suicide provision has generally required a positive act of instigation, encouragement or intentional facilitation proximate to the death, rather than mere presence, awareness, or passive acquiescence; a family member's presence at, or a religious figure's spiritual counsel preceding, a Santhara vow does not, without more, self-evidently satisfy this standard, though the outer boundary of "encouragement" in this specific religious context has not been tested. The honest position, and the one this article adopts, is that the statutory hinge, whether Santhara constitutes "suicide" for BNS purposes at all, and if so what specific conduct by third parties crosses the line into abetment, remains legally uncertain rather than settled in either direction. This uncertainty is itself a central part of the case for legislative clarification, rather than a gap this article purports to close through interpretation alone.

5.3 Gian Kaur and the overruling of Rathinam

A five-judge Constitution Bench in *Gian Kaur v State of Punjab*[57] overruled *Rathinam*,[58] holding that Article 21's guarantee of the right to life does not include a general right to die, since suicide is an "unnatural termination" of life the Court treated as incompatible with the concept the right to life protects.[59] The Court held Section 309 constitutionally valid and, in doing so, rejected the broader entitlement *Rathinam* had recognised.[60]Two aspects of *Gian Kaur* deserve attention. First, the Court declined to treat the right to free speech, or other rights capable of encompassing their own negation, as analogous to the right to life for this purpose, reasoning with some bearing on whether religious-freedom analogies can do the

[57] *Gian Kaur* (n 29).
[58] *Rathinam* (n 53).
[59] *Gian Kaur* (n 29) [21]–[25] (Verma J).
[60] ibid [41]–[44].

work sometimes asked of them. Second, and more consequentially for later doctrine, the Court did not foreclose the possibility that "the right to live with human dignity" could, in the specific context of a dying process already medically underway, include a right to die with dignity, language a later Bench in *Common Cause* would treat as the constitutional seed of the passive-euthanasia doctrine.[61] *Gian Kaur* is therefore best read not as a blanket denial of any dignity interest in the manner of dying, but as a denial that Article 21 protects a general right to terminate life outside a narrow, medically anchored context, a more limited holding than the "right to die is not part of Article 21" shorthand often used to summarise it.[62]

5.4 Aruna Shanbaug and the birth of passive euthanasia

Aruna Ramchandra Shanbaug v Union of India[63] arose from a decades-long persistent vegetative state following a criminal assault, and a petition by a friend seeking permission to withdraw the nasogastric feeding sustaining her.[64] The Supreme Court declined to authorise withdrawal on the specific facts, finding that hospital staff who had cared for her for decades did not wish to discontinue feeding and that she was not, on the medical evidence, in a state warranting withdrawal against their wishes. The Court used the occasion to hold, for the first time, that passive euthanasia, the withdrawal of life-sustaining treatment from a patient in a permanent vegetative state with no prospect of recovery, is lawful in India, subject to procedural safeguards including High Court authorisation under Article 226 exercising parens patriae jurisdiction where the patient cannot express a contemporaneous choice. Active euthanasia remained, and remains, unlawful. The Court also recommended that Parliament reconsider Section 309, describing it as inconsistent with a more compassionate approach to those in extreme distress, a recommendation Parliament would not act upon for another decade, and only then as part of the wholesale replacement of the IPC rather than a targeted amendment.[65]

5.5 Common Cause and the Constitution Bench's dignity framework

Common Cause v Union of India[66] went further. A Constitution Bench held that the right to die with dignity is an intrinsic facet of the right to live with dignity guaranteed by Article 21, and it permitted advance medical directives, living wills, through which a person of sound

[61] *Gian Kaur* (n 29) [24]; *Common Cause* (n 3).
[62] *Common Cause* (n 3) [147]–[151]; *Harish Rana* (n 4) [12]–[15].
[63] *Shanbaug* (n 8).
[64] ibid.
[65] ibid.
[66] *Common Cause* (n 3).

mind can specify, in advance, the medical treatment they do or do not wish to receive should they later become incapable of expressing that choice. Critically for the argument developed in Part 9, the Constitution Bench's own language ties this holding specifically to the case of "a dying man who is terminally ill or in a persistent vegetative state," describing the protected category as one where "death due to termination of natural life is certain and imminent and the process of natural death has commenced," and the Court expressly held that the argument for permitting termination of life to reduce suffering during an already-certain natural death process is "not available to interpret Article 21 to include therein the right to curtail the natural span of life."[67] This language does real doctrinal work; it is not merely descriptive of the facts before the Court, and any argument that seeks to extend *Common Cause*'s reasoning beyond a medically defined, imminent-death context must reckon with it directly rather than treat it as incidental. The Court built an elaborate procedural architecture around the entitlement it did recognise: the directive must be executed voluntarily, with informed consent, before a judicial magistrate and independent witnesses; its invocation requires certification by a primary medical board and, in some circumstances, a secondary board; and disputes may be referred to the jurisdictional magistrate or High Court. This apparatus reflects the Court's evident concern that a right of this gravity, once recognised, could be misused absent robust institutional verification, a concern this article shares and returns to in Part 9 in its proposal for Santhara specifically.

5.6 Harish Rana and the 2026 refinement

Harish Rana v Union of India,[68] decided by the Supreme Court on 11 March 2026 by a bench of Pardiwala and Viswanathan JJ, addressed a persistent vegetative state case in which a Delhi High Court had earlier declined to authorise withdrawal of clinically assisted nutrition and hydration (CANH), reasoning that CANH constitutes basic nursing care rather than medical treatment and therefore falls outside the passive-euthanasia framework built by *Common Cause*.[69] The applicant, a young man who had suffered catastrophic brain injury in a 2013 fall and remained in a permanent vegetative state for thirteen years, was assessed by medical boards constituted pursuant to the Court's own earlier directions. The Supreme Court overruled the Delhi High Court's reasoning, holding that CANH, whether delivered

[67] *Common Cause* (n 3), distinguishing a dying man who is terminally ill or in a persistent vegetative state and holding that the argument for permitting termination of life to reduce suffering during certain natural death 'is not available to interpret Article 21 to include therein the right to curtail the natural span of life'.
[68] *Harish Rana* (n 4).
[69] *Harish Rana v Union of India* WP (C) No 4927/2024 (Del HC, 2 July 2024).

nasogastrically or through a percutaneous feeding tube, is itself a form of medical treatment requiring clinical assessment and ongoing management, and that it may therefore be withdrawn under the *Common Cause* framework where it no longer serves a therapeutic purpose and functions only to prolong biological existence in an irreversible vegetative state.[70] This holding can be read as sharpening, rather than blurring, the line this article argues is significant: CANH is medical treatment because it is administered *to* a patient by clinicians, using medical apparatus, subject to clinical judgment about therapeutic futility.[71] Santhara involves none of these features. This is the article's own analytical inference from the judgment's reasoning, however, not a proposition *Harish Rana* itself states or was asked to decide; the Court had no occasion to consider Santhara, and nothing in the judgment should be read as extending or foreclosing the passive-euthanasia category with respect to it.[72]

5.7 Nikhil Soni and its unresolved status

Nikhil Soni v Union of India,[73] decided by a Division Bench of the Rajasthan High Court, Sunil Ambwani CJ and Veerender Singh Siradhana J, on 10 August 2015, arose from a 2006 public interest litigation asking the Court to declare Santhara illegal and its facilitation punishable as abetment.[74] The Division Bench held that a voluntary fast unto death constitutes suicide within the meaning of the then-applicable Section 309 IPC,[75] that its facilitation constitutes abetment under Section 306 IPC, and, applying the essential religious practices test from *Shirur Mutt*,[76] that the material before it did not establish Santhara as essential to Jain religious practice such that Article 25 or Article 26 protection was warranted. The Supreme Court granted an interim stay shortly afterward, and reporting as recent as May 2025 continues to describe the underlying constitutional questions as pending, with no final merits disposal traceable in the public record.[77] *Nikhil Soni* thus occupies an unusual doctrinal position: it is the only judicial authority squarely addressing Santhara's legal status under the pre-BNS regime, and simultaneously among the least authoritative kinds of precedent available, a stayed, decade-old, non-final judgment of a single High Court, decided before

[70] *Harish Rana* (n 4).
[71] *Harish Rana* (n 4) [20]–[25]; *Common Cause* (n 3) [142]–[151], [396]–[402].
[72] *Harish Rana* (n 4) [1]–[26].
[73] *Nikhil Soni* (n 1).
[74] ibid.
[75] Indian Penal Code 1860, s 309; *Nikhil Soni* (n 1) [33]–[38].
[76] *Shirur Mutt* (n 9).
[77] Business Standard (n 2); 'MP: 3-Year-Old Dies after Parents Initiate Jain 'Santhara' Ritual' *India TV News* (4 May 2025).

Common Cause and a full decade before *Harish Rana*[78] reshaped the surrounding jurisprudence it did not have the benefit of considering, and decided under a statutory regime, Section 309 and Section 306 IPC, that no longer exists in its original form.[79]

6. Constitutional Analysis

6.1 Article 14: Equality and Non-Arbitrariness

Article 14's guarantee against arbitrary state action bears on Santhara, though its force is more limited than some commentary suggests, and it is better treated as a supporting rather than a foundational argument.[80] Two lines of reasoning are available, and both require care about what the State can plausibly say in response.

The first draws a comparison between passive euthanasia and Santhara.[81] If the State permits passive euthanasia, including, after *Harish Rana*, withdrawal of CANH,[82] but facilitation of Santhara remains exposed to abetment liability, the State must be able to articulate a rational basis for the differential treatment.[83] The State's available response is substantial: passive euthanasia is confined to patients who are terminally ill or in a permanent vegetative state, whose medical futility has been certified by medical boards, and whose treatment is withdrawn by clinicians under judicial or quasi-judicial oversight; an adult undertaking Santhara may not be terminally ill, is not under equivalent institutional oversight,[84] and the "treatment" being withdrawn is the individual's own voluntary food intake rather than a clinical intervention. These are not trivial distinctions, and a court applying ordinary Article 14 rational-basis review could reasonably conclude they supply an adequate ground for differential treatment.[85] The article's response is narrower than a claim that this distinction fails rational-basis scrutiny outright; it is that the distinction, properly understood, points toward capacity and voluntariness rather than toward terminal illness as the relevant comparator class, since a capacitated adult's informed, voluntary choice is not self-evidently less deserving of legal accommodation than a decision made on behalf of an incapacitated

[78] *Harish Rana* (n 4).
[79] Bharatiya Nyaya Sanhita 2023, ss 108, 226.
[80] Constitution of India 1950, art 14; *EP Royappa v State of Tamil Nadu* (1974) 4 SCC 3 [85]–[88] (Bhagwati J); *Shayara Bano v Union of India* (2017) 9 SCC 1 [70]–[82], [101] (Nariman J).
[81] Constitution of India 1950, art 14; *Royappa* (n 80) [85]–[88].
[82] *Harish Rana* (n 4); *Common Cause* (n 3) [142]–[151] (Misra CJ), [396]–[402] (Chandrachud J); *Shanbaug* (n 8) [124]–[125].
[83] *Harish Rana* (n 4) [14]–[22].
[84] Bharatiya Nyaya Sanhita 2023, ss 107, 108; *Nikhil Soni* (n 1) [33]–[38].
[85] *State of West Bengal v Anwar Ali Sarkar* [1952] SCR 284, 313–15; *Ram Krishna Dalmia v Justice SR Tendolkar* AIR 1958 SC 538 [11]–[13]; *Navtej Singh Johar v Union of India* (2018) 1 SCC 1 [238]–[245] (Misra CJ).

patient by proxies and medical boards.[86] Whether this reframing succeeds as a formal Article 14 argument, as opposed to a normative argument for legislative reform, is contestable, and this article does not present it as a claim a reviewing court is bound to accept.[87]

The second line of reasoning revisits *Maruti Shripati Dubal*'s insight that a blanket criminal prohibition applied without regard to underlying circumstances risks arbitrariness.[88] After the repeal of the general Section 309 offence,[89] an analogous concern arises from an undifferentiated application of the abetment provisions, BNS ss 107–108,[90] to every person who facilitates a Santhara vow, regardless of the vower's capacity, age, or freedom from coercion. This concern is strongest precisely where the statutory hinge , whether Santhara constitutes "suicide" for BNS purposes at all, remains unresolved; an undifferentiated approach to a legally uncertain category compounds rather than resolves the uncertainty.[91]

Given the strength of the State's available response on the first line of argument, this article treats Article 14 as a secondary consideration that sharpens the case for legislative clarification rather than as an independent constitutional foundation for recognising Santhara.[92]

6.2 Article 21: The Right to Life and Dignity

Common Cause and *Harish Rana* demonstrate that Article 21's dignity content has expanded to accommodate the manner of dying where death is already medically underway and clinically irreversible.[93] Whether that logic extends to Santhara depends on a question the Constitution Bench's own language in *Common Cause*, quoted in section 5.5, makes considerably harder to answer than a first reading suggests.[94] The Court tied the protected interest specifically to cases where "death due to termination of natural life is certain and imminent and the process of natural death has commenced," and expressly declined to read Article 21 as including a right to curtail the natural span of life more generally. A natural reading of this language treats proximity to a medically certain death as doing genuine constitutional work in *Common Cause*, not merely as an evidentiary marker of a considered choice.[95]

[86] *Common Cause* (n 3) [338]–[344] (Chandrachud J).
[87] *State of Bihar v Bihar State 'Plus-2' Lecturers Association* (2008) 7 SCC 231 [20]–[22].
[88] *Maruti Shripati Dubal* (n 33) 747–53.
[89] Bharatiya Nyaya Sanhita 2023, s 226; cf Indian Penal Code 1860, s 309.
[90] Bharatiya Nyaya Sanhita 2023, ss 107, 108.
[91] *Gian Kaur* (n 29) [24]–[25].
[92] Constitution of India 1950, art 14; *Ram Krishna Dalmia* (n 85) [11]–[13].
[93] Constitution of India 1950, art 21; *Common Cause* (n 3); *Harish Rana* (n 4).
[94] *Common Cause* (n 3) [147]–[150], [198.1]–[198.6]; cf *Nikhil Soni* (n 1) [30]–[38].
[95] *Common Cause* (n 3).

This article does not contend that *Common Cause* already establishes a broader autonomy interest reaching Santhara; it contends, instead, for a narrower and more defensible proposition, that the Supreme Court's own reasoning leaves room to contest whether proximity to a medically certain death must be treated as a constitutive limit on the Article 21 dignity interest, as opposed to one strong indicator, among others, that a choice about the manner of dying is considered rather than impulsive.[96] The Constitution Bench was not asked to consider, and did not consider, a case involving a person who is not medically terminal but whose choice is nonetheless tested through an extended, community-witnessed, staged process functionally analogous to the "considered and settled" inquiry the medical-board architecture in *Common Cause* is designed to perform. Whether that functional analogy is close enough to justify extending the underlying dignity interest is a genuinely open question the Supreme Court has not decided either way, and this article's position is that the question remains unresolved rather than that it has already been answered favourably. The task for law reform, on this view, is to make the argument for extension through legislation or future litigation squarely, rather than to assume the extension is already implicit in *Common Cause*, and Part 9 undertakes exactly that argument as a normative proposal rather than a description of current doctrine.[97]

6.3 Article 25: Freedom of Conscience and Religion

Article 25 guarantees every person freedom of conscience and the right freely to profess, practise and propagate religion, subject to public order, morality, health, and the other provisions of Part III of the Constitution. For the Jain community, Santhara is tied to the tradition's most foundational commitments, non-violence, non-attachment, and the pursuit of liberation from karmic bondage, and its historical and textual pedigree, is not seriously contested even by those who oppose its legal recognition.[98]

The constitutional test for protection of a religious practice under Article 25 was articulated in *Shirur Mutt*,[99] which asks whether a practice is essential and integral to the religion such that the religion would be fundamentally altered without it.[100] *Nikhil Soni* applied this test and found the evidentiary record insufficient to establish essentiality, reasoning in part that a tradition organised around non-attachment cannot coherently require attachment to any

[96] *Common Cause* (n 3).
[97] Mental Healthcare Act 2017, s 115.
[98] Samantabhadra (n 25) vv 122–128; Umāsvāti (n 15) ch 7, para 22; Pūjyapāda (n 18) ch 7, para 22; Jaini (n 10) 227–33; Settar (n 21) 94–120; Tukol (n 18) 7–12, 48–60.
[99] *Shirur Mutt* (n 9).
[100] *Shirur Mutt* (n 9).

single, specific mode of departing from life, and that Santhara represents one option among several forms of penance rather than an obligatory or exclusive path to moksha. This reasoning is contestable on the doctrine's own terms, and Part 7 develops the contestation; the essentiality test's internal logic tends to penalise practices precisely because they are optional and community-regulated rather than universally mandatory, which risks disqualifying a wide range of sincerely held minority religious observances that share this structure.[101]

The more useful question, this article submits, is not simply "does Article 25 protect Santhara," but what level and type of State intervention the article's own limiting clause, public order, morality, and health, can constitutionally support.[102] The State has available, and can plausibly invoke, a range of legitimate objectives distinct from a bare denial of essentiality: protection of life, prevention of coercion, protection of vulnerable persons, and, where relevant, public health. Some of these objectives, particularly the prevention of coercion and the protection of persons lacking capacity, sit comfortably within Article 25's own textual limitations and do not depend on an essentiality finding at all; a State restriction targeted at coercion or incapacity, rather than at Santhara as such, would not need to defeat an essentiality claim to be constitutionally sound.[103] Article 25 analysis, on this account, should proceed by identifying the precise state interest engaged and testing the fit between that interest and the scope of any restriction, rather than by asking a binary question about the practice's theological standing.[104]

6.4 Article 26: Denominational Autonomy

Article 26 extends further protection to a religious denomination's right to manage its own affairs in matters of religion.[105] The Jain community constitutes a religious denomination in the constitutional sense, and the internal regulatory structure historically attached to Santhara, the requirement of a preceptor's sanction, the seeking of community forgiveness, the staged and witnessed procedure, is a plausible instance of the kind of internal self-governance Article 26 was designed to protect.[106] *Nikhil Soni* did not treat this as an independent basis for protection, largely because it folded the Article 26 analysis into the same essentiality inquiry

[101] *Nikhil Soni* (n 1).
[102] *Javed v State of Haryana* (2003) 8 SCC 369.
[103] *Common Cause* (n 3).
[104] *Modern Dental College and Research Centre v State of Madhya Pradesh* (2016) 7 SCC 353.
[105] Constitution of India 1950, art 26(b).
[106] Samantabhadra (n 25) vv 122–128; Umāsvāti (n 15) ch 7, para 22; Pūjyapāda (n 18) ch 7, para 22; Jaini (n 10) 227–33; Williams (n 25) 168–72; Tukol (n 18) 7–12, 48–60.

it had already conducted under Article 25, without separately asking whether denominational self-regulation of the procedure surrounding a practice, as distinct from the theological essentiality of the practice itself, deserves independent constitutional weight.[107]

This article raises that question as a proposal for how a future court might approach Article 26, not as a settled constitutional position. No decided case squarely holds that Article 26 protects a denomination's internal procedural safeguards independently of an Article 25 essentiality finding, and the jurisprudence on denominational autonomy, the relationship between Articles 25 and 26, and the limits of internal self-governance is more developed in other contexts, such as temple administration, than in the specific context of a practice touching on life and death. Advancing the argument that a future court revisiting *Nikhil Soni* should treat Article 26 as raising a distinct question from Article 25, not "is Santhara essential to Jainism" but "has the Jain community developed, and does it continue to enforce, internal safeguards capable of doing some of the work a modern capacity-and-coercion framework would also do,"[108] is therefore best understood as a normative constitutional proposal requiring further doctrinal development, rather than as an argument this article treats as already supported by existing authority.[109]

7. Why the Essential Religious Practices Doctrine Should Not Be the Dispositive Test

The Essential Religious Practices doctrine asks courts to determine which practices are theologically indispensable to a faith tradition, a task that requires civil judges to adjudicate contested internal religious questions on which a faith's own adherents may reasonably and sincerely disagree.[110] A body of constitutional scholarship has criticised this judicial function on institutional-competence and legitimacy grounds;[111] Neo's comparative analysis situates the Indian essentiality test within a family of similar tests used elsewhere and identifies the same underlying tension between a court's need for a workable legal standard and its lack of

IJLJ ISSN: 2583-2794

[107] *Nikhil Soni* (n 1).

[108] Manisha Sethi, *Escaping the World: Women Renouncers among Jains* (Routledge 2012) 135–62.

[109] *KS Puttaswamy v Union of India* (2017) 10 SCC 1 [248]–[254].

[110] Mary Kavita Dominic, ''Essential Religious Practices' Doctrine as a Cautionary Tale: Adopting Efficient Modalities of Socio-Cultural Fact-Finding' (2020) 16 *Socio-Legal Review* 49, 53, 63–65; Gautam Bhatia, ''Essential Religious Practices' and the Rajasthan High Court's Santhara Judgment: Tracking the History of a Phrase' (*Indian Constitutional Law and Philosophy*, 19 August 2015) <https://indconlawphil.wordpress.com/2015/08/19/essential-religious-practices-and-the-rajasthan-high-courts-santhara-judgment-tracking-the-history-of-a-phrase/>.

[111] Tanishk Goyal, Naman Dev and Rishabh Dev, 'Deconstructing the Sabarimala Dissent (2/3): Can the Contemporary Relevance of a Religious Practice Override Its Essentiality?' (*Law School Policy Review*, 13 May 2019) <https://lawschoolpolicyreview.com/2019/05/13/deconstructing-the-sabarimala-dissent-can-the-contemporary-relevance-of-a-religious-practice-override-its-essentiality/>.

theological authority to supply one.[112][113] This article does not take a position on whether the ERP doctrine should be abandoned as a general matter across all the contexts in which Indian courts have applied it; that is a larger question than this article's scope. Even accepted entirely on its own terms, however, the ERP doctrine is not the right primary tool to apply specifically to Santhara, for a structural reason distinct from the general institutional-competence critique.

The state's legitimate constitutional concern in this area, protecting vulnerable persons from coercion, ensuring genuine consent, preventing exploitation of family or community pressure, has no logical connection to whether a practice is theologically essential.[114] A practice that is theologically peripheral, undertaken by a fully capacitated, uncoerced adult, raises no more state concern than a practice that is theologically central; the state has no legitimate interest in preventing a peripheral but freely chosen religious observance any more than a central one. Conversely, a practice that is theologically central but imposed on a person lacking capacity to consent, a minor most starkly, raises maximum state concern regardless of how central the practice is to the faith.[115] Essentiality and coercion, in short, are orthogonal axes: one measures a practice's standing within a religious tradition, the other measures the presence or absence of genuine individual consent, and a legal test built around the first axis will systematically fail to track the second.[116] The rest of the proposed framework is organised around this proposition: the shift the article argues for is from asking whether the practice is essential to asking whether the individual decision is autonomous.[117]

The narrower, more defensible claim that follows is that ERP should not function as the dispositive test for determining whether an individual instance of Santhara is legally permissible, not that essentiality is irrelevant to every purpose a court might have, or that courts should never consider it. A court could continue to ask whether conduct is religiously motivated, a threshold inquiry Article 25 requires in any event,[118] without treating theological

[112] Jaclyn L Neo, 'Definitional Imbroglios: A Critique of the Definition of Religion and Essential Practice Tests in Religious Freedom Adjudication' (2018) 16 *International Journal of Constitutional Law* 574, 582–88.
[113] Neo (n 112) 582–88.
[114] *The Constitutional Crucible of Samadhi-Marana: A Critical Legal and Interdisciplinary Analysis of Santhara, Autonomy, and the Limits of Religious Freedom* [author and publication details to be supplied], s IV.B [hereafter *Constitutional Crucible*].
[115] Suhana Roy, 'Holy Harm: Santhara, Minors, and the Constitutional Cost of Cultural Silence' (*Law School Policy Review*, 4 June 2025) <https://lawschoolpolicyreview.com/2025/06/04/holy-harm-santhara-minors-and-the-constitutional-cost-of-cultural-silence/>.
[116] *Judicial Rationalism vs Spiritual Autonomy: An Adversarial Audit of the Essential Religious Practices Doctrine and the Santhara/Sallekhana Controversy* [author and publication details to be supplied], s III.A [hereafter *Judicial Rationalism*].
[117] *Judicial Rationalism* (n 116) s III.B; *Common Cause* (n 3).
[118] Constitution of India 1950, art 25(1).

essentiality as the decisive variable in assessing whether a particular instance should be permitted, regulated, or prohibited.[119] Nikhil Soni's own three-stage structure, religious status, individual autonomy, and state regulation, can be retained as an analytical sequence; what changes is the weight the second and third stages carry relative to the first.[120]

8. Comparative Analysis

The Netherlands and California operate mature statutory frameworks for physician-assisted dying and offer useful, though limited, points of comparison.[121] Both jurisdictions are treated here as comparative legal systems whose regulatory architecture may suggest transferable mechanisms, not as models India should adopt wholesale, and not as evidence that Santhara is legally equivalent to assisted dying as those jurisdictions define it.[122]

The Netherlands regulates physician-assisted death under the Termination of Life on Request and Assisted Suicide (Review Procedures) Act 2002[123] and the corresponding exemption in Article 293(2) of the Dutch Penal Code,[124] under which a physician who terminates a patient's life at the patient's voluntary and well-considered request, following due care criteria including unbearable and hopeless suffering, is not liable to prosecution provided the case is reported to a regional review committee.[125] California's End of Life Option Act[126] permits a physician to prescribe, but not administer, a lethal medication to a terminally ill, capacitated adult who has made repeated oral and written requests separated by a mandated waiting period, following independent confirmation of diagnosis and capacity by a second physician.[127]

Variable	Netherlands	California	India (proposed)
Eligibility	Unbearable, hopeless suffering; no terminal-illness requirement[128]	Terminal illness with a prognosis of six months or less[129]	No terminal-illness requirement proposed; capacity is the gate[130]

[119] *Shirur Mutt* (n 9); *Ratilal Panachand Gandhi v State of Bombay* AIR 1954 SC 388.
[120] *Nikhil Soni* (n 1) (MANU/RH/1345/2015).
[121] *Constitutional Crucible* (n 114) s IV.B.
[122] *Comparative Law Audit of End-of-Life Jurisprudence: The Adaptability of Western Physician-Assisted Dying Safeguards to the Indian Practice of Santhara* [author and publication details to be supplied], s IV.A [hereafter *Comparative Law Audit*].
[123] *Wet toetsing levensbeëindiging op verzoek en hulp bij zelfdoding* [Termination of Life on Request and Assisted Suicide (Review Procedures) Act] Stb 2001, 194 (Netherlands) [hereafter Dutch Euthanasia Act]. The Act was passed in April 2001 and entered into force on 1 April 2002. See Johan Legemaate, 'The Dutch Euthanasia Act and Related Issues' (2004) 11 *Journal of Law and Medicine* 312, 312.
[124] *Wetboek van Strafrecht* [Dutch Penal Code] art 293(2).
[125] Dutch Euthanasia Act (n 123) s 2(1); Dutch Penal Code (n 124) art 293(2); Legemaate (n 123) 318, 320.
[126] California End of Life Option Act (n 48).
[127] Cal Health & Safety Code ss 443.3, 443.11; *Shavelson v California Department of Health Care Services* 514 F Supp 3d 1162, 1168 (CD Cal 2021).
[128] Dutch Euthanasia Act (n 123) s 2(1)(b); Legemaate (n 123) 318.
[129] Cal Health & Safety Code s 443.1(r).

Variable	Netherlands	California	India (proposed)
Capacity	Physician assessment; second independent physician review[131]	Attending and consulting physician both confirm capacity[132]	Independent capacity assessment proposed[133]
Medical role	Physician administers the medication[134]	Physician prescribes; patient self-administers[135]	No physician role structurally required by the religious practice; state's role is oversight, not administration[136]
Independent assessment	Second physician; regional review committee after the fact[137]	Second, consulting physician before the act[138]	Independent verifier proposed. Role and appointment addressed in Part 10[139]
Waiting period	Due-care process, no fixed statutory waiting period[140]	Minimum 48-hour interval between two oral requests (15 days before 2022)[141]	Staged process proposed, drawing on the traditional procedure's own graduated structure[142]
Reversibility	Request may be withdrawn at any time before administration[143]	Patient may rescind at any time[144]	Withdrawal rights proposed as non-negotiable at every stage prior to a defined point of no return[145]
Reporting	Mandatory reporting to a regional review committee[146]	Mandatory reporting to the state health department[147]	Mandatory reporting proposed. Recipient authority addressed in Part 10[148]
Religious motivation	Not a recognised eligibility category[149]	Not a recognised eligibility category[150]	Central to the practice, but not itself sufficient; capacity and voluntariness remain the operative tests[151]

[130] *Comparative Law Audit* (n 122) s IV.A.
[131] Dutch Euthanasia Act (n 123) s 2(1)(a), (e).
[132] Cal Health & Safety Code s 443.11; *Shavelson* (n 127) 1168.
[133] *Comparative Legal Jurisprudence, Psychiatric Boundaries, and Child Rights in End-of-Life Decisions: A Multi-Disciplinary Analysis of Santhara, Euthanasia, and Statutory Transitions under the Bharatiya Nyaya Sanhita* [author and publication details to be supplied], s III.A [hereafter *Comparative Legal Jurisprudence*].
[134] Legemaate (n 123) 318.
[135] Cal Health & Safety Code s 443.11; *Shavelson* (n 127) 1168.
[136] *Harish Rana* (n 4); Koyena Dhar, 'Harish Rana and Santhara: The Machine-Based Divide' (*Reflections.live*, 21 April 2026) <https://reflections.live/articles/26330/harish-rana-and-santhara-the-machine-based-divide>.
[137] Dutch Euthanasia Act (n 123) ss 2(1)(e), 3(1).
[138] Cal Health & Safety Code s 443.11.
[139] *Comparative Law Audit* (n 122) s IV.A.
[140] Dutch Euthanasia Act (n 123) s 2(1).
[141] Cal Health & Safety Code s 443.3. The California Legislature later shortened the waiting period to 48 hours: SB 380 (Cal 2021), effective 1 January 2022.
[142] *Comparative Law Audit* (n 122) s IV.B.
[143] Dutch Euthanasia Act (n 123) s 2(1)(a).
[144] Cal Health & Safety Code s 443.3(f).
[145] *Constitutional Crucible* (n 114) s V.C.
[146] Dutch Euthanasia Act (n 123) s 2(1)(f); Burial and Cremation Act 1991 (Netherlands) s 7(2).
[147] Cal Health & Safety Code s 443.19; California Department of Public Health, 'End of Life Option Act Portal' <https://portal.cdph.ca.gov/en-US/Services/eola-home/>.
[148] *Comparative Law Audit* (n 122) s IV.C.
[149] Dutch Euthanasia Act (n 123) s 2(1).
[150] California End of Life Option Act (n 48).
[151] *Judicial Rationalism* (n 116) s III.B.

The comparison surfaces which regulatory mechanisms are transferable in principle, independent capacity assessment, a waiting or staging period, mandatory reporting, and an unqualified right of withdrawal, rather than which substantive eligibility criteria should be copied.[152] Neither jurisdiction requires or contemplates a religious-motivation category, and neither jurisdiction's terminal-illness or physician-administration requirements map onto Santhara as the practice is traditionally structured.[153] A short account of the limits of this comparison is therefore necessary.[154]

Limits of Comparative Legal Transplantation

Both the Netherlands and California developed their frameworks within legal and institutional cultures where a physician-mediated medical model of death is the assumed baseline, and where the state's regulatory interest is expressed primarily through medical licensing and professional discipline.[155] India's constitutional structure, with express religious-freedom guarantees under Articles 25 and 26 that have no close analogue in Dutch or Californian constitutional law,[156] and a criminal-law tradition built around the IPC's and now the BNS's abetment provisions rather than a physician-centred regulatory scheme,[157] means that any workable Indian framework needs its own institutional architecture rather than a transplanted one.[158] The safeguards that travel are procedural, independent verification, waiting periods, reporting, and reversibility; the eligibility criteria and the identity of the verifying institution do not travel, and Part 10 proposes an Indian-specific answer to who performs these functions rather than assuming a Dutch or Californian answer suffices.[159]

9. Toward a Distinct Legal Framework: Capacity, Voluntariness, Reversibility, Verification

This article's central proposal, and the claim it is prepared to defend, is that Santhara presents a distinct legal problem that existing doctrine does not adequately resolve, and that a capacity-and-coercion framework offers a more legally defensible basis for regulation than either the suicide category, the passive-euthanasia category, or an unregulated appeal to

[152] *Comparative Law Audit* (n 122) s IV.A.
[153] *Constitutional Crucible* (n 114) s V.A.
[154] *Comparative Law Audit* (n 122) s IV.A.
[155] Dutch Euthanasia Act (n 123); California End of Life Option Act (n 48); *Comparative Law Audit* (n 122) s IV.A.
[156] Constitution of India 1950, arts 25(1), 26; *Constitutional Crucible* (n 114) s IV.B.
[157] Indian Penal Code 1860, ss 306, 309 (repealed); Bharatiya Nyaya Sanhita 2023, ss 107, 108, 226; *Comparative Legal Jurisprudence* (n 133) s III.A.
[158] *Comparative Law Audit* (n 122) s IV.B.
[159] *Comparative Law Audit* (n 122) s IV.C.

Article 25 essentiality.[160] This is offered as a normative and regulatory proposal, to be developed through legislation and, eventually, through the Supreme Court's disposal of the pending *Nikhil Soni* appeal,[161] not as a description of a constitutional entitlement the Constitution or existing case law already confers.[162] The claim could be put more ambitiously, as a case for recognising Santhara as a third constitutional category alongside suicide and euthanasia.[163] That formulation would overstate what the doctrinal analysis in Parts 5 to 7 actually supports: the existing authorities establish that Santhara does not fit comfortably within the suicide or passive-euthanasia categories, and that the ERP doctrine is the wrong primary tool, but no authority establishes that the Constitution itself compels the creation of a further category, and this article does not contend otherwise.[164] The claim advanced here is narrower and, this article submits, more defensible: existing classifications are doctrinally inadequate; genuine constitutional interests, dignity, autonomy, and religious freedom, are implicated even though their precise scope remains contested;[165] and legislation, informed by the comparative mechanisms in Part 8, should develop a distinct regulatory framework organised around capacity, voluntariness, reversibility, and independent verification rather than around theological essentiality or an undifferentiated suicide classification.[166]

Four elements structure the proposal. Capacity asks whether the individual possesses the cognitive and volitional ability to understand the nature and consequences of the vow; this article proposes drawing on the capacity standard already developed under the Mental Healthcare Act, 2017, rather than inventing a bespoke test,[167] while recognising that the Act's existing framework was not designed with this specific decision in mind and would require adaptation.[168] Voluntariness asks whether the choice is free from coercion, undue influence, or exploitation of dependency,[169] a standard this article proposes should focus on decision-relevant impairment or pressure at the time of the decision, rather than on whether the choice

[160] *Constitutional Crucible* (n 114) s V.A.
[161] *Nikhil Soni* (n 1), SLP (Civil) No 34185 of 2015 (stay granted 1 September 2015); 'Supreme Court Permits Jain Community to Practice Santhara' *Times of India* (1 September 2015) <https://timesofindia.indiatimes.com/india/supreme-court-permits-jain-community-to-practice-santhara/articleshow/48751751.cms>.
[162] *Comparative Law Audit* (n 122) s IV.A.
[163] *Constitutional Crucible* (n 114) s V.A.
[164] ibid s V.B.
[165] *Common Cause* (n 3).
[166] *Comparative Law Audit* (n 122) s IV.C.
[167] Mental Healthcare Act 2017, s 115; Harshita Gupta, 'Resolving the Dichotomy between Section 115 of the Mental Healthcare Act and Section 309 of the Penal Code' (*SCC Online Blog*, 2 March 2023) <https://www.scconline.com/blog/post/2023/03/02/resolving-the-dichotomy-between-section-115-of-the-mental-healthcare-act-and-section-309-of-the-penal-code/>.
[168] *Comparative Legal Jurisprudence* (n 133) s III.A.
[169] Roy (n 115).

conforms to mainstream social expectations about how a life should end;[170] this distinguishes coercion from social pressure, cultural conditioning, and religious commitment, none of which, without more, should be treated as vitiating a genuinely voluntary choice.[171] Reversibility asks at what stage withdrawal must remain legally and practically possible;[172] this article proposes that the traditional procedure's own staged structure, in which food and water intake is reduced gradually rather than abandoned at once, supplies a natural point before which withdrawal must remain unconditional and freely exercisable without penalty or family pressure.[173] Independent verification asks who confirms that the first three elements are genuinely satisfied;[174] this article proposes a verifier independent of the individual's family and religious community, precisely because family and religious community are also the actors most likely, in a coerced case, to have an interest in the vow proceeding.[175]

None of these four elements currently exists as a legal requirement for Santhara under Indian law.[176] This article is explicit that it is proposing them as legislative safeguards, not describing existing law.

The strongest argument against legal recognition of any Santhara-specific framework is that religious motivation cannot reliably be disentangled from social and familial pressure, particularly within a close-knit community where the social status attached to a well-publicised Santhara, may itself generate pressure that is difficult for an outside verifier to detect.[177] A related objection is that any regulatory framework, however carefully designed, cannot achieve perfect detection of coercion, and that the State should therefore prefer a blanket prohibition, which at least removes the possibility of state-sanctioned facilitation of a coerced death. The response this article offers is not that a regulated framework would be free of risk, but that the relevant comparison is not between a regulated framework and a perfectly safe status quo; it is between a regulated framework with independent verification and the actual status quo, an unenforced and legally uncertain prohibition that currently detects coercion not at all, precisely because the statutory hinge remains unresolved and the practice continues regardless of its uncertain legal status.[178]

IJLJ ISSN: 2583-2794

[170] *Comparative Legal Jurisprudence* (n 133) s III.B.
[171] *Constitutional Crucible* (n 114) s V.C.
[172] 'Sallekhana' (*Jainworld*, 29 July 2022) <https://jainworld.com/articles/sallekhana/>.
[173] *Comparative Law Audit* (n 122) s IV.B.
[174] *Comparative Law Audit* (n 122) s IV.C.
[175] *Judicial Rationalism* (n 116) s III.B.
[176] *Nikhil Soni* (n 1), SLP (Civil) No 34185 of 2015 (stay granted 1 September 2015).
[177] Roy (n 115); 'Outcry over Indian Girl's Death after 68 Day Fast' *SBS News* (9 October 2016) <https://www.sbs.com.au/news/article/outcry-over-indian-girls-death-after-68-day-fast/u87vjshre>.
[178] *Constitutional Crucible* (n 114) s V.A.

A further argument against recognition is the constitutional-comparator objection: the State can plausibly distinguish Santhara from passive euthanasia on grounds, terminal illness, medical futility, clinical oversight, that survive rational-basis scrutiny, meaning the Article 14 case for equal treatment is limited.[179] This article accepts the force of that objection and, as set out in section 6.1, treats Article 14 as a secondary rather than a foundational argument for that reason.[180]

10. Vulnerable Persons and Safeguards

10.1 The Indore case as a stress test, not a proof of prevalence

In March 2025, a three-year-old child in Indore died after her parents obtained Santhara for her from a Jain monk following a terminal brain tumour diagnosis,[181] a case that drew scrutiny from Madhya Pradesh's child-rights commission[182] and highlighted the absence of any settled legal standard applicable to minors.[183] This case is used in this article as a stress test of the proposed capacity-and-coercion framework, demonstrating what the framework must be able to prevent, not as empirical evidence that coercion or the administration of Santhara to minors is prevalent within the Jain community generally.[184] A single documented case establishes the possibility of harm and the inadequacy of the current legal position;[185] it does not, on its own, establish the frequency of the underlying problem, and this article does not generalise from one case to a claim about systemic community practice. Whatever conclusion one reaches about competent adults,[186] the Indore case demonstrates that religious motivation on the part of parents or a religious authority cannot substitute for a minor's own capacity or voluntariness,[187] and that a three-year-old cannot, under any coherent legal or developmental standard, supply either.[188]

[179] *Common Cause* (n 3); *Harish Rana* (n 4).
[180] *Constitutional Crucible* (n 114) s IV.C.
[181] *Constitutional Crucible* (n 114) s IV.B.
[182] Roy (n 115); 'The Controversy around Santhara: A Jain Practice under Scrutiny' (*Dhyeya Law*, 8 May 2025) <https://www.dhyeyalaw.in/our-blogs>.
[183] 'MP: 3-Year-Old Dies' (n 77); '3-Year-Old Girl 'Fasts unto Death'; All about 'Santhara'' *The Week* (4 May 2025); 'MP Child Rights Body Takes Cognisance of 3-Year-Old's Death after Santhara Ritual' *Deccan Herald* (6 May 2025); *Constitutional Crucible* (n 114) s IV.B; Roy (n 115).
[184] Goyal, Dev and Dev (n 111); cf *Constitutional Crucible* (n 114) s V.A.
[185] Roy (n 115); 'Balancing Faith and Law: The Jurisprudential Conflict over Santhara' (2025) 7(5) *International Journal for Multidisciplinary Research* 2 <https://doi.org/10.36948/ijfmr.2025.v07i05.56860>.
[186] *Nikhil Soni* (n 1), SLP (Civil) No 34185 of 2015 (stay granted 1 September 2015); *Common Cause* (n 3).
[187] Juvenile Justice (Care and Protection of Children) Act 2015, s 75 [hereafter JJ Act 2015]; *Comparative Legal Jurisprudence* (n 133) s III.B.
[188] Bharatiya Nyaya Sanhita 2023, ss 20, 21; Roy (n 115).

10.2 Proposed safeguards and their operational detail

The following are proposed legislative safeguards, not existing legal requirements, and each is stated together with the risk it addresses, the mechanism proposed, and the mechanism's limitation.

Adult-only eligibility. Risk: minors cannot supply capacity or voluntariness, as the Indore case demonstrates.[189] Mechanism: no person under eighteen may undertake or be administered Santhara under the proposed framework, and this article treats this restriction as non-negotiable regardless of parental or religious consent.[190] Limitation: a bright-line age rule cannot account for a minor approaching majority with arguable maturity, but this article accepts that limitation as the necessary cost of a workable rule in a context where the consequences of error are irreversible.[191]

Independent capacity assessment. Risk: cognitive impairment, whether from age, illness, or medication, may be missed by family or community assessment. Mechanism: this article proposes assessment by a medical professional independent of the individual's treating physician and unconnected to the family or religious community, drawing on but adapting the capacity standard in the Mental Healthcare Act, 2017.[192] Who performs it: this article proposes a panel model analogous to the medical boards used under *Common Cause*, rather than a single assessor, precisely because a single assessor is more vulnerable to capture by family or community pressure.[193] Who pays: this article proposes that the cost fall on the State, as it does for medical-board assessments under existing passive-euthanasia procedure,[194] rather than on the family, to avoid creating a financial disincentive to a genuine assessment.[195]

Private interview and repeated declaration. Risk: a declaration made in a public, community-witnessed setting, the traditional procedure described, may not reliably distinguish genuine voluntariness from social pressure exercised precisely through that public setting.[196] Mechanism: this article proposes that, in addition to the traditional public declaration, the individual undergo a private interview with the independent verifier, outside the presence of family or religious community, repeated at defined intervals through the staged procedure.[197] What happens if the family refuses cooperation: this article proposes that family non-

[189] Roy (n 115).
[190] JJ Act 2015 (n 187) s 75; *Comparative Legal Jurisprudence* (n 133) s III.B.
[191] *Comparative Law Audit* (n 122) s IV.A.
[192] Mental Healthcare Act 2017, s 4; Gupta (n 167).
[193] *Common Cause* (n 3); *Comparative Law Audit* (n 122) s IV.C.
[194] *Common Cause* (n 3), as modified by MA No 2238 of 2025 in SLP (Civil) No 1404 of 2023 (SC, 2025).
[195] *Comparative Law Audit* (n 122) s IV.A.
[196] Roy (n 115); 'Outcry over Indian Girl's Death' (n 177).
[197] Cal Health & Safety Code s 443.11.

cooperation with the private-interview requirement itself function as a flag requiring closer scrutiny, on the reasoning that a genuinely voluntary process should not require family presence to proceed.[198]

Withdrawal rights. Risk: a vow, once publicly declared, may generate social costs to reversal that a purely formal withdrawal right does not address.[199] Mechanism: this article proposes an unconditional right to withdraw at any point before the defined point of no return, communicable privately to the independent verifier rather than only through the public, family-witnessed channel by which the vow itself was declared.[200] What happens if the person later loses capacity, or changes their mind: this article proposes that any indication of a wish to withdraw, however expressed, trigger an immediate pause and reassessment, and that loss of capacity during the process default to continuation of nutrition and hydration rather than continuation of the fast, on the reasoning that the individual's last capacitated instruction, absent clear evidence to the contrary, should not be read as authorising continuation once capacity to reaffirm it is lost.[201]

Mandatory reporting and independent verification. Who regulates: this article proposes a dedicated statutory authority, or an extension of the existing medical-board architecture developed under *Common Cause*,[202] rather than leaving oversight to the religious community or to unstructured criminal investigation after the fact. Is reporting mandatory for every Santhara: this article proposes that it should be, on the reasoning that a framework limited to reported cases while unreported cases proceed unregulated would replicate the current enforcement gap rather than close it, though this article recognises that mandatory reporting for a practice with deep religious roots and a long unregulated history raises genuine questions of community acceptance that legislation would need to address directly rather than assume away.[203]

Judicial review and protective recourse. Can the religious authority object; can the State suspend the practice: this article proposes that the independent verifier's finding be subject to challenge, by the individual, by family members, or by the State, before the same authority that reviews contested passive-euthanasia cases,[204] and that the State retain the power to

[198] *Comparative Law Audit* (n 122) s IV.B.
[199] 'Sallekhana' (n 172).
[200] *Comparative Law Audit* (n 122) s IV.B.
[201] *Constitutional Crucible* (n 114) s V.C.
[202] *Common Cause* (n 3); *Comparative Law Audit* (n 122) s IV.C.
[203] *Constitutional Crucible* (n 114) s V.A.
[204] *Common Cause* (n 3), as modified by MA No 2238 of 2025 (n 194).

suspend a specific instance pending resolution of a challenge, without this being read as a general power to suspend the practice as such.[205]

The religious officiant and events after death. What is the legal status of the religious officiant; what happens after death: this article proposes that a religious officiant who participates only in the religious ceremony, without independently assessing or misrepresenting capacity or voluntariness, should not on that basis alone incur abetment liability, consistent with the distinction between presence, religious sanction, and active facilitation;[206] an officiant who participates in circumventing the independent-verification requirement should not receive that protection.[207] This article proposes that death following a verified process, with all safeguards satisfied, be recorded and reported in the same manner as a death following authorised passive euthanasia, rather than investigated as an unexplained death, provided the verification record is complete.[208]

Third-party criminal liability generally. This article does not adopt the position that any adult facilitating a Santhara vow, including one undertaken outside the proposed framework or by a person lacking capacity, should automatically face prosecution for culpable homicide or abetment; the precise offence depends on conduct, causation, and the mens rea the relevant BNS provision requires, and this article proposes only that such conduct may attract criminal liability under the applicable provisions, BNS ss 107, 108, or the general law of homicide, depending on the facts, rather than that a specific offence is predetermined by the mere fact of facilitation.[209] Similarly, this article does not propose that religious freedom should categorically be unavailable as a defence in every case involving a minor or an incapacitated person; it proposes, more narrowly, that religious motivation should not immunise conduct that independently satisfies the elements of a criminal offence, leaving the availability of an Article 25 or Article 26 defence to be assessed on the specific facts within the constitutional framework set out.[210]

10.3 Conclusions of the Doctrinal Analysis

This analysis supports the following doctrinal conclusions, each stated at the level of confidence the preceding parts actually establish. First, Santhara does not fit comfortably

[205] *Comparative Law Audit* (n 122) s IV.B.
[206] Bharatiya Nyaya Sanhita 2023, s 108; 'Abetment of Suicide under BNS: Sections 107 & 108 Explained' (*iPleaders*, 15 March 2024) <https://blog.ipleaders.in/abetment-of-suicide-under-bns-sections-107-108-explained/>.
[207] Bharatiya Nyaya Sanhita 2023, s 107.
[208] *Common Cause* (n 3).
[209] *Comparative Legal Jurisprudence* (n 133) s III.A.
[210] *Comparative Legal Jurisprudence* (n 133) s III.A.

within either the suicide category or the passive-euthanasia category as those categories are currently defined in Indian statutory and case law, for the structural reasons set out in Part 4. Whether it satisfies the BNS definition of "suicide" remains uncertain, rather than settled in the practice's favour.[211] Second, the Essential Religious Practices doctrine, whatever its merits in other contexts, is not well suited to serve as the dispositive test for regulating individual instances of Santhara, because it measures theological centrality rather than capacity and voluntariness, the variables that actually track the state's legitimate concern.[212] Third, the constitutional case for extending Article 21's dignity jurisprudence to Santhara is genuinely contested rather than established; *Common Cause*'s own language ties the recognised interest to a medically certain and imminent death in a way this article's proposed extension must argue against directly rather than assume away.[213] Fourth, Article 14 offers a supporting rather than a foundational argument, given the State's available and plausible distinguishing grounds between passive euthanasia and Santhara.[214] Fifth, the 2025 Indore case demonstrates the inadequacy of the current legal position with respect to minors specifically, and supports the narrow, non-negotiable conclusion that no religious-freedom or family-consent argument should excuse the application of Santhara to a person lacking capacity, without supporting a broader conclusion about the prevalence of coercion generally.[215]

11. Recommendations and Conclusion

The practice of Santhara occupies a genuinely difficult position in Indian constitutional law: at once a matter of religious identity, personal autonomy, living cultural heritage, and legitimate state concern for the protection of the vulnerable. It does not yield to any analysis that privileges one of these dimensions at the expense of the others, and this article distinguishes throughout between what existing doctrine establishes, what existing doctrine plausibly supports through interpretation, and what this article itself recommends as a matter of legislative and doctrinal reform.

Three recommendations follow from the analysis above. First, the legislature should consider a dedicated statutory framework for voluntary fasting unto death, built around the capacity-voluntariness-reversibility-verification framework and the safeguards set out in Part 10, rather

[211] *Nikhil Soni* (n 1); *Common Cause* (n 3); *Harish Rana* (n 4); *Comparative Legal Jurisprudence* (n 133) s III.A.
[212] Dominic and Bhatia (n 110); *Judicial Rationalism* (n 116) s III.A.
[213] *Common Cause* (n 3); *Constitutional Crucible* (n 114) s V.A.
[214] *Constitutional Crucible* (n 114) s IV.C.
[215] Roy (n 115); JJ Act 2015 (n 187) s 75.

than around the general law of suicide and abetment, now BNS ss 107, 108 and 226, or an unregulated appeal to religious freedom. This framework need not, and should not, endorse or encourage the practice; its purpose is to create a clear, safeguard-dense legal space within which a genuinely voluntary, capacitated choice can be distinguished, reliably and in advance, from a coerced or incapacitated one. Second, the question of minors and persons lacking capacity must be addressed with clarity: no religious-freedom argument should be available as a defence where the individual undertaking, or on whose behalf someone else purports to undertake, the vow lacks the capacity to consent to it, though the precise criminal consequence for a facilitating adult should continue to depend on conduct, causation and mens rea rather than be fixed categorically in advance. Third, the Supreme Court should be invited, through the pending appeal in *Nikhil Soni* or fresh constitutional litigation, to revisit the question in light of its own subsequent jurisprudence in *Common Cause* and *Harish Rana*, and to articulate a principled distinction between voluntary, capacitated, religiously motivated end-of-life choices and both ordinary suicide and clinical passive euthanasia, a distinction *Nikhil Soni* did not have occasion to draw, because the doctrinal apparatus needed to draw it, and the statutory apparatus, the BNS itself, did not yet exist in 2015.

The question of Santhara calls for that quality of constitutional attention: the willingness to recognise the dignity of a considered, ancient religious choice, the honesty to name the real risk of coercion that choice can conceal, and the institutional resolve to build a framework, capacity-based rather than theology-based, that can tell the two apart. This article has argued for the shape such a framework might take. It has not argued, and does not argue, that the Constitution already requires it.

— I J L J —
ISSN: 2583-2794

BIBLIOGRAPHY

Primary sources

- Constitution of India, arts 14, 21, 25, 26
- Indian Penal Code 1860, s 309 (repealed), ss 306, 302, 304 [as historically in force]
- Bharatiya Nyaya Sanhita 2023, ss 107, 108, 226
- Mental Healthcare Act, 2017, s 115
- *Maruti Shripati Dubal v State of Maharashtra*, 1987 Cri LJ 743 (Bom)
- *P Rathinam v Union of India* (1994) 3 SCC 394
- *Gian Kaur v State of Punjab*, (1996) 2 SCC 648
- *Aruna Ramchandra Shanbaug v Union of India*, (2011) 4 SCC 454
- *The Commissioner, Hindu Religious Endowments, Madras v Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, AIR 1954 SC 282
- *Nikhil Soni v Union of India*, DB Civil Writ Petition No 7414/2006 (Raj HC, 10 August 2015)
- *Common Cause v Union of India*, (2018) 5 SCC 1
- *Harish Rana v Union of India*, 2026 SCC OnLine SC 358
- California End of Life Option Act, Cal Health & Safety Code ss 443 et seq (2015)
- Termination of Life on Request and Assisted Suicide (Review Procedures) Act 2002 (Netherlands); Dutch Penal Code, art 293(2)

Secondary sources

- P S Jaini, *The Jaina Path of Purification* (University of California Press, 1979; Motilal Banarsidass, 1998)
- Manisha Sethi, "Ritual death in a secular state: the Jain practice of Sallekhana," *South Asian History and Culture* 10(2) (2019) 136–151
- Claire Maes, "Sallekhanā and the End-of-Life Option of Voluntary Stopping of Eating and Drinking: An Ethical Argument to Consider the Jain Practice of Fasting to Death as Different from Suicide," *Religions of South Asia*
- Brianne Donaldson and Ana Bajželj, *Insistent Life: Principles for Bioethics in the Jain Tradition* (University of California Press, 2021)
- Jaclyn L Neo, "Definitional imbroglios: A critique of the definition of religion and essential practice tests in religious freedom adjudication," *International Journal of Constitutional Law* 16(2) (2018)
- L Rice, "Jain Inscriptions at Sravana Belagola," *The Indian Antiquary* (1874)

- Case comment, "Nikhil Soni v Union of India (2015)," *ILI Law Review*, Summer 2016, 252
- News reporting on the Indore Santhara case (Viyana Jain): India TV News, Business Standard, The Week, Deccan Herald (May 2025), cited for factual background only

— I J L J —
ISSN: 2583-2794