



**GIAN KAUR V. STATE OF PUNJAB,  
(1996) 6 SCC 262**

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The Judgment was delivered by the Supreme Court on 21<sup>st</sup> March, 1996 by a six-judge bench which criminalized the attempt to suicide in India, upholding the validity of Section 309 of IPC. The judgment was widely criticized for its inability to cope with the present scenario of India. Suicide is the only offence where commission has no punishment but attempt to suicide is punishable. Years before this, in the cases of *P Ratinam v. Union of India*<sup>1</sup> and *State of Maharashtra v. Shripati Maruti Dubal*<sup>2</sup>, the Supreme Court struck down Section 309 of IPC as unconstitutional, upholding that the Right to Life includes the Right to die. However, the crux of the judgment stood in the phrase, “the Right to Life, which is guaranteed by the constitution, cannot include the Right to Die.

In a catena of cases, an attempt to terminate one’s own life has been held to be an offence, punishable with imprisonment.<sup>3</sup> It

<sup>1</sup>P. Ratinam v. Union of India, 1994 AIR 1844.

<sup>2</sup>State of Maharashtra v. Maruti ShripatiDubal (1996) 2 SCC 648.

<sup>3</sup> State of Himachal Pradesh v. Nirmal Devi, (2017) 7 SCC 262, Vijay v. State of Madhya Pradesh, (1994) 6 SCC

308, Bhagwant Singh v. Commr. Of Delhi Police, (1983) 3 SCC 344, Satish Nihakari v. State of Rajasthan (2017).

<sup>8</sup> SCC 497, Dinesh Sahebrao Kadam v. State of Maharashtra (2017) SCC Bom 4141, T.R Balan v. Sup. of Police,

State, Inspector of Police, (2014) SCC Mad 10221.

has been upheld by the court Right to ‘die’ is inherently inconsistent with the ‘right to life’, since it leads to the right to commit suicide<sup>4</sup>. Any aspect of life which makes it dignified may be read into it, but not that which extinguishes it<sup>5</sup>. Right to Life is also considered to be a duty to live.<sup>6</sup>When a man commits suicide, he has to undertake certain positive overt acts and the genesis of those acts cannot be traced to or be included within the protection of “right to life” under Art. 21. The negative aspect of Right to live would mean the end or extinction of the positive aspect

The court did not take into consideration, that just as Freedom of speech includes freedom not to speak, the same way right to life includes right to not live. What is true of one fundamental right is also true of another fundamental right, and they have both positive and negative aspects.<sup>7</sup> The negative aspect of Right to Life, therefore includes the right to terminate natural life. Every person is entitled to a quality of life consistent with his human personality. The right to live with human dignity in the fundamental right of every citizen of every Indian citizen.<sup>8</sup> Life means something more than just mere animal existence.<sup>9</sup> By criminalizing attempt to suicide, the court failed to take into consideration that whether

<sup>4</sup> EMORY LAW JOURNAL, Vol 37, 1988.

<sup>5</sup>*Supra* 76.

<sup>6</sup> LAW OF CRIMES, Ratanlal and Dhirajlal, Lexis, 26<sup>th</sup> Edition, 2007 Nexis Butterworths Wadhwa, Nagpur, p.1825.

<sup>7</sup> R.C Cooper v. Union of India.

<sup>8</sup>Vikram Deo Singh Tomar v. State of Bihar (Supp) SCC 734

<sup>9</sup> Munn v. Illinois, 94 U.S. 113 (1876), Sunil Batra v. Delhi Administration, 1980 AIR 1579, Vikram Deo Singh Tomar v. State of Bihar(Supp) SCC 734



to live or not, is the right which is acquired by man when he is born.

There are various other flaws in the judgment as well. Taking into consideration that the court held that there is no violation of right to equality, the court failed to realize the immense arbitrariness in the law since section does not make any room for understanding the circumstances under which an act has been committed. Which act or acts in series of acts will constitute attempt to suicide, where to draw the line, is not known some attempts may be serious while others non-serious. Section 309 treats all attempts to commit suicide by the same measure without referring to the circumstances in which attempts are made. As held in the case of Maneka Gandhi,<sup>10</sup> arbitrariness is the antithesis of equality, therefore making this section violative of right to equality.

The court has also overlooked on the need for psychological care when it comes to a person who attempts to commit suicide. No person of sane mind and normal circumstances would make such an attempt. People who generally make such an attempt are in depression and need help. It has been laid down that Suicide is a psychological problem, and not a manifestation of criminal instinct. After such an attempt, and failure to die, they can still start a new life if they are given the right psychological care. However, sending them to the jail to stay with other criminals only worsens the scenario. In no way does deterrence against an act always help in preventing it, since if this was true, capital punishment should have reduced the

number of homicides in India. According to the latest American Position, Eighteen States had no laws against either suicide or suicide attempts<sup>11</sup>.

The Medical Health Care Bill, 2016 has altogether decriminalized the attempt to suicide, since Section 115(1) of the Act states, *“Notwithstanding anything contained in section 309 of the Indian Penal code any person who attempts to commit suicide shall be presumed, unless proved otherwise, to have severe stress and shall not be tried and punished under the said Code”*

Henceforth there will always be a presumption of insanity, and the person shall not be prosecuted. But still, the law on this point stays ambiguous. The right to die has been recognized by the court so far as Passive Euthanasia is concerned, but when it comes to suicide, the court has still not laid an affirmative.

It is time for a new development to be made. It is time for the court to over-rule this erroneous judgment and accept the various segments of Right to Life with a broader view. In the recent Puttuswamy judgment, the court recognized the Right to Privacy to be included in Right to Life. Therefore, the constitution being an organic document can be interpreted in various ways, and Right to Die is should be recognized as under the ambit of Right to Life.

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<sup>10</sup>Maneka Gandhi v. Union of India 1978 AIR 597

<sup>11</sup>P. Ratinam v. Union of India, 1994 AIR 1844.