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CASE COMMENTARY: BIJOE EMMANUEL & ORS VS STATE OF KERELA & ORS

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.ABSTRACT

The case of Bijoe Emmanuel v. State of Kerala & Ors, decided on August 11, 1986, is a key one in Indian constitutional law. The case revolves around the national anthem of India. The nation's people, their difficulties, their history across time, their traditions, and more are all reflected in the national anthem. A song that is officially recognized by the government or the country's constitution is typically considered to be patriotic. In this case, three Jehovah's Witness students were embroiled in the controversy because they objected to singing the national song, "Jana Gana Mana," since they felt it went against their faith. Because they didn't follow the national anthem protocol, the school administration expelled them. The

expulsion of the students, according to the Supreme Court of India, violated their basic right to freedom of conscience and religion under Article 25 and freedom of speech and expression i.e., Article 19(1) of the Indian Constitution. The court stated that making someone sing the national song would not foster patriotism and that one's level of patriotism cannot be determined by how many times they sing the anthem. The case is important in determining how to strike a balance between personal freedoms and national icons.

Keywords: Indian Constitution, National Anthem of India, Jehovah witnesses, patriotism, secularism, freedom of speech and expression, freedom of religion and conscience

Case Title	Bijoe Emmanuel & Ors vs State of Kerela & Ors
Civil Appeal No.	870
Date of Judgement	August 11, 1986
Quorum	Two judges bench comprising of O Chinnappa Reddy and M M Dutt
Author of Judgement	O C Reddy
Appellant	Three students
Respondents	The State of Kerela and others
Counsel for Appellants	F.S. Nariman, T.S. Krishnamurthy Iyer, K.J. John and M. Jha for the Appellants
Counsel for Respondents	G. Viswanatha Iyer and Mrs. Baby Krishnan,

	P.S. Poti, E.M.S. Anam and James Vincent
Acts and Sections involved	<ul style="list-style-type: none"> • Section 3 of Prevention of Insults to National Honour Act, 1971 • Section 36 of Kerela Education Act and rule 6 and 9 of Kerela Education Rules • Article 19(1) and Art. 25 of Constitution of India, 1950

I. INTRODUCTION

Bijoe Emmanuel & Ors vs State of Kerala & Ors is a landmark case in Indian constitutional law, decided on August 11, 1986, by a two-judge bench of the Supreme Court of India. The case involved three Jehovah's Witnesses students, Bijoe Emmanuel and his two siblings, who were expelled from their school in Kerala for refusing to sing the national anthem, "Jana Gana Mana," during the morning assembly. The students cited religious reasons for their refusal, as they believed that singing the national anthem was against their faith. The case raised important questions about the balance between individual rights and national symbols, particularly the freedom of religion versus the requirement to show respect for national symbols. The case also highlighted the conflict between the values of secularism and nationalism in India's constitutional framework. The case was initially heard by the Kerala High Court, which upheld the school's decision to expel the students. The students then appealed to the Supreme Court of India, which heard the case and delivered a landmark judgment that upheld the students' right to freedom of religion and conscience. The case has become a significant precedent in Indian constitutional law, setting a benchmark for individual rights and freedoms.

II. FACTS OF THE CASE

There were three children respectively the appellants named Bijoe, Binu Mol and Bindu Emmanuel belonged to a sect called Jehovah's witnesses. These three kids from the Jehovah's Witnesses group were enrolled in a Kerala school. These students always stood up in

respect during the playing of the national anthem in their school but chose not to sing it since, in their opinion, it violates the principles of their religious beliefs. Their two elder sisters also studied in the same school and followed the same practice but no body objected to it. It was against the faith of the children, not the words and thoughts but the actual singing. Even though it went against their convictions and beliefs, they still stand each day during the national anthem out of respect for it On July 1st, 1985, a member of legislative assembly attended the assembly and noticed that the 3 children were not singing the National anthem and he saw this as unpatriotic and disrespectful. He raised this question in assembly and a commission was appointed to enquire and frame a report on this. According to the report of the commission, these children were law abiding, disciplined and have not shown any disrespect to the national anthem. However, on July 26th, 1985, these children under the instructions of deputy Inspector of Schools, the Head Mistress, were expelled from the school. Finally, the children filed a writ petition in the Hon'ble High court, where the prayer of the appellants was rejected. Therefore, a special appeal under Art. 136 of the Constitution of India was made to the Hon'ble Supreme court was requested and later allowed.

III. ISSUES

1. Whether the three children have committed an offence under sec. 3 of Prevention of Insults to National Honour Act, 1971, by not singing the national anthem?
2. Whether the expulsion of the 3 children was justified under section 36 of Kerela

Education Act and rule 6 and 9 of Kerala Education Rules?

3. Whether the fundamental rights of three children guaranteed under Art. 19(1) and Art. 25 of constitution of India was violated?

IV. ARGUMENTS IN FAVOUR OF APPELLANTS

1. As the appellants are Jehovah's witnesses, they were not allowed to sing the Anthem of any Country of place. In their words in the Writ Petition they say, "The students who are Witnesses do not sing the Anthem though they stand up on such occasions to show their respect to the National Anthem. They desist from actual singing only because of their honest belief and conviction that their religion does not permit them to join any rituals except it be in their prayers to Jehovah their God."

2. The petitioners desisted from singing National Anthem not out of any unpatriotic sentiments but due to their own faith and conviction as they call themselves as Jehovah's witnesses.

3. Some of the beliefs held by Jehovah's Witnesses are mentioned in a little detail in the statement of case in *Adelaide Company of Jehovah's Witnesses v. The Commonwealth*, 67 CLR 116 a case decided by the Australian High Court. It is stated, "Jehovah's Witnesses are an association of persons loosely organised throughout Australia and elsewhere who regard the literal interpretation of the Bible as Fundamental to proper religious beliefs."

4. It is clear that Jehovah's Witnesses, wherever they may be, adhere to a religion that may seem weird or even bizarre to us, but there can be no doubt about the sincerity of their convictions. Do they have a right to constitutional protection?

5. Also that there is no provision which compels a person to stand and sing during national anthem.

6. As per Art. 51-A(a) of Constitution of India which enjoins a duty on every citizen of India "to abide by the Constitution and respect its ideals

and institutions, the National Flag and the National Anthem." The three children also showed respect to National Anthem of India and not singing the National Anthem does not show that they were disrespectful of it.

7. The sec.3 of Prevention of Insults to National Honour Act, 1971 was not violated as clearly, not singing the National Anthem does not either prevent the singing of national anthem or cause any kind of disturbance to an assembly engaged in such singing.

8. Chapter IX deals with discipline. Rule 6 of Chapter IX provides for the censure, suspension or dismissal of a pupil found guilty of deliberate in-subordination, mischief, fraud, mal-practice in examinations, conduct likely to cause unwholesome influence on other pupils etc. but the appellants were never found misbehaved or any mal practices, the same was also proved by the appointed commission.

9. Apart from the circulars and Act, there were no legal sanction against the 3 children. Also, one of the circulars rightly emphasizes on the importance of religious tolerance also says that "all religions should be equally respected." Therefore, these circulars clearly can not be interpreted as compulsory singing of national anthem. And if they interpret it so, it will be violative of article 19(1)(a) and Art. 25(1) of Constitution of India.

10. Also, the two circulars which were relied on by the respondent's place has no statutory basis. It is merely a departmental instruction and therefore anything written into it cannot deny what is mentioned in the constitution of India.

V. ARGUMENTS IN FAVOUR OF RESPONDENTS

1. the respondents argued that singing the national anthem is a patriotic duty that every citizen of India must fulfil. They claimed that the national anthem is not merely a symbolic representation of the country but a unifying force that binds the diverse cultures and religions of India.

2. The respondents contended that the petitioners' refusal to sing the national anthem during the morning assembly was a violation of the school's rules and regulations, and therefore, the school authorities had the right to expel them. The respondents argued that the school's decision was based on the need to maintain discipline and order, and to inculcate a sense of patriotism and nationalism among students.

3. Furthermore, the respondents argued that the petitioners' act of not singing the national anthem was not an exercise of their fundamental right to freedom of religion and conscience, as enshrined in the Indian Constitution. Instead, they argued that it was a deliberate attempt to disrespect the national symbol and to cause disharmony in the school environment.

4. Overall, the respondents' argument was centered around the need to uphold the values of patriotism and national unity, and to ensure that individual rights do not override the larger interests of the country.

VI. ORDER OF THE COURT

A. The Hon'ble Supreme court set aside the order of the High court stating that the fundamental rights of the three students are infringed and they are entitled to be protected.

B. There is no provision given in any law stating the necessity of singing the National Anthem. Therefore, it cannot be said that it is disrespectful if the students stand during national anthem but does not sing just because of their religious faith.

VII. CONCLUSION

In conclusion, judges were satisfied by the present case and held that the fundamental rights of the Art. 19(1)(a) and 25(1) of Constitution of India of the three children were violated and they are entitled to be protected. The *Bijoe Emmanuel & Ors vs State of Kerala & Ors* case was a significant milestone in Indian constitutional law, establishing a balance between individual rights and national symbols. The case affirmed the fundamental right to

freedom of religion and conscience, as enshrined in the Indian Constitution, and recognized that forcing someone to sing the national anthem goes against the principles of individual freedom and dignity.

The Supreme Court's judgment in this case had far-reaching implications, emphasizing the importance of protecting individual rights and preventing the imposition of cultural or religious beliefs on anyone. It also recognized that patriotism cannot be measured by the number of times one sings the national anthem, and that respecting national symbols is not an obligation but a voluntary expression of love and allegiance.

The case remains a vital precedent in Indian constitutional law, shaping the country's legal and social landscape and setting an example for the rest of the world on how to balance individual rights and national symbols. It reminds us that, in a democratic society, individual freedoms must be respected, and cultural diversity and pluralism must be celebrated.

VIII. APPLIED CASE LAWS

1. *Adelaide Company of Jehovah's Witnesses v. The Commonwealth*, 67 CLR 116
2. *Minersville School District v. Gebitis*, 84 Law Ed. US 1376
3. *West Virginia State Board of Education v. Barnette*, 87 Law Ed. 1628
4. *Donald v. The Board of Education for the City Hamilton*
5. *Sheldon v. Fannin*, 221 Federal Suppl. 766
6. *The Commissioner Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt*, [1954] SCR 1005
7. *Rati Lal Panachand Gandhi v. The State of Bombay & Ors.*, [1954] SCR 1055
8. *SP Mittal etc. etc. v. Union of India*



REFERENCE

- I. Bare act of Indian constitution
- II. Sec. 3 of Prevention of Insults to National Honour Act, 1971
- III. Section 36 of Kerela Education Act and rule 6 and 9 of Kerela Education Rules
- IV. Indian kanoon case study Bijoe Emmanuel and Ors vs state of Kerela and Ors