

**Case Commentary - BIJOE EMMANUEL & ORS
VERSUS STATE OF KERALA & ORS**

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ABSTRACT

The National Anthem which proves our Patriotism toward our country. The National Anthem shows our belief, culture, sufferings, cause, triumphs which we all suffered and faced together. A song keeps all people in the country together as one. It's played wherever; it gives you a homely presence and pride in our heart by hearing it. It has a sense of pride and strong emotions of Patriotism for the country. The National Anthem is played at assembly of school and college culturals, theatre, and in inauguration of programs

and events. While playing it, we as a citizen need to stand by showing respect towards it and it inculcate pride, respect, nationalism and a sense of unity and identity of our country. In India, The Prevention of Insults to National Honour Act, 1960; section 3 of the act has punishment of extended 3 years imprisonment or fine or both, when anyone interrupts or prevents or cause disturbance while singing National Anthem. The court has exercised its authority under Article 19(1)(a) of Indian constitution to protect people's freedom of speech and expression and to maintain 25(1) constitutional principle, when the government has failed to do so. This paper is aimed to examine the supreme court order using article 19(1)(a) and 25(1) in the Constitution of India; 1949 in the case of BIJOE EMMANUEL v. STATE OF KERALA.

Keywords: National Anthem; Supreme Court; Jehovah's Witness; Expulsion; Religious belief.

Case Title	BIJOE EMMANUEL & ORS V. STATE OF KERALA & ORS
Case No	CIVIL APPEAL NO. 870 OF 1986
Date Of The Order	11-08-1986
Jurisdiction	Supreme Court Of India
Quorum	Hon'ble Mr. Justice Chinnappa Reddy J
Author Of The Judgment	Hon'ble Mr. Justice Chinnappa Reddy J
Appellant	Bijoe, BinuMol, Bindu Emmanuel
Respondent	State of Kerala
Counsel For Appellant	Advocate F.S Nariman, T.S. Kishnamurthy Iyer, K.J. John and M. Jha for the Appellants.

Counsel For Respondent	Advocate G. Viswanatha Iyer and Mrs. Baby Krishnan for Respondent Advocate P.S. Poti, E.M.S Anam and James Vincent for the Respondents.
Acts And Sections Involved	I. Indian Constitution, 1949 <ul style="list-style-type: none"> ● Article 19(1)(a) ● Article 25(a) II. Prevention Of Insult To National Honour Act, 1960
	<ul style="list-style-type: none"> ● Section 3 III. Kerala Education Act, 1959 with the Kerala Education Rules, 1959 <ul style="list-style-type: none"> ● Section 36, Chapter IX Rule-6.

I. INTRODUCTION:

Supreme Court Justice C.O. Reddy has represented the law and hon'ble of Court and He is a gem of the Supreme Court. He is known for his Proactive Judgment which changed the judicial history of India. As a judge; before his retirement he gave landmark judgments by his extraordinary powers of the court of law under Article 19(1)(a) and Article 25(1) in the Constitution of India; 1949 to do complete justice. By this paper; we analyses and clearly discuss this verdict regarding the importance of the National Anthem and Individual rights.

II. FACTS OF THE CASE:

The appellant 3 students Bijoe; Binu Mol and Bindu Emmanuel who studied in a school in Kerala. They attend school religion assembly daily; when the National Anthem

song; they don't sing with other students due to their Jehovah's Witnesses religious faith; but they stood up in attention by showing respect towards anthem and their two elder sisters also studied in the same school and done the same activity but no one notices it. In July 1985, one day a member of Legislature Assembly noticed their activity in assembly; he thought it was unpatriotic and appointed a commission to investigate. The Commission reported children well behaved and didn't show unpatriotic towards the country. But the head mistress expelled students from the school following the instruction of the Deputy Inspector of School. The father of children pleaded with their head mistress to allow children's inside the school but the head mistress shows her inability to do it.

Appellant filed writ petition in high court was rejected by a single learned judge and then division bench also rejected it. Later High Court passed an order according to the Kerala Education Act; 1959 under section 36 enables The Kerala Education Rules, 1959; Rule 6 of Chapter IX; it suspend or

dismiss children's who found guilty of deliberate insubordination, mischief, fraud, malpractice in examinations, conduct likely to cause negatively influences others etc. The High court aside respondent in this case, then appellate has filed an appeal to the Supreme Court by **Special Leave Petition under Article 136 of Indian Constitution.**

III. ARGUMENTS FAVOUR OF APPELLANT:

- A. Appellant claimed that students always stood up in attention when the national anthem was being sung and never showed disrespect towards the national anthem and their country.
- B. They didn't sing only due to their Jehovah's Witnesses religious faith, which they didn't allow them to do.
- C. Appellant raised an issue that the expulsion of the students is justifiable? Such expulsion are not violations of their Fundamental Right under article 19(1)(a) and 25(1) in the Constitution of India?

IV. ARGUMENTS FAVOUR OF RESPONDENT:

- A. Respondents claimed that students did not sing the National Anthem; which shows their unpatriotic behavior and disrespect towards the National Anthem and our country by not singing it.
- B. They justified their action according to the Kerala Education Act; 1959 and Kerala Education Rule; 1959, Chapter IX Rule 6.

V. ORDER OF THE COURT:

- A. The Supreme Court gave verdict **under Article 19(1)(a) of Indian Constitution giving Freedom of Speech and Expression** by examining the education authorities action in **Kharak Singh V. State of Uttar Pradesh and Baleshwar Pradesh V. State of Bihar[1962] SUPP. SCR 369** cases and **Article 25(1)** gives the right to public order, morality and health and to the other provisions of Part III and **the right to Freedom of conscience to freely profess; practice; propagate religion are Fundamental Rights applicable to every citizen** in a country.
- B. Making every student join in the singing of the National Anthem would violate their Jehovah's Witnesses religious belief and breaches the rights under Article 19(1) (a) and Article 25(1) in the Constitution of India.
- C. The Supreme Court held that **students are not guilty for not singing the National Anthem; they gave respect by standing up in attention and No legal provision obligates anyone to sing the National Anthem** and it is not disrespectful or unpatriotic to the Anthem.
- D. The Supreme Court set High Court order aside and ordered to allow students again to study in school without any hindrance; **sentenced appellant aside by the facts of the case.**

VI. CONCLUSION:

By these judgments, we understand our patriotism towards our country and basic rights toward the people in a society. Day by day society is updating and evolving more about the

Fundamental rights of every citizen in the country and People in a country are following their religious belief strongly. And the importance of the National Anthem and its provisions regarding it, our tradition taught us tolerance; our philosophy preached tolerance and our constitution practices tolerance, hence we should not dilute it.

VII. RELATED CASES LAWS:

- A. Adelaide Company of Jehovah's Witnesses V. The Commonwealth, 67 CLR 116 (Australian High Court).
- B. Minersville School District V. Gobitis, 84 Law Ed. US 1376 (American Supreme Court)
- C. West Virginia State Board of Education V. Barnett, 87 Law Ed. 1628 (American Supreme Court).
- D. Donald V. The Board of Education for the City Hamilton, 1945 Ontario Reports 518.
- E. Sheldon V. Fannin, 221 Federal suppl. 766 (United States District Court of Arizona).
- F. The commissioner Hindu Religious Endowments, Madras V. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, [1954] SCR 1055.
- G. SP Mittal etc. etc. V Union of India.

VIII.REFERENCE:

- A. <https://indiankanoon.org/doc/1508089/>
- B. <https://main.sci.gov.in/judgment/judis/8973.pdf>