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Bijoe Emmanuel & Ors vs State Of Kerala & Ors by Vikshita Poojary, Shree L.R. Tiwari College of Law, University of Mumbai

Abstract-

The case of Bijoe Emmanuel & ors V. state of kerala & ors, raised a fundamental question regarding the relationship between the individual freedom, national identity and the role of the state in regulating these competing interests. The case dealt with the issue of 'Reasonable Restrictions' on Fundamental Rights, whether such restrictions are created by statute or are administrative or departmental restrictions.

At the heart of the case was the conflict between the religious beliefs of the petitioners, who were members of the Jehovah's Witnesses, and the requirement to sing the national anthem, which they believed to conflict with their religious beliefs. The Court was tasked with determining whether the expulsion of the petitioners from their school for refusing to sing the national anthem violated their fundamental right to freedom of religion and whether the singing of the national anthem could be made mandatory in schools.

In its judgment, the Supreme Court of India held that the students had the right to their religious beliefs and practices, but also recognized the importance of the national anthem as a symbol of national identity and unity. The Court delved into the meaning of "proper respect" for the national anthem and ultimately struck a balance between protecting an individual's beliefs and upholding the integrity and sovereignty of the national anthem. This case upholds the principles of secularism, pluralism, and individual freedom. that involve fundamental rights.

Keywords-

National Anthem; Supreme Court; Jehovah's Witness; Expulsion; Religion; Belief;

Case details-

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
Appellant	Bijoe, BinuMol, Bindu Emmanuel
Defendant	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 Defendant	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	Article 19(1)(a), Article 25
Case Citation	1987 AIR 748 1986 SCR (3) 518 1986 SCC (3) 615 JT 1986 115 1986 SCALE (2)217

I. Introduction-

The Supreme Court of India in the case of *Bijoe Emmanuel & ors v State of Kerala & ors* held that the expulsion of school children for not singing the national anthem constituted a violation of their Fundamental Rights i.e., Article 19(1)(a) and Article 25. The Counsel on behalf of the Appellants argued that the expulsion was an infringement of their fundamental right to freedom of expression under Article 19 and freedom of religion under Article 25 of the Constitution of India. The Court reasoned that a limitation on the right to freedom of expression must be based on a law with statutory force. Yet, there were no provisions of the law that obligated individuals to sing the national anthem and the State of Kerala's Department of Education lacked statutory force to require school children to participate. This case commentary analyses the case through the lens of Article 19(1)(a) and Article 25 and whether it violates the Fundamental Rights of the Appellants.

II. Background-

A. Facts of the case-

The Appellants- Bijoe, Binu Mol, and Bindu Emmanuel were three students attending a school in Kerala (NSS High School). They were Jehovah's Witnesses and, as a result, did not sing the

National Anthem during the daily school assembly but stood up to show their respect towards the anthem.¹

In July 1985, a member of the Legislative Assembly observed their actions during the assembly and deemed it unpatriotic. A commission was appointed to investigate the matter, which ultimately concluded that the children were well-behaved, 'law-abiding' and showed no signs of unpatriotic behavior.²

Furthermore, the children's father pleaded with the headmistress to allow them back into the school, until further orders by the government. However, she refused to do so, stating that she is incapable of reversing the expulsion. Furthermore, a writ petition was filed in regards to the expulsion, preventing the authorities from restraining the children from attending the school. A single judge bench rejected the prayer of the children, later on a division bench rejected the prayer.³

B. Issue Raised-

1. Whether the expulsion of the students was justified under Kerala Education Act⁴, Kerala Education Rules⁵ and of Prevention of Insults to National Honour Act 1971⁶?
2. Whether the expulsion of the children from the school is consistent with the rights guaranteed under Article 19(1) and Article 25 of the Indian Constitution?

¹ O. C. Reddy, Bijoe Emmanuel & Ors vs State Of Kerala & Ors, Indian Kanoon (April. 29, 2023, 10:30 p.m.), <https://indiankanoon.org/doc/1508089/>

² Supra note 1

³ Supra note 1

⁴ Sec 36, The Kerala Education Act, 1958, Act no 6 of 1959

⁵ Rule 9 and Rule 6, The Kerala Education Rules 1959, Act no 6 of 1959

⁶ Sec 3, Prevention of Insults to National Honour Act, 1971, Act No. 69 of 1971

C. Contentions of the Appellant-

The appellant argued that the students had consistently shown respect towards the National Anthem and their country by standing up in attention. Citing the commission's observation regarding the conduct of the children. The sole reason for not singing was due to their religious faith as Jehovah's Witnesses, which prohibits them from doing so. The Appellants further went on to citing 'Jana Gana Mana' to 'God save the Queen' in Britain and how refusing to actually sing the same does not translate to disrespecting the anthem.

Reasoning citing *Sheldon v. Fannin*, 221 Federal Supp. 766 a case decided by the United States District Court of Arizona⁷, *Donald v. The Board of Education for the City Hamilton* 1945 Ontario Reports 518⁸ and *Minersville School District v. Gobitis*, 84 Law. Ed. US 1375 and *West Virginia State Board of Education v. Barnette*, 87 Law Ed. 1628⁹

⁷ Supra note 1. The Court observed:

"This refusal to participate, even to the extent of standing, without singing, is said to have been dictated by their religious beliefs as Jehovah's Witnesses, requiring their literal acceptance of the Bible as the Word of Almighty God Jehovah. Both precedent and authority for their refusal to stand is claimed to be found in the refusal of three Hebrew children Shadrach, Meshach and Abednege, to bow down at the sound of musical instruments playing patriotic- religious music throughout the land at the order of King Nebuchadnezzar of ancient Babylon.. (Daniel 3: 1328) For a similar reason, members of the Jehovah's Witnesses sect refuse to recite this Pledge of Allegiance to the Flag of the United States viewing this patriotic ceremony to be the worship of a graven image. (Exodus 20: 4-5). However, by some process of reasoning we need not tarry to explore, they are willing to stand during the Pledge of Allegiance, out of respect for the Flag as a symbol of the religious freedom they enjoy (See *Board of Education v. Barnette*, 319 US 624 (1943))."

⁸ Supra note 1. The Court referred to the following belief of the Jehovah's Witnesses:

"The appellants, father and sons, are affiliated with "Jehovah's Witnesses" and believe that saluting the flag and joining in the singing of the national anthem are both contrary to and forbidden by command of Scripture-the former because they consider the flag an "image" within the literal meaning of Exodus, Chapter XX verses 4 and 5, and the latter because, while they respect the King and the State, the prayer voiced in this anthem is not compatible with the belief and hope which they hold in the early coming of the new world, in the government of which present temporal states can have no part."

⁹ Supra note 1. Jackson, J. referred to the particular belief of the Witnesses which was the subject matter of that case, as follows:

The appellant argued that the students' expulsion was unjustified and it violated their Fundamental Rights as outlined in Article 19(1)(a) and 25(1) of the Constitution of India. Moreover, it was reiterated and emphasized in the arguments of the appellant that the connotation of 'proper respect' does not mean actually singing but simply standing up and paying respect. And in no manner does not singing the national anthem translate to disrespecting it.

D. Contentions of the Defendant-

The respondents contended that the students' decision not to sing the National Anthem demonstrated their lack of patriotism and disrespect towards both the anthem and the country. They justified their actions by citing the provisions of the Kerala Education Act of 1959 and Kerala Education Rule of 1959, specifically Chapter IX Rule 6.

III. Ratio Decidendi-

The Supreme Court delivered its judgment basing its core reasoning around the case of the High Court of Australia in *Adelaide Company of Jehovah's Witness V. Commonwealth* (1943)¹⁰ The court observed that the Jehovah's Witnesses are persons loosely organized throughout Australia and elsewhere who regard literal interpretation of the bible as the fundamental to proper religious beliefs'. The court further went onto discussing the meaning of 'Religion' in the context of fundamental rights and the freedom to conscience and the right to profess, practice and propagate religion under the article 25 in the case of *The Commissioner, Hindu Religious Endowments, Madras V. Shri Lakshmindra Thirtha Swamiar of Shri Shirur Mutt*¹¹.

"The Witnesses are an unincorporated body teaching that the obligation imposed by the law of God is superior to that of laws enacted by the temporal government. Their religious beliefs include a literal version of Exodus, Chapter XX, verses 4 and 5, which says "Thou shalt not make up to the any graven image, or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth; thou shalt not bow down thyself to them, nor serve them." They consider that the flag is an "image"

¹⁰ 1943 HCA 12, 1943 67 CLR 116

¹¹ 1954 AIR 282, 1954 SCR 1005

Furthermore, in the case of Ratilal, Justice Mukherjea noted and elucidated on the concept of belief and how a belief of a community must be accepted as a general belief and no person has a right to interfere with the belief of the community at large.¹²

The Supreme Court rendered its verdict under Article 19(1)(a) of the Indian Constitution, which grants Freedom of Speech and Expression. Here, the court observed that the state shall have a right to impose reasonable restrictions in the interest of the sovereignty and integrity of india. However, 'the law' in discussion here, which is presumed to impose reasonable restrictions, must have statutory force and not mere executive or departmental instructions.

The court examined previous cases such as Kharak Singh V. State of Uttar Pradesh and Baleswar Pradesh V. State of Bihar[1962] SUPP. SCR 369 to evaluate the actions of the education authorities.¹³ Furthermore, observing the circulars issued by the authority it is noted that the circulars were not issued 'in the interest of the sovereignty and integrity of india, the security of the state, friendly relation with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to a offense' and hence, cannot deny the citizens their fundamental rights.

¹²Supra note 1. "If this is the belief of the Community and it is proved undoubtedly to be the belief of the Zoroastrian community,-a secular Judge is bound to accept that belief-it is not for him to sit in judgement on that belief, he has no right to interfere with the conscience of a doner who makes a gift in favour of what he believes to be the advancement of his religion and the welfare of his community or mankind."

¹³ Supra note 1. "Though learned Counsel for the respondent started by attempting such a justification by invoking s. 12 of the Indian Police Act he gave this up and conceded that the regulations contained in Ch. XX had no such statutory basis but were merely executive or departmental instructions framed for the guidance of the police officers. They would not therefore be "a law" which the State is entitled to make under the relevant cls. (2) to (6) of Art. 19 in order to regulate or curtail fundamental rights guaranteed by the several sub-clauses of Art. 19(1), not would the same be "a procedure established by law" within Art. 21. The position therefore is that if the action of the police which is the arm of the executive of the State is found to infringe any of the freedoms guaranteed to the petitioner the petitioner would be entitled to the relief of mandamus which he seeks, to restrain the State from taking action under the regulations."

Additionally, Article 25(1)¹⁴ provides every citizen with the right to Freedom of conscience, the right to publicly maintain, practice and propagate religion, and the right to public order, morality, and health, as well as other provisions of Part III of the constitution. This Article is known to be the 'Article of Faith' in the constitution which holds in itself a real test of a true democracy, which is the oneself that a secular country provides to its minority. Therefore, whenever the fundamental right to freedom of conscience and to profess, practice and propagate religion is invoked this article must be put to test to understand whether the fundamental right is breached or not?

Again, bringing the question of 'reasonable restriction', it is held that it can only be imposed in instances where the statute has a power to do so, and not mere executive or departmental instructions.

The Supreme Court ruled that the students' decision not to sing the National Anthem did not demonstrate disrespect or unpatriotic behavior since they stood up in attention to show respect. The court found no legal provision obligating anyone to sing the National Anthem. As a result, the Supreme Court overturned the High Court's ruling and ordered the school to allow the students to continue their studies without any hindrances. The appellant's sentence was set aside based on the facts of the case.

¹⁴The Constitution of India 1950.

25(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practice and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."

V. Analysis-

A. Was the special leave petition maintainable in the apex court?

The petition was filed through article 136. This provision of the constitution vests with the apex court, the Supreme Court of India. Which deals with a special power to grant special leave against any judgment or order or decree or cause passed by a court.

B. Is it mandatory to sing the national anthem?

The observations held by the honorable court clearly translates that there is no special provision of law which obliges anyone to sing the National Anthem nor is it disrespectful to the national anthem if a person who stands respectfully when the national anthem is sung does not join the singing. Simply, standing up while the national anthem is sung is enough to pay respect. Standing up respectfully when the national anthem is sung but not singing oneself clearly does not either prevent the singing of the national anthem or cause disturbance to an assembly engaged in such singing.

Furthermore, this compulsion draws our attention towards the differentiation between article 19(1)(a) and Article 51A (a) of the constitution. It is evident that the fundamental duties are not legally enforceable, whereas fundamental rights are. When both weighed on a legal pedestal the fundamental right holds higher virtue but in no way means that duties must be disregarded. In Conclusion, it is always an individual's freedom of expression and patriotism which prevails.

VI. Related Case laws-

Adelaide Company of Jehovah's Witnesses V. The Commonwealth¹⁵

Donald v. The Board of Education for the City Hamilton 1945 Ontario Reports¹⁶

¹⁵ 1943 HCA 12, 1943 67 CLR 116

¹⁶ 630 F.2d 509

Kharak Singh v. State of U.P.¹⁷

VII. Conclusion-

On the basis of the foregoing observations, The honorable court held that the expulsion of the students infringed their fundamental rights. Furthermore, it set aside the judgment of the high court and directed the schools to readmit the children. Moreover, this case is a clear depiction of moral policing, and the question of what really constitutes as patriotic, unpatriotic, belief and disbelief? To ponder on this question, a quote held by Justice D.Y.Chandrachud, ‘Where then do we draw the line? Where will this moral policing stop?’

VIII. References-

1. Bare act on Indian Constitution 1950
2. Indian kanoon case study Bijoe Emmanuel & Ors vs State Of Kerala & Ors

¹⁷ 1963 AIR 1295, 1964 SCR (1) 332