

# THE JOURNAL OF EQUITY AND JUSTICE



VOLUME 1 AND ISSUE 1 OF 2023  
INSTITUTE OF LEGAL EDUCATION





**ILE Journal of Equity and Justice**  
**(Free Publication and Open Access Journal)**

**Journal's Home Page** – <https://jej.iledu.in/>

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**Volume 1 and Issue 1 (Access Full Issue on – <https://jej.iledu.in/category/volume-1-and-issue-1-of-2023/>)**

**Publisher**

Prasanna S,

Chairman of Institute of Legal Education (Established by I.L.E. Educational Trust)

No. 08, Arul Nagar, Seera Thoppu,

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**CASE COMMENTARY ON BIJOE EMMANUEL & ORS V. STATE OF KERALA & ORS**

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**Best Citation** - JHALAK SINGH & RIYA BISWAS, CASE COMMENTARY ON BIJOE EMMANUEL & ORS V. STATE OF KERALA & ORS, *ILE Journal of Equity and Justice*, 1 (1) of 2023, Pg. 146-149, ISBN – 978-81-961791-3-7

**ABSTRACT**

The National Anthem, which symbolises our loyalty to our nation. The National Anthem depicts our culture, beliefs, causes of sorrow, and victories that we have all shared. All of the citizens of the nation remain together via singing. It is played everywhere; hearing it makes you feel at home and brings us pride. It exudes a sense of pride and intense patriotism for the nation. At gatherings for theatre, school and college cultural events, and the beginning of programmes and activities, the national anthem is performed. In order to encourage pride, respect, nationalism, and a sense of our country's unity and identity, we as citizens must stand while we play it and occasions. It encourages pride, respect, nationalism, and a sense of our country's unity and identity when we perform it as citizens, thus we must stand by

doing so. Anyone who interrupts, prevents, or causes a disturbance during the singing of the national anthem in India is subject to punishment under Section 3 of The Prevention of Insults to National Honour Act, 1960, which carries a maximum sentence of three years in jail or a fine, or both. When the government failed to uphold the 25(1) basic principle and the right to free speech, the court utilised its jurisdiction under Article 19(1)(a) of the Indian Constitution to preserve that right. Articles 19(1)(a) and 25(1) of the Constitution of the United States are used in this paper to analyse the supreme court order. 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.

<b>Case Title</b>	BIJOE EMMANUEL & ORS V. STATE OF KERALA & ORS
<b>Case No</b>	CIVIL APPEAL NO. 870 OF 1986
<b>Date Of The Order</b>	11-08-1986
<b>Jurisdiction</b>	Supreme Court Of India
<b>Quorum</b>	Hon'ble Mr. Justice Chinnappa Reddy J
<b>Author Of The Judgment</b>	Hon'ble Mr. Justice Chinnappa Reddy J
<b>Appellant</b>	Bijoe, BinuMol, Bindu Emmanuel

<b>Respondent</b>	State of Kerala
<b>Counsel For Appellant</b>	Advocate F.S Nariman, T.S. Kishnamurthy Iyer, K.J. John and M. Jha for the Appellants.
<b>Counsel For Respondent</b>	Advocate G. Viswanatha Iyer and Mrs. Baby Krishnan for Respondent Advocate P.S. Poti, E.M.S Anam and James Vincent for the Respondents.
<b>Acts And Sections Involved</b>	<ul style="list-style-type: none"> <li>● Indian Constitution, 1949- Article 19(1)(a) Article 25(a)</li> <li>● Prevention Of Insult To National Honour Act, 1960 Section 3</li> <li>● Kerala Education Act, 1959 with the Kerala Education Rules, 1959 Section 36, Chapter IX Rule-6.</li> </ul>

**I. INTRODUCTION:**

An important case in Indian constitutional law that addressed the subject of freedom of expression and religion was *Bijoe Emmanuel & Ors v. State of Kerala & Ors*. Three Jehovah's Witness students who refused to sing India's national song out of a sense of religious duty were the subject of the 1986 Supreme Court of India hearing. The father of the children brought the case to the Kerala High Court, but it was dismissed because the high court believed that the National Anthem did not include any language that may hurt anyone's religious beliefs. The children's father then petitioned the Supreme Court for special leave, and the top court determined that the kids' rights to freedom of expression from the school was a violation of students' freedom of expression since, despite the fact that they didn't sing along, they nonetheless stood as other people sang the national anthem. Justice C.O. Reddy of the Supreme Court has served as an ambassador for the rule of law and the honour of the Court. He is renowned for his Proactive Judgement, which altered the course of Indian legal history. Prior to his retirement as a judge, he rendered historic rulings using the exceptional judicial powers granted to him under Article 19(1)(a) and Article 25(1) of the

1949 Indian Constitution. With regard to the significance of the National Anthem and individual rights, we assess and lucidly address this judgement in this article.

**II. Fact of the case:**

The three appellant students, Bijoe, Binu Mol, and Bindu Emmanuel, attended a school in Kerala. They regularly attend religious assemblies at school, but because they are Jehovah's Witnesses, they cannot sing along with the other students during the playing of the National Anthem. Nevertheless, they stood up in respect for the anthem, just as their two older sisters did when they attended the same school and performed the same activity, but nobody noticed. One day in July 1985, a member of the Legislature Assembly spotted their activities in the assembly. He deemed it disloyal and created a commission to look into it. The Commission noted that kids were well-behaved and didn't display unpatriotic behaviour. However, the headmistress dismissed pupils from the school in accordance with the directive of the deputy inspector of schools. The father of the children begged the headmistress to let the kids enter the school, but the headmistress refused.

A single learned judge and subsequently a division bench both denied the appellant's writ petition that was filed in the high court. The

Kerala Education Rules, 1959, Rule 6 of Chapter IX, allows for the suspension or dismissal of students who have been found guilty of deliberate insubordination, mischief, fraud, malpractice in examinations, conduct likely to have a negative impact on others, etc. Later, the High Court issued an order based on this provision. Apart from the respondent in this case, the appellant filed an appeal with the Supreme Court using a Special Leave Petition under The Indian Constitution's Article 136.

### **III. ARGUMENTS IN APPELLANT'S FAVOUR:**

A. The appellant asserted that students never disobeyed the national anthem or their country by failing to stand when it was being performed.

B. They refused to sing because they were Jehovah's Witnesses and their faith forbade it.

C. Did the appellant bring up the question of whether the pupils' expulsion was justified?

In accordance with articles 19(1)(a) and 25(1) of the Indian Constitution, does this deportation not violate their fundamental rights?

### **IV. JUSTIFICATIONS IN RESPONDENT'S FAVOUR:**

A. The respondents asserted that students disregarded the National Anthem by refusing to sing it, which demonstrates their lack of patriotism and disdain for both the National Anthem and our nation.

B. The Kerala Education Act of 1959 and Kerala Education Rule of 1959, Chapter IX Rule 6, were used to support their course of action.

### **V. ORDER OF THE COURT:**

A. The Supreme Court ruled in the cases of *Kharak Singh v. State of Uttar Pradesh* and *Baleswar Prades v. State of Bihar* (1962) SUPP. SCR 369 that Article 19(1)(a) of the Indian Constitution, which grants freedom of speech and expression, and Article 25(1), which grants the right to public order, morality, and health as well as the other provisions of Part III, as well as the freedom of conscience to freely profess, practise, and propagate religion,

B. Forcing all students to participate in singing the national anthem would go against their Jehovah's Witnesses' religious beliefs and violate their rights under Article 19(1)(a) and Article 25(1) of the Constitution of India.

C. The Supreme Court ruled that students are not at fault for not singing the National Anthem because they showed respect by standing up and paying attention. Additionally, no one is required by law to sing the National Anthem, so skipping it is neither disrespectful nor disloyal.

D. The Supreme Court overturned the High Court's decision and mandated that kids once more be able to attend school without any restrictions; the appellant's sentence was overturned as a result of the case's circumstances.

### **VI. CONCLUSION:**

By making these decisions, we demonstrate our patriotism for our nation and our understanding of fundamental human rights. The country's citizens are firmly adhering to their religious beliefs, and society is constantly updating and growing with regard to these rights. We shouldn't water down the National Anthem because of its significance and the provisions that go along with it. Our tradition has taught us to tolerate others, and our philosophy and constitution support this.

The Supreme Court ruled on the matter of the National Anthem and made clear where it stood, yet it occasionally comes up again. A family was recently ejected from a Mumbai movie theatre for refusing to stand as the national anthem was played on the big screen. A few years ago, the government in Allahabad, Uttar Pradesh, closed a school and detained its owner Mohammad Zia-il-haq for forbidding the singing of the National Anthem during the school's Independence Day festivities. The phrase "bharata bhagya vidhata" was allegedly against Islamic beliefs, according to him. Sedition charges have already been brought against individuals for refusing to sing the National Anthem. Other issues that occasionally



arise include the National Anthem's use in musical compositions, its use in motion pictures, and whether or not touching one's heart while it is playing is offensive. There is no doubt that citizens of a nation should respect their national anthem, but as long as it is one of the recognised ways, it should not be imposed upon them.

**VII. RELATED CASES LAWS:**

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

**VIII.REFERENCE:**

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