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**RECONCILING CONSCIENCE AND NATIONAL HONOUR: A  
CONSTITUTIONAL REAPPRAISAL OF BIJOE EMMANUEL V. STATE  
OF KERALA (1986) 3 SCC 615**

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**Introduction:**

The Supreme Court's ruling in *Bijoe Emmanuel v. State of Kerala* (1986) is a seminal judgment that profoundly shaped the understanding of religious freedom and freedom of speech within the Indian constitutional framework. This case addressed the conflict between individual conscience and the expectation of patriotic conformity. The Supreme Court's decision underscored the inviolability of fundamental rights guaranteed under Articles 19(1)(a) and 25(1) of the Constitution, emphasising that the state cannot compel individuals to act against their religious convictions, even in the name of national unity or patriotism.<sup>2</sup>

Delivered in the post-Emergency period, a time when India was re-examining the balance between state authority and individual liberties, the judgment reaffirmed the primacy of constitutional morality over popular sentiment or enforced nationalism. It established that freedom of conscience and expression is not subordinate to symbolic displays of patriotism, thereby protecting minority rights and reinforcing the nation's pluralistic ethos.<sup>3</sup> This case remains a cornerstone in illustrating how the Constitution safeguards personal liberty while maintaining respect for national symbols. It serves as a powerful reminder that true patriotism respects dissent and that liberty includes the right to disagree peacefully.

**Historical and Factual Background**

In 1985, a quiet yet profound constitutional conflict began in a school in Kerala's Kottayam district, involving three siblings, Bijoe, Binu, and Bindu Emmanuel, who were devoted

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<sup>2</sup> Constitution of India, art 19(1)(a)

<sup>3</sup> Constitution of India, art 25(1)

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followers of the Jehovah's Witnesses faith. Guided by their religious convictions, the children stood respectfully during the daily recitation of the national anthem, "Jana Gana Mana," but refrained from singing, believing that vocal participation would violate their commitment to worship only Jehovah and not any earthly authority.<sup>4</sup> Their silent stance was not disruptive, yet it drew the attention of a Member of the Legislative Assembly, who raised the matter with school authorities. Acting on instructions from the Deputy Inspector of Schools, the headmistress expelled the siblings for non-compliance with government directives mandating participation in the anthem.

The children's father, seeking to protect their rights, approached the Kerala High Court, arguing that the expulsion infringed on the freedoms of expression and religion guaranteed by Art19(1)(a) and 25(1) of the Constitution. However, the High Court upheld the expulsion, reasoning that refusal to sing the anthem amounted to disrespect and a breach of fundamental duties under Article 51A(a). This decision forced the family to seek recourse from the Supreme Court of India.<sup>5</sup>

A pivotal aspect of the dispute, later emphasised by the Supreme Court, was that the children never disrupted the assembly or disrespected the anthem; they merely exercised their faith-driven choice to remain silent while standing in respect. This subtle distinction between respectful abstention and active disrespect lay at the heart of the constitutional questions raised, highlighting the tension between compelled patriotic expression and the fundamental right to religious liberty.

### Issues raised before the Court

The issues regarding this, which were raised before the High Court as well as the Supreme Court, included;

1. Whether a student's refusal to sing the national anthem, based on genuine religious beliefs, constitutes disrespect to the anthem under the PINH Act, 1971.<sup>6</sup>
2. Whether compelling students to sing the national anthem despite sincere religious objections violates their fundamental rights under Art 19(1)(a) and 25(1) of the Constitution.

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<sup>4</sup>'India Supreme Court's Landmark Judgment—Pillar of Free Speech' (JW.ORG, 11 November 2014) <https://www.jw.org/en/news/region/india/supreme-court-national-anthem-free-speech/>

<sup>5</sup>*Bijoe Emmanuel v State of Kerala* (1986) 3 SCR 518 (SC)

<sup>6</sup>The Prevention of Insults to National Honour Act 1971 (PINH Act)

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3. Whether the fundamental duty under Article 51A(a) to respect national symbols can override fundamental rights that are guaranteed under Part III of the Constitution.

### Arguments

#### Petitioner's Contention

The Petitioners, represented by the Emmanuel family, argued that their children's refusal to sing the national anthem was grounded in sincere religious beliefs as Jehovah's Witnesses, which prohibit participation in any ritual or song that implies allegiance to anyone other than their God. They emphasised that the children stood silently and respectfully during the anthem, thereby showing no intention of disrespect or disruption. The Petitioners contended that compelling them to sing the anthem would violate their fundamental rights under Art19(1)(a), which guarantees freedom of speech and expression, and Art 25(1), which protects freedom of conscience and the right to profess and practice religion freely. They further asserted that neither the Kerala Education Act nor any related rules authorised the expulsion of students solely for not singing the anthem, and that their actions did not disturb public order, morality, or health<sup>7</sup>. Thus, the expulsion was unjustified and constituted an infringement of their constitutional rights.

#### Respondent's Contention

In response, the Respondents maintained that refusal to sing the national anthem amounted to disrespect and indiscipline, undermining the unity and integrity of the nation. They argued that Article 51A(a)<sup>8</sup> imposes a fundamental duty on every citizen to respect national symbols, & that participation in the anthem was compulsory under educational directives and official circulars. The State also questioned whether Jehovah's Witnesses qualified as a religious denomination entitled to constitutional protection under Article 26, and insisted that the Petitioners' conduct was contrary to the obligations of citizenship and school regulations. On

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<sup>7</sup>Mallika Rani Garimella, 'Bijoe Emmanuel v State of Kerala' (Naya Legal) <https://www.nayalegal.com/bijoe-emmanuel-v-state-of-kerala>

<sup>8</sup>Rishabh Bhan Singh, 'Question of Religious Beliefs and Disrespect to the National Anthem: A Case Brief of Bijoe Emmanuel v State of Kerala' (International Journal of Legal and Law Research, 27 April 2022) <https://www.ijllr.com/post/question-of-religious-beliefs-and-disrespect-to-the-national-anthem-a-case-brief-of-bijoe-emmanuel>

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these grounds, the Respondents defended the expulsion as both lawful and necessary to uphold national respect and discipline.

### Ruling Given by The Kerala High Court

The High Court of Kerala, in its judgment passed on October 7, 1985, dismissed the Petitioners' claims and upheld the decision of the school authorities to bar the Emmanuel siblings from attending classes. The Court placed significant emphasis on the intent behind the introduction of fundamental duties through Art 51A by the Constitution (Forty-Second Amendment) Act, 1976, highlighting Parliament's objective to reinforce the unity and integrity of the nation. It held that these duties represent the political responsibilities of every citizen, which cannot be set aside based on individual or sectarian practices.

The Court accepted the argument advanced by the Respondent that Jehovah's Witnesses were not a distinct religious denomination but rather a charitable association, and therefore, not entitled to constitutional protection under Art 25 and 26.<sup>9</sup> It relied on the existence of registered offices of the Jehovah's Witnesses worldwide, including in India, to support this conclusion.

Further, the High Court reasoned that fundamental rights relating to religion must be exercised in harmony with the fundamental duties incorporated in the Constitution. It asserted that when the Constitution mandates citizens to show respect to national symbols, such as the National Flag and National Anthem, this obligation must be honoured without reservation, regardless of any special rights claimed under the Constitution. The Court concluded that constitutional provisions are paramount and must be read into every law, either expressly or by necessary implication, as they form the supreme law of the land.

### Supreme Court's Final Verdict

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<sup>9</sup>Partha Pratim Paul, 'Honouring National Anthem and Song: A Facet to Constitutional Patriotism vis-à-vis Reconstruction of Fundamental Right and Duty Jurisprudence' (2023) 13 GNLU Journal of Law and Development Policy 153

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On 11<sup>th</sup> August, 1986, the Supreme Court reversed the Kerala High Court's decision, firmly upholding the constitutional rights of the Emmanuel children. The Court emphasised that the core issue was not about the content or message of the national anthem but the act of singing it, which conflicted with the children's religious beliefs as Jehovah's Witnesses. The Court recognised that while their beliefs might be uncommon, the children did not intend any disrespect toward the anthem or national values.<sup>10</sup>

The pronouncement clarified that the freedom of speech and expression protected by Art19(1)(a) includes the right to remain silent<sup>11</sup>. Forcing individuals to express themselves against their conscience violates this fundamental liberty<sup>12</sup>. The Court pointed out that the PINH Act, 1971, penalises only those who actively prevent others from singing or disrupt the anthem, which was not the case here since the children stood quietly and respectfully.

Regarding administrative instructions requiring participation in the anthem, the Court noted these lacked the statutory authority and could not lawfully compel students to sing against their religious convictions. Interpreting such directives to override fundamental rights would be unconstitutional.

Importantly, the Court distinguished between fundamental duties under Article 51A(a) and fundamental rights. While duties serve as moral guidelines, they cannot be enforced in a way that infringes upon the justiciable and protected rights guaranteed by the Constitution<sup>13</sup>. The authorities, by expelling the children, had exceeded their powers and violated their constitutional freedoms.

Justice O. Chinnappa Reddy eloquently highlighted that India's constitutional framework is built on tolerance and respect for individual conscience. By safeguarding the children's right to abstain from singing the anthem, the Court reaffirmed that true patriotism respects diversity and freedom of belief. The verdict ordered the children's reinstatement and set a

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<sup>10</sup>Emmanuel v State of Kerala, Global Freedom of Expression, Columbia University <https://globalfreedomofexpression.columbia.edu/wp-content/uploads/2015/12/Emmanuel-v.-State-of-Kerala.pdf>

<sup>11</sup>Lawrence Liang, 'Free Speech and Expression' in Sujit Choudhry, Madhav Khosla and Pratap Bhanu Mehta (eds), The Oxford Handbook of the Indian Constitution (South Asian edn, OUP 2021) 815

<sup>12</sup> 'Bijoe Emmanuel Case' (Gyan Sanchay) <https://gyansanchay.csjmu.ac.in/wp-content/uploads/2023/07/Bijoe-Emmanuel-Case.pdf>

<sup>13</sup> Rachit Garg, 'Bijoe Emmanuel v State of Kerala: Case Analysis' (iPleaders, 7 March 2024) <https://blog.iplayers.in/discussion-bijoe-emmanuel-case/>

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vital precedent affirming that fundamental rights cannot be sacrificed in the name of enforced nationalism.

#### Analysis of the judgment of the case

The Apex Court's analysis in the Bijoe Emmanuel case reflects a profound and precise interpretation of constitutional principles, particularly concerning the PINH Act, 1971, and the balance between fundamental rights and duties. The Court clarified that Section 3 of the Act targets only deliberate acts that obstruct or disturb the singing of the national anthem. Simply standing silently, as the students did, does not amount to an offence or insult under this provision. This distinction between passive non-participation and active disruption was central to the Court's reasoning.<sup>14</sup>

On constitutional grounds, the Court gave strong protection to religious freedom and freedom of expression under Art 25(1) and 19(1)(a) of the Constitution. It emphasised that the sincerity of religious belief, rather than its popularity or rationality, is the key criterion for protection. The Jehovah's Witnesses' refusal to sing was a genuine expression of their faith, deserving constitutional respect. Furthermore, the Court expanded the understanding of freedom of expression to include the right not to speak or be compelled to express beliefs against one's conscience, recognising this as an essential aspect of individual liberty.

Regarding fundamental duties under Article 51A(a)<sup>15</sup>, the Court made it clear that these duties are moral obligations and cannot override the enforceable fundamental rights guaranteed by the Constitution. Respect for national symbols can be shown without forced participation, and the students' respectful silence fulfilled this duty. This judgment thus reinforced the supremacy of fundamental rights over non-justiciable duties.

The decision has had a significant impact on Indian constitutional law by strengthening protections for minority religious beliefs and broadening the scope of free speech to include

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<sup>14</sup>Geeta Kanwar, 'Analysis of Bijoe Emmanuel v State of Kerala' (RMLNLU Constitutional Law and Public Policy Blog, 24 September 2020) <https://seclpp.wordpress.com/2020/09/24/analysis-of-bijoe-emmanuel-vs-state-of-kerela/>

<sup>15</sup>K Sita Manikyam, 'Fundamental Duties Under Constitution of India' in Philosophical Foundations of Human Rights: Duties and Responsibilities (INFLIBNET) <https://ebooks.inflibnet.ac.in/hrdp01/chapter/fundamental-duties-under-constitution-of-india/>

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the right to dissent silently. It also articulated a vision of patriotism that honours diversity and conscience rather than demanding uniformity. Ultimately, the Court affirmed that constitutional democracy thrives on tolerance and respect for individual freedoms, especially when they challenge majority norms.<sup>16</sup>

After this exemplary ruling, there have been numerous cases where this particular ruling has been upheld countless times. Some of them are;

1) Union of India v. Naveen Jindal (2004)

In this case, the Supreme Court addressed whether citizens have a fundamental right to fly the national flag. Naveen Jindal, whose factory displayed the flag, challenged government objections based on the Flag Code of India. The Delhi High Court ruled that the Flag Code was not law and could not restrict constitutional rights. On appeal, the Supreme Court affirmed that flying the national flag is a form of expression protected under Article 19(1)(a) of the Constitution, provided it is done with dignity and respect. The Court clarified that the Flag Code, being executive instructions, does not override statutory rights, and any restrictions must be reasonable and rooted in law. The judgment echoed the spirit of *Bijoe Emmanuel*, reaffirming that respect for national symbols is essential, but the right to express patriotism is a protected constitutional freedom, not subject to arbitrary executive limitation.<sup>17</sup>

2) Dr. Tawseef Ahmad Bhat v. State of Jammu and Kashmir (2021)

In this case, the High Court addressed an FIR filed against a college professor accused of disrespecting the National Anthem during a special assembly. The allegation was that he neither stood nor sang the anthem. However, the Court found that the FIR was improperly registered since the complaint was directed by an Executive Magistrate, who lacks authority under Section 156(3) of the Cr.P.C., 1973<sup>18</sup> to order police for the registration of an FIR.<sup>19</sup> Furthermore, the Court examined the PINH Act, 1971, and concluded that only deliberate

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<sup>17</sup>Union of India v Naveen Jindal (2004) 2 SCC 510

<sup>18</sup>Code of Criminal Procedure 1973 (CrPC)

<sup>19</sup>Tawseef Ahmad Bhat v State of Jammu and Kashmir 2021 SCC OnLine J&K 453

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prevention of singing or causing disturbance during the anthem is punishable. Simply not standing or singing, despite being a fundamental duty under Article 51A, does not amount to a criminal offence. This ruling reinforces the principle established in Bijoe Emmanuel that freedom of conscience and peaceful non-participation cannot be criminalised as disrespect.

### Conclusion

The Bijoe Emmanuel judgment powerfully affirms the Supreme Court's commitment to protecting individual liberties while honouring national values. By holding that true respect for the Constitution means upholding the right to religious conscience, the Court advanced an inclusive vision of patriotism that values pluralism over enforced uniformity<sup>20</sup>. This decision established that in a constitutional democracy, the state must accommodate sincere religious differences, even when intersecting with national symbols, rather than suppressing them through coercion.<sup>21</sup>

The enduring legacy of this case lies in its clear distinction between genuine disrespect and peaceful non-participation. The Court, interpreting the PINH Act, 1971, made it clear that only acts of active disruption or prevention of the anthem are punishable, not mere refusal to sing or stand, whether for religious reasons or otherwise. This principle has been consistently upheld, with courts recognising that while standing and singing the National Anthem may be a fundamental duty, citizens cannot be penalised for non-participation, as neither the law nor legislative intent supports such punishment. Thus, the Bijoe Emmanuel case remains a cornerstone for balancing individual conscience with collective identity, guiding India's constitutional democracy toward tolerance and genuine respect for diversity.

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<sup>20</sup> 'Bijoe Emmanuel v State of Kerala (1986)' (LawBhoomi, 17 January 2025) <https://lawbhoomi.com/bijoe-emmanuel-v-state-of-kerala/>

<sup>21</sup> Vikshita Poojary, 'Case Commentary on Bijoe Emmanuel v State of Kerala' (2023) 1 Law and Society Policy Review 100 <https://lspr.iledu.in/wp-content/uploads/2023/05/VII114.pdf>

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