

## NATIONAL ANTHEM

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The National Anthem of India is played and sung on different occasions. The instructions are issued from time to time about the correct versions of the anthem, the occasion on which these are to be played or sung, and about the need for paying respect to the anthem by an observance of proper decorum on such occasions. Patriotism is a feeling that can be exhibited through several conducts. It is a sentiment that is personal and it comes from the inside. Showing respect for the National Anthem is one way of viewing Patriotism. The actual sense of Patriotism cannot be enforced on any individual. Standing up for National Anthem before the display of movies at theatres is not the real sense of Nationalism or Patriotism. An interim order passed by the Apex Court in *Shyam Narayan Chouksey v. Union of India*<sup>1</sup> that the National Anthem is to be bestowed the respect and reverence it is worthy of. Authored by Justice Dipak Misra, this order ensures that while the National Anthem might stand adequately "respected", the expectation of reasoned judicial orders will quiver in a corner. The case led to different inferences, like the Court does not make the important categorical distinction as required between a refusal to stand up for the anthem as an active act of disturbance as opposed to a passive act of silence or does not concern for people with disabilities. Instead, it cherishes a positive duty and states that all the cinema halls in India shall play the National Anthem before featuring the film and all present in the hall are obliged to stand up to show respect to the National Anthem. The case was decided correctly, but the court's reasoning was wrong. A true patriot shall respect other individuals, nations and cultures regardless of any labels, by respecting another's allegiance to their country and not targeting other communities.

To put it within the perspective of the issue in hand, the question lies whether the decision as to what constitutes due respect to the National Anthem in keeping with the spirit of Article 51A of the Constitution could be taken by the Legislature or the Executive. Whether the same could then be called into question before the constitutional courts, which is when the court could either sustain the decision or strike it down, and that would be the proper time for the court to

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<sup>1</sup> *Shyam Narayan Chouksey v. Union of India*, AIR 2003 MP 233 (India).

pronounce upon the issue. In the case of *Shyam Narayan Chouksey v. Union of India*<sup>2</sup>, the High Court of Madhya Pradesh ordered the deletion of a scene involving the depiction of National Anthem in the movie *Kabhi Khushi Kabhi Gham*. The judgment of Madhya Pradesh High Court was set aside by *Karan Johar v. Union of India*<sup>3</sup>, wherein the Supreme Court referred to clause V (1) of the Orders relating to the National Anthem of India issued by the Government of India. In the middle of the showcase of the movie, the audience can't predict the scene of National Anthem coming up and for that reason, the movie could not include the sequence in section. It resulted in unintentional disrespect to the National Anthem. It states "Whenever the Anthem is sung or played, the audience shall stand to attention. However, when in the course of newsreel or documentary the Anthem is played as a part of the film, it is not expected of the audience to stand as standing is bound to interrupt the exhibition of the film and would create disorder and confusion rather than add to the dignity of the Anthem." According to the Indira Gandhi government, The Prevention of Insults to National Honor Act 1971 (hereinafter referred to as '1971 Act') was enacted and penalized those found guilty of intentionally preventing the singing of Indian National Anthem or causing "disturbances to any assembly engaged in such singing" with a jail term of up to three years.

In a famous case of Supreme Court, *Bijoe Emmanuel vs the State of Kerala*<sup>4</sup>, three students who followed the Jehovah's Witness faith were expelled from school for not singing the National Anthem. When the action of the school authorities was challenged, the Apex Court held that the students must be readmitted, as they had not disturbed the assembly singing the National Anthem. The ratio of this decision was that the students had not disturbed the assembly or the singing by their non-participation. This same principle should also be applied to those present in the theatre and who chose not to stand during the National Anthem in a cinema hall. The said case was decided correctly because no citizen can be punished for not standing during the National Anthem for there is no law of the law which prescribes punishment for such acts. In the leading cases referred to as above, the Supreme Court looked into the question of citizens' Fundamental Rights guaranteed by Part III of the Constitution vis-a-vis the duty to show respect to the National Anthem as mandated by the law. However, what constitutes due respect and how it must be shown was treated as necessarily a policy decision

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<sup>2</sup> *Supra*.

<sup>3</sup> *Karan Johar v. Union of India*, (2004) 5 SCC 127 (India).

<sup>4</sup> *Bijoe Emmanuel vs the State of Kerala*, 1987 AIR 748, 1986 SCR (3) 518 (India).

to be taken by the Legislature, or, in absence of a legislative enactment, by the Executive in exercise of the executive power conferred upon it by the Constitution, which is why in the Bijoe Emmanuel case<sup>5</sup> it was the 1971 Act and in the Karan Johar case<sup>6</sup> an Order by the Government of India was made the basis for the judicial determination of the issue though the enforcement of the statute or the government order was not the primary objective of the Supreme Court's decision.

The strongest contentions regarding playing the National Anthem daily, multiple numbers of times, is that it only results in lowering its dignity apart from exposing it to potential disrespect every day a thousand times. It is not an advertisement jingle. It is our National Anthem and should only be played on special occasions with dignified fashion. In September 2014, the Calcutta High Court in the case of 'Kamal Dey vs Union of India' issued a direction to the Central and state government that educational institutions should strictly follow the "Orders Relating to the National Anthem of India" (National Anthem Order). The National Anthem Orders, compiled by the ministry of home affairs are in the form of guidelines and not judicial creations. They denote when and how the National Anthem has to be played. Hence, they would not result in penalties and one could not be punished for disobeying them if such disobedience does not also result in the breach of the 1971 Act. The Madras High Court, while hearing the case of N. Selvathirumal vs Union of India<sup>7</sup>, observed the same question and issued similar directions to state and Central government bodies and private schools. The court noted that "The stand of the authorities including the Union of India is that the National Anthem ought to be sung and is being sung. This is the stand of the Schools also."

The connection between the National Anthem and "a sense of committed Patriotism and Nationalism" that the Supreme Court made and based its order on is way too far-fetched to serve as a rational ground for the order handed down by the Apex Court. People are respectful to the National Anthem due to a sense of Patriotism and Nationalism, and not the other way round. Display of respect – particularly when one is forced to show respect – to the National Anthem does not – and cannot – generate a sense of Patriotism or Nationalism. All it can

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<sup>5</sup> Supra.

<sup>6</sup> Supra.

<sup>7</sup> N. Selvathirumal vs Union of India, AIR 2016 Mad 107 (India).

generate is anger and resentment in people at being forced to prove their Patriotism at the beginning of every movie.

The policy decisions are outside the judicial domain for the simple reason that it is the Judiciary that has to sit in judgment over the legality and constitutionality of the policy decisions, which is consistent with the System of Checks and Balances we have in place as the operational core of the Doctrine of the Separation of Powers. It gets more complicated if the policy decision is taken by a High Court because then it is only the Supreme Court that can look into the legality of it, and it is worst when the policy decision is taken by the Supreme Court itself because then there is no higher court left to approach against the decision in appeal. The love for your country comes from the love for its people, regardless of identity, gender or religion.

