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Case Comment: Shyam Narayan Chouksey v Union of India (2018): The National Anthem Case

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INTRODUCTION

Cinema has become an indispensable element of freedom and expression, mainly for entertainment. Surprisingly, entertainment has been subjected to innumerable controversies. This case is a classic example of the same. More than just being a controversy, it is also a very important case in the legal fraternity. It deals with a raging debate of the era- Fundamental Rights v. Fundamental Duties, Entertainment v Honor, etc. It makes the fraternity question and analyze the validity of legally induced patriotism. The entire dispute could come to a final conclusion if a balance is established between all these factors that frequently overstep its balance. The only question is, 'How to achieve that balance?' With other unsolved questions from the 2018 case, this question also stands unanswered.

Mr. Chouksey, the petitioner, has been approaching the Court since 2003. The issues associated with every petition have evolved, however, the essence of all the cases has stayed constant, i.e., the honor of the National Anthem. In 2019, Shyam Narayan Chouksey approached the Apex Court under Article 32 of the Constitution of India. The petitioner aimed to inculcate and

instill a sense of respect and patriotism in the public at large towards the National Anthem and analyze what constitutes respect and disrespect towards the National Symbols of the country. Listed under the Supreme Court of India on 9th April 2018, the quoted case was filed because of a lack of clarity in terms of respect, abuse, commercialization, and exploitation of the National Anthem. The case has a long and significant history in its name.

BACKGROUND OF THE CASE

Although the initial petition was filed in 2003, the history of mandating the screening of the National Anthem has been in prevalence since the Indo-China War. But again, in 1975, the practice was discontinued. However, later in 2003, Maharashtra Assembly mandated the playing of the Anthem in cinema halls of Maharashtra.¹

24 July 2003:²The petitioner filed a PIL in the M.P. High Court. He brought the claim to ban the commercialization of the National Anthem after his disappointing experience at a cinema hall during the screening of the popular movie, 'Kabhi Khushi Kabhi Gham'. In the movie, a child sang the National Anthem on a school stage and forgot the last verse, and his mother completed the Anthem for him. The petitioner contended that people in the audience were blissfully ignorant and did not stand when the Anthem was played during the film, which was quoted as 'disrespect' and 'outright insult' to the country's ideals by Mr. Chouksey. Moreover, when the petitioner and some other members of the audience stood up in honour of the National Anthem, the audience complained of obstruction. Various contentions unfurled as the petition blamed the Censor Board of Film Certification for the screening of the National Anthem for 'commercial interest'. As a result of this event, The MP High Court directed a complete ban on the film, unless the National Anthem was removed.

¹ Faisal Malik, 'National Anthem in theatres: Maharashtra Govt made it mandatory in 2003' (*Hindustan Times*, 30 November 2006) <<https://www.hindustantimes.com/mumbai-news/national-anthem-in-theatres-maharashtra-govt-made-it-mandatory-in-2003/story-OpxeXVPXjWtpoy7Zc3xceM.html>> accessed 02 September 2021

² *Shyam Narayan Chouksey v Union of India & Ors* AIR 2003 MP 233

19 April 2004: ³Pursuant to the ban of the film, the producers approached the Apex Court which dismissed the order of the M.P. High Court and directed that it was not mandatory for viewers to stand up in a film if the National Anthem was being screened.

30 November 2016:⁴ Unsatisfied with the verdict of the Court, the petitioner filed another petition in 2016. By the virtue of Article 51A (a)⁵ of the Constitution, an interim order was passed.

- The order prohibited commercialization, financial exploitation, and dramatization of the National Anthem.
- The order made the playing of the National Anthem before the screening of the film a **mandatory obligation**. Everyone has to stand up in order to respect the National Anthem.
- Prior to the playing of the National Anthem, the doors must be closed and any disturbance during the playing of the Anthem would be tantamount to disrespect.
- The National Flag has to be presented on the screen when the Anthem is being sung/played.
- The ideals, National Flag, and the National Anthem must not be displayed or printed in any disrespectful way.
- Also, the abridged version is prohibited to be played/displayed.

9th December 2016:⁶ The interim order stirred up an inevitable debate. An application was filed for exemption of the physically challenged persons from the order. It was ruled that a physically challenged/handicapped person is not obligated to stand up for the National Anthem in a cinema hall. But his conduct should reflect respect for the National Anthem.

³ *Karan Johar v Union of India & Ors* 2004 (9) SCALE 33

⁴ *Shyam Narayan Chouksey v Union of India* WP (C) 855/2016

⁵ Constitution of India, art 51A

⁶ *Shyam Narayan Chouksey* (n 4)

Applications also dissented on the clause of 'closing of the doors', despite the invalidity of the same after the Uphaar Gas Tragedy.⁷ It was clarified that the interim order only demanded 'bolting of the doors' to avoid disturbance. Finally, another application demanded that standing up for the National Anthem during the screening of newsreel, or documentary or feature film should be discretionary. The Court ruled in affirmative. After various other interlocutory applications, a petition was filed by Mr. Shyam Narayan Chouksey in 2018.

IMPORTANT PROVISIONS

Article 51A (a) of the Constitution of India: Enshrined in the Constitution of India, the article enlists the fundamental duty of every Indian citizen to respect its ideals and institutions, including the National Anthem and the National Flag.

Article 32 of the Constitution of India: To enforce the fundamental rights guaranteed by the Constitution of India, the Supreme Court can issue orders, directions, or writs, whichever may seem appropriate. They can be in the form of mandamus, habeas corpus, prohibition, certiorari, and quo warranto.

Article 19 (1) (a) of the Constitution of India: All citizens have been guaranteed the right to freedom of speech and expression as a fundamental right under this article.

Article 19 (2) of the Constitution of India: Right to freedom of speech and expression is subject to 'reasonable restrictions in the interest of integrity and sovereignty of India, the security of the State, public order, friendly relations with foreign States, decency or morality, or in relation to contempt of court, defamation or incitement to an offence.

Section 3 of the Prevention of Insults to National Honour Act, 1971: Intentional prevention of the singing of the Indian National Anthem or causing disturbance to any assembly engaged in such singing is a punishable offence with imprisonment for a term which may extend to three years, or with fine, or with both.

⁷ *Assn of Victims of Uphaar Tragedy v Union of India & Ors* 2003 ACJ 1631

Section 2 of the Prevention of Insults to National Honour Act, 1971: In case of any person in a public place burns, defaces, destroys, mutilates, disfigures, tramples upon or otherwise shows disrespect to the Indian National Flag or the Constitution of India, or brings contempt by words, either spoken or written, or by acts to the Indian National Flag or the Constitution of India or any part thereof, shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both.

CONTENTIONS

Petitioner: The learned counsel on the behalf of the petitioner, Mr. Abhinav Srivastava contended on the following points:

- With reference to Section 3 of the Prevention of Insults to National Honour Act, 1971, the learned counsel contended that the act only deals with the prevention of playing or singing of the National Anthem, and lays down no provisions relating to how respect has to be shown towards the National Anthem. He demanded appropriate measures to be taken regarding disrespect of the National Anthem.
- The counsel demonstrated the fundamental duty enshrined under 51A (a) of the Constitution of India to support his case. The duty enlists that every citizen must respect national symbols and ideals, inclusive of the National Anthem.
- The counsel requested that Preamble's mention of the words 'unity and integrity of the Nation' must be interpreted broadly to encompass honour and respect for the National Anthem.

Respondent: The contention on behalf of the Union of India was presented by learned Attorney General, Mr. K.K. Venugopal in the form of these points:

- The mandatory order of screening of the National Anthem will thereafter be directory or optional till further instructions are formulated by the Inter-Ministerial Committee appointed in 2017.

Others: Mr. Sidharth Luthra, a friend of the Court, suggested that Article 51A of the Constitution must be understood in consonance with the 1971 Act. Several intervening senior counsels agreed with the decision of the Union of India. Mr. C. U. Singh suggested that in the absence of law, the playing/singing of the National Anthem should be optional. Mr. Dinesh put forth that those modifications must also be made in cases of film festivals where 5 to 6 films are screened every day. Furthermore, Mr. Sanjeev Bhatnagar reiterated that the cinema hall is not a suitable place to judge and instill feelings of nationalism.

Ratio: The bench headed by Chief Justice Dipak Misra held that the National Anthem is the *evan vital* of the Nation. Therefore, it is undeniable that National Symbols, including the National Anthem, have to be respected. However, the public's intent of going to the cinema is for unobstructed entertainment, and it is not the best place to judge patriotism. This is why the bench made the playing of the National Anthem a discretionary matter, not a mandatory one. For follow-up action, the Committee, appointed by the Union Government, has to submit its report to the competent authority. The place and occasion of playing the National Anthem will be based on the executive orders, which will remain uninfluenced by the interim order given by the court in 2016. It is to note that the exemption for disabled persons will stay in force until the recommendations are made by the Committee.

ANALYSIS OF THE CASE

Although the Honorable Supreme Court made commendable reforms by the 2018 judgment, there are many stances that are left unclear or unanswered.

- **Was the petition maintainable in the Apex Court?**

The case was filed by the means of Article 32. This provision of the Constitution can only be invoked in case of a fundamental right violation. After the perusal of all the petitions filed by Mr. Chouksey, there has been no violation of any fundamental right. The Court bypassed this crucial requisite and allowed multiple petitions. Rather, the case should have been adjourned by taking Article 226 of the Constitution into account. It has been clearly stated by the Court

that no question other than that of a Fundamental right violation will be entertained under Article 32.⁸

- **Is it mandatory to stand while singing the National Anthem?**

The law put a clear lens towards singing of the national anthem, however, it is still ambiguous when we try to analyze 'standing up in honour of the National Anthem' as the subject. Sadly, even in the 2018 case, no remarks were made on the same. In furtherance, an incident in Bangalore in 2019⁹ was reported when a man refused to stand up for the National Anthem in the cinema hall. This led to a heated argument in the hall and the man was labeled as a 'Pakistani Terrorist' by one of the men in the cinema hall. The man was arrested on the account of Section 2 of Prevention of Insults to National Honour Act, 1971, but was later granted bail that night. A wrongful arrest is violative of the right to life and personal liberty, which is the heart and soul of the Constitution.¹⁰ Not only is it defamatory to dictate an individual's choice of expression, but also this ambiguous position of the law makes patriotism substituted by jingoism, which was not the intention behind the judgment. Although the judgment was given in good faith, it violates the Freedom of Speech and Expression by limiting the ways of professing patriotism for the nation.

Another point to note is that the issue is a debate between Article 19 (1) (a) and Article 51A (a) of the Constitution.¹¹ It is evident that Fundamental Duties are not legally enforceable, whereas Fundamental Rights are. So, if both the two need to be measured on the legal pedestal, Article 19(1)(a) should hold the higher virtue, however, this in no way means that duties must be disregarded. Therefore, the right to an individual's freedom of expression of patriotism must prevail.

⁸ *Amar Singhji v State of Rajasthan* AIR 1965 SC 504

⁹ India Today Web Desk, 'Bengaluru family bullied for not standing during National Anthem: Internet is divided' (*India Today*, 29 October 2019) <<https://www.indiatoday.in/trending-news/story/bengaluru-family-bullied-for-not-standing-during-national-anthem-internet-is-divided-1613673-2019-10-29>> accessed 03 September 2021

¹⁰ Constitution of India, art 21

¹¹ Madhavi Shukirbaba Sarvade, 'Debate over sitting or standing at a cinema hall whether a violation of right to freedom of speech and expression' (*Legal Services India*) <<http://www.legalservicesindia.com/article/2271/Debate-over-Sitting-or-Standing-at-Cinema-Hall-Whether-Violation-of-Right-to-freedom-of-Speech-and-Expression.html>> accessed 03 September 2021

- **What constitutes respect or disrespect towards the National Anthem?**

Starting with the stance for respect of the National Anthem, even in the 2018 judgment, there has been no provision that concretely demarcates between the respect and disrespect of the National Ideals. The Apex Court has made startling judgments in the matter. The first case being the Bijoe Emmanuel Case.¹² The case asserted that standing up in honour of the national anthem is a sign of respect, and it doesn't matter whether or not it is being sung. This judgment was highly appreciated considering that it did not add a mandate for communities singing the National Anthem which violates their religion.

The Court also relied upon landmark precedents for a better understanding of the case. It was noted that the ideals are 'secular symbols of the nationhood and are bound to be duly respected'¹³. However, with the interim order passed in 2016, the Court took the stricter route which should ideally have been reversed. The rules got more stringent, violative of rights, and cumbersome when it was made compulsory to sing/play the National Anthem and stand in its honour before a film was screened. 2017 added interlocutory applications which eased down the rules from being mandatory to optional, however, still what constitutes respect and what does not is a vague subject.

CONCLUSION

It is indisputable that the ideals of the country have to be respected. In most cases, the patrons do not have an issue in standing up for the National Anthem, but making it mandatory ruins the exact purpose of the case because patriotism must be an inherent emotion, not a forcefully spoon-fed value. In 2003, Shyam Narayan Chouksey also requested the Court to give a flash warning before the National Anthem is screened. This comes under the ambit of *Parents Patriae* jurisdiction, similar to the tobacco ads seen on the screen. This implies that the public cannot make the right judgment and the State has to step up, which is an absurd notion, especially when it comes to patriotism. Therefore, there is no need for legal policing in the subject matter.

¹² *Bijoe Emmanuel & Ors v State of Kerala & Ors* 1987 AIR 748

¹³ *Union of India v Naveen Jindal* (2004) 2 SCC 510

In another application by the same petitioner, ¹⁴it was demanded that National Flag must be hosted on polling booths on voting days. Additionally, he also demanded the flag should be hosted on important dates like 30th January, 13th April, 23rd March, etc. Despite the bonafide intentions behind this petition, it is imperative to realize that state-induced patriotism should be an unfavorable tactic. Moreover, petitions like these make the scope of 'patriotism' ridiculously wide. As stated by Justice D.Y. Chandrachud, *"Where then do we draw the line? Where will this moral policing stop?"*

Therefore, it is essential for the system to develop discretionary provisions when it comes to respecting the National symbols. Also, the country is in a dire need of unambiguous provisions which can be reasonably and liberally interpreted. The indefinite position of the law leads to chaos. Therefore, it is very important to abide by the spirit of justice before the judgment becomes an example of judicial overreach. The case of *Shyam Narayan Chouksey v Union of India* is still an ongoing fight for understanding the realm of 'respect' and striking a balance between freedom of expression and abiding by fundamental duties. The cause behind the case was oneness, patriotism, and democracy which has been fulfilled to some extent. There is still a long way to go.

¹⁴ *Shyam Narayan Chouksey* (n 4)