IJARSCT
ISSN (Online) 2581-9429
International Journal of Advanced Research in Science, Communication and Technology (IJARSCT)
International Open-Access, Double-Blind, Peer-Reviewed, Refereed, Multidisciplinary Online Journal
Impact Factor: 7.53
Volume 4, Issue 3, June 2024

The Landmark Judgments of Supreme Court that Shaped Modern India

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Abstract: *On November 26, 2023, 73 years have passed since the Constitution of India came into force. In this pretext, this article is a review of the judgments given by the honourable Supreme Court of this country, which upheld the freedom of speech and expression, individual dignity, human rights and social justice in modern India*

Keywords: Constitution of India

Case Law No.1:

Bijoe Emmanuel and others Vs. State of Kerala and others (National Anthem Case)[1]

Pursuant to a circular issued by the Director of Public Instruction, Kerala, all the students of the schools in the state of Kerala were made to assemble in one place to sing the National anthem before the commencement of classes every day. Three students of the Jehovah's Witness sect however, refused to sing the national anthem as the they believed that singing the same was against the tenets of their religion. Consequently, the students were expelled from the school. This matter was brought before the apex court under Article 136 of the Constitution of India wherein the court were to decide whether the expulsion of the students from school for not singing the country's national anthem was in fact a violation of the student's right to freedom of conscience and free profession, practice and propagation of religion under Section 25(1) and the right to freedom of speech and expression under Article 19(1)(a). The court were to also decide whether the fundamental duty under Article 51A and Section 3 of the Prevention of Insults to National Honour Act, 1971 were violated by the student's conduct or not. In the current time and age where the question as to whether the singing of the national anthem in education institutions shall be made mandatory is discussed at large with varying views being presented by each the Bijoe Emmanuel case acts as landmark case with respect to the freedom of speech and expression.[2]

Brief facts of the Case

In the Instant case, three students namely, Bijou, Binu Mol, and Bindu Emmanuel belonging to the Jehovah's Witness Sect studying in a school in Kerala while attending the school assembly every day did not sing the national anthem as they bonafidely believed that singing the national anthem was not in conformity with their religious beliefs while their two elder sisters studying in the same school never objected to such practice and sung the national anthem every day. On July 1985 a member of the legislative assembly visited the school and attended the school assembly where he noticed three children standing silently while others sung the anthem, he was of the view that such callous act of the students caused grave disrespect to the national honour of the country. Thus, a commission was set up to investigate the matter at hand. The commission was of the view that the children in question were well behaved ad law abiding citizens who had not been accused of disrespecting the National Anthem earlier. Yet the head master of the school as per the instructions of the Deputy Inspector of Schools expelled the three students. The parents requested the headmistress to allow the children to attend the school until further government order on the said matter is received however, these requests were not paid heed to. As a result of which the father of the expelled students filed a writ petition in the High

[1]1987 AIR 748, 1986 SCR (3) 518
[2]https://legalvidhiya.com/bijoe-emmanuel-v-state-of-kerala-and-ors-a-i-r-1987-sc-748/

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Court of Kerala on grounds that such expulsion was a grave violation of the right to freedom of speech and expression and the right to freedom of religion enshrined under Articles 19 and 25, respectively of the Indian Constitution. The High Court dismissed the case by stating that no words or thoughts in the national anthem were capable of offending religious convictions and thus not singing the national anthem did in fact disregard and tarnish the national honour. Following this decision, the father pursuant to Article 136 of the Constitution, then filed a Special Leave petition before the apex court.[3]

Issues Raised

Whether the circulars issued by the Director of Public Information were violative of Article 25 and Article 19(1)(a) of the Constitution of India, 1950?

Whether the act of the students expelled was a violation of Article 51A of the Constitution of India, 1950, and Section 3 of the Prevention of Insults to National Honour Act, 1971.[4]

Arguments of the Respondents

In the given case the respondents contended that the expulsion of the students was constitutional as the act of the three students not singing the National anthem was disrespectful to the national honour. The respondents argued that the national anthem did not have any words or sentences which were repugnant to, disrespectful, or against the religious tenets of the petitioners thus the expulsion was not violative of Article 25 of the Constitution of India. The respondents further argued that the right to freedom of speech and expression under Article 19(1)(a) of the Constitution of India was subject to reasonable restrictions under sub-section (2) of Section 19 thus, the expulsion of the students was not unconstitutional or arbitrary. Section 3 of the Prevention of Insults to National Honour Act, 1971 endeavours to protect the sanctity of the symbols of national interests including the National Anthem, and National Flag, inter alia. As per the said provision, anyone who prevents the singing of the Indian national anthem or causes disturbance to any assembly engaged in singing may be punished with imprisonment that may extend up to three years or with a fine or both. The respondents contended that the expelled students were liable for the punishment prescribed under Section 3 of the aforementioned act and had also violated Article 51A of the Constitution of India.[5]

Arguments of the Petitioners

The petitioners contended that the students bonafidely believed that singing of national anthem would be against their religious tenets. Further contending that not singing the national anthem and remaining silent was well within the fundamental rights conferred to them under Article 25 and under Article 19(1)(a) of the constitution of India. The petitioners also contended that the students neither violated Article 51A of the Constitution nor Section 3 of the Prevention of Insults to National Honour Act, 1971 as the act of the students was not disrespectful whatsoever towards the national anthem, they stood respectfully while others sang the national anthem. The said provision does not create an obligation on anyone to stand up and sing the anthem nor does it penalize such conduct. The students expelled were law-abiding citizens who had not been accused of disrespecting the national anthem in the past. In light of the aforementioned contentions, the petitioners prayed before the hon'ble court to set aside the expulsion order.[6]

Judgment

In the given case the apex court reiterated that it was proved beyond a reasonable doubt before the court of law that the appellant Jehovah's Witnesses truly and consciously believed that their religion did not permit them to join any rituals except the prayers to Jehovah their God. Even though the appellant's beliefs may seem bizarre and strange, the sincerity of these beliefs was genuine beyond doubt. The court further observed that the petitioners are well behaved and law-

[3] *Ibid.*
[4] *Ibid.*
[5] *Ibid.*
[6] *Ibid.*

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abiding citizens who stood respectfully while others sang the national anthem and would continue to do so in the future and thus their acts were not inconsistent with the fundamental duties enshrined under Article 51A of the Constitution of India nor did it violate Section 3 of the Prevention of Insults to National Honour Act, 1971. The court also cited several judicial pronouncements such as the Ratilal Panachand Gandhi v. State of Bombay, S.P Mittal v. Union of India, inter alia wherein Jehovah's Witnesses incessantly fought for the realization of their beliefs and religious tenets the world over. The court further observed that there are no laws in India that make it mandatory for individuals to sing the national anthem and that the circulars of 1961 and 1970 issued by the Director of Public Information and the punishment for no-conformity with these circulars thereof were in contravention with Article 25 and Article 19 of the Constitution of India. Thus, the said expulsion order was deemed unconstitutional by the Supreme Court of India.[7]

Conclusion

Whether singing the national anthem shall be made mandatory or not is a highly debatable topic which is discussed and deliberated upon incessantly throughout the country. While several contend that singing the National anthem in educational institutions, cinema halls, on important occasions, inter alia brings a sense of cohesiveness and oneness among the masses and that it is a symbol of patriotism which unites all citizens of this great nation. Others believe that whether to sing the national anthem or not shall be the prerogative of the people itself and must not be a mandate as the right to remain silent is also a right bestowed upon the citizens of this country. The people having such view believe that making an individual sing the national anthem against their will is a grave violation of the fundamental rights provided under Part III of the Constitution of India. In the aforementioned case the apex court adopted the latter's view.[8]

Case Law No.2:

State of Maharashtra Vs. Tukaram and others (Mathura Rape Case)[9]

Brief facts of the Case

This case took place in a small area called Desiganj in Maharashtra. The central figure of this case is Mathura, a sixteen-year-old girl. Many people found Mathura having a good time with a local boy from his hometown Desiganj and spread the news to the young boy's house. The elder sister of the boy was asked about his brother and he said that he was in love with Mathura. Enraged by this, the boy's elder sister called Mathura and warned to stay away from her brother. But, the two lovers will not budge for any of this. Finally, the boy's elder sister accused Mathura of theft and filed a complaint at Desiganj police station in Chandrapur District.

On the call of the police, Mathura along with her family members went to Desiganj police station for investigation. The police, who initially threatened Mathura on the complaint of theft, started to play a different drama after learning about her love affair. Two police constables named Tukaram and Ganapath lured Mathura to marry her boyfriend today in the police station if she cooperated with them sexually. A victim of that lure, Mathura was raped by the police in the police station itself. After seeing this rape inside the police station, the family members of Mathura called their villagers and broke up the entire police station. Then the case came before the Chandrapur District Sessions Court. Both the District Court and the Maharashtra High Court ruled in favour of Mathura and sentenced the accused policemen. Challenging this verdict, the rapists appealed to the Supreme Court.

However, the Supreme Court acquitted the two policemen who raped her in the police station, concluding that 'the fact that a sixteen-year-old girl did not scream and did not get a small scratch on her body is not rape'.

Delhi University law students and law professors Upendra Bakshi, Raghunath Kelkar, Lotika Sarkar wrote a letter to the Chief Justice condemning the verdict in the said case. The Chief Justice not only reviewed the judgment, but also saw to it that dozens of amendments were made to the Criminal Law Amendment Act, 1983 relating to rape.

[7] *Ibid.*
[8] *Ibid.*
[9] 1979 AIR 185, 1979 SCR (1) 810

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The Chief Justice said that the sexual assault of a woman cannot be taken lightly simply because she is an accomplice in the rape. The Chief Justice gave new discretion to India's criminal justice system that sexual assaults committed by vested forces by creating a state of fear and adverse circumstances should be treated as rape. This case has shown to a large extent that even the Supreme Court can go astray.

Case Law No.3:

Lakshmi Vs. Union of India[10]

Brief facts of the Case

This is a case where a fifteen-year-old girl who was subjected to a terrible acid attack and beaten to death has moved the Supreme Court through a Public Interest Litigation.

Ayoung girl who had just entered class 10, started being harassed by a local thug who insisted that she confess his love. At first Lakshmi, who somehow managed to endure this initial stage of mental harassment and went to school, began to be attacked by the bully with physical harassment and new forms of perversion. One fateful day in 2013, that young thug pouredliters of acid on Lakshmi and ran away. Lakshmi barely survived the acid attack and she was physically and mentally burnt by this acid attack.

Faced with her tragic life, Lakshmi filed a Public Interest Litigation in the Supreme Court with a few questions:

1. Is the current ten-year sentence for a barbaric act like acid attack, correct?
2. Is acid so easily available to criminals and habitual criminals that there is no control over it?
3. Can't the sale of acid be banned completely?
4. Why is there no proper comfort centre for acid attack survivors in this country?
5. Shouldn't acid attack criminals be given death penalty?
6. Shouldn't the government fully bear the medical expenses of the acid attack and the subsequent days?

- The Public Interest Litigation (PIL) filed by Lakshmi, who was caught in the acid attack, and the questions she asked had caused a great stir in the Supreme Court. This led to urgent amendments to the Indian Penal Code of 1860:

- Section 326A newly inserted.
- The term of punishment extended from ten years to life.
- Accused/offender shall bear the entire cost of medical treatment of acid attack victim.
- If the acid attack victim dies, the sentence can be extended from life to death.
- Central/State Governments to strictly monitor acid buyers and sellers.
- Section 320 of the Indian Penal Code of 1860 treats acid attacks as grievous bodily harm.

Case Law No.4:

Aruna Ramachandra Shanabhaga v. Union of India and others[11]

Brief facts of the Case

Aruna Ramachandra Shanabhaga hails from Haladipura village in Uttara Kannada district of Karnataka. On 25 November 1973, while working as a junior nurse at the King Edward Memorial (KEM) Hospital in Parel, Mumbai, Aruna was severely sexually assaulted by a young ward boy named Sohan Lal. At the time of raping Aruna, Sohan Lal tied a dog-chain around her neck and raped her. Due to this barbaric rape and a tight chain tied to the neck, Aruna's brain became inactive due to lack of oxygen and she suffered cervical cord injury, brain stem contusion and cortical blindness. On this juncture, Aruna was 25 years old and engaged to a doctor from KEM Hospital.

The next morning, a hospital staff informed about Arun's condition to the other hospital staff and the police. The court did not find any traces or evidence of rape on Arun, and Sohan Lala was sentenced to only seven years for assaulting, trespassing and robbing.

[10](2014) 4 SCC 427

[11]AIR 2011 SUPREME COURT 1290, 2011 (4) SCC 454, 2011 AIR SCW 1625.

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Aruna was in a coma at KEM Hospital reaching a vegetative state for a total of 42 years. When Aruna was in a coma at the age of 61, Mubai based author Pinky Virani brought out a book about her. Next, this same Pinky Virani approached the court to legally euthanize Aruna.

It was only after Aruna's case came to court that the facts of euthanasia in force in America, England, and Europe came into much discussion. Pinky Virani had moved the Supreme Court to allow Aruna a legal death through indirect euthanasia and relieve her of four decades of suffering. However, the Dean and Staff of KEM Hospital went to the court as defendants that they should not allow Aruna to be euthanized for any reason. The entire hospital is behind Arun's care and concern. Hospital nurses and doctors are taking care of Arun in shifts. No one felt burdened in the matter of Arun's care, while Pinky said Virani's euthanasia argument was unreasonable and unconstitutional.

Justices Markandeya Katju and Gyan Sudha Mishra were the judges in the said case. Article 21 of the Constitution of India deals with the right of an individual to life and personal liberty. Our Constitution recognizes the right to live, not the right to die. Further, Section 306 of the Indian Penal Code provides for incitement to suicide and Section 309 for attempted to suicide are both offensive and punishable. These two Supreme Court justices opined that taking the life of a person by direct or indirect euthanasia is inhumane and unconstitutional.

(A petition filed by author Pinky Virani in the Supreme Court seeking euthanasia on behalf of Aruna Shanabhaga was dismissed. Aruna died in 2015 at the age of 67 at KEM Hospital in Maharashtra.)

Case Law No.5:

Indian Young Lawyers Association and others Vs. State of Kerala and others[12]

Sabarimala Ayyappaswamy Temple in Pathanamthitta District of Kerala is the most famous temple in India and has the most devotees among the states of South India. The management of the said temple has been denying entry to women for many years due to menstruation. Considering this action of the temple management as inhumane, five women lawyers from Kerala along with many women activists entered the temple. On this occasion they were attacked by many members of the temple administration. They also resorted to physical and mental harassment. On this instance, the State Government of Kerala also sided with the temple management and directly showed its anti-women attitude in a big way.

Lawyers of the Indian Young Lawyers Association filed a case in the Supreme Court against the State Government of Kerala, calling it inhumane and unconstitutional to bar entry to the temple on the grounds of menstruation and womanhood.

A five-judge bench of the Supreme Court comprising Justices Dipak Misra, RF Nariman, DY Chandrachud, AM Khanwalkar and Indu Malhotra gave its final verdict. Of these five judges, four were in favour of women's temple entry, while one was against it. The gist of that judgment is as follows:

"Denying temple entry to women on grounds of femaleness, femininity, menses, stature is a clear violation of Articles 14, 15, 19(1), 21, 25, 25(1) and 26 of the Constitution of India. It is most shocking and inhumane that the respondents State Government of Kerala and Sabarimala Ayyappaswamy Temple Management Board have stated that the denial of entry of women to the temple on the basis of the Kerala Hindu Place of Public Worship Act, 1965 is not a violation of constitutional and human rights.

Menstruation is a biological factor that affects the physical structure of a woman. A woman's menstruation should be looked at scientifically based on the nature and physiological development of the woman. Yet denying women temple entry on the grounds of menstruation is nothing but gender discrimination. If menstruation is to be credited, no woman can enter a single temple in India.

Denial of women entry to Sabarimala Ayyappaswamy temple is a most heinous act by the State Government of Kerala and the temple management."

Justice Indu Malhotra, who was on the five-judge bench, opined that it is better for the court to stay away from sensitive issues like extreme religious sentiments, religious practices and temple entry without any interference.

[12] AIR 2018 SC 243

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(Despite the court ruling in favour of the woman, even today the State Government of Kerala has continued to maintain the status quo on the entry of the Sabarimala Ayyappaswamy temple in Kerala, and complicating the issue).

Case Law No.6:

Gajendra Sharma Vs. Union of India and others[13]

Gajendra Sharma, the plaintiff in this case, had taken a loan of Rs 37,48,000 from ICICI Bank in the form of a home loan. Gajendra Sharma, who was running a small shop and clearing his bank loan, came and hit the storm in the name of Covid-19. The Covid-19 that shook the whole world took the life of Gajendra Sharma. Unable to make a living, unable to pay the home loan, Gajendra Sharma literally fell on the street. Home loan interest kept on increasing. Meanwhile, the Reserve Bank of India issued a new notification. Any kind of huge amount of bank loans should not be repaid immediately. RBI has given an exemption called moratorium for EMI instalments. This was seen by many as a situation of escape from the dilemma. However, the RBI had added some conditions to the moratorium. One of those conditions is that the EMI instalments for the exempted period should be paid without fail in the post-moratorium period.

Challenging these conditions, Gajendra Sharma approached the Supreme Court. A three-judge bench comprising Justices Ashok Bhushan, Subhash Reddy and MR Shah gave the judgment in this case.

"Covid-19 has had a dire impact on the health of Indians and the economic system of the country. In such a situation, it is really a challenging task to lead the country without becoming financially bankrupt. Government's responsibility is to maintain the health and financial condition of the people. In a situation like Covid-19, when the machinery of governance collapses, the government inevitably has to lean towards natural justice. The principle of natural justice rests on Constitutional Morality. The conditions for RBI's moratorium need to be reviewed. Article 21 of the Constitution of India confers on a person's right to life and personal liberty. The government has to stand as a support to the people who have lost hope in life because of health and finance. But the RBI's moratorium clauses have started taking away the hopes of a person's life,"opined the three-judge bench.

Case Law No.7:

Manish Goel Vs. Rohini Goel[14]

Prior to this case, the couple applying to the court for divorce had to complete a mandatory waiting period of six months. Before six months, none of the courts in the country could adjudicate divorce cases on an urgent basis. However, Justice Aftab Alam andJustice Dr. B.S.Chauhan-a two-judge bench of the Supreme Court ordered that "if couples come to the court seeking divorce by mutual consent, such cases can be settled before the waiting for a waiting period of six months."

The same judges bench further observed that "Indian society especially poor middle-class families are looking at family courts and divorce as curse and hell. However, I do not know how and why such opinions arose among the masses. Divorce can give release and rebirth to divorced couples. Especially if the husband and wife come to the family courts for divorce by mutual consent, it should be settled as soon as possible (without waiting for a six-month waiting period)."

Case Law No.8:

Krishnendu Haldar Vs. Visvesvaraya Technological University and others[15]

This is the most important judgment given by the Karnataka High Court on the provision of educational reservation.

The petitioner of this case cannot get a seat under General Merit and in OBC category list in an engineering college affiliated to Visvesvaraya Technological University, Karnataka, and his contention is that"it is more reasonable and constitutional to grant me a seat on the basis of backward class quota. As a Non-Karnataka student, Karnataka's

[13]AIR 2020 SC 863

[14]AIR 2010 SC 1099, 2010 (4) SCC 393, 2010 AIR SCW 1277

[15][2011 (3) SCALE 359], (2010) ILR (Kar) 1735, (2010) 5 KarLJ 675

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reservation policies have hindered me from pursuing higher education." Therefore, he had filed a case in the court asking him to give justice to get higher education in Karnataka.

A two-judge bench of Karnataka HighCourt comprising Justices KL Manjunath and BV Nagarathna opined: "The orders, policies, rules and acts enacted by the Karnataka State Government from time to time regarding reservation for Scheduled Caste, Scheduled Tribe, Backward Class, Minority, Women, Handicapped, Kannada Medium, Project Displaced Person etc., are applicable only to the students of Karnataka and not to the students of other states. In particular, the respective state governments formulate the policies for allotment of seats for professional educational courses to the students of the respective state under reservation. In this case it is more constitutional for students from other states to exercise their reservation rights in their own states. Now reservation policies are not applicable here as anyone can get general seat allotment. It is also a constitutional act of the state governments to safeguard the interest of the students of their state."