AIR 1987 SUPREME COURT 748
(From : 1986 Ker LT 227)
O. CHINNAPPA REDDY AND
M. M. DUTT, JJ.

Civil Appeal No. 870 of 1986, D/- 11-8-1986.

Bijoe Emmanuel and others, Appellants v. State of Kerala and others, Respondents.

(A) Constitution of India, Arts. 19(1)(a), 25(1), 51-A(a) – National Anthem – Non-joining in singing – Not disrespectful – Children of School standing up respectfully when anthem is sung but not joining singing because of their conscientiously held religious faith – Expulsion of children from School for not joining singing of anthem – Is violative of Arts. 19(1)(a) and 25(1). 1986 Ker LT 227, Reversed. (Prevention of Insults to National Honour Act (1971), S. 3).

There is no provision of law which obliges anyone to sing the National Anthem nor it is disrespectful to the National Anthem if a person who stands up respectfully when the National Anthem is sung does not join the singing. It is true Art. 51-A (a) of the Constitution enjoins a duty on every citizen of India "to abide by the Constitution and respect its ideals and institutions, the National Flag and the National anthem." Proper respect is shown to the National Anthem by standing up when the National Anthem is sung. It will not be right to say that disrespect is shown by not joining in the singing.

(Para 9)

Therefore the expulsion of the children from the school who are faithful of Jehovah's witnesses for the reason that because of their conscientiously held religious faith, they do not join the singing of the national anthem in the morning assembly though they do stand up respectfully when the anthem is sung, would be violative of their fundamental rights under Arts. 19(1)(a) and 25(1), especially when it was sought to be done in pursuance of two circulars issued by the Director of Public Instruction, Kerala, having no statutory force. 1986 Ker LT 227, Reversed.

(Paras 22, 24)

Any law which may be made under cls. (2) to (6) of Art. 19 to regulate the exercise of the right to freedoms guaranteed by Art. 19(1)(a) to (e) and (g) must be 'a law' having statutory force and not a mere executive or departmental instruction. Thus the two circulars of September 1961 and February 1970, issued by the Director of Public Instruction, Kerala in which the instructions of general nature regarding National Anthem were given, having no statutory force and being mere departmental instructions, could not form the foundation of any action aimed at denying to citizen's Fundamental Right under Arts. 19(1)(a) and 25(1). Since the two circulars were also not issued in the interest of the sovereignty and integrity of India, the security of the State, friendly relation with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence' they could not again be invoked to deny a citizen's Fundamental Right under Art. 19(1)(a).

(Paras 13, 16, 18)

(B) Constitution of India, Art. 25(1) – Protection under – Jehovah's witnesses – Cannot be denied fundamental right under Art. 25(1) on ground that it is a religious denomination (Observation to the contrary in AIR 1984 SC 51, held obiter).

(Para 23)

(C) Constitution of India, Art. 25 – Interpretation of - Factors to be considered.

Article 25 is an article of faith in the Constitution, incorporated in recognition of the principle that the real test of a true democracy is the ability of even an insignificant minority to find its identity under the country's Constitution. This has to be borne in mind in interpreting Art. 25.

(Para 17)

(D) Constitution of India, Art. 25 – Protection under – When can be claimed.

Notwithstanding the fact that a particular religious belief or practice does not appeal to our reason or sentiment, it would attract the protection of Art. 25 subject, of course, to the inhibitions, contained therein, when the belief is genuinely and conscientiously held

as part of the profession or practice of religion. Our personal views and reactions are irrelevant. (1909) ILR 33 Bom 122, Approved.

(Para 19)

Cases Referred :	**Chronological Paras**
AIR 1984 SC 51 : 1983 Cri LJ 1872	23
AIR 1983 SC 1	19
AIR 1963 SC 1295 : 1963 (2) Cri LJ 329	15, 16
AIR 1962 SC 1166 : 1962 (3) Suppl. SCR 369	16
AIR 1954 SC 282	19
AIR 1954 SC 388	19
1945 Ontario Reports 518, Donald v. Board of Education for the City Hamilton	6, 21
(1943) 67 CLR 116 : (1943) Aus LR 193, Adelaide Company of Jehovah's witnesses v. Commonwealth	5, 18, 19
(1942) 87 Law Ed 1628 : 319 US 624, West Virginia State Board of Education v. Barnette	6, 19, 20, 21
(1939) 84 Law Ed. 1375 : 310 US 586, Minersville School District v. Gobitis	6, 20
(1909) ILR 33 Bom 122 : 10 Bom LR 417	19

Mr. F. S. Nariman, Mr. T. S. Krishnamurthy Iyer, Sr. Advocates, Mr. K. J. John and Mr. M. Jha, Advocates with them for Appellants; G. Viswanatha Iyer, Sr. Advocate, and Mrs. Baby Krishnan, Advocate with him (for Nos. 1 to 3); Mr. P. S. Poti, Sr. Advocate, Mr. E. M. S. Anam and Mr. James Vincent, Advocates with him, for Respondents.

CHINNAPPA REDDY, J. :- The three child appellants, Bijoe, Binu Mol and Bindu Emmanuel, are the faithful of Jehovah's Witnesses. They attend school. Daily, during the morning Assembly, when the National Anthem 'Jana Gana Mana' is sung, they stand respectfully but they do not sing. They do not sing because, according to them, it is against the tenets of their religious faith not the words or the thoughts of the Anthem but the singing of it. This they and before them their elder sisters who attended the same school earlier have done all these several years. No one bothered. No one worried. No one thought it disrespectful or unpatriotic. The children were left in peace and to their beliefs. That was until July, 1985, when some patriotic gentleman took notice. The gentleman thought it was unpatriotic of the children not to sing the National Anthem. He happened to be a Member of the Legislative Assembly. So, he put a question in the Assembly. A Commission was appointed to enquire and report. We do not have the report of the Commission. We are told that the Commission reported that the children are 'law-abiding' and that they showed no disrespect to the National Anthem. Indeed, it is nobody's case that the children are other than well-behaved or that they have ever behaved disrespectfully when the National Anthem was sung. They have always stood up in respectful silence. But these matters of conscience, which though better left alone, are sensitive and emotionally evocative. So, under the instructions of Deputy Inspectors of Schools, the Head Mistress expelled the children from the school from July 26, 1985. The father of the children made representations requesting that his children may be permitted to attend the school pending orders from the Government. The Head Mistress expressed her helplessness in the matter. Finally the children filed a Writ Petition in the High Court seeking an order restraining the authorities from preventing them from attending School. First a learned single Judge and then a Division Bench rejected the prayer of the children. They have now come before us by special leave under Art. 136 of the Constitution.

2. We are afraid the High Court misdirected itself and went off at a tangent. They considered, in minute detail, each and every word and thought of the National Anthem and concluded that there was no word or thought in the National Anthem which could offend anyone's religious susceptibilities. But that is not the question at all. The objection of the petitioners is not to the language or sentiments of the National Anthem : they do not sing the National Anthem wherever, 'Jana Gana Mana' in India, 'God save the Queen' in Britain, the Star-spangled Banner in the United States and so on. In their words in the Writ Petition they say, "The students who are Witnesses do not sing the Anthem though they stand up on such occasions to show their respect to the National Anthem. They desist from actual singing only because of their honest belief and conviction that their religion does not permit them to join any rituals except it be in their prayers to Jehovah their God.

3. That the petitioners truly and conscientiously believe what they say is not in doubt. They do not hold their beliefs idly and their conduct is not the outcome of any perversity. The petitioners have not asserted these beliefs for the first time or out of any unpatriotic sentiment. Jehovah's Witnesses, as they call themselves, appear to have always expressed and stood up for such beliefs all the world over as we shall presently show. Jehovah's Witnesses and their peculiar beliefs though little noticed in this country, have been noticed, we find, in the Encyclopaedia Britannica and have been the subject of judicial pronouncements elsewhere.

4. In 'The New Encyclopaedia Britannica' (Macropaedia) Vol. 10 page 538, after mentioning that Jehovah's Witnesses are "the adherents of the apocalyptic sect organized By Charles Taze Russell in the early 1870", it is further mentioned, "……They believe that the Watch Tower Bible and Tract Society, their legal agency and publishing arm, exemplifies the will of God and proclaims the truths of the Bible against the evil triumvirate of organized religion, the business world, and the state……..The Witnesses also stand apart from civil society, refusing to vote, run for public office, serve in the armed forces, salute the flag, stand for the national anthem, or recite the pledge of allegiance. Their religious stand have brought clashes with various governments, resulting in law suits, mob violence, imprisonment, torture, and death. At one time more than 6,000 Witnesses were inmates of Nazi concentration camps. Communist and Fascist states usually forbid Watch Tower activities. In the U. S. the society has taken 45 cases to the Supreme Court and has won significant victories for freedom of religion and speech. The Witnesses have been less successful in claiming exemptions as ministers from military service and in seeking to withhold blood transfusions from their children."

5. Some of the beliefs held by Jehovah's Witnesses are mentioned in a little detail in the statement of case in Adelaide Company of Jehovah's Witnesses v. Commonwealth (1943) 67 CLR 116 a case decided by the Australian High Court. It is stated,

"Jehovah's Witnesses are an association of persons loosely organized throughout Australia and elsewhere who regard the literal interpretation of the Bible as Fundamental to proper religious beliefs.

"Jehovah's Witnesses believe that God, Jehovah, is the Supreme ruler of the universe. Satan or Lucifer was originally part of God's organization and the perfect man was placed under him. He rebelled against God and set up his own organization in challenge to God and through that organization has ruled the world. He rules and controls the world through material agencies such as organized political, religious, and financial bodies. Christ, they believe, came to the earth to redeem all men who would devote themselves entirely to serving God's will and purpose and He will come to earth again (His second coming has already begun) and will overthrow all the powers of evil.

"These beliefs lead Jehovah's Witnesses to proclaim and teach publicly both orally and by means of printed books and pamphlets that the British Empire and also other organized political bodies are organs of Satan, unrighteously governed and identifiable with the Beast in the thirteenth chapter of the Book of Revelation. Also that Jehovah's Witnesses are Christians entirely devoted to the Kingdom of God, which is "The Theocracy", that they have no part in the political affairs of the world and must not interfere in the least manner with war between nations. They must be entirely neutral and not interfere with the drafting of men of nations they go to war. And also that whenever there is a conflict between the laws of Almighty God and the Laws of man the Christian must always obey God's law in preference to man's law. All laws of men, however, in harmony with God's law the Christian obeys. God's law is expounded and taught by Jehovah's Witnesses. Accordingly they refuse to take an oath of allegiance to the King or other constituted human authority."

The case of Adelaide Company of Jehovah's Witnesses v. Commonwealth (supra) arose out of an action to restrain the Commonwealth of Australia from enforcing the National Security (Subversive Associations) Regulations to the Jehovah's Witnesses.

6. Minersvill School District v. Gobitis, (1939) 84 Law Ed 1375 and West Virginia

State Board of Education v. Barnette, (1942) 87 Law ed 1628 are two cases decided by the American Supreme Court in which Jehovah's Witnesses claimed that they could not be compelled to salute the flag of the United States while reciting pledge of allegiance. In the latter case, Jackson, J. referred to the particular belief of the Witnesses which was the subject matter of that case, as follows:

"The Witnesses are an unincorporated body teaching that the obligation imposed by law of God is superior to that of laws enacted by temporal government. Their religious beliefs include a literal version of Exodus, Chapter XX, verses 4 and 5, which says "Thou shall not make unto thee any graven image, or any likeness of anything that is in heaven above, or that is in the earth beneath, or that is in the water under the earth; thou shalt not bow down thyself to them, nor serve them." They consider that the flag is an "image" within this command. For this reason they refuse to salute it."

Donald v. The Board of Education for the City Hamilton, 1945 Ontario Reports 518 is a case decided by the Court of Appeals of Ontario where the objection by Jehovah's Witnesses was to saluting the flag and singing National Anthem. The Court referred to the following belief of the Jehovah's Witnesses:

"The appellants, father and sons, are affiliated with "Jehovah's Witnesses" and believe that saluting the flag and joining in the singing of the national anthem are both contrary to and forbidden by command of Scripture – the former because they consider the flag an "image" within the literal meaning of Exodus, Chapter XX verses 4 and 5, and the latter because, while they respect the King and the State, the prayer voiced in this anthem is not compatible with the belief and hope which they hold in early coming of the new world, in the government of which present temporal states can have no part."

7. Sheldon v. Fannin,* a case decided by the United States District Court of Arizona also arose out of the refusal of Jehovah's Witnesses to stand when the National Anthem was sung. The Court observed :

"This refusal to participate, even to the extent of standing, without singing, is said to have been dictated by their religious beliefs as Jehovah's Witnesses, requiring their literal acceptance of the Bible as the Word of Almighty God Jehovah. Both precedent and authority for their refusal to stand is claimed to be found in the refusal of three Hebrew children Shadrach, Meshach and Abednege, to bow down at the sound of musical instruments playing patriotic-religious music throughout the land at the order of King Nebuchadnezzar of Ancient Babylon. (Deniel 3 : 13-28) For a similar reason, members of the Jehovah's Witnesses sect refuse to recite this Pledge of Allegiance to the Flag of the United States viewing this patriotic ceremony to be the worship of a graven image. (Exodus 20 : 4-5) However, by some process of reasoning we need not tarry to explore, they are willing to stand during the Pledge of Allegiance, out of respect for the Flag as a symbol of the religious freedom they enjoy. (See Board of Education v. Barnette, (1943) 319 US 624."

It is evident that Jehovah's Witnesses, wherever they are, do hold religious beliefs which may appear strange or even bizarre to us, but the sincerity of their beliefs is beyond question. Are they entitled to be protected by the Constitution ?

8. Article 19(1)(a) of the Constitution guarantees to all citizens freedom of speech and expression, but Art. 19(2) provides that nothing in Art. 19(1)(a) shall prevent a State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by the said sub-clause in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence. Art. 25(1) guarantees to all persons freedom of conscience and the right freely to profess, practise and propagate religion, subject to public order, morality and health and to the other provisions of Part III of the Constitution. Now, we have to examine whether the ban imposed by the Kerala Education Authorities against silence when the National Anthem is sung on pain of expulsion from the school is consistent with the rights guaranteed by Arts. 19(1)(a) and 25 of the Constitution.

9. We may at once say that there is no provision of law which obliges anyone to sing

* Citation not given in copy – Ed.

the National Anthem nor do we think that it is disrespectful to the National Anthem if a person who stands up respectfully when the National Anthem is sung does not join the singing. It is true Art. 51-A(a) of the Constitution enjoins a duty on every citizen of India "to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem." Proper respect is shown to the National Anthem by standing up when the National Anthem is sung. It will not be right to say that disrespect is shown by not joining in the singing.

10. Parliament has not been unmindful of 'National Honour'. The Prevention of Insults to National Honour Act was enacted in 1971. While S.2 deals with insult to the Indian National Flag and the Constitution of India, S. 3 deals with the National Anthem and enacts,

"Whoever, intentionally prevents the singing of the National Anthem or causes disturbance to any assembly engaged in such singing shall be punished with imprisonment for a term which may extend to three years, or with fine, or with both."

Standing up respectfully when the National Anthem is sung but not singing oneself clearly does not either prevent the singing of the National Anthem or cause disturbance to an assembly engaged in such singing so as to constitute the offence mentioned in S. 3 of the Prevention of Insults to National Honour Act.

11. The Kerala Education Act contains no provision of relevance. Section 36, however, enables the Government to make rules for the purpose of carrying into effect the provisions of the Act and in particular to provide for standards of education and courses of study. The Kerala Education Rules have been made pursuant to the powers conferred by the Act. Chapter VIII of the Rules provides for the organization of instruction and progress of pupils. Rule 8 of Chapter VIII provides for moral instruction and expressly says "Moral instruction should form a definite programme in every school but it should in no way wound the social or religious susceptibilities of the peoples generally." The rule goes on to say that 'the components of a high character' should be impressed upon the pupils. One of the components is stated to be 'love of one's country'. Chapter IX deals with discipline. Rule 6 of Chapter IX provides for the censure, suspension or dismissal of a pupil found guilty of deliberate insubordination, mischief, fraud, mal-practice in examinations, conduct likely to cause unwholesome influence on other pupils etc. It is not suggested that the present appellants have ever been found guilty of misconduct such as that described in Chapter IX, Rule 6. On the other hand, the report of the Commission, we are told, is to the effect that the children have always been well-behaved, law-abiding and respectful.

12. The Kerala Education Authorities rely upon two circulars of September 1961 and February 1970 issued by the Director of Public Instruction, Kerala. The first of these circulars is said to be a Code of Conduct for Teachers and Pupils and stresses the importance of moral and spiritual values. Several generalizations have been made and under the head patriotism it is mentioned,

"Patriotism

1. Environment should be created in the school to develop the right kind of patriotisms in the children. Neither religion nor party nor anything of this kind should stand against one's love of country.

2. For national integration, the basis must be the school.

3. National Anthem, as a rule, the whole school should participate in the singing of the National anthem."

In the second circular also instructions of a general nature are given and para 2 of the circular, with which we are concerned, is as follows:-

"It is compulsory that all schools shall have the morning Assembly every day before actual instruction begins. The whole school with all the pupils and teachers shall be gathered for the Assembly. After the singing of the National Anthem the whole school shall, in one voice, take the National Pledge before marching back to the classes."

13. Apart from the fact that the circulars have no legal sanction behind them in the sense that they are not issued under the

authority of any statute, we also notice that the circulars do not oblige each and every pupil to join in the singing even if he has any conscientious objection based on his religious faith, nor is any penalty attached to not joining the singing. On the other hand, one of the circulars (the first one) very rightly emphasises the importance of religious tolerance. It is said there, "All religions should be equally respected."

14. If the two circulars are to be so interpreted as to compel each and every pupil to join in the singing of the National Anthem despite his genuine, conscientious religious objection, then such compulsion would clearly contravene the rights guaranteed by Art. 19(1)(a) and Art. 25(1).

15. We have referred to Art. 19(1)(a) which guarantees to all citizens freedom of speech and expression and to Art. 19(2) which provides that nothing in Art. 19(1)(a) shall prevent a State from making any law, in so far as such law imposes reasonable restrictions on the exercise of the right conferred by Art. 19(1)(a) in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of Court, defamation or incitement to an offence. The law is now well settled that any law which may be made under Cls. (2) to (6) of Art. 19 to regulate the exercise of the right to the freedoms guaranteed by Art. 19(1)(a) to (e) and (g) must be 'a law' having statutory force and not a mere executive or departmental instruction. In Kharak Singh v. State of U.P., AIR 1963 SC 1295 the question arose whether a police regulation which was a mere departmental instruction, having no statutory basis could be said to be a law for the purpose of Art. 19(2) to (6). The Constitution Bench answered the question in the negative and said,

"Though learned counsel for the respondent started by attempting such a justification by invoking S. 12 of the Indian Police Act he gave this up and conceded that the regulations contained in Chap. XX had no such statutory basis but were merely executive or departmental instructions framed for the guidance of the police officers. They would not therefore be "a law" which the State is entitled to make under the relevant Cls. (2) to (6) of Art. 19 in order to regulate or curtail fundamental rights guaranteed by the several sub-clauses of Art. 19(1), nor would the same be "a procedure established by law" within Art. 21. The position therefore is that if the action of the police which is the arm of the executive of the State is found to infringe any of the freedoms guaranteed to the petitioner the petitioner would be entitled to the relief of mandamus which he seeks, to restrain the State from taking action under the regulations."

16. The two circulars on which the department has placed reliance in the present case have no statutory basis and are mere departmental instructions. They cannot, therefore, form the foundation of any action aimed at denying to citizen's Fundamental Right under Art. 19(1)(a). Further it is not possible to hold that the two circulars were issued 'in the interest of the sovereignty and integrity of India, the security of the State, friendly relation with foreign States, public order, decency and morality, or in relation to contempt of Court, defamation or incitement to an offence' and if not so issued, they cannot again be invoked to deny a citizen's Fundamental Right under Art. 19(1)(a). In Kameshwar Prasad v. The State of Bihar, 1962 (3) Supp SCR 369 : (AIR 1962 SC 1166), a Constitution Bench of the Court had to consider the validity of R. 4A of the Bihar Government Servants Conduct Rules which prohibited any form of demonstration even if such demonstration was innocent and incapable of causing a breach of public tranquility. The Court said,

"No doubt, if the rule were so framed as to single out those types of demonstration which were likely to lead to a disturbance of public tranquility or which would fall under the other limiting criteria specified in Art. 19(2) the validity of the rule could have been sustained. The vice of the rule, in our opinion, consists in this that it lays a ban on every type of demonstration – be the same however innocent and however incapable of causing a breach of public tranquility and does not confine itself to those forms of demonstrations which might lead to that result."

Examining the action of the Education Authorities in the light of Kharak Singh v.

State of Uttar Pradesh, (AIR 1963 SC 1295) (supra) and Kameshwar Prasad v. State of Bihar, (AIR 1962 SC 1166) (supra) we have no option but to hold that the expulsion of the children from the school not joining the singing of the National Anthem though they respectfully stood up in silence when the Anthem was sung was violative of Art. 19(1)(a).

17. Turning next to the Fundamental Right guaranteed by Art. 25, we may usefully set out here that article to the extent relevant ;

"25.(1) Subject to public order, morality and health and to the other provisions of this Part, all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion.

(2) Nothing in this article shall affect the operation of any existing law or prevent the State from making any law-

(a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice;

(b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus."

(Explanations I and II not extracted as unnecessary)

Article 25 is an article of faith in the Constitution, incorporated in recognition of the principle that the real test of a true democracy is the ability of even an insignificant minority to find its identity under the country's Constitution. This has to be borne in mind in interpreting Art. 25.

18. We see that the right to freedom of conscience and freely to profess, practise and propagate religion guaranteed by Art. 25 is subject to (1) public order, morality and health; (2) other provisions of Part III of the Constitution; (3) any law (a) regulating or restricting any economic, financial, political or other secular activity which may be associated with religious practice; or (b) providing for social welfare and reform or the throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus. Thus while on the one hand, Art. 25(1) itself expressly subjects the right guaranteed by it to public order, morality and health and to the other provisions of Part III, on the other hand, the State is also given the liberty to make a law to regulate or restrict any economic, financial, political or other secular activity which may be associated with religious practise and to provide for social welfare and reform, even if such regulation, restriction or provision affects the right guaranteed by Art. 25(1). Therefore, whenever the Fundamental Right to freedom of conscience and to profess, practise and propagate religion is invoked, the act complained of as offending the Fundamental Right must be examined to discover whether such act is to protect public order, morality and health, whether it is to give effect to the other provisions of Part III of the Constitution or whether it is authorised by a law made to regulate or restrict any economic, financial, political or secular activity which may be associated with religious practise or to provide for social welfare and reform. It is the duty and function of the Court so to do. Here again as mentioned in connection with Art. 19(2) to (6), it must be a law having the force of a statute and not a mere executive or a departmental instruction. We may refer here to the observations of Latham, C.J. in Adelaide Company of Jehovah's Witnesses v. The Commonwealth, (1943-67 CLR 116) (supra), a decision of the Australian High Court quoted by Mukherjea, J. in the Shirur Mutt case. Latham, C.J. had said :

"The Constitution protects religion within a community organized under a Constitution, so that the continuance of such protection necessarily assumes the continuance of the community so organized. This view makes it possible to reconcile religious freedom with ordered government. It does not mean that the mere fact that the Commonwealth Parliament passes a law in the belief that it will promote the peace, order and good government of Australia precludes any consideration by a Court of the question whether or not such a law infringes religious freedom. The final determination of that question by Parliament would remove all reality from the Constitutional guarantee.

That guarantee is intended to limit the sphere of action of the legislature. The interpretation and application of the guarantee cannot, under our Constitution, be left to Parliament. If the guarantee is to have any real significance it must be left to the Courts of justice to determine its meaning and to give effect to it by declaring the invalidity of laws which infringe it and by declining to enforce them. The Courts will therefore have the responsibility of determining whether a particular law can fairly be regarded, as a law to protect the existence of the community, or whether, on the other hand, it is a law "for prohibiting the free exercise of any religion." The word "for" shows that the purpose of the legislation in question may properly be taken into account in determining whether or not it is a law of the prohibited character."

What Latham, C.J. has said about the responsibility of the Court accords with what we have said about the function of the Court when a claim to the Fundamental Right guaranteed by Art. 25 is put forward.

19. The meaning of the expression 'Religion' in the context of the Fundamental Right to freedom of conscience and the right to profess, practise and propogate religion, guaranteed by Art. 25 of the Constitution, has been explained in the well known cases of The Commissioner, Hindu Religious Endowments, Madras v. Sri Lakshmindra Thirtha Swamiar of Sri Shirur Mutt, (AIR 1954 SC 282); Rati lal Panachand Gandhi v. State of Bombay, (AIR 1954 SC 388) and S. P. Mittal v. Union of India, (AIR 1983 SC 1). It is not necessary for our present purpose to refer to the exposition contained in these judgments except to say that in the first of these cases Mukherjea, J. made a reference to "Jehova's Witnesses" and appeared to quote with approval the views of Latham, C.J. of the Australian High Court in Adelaide Company v. The Commonwealth, (1947-67 CLR 116) (supra) and those of the American Supreme Court in West Virginia State Board of Education v. Barnette, (1942-87 Law Ed 1628) (supra). In Ratilal's case we also notice that Mukherjea, J. quoted as appropriate Davar, J.'s following observations in Jamshedji v. Soonabai, (1909) ILR 33 Bom 122 :

"If this is the belief of the Community and it is proved undoubtedly to be the belief of the Zoroastrian community, – a secular Judge is bound to accept that belief – it is not for him to sit in judgment on that belief, he has no right to interfere with the conscience of a donor who makes a gift in favour of what he believes to be the advancement of his religion and the welfare of his community or mankind."

We do endorse the view suggested by Davar J.'s observation that the question is not whether a particular religious belief or practice appeals to our reason or sentiment but whether the belief is genuinely and conscientiously held as part of the profession or practice of religion. Our personal views and reactions are irrelevant. If the belief is genuinely and conscientiously held it attracts the protection of Art. 25 but subject, of course, to the inhibitions contained therein.

20. In Minersville School Dist. V. Gobitis, (1939) 84 Law Ed 1375 (supra) the question arose whether the requirement of participation by pupils and public schools in the ceremony of saluting the national flag did not infringe the liberty guaranteed by the 14th amendment, in the case of a pupil who refused to participate upon sincere religious grounds. Frankfurter, J. great exponent of the theory of judicial restrain that he was speaking for the majority of the United States Supreme Court upheld the requirement regarding participation in the ceremony of flag salutation primarily on the ground,

"The wisdom of training children in patriotic impulses by those compulsions which necessarily pervade so much of the educational process is not for our independent judgment ……For ourselves, we might be tempted to say that the deepest patriotism is best engendered by giving unfettered scope to the most crochety beliefs……..But the courtroom is not the arena for debating issues of educational policy. It is not our province to choose among competing considerations in the subtle process of securing effective loyalty to the traditional ideals of democracy, while respecting at the same time individual idiosyncracies among a people so diversified in racial origins and religious allegiances : so to hold would in effect make us the school

board for the country. That authority has not been given to this Court, nor should we assume it."

Frankfurter, J.'s view, it is seen, was founded entirely upon his conception of judicial restraint. In that very case Justice Stone dissented and said,

"It (the Government) may suppress religious practices dangerous to morals, and presumably those which are inimical to public safety, health and good order. But it is a long step, and one which I am unable to take, to the position that Government may, as a supposed, educational measure and as a means of disciplining the young, compel affirmations which violate their religious conscience."

Stone, J. further observed :

"The very essence of the liberty which they guaranteed is the freedom of the individual from compulsion as to what he shall think and what he shall say, at least where the compulsion is to bear false witness to his religion."

It was further added :

"History teaches us that there have been but few infringements of personal liberty by the State which have not been justified, as they are here, in the name of righteousness and the public good, and few which have not been directed, as they are now, had politically helpless manners."

We do not think that it is necessary to consider the case of Gobitis at greater length as the decision was overruled very shortly after it was pronounced by the same Court in West Virginia State Board of Education v. Barnette, (1942-87 Law Ed 1628) (supra). Justices Black and Douglas who had agreed with Justice Frankfurter in the Gobitis's case retraced their steps and agreed with Justice Jackson who gave the opinion of the Court in West Virginia State Board of Education v. Barnotte (supra). Justice Jackson in the course of his opinion observed,

"It is also to be noted that the compulsory flag salute and pledge requires affirmation of a belief and an attitude of mind. It is not clear whether the regulation contemplates that pupils forego any contrary convictions of their own and become unwilling converts to the prescribed ceremony or whether it will be acceptable if they simulate assent by words without belief and by a gesture barren of meaning. It is now a common place that censorship or suppression of expression of opinion is tolerated by our Constitution only when the expression presents a clear and present danger of action of a kind the State is empowered to prevent and punish. It would seem that involuntary affirmation could be commanded only on even more immediate and urgent grounds than silence. But here the power of compulsion is invoked without any allegation that remaining passive during a flag salute ritual creates a clear and present danger that would justify an effort even to muffle expression. To sustain the compulsory flag salute we are required to say that a Bill of Rights which guards the individual's right to speak his own mind, left it open to public authorities to compel him to utter what is not in his mind."

Justice Jackson referred to Lincoln's famous dilemma 'must a government of necessity be too strong for the liberties of its people, or too weak to maintain its own existence' and added,

"It may be doubted whether Mr. Lincoln would have thought that the strength of government to maintain itself would be impressively vindicated by our confirming power of the state to expel a handful of children from school. Such oversimplification, so handy in political debate, often lacks the precision necessary to postulates of judicial reasoning. If validly applied to this problem, the utterance cited would resolve every issue of power in favour of those in authority and would require us to override every liberty thought to weaken or delay execution of their policies.

Government of limited power need not be anemic government. Assurance that rights are secure tends to diminish fear and jealously of strong government, and by making us feel safe to live under it makes for its better support. Without promise of a limiting Bill of Rights it is doubtful if our Constitution could have mustered enough strength to enable its ratification. To enforce those rights today is not to choose weak government over strong government. It is only to adhere as a means of strength to individual freedom of mind in

preference to officially disciplined uniformity for which history indicates a disappointing and disastrous end."

Dealing with the argument that any interference with the authority of the school Board would in effect make the Court the School Board for the country as suggested by Justice Frankfurter, Justice Jackson said,

"There are village tyrants as well as village Hampdens, but none who acts under color of law is beyond reach of the Constitution…… We cannot, because of modest estimates of our competence in such specialities as public education, withhold the judgment that history authenticates as the function of this Court when liberty is infringed."

Justice Jackson ended his opinion with the statement,

"If there is any fixed star in our Constitutional constellation, it is that no official, high or petty, can prescribe what shall be orthodox in politics, nationalism, religion, or other matters of opinion or force citizens to confess by word or act their faith therein. If there are any circumstances which permit an exception, they do not now occur to us.

We think that the action of the local authorities in compelling the flag salute and pledge transcends constitutional limitations on their power and invades the sphere of intellect and spirit which it is the purpose of the First Amendment to our Constitution to reserve from all official control."

Sheldon v. Fannin (supra) was a case where the pupils refused even to stand when the National Anthem was sung. We do not have to consider that situation in the present case since it is the case of the appellants and it is not disputed that they have always stood up and they will always stand up respectfully when the National Anthem is sung.

21. Donald v. Hamilton Board Education, (1945 Ontario Reports 518) (supra) was again a case of objection by Jehovah's witnesses to flag salutation and singing the national anthem. Gillanders, J.A., said :

"There is no doubt that the teachers and the school board, in the case now being considered, in good faith prescribed the ceremony of the flag salute only with the thought of inculcating respect or the flag and the Empire or Commonwealth of Nations which events of recent years have given more abundant reason than ever before to love and respect. If I were permitted to be guided by my personal views, I would find it difficult to understand how any well-disposed person could offer objection to joining in such a salute on religious or other grounds. To me, a command to join the flag salute or the singing of the national anthem would be a command not to join in any enforced religious exercise, but, viewed in proper perspective, to join in an act of respect for a contrary principle, that is, to pay respect to a nation and country which stands for religious freedom, and the principle that people may worship as they please, or not at all."

"But, in considering whether or not such exercises may or should, in this case, be considered as having devotional or religious significance, it would be misleading to proceed on any personal views on what such exercises might include or exclude."

After referring to Jackson, J.'s opinion in West Virginia State Board of Education v. Barnette, (1942-87 Law Ed 1628) (Supra) and some other cases, it was further observed,

"For the Court to take to itself the right to say that the exercise here in question had no religious or devotional significance might well be for the Court to deny that very religious freedom which the statute is intended to provide."

"It is urged that the refusal of the infant appellants to join in the exercises in question is disturbing and constitutes conduct injurious to the moral tone of the school. It is not claimed that the appellants themselves engaged in any alleged, religious ceremonies or observations, but only that they refrained from joining in the exercises in question…….To do just that could not, I think be viewed as conduct injurious to the moral tone of the school or class."

22. We are satisfied, in the present case, that the expulsion of the three children from the school for the reason that because of their conscientiously held religious faith, they do not join the singing of the national anthem in the morning assembly though they do stand

up respectfully when the anthem is sung, is a violation of their fundamental right 'to freedom of conscience and freely to profess, practise and propagate religion.'

23. Shri Vishwa Nath Iyer and Shri Potti, who appeared for the respondents suggested that the appellants, who belonged but to a religious denomination could not claim the Fundamental Right guaranteed by Art. 25(1) of the Constitution. They purported to rely upon a sentence in the judgment of this Court in Jagdishwaranand v. Police Commissioner, Calcutta, AIR 1984 SC 51. The question in that case was whether the Ananda Margis had a fundamental right within the meaning of Art. 25 or Art. 26 to perform Tandava dance in public streets and public places. The Court found that Anand Marga was a Hindu religious denomination and not a separate religion. The Court examined the question whether the Tandava dance was a religious rite or practise essential to the tenets of the Ananda Marga and found that it was not. On that finding the Court concluded that the Ananda Marga had no fundamental right to perform Tandava dance in public streets and public places. In the course of the discussion, at one place, there is found the following sentence :

"Mr. Tarkunde, Counsel for the petitioner had claimed protection of Art. 25 of the Constitution, but in view of our finding that Ananda Marga was not a separate religion, application of Art. 25 is not attracted."

This sentence appears to have crept into the judgment by some slip. It is not a sequitur to the reasoning of the Court on any of the issues. In fact, in the subsequent paragraphs, the Court has expressly proceeded to consider the claim of the Ananda Marga to perform Tandava dance in public streets pursuant to the right claimed by them under Art. 25(1).

24. We, therefore, find that the Fundamental Rights of the appellants under Arts. 19(1)(a) and 25(1) have been infringed and they are entitled to be protected. We allow the appeal, set aside the judgment of the High Court and direct the respondent authorities to re-admit the children into the school, to permit them to pursue their studies without hindrance and to facilitate the pursuit of their studies by giving them the necessary facilities. We only wish to add : our tradition teaches tolerance; our philosophy preaches tolerance; our constitution practises tolerance; let us not dilute it.

25. The appellants are entitled to their costs.

Appeal allowed.
