



Constitutional duty to show respect to national anthem: A legislative and judicial response

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Abstract

The national anthem is the torch-bearer of India's national heritage, the deepest root of the patriotism and national-allegiance that the people of this country exhibit, the essence of national honour and the catalyst to the sensation of national pride and promise. This paper deals with the Constituent Assembly Debate (CAD) and the legal and judicial development of 'National Anthem' of India towards fulfillment of Constitutional Duty. This paper also describes the various judicial pronouncements of High courts and Apex Court of India which are related with the Commercial use of National Anthem and the prospect of National Anthem being enlarged, re-written or modified. The research paper also discusses the binding direction to Cinema Hall to play the National Anthem and show respect to National Anthem before the feature film starts.

Keywords: national anthem, fundamental duties, constitution of India, judicial approach

1. Introduction

The National Anthem is the first stanza of the song 'Jan Gan Man', a poem written by the late poet Rabindra Nath Tagore. The National Anthem, for the first time, was sung on December 27, 1911 at the Indian National Congress, Calcutta session and again in January 1912 at the annual event of the Adi Brahma Samaj^[1-2]. At that time, it was relatively unknown except to the readers of Adi Brahma Samaj journal, *Tattwabodhini Patrika*, of which Tagore was the editor.

The newspapers Statesman, Englishman and India wrote the news about the Calcutta session of Indian National Congress. The Statesman wrote "The Bengali poet Rabindranath Tagore sang a song composed by him specially to welcome the Emperor" (Dec. 28, 1911). The Englishman stated "The proceedings began with the singing by Rabindranath Tagore of a song specially composed by him in honour of the Emperor." (Englishman, Dec. 28, 1911). The India wrote "When the proceedings of the Indian National Congress began on Wednesday 27th December 1911, a Bengali song in welcome of the Emperor was sung. A resolution welcoming the Emperor and Empress was also adopted unanimously." (Indian, Dec. 29, 1911).

Questions on the basis of Newspaper headlines were raised as the poem was said to be written in the honour of the Emperor, King George V. When Tagore was told about what was being said about the origin of Jana Gana Mana he said in a letter³ to Pulinbihari Sen dated 20 November 1937 published in Vichitra and Tagore's biography Ravindrajivani:

"A friend influential in the Government circles had importuned me to compose a song in praise of the King. His request had amazed me and the amazement was mingled with anger. It was under the stress of this violent reaction that I proclaimed in the Janaganamana adhinayaka song the victory of that Dispenser of India's destiny who chariots eternally the travellers through the ages along the path rugged with the rise and fall of nations,— of Him who dwells within the heart of man and leads the multitudes. That great Charioteer of man's destiny in age after age

could not by any means be George V or George VI or any George. Even my „loyal“ friend realized this; because, however powerful his loyalty to the King, he was not wanting in intelligence”.

In this way, the legendary poet proved what the real purpose was behind writing the song. Poet Rabindranath Tagore clarified it himself and said that the five stanzas in which the poem was written is addressed to God. The poem is a reflection of the real India as a country -- a confluence of many religions, races, communities and geographical entities. It is a message of unity in diversity. It is a patriotic song.

In 1937, the Working Committee of the Congress appointed a sub-committee to consider the question of a national anthem for India with Abul Kalam Azad, Jawaharlal Nehru, Subhas Chandra Bose and Narendra Dev as its members there arose a controversy as to the relative claims of 'Vande Mataram' and 'Jana Gana mana'. In 1946 Mahatma Gandhi had said as quoted in the 19th May 1946 issue of Harijan, that the song 'Jana Gana mana' has found a place in our national life. It is not only a song but it is like a devotional hymn. As the decades have passed, it has inspired many by arousing their patriotic sentiments when sung in rhythm. It is the representative of the ethos of the country.

2. National Anthem in Constituent Assembly Debate

In the Constituent Assembly of India questions regarding adoption of the national anthem were raised a number of times. The most vocal voices on the subject of 'National Anthem' were of Seth Govind Das, Shri H. V. Kamath, Shri B. Das (Orissa). They were keen to resolve the issues of National Anthem. Friday, the 5th November 1948 Seth Govind Das⁴ express his view on National Anthem:

"Our draft Constitution is silent about our National Anthem. On many occasions our Prime Minister Pandit Jawaharlal Nehru has stated that the final decision on the question of National Anthem would be taken by the Constituent Assembly. But I would also like that a

provision should be included in our Constitution which specifically fixes our National Anthem.”

He further expressed his view in favour of Vande Matram ^[5]:

“As far as the question of National Anthem is concerned, I would say that 'Vande Mataram' can be our National Anthem. The history of our struggle for independence is associated with Vande Mataram. If it be said that its tune is not fit for orchestration I would submit that this is a difficulty which can be overcome by experts in orchestral music.”

Some of the members of Constituent Assembly were in favour of Seth Govind Das' view and demanded that Vande Mataram, written by Bankim Chandra Chatterji, must be declared as a National Anthem and included in the Constitution of India. But the issue of National Anthem was not resolved till 26th November 1949.

On 26th November 1949, when the Constitution of India was adopted, Shri B. Das (Orissa) asked the President of Assembly, Dr. Rajendra Prasad, I would like to know if you are going to make a pronouncement as to whether *Vande Mataram* should be the National Song and what should be our National Anthem. The Assembly President Dr. Rajendra Prasad replied that he was not going to make any announcement then and that the matter will be considered later on, if necessary, by the Assembly when they will meet in January ^[6].

The Constituent Assembly of India adopted the National Anthem on 24th January 1950, when the members of the Constituent Assembly gathered to signing of the final copy of the Constitution. Dr. Rajendra Prasad, President of Constituent Assembly declared ^[7]:

“There is one matter which has been pending for discussion, namely the question of the National Anthem. At one time it was thought that the matter might be brought up before the House and a decision taken by the House by way of a resolution. But it has been felt that, instead of taking a formal decision by means of a resolution, it is better if I make a statement with regard to the National Anthem.”

Accordingly I make this statement ^[8].

“The composition consisting of the words and music known as Jana Gana Mana is the National Anthem of India, subject to such alterations in the words as the Government may authorise as occasion arises; and the song Vande Mataram, which has played a historic part in the struggle for Indian freedom, shall be honoured equally with Jana Gana Mana and shall have equal status with it. I hope this will satisfy the Members.”

The National Anthem has been sung throughout the length and breadth of India, by every patriot, every citizen and all people of this country. It has been sung even in places beyond India.

3. Constitutional Provision

The Constitution of India Part IV-A Fundamental Duties in Article 51(A) Clause (a) provides:

51 A. Fundamental duties. -- It shall be the duty of every

citizen of India--

(a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem."

Article 51-A (a) of the Constitution of India reads as under:-

The Fundamental Duties Part IV-A of the Constitution of India was introduced by the 42nd Amendment Act, 1976, in accordance with the recommendations of the Swaran Singh Committee in order to bring our Constitution in line with Article 29(1) of the Universal Declaration of Human Rights, 1948. The Constitution of India Article 51- A (a) provides a sacrosanct obligation on every citizen to put up with the ideals engrafted in the Constitution. One such ideal is to show respect for the National Anthem and the National Flag. The National Anthem is a hymn or song expressing patriotic sentiments and feelings. The citizens of the country must realize that they live in a nation and are duty bound to show respect to National Anthem which is the symbol of the Constitutional patriotism and inherent national quality.

4. Legislative Provision

The matter of deliberate disrespect incidents occurred after the enforcement of the Constitution of India and on many occasions these incidents were discussed in both the Houses of Parliament and members expressed great anxiety. The members of the parliament urge many times to prevent such incidents and make it as a punishable offence. By this background Union Government prepared a bill in 1971, its Statement of Objects and Reasons to the Prevention of Insults to National Honour Bill, 1971 clarified the necessity of Bill:

“Disrespect to the National Flag and the Constitution or the National Anthem is not punishable under the existing law. Public acts of insults to this symbol of sovereignty and the Integrity of the nation must be prevented. The scope of the law is restricted to overt acts of insult to and attack on, the national symbols by burning, trampling defiling or mutilating in public. It is not intended to prohibit honest and bona fide criticism of the symbols, and express provisions to this effect have been made in the Bill.”

The Indian parliament passed the Prevention of Insults to National Honour Act, 1971 which was enforced on 23rd December, 1971 in whole India. The section 2 of the Act deals with the insults to the Indian National Flag and the Constitution of India while Section 3 deals with the prevention of singing of National Anthem. The Section 3 of the Act also provides punishment for breaching the duty and Section 3-A of the act deals aggravated punishment for subsequent breach of duty.

Prevention of Insults to National Honour Act, 1971 (Act 69 of 1971)

3. Prevention of Singing of National Anthem: Whoever intentionally prevents the singing of the Indian National Anthem or causes disturbances 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.

3a. Minimum Penalty on Second or Subsequent Offence: Whoever having already been convicted of an offence under section 2 or section 3 is again convicted of any such offence shall be punishable for the second and for every subsequent offence, with imprisonment for a term, which shall not be less than one year.

The aforesaid provisions make it crystal clear that the National Anthem is the symbol of sovereignty and integrity of the India. The Government of India, Ministry of Home Affairs issued a circular/order⁹ referring to the National Anthem of India. The said order in Clause 1(1) deals with the full version of the National Anthem and stipulates that play time of the anthem is approximately 52 seconds. Sub-clause (2) of Clause 1 provides the short version of the National Anthem and playing time of the same is about 20 seconds. Sub-clause (3) stipulates about the occasions on which the full version and short version would be played. Clause II deals with the playing of the anthem. On a perusal of the same it is apparent that the same deals with the ceremonial occasions. Clause III deals with the mass singing of the anthem which reads as under: "III Mass Singing of the Anthem (1) the full version of the Anthem shall be played accompanied by mass singing on the following occasions.

1. On the unfurling of the National Flag, on the cultural occasions or ceremonial functions other than parades. (This could be arranged by having a choir of adequate size, suitably stationed, which would be trained to co-ordinate its singing with the band etc. There should be an adequate public audition system so that the gathering in the various enclosures can sing in unison with the choir);
2. On the arrival of the President at any Government or Public function but excluding formal State functions and mass functions and also immediately before the departure from such functions.
3. On all occasions when the National Anthem is sung, the full version shall be recited accompanied by mass singing.
4. The Anthem may be sung on occasions which, although not strictly ceremonial, are nevertheless invested with significance because of the presence of the Ministers etc. The singing of the Anthem on such occasions (with or without the accompaniment of an instruments) accompanied by mass singing is desirable.
5. It is not possible to give an exhaustive list of occasions on which the singing (as distinct from playing) of the Anthem can be permitted. But there is no objection to the singing of the Anthem accompanied by mass singing so long as it is done with due respect as a salutation to the motherland and proper decorum is maintained.
6. In all schools, the day's work should begin with community singing of the Anthem. School authorities should make adequate provision in their programmes for popularizing the singing of the Anthem and promoting respect for the National Flag among students."

Clause IV deals with the playing of Foreign Anthems. As immense emphasis has been placed upon on Clause V, we may profitably quote it:

"V-General

1. Whenever the Anthem is sung or played, the audience shall stand to attention. However, when in the course of a news-reel 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.
2. As in the case of the flying of the National Flag, it has been left to the good sense of the people not to indulge in indiscriminate singing or playing of the Anthem."

The Government of India on 12th March, 2001 has issued the instructions to Chief Secretaries of the State Governments and

Union Territories that the orders relating to the National Anthem and Flag do not have the statutory back up and they are guidelines and advisory in nature and in the said correspondence certain clarification have been mentioned about the singing in schools.

5. Judicial Pronouncements on National Anthem

Through various Judicial Pronouncements in the last three decades by High Courts and Supreme Court of India, the following points have emerged— Right of Silence at the time of singing of the Indian National Anthem, Commercial use of National Anthem, Can National Anthem be enlarged, re-written or modified?, Duty bound to show respect to National Anthem and National Anthem in Court Room are discussed.

5.1 Right of Silence at the time of singing of the Indian National Anthem

In the *Bijoe Emmanuel v. State of Kerala* ^[10] popularly known as the National Anthem case, a circular issued by the Education Department of the Kerala State Government required that the start of the classes in every school on every day should be preceded by an assembly wherein the whole school should join in collectively singing the National Anthem. The three children Bijoe, Binu Mol and Bindu Emmanuel, are the faithful of Jehovah's Witnesses were expelled from school because they were not joining in the daily singing of the national anthem in the school. They attended the school daily, during the morning Assembly, when the National Anthem 'Jana Gana Mana' was sung, they stood respectfully but they did not sing. They did not sing because, according to them, it was against the tenets of their religious faith to sing the National Anthem not the words or the thoughts of the Anthem. They said that their elder sisters who attended the same school earlier had done all these several years.

The children filed a Writ Petition against expulsion from the school in the Kerala 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. Then they approached the Supreme Court of India under special leave petition under Article 136 of the Constitution of India.

The two judges Bench (M.M. Dutt and O. Chinnappa Reddy, JJ.) of Supreme Court of India referred number of foreign cases which were related with Jehovah's Witnesses religious beliefs and came to the conclusion:

"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."

In para 9 of the Judgement, the Court expressed:

"We may at once say that there is no provision of law which obliges anyone to sing 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 Article 51A(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."

The Apex Court had taken note of Article 51-A of the Constitution of India and expressed the view that in no uncertain terms the persons who stand up respectfully to the National Anthem where it is sung shows due respect to the National Anthem

The Apex Court invalidated the expulsion order passed against the children. The Court held that the punitive action taken against them was in violation of their fundamental rights guaranteed under Article 19(1)(a) and 25(1). Parliament has not been unmindful of 'National Honour'. The Prevention of Insults to National Honour Act was enacted in 1971. While Section 2 deals with insult to the Indian National Flag and the Constitution of India, Section 3 deals with the National Anthem and enacts, 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 Section 3 of the Prevention of Insults to National Honour Act.

When judged in the context of Article 19(1)(a) the singing, they had to be in consonance with the requirements of Article 19(2) which defines how and what kind of restrictions can be imposed on the right of speech and expression which had become the right not to speak in the facts of the present case. *First*, the right can be restricted only by law whereas the Court found that the circulars did not have any sanction of law. *Second*, the Court found that the circulars were not related to any of the permissible grounds of restrictions mentioned in Article 19(2). *Last*, it was on its face unreasonable to expel the students who were well behaved, who showed due respect to the national anthem by keeping themselves standing when it was being sung, but only refused to join in the singing purely because of sincere conscientious objection^[11].

5.2 Commercial use of National Anthem

In the case of *Shyam Narayan Chouksey v. Union of India (UOI) and Ors.*^[12] The Bench of M.P. High Court (Dipak Misra and A.K. Shrivastava JJ.) discussed the cases of *K.A. Abbas vs. The Union of India and Anr*^[13], *Raj Kapoor and Ors. Vs. State and Ors*^[14], and *Raj Kapoor vs. Laxman*^[15] and Relied on *Bijoe Emmanuel and Ors. Vs. State of Kerala and Ors*^[16]. Observed:

The national anthem is pivotal and centripetal to the basic conception of sovereignty and integrity of India. It is the marrow of nationalism, hypostasis of patriotism, nucleus of national heritage, substratum of culture and epitome of national honour. In this context it is worth noting that the founding fathers of the Constitution of India had encapsulated in a most vibrant manner in the Preamble of the Constitution the feelings, the needs, the desires and aspiration of a great country. Many an eminent jurists on many an occasion, opined that fundamental rights enshrined in part III of the Constitution of India have inbuilt obligation therein. To elaborate: it has been expressed that rights and duties co-exist. Article 51A was brought by an amendment not to deviate from the path or pave the way of transgression of the national value and unitedly stand together to re-construct the nation as an

ideal one where a citizen does not claim to enforce his right but also solemnly adhere to perform the duty. The Constitution casts a duty on every citizen to abide by the Constitution and respect its ideals and institution and national flag and national anthem.

The court citing the relevant provisions of Cinematograph Act, 1952 Section 5 A, 5B, 8 and 16, prevented the commercial use of National Anthem and directed as under:

- (a) The film 'Kabhi Khushi Kabhi Gham' shall not be shown in any theatre unless the scene which depicts the national anthem is deleted.
- (b) Respondents 4 and 5 shall immediately withdraw the film from all cinema-halls and the theatre owners are restrained from showing the film in the present form.
- (c) The respondent No. 3 shall withdraw the certificate unless the deletion is effected and deleted feature film is shown to the members of the Board as required under the Act and the Rules.
- (d) The aforesaid film shall not be telecasted on national channels and also in any satellite channel without deletion.
- (e) If any video cassette/VCD/DVD is sold in the market without deletion of the national anthem the appropriate authority shall take action against the said persons as permissible in law as it would amount to dealing with an uncensored film.
- (f) No cable operator shall show the movie as long as the national anthem is not deleted as that would tantamount to showing of an uncensored film.

In the *Karan Johar V. Union of India (UOI) and Ors*^[17] the Supreme Court, the appeal filed against the order passed by the High Court of Madhya Pradesh in Public Interest Litigation *Shyam Narayan Chouksey Vs. Union of India (UOI) and Ors* judgment, directing that the film 'Kabhi Khushi Kabhi Gham', produced and directed by the appellants, shall not be shown in any theatre unless the scene which depicts the national anthem is deleted and further the other respondents have been directed to withdraw the film from all cinema halls and the theater owners are restrained from showing the film in its present form. The Apex Court held:

"The national anthem which is exhibited in the course of exhibition of newsreel or documentary or in a film, the audience is not expected to stand as the same interrupts the exhibition of the film and would create disorder and confusion, rather than add to the dignity of the national anthem. We, therefore, set aside the order under challenge."

The Apex court set aside direction/order under challenge in terms of instruction issued by Government of India.

5.3 Can National Anthem be enlarged, re-written or modified?

In *Sanjeev Bhatnagar V. Union of India (UOI) and Ors*^[18], the Petition seeking direction to U.O.I. to delete word Sindh from National Anthem on ground that geographical region known as Sindh was part of pre-partition India and not after partition. The two judge's bench of Apex Court after hearing the Attorney General of India, opined in para 12 and 13 of the judgment:

"A National Anthem is a hymn or song expressing patriotic sentiments or feelings. It is not a chronicle which

defines the territory of the nation which has adopted the anthem. A few things such as -- a National Flag, a National Song, a National Emblem and so on, are symbolic of our national honour and heritage. The National Anthem did not, and does not, enlist the states or regional areas which were part of India at the point of time when it was written. Nor is it necessary that the structure of the National Anthem should go on changing as and when the territories or the internal distribution of geographical regions and provinces undergoes changes. Very recently Uttaranchal, Chhattisgarh and Jharkhand have been carved out by reorganizing certain states. Does it mean that the National Anthem should be enlarged, re-written or modified to include the names of these new states? The obvious answer is no. The National Anthem is our patriotic salutation to our motherland, nestling between the Himalayas and the oceans and the seas surrounding her. The mention of a few names therein is symbolic of our recollection of the glorious heritage of India. 'Sindh' is not just a geographical region. It refers to the place and to its people. Sindhis are spread throughout the country and they derive their such name as having originated and migrated from Sindh. 'Sindh' also refers to the river 'Sindhu' or 'Indus'. It also refers to a culture, one of the oldest in the world and even modern India feels proud of its having inherited the Indus Valley Civilisation as an inalienable part of its heritage. River Indus (Sindhu) finds numerous references in the Indian Classical Literature including Rig Veda. It is a patriotic song. It has since the decades inspired many by arousing their patriotic sentiments when sung in rhythm. It is the representative of the ethos of the country. Any classic, once created, becomes immortal and inalienable; even its creator may not feel like making any change in it. Any tampering with the script of the poem would be showing disrespect to the great poet --- Rabindranath Tagore.”

The court held that the petition is wholly devoid of any merit. The petition is not in public interest. It is a petition which should never have been filed. It is more of the publicity interest litigation wherein the petitioner seems to have achieved his purpose. To discourage the filing of such like petitions which result only in wasting the valuable time of this Court, we direct the petition to be dismissed with costs quantified at Rs.10,000/-

5.4 Duty bound to show respect to National Anthem

In *Shyam Narayan Chouksey Vs. Union of India (UOI)* ^[19] decided on 30.11.2016, the Petitioner seeking direction to the Apex Court to take appropriate steps to specify what would be constituting disrespect and abuse of National Anthem. In the petition, reference was also made to Prevention of Insults to National Honour Act, 1971. Earlier, the Petitioner submitted that it is duty of every person to show due respect and due honour when National Anthem is played or recited or sung. The *Dipak Misra and Amitava Roy, JJ.* Bench of Supreme Court of India observed that when the national anthem is sung, the concept of protocol associated with it has its inherent roots in national identity and integrity and constitutional patriotism. The bench issued several directions *as an interim measure* with regard to Commercial exploitation and dramatized exhibition of National Anthem. The court also issued guideline to Cinema Hall to play the National Anthem before the feature film starts.

The Bench cited Article 51A (a), justified his order and reasoned the order:

“it is clear as crystal that it is the sacred obligation of every citizen to abide by the ideals engrafted in the Constitution. And one such ideal is to show respect for the National Anthem and the National Flag. Be it stated, a time has come, the citizens of the country must realize that they live in a nation and are duty bound to show respect to National Anthem which is the symbol of the Constitutional Patriotism and inherent national quality. It does not allow any different notion or the perception of individual rights that have individually thought of have no space. The idea is constitutionally impermissible.”

The Court directed that the following directions shall be carefully followed:

- (a) There shall be no commercial exploitation to give financial advantage or any kind of benefit. To elaborate, the National Anthem should not be utilized by which the person involved with it either directly or indirectly shall have any commercial benefit or any other benefit.
- (b) There shall not be dramatization of the National Anthem and it should not be included as a part of any variety show. It is because when the National Anthem is sung or played it is imperative on the part of every one present to show due respect and honour. To think of a dramatized exhibition of the National Anthem is absolutely inconceivable.
- (c) National Anthem or a part of it shall not be printed on any object and also never be displayed in such a manner at such places which may be disgraceful to its status and tantamount to disrespect. It is because when the National Anthem is sung, the concept of protocol associated with it has its inherent roots in National identity, National integrity and Constitutional Patriotism.
- (d) All the cinema halls in India shall play the National Anthem before the feature film starts and all present in the hall are obliged to stand up to show respect to the National Anthem.
- (e) Prior to the National Anthem is played or sung in the cinema hall on the screen, the entry and exit doors shall remain closed so that no one can create any kind of disturbance which will amount to disrespect to the National Anthem. After the National Anthem is played or sung, the doors can be opened.
- (f) When the National Anthem shall be played in the Cinema Halls, it shall be with the National Flag on the screen.
- (g) The abridge version of the National Anthem made by any one for whatever reason shall not be played or displayed.

Ministry of Home affairs, Government of India, by its Circular²⁰ no. 14/6/216-Public dated 6 December 2016 directed to all the Chief Secretaries of States/Union Territories for the implementation of the aforesaid order in the whole of India.

5.5 National Anthem in Court

In *Suresh Kumar Gupta Vs. State of U.P. and Ors.* ^[21], the petitioner inspired by the order of the Apex Court *Shyam Narayan Chouksey V. Union of India (UOI)* above discussed case filed a PIL in Allahabad High Court referring to Article 51-A (a) of the Fundamental Duties contained in Part-IV-A of the Constitution of India. The Contention of the petitioner is

that the Courts should rise each morning and begin the day with the singing of the National Anthem. The Court cited the various rules and regulation of Allahabad High Court.

A division bench of Justice Amreshwar Pratap Sahi and Justice Sanjay Harkauli distinguish this case to Shyam Narayan Chouksey case ^[22] (2016) and observed:

“To show respect to the National Anthem is one aspect but to sing it daily in the name of patriotism as a matter of daily routine before discharging official functions either inside the Court or in its offices has never been the practice nor was it introduced ever before. The order dated 30.11.2016 in the case of Sham Narayan Cooksey nowhere gives any indication for such performance either inside Courts or even outside it in its offices. There is no mandate of such a performance, and the High Court being an institution of judicial autonomy, has nowhere framed any such Rules that may run counter to the letter and spirit of a fundamental duty. There is no mandate either under the law for such recital and chanting of the National Anthem on a daily routine basis nor is there any tradition to that effect. We have not been informed of any such practice of any High Court as well throughout the country.”

The court made it clear that there has been no tradition of singing of the national anthem either inside courts or in its offices as a matter of daily routine every day, and to the best of the information to this court, such is also not the practice. The High Courts have been given power to frame their own Rules as they are Courts of Record. The Allahabad High Court has framed its Rules, namely, Allahabad High Court Rules, 1952. The High Court is not only run by Rules but also by deep rooted traditions that have been fostered from times immemorial, and particularly after India has gained independence being governed by the Constitution.

The Allahabad High Court dismissed the petition with the faith and hope that everybody concerned would continue to respect the National Anthem as desired and as expected, but Court unable to issue any compulsive direction of recital of National Anthem in Court room.

6. Conclusions

The true source of right is duty. The Chapter of Fundamental duties in the Constitution provides obligation to the country and community. The Constitution of India casts a communitarian values in the language of duty on every citizen to abide by the Constitution and respect its ideals and institution and national anthem. Reason of insertion of Fundamental duties in Constitution part –IV A to remind us a time has come that, we the people of India, must realize that we live in a nation and are duty bound to show respect to National Anthem, other ideals and institution which is the symbol of the Constitutional Patriotism and inherent national quality. Apart from many other behavioral patterns, duties are also expected from the citizens which are the outcome of various judicial pronouncements and legislative developments of the last three decades.

Perhaps, under trial and error basis, the Apex court has taken an interim decision in relation to the performance of National Anthem in Cinema Hall. But the Court has applied the principle of judicial self-restraint when matter comes to the singing of National Anthem in Court Premises as a daily

routine. The Prevention of Insults to National Honour Act, 1971 and number of circulars of Ministry of Home affairs, Government of India made binding obligation on the people of India to respect National Anthem which is a symbol of sovereignty and the Integrity of the nation. Through judicial pronouncements, it is a well-settled fact that the National Anthem cannot be rewritten, modified or enlarged. The National Anthem is our patriotic salutation to our motherland, nestling between the Himalyas and the oceans and the seas surrounding her. The mention of a few names therein is symbolic of our recollection of the glorious heritage of India. Another dimension related to the National Song, ‘Vande Matram’ was revealed in the course of the study. On Jan 24 1950, Dr. Rajendra Prasad stated that the National Anthem of India and the National song, i.e. Vande Matram would have been honored equally and have equal status. But after the Prevention of Insults to National Honour Act, 1971 was enacted; the National Song lost its equal status as it was not given a place in the Act. Thus, if it is disrespected, there would be no punishment for the offender and the same rule would not apply to the same. The study suggests that an amendment to the Prevention of Insults to National Honour Act must be made and along with the word ‘National Anthem’, ‘the National Song’ must also be included.

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