
IN THE HONORABLE SUPREME COURT OF BHARATH NADU

*Case filed seeking an Order under Article 32 of the
Constitution of Bharath Nadu*

WRITTEN SUBMISSION ON BEHALF OF THE PETITIONERS

Writ Petition (Civil) No. ____ of 2019

United National Congress Party Petitioner No. 1

Raith Mitra Petitioner No. 2

Bharath Nadu Youth Party Petitioner No. 3

Belliyappa Petitioner No. 4

v.

Union of Bharath Nadu Respondent No. 1

Nation Builder Respondent No. 2

*Most respectfully submitted before the Hon'ble Chief Justice and companion
Judges of Supreme Court of Bharath Nadu*

MEMORANDUM ON BEHALF OF THE PETITIONERS

DRAWN AND FILED BY THE COUNSELS FOR THE PETITIONERS

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PRAYER FOR RELIEF XIII

LIST OF ABBREVIATIONS

ABBREVIATION	EXTENSION
&	And
§	Section
¶	Paragraph
AIR	All India Reporter
Anr.	Another
Art.	Article
Assn.	Association
Co.	Company
Const.	Constitution
Coop.	Cooperative
Cri.	Criminal
ed.	Edition
etc.	Etcetera
Hon'ble	Honourable
i.e.	that is
Ltd.	Limited
MLA	Member of Legislative Assembly
MP	Member of Parliament
NCT	National Capital Territory

No.	Number
Ors.	Others
PUCL	People's Union for Civil Liberties
Pvt.	Private
SC	Supreme Court
SCC	Supreme Court Cases
Sec.	Section
U.P.	Uttar Pradesh
UOI	Union of India
v.	Versus
Vol.	Volume

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STATEMENT OF JURISDICTION

The Petitioners i.e. United National Congress Party, Raith Mitra, Bharath Nadu Youth Party and Belliyappa have approached the Hon'ble Supreme Court of Bharath Nadu under Art. 32 of the Constitution of Bharath Nadu.

ART. 32: REMEDIES FOR ENFORCEMENT OF RIGHTS CONFERRED BY THIS PART

- 1. The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guarantee.*
- 2. The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.*
- 3. Without prejudice to the powers conferred on the Supreme Court by clause (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).*
- 4. The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.*

STATEMENT OF FACTS

1. Bharath Nadu is a federal country with a multiparty system and parliamentary form of government, and is considered to have the potential of becoming a world leader.
2. However, the country is also facing certain issues like low literacy rate, farmer suicide and political instability.
3. The Hon'ble Supreme Court, after taking cognizance of a letter written by a prison inmate expressing his concern about flawed electoral practices, constituted a committee to review the Electoral Law and cull out the lacunae in it.
4. On 1st November 2018, the Supreme Court sent this report to the Union Parliament, State Governments and all the political parties for their consideration.
5. Meanwhile the parliamentary elections were declared and Bharath Nadu Janata Party (BNJP) in its election manifesto promised to bring in the reforms recommended by the committee.
6. The party won elections and brought an amendment to the Constitution, by way of which it further brought some major reforms in the Electoral Law.
7. However, the newly introduced amendments were challenged on the following grounds in separate petitions:
 - (a) 104th Constitutional Amendment as violative of Basic structure of the Constitution.
 - (b) Sec. 123(9) of the Representation of the People Act, 1951 as violative of Art. 19(1)(a).
 - (c) Sec. 29D of the Representation of the People Act, 1951 as violative of Art. 19(1)(c).
 - (d) Sec. 168A of the Representation of the People Act, 1951 as violative of Art. 19 and Art. 21.
8. Meanwhile, Nation Builder, an income taxpayers' association welcomed Sec. 123(9) and filed an intervening application, and was thus arraigned as Respondent.
9. The Supreme Court admitted all the petitions and clubbed them together for a common hearing.

STATEMENT OF ISSUES

ISSUE 1

WHETHER OR NOT THE 104TH CONSTITUTIONAL AMENDMENT IS VIOLATIVE OF THE BASIC
STRUCTURE OF THE CONSTITUTION?

ISSUE 2

WHETHER OR NOT SEC. 123 (9) OF THE REPRESENTATION OF THE PEOPLE ACT, 1951 IS
VIOLATIVE OF THE FUNDAMENTAL RIGHTS?

ISSUE 3

WHETHER OR NOT SEC. 29D OF THE REPRESENTATION OF THE PEOPLE ACT, 1951 IS VIOLATIVE
OF ART. 19(1)(C)?

ISSUE 4

WHETHER OR NOT SEC. 168A OF THE REPRESENTATION OF THE PEOPLE ACT, 1951 IS
VIOLATIVE OF THE PETITIONER NO. 4'S FREEDOM OF CONSCIENCE?

SUMMARY OF ARGUMENTS

**CONTENTION 1: THAT 104TH CONSTITUTIONAL AMENDMENT VIOLATES THE PRINCIPLE OF
FEDERALISM EMBODIED UNDER THE DOCTRINE OF BASIC STRUCTURE.**

It is submitted that the provision in question is in violation of Bharath Nadu's federal structure. Art. 172(2) gives the Parliament arbitrary power to alter the term of the State Assemblies, which is the prerogative of the concerned State and is mandated by the Constitution, thus violating the principle of division of powers.

**CONTENTION 2: THAT SEC. 123(9) OF THE REPRESENTATION OF THE PEOPLE ACT, 1951 IS
VIOLATIVE OF THE FUNDAMENTAL RIGHTS.**

It is submitted that Sec. 123(9) is not only superfluous and unclear in objective but also violative of various fundamental rights of the voters including their right to know under the right to freedom of speech and expression, and economic growth and development under the right to life.

**CONTENTION 3: THAT SEC. 29D OF THE REPRESENTATION OF PEOPLE ACT, 1951 IS VIOLATIVE
OF FUNDAMENTAL RIGHT UNDER ART. 19(1)(C).**

It is submitted that it is the fundamental right of citizens to form associations and continue them according to the will and wishes of the establishers. Thus, any kind of unwarranted interference with the same, calls for a violation of the right to form associations.

CONTENTION 4: THAT SEC. 168A IS VIOLATIVE OF THE FREEDOM OF CONSCIENCE.

It is submitted that the Freedom of Conscience, which includes the aspect of political beliefs including the sole decision of the person to be in a party or not, is being violated here. The right not to be in an association is also a Fundamental right being violated in the instant case.

ARGUMENTS ADVANCED

**CONTENTION 1: THAT 104TH CONSTITUTIONAL AMENDMENT VIOLATES THE PRINCIPLE OF
FEDERALISM EMBODIED UNDER THE DOCTRINE OF BASIC STRUCTURE.**

1. It is most humbly submitted before the Hon'ble Court that Article 172(2) of the Constitution of Bharath Nadu, introduced under the (104th Amendment) Act, 2019 is violating the principle of federalism which forms a part of the doctrine of basic structure of the Constitution and is thus, unconstitutional. The Hon'ble SC in *His Holiness Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala*¹ held that the Parliament's constituent power under Art.368 is constrained by the inviolability of the Basic Structure of the Constitution, which is one of the Basic features of the Constitution. The Basic Structure of the Constitution could not be destroyed or altered beyond recognition by a constitutional amendment.
2. In the instant case, the impugned Art. gives the Parliament the power to extend or curtail the term of any of the State Assemblies for a period it deems necessary.² It is submitted that the provision in question is in violation of Bharath Nadu's constitution and its basic structure as Bharath Nadu is a federal country.³ Article 172(2) gives the Parliament arbitrary power to alter the term of the State Assemblies, which is the prerogative of the concerned State and is mandated by the Constitution,⁴ thus violating the principle of division of powers. Any expansion of Art.368 to achieve consequence of total repeal has been held to be violative of the basic structure.⁵

¹ His Holiness Kesavananda Bharati Sripadagalvaru and Ors. v. State of Kerala, AIR 1973 SC 1461.

² Moot Proposition, ¶ 7.

³ Moot Proposition, ¶ 1.

⁴ India Const. art. 172(1).

⁵ Bar Council of India Trust, [Amendment of the Constitution in Constitutional Law of India.](#)

1.1 Meaning of the axiom “Federal” as exercised in Bharath Nadu

3. It is submitted that the Bharath Nadu is a federal state and this principle has also been enshrined under the doctrine of basic structure. In *S.R. Bommai v. Union of India*,⁶ this Court held that the principle of federalism has not been watered down so as to make the Constitution unitary in character. Under the Constitution there is a three-fold distribution of legislative powers between the Union and the States and for that Seventh Schedule to the Constitution divides the subjects of the legislation under the three lists viz. List I (Union List), List II (State List) and List III (Concurrent List).⁷ Moreover, neither the relative importance of the legislative entries in Schedule VII List I over List II of the Constitution nor the fiscal control by the union *per se* is decisive to conclude that the Constitution is unitary.⁸

1.1.1 Federalism as a part of basic structure

4. The power to amend the Constitution is a derivative power. The exercise of such power to amend the Constitution is subject to two limitations, namely, the doctrine of basic structure and lack of legislative competence. The basic structure doctrine provides a touchstone on which the validity of a Constitutional amendment under Art.368 could be judged.⁹

5. The basic structure of the Constitution is to be taken as a larger principle on which the Constitution itself is framed and some of the illustrations given as to what constitutes the basic structure of the Constitution would show that they are not confined to the alteration or modification of any of the fundamental rights alone or any of the provisions of the Constitution.¹⁰ The federal principle is said to be the basis of the Constitution.¹¹ Since the power

⁶ *S.R. Bommai v. Union of India* AIR 1994 SC 1918.

⁷ *State of West Bengal v. Committee for Protection of Democratic Rights*, AIR 2010 SC 1476.

⁸ *Kuldip Nayar v. Union of India*, AIR 2006 SC 3127.

⁹ *Glanrock Estate Private Limited v. State of Tamil Nadu*, (2010) 10 SCC 96.

¹⁰ *Ashok Kumar Thakur v. Union of India*, (2008) 6 SCC 1.

¹¹ *Minerva Mills v Union of India*, AIR 1980 SC 1789.

to amend the Constitution is unlimited, if changes brought about by amendments destroy the identity of the Constitution, such amendments would be void.¹²

6. In the present case in order to introduce the synchronization of elections, the Constitution (104th Amendment) Act, 2019, was passed as a prerequisite. However, it is humbly contended that the amendment rather than introducing a constitutionally valid method to conduct elections which it aimed at doing, has come out to be a deceptively non-federal insertion of provisions infringing state autonomy. It is a settled law that within the sphere allotted to the states they are supreme and the Centre cannot tamper with their powers.¹³ Hence, the basic structure of the Constitution is being whittled down, making the impugned legislative action unconstitutional.

1.2 That Art. 172(2) is an onslaught on the Constitution's Basic structure

7. It is submitted that even though the reform was introduced to address the concern of unjustified burden on the exchequer due to multiple unsynchronized elections, the amendment rather than dividing powers between the Centre and the States, empowers the Centre with all powers, while the States are arbitrarily suppressed. One possible source from which the Parliament seems to have derived this power is Entry 72, List I, Schedule 7 of the Constitution. However, the Centre has failed to give due consideration to the ambit of powers as provided for by the said Entry while also failing to acknowledge an essential constitutional mandate as embodied under Art. 172(1) of the Constitution.
8. It is a settled rule of interpretation that one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute.¹⁴ It is the duty of the courts to avoid “a head on clash”¹⁵ between two sections of the

¹² I.R. Coelho v. State of Tamil Nadu, AIR 2007 SC 861.

¹³ Bar Council in India Trust *Supra*. Note 5.

¹⁴ Punjab Beverages Pvt. Ltd. v. Suresh Chand, AIR 1978 SC 995.

same Act and, “whenever it is possible to do so, to construe provisions which appear to conflict so that they harmonise”.¹⁶ A familiar approach in all such cases is to find out which of the two apparently conflicting provisions is more general and which is more specific and to construe the more general one as to exclude the more specific.¹⁷ If a special provision is made on a certain matter that matter is excluded from the general provision.¹⁸

9. Moreover, it has been authoritatively held that an amendment to the provisions of Constitution would not be sustainable if it violated the basic structure of the Constitution, even though the amendment had been carried out by the procedure contemplated under the Constitution.¹⁹

1.2.1 Insertion of Art. 172(2) in violation of federalism

10. The amendment inserted in the Constitution empowers the Parliament to extend or curtail the term of any state assembly for a period ‘it deems necessary’ for the purpose of synchronizing the elections. This is a direct interference of the Centre in the affairs of the State. Though, undoubtedly, the Constitution exhibits supremacy of Parliament over State Legislatures, yet the principle of federal supremacy laid down in Article 246 of the Constitution cannot be resorted to unless there is an irreconcilable direct conflict between the entries in the Union and the State List.²⁰

11. In order to hold simultaneous national and state elections, all state Assembly polls have to be brought in sync from their present temporal offsets. Thus, certain state assemblies will have to be elected way before their normal term ends while others will last longer than their mandated term of five years. That in itself is unfair to the sovereign democratic mandate given to states in the

¹⁵ Raj Krushna v. Binod Kanungo, AIR 1954 SC 202; Sultana Begum v. Premchand Jain, AIR 1997 SC 1006.

¹⁶ Krishna Kumar v. State of Rajasthan, AIR 1992 SC 1789.

¹⁷ State of U.P. v. Renuagar Power Co., AIR 1988 SC 1737.

¹⁸ State of Bihar v. Yogendra Singh, AIR 1982 SC 882.

¹⁹ Madras Bar Association v. Union of India, AIR 2015 SC 1571.

²⁰ State of West Bengal v. Committee for Protection of Democratic Rights, West Bengal, AIR 2010 SC 1476.

first place, and all this for reasons of cost-cutting and vaguely expressed sentiments about governance efficiency and stability seems to be constitutionally unfounded.

12. The idea of federalism is that of cooperation, however, there is an element of dictatorship in the instant case as there is a virtual veto exercised by the Union at the Centre.

1.2.2 The Amendment is an infringement of the autonomy of the states

13. The Union and the states both derive their authority from the Constitution which divides all powers- legislative, executive and financial, between them. The result is that the states are not delegates of the Union and that, though there are agencies and devices of Union control over the states in many matters- subject to such exceptions, the states are autonomous within their own spheres as allotted by the constitution.²¹

14. It is humbly submitted that the powers, privileges and immunities secured for the State Legislature under Art. 194(3) do not form a law at all, in the juristic sense; actually this corpus is part of the law of the Constitution itself. More so, nor can it be contended that such law is amorphous or unascertainable; though it may be true that certain sources of the law, comprising precedents are not easily available.²² In the instant case it has been clearly mentioned that the power to extend or curtail the term of the state assemblies will be at the discretion of the Parliament. The essence of federal polity is that there is no uncalled for interference by the Centre in the matter of the States which leads to the encroachment of its rights.²³ Since the states are not being given the freedom to decide the functioning of the State assemblies, they are serving as mere puppets at the hands of the Centre and is thus not adhering to the basic structure principal of federalism and should be held unconstitutional.

²¹ D.D.Basu, *Introduction to the Constitution of India*, (21st ed. 2014).

²² C. Subramaniam v. Speaker of Madras, AIR 1969 Mad 10 (FB)

²³ State (NCT of Delhi) v. Union of India, (2018) 8 SCC.

CONTENTION 2: THAT SEC. 123(9) OF THE REPRESENTATION OF PEOPLE ACT, 1951 IS

VIOLATIVE OF THE FUNDAMENTAL RIGHTS.

15. It is humbly submitted before the Hon'ble Court that Sec. 123(9) of the Representation of the People Act, 1951 which mandates the declaration of making enticing promises, giving freebies, loan waivers, etc. in election manifestos as a corrupt practice, is violative of various fundamental rights, thus bringing its validity into question. The courts have time and again held that out of the several rights enumerated in clause (1) of Article 19, the right of sub-clause (a) is not merely a right of speech and expression but right to freedom of speech and expression. The enumeration of other rights is not by reference to freedom.²⁴ These rights have been advisedly set out in broad terms leaving scope for their expression and adaptation, through interpretation, to the changing needs and evolving notions of a free society.²⁵
16. Moreover, according to the Supreme Court of India's doctrine of implied Fundamental Rights, the court asserted that in order to treat a right as a Fundamental Right, it is not obligatory that it must be expressly stated in the constitution as a Fundamental Right. Political, social and economic changes occurring in the country may lead to recognition of new rights and the law in its eternal youth grows to meet its social demands.²⁶

2.1 That the impugned provision is superfluous.

17. It is humbly submitted that the impugned provision has imposed restrictions on the political parties from putting forth their promises in election manifesto, if made 'solely with a view to

²⁴ Dharam Dutt v. Union of India, AIR 2004 SC 1295.

²⁵ People's Union for Civil Liberties v. Union of India, AIR 2004 SC 1442.

²⁶ Unni Krishnan, JP v. State of AP, AIR 1993 SC 2178.

secure votes'²⁷ However, what the Respondent No. 1 has failed to understand is that the expression itself is superfluous and non-implementable for the reason of subjectivity.²⁸

18. It has been concluded by the Hon'ble Apex Court time and again that such provisions are often introduced *ex majore cautela* to quiet the fears of those whose interests are engaged or sympathies aroused in favour of some particular institution.²⁹ It is not uncommon to find the Legislature inserting superfluous provision under the influence of what may be abundant caution.³⁰ Such superfluous provisions cannot lay the foundation for an argument resting on the maxim, '*expressio unius est exclusio alterius*' and the maxim³¹ is inapplicable in such cases. When a provision in the Act owes its origin to a confusion of ideas or to abundant caution, the court reaches the conclusion that the provision is superfluous,³² and should therefore be quashed.

2.2 That it is violative of the freedom of Speech and Expression of Petitioner No. 1

19. It is humbly submitted that freedom of Speech and Expression occupies first place in the list of liberties guaranteed under Art. 19(1)(a) of the Constitution and is the stockade of the democratic process. It has been said that freedom of speech and expression is the mother of all other liberties.³³ Freedom of speech plays an imperative role in the formation of public opinion on social, political and economic matters.³⁴ However, the impugned section lays down a preposterous and arbitrary censor on what a political party can and cannot include in their manifestoes, and thus is in absolute violation of Article 19(1)(a).

²⁷ Moot Proposition, ¶ 8.

²⁸ Biswanath Mallick v. State of Orrisa, 1995 APLJ (Cri) 301.

²⁹ Commissioner for Special Purposes of Income-Tax v. John Frederick Pemsel, (1891) AC 531 (HL).

³⁰ Gokaraju Rangaraju v. State of Andhra Pradesh, AIR 1981 SC 1473.

³¹ State of Karnataka v. Union of India, AIR 1978 SC 68.

³² Shri Gopal Jalan & Co. v. Calcutta Stock Exchange Association, AIR 1964 SC 250.

³³ India Second Press Commission, *Report of the Second Press Commission of India* (Controller of Publications, Vol. I, 1982) 34-35.

³⁴ Unni Krishnan, JP v. State of AP, AIR 1993 SC 2178.

20. It needs to be understood that the manifesto of a political party is a statement of its policy. It is the promise of a future government.³⁵ It is a written statement declaring the issuer's principles, policies or intention,³⁶ and therefore clearly falls under their freedom of speech and expression. Here, "expression" includes the freedom of propagation of ideas, their publication and circulation,³⁷ along with the right to acquire and import ideas and information about matters of common interest.³⁸ The ambit of freedom of expression further extends to the ability to express one's thoughts without government restrictions.³⁹ This freedom becomes even more necessary in a democratic setup where the political parties need to be given an opportunity to put forth their policies to the public so as to be able to effectively exercise their electoral rights.⁴⁰
21. Moreover, it is further submitted that the apex court in *S.R Bommai and Ors. v. Union of India and Ors.*⁴¹, laid down an exhaustive list of restrictions on an election manifesto by clearly holding that the manifesto of a political party should be consistent with these fundamental and basic features of the constitution; secularism, socio-economic and political justice, fraternity, unity and national integrity. Thus, to put any kind of restriction on the election manifestos beyond the grounds laid down by the Hon'ble Supreme Court just goes on to prove its arbitrary nature and its clear contradiction to the functioning of the fundamental freedom laid down under Art. 19(1)(a). Therefore, it is humbly submitted that to let such a legislation stand, would be to allow the Parliament to violate the supremacy of the country's grundnorm.

³⁵ *S.Subramaniam Balaji v. Government of Tamil Nadu and Ors.*, (2013) 9 SCC 659.

³⁶ *Manifesto*, *Black's Law Dictionary*, (8th ed. 2004).

³⁷ *Romesh Thapar v. State of Madras*, AIR 1950 SC 124.

³⁸ *Hamdard Dawakhana v. Union of India*, (1960) 2 SCR 671.

³⁹ *Freedom of Expression*, *Black's Law Dictionary*, (8th ed. 2004).

⁴⁰ *India The Representation of the People Act § 79(d)* (1951).

⁴¹ *S.R Bommai and Ors. v. Union of India and Ors.* AIR 1994 SC 1918.

2.3 That the impugned provision is violative of Fundamental Rights of the farmers

22. It is submitted that the impugned provision is in violation of the farmers' fundamental Right to know, covered under the Right to Freedom of Speech and Expression.⁴² Every voter, whether a farmer or not, has the fundamental right to make an informed choice⁴³ before voting for a particular party.⁴⁴ However, in the instant case, the provision in question, prohibits the parties from putting forth their intention of making positive changes or bringing about welfare schemes for people, in case they come to power,⁴⁵ thus making people exercise their right to vote without having full knowledge of the possible capabilities of the party. This completely defeats their right to make informed choices.
23. It is further submitted that Sec. 123(9) has the potential of paving way for the violation of the Right to Life and thus Livelihood of farmers which is a fundamental right covered under the ambit of the Right to Life and Personal Liberty.⁴⁶ It is essential to take into consideration that the right to livelihood is no more confined to the bare physical survival. Even the distribution of freebies to the needy has been justified to fall under the ambit of basic requirements of livelihood,⁴⁷ and therefore an incidental duty is cast upon a welfare state to fulfil the same in accordance with the Directive Principles of State Policy.⁴⁸
24. It is also submitted that the right to life envisages the right to social justice and economic empowerment as well.⁴⁹ However, the impugned law by curtailing the declaration of policies by the parties, clearly lowers down the standards of accountability and sense of security, and hence is violative of right to life and personal liberty.

⁴² Lok Prahari v. Union of India, AIR 2018 SC 1041.

⁴³ University of Kerala v. Council of Principals of Colleges, (2011) 14 SCC 357.

⁴⁴ People's Union for Civil Liberties v. Union of India, AIR 2003 SC 2363.

⁴⁵ Moot Proposition, ¶ 7.

⁴⁶ Olga Tellis v. Bombay Municipal Corporation, AIR 1986 SC 180.

⁴⁷ Subramaniam Balaji v. Government of Tamil Nadu and Others, (2013) 9 SCC 659.

⁴⁸ India Const. art. 38.

⁴⁹ Ashok Kumar Gupta v. State of U.P., (1997) 5 SCC 201.

**CONTENTION 3: THAT SEC. 29D OF THE REPRESENTATION OF PEOPLE ACT, 1951 IS VIOLATIVE
OF FUNDAMENTAL RIGHT UNDER ART. 19(1)(C).**

25. It is humbly submitted that Art. 19(1)(c) guarantees to the citizens of India the right to form associations or unions or co-operative societies. A political party is an association of individuals pursuing certain shared beliefs. The right to form associations is the very lifeblood of democracy. Without such a right, political parties cannot be formed and without such parties a democratic form of government, especially that of the parliamentary type, cannot be run properly.⁵⁰
26. The Hon'ble Supreme Court in *State of Madras v. V.G. Row*,⁵¹ emphasised that curtailing the right to form associations was fraught with serious potential reactions in political fields. In the present matter, Sec. 29D of the Representation of the People Act, 1951 must be held to be unconstitutional for violating the mandate under Art. 19(1)(c), because the provision vests subjective discretion in the hands of the Election Commission by way of Sec. 29E, and leaves no scope for justifiability on the factual grounds. "The right to form an association" "necessarily implies that the persons forming the association, have also the right to continue to be associated with only those whom they voluntarily admit in the association. Any law by which members are introduced in the voluntary association contrary to the manner in which the founding members intended it to be, it will be a law violating the right to form an association."⁵² Moreover, the provisions as laid down under Sec. 29D and Sec. 29E are mandatory in nature since the use of the word 'shall' raises a *prima facie* presumption that the particular provision is imperative.⁵³

⁵⁰ DMDK v. Election Commission of India, AIR 2012 SC 2191.

⁵¹ State of Madras v. V.G. Row AIR 1952 SC 196.

⁵² Damyanti Naranga v. The Union of India, AIR 1971 SC 966.

⁵³ State of U.P. v. Manbodhan Lal Srivastava, AIR 1957 SC 912; State of U.P. v. Babu Ram Upadhyaya, AIR 1961 SC 751; Sainik Motors, Jodhpur v. State of Rajasthan, AIR 1961 SC 1480; Govindlal Chagganlal Patel v. Agriculture Produce Market Committee, AIR 1976 SC 263.

3.1 That the impugned law causes disturbance to the composition of the party

27. It is humbly submitted that the Hon'ble SC in *S.P. Mittal v. Union of India*⁵⁴ clearly observed that any tampering with the governing body of an association may be said to be the violation of their right to freedom of association. This clearly implies that the term 'composition' within its ambit does not only include the number of persons in an association but also the manner in which they are to be placed within the association.
28. It is further submitted that any law compulsorily altering the composition of the association amounts to a breach of the right to form the association because it violates the composite right of forming an association and the right to continue it as the original members desired it. The right under Art. 19(1)(c) also protects the right to continue the association with its own composition as voluntarily agreed upon by the persons forming the association.
29. Furthermore, if the freedom to choose their representative in the manner the association wants to do it is not vested in the association itself, the right under Art. 19(1)(c) would be meaningless. The right can be effective only if it is held to include within it the right to continue the association with its composition as voluntarily agreed upon by the persons forming the association. If there is any interference with the society, its constitution or composition, the Fundamental Right to form an association may be said to be infringed.⁵⁵ Similarly, the impugned law does not merely regulate the affairs of the political party; it also alters its composition. Any law altering the composition of association compulsorily has been held to be a breach of the right to form the association of the original members guaranteed under Art. 19(1)(c) and such a law cannot be protected under Art. 19(4).⁵⁶

⁵⁴ *S.P. Mittal v. Union of India* (1983) 1 SCC 51.

⁵⁵ *L.N. Mishra Institute of E.D. & Social Change v. State of Bihar*, AIR 1988 SC 1136.

⁵⁶ *Damyanti Naranga v. The Union of India*, AIR 1971 SC 966.

3.2 That the impugned law may have the effect on the recognition of the political party

30. It is humbly submitted that Sec. 29A of the Representation of the People Act, 1951 gives powers to the Election Commission to register or not to register a political party⁵⁷ after looking into several requirements as laid under Sec.29A(5). Through the impugned law, the Parliament has now made it mandatory to practice the method of elections for the leadership position, and has indirectly vested discretion in the hands of the election commission to grant the registration to any political party. It has further been observed that recognition or non-recognition of an association by the government may affect the right to form an association.⁵⁸ Recognising the importance of the right of forming associations in a democratic society, the Courts have not favoured the vesting of absolute discretion in the executive to interfere with the Fundamental Right.⁵⁹
31. In the present matter, formation and pursuance of a political party becomes vitally linked up with government recognition, for without recognition the right to form association becomes illusory. In such a situation, Art. 19(1)(c) would control the power of the government to recognise the associations. These conditions for recognition are held to contravene Art. 19(1)(c).⁶⁰
32. Therefore, it is humbly submitted that the rule in question is neither reasonable nor in the interest of “public order” under Art. 19(4). The restriction is such as to make the right guaranteed under Art. 19(1)(c) illusory since the election commission can refuse recognition of a political party on considerations which might not have any direct or reasonable connection with discipline or efficiency of the political party or the public order.⁶¹

⁵⁷ India The Representation of the People Act, Sec. 29A(7) (1951).

⁵⁸ U.P. Shramik Maha Sangh v. State of Uttar Pradesh, AIR 1960 All. 45

⁵⁹ Bhikhubhai Vithalbai Patel & Ors. v. State of Gujarat & Anr., AIR 2008 SC 1771.

⁶⁰ E.R.E. Congress v. General Manager, E. Rly., AIR 1965 Cal. 389.

⁶¹ O.K. Ghosh v. E.X. Joseph, AIR 1963 SC 812.

CONTENTION 4: THAT SEC. 168A OF THE REPRESENTATION OF PEOPLE ACT, 1951 IS

VIOLATIVE OF THE FREEDOM OF CONSCIENCE.

33. It is humbly submitted before the Hon'ble Court that Sec. 168A of the Representation of the People Act, 1951, is in blatant violation of the Right to Freedom of Conscience. The said right has a wide ambit and is directly in relation to the person's right to choose according to his conscience.⁶² In practical terms the freedom of conscience implies a right to hold or entertain freely any faith or belief in accordance with one's own prudence and consciousness.⁶³ With the same spirit these concepts have been incorporated in the Constitution and are well reflected by many of its provisions *inter alia* Art. 19, 21 and 25.⁶⁴

4.1 That the impugned provision is violative of Art. 19

34. It is humbly submitted that the Freedom of Expression has been held to be vital to the maintenance of a free society and essential to the rule of law and liberty of the citizens.⁶⁵ The Right to freedom of expression as enshrined in Article 19(1)(a) is not and ought not to be confined to expressing something orally in words or in writing.⁶⁶ Even a manifestation of an emotion, feeling, etc. without words would amount to expression.⁶⁷

35. However, in the instant case, the impugned provision, by imposing a sanction on the person's right to choose the political party that he wants to be affiliated with, while evidently being qualified to hold the concerned office, overtly violates the right to choose of the person. Moreover, his right to freedom of conscience which may further fall under the ambit of the Right

⁶² David Feldman *Civil Liberties & Human Rights* (2nd ed. 2000).

⁶³ K.S Puttaswamy v. Union of India (2017) 10 SCC 1.

⁶⁴ Id.

⁶⁵ D.C. Saxena v. Chief Justice of India, AIR 1996 SC 2481.

⁶⁶ Union of India v. Association for Democratic Reforms, AIR 2002 SC 2112.

⁶⁷ State of Karnataka v. Associated Management of English Medium Primary & Secondary Schools, AIR 2014 SC 2094.

to Freedom of Speech and Expression and the Right not to be a part of an association as granted under Art. 19(1)(a) and Art. 19(1)(c) respectively.

36. A fair analogy can be drawn by considering the right to choose of voters, which flows from their right to know,⁶⁸ covered under Article 19(1)(a) which enables them to vote for the political party they wish to vote for, after forming an opinion according to their conscience and best of justice. In the same regard, it was held that nothing is more important for sustenance of democratic polity than the voter making an intelligent and rational choice of his or her representative.⁶⁹ It is submitted that if it is the fair right of voters to vote for the party whose beliefs they support then it is essential that MPs and MLAs also have the right to be in the party whose beliefs they support and making this choice an intelligent and rational one as well as they are ultimately representing the people and not the party.
37. All the citizens have a fundamental right to associate for the advancement of political beliefs and opinions held by them and can either form or join a political party of their choice.⁷⁰ It is thus submitted that the said provision is also violative of Article 19(1)(c) on the ground that right to freedom to form associations includes within its ambit the right not to be a member of an association.⁷¹ In the instant case, a simple resignation will lead to the member being charged with exemplary costs, thus violating his right to withdraw the membership of the association.

4.2 That the impugned provision is violative of Art. 21

38. It is humbly submitted that Sec. 168A infringes the right enshrined under Art. 21 of the Constitution. Art. 21 extends the scope of “personal liberty” to include the right to carry on

⁶⁸ Lok Prahari v. Union of India, AIR 2018 SC 1041.

⁶⁹ PUCL v. Union of India, (2003) 4 SCC 399.

⁷⁰ DMDK v. Election Commission of India, AIR 2012 SC 2191.

⁷¹ Suta Ramacharya v. Senior Dy. Inspector, AIR 1958 A.P. 78.

functions and activities as (they) constitute the bare minimum expression of human self.⁷² This itself lays emphasis on giving all people the basic freedoms to express themselves, including the right to be associated as well as the right to form different beliefs. In the light of the above, an overlapping of distinct fundamental rights has been established to protect certain freedoms under multiple fundamental rights, thus stressing the importance of the said fundamental freedoms.⁷³

39. The Hon'ble SC in *K.S Puttaswamy v. Union of India*⁷⁴ while interpreting the ambit of Freedom of Conscience held that there are areas other than religious beliefs which form part of the individual's freedom of conscience such as political belief etc. which form part of the liberty under Art. 21. Therefore, a man's political beliefs, which further goes on to be a part of his conscience, have been included under the ambit of Art. 21.

40. In the present case, Petitioner No. 4 as per the reasonable exercise of his fundamental freedoms has the right to shift his political affiliations in light of his political beliefs, and any other contravening policy will not only be unconstitutional but also extremely harmful and suffocating for public.⁷⁵ However, the Parliament by way of impugned law has tried to restrict this fundamental freedom without any reasonable ground.

41. Moreover, as an elected representative the Petitioner's accountability lays not only with the political party, but also with the supreme authority of the land, that is, the People.⁷⁶ Therefore, the Petitioner No. 4 should not be arbitrarily curbed while exercising his fundamental freedoms reasonably, and in line with his accountability to the people while also holding-up the basic principles as laid down in the Constitution.⁷⁷

⁷² Francis Coralie v. Administrator, Union Territory of Delhi, AIR 1981 SC 746.

⁷³ Maneka Gandhi v Union of India, AIR 1978 SC 597.

⁷⁴ K.S Puttaswamy v. Union of India (2017) 10 SCC 1.

⁷⁵ Mittal, S.P. v. Union of India (1983) 1 SCC 51.

⁷⁶ State (NCT of Delhi) v. Union of India, (2018) 8 SCC 501.

⁷⁷ Subramanian Swamy v. Union of India (2016) 7 SCC 221.

PRAYER FOR RELIEF

In light of the facts of the case, issues raised, arguments advanced and authorities cited, the Counsels on behalf of the Petitioners humbly pray before the Hon'ble Supreme Court of Bharath Nadu to kindly adjudge and declare that:-

- a) Art. 172(2) is violative of the Basic Structure of the Constitution of Bharath Nadu and therefore shall be struck down.*
- b) Sec. 29D, Sec. 29E, Sec. 123(9) and Sec. 168A of the Representation of the People Act, 1951 are violative of the Fundamental Rights of the Petitioners and therefore shall be struck down.*

AND/OR

Pass any other order which the bench deems fit in the best interest of Justice, Equity and Good Conscience, and for this act of kindness the Counsels on behalf of the Petitioners as in duty bound shall forever pray.

All of which is respectfully submitted

Sd/-

Counsels for Petitioners