

TEAM CODE-94

3rd Surana and Surana Moot and KLE Law College National Constitutional
Law Moot, 2019

IN THE SUPREME COURT OF BHARAT NADU

Petition no- 17/2019

United National Congress Party and Others.....Petitioner

V.

Union of Bharath Nadu and Others.....Respondent

MEMORIAL FOR THE PETITIONERS ON SUBMISSION TO THIS
HON'BLE SUPREME COURT OF BHARAT NADU

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STATEMENT OF JURISDICTION

The Petitioners have approached the Supreme Court of Bharat Nadu under the writ jurisdiction under Article 32 of the Constitution of Bharat Nadu.

SYNOPSIS OF FACTS

Bharath Nadu is a federal country with a multiparty system and Parliamentary form of govt. The Country had been facing political instability due to defections, corruptions, split in the political parties, etc. since the last two decades.

The Supreme Court of Bharath Nadu, as a response to a letter written by a prison inmate, stressed on the need for reforms in the Electoral Law and constituted a committee under the chairmanship of former Justice Radhakrishnan to review the Electoral Law and submit a report to the Court. In the report, the Committee said that the present Electoral Law is not in tune with the Constitutional values and stressed on the need for reforms.

The Supreme Court sent the report of the Committee to Union govt., State govt. and all other political parties on 1st Nov., 2018. The Bharat Nadu Janata Party (BNJP) won the Parliamentary elections and introduced reforms such as 104th Constitutional Amendment, as well as, Sections 123 (9), 29D, 29E and 168A in the “Representation of People Act, 1951” with huge support from the public.

The United National Congress Party (UNCP) challenged the 104th Constitutional Amendment as violative of the basic structure of the Constitution of Bharath Nadu and Section 123 (9) of the Act as a violation of Article 19 (1) (a). The Bharath Nadu Youth Party (BNYP) challenged Section 29D of the Act as violative of Article 19 (1) (c) of the Constitution. Mr. Belliyappa challenged Section 168A of the Act as violative of his freedom of conscience. Raith Mitra (a farmers’ association) challenged Section 123 (9) of the Act as anti-farmer and violative of fundamental rights of the farmers.

Nation Builders (an income tax payer association) submitted an intervening application supporting Article 123 (9) of “the Act”

STATEMENT OF ISSUES

- I) The 104th Constitutional Amendment is violative of the “Basic Structure” of the Constitution of Bharat Nadu.
- II) Section 29D and 29E of the “Representation of the People Act, 1951” violates Article 19 (1) (C) of the Constitution.
- III) Section 123 (9) is a violation of Fundamental Right under 19 (1) (A).
- IV) Section 168A is violative of “Freedom of conscience” under Article 25 of the Constitution.

SUMMARY OF ARGUMENTS

I. THE 104TH CONSTITUTIONAL AMENDMENT IS VIOLATIVE OF THE BASIC STRUCTURE OF THE CONSTITUTION OF BHARATH NADU.

104th Constitutional Amendment is in violation of the basic features of the Constitution the federal system of governance of the country and run contrary to the spirit of democracy which provides for fair, free and periodic elections.

II. SECTION 29D AND 29E OF THE REPRESENTATION OF THE PEOPLE ACT, 1951 VIOLATES ARTICLE 19(1)(C) OF THE CONSTITUTION.

Article 19(1)(c) of the Constitution is being violated by the insertion of Sections 29D and 29 E as it defies the members of the political party the right to choose their leader and does not fall within the purview of reasonable restrictions provided under Article 19(4).

III. SECTION 123(9) IS A VIOLATION OF FUNDAMENTAL RIGHT UNDER 19(1)(A).

Section 123(9) violates Freedom of speech and expression of the political parties guaranteed under Article 19(1)(a) to express freely. Furthermore, the legislative act does not fall within the purview of reasonable restriction provided under Article 19(2).

IV. SECTION 168A IS VIOLATIVE OF FREEDOM OF CONSCIENCE UNDER ARTICLE 25 OF THE CONSTITUTION.

Insertion of Section 168A in the Representation of people's act, 1951 violates Freedom of conscience which forms an essential part of Article 25 of the Constitution. Furthermore, it curtails the freedom of speech and expression in form of debates in the Parliament and additionally reduces individual accountability of legislators to their constituency.

BODY OF ARGUMENTS

I) THE 104TH CONSTITUTIONAL AMENDMENT IS VIOLATIVE OF THE BASIC STRUCTURE OF THE CONSTITUTION OF BHARATH NADU.

1. The 104th Amendment is violative of Federalism as a Basic Feature of the Constitution (A). The 104th Amendment is violative of the Principles of Democracy (B).
2. The Basic Structure doctrine is an Indian judicial principle that the Constitution of India has certain basic features that cannot be altered or destroyed through Amendments by the Parliament.¹ Article 368 of the Constitution of Bharath Nadu gives the power to the Parliament to amend the Constitution. The Apex Court held that so far as the power to amend the Constitution under Article 368 is concerned, “one cannot legally use the Constitution to destroy itself”, as the doctrine of Constitutional identity requires.²

A) The 104th Amendment is violative of Federalism as a basic feature of the Constitution.

3. The Federal set-up of the country has always been recognized as a basic feature of the Constitution.³
4. Federalism lies in distribution of powers between the Federation or the Union and the States or, the Provinces, each organized and controlled by the Constitution.⁴ Federalism, therefore, is a concept which unites separate States into a Union without sacrificing their own fundamental political integrity.⁵
5. The Petitioner contends that Bharath Nadu is a Federal country with Parliamentary form of Government and Multi Party system.⁶

¹ S.R. Bommai v. Union of India, (1994) 3 SCC 1; Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

² Minerva Mills Ltd. and Ors. v. Union of India and Ors, AIR 1980 SC 1789.

³ Kesavananda Bharati v. State of Kerala, AIR 1973 SC 1461; Minerva Mills Ltd. v. Union of India, AIR 1980 SC 1789; P.V Narsimha Rao v. State, AIR 1998 SC 2120.

⁴ S.R. Bommai v. Union of India, (1994) 3 SCC 1; Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

⁵ S.R Bommai v. Union of India, AIR 1994 SC 1918.

⁶ Moot Proposition, ¶1.

6. Syncing all elections to the Parliamentary election is an indirect attack at the roots of the federal structure which forms a fundamental part of the Indian Constitution.⁷ Simultaneous elections undermine the federal nature of the Constitution which provides for two separate bodies and separate elections for both the Parliament and the state assemblies.⁸ Additionally, the Petitioner contends that synchronized polls introduced by the Parliament through the current Amendment strikes at the heart of the Constitution as it makes major changes to the Federalism governing Centre-State ties and expands the powers of the president. 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 first place.
7. Further, synchronized election leads to yet another opportunity to the federal Government to impose President's rule in states under Article 356 of Constitution, thereby taking away the power of states to govern them.⁹ In *S.R Bommai v. Union of India*¹⁰, the SC has stated guidelines to be followed for imposition of president's rule and held that such rule should only be imposed in the rarest and rarest of situations, however the current Amendment shall turn clock back from the Federalism that the Supreme Court protected through its judgment. Additionally, the Petitioner contends that Application of President's rule in case of failure of legislators to form a Government will be negation of people's right and it shall

⁷ Aadrita Das, *Introduction of Simultaneous Elections to National and State Legislatures*, RGICS. I. B.3, 9 (2017), <https://www.rgics.org/wp-content/uploads/policy-issue-briefs/Issue-Brief-Introduction-of-Simultaneous-Elections-October-2017.pdf>.

⁸ *Id.*

⁹ N. Bhaskara Rao, *Are simultaneous polls good for governance?*, THE TRIBUNE (Mar. 15, 2019, 9:29 PM), <https://www.tribuneindia.com/news/comment/are-simultaneous-polls-good-for-governance/576674.html>.

¹⁰ *S.R. Bommai v. Union of India*, (1994) 3 SCC 1.

also dilute the spirit of Representation of People Act, 1951, and will lead to political and administrative corruption.

8. Additionally, synchronization shall lead to the risk of national pan-Indian parties overshadowing smaller regional parties and thus the emergence of a hierarchy between the states and the centre which leads to undermining the federal structure of the Constitution.¹¹
9. Therefore, it is submitted that the current Amendment seeks to interfere with the power of the state legislative assembly to conduct their own elections and by doing so has rendered Federalism as a Basic Structure infructuous.

B) The 104th Amendment is violative of the principles of democracy.

10. The Preamble to the Constitution of India makes democracy as an essential feature of the Constitution.¹² The provisions of Constitution have to be read in light of the Preamble.¹³ The courts have time and again held democracy as a Basic Structure of the Indian Constitution, which prohibits any derogation from it.¹⁴
11. The spirit of democracy lies in an elaborate mechanism of checks and balances imposed on every tier of Government through frequent elections and by-elections.¹⁵ Democracy in its real sense is about ensuring accountability to the people.
12. The Petitioner contends that one of the fundamental disadvantages that arise out of synchronizing elections is the clear dominance of national agenda. Overshadowing these parties and the regional agendas by putting the spotlight on national is harmful to the representative character of democracy¹⁶ which leads to affecting the behavior of voters in favor of the national agenda which undermines democracy.

¹¹ N Bhaskara Rao, *supra* note 9.

¹² INDIA CONST, preamble.

¹³ Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

¹⁴ S.R. Bommai v. Union of India, (1994) 3 SCC 1; Kesavananda Bharati v. State of Kerala, (1973) 4 SCC 225.

¹⁵ Aadrita Das, *supra* note 7.

¹⁶ Aadrita Das, *supra* note 7.

13. Further, it is an essential feature of democracy that a Government may choose to dissolve itself, or a Government may fall if it loses its majority, and then the governor, acting on behalf of the president of the republic, will be obliged either to ask another combine to form a Government, or must perforce call fresh elections.¹⁷ But, in case of synchronized elections, keeping a moribund assembly in a state of suspended animation while the governor rules the state, presumably under guidance from the Centre, until the next predetermined election date rolls around, is nothing other than anti-democratic in spirit.¹⁸
14. Under the Constitution of Bharath Nadu, a Constitutional authority was created under Article 324 for the superintendence, direction and conduct of elections.¹⁹ This body, called the Election Commission, is totally independent and impartial body. Holding periodic, free and fair elections by the Election Commission are part of the Basic Structure.²⁰ Democracy is a part of the Basic Structure of our Constitution; and rule of law and free and fair elections are basic features of democracy.²¹ Additionally, the Petitioner contends that frequent elections also evaluate the representatives and the party to which the representative belongs and ensures that the Government is in tune with the realities and people have a chance to voice their feedback. This spirit of democracy is lost due to synchronization of elections.
15. Therefore it is submitted that as the Amendment seeks to overshadow the claims of regional parties and are against the idea of fair, free and periodic elections, and hence it is violative of the basic principles of democracy enshrined in the Constitution.

¹⁷ Vivek Dehejia, *Simultaneous elections are a bad idea*, LIVEMINT (Mar. 16, 2019, 10:00 PM), <https://www.livemint.com/Opinion/MgitLxJasfNAbKDhnCQgUJ/Simultaneous-elections-are-a-bad-idea.html>.

¹⁸ *Id.*

¹⁹ INDIA CONST. art. 324.

²⁰ Special Reference No. 1 of 2002. In re (Gujarat Assembly Election Matter), AIR 2003 SC 87; Indira Nehru Gandhi v. Raj Narain, AIR 1975 SC 2299.

²¹ Kihoto Hollohan v. Zachilhu, AIR 1993 SC 412.

II) SECTION 29D AND 29E OF THE REPRESENTATION OF THE PEOPLE ACT, 1951 VIOLATES ARTICLE 19(1)(C) OF THE CONSTITUTION.

16. Restrictions imposed on Article 19(1)(c) does not fall under the purview of Article 19 (4) of the Indian Constitution(A). “Right to Privacy” of the members of the political parties has been violated due to the unreasonable restrictions imposed by Section 29 D & E of “The Act”(B).

A) Restrictions imposed on Article 19(1)(c) do not fall under the purview of Article 19 (4) of the Indian Constitution.

17. A political party is a voluntary association for a lawful purpose, since it is essential for the operation of a democracy²² and would therefore come under the protection of Art. 19(1)(c). Hence, any restrictions which the State seeks to impose upon a political party must, in order to be valid, be a reasonable restriction within the purview of Clause (4) of Art. 19. According to Clause (4) of Art. 19, an individual’s right to freedom of association can be curtailed only on of public order²³ where speech or behavior could Constitutionally be declared seditious if violence or a call to violence was involved²⁴, sovereignty and integrity of the state²⁵ that preaches danger to cession of any part of the territory²⁶ and decency and morality which imposes restrictions on depraved and corrupt actions or behaviour which include acts of obscenity. Restrictions imposed by the Amendment of the Representation of the People Act, 1951 are not in adherence with any of the principles of “reasonable restriction” as mentioned in Clause 4 of Article 19 of the Indian Constitution.

²² A.P.H.L.C. Shillong v. Sangma, AIR 1977 SC 2155.

²³ Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955.

²⁴ Chintaman Rao v. State of MP, AIR 1951 Madras 147.

²⁵ Kanhaiya Kumar v. Jawaharlal Nehru University and Anr., W.P. (C)-7902/2016.

²⁶ Dr. Subhash C. Kashyap, volume 1, pg 584.

Additionally, as held in the case of *Diva Jcaran Nair v. State of Travancore-Cochin*²⁷, the test of reasonableness is limited to the provisions of Clause 4 of Art. 19 and it is not permissible to go beyond that. Therefore, the fundamental right of “Right to Association” of the members of the political party is being unjustly hampered.

18. Additionally, there is no direct nexus between selection of leader and public faith as the public vote for party and not for the leader. There is also no maintenance of public interest in controlling the election of leaders and confining it to democratic purposes only. It was held in the case of *Damyanti v. Union of India*²⁸ that if any Act changes or disrupts the composition of the association and takes away the rights of the members of regulating it, then it can be declared Unconstitutional or invalid. Hence, it can be concluded that the restrictions imposed by the Sections in contention of the Representation of the People Act, 1951 are not in compliance with any of the established provisions of “reasonable restriction”, and hence are violating the rights of the party members.

B) That the Sections 29D and 29E of “the Act” are in violation of the “Right to Privacy” of the citizens of the country.

19. The “Right to Association” does not merely include the right to form companies, societies, trade unions and partnerships. It also entails the right to form political parties. Since the right to form a political party comes under the ambit of “Right to Privacy”, the right of the members of the said political party to choose their leader in whichever way they deem fit also comes under their “Right to Privacy”. Election of party leader is an internal party matter and hence, imposition of rules by the Parliament in the procedure of election of the leadership of a political party violates their “Right to Privacy”. Also, the decision of

²⁷ *Diva Jcaran Nair v. State of Travancore-Cochin*, AIR 1956 SC 99.

²⁸ *Damyanti v. Union of India*, 1971 AIR 966.

making supervision of Election Commission mandatory during the election of the party leaders is also a clear violation of privacy rights of said party members.

20. The judgment in *K.S. Puttaswamy v. Union of India*²⁹ (which established that “Right to Privacy” is a fundamental right protected under Articles 14, 19 & 21 of the Indian Constitution) clearly laid down a link between “Right to Association” and “Right to Privacy” as follows: “I do not think that anybody would like to be told by the State as to what they should eat or how they should dress or whom they should be associated with either in their personal, social or political life. Freedom of social and political association is guaranteed to citizens Under Article 19 (1) (c). The decision-making process regarding the freedom of association, freedoms of travel and residence are purely private and fall within the realm of the right to privacy. It is one of the most intimate decisions.”
21. Furthermore, cases such as *I.R. Coelho v. State of Tamil Nadu*³⁰ and *Bacchan Singh v. State of Punjab*³¹ recognize “Right to Privacy” as presupposed by the Preamble and Part III of the Constitution and further as a natural right and international human right.

III) SECTION 123(9) IS A VIOLATION OF FUNDAMENTAL RIGHT UNDER 19(1)(A).

22. Section 123(9) is an unreasonable restriction on Freedom of Speech and Expression under Article 19(2) of the Constitution (A). It is common knowledge that everything mentioned in the manifesto is not fulfilled (B). Section 123(9) is against the fundamental rights of the farmers under Article 21 of the Constitution (C).

A) Section 123(9) is an unreasonable restriction on Freedom of Speech and Expression under Article 19(1)(a) of the Constitution.

²⁹ K.S. Puttaswamy and Ors. v. Union of India and Ors, W.P. (C)- 494/2012.

³⁰ I.R. Coelho v. State of Tamil Nadu, AIR 2007 SC 861.

³¹ Bacchan Singh v. State of Punjab, AIR 1980 SC 898.

23. Freedom of expression means the right to express ones convictions and opinions freely, by word of mouth, writing, printing, through picture or in any other manner.³² They are incapable of being taken away or abridged. Petitioners contend that restrictions put in Section 123(9) are unnecessary and hinder the right to free and fair opportunity to Political Parties.
24. Restriction put under 123(9) is an unreasonable restriction as a manifesto is merely a policy of a political party and not a promise. This was reiterated in the landmark judgment of *S. Subramaniam Balaji v. Government of Tamil Nadu (2013)*³³ The Supreme Court held that the manifesto of a political party is a statement of its policy and the question of implementing the manifesto arises only if the political party forms a Government and is not a promise of an individual candidate and the provisions of the Representation of The People's Act, 1951 clearly draw a distinction between an individual candidate put up by a political party and the political party as such and the provisions of the Act as they exist place no fetter on the power of the political parties to make promises in the election manifesto.³⁴ Hence, court held that the promises in the election manifesto cannot be read into Section 123 for declaring it to be a corrupt practice. Thus, promises in the election manifesto do not constitute as a corrupt practice under the prevailing law.³⁵
25. Article 123(9) is Unconstitutional on the grounds that the legislative assembly is encroaching on the Rights and Freedom of Political Parties by putting a restriction on Election Manifestos. Policy formulations are the true reflections of a Political Party and restrictions under Article 19(2) cannot be extended to formulation of Manifestos.

³² 4 DD BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 2383 (LexisNexis 2014).

³³ *S. Subramaniam Balaji v. Government of Tamil Nadu*, (2013) 9 SCC 659.

³⁴ *Mithilesh Kumar Pandey v. Election Commission Of India & Ors*, W.P. (C)- 1950/2014.

³⁵ *Prof. Ramchandra G. Kapse v. Haribansh Ramakbal Singh*, (1996) 1 SCC 206.

26. Additionally, freebies given out by political parties are not just in the form of laptops or television sets. Political parties are also known to give out scholarships, made pakka houses, loan waivers which is a quick aid received by the poor and the lower class. Schemes introduced for imparting education to all the masses and reducing the burden on farmers caused due to climate change, soil erosion or farm loans usually have weak implementation. Freebies are an excellent way to aid these Sections of the society.
27. Article 32 is an important and integral part of the Basic Structure of the Constitution. It is meaningless to confer fundamental rights without providing an effective remedy for their enforcement if they are violated.³⁶ Under Article 32, the Supreme Court should provide remedy by rendering Section 123(9) as Unconstitutional on the grounds of violation of freedom of speech and expression under Article 19(1)(a).

B) It is common knowledge that everything mentioned in the manifesto is not fulfilled.

28. Election manifestos usually comprise a mix of straightforward sops, specific promises and vague letters of intent. It is common knowledge to the voters that everything written in a political manifesto is not going to be fulfilled. Hence, the Petitioners assert that looking at it from a rational and reasonable perspective. A political party is not expected to fulfill everything written in a political manifesto. It is further asserted that that political parties hold out high promises to the voters expecting to be returned to power but it is not necessary that they must be voted in by the electorate; the political parties may commit to the voters that they would enact or repeal certain laws but they may not succeed in doing so for reasons more than one and they know well this truth while making such promises and the electorate to which such promises are made also knows it.³⁷

³⁶ 6 DD BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 5760 (LexisNexis 2014).

³⁷ ANZ Grindlays Bank Pie v. The Commissioner, MCD, 1995 II AD (Delhi) 573.

29. In reference to this, Lord Denning, further elucidated "A manifesto issued by a political party in order to get votes is not to be taken as gospel. It is not to be regarded as a bond, signed, sealed and delivered. It may contain and often does contain promises or proposals that are quite unworkable or impossible of attainment. Very few of the electorate read the manifesto in full. A goodly number only know of it from what they read in the newspapers or hear on television. Many know nothing whatever of what it contains. When they come to the polling booth, none of them vote for the manifesto. Certainly not for every promise or proposal in it. Some may be influenced by one proposal and others by another. Many are not influenced by it at all. They vote for a party and not for a manifesto. No party can or should claim a mandate and commitment for any one item in a long manifesto. When the party gets into power, it should consider any proposal or promise afresh on its merits, without any feeling of being obliged to honour it or being committed to it. It should then consider what is best to do in the circumstances of the case and to do it if it is practicable and fair."³⁸
30. Hence, the intellect of this class cannot be underestimated. Even though the freebies are distributed on the condition of votes, it is at the discretion of the voter to vote for the party they want to as there is no mechanism to check if the voter has actually voted for the party from whom they received the benefits from. There have been instances when voters have opportunistically gained materialistic benefits from multiple parties under the promise of votes. Hence freebies do not influence the voters.
31. Therefore, the fundamental right under Article 19(1)(a) provided to Political Parties would be frustrated if the ban prescribed by Section 123(9) of The Representation of the People Act, 1951 is taken to its logical effect.

³⁸ Bromley London Borough Council v. Greater London Council, (1982) 1 All ER 129.

C) Section 123(9) is Unconstitutional as it is in violation of the Fundamental Rights of the farmers under Article 21 of the Constitution.

32. Petitioner asserts that Section 123(9) will deprive the farmers to get loans waived off, which fundamentally go against their right to dignity under Article 21. The early approach to Article 21 which generates right to life and personal liberty was circumscribed by literal interpretation.³⁹ But in course of time, the scope of this application of the Articles against arbitrary encroachment by the executive has been expanded by liberal interpretation of the components of the Article in tune with the relevant international understanding. Thus, protection against arbitrary privatization of “life” no longer means mere protection of death, or physically injury, but also an invasion of the right to “live” with human dignity.⁴⁰
33. Farmer suicide is on a rise and has become a national ignominy. Due to a cycle of debt, farmers tend to lead a life with indignity, non recognition and humiliation which is a gross violation of Article 21 of the Constitution, additionally, economic empowerment to poor and render socio-economic justice is a facet to right to life. Raith Mitra has successfully gotten farm loans waived off from every Government in Karunadu state. Hence, there exists a mechanism for the implementation of the manifesto. The indifference of Governmental authority towards farmers has been a serious issue for decades and it has put the farmers at the risk of being exploited by loan sharks. Hence, Section 123(9) works against the interest of the farmers and makes this law Unconstitutional on the grounds of being unfair, unreasonable and going against public interest.
34. Additionally, Article 14 of the Constitution has established that equals should be treated equally and unequals should be treated unequally. The law is arbitrary as it differentiates

³⁹ AK Gopalan v. State of Madras, AIR 1950 SC 27.

⁴⁰ Maneka Gandhi v. Union of India, AIR 1978 SC 597.

against a class of people, i.e., the farmers. Rather laws should be based on intelligible differentia and affirmative action⁴¹ should be taken in the interest of the farmers. They make a large chunk of the population and they are crucial for the economy. The Petitioner asserted that the rationale behind this law is anti-farmer.

IV) SECTION 168A IS VIOLATIVE OF FREEDOM OF CONSCIENCE UNDER ARTICLE 25 OF THE CONSTITUTION.

35. Freedom of Conscience forms an essential part of Article 25 of the Constitution (A). Section 168A restricts Freedom of Speech and Expression in the form of debates in the Parliament (B). Section 168A reduces individual accountability of legislators to their constituency (C).

A) Freedom of Conscience forms an essential part of Article 25 of the Constitution.

36. Freedom of conscience forms a part of Article 25 of the Constitution. Hence, Article 25 is not restricted to rights regarding freedom of religion. ‘Freedom of conscience’ as “the most sacred of all property; other property depending in part on positive law, the exercise of that, being a natural and inalienable right.”⁴² Thus, every person has a natural title to freedom of conscience which includes the right of a person to adopt or abandon any faith or belief according to his decisions.

37. Furthermore, In *S.R. Bommai*, it was held that “no man possesses a right to dictate to another what religion he believes in; what philosophy he holds, what shall be his politics or what views he shall accept, etc.”⁴³ The failure to protect one’s right to “profess, practice

⁴¹ 2 DD BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 2174 (LexisNexis 2014).

⁴² James Madison, *The Writings of James Madison*, ONLINE LIBRARY OF LIBRARY (Mar. 15, 2019, 2:00 PM), <https://oll.libertyfund.org/titles/madison-the-writings-vol-6-1790-1802>; K.S. Puttaswamy and Ors. v. Union of India and Ors, W.P. (C)- 494/2012.

⁴³ S.R. Bommai v. Union of India, (1994) 3 SCC 1.

and propagate his religion and freedom of conscience” will invariably compromise the rule of law.⁴⁴ A person may feel strongly about joining another party for various reasons, but whether they are moral, religious or political, these beliefs and convictions should be given equal importance as they are the fundamental rights derived from the Constitution. When considering freedom not to associate with a political party due to difference in values, including freedom of conscience and expression, liberty, mobility and the right to work, Governmental restriction placed under 168A infringes the right to freedom of conscience under Article 25 of the Constitution.⁴⁵

B) Section 168A restricts Freedom of Speech and Expression in the form of debates in the Parliament.

38. The law interferes with the freedom of speech and expression of a legislator. A legislator is guaranteed this freedom under the Constitution. The law curbs this right by mandating that all members must vote strictly on party lines, and in complete obedience to party whips. By doing this, it takes away the ability of a legislator to vote according to his conscience. It further prohibits voicing dissent against his party’s positions and policies, except through intra-party debate.
39. The freedom to express one's self freely is important for a number of reasons. Firstly, self expression is significant instrument of freedom of conscience and self-fulfillment. Second justification concerns epistemology. Freedom of expression enables people to contribute to debates about social and moral values. The best way to find the best or truest theory or model of anything is to permit the widest possible range of ideas to circulate. Thirdly, the freedom of expression allows political discourse which is necessary in any country which

⁴⁴ State of Karnataka v. Dr. Praveen Bhai Thogadia, AIR 2004 SC 2081.

⁴⁵ R. v. Advance Cutting & Coring Ltd, 2001 SCC 70.

aspires to democracy. And lastly, it facilitates artistic scholarly endeavors of all sorts.⁴⁶ Hence, such a law is incompatible with fundamental tenets of a Parliamentary democracy.

40. A Parliamentary democracy envisages that matters of legislation and policy must be discussed and debated in a legislature. Governments must then respond and defend their legislation and policy, in light of the criticisms raised and alternatives proposed. However, the purpose of the discussion is defeated if votes cannot be altered on the basis of these debates and discussion. Further, prohibition against dissent may undermine the role of Parliament as an effective check on the executive. In a legislature with the Government in clear majority, once a whip is issued by the ruling party in such a House, there can be no dissent or disapproval voiced by any of the members of the party having a majority. This may have a deleterious impact on Government accountability.
41. Therefore, this law has destroyed incentives and means for honest and open Parliamentary debate to continue on key legislative and policy issues.

C) Section 168A reduces individual accountability of legislators to their constituency.

42. The law breaks the accountability link between the elected representative and the voter. As the role of a legislator is governed by the political party they are affiliated to, they cannot be held accountable for their decisions as the blame can be shifted to the political party. Legislators can now say that they voted in a particular manner because their party required them to do so. Their justification can be that they exercise no control over their vote and therefore ought not to be held accountable for it. This deprives the people of that constituency to express dissent as the legislator cannot be held accountable for his actions.

⁴⁶ Secretary, Ministry of Information and Broadcasting, Govt. of India and Ors. v. Cricket Association of Bengal and Ors, 1995 SCC (2) 161.

43. Hence, this considerably diminishes the role of an MP in a Parliament to that of a person who only follows orders of the party whip. Additionally, to gain the support of the House for its various decisions and policies, the ruling party will only have to garner the support of the opposition party and will not need to develop support of majority of the MPs from its own party as they are supposed to comply with party orders.
44. Additionally, this law is arbitrary on the lines that it does not provide an opportunity to the member to explain his position which in turn, goes against the principles of Natural Justice.⁴⁷ Also, the opportunity has to be impartial and without any bias.⁴⁸ A member can leave a party based on other reasons apart from political discourse. If the member leaves believing his personal commitments for the next year will hinder him from serving his citizens at the Parliament, he will be restricted from contesting elections until his term is completed. The law has been formulated in a narrow sense that he does not leave room for a different case. No hard and fast rule should be laid down when the answer is dependent on the facts of each case.⁴⁹

⁴⁷ Mahachandra Prasad Singh v. Chairman, Bihar legislative council, AIR 2005 SC 69.

⁴⁸ Balachandra L. Jarkiholi v. B. S. Yeddyurappa, (2001) 7 SCC 1.

⁴⁹ Jagjit Singh v. State of Haryana, AIR 2007 SC 590.

PRAYER

Wherefore, in light of the issues raised, arguments advanced and authorities cited, it is humbly prayed that this Honourable Court may be pleased to adjudge and declare that:

- I. The 104th Constitutional Amendment is violative of the Basic Structure of the Constitution of Bharath Nadu.
- II. The Sections 29D and 29E of the Representation of the People act, 1951 violates Article 19(1)(c) of the Constitution.
- III. Section 123(9) is a violation of Fundamental Right under 19(1)(a).
- IV. Section 168A is violative of Freedom of Conscience under Article 25 of the Constitution.

And/ or pass any other order that this Honourable Court may deem fit in the interests of Justice, Equity and Good Conscience.

All of which is humbly prayed,

Sd/-

Counsels for the Petitioners