
IN THE HONORABLE SUPREME COURT OF BHARATH NADU

*Reply filed on behalf of Respondents to the Civil Writ Petition filed under
Article 32 of the Constitution of Bharath Nadu*

WRITTEN SUBMISSION ON BEHALF OF THE RESPONDENTS

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 RESPONDENTS

DRAWN AND FILED BY THE COUNSELS FOR THE RESPONDENTS

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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 Respondents, i.e. the Union of Bharath Nadu and Nation Builder humbly submit to the jurisdiction of the Hon'ble Supreme Court of Bharath Nadu under Article 32 of the Constitution of Bharath Nadu in response to the petitions filed by the Petitioners.

However, Respondent No. 1 reserves the right to challenge the same.

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 after taking a public poll, brought an amendment to the Constitution, and amended the Electoral Law in accordance with the recommendations.
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 DOES NOT VIOLATE THE
PRINCIPLE OF FEDERALISM EMBODIED UNDER THE DOCTRINE OF BASIC STRUCTURE.**

It is submitted that Bharath Nadu is a quasi-federal State where the concepts of pragmatic and cooperative federalism exist. The constitution places the Centre on a higher pedestal. Thus, by placing the welfare of the people above all, the state is only abiding by its duty and right to do so. Further, the burden of proof lies on the petitioners as there is presumption of constitutionality.

**CONTENTION 2: THAT SEC. 123(9) OF THE REPRESENTATION OF PEOPLE ACT, 1951 IS NOT
VIOLATIVE OF FUNDAMENTAL RIGHTS.**

It is submitted that the question of violation of fundamental rights does not arise as the provision merely seeks to safeguard the electorate and protect their fundamental Right to Know. Arguendo, the provision satisfies the exception of public order and hence is valid.

**CONTENTION 3: THAT SEC. 29D OF THE REPRESENTATION OF PEOPLE ACT, 1951 IS NOT
VIOLATIVE OF FUNDAMENTAL RIGHT UNDER ART. 19(1)(C).**

It is submitted that there can be no objection to statutory interference with the composition or functioning of associations which are created, controlled and governed by statute as in the instant case. Moreover, the right to form association stands exercised as soon as it is formed, and hence there is no violation of the said right.

CONTENTION 4: THAT SEC. 168A IS NOT VIOLATIVE OF THE FREEDOM OF CONSCIENCE.

It is submitted that Sec. 168A is read in furtherance of Sch. X, in context of which, there is no violation of freedom of conscience. The provision is merely preventing the abridgment of the existing democratic set up of the country and the constitutional conscience.

ARGUMENTS ADVANCED

**CONTENTION 1: THAT 104TH CONSTITUTIONAL AMENDMENT DOES NOT VIOLATE THE
PRINCIPLE OF FEDERALISM EMBODIED UNDER THE DOCTRINE OF BASIC STRUCTURE.**

1. It is humbly submitted that the 104th Constitutional Amendment Act, 2019 is in complete consonance of the principle of federalism as embodied under the Constitution. The federal nature of Bharath Nadu has been fairly cogitated while introducing the impugned amendment. Moreover, it is essential to take into consideration that the concept of ‘absolute’ federalism is not followed in Bharath Nadu,¹ rather it is a quasi-federal State² where the concepts of pragmatic and cooperative federalism exist.³
2. It has been held by the Apex Court in *Swaraj Abhiyan (V) v. Union of India*⁴ that in cases concerning public welfare, it is important for the state and the central governments to work together in order to bring about the necessary amendment even if the Centre gets more power to execute the same. Therefore, the allegation of violation of Basic Structure of the Constitution by the impugned amendment is completely unfounded. Rather, it introduces the first step to bring into effect the much anticipated goal of synchronized elections, solely keeping the interest of the public in mind, which has been given significant constitutional importance.⁵ Therefore, by placing the welfare of the people above all, the state is only abiding by its duty to do so⁶ and is in no way violating the federal spirit of the Constitution of Bharat Nadu.

¹ State of West Bengal v. Union of India, AIR 1963 SC 1241.

² Shamsher Singh v. State of Punjab, AIR 1974 SC 2192.

³ State of Karnataka v. Union of India, AIR 1978 SC 68.

⁴ Swaraj Abhiyan (V) v. Union of India (2018) 12 SCC 170.

⁵ State of Karnataka & Anr. v. Praveen Bhai Togadia, AIR 2004 SC 2081; Ashok Kumar Gupta v. State of Uttar Pradesh, (1997) 5 SCC 201.

⁶ India Const. art.38.

1.1 Presumption of Constitutionality

3. It is humbly submitted before the Hon'ble bench that there is a presumption of constitutionality in the favour of already existing laws.⁷ As ruled in *State of Madras v. Zenith Lamps*,⁸ the presumption of constitutionality of laws requires that it has to be resolved in favour of constitutionality unless so irrational as to incur any constitutional infirmity. In order to sustain the presumption of constitutionality, the Court may take into consideration matters of common knowledge, matters of common report and may assume every state of facts which can be conceived existing at the time of legislation.⁹
4. A provision of law is construed so as to make it effective and operative on the principle expressed in the maxim '*ut res magis valeat quam pereat*'. Therefore, the burden of establishing that the provision has transgressed any constitutional mandates is always on the person who challenges its *vires*.¹⁰ "Unless it becomes clear beyond reasonable doubt that the legislation in question transgresses the limits laid down by the organic law of the Constitution it must be allowed to stand as the true expression of national will."¹¹

1.2 Meaning and Definition of 'Federal And 'Federalism' as exercised in Bharath Nadu

5. It is humbly submitted that the Bharath Nadu federation is a unique federation. The nature of our federalism can only be studied having a thorough understanding of all the provisions of the Constitution.¹² The structure of the Constitution has not been canvassed to provide the States with such sweeping powers that they administrate themselves as isolated units. In a semi-federal system of government, which has been adopted under the Bharath Nadu constitution, all the

⁷ Ram Krishna Dalmia v. Justice S.R. Tendolkar, AIR 1958 SC 538.

⁸ State of Madras v. Zenith Lamps, AIR 1973 SCC 724.

⁹ Bombay Dyeing & Mfg. Co. Ltd. v. Bombay Environmental Action Group, AIR 2006 SC 1489.

¹⁰ Hamdard Dawakhana v. Union of India, AIR 1960 SC 554.

¹¹ Union of India v. Elphinstone Spinning & Weaving Co., AIR 2001 SC 724.

¹² Jindal Stainless Steel v. State of Haryana, AIR 2016 SC 5617.

essential powers, both legislative and executive have been conferred upon the central government. Therefore, even though the executive and legislative functions of the Centre and States have been defined and distributed, there runs through it all a thread or rein in the hands of the Centre in both the fields.¹³ It has always been the objective of this Constitution that the Centre be allowed to harmonize the nation as one socio-economic unit. This is because, inspite of federalism, the national interest ought to be paramount.¹⁴ That is why this Constitution has been made with a strong Centre.

6. The basic structure of the Constitution is to be taken as a larger principle on which the Constitution itself is framed.¹⁵ The federal principle is said to be the basis of the Constitution. It is hazardous to define what the basic structure of the Constitution is as what is basic does not remain static for all time to come.¹⁶ In the light of the existing situation in the country, it is of paramount importance to curtail an unnecessary pressure on exchequer, and therefore an incidental legislation to that effect does not violate the federal structure.

7. Moreover, the Constitution provides for a Constitutional Amendment to be initiated only by the introduction of a bill in the parliament and requires the majority of the total membership in each house and not less than two-third majority of the members present and voting, more so the amendment in the present case also required ratification by the legislature of not less than one-half of the states of the country.¹⁷ Considering that the bill was passed, it is fair to assume that the required procedure was followed and hence the majority approval of the states was already there. It is evident from the same that the federal character of the Constitution was not interfered with.

¹³ State of Karnataka v. Union of India, 1978 AIR 68.

¹⁴ Ivor Jennings, Some Characteristics of the Indian Constitution 55(1953).

¹⁵ Ashok Kumar Thakur v. Union of India, (2008) 6 SCC 1.

¹⁶ Jammu & Kashmir National Panther's Party v. Union of India & others., (2011) 1 SCC 228.

¹⁷ India Const. art.368.

1.3 That insertion of Art. 172(2) falls under the ambit of the powers of the Parliament

8. It is submitted that under Art. 327 and under Entry 72, List I, Schedule VII of the Constitution, the aspect of elections is covered. It is important to take into consideration that the Parliament passed legislation on a subject which is enumerated directly in the Union List, the subject being elections, which further bolsters the fact that the amendment is not unconstitutional.
9. Further, a broad and liberal spirit should inspire those who interpret the subjects of the list as they should not be read in a narrow sense.¹⁸ It is thus well established that the language of the various entries should be given the widest scope of which their meaning is fairly capable,¹⁹ not only the main matter but also any incidental and ancillary matters are available to be included within the field of the entry. The Parliament has been accorded with the express power to make provisions relating to ‘all’ matters or matters ‘in connection with’ elections to either House of the Parliament or the State Legislature. This express provision makes it clear that the Parliament has all the authority to amend election related provisions made in the constitution. Taking the same into consideration, it is fair to assume that the amendment was in the ambit of the Parliament.

1.4 The language of the amendment must be strictly construed

10. It is humbly submitted that the language of the amendment is in itself a proof of the ambit of its application and has to be construed accordingly. It has been clearly laid down that the words of a statute are first understood in their natural, ordinary or popular sense and phrases and sentences are construed according to their grammatical meaning, unless that leads to some absurdity or unless there is something in the context, or in the object of the statute to suggest the contrary.²⁰

¹⁸ Bimolangshu Roy v. State of Assam & Another, (2018) 14 SCC 408.

¹⁹ Raghu Seeds & Farms v. Union of India, AIR 1994 SC 533.

²⁰ Doypack Systems Pvt. Ltd. v. Union of India, AIR 1988 SC 782.

11. The essence here is to understand that whether the basic structure is damaged or destroyed in any given case, would not depend upon which particular Article of the Constitution is in issue but, whether what is withdrawn distorts the Constitution so as to rob it, of its total identity.²¹ In the present case, the impugned amendment has been brought into effect “strictly for the purpose of synchronization of elections”²², and hence any other interpretation in order to prove it constitutionally invalid is completely unfounded. It has been clearly laid down that if the words used are capable of one construction only then it would not be open to the courts to adopt any other hypothetical construction on the ground that such construction is more consistent with the alleged object and policy of the Act.²³
12. Moreover, it is not a sound principle of construction to brush aside words in a statute as being inappropriate surplusage, if they can have appropriate application in circumstances conceivably within the contemplation of the statute.²⁴ If the words of the statute are in themselves precise and unambiguous, then no more can be necessary than to expound these words in their natural and ordinary sense. The words themselves do alone in such cases best declare the intent of the lawgiver.²⁵ The Legislature is deemed not to waste its words or to say anything in vain²⁶ and a construction which attributes redundancy to the Legislature will not be accepted except for compelling reasons.²⁷
13. It can thus be fairly concluded that the amendment is constitutionally valid in all its sense and cannot be struck down on the ground of being violative of the basic structure, as established above.

²¹ Virendra Kumar, “The Proposed Perspective of the Doctrine of Basic Structure of the Constitution,” AIR 1982 (Jour), p. 55, 59.

²² Moot Proposition, ¶ 7.

²³ Kanailal Sur v. Paramnidhi Sadhu Khan, AIR 1957 SC 907

²⁴ Aswini Kumar Ghose v. Arabinda Bose, AIR 1952 SC 369.

²⁵ State of Maharashtra v. Nandet Prabhani Operators Sangh, AIR 2000 SC 725.

²⁶ J.K. Cotton Spinning & Weaving Mills Co. Ltd. v. State of U.P., AIR 1960 SC 1170.

²⁷ Borosil Glass Works Ltd. Employees Union v. D.D. Bambode, AIR 2001 SC 378.

**CONTENTION 2: THAT SEC. 123(9) OF THE REPRESENTATION OF PEOPLE ACT, 1951 IS NOT
VIOLATIVE OF FUNDAMENTAL RIGHTS.**

14. It is humbly contended before the Hon'ble Court that Sec. 123(9) of the Representation of People Act, 1951, (hereinafter referred to as 'the Act') is constitutionally valid, contrary to the proposition of the Petitioners, as it, in no way, violates the Fundamental rights enshrined in the Constitution. It is the humble submission of Respondent No. 1 that the impugned provision does not even touch the aspect of Freedom of Speech and Expression of the Petitioners.
15. The question of fundamental right does not arise in the present matter as the provision does not intend to curb the Right to Expression²⁸ of Petitioner No. 1, but merely seeks to safeguard the electorate and protect their Right to Know in the true sense, along with protecting the spirit of democracy as enshrined in the Constitution.
16. However, *arguendo* even if it be considered that the impugned provision is in any manner violative of Freedom of Speech and Expression, it only falls under the ambit of the reasonable restriction of public order.²⁹
17. It is further submitted that the expression 'reasonable'³⁰ is so wide and elastic that a court should not ordinarily strike down any restrictive provision as void as being non-reasonable, unless it appears that a different view could not be taken with any justification.³¹ The various census reports³² and governmental data go on to prove the ill-effects on the Public order of the promises of loan-waiver schemes which are subsequently not fulfilled in the post-election period.

²⁸ India Const., art. 19(1)(a).

²⁹ India Const. art. 19(2).

³⁰ Bannari Amman Sugars v. CTO, (2005) 1 SCC 625.

³¹ P. Arumugham v. State of Madras, 1952 SCC OnLine Mad 281

³² NILANJAN BANIK, IS LOAN WAIVER A PANACEA FOR RURAL DISTRESS?, U.N. Doc. Brief No. 56, (2018).

2.1. That the impugned provision rather protects the fundamental rights of the citizens

18. It is humbly put forth on behalf of Respondent No. 1 that the impugned provision is completely misconstrued and wrongly interpreted by the Petitioners, as it imposes no restrictions on the exercise of the policy of loan waivers implemented by the government. To the contrary, the government's sole aim is to prevent the violation of the fundamental 'right to know' of the voters. Every voter has the right to know fairly about the capabilities of the candidates. In *Lok Prahari v. Union of India*,³³ it was held that even the non-disclosure of a candidate's income can mislead the voter as to the capabilities of the party.
19. Further, the Right to Know has been held to be a fundamental right covered under the ambit of the right to Freedom of Speech and Expression.³⁴ An essential ingredient of the exercise of Right to know is to receive factually correct information.³⁵ Similarly, the said right is violated by one-sided information, disinformation, misinformation and non-information, as they will equally create an unformed citizenry which makes democracy a farce.³⁶ Therefore, it is only reasonable to conclude that making empty promises only to secure votes, with no intention of fulfilling them will certainly mislead people, thus violating their right to know and freedom of choice as enunciated under Art. 19(1)(a) of the Constitution.
20. Furthermore, in accordance with the 'Effect test' laid down in the *Bennet Coleman case*,³⁷ it is the effect and final consequence of an action that determine whether the right to freedom of speech and expression has been violated.³⁸ The direct effect of enacting the provision, that is, Section 123(9) is the prevention of the violation of right to know of the citizens by restricting the

³³ *Lok Prahari v. Union of India*, (2018) 4 SCC 699.

³⁴ *People's Union of Civil Liberties v. Union of India*, (2003) 4 SCC 399.

³⁵ *Union of India v. Association for Democratic Reforms*, (2002) 5 SCC 294.

³⁶ *Union of India v. Association for Democratic Reforms*, (2002) 5 SCC 294.

³⁷ *Bennet Coleman & Co. v. Union of India*, (1972) 2 SCC 788.

³⁸ *Supreme Court Advocates on Record Association v. Union of India*, AIR 2016 SC 117.

21. propagation of misinformation by parties which hinders the right of the citizens. The provision is thus not violating rather is preventing the violation of the fundamental right to know of citizens.

2.2 Constitutional and legal validity of the impugned provision

22. It is humbly submitted that the impugned provision has to be construed according to the rule of “purposive construction” as laid down under the *Heydon’s case*.³⁹ It has been laid down that when the material words are capable of bearing two or more constructions the most firmly established rule for construction of such words of all statutes in general, be they penal or beneficial, restrictive or enlarging, is the ‘mischief rule’.⁴⁰
23. This rule enables the consideration of four matters in construing an Act: (i) What was the law before making the Act, (ii) What was the mischief or defect for which the law did not provide, (iii) What is the remedy that the Act has provided, and (iv) What is the reason of the remedy.
24. It is further submitted that the impugned provision fulfills all the four essentials fair and square. The former law being the existence of no restrictions for political parties while making false promises in manifestos, which would be the mischief, the remedy being the declaration of the said act as a corrupt practice and the reason being the prevention of violation of the voter’s fundamental right to know as established above.
25. Further, the above rule of ‘purposive construction’ itself casts a duty on the judges to make such construction as shall suppress the mischief, and advance the remedy, and to suppress subtle inventions and evasions for continuance of the mischief, and *pro privato commodo*, and to add force and life to the cure and remedy, according to the true intent of the makers of the Act, *pro bono public*.⁴¹

³⁹ Kanailal Sur v. Paramnidhi Sadhukhan, AIR 1957 SC 907.

⁴⁰ Anderton v. Ryan, (1985) 2 All ER 355, p. 359 (HL).

⁴¹ Bengal Immunity Co. v. State of Bihar, AIR 1955 SC 661.

26. The Apex Court in *S. Subramanian Balaji v. Government of Tamil Nadu*⁴², keeping in mind the Constitutional provision to hold free and fair elections, appreciated the following major guidelines with respect to the election manifesto for any election to the Parliament or State Legislatures:

- (i) Election manifestoes shall not contain anything repugnant to the ideals and principles enshrined in the Constitution;
- (ii) Political parties should avoid making those promises which are likely to vitiate the purity of the election process or exert undue influence on the voters in exercising their franchise.
- (iii) In the interest of transparency, level playing field and credibility of promises, it is expected that the manifesto also reflects rationale for the promises and broadly indicates the ways and means to meet the financial requirement for it.

27. Therefore, it is humbly submitted that it is necessary to interpret Sec. 123(9) in light of the above guidelines, to understand the Constitutional validity and need for such a legislation, which is to protect the electorate and to hold their future leaders to a more accountable standard, while ensuring that the idea of Free and Fair Elections as envisioned by the framers of the Constitution is also achieved.⁴³

⁴² *S. Subramanian Balaji v. Government of Tamil Nadu*, (2013) 9 SCC 659.

⁴³ India Const. art.324.

**CONTENTION 3: THAT SEC. 29D OF THE REPRESENTATION OF PEOPLE ACT, 1951 IS NOT
VIOLATIVE OF FUNDAMENTAL RIGHT UNDER ART. 19(1)(C).**

28. It is humbly submitted before the Hon'ble Court that Sec. 29D of the Act is not in violation of the Right to Freedom to Form Associations as laid down under Article 19(1)(c) of the Constitution of Bharath Nadu. It merely directs that the leadership of a political party 'shall', at all levels, be duly elected by the members of the political party.⁴⁴ The provision merely solidifies the intent to democratize the procedure as also expressed by Sec. 29A of the said Act.

3.1 That Sec. 29D and Art. 19(1)(c) are disparate

29. It is humbly submitted that the impugned provision is in no way even related to the violation of the fundamental right to form associations as granted under Art. 19(1)(c). The alleged violation of Art. 19(1)(c) as being pled by Petitioner No. 3 is merely a result of misconstruction of the impugned provision. Therefore, it is humbly clarified that the use of the word 'shall' in the impugned provision does not make the provision mandatory or a hindrance in the exercise of the right to form associations.⁴⁵ There are numerous cases where the word 'shall' has been construed as merely directory.⁴⁶ The real intention of the legislature can be ascertained by carefully attending to the whole scope of the Statute.⁴⁷

30. Thus, in the instant case, the nature of the word 'shall' has to be interpreted with reference to the whole part it is contained in, the heading of which reads 'Registration of Political Parties'.⁴⁸ Since registration is not compulsory but optional and only necessary to avail certain benefits that

⁴⁴ Moot Proposition, ¶ 8.

⁴⁵ Sainik Motors v. State of Rajasthan, AIR 1961 SC 1480.

⁴⁶ Paradise Printers v. Union Territory of Chandigarh, AIR 1988 SC 354; Rubber House v. Excellsiior Needle Industries Pvt. Ltd., AIR 1989 SC 1160.

⁴⁷ Govindlal Chagganlal Patel v. Agriculture Produce Market Committee, AIR 1976 SC 263.

⁴⁸ India The Representation of the People Act Part IVA (1951).

come with it,⁴⁹ the nature of the impugned provision cannot be construed to be mandatory but only necessary to avail the benefits under the said Act. Hence, the impugned provision can in no way be said to be fettering the Right to Form Associations under Art. 19(1)(c).

3.2 That there is no unjustified interference with the right to form associations.

31. It is humbly submitted that even if there is any interference with the Petitioner No. 3 right to form association, such interference is not unjustified. The Parliament can by law regulate the working of such associations by imposing conditions and restrictions on such functions. There can be no objection to statutory interference with the composition or functioning of associations which are created, controlled and governed by statute.⁵⁰ Moreover, the impugned provision passed by the Parliament only propagates the ideals of democracy in the light of the basic structure of the constitution.

32. It is further submitted that the impugned provision is merely a pre-condition for the registration of the political parties and not their formation. The right to the recognition of the association by the Government is not held to be a fundamental right.⁵¹ Moreover, the unregistered parties are neither deprived of their status nor are prohibited from contesting elections.⁵² Furthermore, as soon as the association is formed the right granted under Art. 19(1)(c) stands exercised.⁵³ Thus, the conditions imposed by the government for obtaining recognition cannot be challenged as unreasonable restrictions imposed upon the freedom of association.⁵⁴

⁴⁹ Jeevan Chandrabhan Idnani v. Divisional Commissioner, Konkan Bhavan, (2012) 2 SCC 794.

⁵⁰ Zoroastrian Coop. Housing Society Ltd. v. District Registrar, Coop. Societies (Urban), (2005) 5 SCC 632.

⁵¹ Delhi Police Non-Gazetted Karmchhari Sangh v. Union of India, (1987) 1 SCC 115.

⁵² Election Commission of India, Registration of Political Parties, (Mar.13,2019, 3:31 PM), <https://eci.gov.in/faqs/registration-of-political-parties/faqs-registration-of-political-parties-r5/>.

⁵³ Board of Control for Cricket v. Cricket Association of Bihar & Ors., (2016) 8 SCC 535; All India Bank Employees' Association v. National Industrial Tribunal, AIR 1962 SC 171.

⁵⁴ Raghubar v. Union of India, AIR 1962 SC 263 (270).

33. It is humbly admitted that the only restriction that may flow from the impugned provision is that of not being able to avail the benefits under Part IVA of the Representation of People Act, 1951 which might in-turn be essential for attaining objectives of the party. However, the right under Article 19(1)(c) does not include the right of the association or union so formed to achieve its objective.⁵⁵ Therefore, in no manner can it be said that the impugned provision is violative of the fundamental right granted under Art. 19(1)(c) of the Constitution.

3.3 *Arguendo*, that the impugned provision is protected by exception under Art. 19(4).

34. It is an admitted position of law that the right granted under Art. 19(1)(c) can reasonably be restricted under the garb of ‘morality’. The expression ‘morality’ in itself is of widest amplitude.⁵⁶ The concept of Constitutional morality is also a facet of it. Constitutional morality in its strictest sense contains the inherent elements of the constitutional norms and conscience of the Constitution and it negates the idea of concentration of power in the hands of a few.⁵⁷ However, in the present political setup, the leaders of the political party are chosen on nomination basis, and therefore the very purpose of the principles of equality, so profoundly laid down in the constitution, is defeated.

35. Moreover, constitutional morality requires filling in constitutional silences to enhance and complete the spirit of the Constitution. A Constitution can establish a structure of Government, but how these structures work rests upon the fulcrum of constitutional values.⁵⁸ Our Constitution, though talks about the equality of opportunity for all, is silent on the promotion of internal democracy within the political parties. Therefore, it is humbly submitted that it is this lacuna that the impugned law intends to fill, and therefore cannot be held to be unconstitutional.

⁵⁵ Dharam Dutt v. Union of India, (2004) 1 SCC 678.

⁵⁶ Ramesh Yeshwant Prabhu (Dr.) v. Prabhakar Kashinath Kunte, (1996) 1 SCC 130.

⁵⁷ State (NCT of Delhi) v. Union of India, (2018) 8 SCC 501.

⁵⁸ State (NCT of Delhi) v. Union of India, (2018) 8 SCC 501.

**CONTENTION 4: THAT SEC. 168A OF THE REPRESENTATION OF PEOPLE ACT, 1951 IS NOT
VIOLATIVE OF THE FREEDOM OF CONSCIENCE.**

36. It is humbly submitted before the Hon'ble Court that Sec. 168A is not in violation of the Freedom of Conscience, which grants people the freedom to hold beliefs.⁵⁹ It is a provision which bolsters the anti-defection law as provided in the Constitution. The Apex Court has blatantly held that defection is an evil and the laws enacted to curb it are in no way violative of the freedom of conscience.⁶⁰ It has been reiterated multiple times that there can never be a sacrifice of constitutional conscience.⁶¹ It is, on the contrary, preventing the abridgment of the existing democratic set up of the country which is an essential feature of the Basic structure.

4.1 That Sec. 168A is merely a preventive and not a prohibitive measure

37. It is an established principle of law which illustrates that an act that cannot be done directly cannot be done indirectly either.⁶² It is submitted that Sec. 168A brings into play this very principle. The members of the legislature are not allowed to switch the political parties under Schedule X of the Constitution. However, a convenient path has been devised by Members of Parliament and Members of Legislative Assemblies to switch parties without getting the demeaning tag of being 'disqualified'.⁶³

38. It is thus only to prevent the misuse of this dodge, which allows members to switch parties without any sanctions, that Sec. 168A has been introduced in the Act. The intention of the impugned provision is nothing but to safeguard the democratic set up by introducing a sanction for indirectly switching parties before the five year term gets completed.

⁵⁹ K.S Puttaswamy v. Union of India, AIR 2017 SC 4161.

⁶⁰ Kihoto Hollohan v. Zachillhu & Ors., AIR 1993 SC 412.

⁶¹ State (NCT of Delhi) v. Union of India, (2018) 8 SCC 501.

⁶² Shailesh Manubhai Parmar v. Election Commission of India, AIR 2018 SC 3918.

⁶³ India Const. schd 10.

39. The form of Government envisaged under a parliamentary system of democracy is a representative democracy where the people are the sovereign since they exercise the power of adult franchise that ultimately builds the structure of representative democracy.⁶⁴ The formation of the Government is based on getting majority votes.
40. While voting for a particular party, people place faith in that party to exercise the citizenry's will. Shifting parties does not only lead to an accountability failure towards people but also muddles with the number of seats that a party has and hence the structure of the Government. Further, it is the duty of the elected representatives to be accountable to the citizens.⁶⁵ However, while backing out from their obligation to serve the people, for a required period of five years, as provided in the constitution,⁶⁶ the provision of bye polls⁶⁷ is being blatantly misused by the members who intend to contest elections from another party for the same term, thus scuttling the entire democratic set up of the country.
41. The submission that the ground for the same is the change in political ideology does not stand as it has been held by Apex Court that it is the duty of elected representatives to display constitutional objectivity which does not tolerate ideological fragmentation,⁶⁸ as the Fragmentation of faith has the effect potentiality to bring in a state of cataclysm where justice may become a casualty.⁶⁹

⁶⁴ State (NCT of Delhi) v. Union of India, (2018) 8 SCC 501.

⁶⁵ State (NCT of Delhi) v. Union of India, (2018) 8 SCC 501.

⁶⁶ India Const. art. 83, art. 172.

⁶⁷ The Representation of the People Act, 1951, Sec. 149. Sec. 150.

⁶⁸ State (NCT of Delhi) v. Union of India, (2018) 8 SCC 501.

⁶⁹ Fauzia & Anr. v. State of U.P. & Anr., 2019 SCC OnLine All 1226.

42. Therefore, it is to prevent this obliteration of the constitutional conscience that the impugned provision has been introduced. It is merely a preventive measure which causes deterrence to the act of shifting parties for political benefits. It however is important to understand that, even if it is agreed that the act of shifting parties is on the ground of freedom of conscience, it is in no way being prohibited completely and hence is not a violation of such right.

4.2 Arguendo, that the provision falls within the reasonable restriction

43. It is humbly submitted that the principle enshrined in Sec. 168A falls under the exception of Constitutional morality under Art. 19(2) & Art. 25, and further aims to protect the system of democracy which is fundamental to the country. Democracy is not just a political philosophy but also an embodiment of constitutional morality.⁷⁰

44. The constitutional functionaries owe a greater degree of responsibility towards this eloquent instrument for it is from this document that they derive their power and authority from and as a natural corollary, they must ensure they cultivate and develop a spirit of constitutionalism where every action taken by them is governed by and is in strict conformity with the basic tenets of the constitution.⁷¹

45. However, the prayer of the Petitioner No. 4, if granted, could lead to a disastrous fate for the democratic setup of the country, as it would make it easier for members of the house to shift sides as per their own personal agendas, causing a flurry of collapsing governments, no confidence motions and a continuous state of bye polls, resulting in the failure of the democratic machinery⁷² and constant political instability in the country. Therefore, it is for the prevention of these that the impugned provision qualifies the test of constitutionality.

⁷⁰ Manoj Narula v. Union of India (2014) 9 SCC 1.

⁷¹ State (NCT of Delhi) v. Union of India, (2018) 8 SCC 501.

⁷² State (NCT of Delhi) v. Union of India, (2018) 8 SCC 501.

PRAYER FOR RELIEF

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

- a) *Art. 172(2) is not violative of the Basic Structure of the Constitution of Bharath Nadu and therefore shall be upheld.*
- b) *Sec. 29D, Sec. 29E, Sec. 123(9) and Sec. 168A of the Representation of the People Act, 1951 are not violative of any of the Fundamental Rights and therefore their status quo shall be maintained.*

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 Respondents as in duty bound shall forever pray.

All of which is respectfully submitted

Sd/-

Counsels for Respondents