

**PROVISIONAL TEAM CODE: 70**

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**3<sup>RD</sup> SURANA & SURANA & KLE LAW COLLEGE NATIONAL CONSTITUTIONAL  
LAW MOOT COURT COMPETITION – 2019**

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IN THE SUPREME COURT OF BHARATH NADU

WRIT PETITION (C) No. \_\_\_\_/2019

(ART.32 OF CONSTITUTION OF BHARATH NADU)

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UNITED NATIONAL CONGRESS PARTY AND OTHERS.....PETITIONERS

v.

UNION OF BHARATH NADU AND OTHERS..... RESPONDENT

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**MEMORIAL ON BEHALF OF THE PETITIONERS**

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**STATEMENT OF JURISDICTION**

The petitioner has approached this Honourable Court under Article 32 of the Constitution of Bharath Nadu, 1949, read with the Order XXXVIII of Supreme Court Rules, 2013. The respondent humbly submits to the jurisdiction of the Honourable Court.

## STATEMENT OF FACTS

Bharat Nadu is a country with a parliamentary form of government, with federal structure and a multiparty system. The country has been facing challenges to its political stability in the form of splits in political parties, defections and corruption. According to the opinion of several political scientists, economists, jurists and international organisations Bharat Nadu has the potential to become a world leader if it effectively addresses these challenges.

A prison inmate wrote a letter to the Supreme Court expressing unfairness over the fact that inmates are prohibited from contesting elections even though the accused are allowed to contest from prison. He further asked the Union of Bharat Nadu to address the concerns regarding the unjustified burden on the exchequer due to multiple unsynchronized elections, and criminalization of politics. In response to this the Supreme Court stressed the need for reforms, while expressing the constitutional limitations on its powers. A committee was constituted to review the Electoral law under the chairmanship of former Justice Radhakrishnan. In its report the committee suggested some broad objectives for electoral law.

In their manifesto for parliamentary elections, Bharat Nadu Janata Party ('BNJP') promised to implement these reforms if they came into power. After winning the election, they enacted the Constitution (104<sup>th</sup> Amendment) Act, 2019 which inserted certain provisions into the Representation of the People Act, 1951. These provisions were challenged by several parties as being violative of basic structure of the Constitution and certain Fundamental Rights. The petitions were all admitted and clubbed together for a common hearing by the Supreme Court.

**STATEMENT OF ISSUES**

**I.**

WHETHER THE 104<sup>TH</sup> CONSTITUTIONAL AMENDMENT IS VIOLATIVE OF THE BASIC STRUCTURE OF THE CONSTITUTION OF BHARATH NADU?

**II.**

WHETHER SECTION 123 (9) OF THE RP ACT IS VIOLATIVE OF ARTICLE 19 (1) (a) OF THE CONSTITUTION?

**III.**

WHETHER SECTION 29D OF THE RP ACT VIOLATES ARTICLE 19 (1) (C) OF THE CONSTITUTION?

**IV.**

WHETHER SECTION 168A OF THE RP ACT IS VIOLATIVE OF THE FREEDOM OF CONSCIENCE?

**V.**

WHETHER SECTION 123 (9) OF THE RP ACT IS ANTI-FARMER AND VIOLATIVE OF FUNDAMENTAL RIGHTS OF THE FARMERS?

## SUMMARY OF ARGUMENTS

### **[1]. THE CONSTITUTION (104<sup>TH</sup> AMENDMENT) ACT, 2019 IS VIOLATIVE OF THE BASIC STRUCTURE OF THE CONSTITUTION OF BHARATH NADU**

S. 172(3) of the constitution violates the basic structure because it violates the federal character of the constitution. It also violates the principle of democracy as synchronised elections are opposed to free and fair elections and the article violates the principle of periodical elections.

### **[2]. ART.123(9) IS VIOLATIVE OF ART.19(1)(A)**

Art.123(9) violates Art.19(1)(a) as it restricts the freedom of propagation by restricting the promises made in the manifesto. This restriction is not a permissible one as there is no proximate connection between the restriction the listed grounds of Art.19(2) and it does not satisfy the test of reasonableness. Further, the provision is vague, resulting in a chilling effect.

### **[3]. S.29D IS VIOLATIVE OF ART.19(1)(C)**

Political parties are defined as associations as per the RP Act and therefore, come within the scope of Art.19(1)(c). Art.19(1)(c) includes the right to continue the association as such formed with the agreed upon hierarchy. S.29D restricts this freedom. This restriction is not a reasonable one since it does not have a proximate connection with the listed grounds under Art.19(2), and further it does not satisfy the proportionality test.

### **[4]. S.168A IS VIOLATIVE OF FREEDOM OF CONSCIENCE**

Art.25 is violated because the threshold for imposing reasonable restrictions on this freedom has not been attained. Therefore, the restrictions imposed are unreasonable. Additionally, the right of association, which ensures the freedom of conscience, is violated by S.168A.

### **[5]. S.123(9) IS VIOLATIVE OF FUNDAMENTAL RIGHTS OF FARMERS**

S.123(9) violates the right to life as it takes away the famers' right to livelihood. Additionally, S.123(9) is manifestly arbitrary because it is vague, and therefore, uncertain in its implications.

**ARGUMENTS ADVANCED**

**[1] THE CONSTITUTION (104<sup>TH</sup> AMENDMENT) ACT, 2019 IS VIOLATIVE OF THE BASIC  
STRUCTURE OF THE CONSTITUTION OF BHARATH NADU**

The Parliament inserted provision Art.172(3) to the Constitution. However, the power to amend the Constitution does not permit the Parliament to alter the basic structure of the Constitution.<sup>1</sup> There is no specified or particular list of features which constitute as the basic structure.<sup>2</sup> However, subsequent to the *Kesavananda Bharti*<sup>3</sup> judgement, Courts have adopted a framework to identify features that are a part of the basic structure of the constitution. In order to identify whether a facet of the constitution is a part of the basic structure it must be construed, in each individual case, with respect to specific provisions of the constitution, its object and purpose and the consequences of its denial on the integrity of the constitution.<sup>4</sup> The essence of the basic structure is that (i) it must be identified from the provisions of the constitution<sup>5</sup> and (ii) that if amended it would alter the very identity of the constitution.<sup>6</sup>

It is submitted that the Constitution (104<sup>th</sup> Amendment) Act, 2019 is violative of the basic structure of the constitution because *first*, Art.172(3) violates the federal character of the constitution [1.1]; *second*, the amendment violates the principle of democracy [1.2].

**[1.1] ART.172(3) VIOLATES THE FEDERAL CHARACTER OF THE CONSTITUTION**

Bharath Nadu is a federal state<sup>7</sup> and the principle of federalism is an essential feature to the Constitution of Bharath Nadu. The fundamental principle of federalism is that legislative and executive authority is partitioned between the centre and the states by the constitution.<sup>8</sup> The division of legislative power is evident in the Constitution from the Seventh Schedule and

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<sup>1</sup> *Kesavananda Bharati v. State of Kerala* AIR 1973 SC 1461.

<sup>2</sup> *ibid.*

<sup>3</sup> *ibid.*

<sup>4</sup> *Indira Gandhi v. Raj Narain* 1975 Supp SCC 1 [663] (Chandrachud J.).

<sup>5</sup> *Minerva Mills Ltd v. Union of India* (1980) 3 SCC 625 [83] (Mathew J.).

<sup>6</sup> *M Nagaraj v. Union of India* (2006) 8 SCC 212 [102].

<sup>7</sup> ¶1, Facts on Record.

<sup>8</sup> *Kuldip Nayar v. Union of India* (2006) 7 SCC 1 [52].

Art.246 which gives the parliament and the state assemblies exclusive legislative power to make laws with respect to the subjects given in these lists.<sup>9</sup> This represents the supremacy of the states in their own spheres thereby indicating the federal character of the constitution.<sup>10</sup>

Art.172(1) provides for a five-year tenure for the State Legislative Assembly from the date of its first sitting.<sup>11</sup> This means that state legislative assemblies can only be pre-maturely dissolved by the Governor of that state under Art.174(2)(b) and the Parliament can in no event curtail the duration of the State Legislature. Similarly, the tenure of the State Assembly cannot be extended beyond 5 years except in the case of emergency where it can be extended by the parliament by a maximum of one year.<sup>12</sup> The powers vested in the union in cases of national emergency are all extraordinary powers in the nature of safety valves to protect the country in exceptional circumstances. The provisions clearly envision minimal interference by the parliament in the term of state legislature which is essential to maintaining the autonomy of the state and ensuring division of legislative power. Art.172(3) gives the parliament absolute discretion to curtail or extend the term of legislative assemblies, rendering the State's legislative power subject to control of the Centre. This disrupts the balance of power and abrogates the federal character. Therefore, the amendment alters the very identity of the constitution and violates the basic structure.

### **[1.2] ART.172(3) VIOLATES THE PRINCIPLE OF REPRESENTATIVE DEMOCRACY**

Democracy is a part of the basic structure of the constitution.<sup>13</sup> Art.172(3) violates the principle of democracy for two reasons- *first*, synchronised elections violate the principle of free and fair elections [1.2.1]; *second*, Art.172(3) is violative of periodical elections [1.2.2].

#### **[1.2.1] SYNCHRONISED ELECTIONS VIOLATE THE PRINCIPLE OF FREE AND FAIR ELECTIONS**

<sup>9</sup> Constitution of Bharath Nadu 1949, art 246.

<sup>10</sup> Constitution of Bharath Nadu 1949, art 172(1).

<sup>11</sup> Constitution of Bharath Nadu 1949, art 174(2)(b).

<sup>12</sup> Constitution of Bharath Nadu art 1949, 172(1).

<sup>13</sup> *Kesavananda Bharati* (n 1).

The amendment has been enacted for the purpose of achieving simultaneous elections. Simultaneous elections would involve structuring the election cycle in a manner where a voter would normally cast his/her vote for electing members of Lok Sabha and State Assembly on a single day and at the same time.<sup>14</sup> This will impact the electorate's behaviour for voting in State Assembly elections substantially. Synchronised elections would result in voters conflating national and state issues. On average, there is a seventy-seven per cent chance that voters will vote for the same party for both the State and Centre when elections are held simultaneously.<sup>15</sup> This would lead to larger national parties winning both State and Lok Sabha elections thereby marginalizing regional parties which often represent the interests of local social and economic groups.<sup>16</sup> A diversity of opinions and a plurality of parties is essential to free and fair elections and would be violated with simultaneous elections. Therefore, synchronised elections undermine the width and depth of democracy of Bharath Nadu and the amendment violates the basic structure of the constitution.

#### [1.2.2] ART.172(3) IS VIOLATIVE OF PERIODICAL ELECTIONS

A democracy postulates the existence of periodical elections to ensure that people are in a position to re-elect the old representatives or to change them and elect in their place other representatives.<sup>17</sup> With Bharath Nadu having adopted the parliamentary form of government, periodical elections are essential to the identity of its constitution. In order to achieve the same, Art.83 and Art.172 provide for a fixed tenure of five years for the Parliament and State Legislative Assemblies respectively.<sup>18</sup> This provides voters with the option to exercise their right to vote on a periodical basis. The amended provision allows the Parliament to curtail or

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<sup>14</sup> Bibek Debroy and Kishore Desai, 'Analysis Of Simultaneous Elections: The "What", "Why" And "How" A Discussion Paper', (NITI Aayog, 2017) 4.

<sup>15</sup> Praveen Chakravarty (IDFC Institute), 'Nudging the Voter in One Direction?', (*The Hindu*, 8 September 2016) <<http://www.thehindu.com/opinion/op-ed/state-assembly-elections-nudging-the-voter-in-onedirection/article8438114.ece>> accessed 17 March 2019.

<sup>16</sup> Bibek Debroy (n 14) 17.

<sup>17</sup> *Indira Gandhi* (n 4).

<sup>18</sup> Constitution of Bharath Nadu 1949, arts 83 and 172.

extend the term of state assemblies **for whatever period it deems necessary**. The provision provides no restraints in terms of the period by which the term of state legislative assembly can be curtailed or extended. Without this limitation the terms of legislative assemblies can be extended for long periods of time which violates the principle of periodical elections. Furthermore, it does not ensure that such curtailment or extension will be a one-time measure for the purposes of synchronising elections. Therefore, it gives the centre wide power which can be exercised in disrupting the terms of the legislative assemblies. The essential feature of democracy will be destroyed if power is conceded to the Parliament under Art.172(3). It is evident that this violates normative values that are foundational to the Constitution.

### **[2]. ART.123(9) IS VIOLATIVE OF ART.19(1)(A)**

The Parliament of Bharat Nadu inserted the provision of S.123(9) RP Act.<sup>19</sup> It is submitted that this provision violates Art.19(1)(a) of the Constitution as *first*, Art.123(9) restricts the freedom given in Art.19(1)(a) **[2.1]**; *second*, such a provision is not a permissible restriction as per Art.19(2) **[2.2]**.<sup>20</sup>

#### **[2.1] S.123(9) RESTRICTS THE FREEDOM GIVEN IN ART.19(1)(A)**

The Constitution grants the right of free speech and expression as a part of political rights.<sup>21</sup> This freedom includes within it the freedom of propagation of ideas.<sup>22</sup> A political party's manifesto is a statement of its policy,<sup>23</sup> and its way of expressing and propagating its ideas to the general public. By restricting the kind of promises political parties can make, and declaring them to be 'corrupt practices', this section restricts the freedom of propagation of the political party's ideas. Thus, S.123(9) restricts the freedom given in Art.19(1)(a).

#### **[2.2] S.123(9) IS NOT A PERMISSIBLE RESTRICTION AS PER ART.19(2)**

<sup>19</sup> Representation of People Act 1951 (RP Act 1951) s 123(9).

<sup>20</sup> Constitution of Bharat Nadu 1949, arts 19(1)(a) and 19(2).

<sup>21</sup> *YSRCP v The Government of Andhra Pradesh* 2013 SCC OnLine AP 220.

<sup>22</sup> *Romesh Thapar v The State of Madras* 1950 SCR 594 [4].

<sup>23</sup> *S. Subramaniam Balaji v Govt. of T. Nadu* (2013) 9 SCC 659 [61.2].

Art.19(2) requires that a valid restriction must be *one*, in the interests of one of the listed grounds under Art.19(2) and *two*, a reasonable restriction. It is submitted that this restriction is neither in the interest any of the listed grounds, nor is it reasonable. It is further submitted that the provision is void for vagueness, resulting in a chilling effect.

The phrase ‘in the interests of’ is interpreted using the test of clear and present danger.<sup>24</sup> There ought to be a connection between the ground for restriction and the threatened disorder.<sup>25</sup> Further, this restriction must be narrowly tailored so as to restrict what is absolutely necessary.<sup>26</sup>

Sovereignty and integrity refer to the ultimate political sovereignty of the people, the quasi-federal nature of our government and the unity of the nation.<sup>27</sup> There is no connection between sovereignty and integrity and the threatened disorder. ‘Public order’ signifies the ‘state of tranquility’ that prevails, and in its aggravated form it would classify as a security of state issue.<sup>28</sup> There is no connection between the effect that political promises have and public order, or state security. There is no connection with the maintenance of foreign relations either. When the provision is judged by applying contemporary community standard there is no danger to morality or decency.<sup>29</sup> Further, there is no connection to the contempt of court, defamation or incitement to an offence. Thus, the restriction does not fall under any of the listed heads.

A provision is void for vagueness if it is not possible to construe it in accordance with the legislature, when there is uncertainty and the law *prima facie* takes away a guaranteed freedom.<sup>30</sup> A law has a chilling effect when it takes within its sweep protected speech and speech that is innocent in nature,<sup>31</sup> resulting in self-protecting censorship in fear of

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<sup>24</sup> *Shreya Singhal v Union of India* (2015) 5 SCC 1 [39]-[44].

<sup>25</sup> *ibid.*

<sup>26</sup> *ibid.*

<sup>27</sup> *SR Bommai v Union of India* (1994) 3 SCC 1.

<sup>28</sup> *Romesh Thappar* (n 22) [6].

<sup>29</sup> *Shreya Singhal* (n 24).

<sup>30</sup> *ibid.*

<sup>31</sup> *ibid.*

penalization. Such a law should be struck down on the ground of overbreadth- being so wide and vague that it is difficult to define its scope.<sup>32</sup> The provision does not define what ‘gainful benefits’ are, and gives it an undefined scope by using the word ‘etc.’. Further, any promise made “*solely in the view of gaining votes*” covers almost everything that is part of a political party’s campaign. A manifesto is the promise of a future government.<sup>33</sup> By restricting virtually all promises, the provision, given its undefined scope, restricts almost the entire manifesto. Since political parties campaign and release manifestos in view of gaining votes, it takes within its sweep promises that are protected and those which are innocent in nature. This means that political parties are left in fear of being subject to disqualification of up to six years under S.8A of the RP Act.<sup>34</sup> This would result in a chilling effect leading to self-protection and unnecessary censorship. Thus, since the provision is vague and likely to be used in such a way as to have a chilling effect, it is unconstitutional on the ground of overbreadth.

### **[3]. S.29D IS VIOLATIVE OF ART.19(1)(C)**

The Parliament inserted the provision of S.29D in the RP Act, 1951.<sup>35</sup> It is submitted that this provision violates Art.19(1)(c) of the Bharat Nadu Constitution as *first*, political parties are associations or unions as given in Art.19(1)(c) [3.1]; *second*, Art.19(1)(c) includes the right to internal autonomy, which is curtailed by S.29D [3.2]; and *third*, the provision is not a reasonable restriction as per Art.19(4) [3.3].<sup>36</sup>

#### **[3.1]. POLITICAL PARTIES ARE ASSOCIATIONS OR UNIONS AS GIVEN IN ART.19(1)(C)**

Art. 19(1)(c) guarantees the freedom of social and political association.<sup>37</sup> It is submitted that the right to association would include the right to form political parties. The freedom of social and political association is expressed by formation of, and affiliation with, political parties.

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<sup>32</sup> *State of Bombay v FN Balsara* AIR 1951 SCR 682 [53].

<sup>33</sup> *Subramaniam Balaji* (n 23).

<sup>34</sup> RP Act, s 8A.

<sup>35</sup> Representation of People Act 1951 (RP Act 1951) s 29D.

<sup>36</sup> Constitution of Bharat Nadu 1949, arts 19(1)(c) and 19(4).

<sup>37</sup> *Justice KS Puttaswamy v Union of India* (2018) 1 SCC 809 [373].

Further, S.2 of the RP Act, 1951, defines political parties as ‘associations’.<sup>38</sup> Thus, the provision of S. 29D dealing with a ‘political party’ is subject to scrutiny under Art.19(1)(c).

### **[3.2]. S.29D CURTAILS THE RIGHT UNDER ART.19(1)(C)**

A right not explicitly stated under Art.19(1) can still be a Fundamental Right if it is an integral part of a named Fundamental Right.<sup>39</sup> It is submitted that S.29D restricts the right under Art.19(1)(c) because *first*, the right to association is not restricted to the initial formation but extends to the continuation of the association; and *second*, the provision restricts this right.

The scope of Art.19(1)(c) is tested by determining whether the right claimed is such that the exercise of the same is nothing but an instance of the exercise of the named Fundamental Right.<sup>40</sup> An association is formed of members with a hierarchy and composition as agreed upon by founders and members. Therefore, exercising the right to form an association is nothing but exercising the right to choose the hierarchy and composition of the association. This right extends to include within it the right to continue the association with its composition, and leadership, as voluntarily agreed upon by the members.<sup>41</sup> Thus, Art.19(1)(c) includes the continuation of the association with the voluntary agreed-upon leadership and composition.

S.29D in dictating the terms of selection of leadership positions restricts the freedom of continuation of association. It interferes with the right to continue to function as members of the association which was voluntarily formed by the original founders.<sup>42</sup> Thus, it restricts the right under Art.19(1)(c).

### **[3.3]. THE PROVISION IS NOT A REASONABLE RESTRICTION TO THIS FREEDOM**

Art. 19(4) requires that a valid restriction must be *one*, permissible under one of the three listed grounds under Art.19(4) and *two*, a reasonable restriction. It is submitted that this restriction is

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<sup>38</sup> RP Act 1951, s 2.

<sup>39</sup> *Maneka Gandhi v Union of India* (1978) 1 SCC 248 [29].

<sup>40</sup> *ibid.*

<sup>41</sup> *Damyanti Naranga v Union of India* (1971) 1 SCC 678 [6].

<sup>42</sup> *ibid.*

neither permissible under any of the listed grounds, nor is it reasonable. Further, it is submitted that the provision is void for vagueness.

Sovereignty and integrity refer to the ultimate political sovereignty of the people, the quasi-federal nature of our government and the unity of the nation.<sup>43</sup> There is no connection between the sovereignty and integrity of the State and the internal democracy of political parties. The lack of internal democracy in a political party does not lead to loss of public order. Further, when the provision is judged by applying contemporary community standards there is no danger to morality.<sup>44</sup> Thus, the restriction does not fall under any of the listed heads.

Assuming, *arguendo*, that the restriction did fall under one of the categories given in Art, 19(4), it is submitted that as per the proportionality test,<sup>45</sup> it is not reasonable. The proportionality test requires the restriction to satisfy four conditions- first, the objective of the restriction be necessary to limit a Fundamental Right; second, the restriction must achieve that objective; third, there be minimal impairment of the right to accomplish the objective; and fourth, the restriction be balanced against the right.<sup>46</sup> In the present case, the objective is to make political parties more accountable and promote internal democracy,<sup>47</sup> in public interest. This is not a ground for reasonable restrictions as per Art.19(4). Further, the third condition remains unfulfilled, since the provision does more than minimally impair the freedom of association. Given that political parties have different hierarchies and methods of functioning, elections at every level would not necessarily further accountability and internal democracy. A blanket law such as S.29D would not be the ideal or necessary measure to achieve the object. The provision dictates terms of leadership at every level of its functioning, thus dictating its hierarchy. In an association, the members and the hierarchy are what constitute and form the association. Thus,

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<sup>43</sup> *SR Bommai* (n 27).

<sup>44</sup> *Shreya Singhal* (n 24).

<sup>45</sup> *Modern Dental College & Research Centre v State of Madhya Pradesh* (2015) 15 SCC 560.

<sup>46</sup> *ibid.*

<sup>47</sup> ¶ 3, Facts on Record.

balancing the right against the restriction, this provision interferes with the formation of the association, without a guarantee of achieving its object. Thus, the provision cannot be considered a reasonable restriction under Art.19(4).

A provision is said to be void for vagueness if it is not possible to construe it in accordance with the legislature, when there is uncertainty and the law *prima facie* takes away a guaranteed freedom.<sup>48</sup> In S.29D, the terms ‘leadership’ and ‘at all levels’ remain undefined- leaving them uncertain, and taking away the freedom of association as has been established. Thus, the provision is void for vagueness.

Therefore, since the provision is not a valid restriction under the listed grounds of 19(4), and because it is void for vagueness, the restriction is unreasonable.

#### **[4] S.168A IS VIOLATIVE OF FREEDOM OF CONSCIENCE**

The freedom of conscience under Art.25(1) is a Fundamental Right. It is submitted that S.168A violates Art.25(1), because *first*, the freedom of conscience extends to political affiliations [4.1]; and *second*, the freedom of conscience is violated by restricting Art.19(1)(c) [4.2].

#### **[4.1] THE FREEDOM OF CONSCIENCE EXTENDS TO POLITICAL AFFILIATIONS AND BELIEFS**

All persons have a ‘freedom of conscience’ *and* the right to freely profess and practice religion.<sup>49</sup> Such phraseology evinces that the freedom of conscience is interpreted even in matters of non-religion.<sup>50</sup> The freedom of conscience is a Fundamental Right guaranteed under Part III of the Constitution. Therefore, the free conscience of a person is applicable to matters of political belief as well, thus ensuring his or her liberty of thought in such issues.<sup>51</sup>

#### **[4.1.1] THE THRESHOLD FOR IMPOSING REASONABLE RESTRICTIONS HASN’T BEEN ATTAINED**

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<sup>48</sup> *Shreya Singhal* (n 24).

<sup>49</sup> Constitution of Bharath Nadu 1949, art 25(1).

<sup>50</sup> *Indira Gandhi* (n 4) [677].

<sup>51</sup> *Justice KS Puttaswamy* (n 37).

Under S.25(1) the right to freedom of conscience is subject to public order, morality and health, and the other provisions of Part III.<sup>52</sup> Therefore, Art.25 is subject to reasonable restrictions under Art.19(5).<sup>53</sup> The tests to be taken into consideration for identifying the reasonableness of the restrictions imposed, are identifying the nature of the alleged infringed right, the purpose of such restrictions, the urgency of the evil to be remedied, the disproportionateness of the restriction and the conditions at the time of imposition of such legislation.<sup>54</sup>

[4.1.1.1] THE RESTRICTIONS IMPOSED ARE NOT REASONABLE

The Radhakrishnan Committee did not mention defections as an evil that had to be *urgently* remedied.<sup>55</sup> Defections are ignominies that have to be remedied, but, this has led to the Parliament creating unreasonable restriction on honest dissenters. For instance, S.168A mentions that the fine to be paid shall be ‘exemplary’.<sup>56</sup> It is submitted that S.168A directly violates the freedom of conscience as it dissuades conscientious dissenters because of the unreasonable fine it imposes.

[4.1.1.2] THERE IS NO DISTURBANCE TO PUBLIC ORDER OR MORALITY

The test for public order is identifying whether the commission of an act would lead to a potential disturbance of the community, leaving a long-lasting impression.<sup>57</sup> In the instant case, if an MP or MLA resigns from their office in order to get themselves re-elected, from another party, it is submitted that there is no disturbance that would accrue to the public.

It is submitted that there is no violation of morality as under Art.25(1) of the Constitution, as is necessary for restraining the freedom of conscience. ‘Morality’ refers to constitutional morality.<sup>58</sup> The test for violation of constitutional morality is to identify if any act contravenes

<sup>52</sup> Constitution of Bharath Nadu 1949, art 25(1).

<sup>53</sup> *The Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar* (1954) SCR 1005.

<sup>54</sup> *State of Madras v VG Row* AIR 1952 SC 196.

<sup>55</sup> ¶ 3, Facts on Record.

<sup>56</sup> ¶ 8, Facts on Record.

<sup>57</sup> *Shreya Singhal* (n 24).

<sup>58</sup> *Indian Young Lawyers Association v State of Kerala* 2018 SCC OnLine SC 1690 [106] (Misra CJ).

the rule of law or indicates an arbitrariness in its manner.<sup>59</sup> Art.361B of the Constitution avers that any Member is disqualified on grounds of defection **till he/she gets elected again**, or till the expiry of his/her term, **whichever is earlier**.<sup>60</sup> It is moral on their part to give up membership before switching political affiliations.<sup>61</sup> This shows a general pattern of legislative and judicial intent to penalize the Member who switches political associations, only **until he/she faces re-elections**. Therefore, it is submitted that S.168A penalizes an act that is constitutionally moral.

#### **[4.2] THE FREEDOM OF ASSOCIATION, ENSURING FREEDOM OF CONSCIENCE, IS VIOLATED**

The freedom of association lets a citizen of the country be a part of the association of his/her choice.<sup>62</sup> It is submitted that S.168A impinges on the freedom of association, which in turn violates the freedom of conscience.

##### [4.2.1] THE FREEDOM OF ASSOCIATION ENSURES THE FREEDOM OF CONSCIENCE

The freedom of association includes a Fundamental Right *not* to join an association. Conscience is ‘a person’s moral sense of right or wrong’ which would therefore imply that what is considered morally wrong cannot be right.<sup>63</sup> Admittedly, the individual candidate has a duty to their political party, but, a simultaneous responsibility rests on them to represent the needs of the voters of their constituency.<sup>64</sup> A democracy in which the elected representatives act as per the wishes of their electorate forms a part of the Constitutional basic structure.<sup>65</sup> A person wishes to remain in an association as long as their values correspond to those of their party. Therefore, when there is a disharmony in this, the person must be allowed to leave the association as per their conscience.

<sup>59</sup> *Manoj Narula vs Union of India* (2014) 9 SCC 1 [75] (Misra CJ).

<sup>60</sup> Constitution of Bharat Nadu 1949, art 361B.

<sup>61</sup> *Kihoto Hollohan v Zachillhu* (1992) Supp (2) SCC 651.

<sup>62</sup> Constitution of Bharat Nadu 1949, art 19(1)(c).

<sup>63</sup> *Rajinder Kumar vs Kuldeep Singh & Ors* (2014) 15 SCC 529 [1] (Kurien J).

<sup>64</sup> *Union of India vs Association for Democratic Reforms* (2002) 5 SCC 294.

<sup>65</sup> *Indira Gandhi* (n 4) [332] (Ray CJ).

[4.2.2] S.168A VIOLATES THE FREEDOM OF ASSOCIATION

There is a Fundamental Right to resign from the current party and thus, there is no restriction to remain in the party that brought the candidate into power.<sup>66</sup> S.168A discourages ‘principled defections’<sup>67</sup> by imposing exorbitant costs. Therefore, they are compelled to perform as per the party whip’s orders, which may have a pernicious impact on the government’s answerability. Thus, it is submitted that, their freedom of conscience is severely curtailed.

**[5] S.123 (9) IS VIOLATIVE OF FUNDAMENTAL RIGHTS OF FARMERS**

It is submitted that S.123(9) is violative of the Fundamental Rights of farmers because *first*, it violates the right to life of farmers [5.1], and *second*, it is manifestly arbitrary [5.2].

**[5.1] S.123 (9) VIOLATES THE RIGHT TO LIFE OF THE FARMERS**

The right to life has multi-dimensional aspects, to include the right to more than a mere existence. Life includes those aspects that make it meaningful and worth living.<sup>68</sup> With the expansion, DPSPs have also been incorporated into these Fundamental Rights. Thus, it is submitted that the right to both a basic sustainable livelihood and a standard of living has been infringed, thereby affecting the farmers’ right to life.

**[5.1.1] THE RIGHT TO A STANDARD OF LIVING AND LIVELIHOOD ARE A PART OF THE RIGHT TO LIFE**

The right to life also includes within it the right to livelihood. Nobody can survive without the presence of essential requisites to ensure their livelihood. The concept of livelihood subsumes such necessities, which the State has a moral obligation to provide under the DPSPs ensured by Articles 39(a),<sup>69</sup> 38 and 47 of the Constitution. Thus, laws depriving the farmers of their right to livelihood are void.

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<sup>66</sup> *Jayashankara Gowda vs Chief Secretary* (1988) ILR KAR 1005.

<sup>67</sup> MP Jain, *Indian Constitutional Law* (LexisNexis 2003) vol 1, 8<sup>th</sup> edn, 62.

<sup>68</sup> *ibid* 1310.

<sup>69</sup> *Olga Tellis v. Bombay Municipal Corporation* (1985) 3 SCC 545 [33] (Chandrachud CJ).

The right to live with human dignity, not a mere hopeless existence, is a part of the right to life.<sup>70</sup> Those essential aspects of life that are needed for a minimum acceptable standard of living should be fundamentally available to everyone.

[5.1.2] S.123(9) VIOLATES THE RIGHT TO LIVELIHOOD

S.123(9) restricts positive obligation on the State to provide certain requisites to ensure a decent standard of living. It is submitted that S.123(9) goes against the positive obligation of the State to ensure, to the farmers, the right to life.

[5.1.2.1] THE RIGHT TO LIFE INCLUDES A POSITIVE OBLIGATION ON THE STATE

The right to life is a positive and a negative right.<sup>71</sup> The State, it is submitted, can *suo motu* take up measures that ensure or elevate the right to life.<sup>72</sup> Similarly, there is a positive constitutional duty to implement the DPSPs.<sup>73</sup>

[5.1.2.2] S.123(9) CONTRAVENES THE POSITIVE OBLIGATION

Freebies and other benefits, which were earlier considered to be a luxury, are necessities in the present.<sup>74</sup> Thus, it is submitted that the provision of goods like stoves, televisions, etc., provide farmers a minimum acceptable standard of living. Besides, the right to a decent life also includes the right to food and water.<sup>75</sup> The farmers' means of livelihood, agriculture, is dependent on necessities like grains, implements, for which taking of loans becomes a necessity. Burdensome repayment installations these loans will compromise on their ability to afford food and other needs.

If electoral promises are fulfilled in good faith, it will be a step to ensure an adequate livelihood guaranteed by Directive Principle of State Policy under Art.39(a) of the Constitution. However, if S.123(9) is implemented, the promises made by political parties in their manifestoes could

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<sup>70</sup> *Maneka Gandhi* (n 39).

<sup>71</sup> *Tehseen S. Poonawalla vs Union of India* (2018) 9 SCC 501 [23] (Dipak Misra CJ).

<sup>72</sup> *Prithipal Singh Etc vs State of Punjab & Anr. Etc* (2012) 1 SCC 10.

<sup>73</sup> *ibid.*

<sup>74</sup> *Subramaniam Balaji* (n 23) [51] (Sathasivam J).

<sup>75</sup> *Chameli Singh v. State of Uttar Pradesh* AIR 1996 SCC 1051 [8] (Ramaswamy J).

be construed as a 'Corrupt Practice'. This would prevent farmers from getting those benefits that would have elevated their standard of living. Therefore, it is submitted S.123(9) violates farmers' rights to livelihood and a minimum acceptable standard of living, the Fundamental Rights guaranteed under Art.21.

#### **[5.2] S.123(9) IS A MANIFESTLY ARBITRARY LEGISLATION**

The right to life of is subject to the 'procedure established by law'.<sup>76</sup> However, this also includes the fairness of the procedure that has been mentioned in Art.21.<sup>77</sup> Therefore, it is submitted that any legislation that takes away the right to life under Art.21 of the Constitution, has to be reasonable, and that S. 123 (9) is unreasonable and manifestly arbitrary.

##### [5.2.1] THE DUE PROCESS THAT RESTRICTS RIGHT TO LIFE HAS TO BE REASONABLE

Art.21 had to be read in a manner that the procedure for denying the Right to Life has to be as per fair, just and reasonable procedure.<sup>78</sup> The legislated procedure should not be arbitrary.<sup>79</sup> The reasonableness test is such that the government action must satisfy the criterion of catering to 'public interest'.<sup>80</sup> This indicates that there must be no 'manifest arbitrariness'. Therefore, the test for manifest arbitrariness would be to check if the legislation passed by the government is 'without adequate determining principle', and is vacillating and 'disproportionate'.<sup>81</sup>

##### [5.2.2] S.123(9) IS MANIFESTLY ARBITRARY

The Parliament amended S.123 of the RP Act.<sup>82</sup> S.8A of the Act elucidates on the disqualification on the grounds of indulging in corrupt practices as defined in S.123. It is submitted that S.123(9) does not satisfy the test of reasonableness because it is vague and uncertain in its phraseology, and it is not compatible with certain other provisions.

<sup>76</sup> Constitution of Bharat Nadu 1949, art 21.

<sup>77</sup> MP Jain (n 67) 1269.

<sup>78</sup> *Bacchan Singh v State of Punjab* (1980) 4 SCC 669, 673 [136] (Chandrachud CJ).

<sup>79</sup> *Maneka Gandhi* (n 39).

<sup>80</sup> *Kasturi Lal Lakshmi Reddy vs State of Jammu And Kashmir* (1980) 3 SCR 1338 [14] (Bhagwati J).

<sup>81</sup> *Shayara Bano v Union of India* (2017) 9 SCC 1.

<sup>82</sup> ¶ 8, Facts on Record.

Vague laws are arbitrary and implicate the innocent,<sup>83</sup> and widen the scope of application for unjust ad hoc implementation of laws. Such laws could be used to the detriment of individuals, in the present case by probably disqualifying the political party and thereby denying the farmers from seeking performance of their promises. Laws are unconstitutional if its confines and prohibitions aren't clearly elucidated.<sup>84</sup> If this happens, the State could use the law in order to interpret it as per their convenience.

It is there are several ambiguities associated with S.123(9) in that it is a provision that is vaguely worded, and also in that there procedural flaws flowing from the introduction of this provision. S.123(9) talks of promises made by political parties with the purpose of only securing votes.<sup>85</sup> However, identifying if the promises made by the political party in the manifesto were made with a preconceived plan of not acting on them once it came into power, is highly improbable. Sometimes, the elected party wishes to pursue the promises it had made in its manifesto, but circumstances force them to either delay or shelve the plan altogether.<sup>86</sup>

Additionally, S.123(9) talks of 'gainful benefits' and leaves the definition open by using the word 'etc.,'.<sup>87</sup> What constitutes 'gainful benefits' hasn't been mentioned, however. It is also submitted that judging if promises like 'better governance' have been fulfilled or not is highly subjective. Therefore, it is submitted that S.123(9) is unreasonable on account of its ambiguity. It has been ruled that promises in election manifestoes by electoral parties are not 'corrupt practice' under S.123 of the Act.<sup>88</sup> Besides, S.8A talks of disqualification of only '*persons*' who were guilty of corrupt practice. No provision has been provided for punishing a party that has been found guilty of said corrupt practice.

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<sup>83</sup> *Shreya Singhal* (n 24).

<sup>84</sup> *Kartar Singh v. State of Punjab*, (1994) 3 SCC 569.

<sup>85</sup> ¶ 8, Facts on Record.

<sup>86</sup> *ANZ Grindlays Bank Pie v Commissioner MCD* 1995 II AD(Delhi) 573.

<sup>87</sup> ¶ 8, Facts on Record.

<sup>88</sup> *Subramaniam Balaji* (n 23) [85] (Sathasivam J).

**PRAYER**

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

- I. Declare that the Constitutional (104<sup>th</sup> Amendment) Act, 2019 is unconstitutional as it violates the basic structure of the Constitution.
- II. Declare that S.123(9) of the RP Act as void as it violates Art.19(1)(a) of the Constitution, and the fundamental rights of farmers.
- III. Declare that S.29D of the RP Act as void as it violates Art.19(1)(c) of the Constitution.
- IV. Declare that S.168A of the RP Act as void as it violates freedom of conscience.

And pass any other order that this Hon'ble Court may deem fit in the interest of justice, equity and good conscience.

All of which is humbly prayed,

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Counsel for the Petitioner.