

**TEAM CODE-94**

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

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IN THE SUPREME COURT OF BHARAT NADU

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

V.

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

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MEMORIAL FOR THE RESPONDENTS ON SUBMISSION TO THIS HON'BLE

SUPREME COURT OF BHARAT NADU

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**STATEMENT OF JURISDICTION**

The Petitioners have approached the court under Article 32 of the Constitution, Bharat Nadu  
the Respondents reserve their right to contest the same.



### **SYNOPSIS OF FACTS**

Bharath Nadu is a federal country with a multiparty system and parliamentary form of govt. 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 1<sup>st</sup> Nov., 2018. The Bharath Nadu Janata Party (BNJP) won the parliamentary elections and introduced reforms such as 104<sup>th</sup> 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.

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

The United National Congress Party (UNCP) challenged the 104<sup>th</sup> 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. The Supreme Court admitted and clubbed all the petitions together for a common hearing. The matter is posted for final hearing on 30<sup>th</sup> and 31<sup>st</sup> March, 2019.

**STATEMENT OF ISSUES**

- I. The 104<sup>th</sup> Amendment by the Parliament is in harmony with the basic feature of the Constitution.
- II. Section 29D and 29E of the Representation of the People's Act, 1951 is not violative of Article 19(1) (c) of the Constitution of Bharat Nadu.
- III. Section 123(9) of the Representation of the People's Act, 1951 is not violative of Article 19(1) (a) of the Constitution of Bharat Nadu.
- IV. Section 168A of the "Representation of People Act" is not in violation of Article 25 of the Constitution of Bharat Nadu.

## SUMMARY OF ARGUMENTS

### **I. 104<sup>TH</sup> AMENDMENT BY THE PARLIAMENT IS IN HARMONY WITH THE BASIC FEATURE OF THE CONSTITUTION.**

104<sup>th</sup> Constitutional amendment is valid as it is within the powers conferred upon the parliament under article 368 and does not violate the basic features of the constitution. Also, Synchronised elections are in favour of and for the well being of the states.

### **II. SECTION 29D IS NOT VIOLATIVE OF FREEDOM OF ASSOCIATION OF POLITICAL PARTIES UNDER ARTICLE 19(1)(C).**

Freedom of association guaranteed by our constitution under Article 19(1)(c ) is not being infringed by the insertion of section 29D in the Representation of people's act,1951 as political parties are primary instruments of democracy and Election commission is the appropriate body to supervise elections. Additionally, the contented legislative act also complies with the reasonable restrictions provided under 19(4).

### **III. Section 123(9) of the Representation of the People's Act, 1951 is not violative of Article 19(1)(a) of the Constitution of Bharat Nadu.**

Freedom of speech and expression guaranteed under article 19(1)(a) of the constitution is not being violated by the introduction of section 123(9) as the section complies with the reasonable restrictions under article 19(2) of the constitution. Additionally, the promises made by political parties solely for the benefit of gaining votes is in violation of level playing field.

### **IV. SECTION 168A OF THE REPRESENTATION OF PEOPLE ACT IS NOT IN VIOLATION OF ARTICLE 25.**

Insertion of section 168A does not interfere with Article 25 of the constitution as Unprincipled defections are not protected under the freedom of conscience. Additionally, 168A reduces the burden on the exchequer and ensures the electoral verdict is not negated.

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## BODY OF ARGUMENTS

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### **I. 104<sup>TH</sup> AMENDMENT BY THE PARLIAMENT IS IN HARMONY WITH THE BASIC FEATURE OF THE CONSTITUTION.**

1. The 104<sup>th</sup> Amendment is not violative of the basic structure of the constitution as it is in adherence with the structure of federalism and principles of democracy **(A)**. synchronised elections are for the wellbeing of the states **(B)**.
2. Article 368<sup>1</sup> is the principal provision that confers upon the Parliament the wide power of Amendment by way of addition, variation, or repeal any provision of the constitution.<sup>2</sup> There are no implied limitations on the power of the Parliament under Article 368 when it seeks to amend the Constitution.<sup>3</sup>

#### **(A) The 104<sup>th</sup> Amendment is not violative of the basic structure of the constitution as it is in adherence with the structure of federalism and principles of democracy.**

3. It is established that our Constitution is “*quasi federal*”<sup>4</sup> in nature, because it is a mixture of the federal and unitary elements, leaning more towards the latter.<sup>5</sup> The Supreme Court observed that the Constitution also embodies certain features which can be perceived as deviations from federalism, giving it a unitary character. The ideas of unity and integrity of nation is enshrined in our preamble<sup>6</sup> gives effect to the idea that the constitution leans in the favor of a strong centre while distributing the powers and functions between the centre and the States.<sup>7</sup>
4. Hence, it is well established that though the country follows a federal structure, it is slightly tilted towards a unitary form of government.

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<sup>1</sup> INDIA CONST. art. 368.

<sup>2</sup> INDIA CONST. art. 368, Cl. 1.

<sup>3</sup> M.Nagaraj & Ors v. Union Of India & Ors, AIR 2007 SC 71.

<sup>4</sup> S.R Bommai v. Union of India , AIR 1994 SC 1918.

<sup>5</sup> Jindal Stainless Ltd. & Ors. v. State of Haryana & Ors., AIR 2016 SC 5617; State Bank of India v. Santosh Gupta, AIR 2017 SC 25.

<sup>6</sup> INDIA CONST, preamble.

<sup>7</sup> S.R. Bommai v. Union of India, (1994) 3 SCC 1; State Of Karnataka v. Union Of India & Anr, 1978 AIR 68.

5. Furthermore, SC observed that even though the country follows a Federal form of Government, but this has been back lined due to the necessity of progress and development which has to be nationally integrated, maintain coordination between the Centre and State with the economy of the country, and improving the quality of life of its own citizens. In such a system, which focuses on the wholesome wellbeing of its citizens, the States cannot stand in the way of a legislative decision taken for planned development of the country by the Central Government.<sup>8</sup> Additionally, the respondent contends that in the present case the amendment seeks to give more powers to the parliament for national needs of the country as directed by the Radhakrishnan Committee<sup>9</sup> after seeking public opinion through an online referendum.<sup>10</sup>
6. The respondent further contends that interpreting the strict and literal wording of the Article 172(3), it states that the parliament may extend or curtail the term of any state assemblies for a period it deems necessary “strictly for the purpose of synchronisation” of elections. The above word “strictly” implies that the parliament has amended the constitution for the purpose of synchronisation which is necessary for bringing in changes in the electoral laws as directed by the Radhakrishnan Committee.<sup>11</sup>
7. Therefore, it is contented that as it is for the nation’s well being and for coordination between the centre and states that electoral reforms in the form of synchronization of elections are introduced, the amendment is not attacking the federal polity of the country.

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<sup>8</sup> State of Rajasthan v. Union of India, AIR 1977 SC 1361.

<sup>9</sup> Moot Proposition, ¶3.

<sup>10</sup> Moot Proposition, ¶6.

<sup>11</sup> Moot Proposition, ¶3.

8. Further, Democracy enshrined in our preamble is a basic feature of the constitution.<sup>12</sup> In a democratic republic it is the will of the people which is paramount and forms the basis of the authority of the Government.<sup>13</sup> In a democracy, periodical elections are conducted for having efficient governance for the country and for the benefit of citizens.<sup>14</sup> Democracy based on "free, fair and periodic elections" is regarded as a basic feature of the Constitution.<sup>15</sup>
9. The respondent contends that in absence of synchronization, Elections are held according to the stability of the current legislative assembly where, premature dissolution of House(s) and mid-term polls are frequent in the country. Frequent elections adversely impact the focus of Governments and political parties. The need to win the next election makes short-term political imperatives an immediate priority.<sup>16</sup> Therefore, frequent elections are against the ideals of a free, fair and periodic election.
10. Hence, it is contended that holding simultaneous elections, by no means, affect democratic set up of Bharath Nadu but further enhances it.

### **B. SYNCRONISED ELECTIONS ARE FOR THE WELLBEING OF THE STATES.**

11. Synchronized elections are for the well being of the states as it impacts the development programs and governance due to imposition of MCC (i).Creates huge burden on

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<sup>12</sup> 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.

<sup>13</sup> Kesavananda Bharati v. Union of India, AIR 1973 SC 1461; Kuldip Nayar & Ors. v. Union of India & Ors, AIR 2006 SC 3127.

<sup>14</sup> *Id.*

<sup>15</sup> Kihoto Hollohan v. Zachilhu, AIR 1993 SC 412.

<sup>16</sup> S Y Quraishi, *Holding Simultaneous LS, Assembly Polls Desirable, but not feasible*, THE QUINT (Mar. 14, 2019, 7:00 PM), <https://www.thequint.com/voices/opinion/holding-ls-assembly-polls-together-is-desirable-but-not-feasible>.

exchequer and other stake holders **(ii)** Leads to Engagement of security forces for significantly prolonged periods **(iii)**.

**i.) Impact of Development programs and governance due to imposition of Model Code of Conduct-**

12. The model Code of Conduct lays down the guidelines for political parties during contesting elections and the party in power has to strictly abide by during elections.<sup>17</sup> Frequent elections lead to frequent imposition of the MCC, resulting in policy paralysis and governance deficit.<sup>18</sup> Additionally, it puts the entire development program on hold and affects normal governance by curbing government activities in poll bound states.<sup>19</sup>

**ii.) Huge burden on exchequer and other stake holders-**

13. The Government and State Government bear huge expenditure on account of conduct, control and supervision of elections. Candidates and political parties end up spending significantly more than the prescribed expenditure limits, which is one of the key drivers for corruption and black-money in the country. After winning elections, the politician-bureaucrat nexus indulges in “recovering the investment” and this marks the inception of corruption.<sup>20</sup>

**iii.) Engagement of security forces for significantly prolonged periods.**

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<sup>17</sup> Election Commission of India, *Model Code of Conduct for the guidance of Political Parties and Candidates 7* (2007).

<sup>18</sup> Committee on personnel, public grievances, law and Justice, 79<sup>th</sup> report, feasibility of holding simultaneous elections to the house of people (Lok Sabha) and state legislative assemblies 3 (2015) [79<sup>th</sup> report]

<sup>19</sup> *Id.*

<sup>20</sup> Bibek Debroy and Kishore Desai, Analysis of Simultaneous Elections: The “what”, “why”, & “how” A discussion paper, NITI AAYOG Vol. 136 (Jan 7, 2017), [http://niti.gov.in/writereaddata/files/document\\_publication/Note%20on%20Simultaneous%20Elections.pdf](http://niti.gov.in/writereaddata/files/document_publication/Note%20on%20Simultaneous%20Elections.pdf).

14. The ECI takes help of a significant number of polling officials as well as armed forces to ensure smooth, peaceful and impartial polls. The role of such security forces starts much before polling and ends only after the counting of votes and declaration of results. Considering that about two to five State Assemblies go to polls in every six months, the situation leads to a lock-in of state police forces for prolonged periods of time. Simultaneous Elections would help in freeing up this crucial manpower, enabling it to be better deployed for other internal security purposes – the basic responsibilities for which these forces were developed for.<sup>21</sup>

15. Therefore, as the current situation of the country requires for the implementation of simultaneous elections for reducing pressure upon the exchequer<sup>22</sup>, control the expenses of political parties, help in avoiding repeated enforcement of the Model Code of Code which affects administrative actions of the Government<sup>23</sup>, hence it is submitted that electoral reforms in the form of synchronization of elections are for the well being of the states and is constitutionally valid.

## **II. SECTION 29D IS NOT VIOLATIVE OF FREEDOM OF ASSOCIATION OF POLITICAL PARTIES UNDER ARTICLE 19(1)(C).**

16. Political Parties are primary instruments of Democracy (A). Election commission is the appropriate body to supervise the elections of Political Parties (B). Section 29D and 29E is a reasonable restriction on Article 19(1)(c) under 19(4) in the interest of Public Order (C).

### **A) Political Parties are primary instruments of Democracy.**

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<sup>21</sup> *id.*

<sup>22</sup> Moot Proposition, ¶3.

<sup>23</sup> Law Commission of India reports, *Draft report on Simultaneous Elections*, August 30, 2018.



17. Political parties are a group of people who follow the ideologies of their leader who aims to gain control over the government through constitutional means. These parties are the medium through which the citizens vocalize their issues and they act as an instrument for enactment of the law. Even though electors vote for a party and not for a specific individual, these individuals are chosen by the political party.<sup>24</sup> They are the future government who are responsible for formulation of policies for the welfare of the state. Hence, are an important institution to a democratic setup and therefore they have become so potent in determining the measure and in administering the affairs of Government that they are now regarded as inseparable from a democratic government.
18. Hence, as the actions of a political party affect the regulation of a country, it is essential that the leader of a political party is duly elected by the members of the political parties itself. Due to the strict defection laws in the country, the candidates are not allowed to defy the party whip in the parliament. Hence a uniform ideology is propagated by a party which originates from its leader. Candidates of a party, work at the grass root level that helps them understand the desires of its citizens. Hence, democratization of political parties is necessary so that the candidates can elect the leader of the party at the will of the citizens.

**B. Election Commission is an appropriate body to supervise the elections of Political Parties.**

19. Election Commission is an independent body which works without any interference from the Government. Additionally, it will act in a neutral manner in the supervision of these elections.<sup>25</sup> The commission being a multiple-member body will ensure that it does not

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<sup>24</sup> 4 DD BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 4234 (LexisNexis 2014).

<sup>25</sup> 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.

give unrestricted authority to a single individual and prohibit arbitrariness.<sup>26</sup> If these elections are left unsupervised, it can give rise to nepotism and favoritism which entirely defeats the purpose of this law and affects the true spirit of inner party democracy. Hence, it is essential that an external body supervises elections of Political Parties.

**C. Section 29D and 29E is a reasonable restriction on Article 19(1)(c) under 19(4) in the interest of Public Order.**

20. Fundamental rights are not absolute rights and are subject to reasonable restrictions as long as it is in the welfare of the state. Article 19(4) specifically includes “in the interest of” public order. This expression makes the ambit of protection very wide. A law may not have been designed to directly maintain public order and yet it may have been enacted in the interest of public order.<sup>27</sup>
21. Generally, local leaders are unable to deliver the message by its constituency to the party whip. Various promises are made in order to collect votes from the citizens but these promises are almost never fulfilled. Promises are usually disregarded as local leaders are bound by the decisions of the party. This causes dissatisfaction amongst the masses. Hence, this calls for an organized state which can be achieved by democratization of political parties. Additionally, this will help in formulating uniform policies which will percolate down from the party leader.
22. In order to be reasonable, ‘restrictions’ must have reasonable relation to the object which the legislation seeks to achieve and must not go in excess of that object. The restriction needs to be in proximate connection or nexus of public order.<sup>28</sup> There is no restriction imposed on who can become the party leader, the legislation is aimed to regulate the

<sup>26</sup> Dwaraka PD v. State of UP, AIR 1954 SC 224; Excel Wear v. Union of India, AIR 1979 SC 25.

<sup>27</sup> Superintendent, Central Prison, Fatehgarg v. Ram Manohar Lohia, AIR 1960 SC 633; Kedar Nath Singh v. State of Bihar, AIR 1962 SC 955.

<sup>28</sup> Superintendent, Central Prison, Fatehgarg v. Ram Manohar Lohia, AIR 1960 SC 633; V. K Javali v. State of Mysore, AIR 1966 SC 1387.

elections of a post that has an influence on determining party ideals which in turn would shape public policy.

23. Furthermore, when a leader is elected by its members, he is accountable to the members of the political party and this will keep his actions in check. This will strengthen the inner democracy for a political party and aid in fulfillment of the promises made to its citizens.

**III. Section 123(9) of the Representation of the People’s Act, 1951 is not violative of Article 19(1)(a) of the Constitution of Bharat Nadu.**

24. Section 123(9) complies with reasonable restriction under Article 19(2) of the constitution (A). Promises made by political parties solely for the benefit of gaining votes is in violation of level playing field (B).

**A) Section 123(9) complies with reasonable restriction under Article 19(2) of the constitution.**

25. Fundamental rights are not uncontrolled or absolute rights<sup>29</sup> and are subjected to reasonable restriction.<sup>30</sup> Article 19(1)(a) is bound by certain restrictions under Article 19(2)<sup>31</sup> of the Constitution of India under the interest of public order<sup>32</sup>.

**i.) The restriction should be in direct nexus and proportionate to the right created.<sup>33</sup>**

26. If there is a direct nexus between the restriction and the object of the act, then a strong presumption in the favour of the constitutionality will naturally arise.<sup>34</sup> Justice Chandrachud called it “the test of proximate effect and operation of the statute.”<sup>35</sup>

<sup>29</sup> 3 DD BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 3262 (LexisNexis 2014).

<sup>30</sup> Dwarka Prasad Laxmi Narain v. State of UP, AIR 1954 SC 224.

<sup>31</sup> INDIA CONST art. 19, cl. 2.

<sup>32</sup> Dr. Ramesh Yeshwant Prabhoo v. Shri Prabhakar Kashinath Kunte & ors., 1996 AIR 1113.

<sup>33</sup> MRF ltd. v. Inspector Kerala Government, AIR 1999 SC 188.

27. Manifestos, policies, programs of the political parties have lost meaning in the present system of governance due to lack of accountability.<sup>36</sup> Hence, to formulate a change to that amendments are necessary as long the law made is in balance to the effect that the reasonable restriction does not interfere with the fundamental right. The law does not completely take away the right of formulating manifestos but rather it is a partial prohibition keeping in mind to not disturb the balance of proportion between the law and fundamental rights. According to the Proportionality test, restriction imposed in exercise of a Fundamental Right must be proportionate to the legitimate aim pursued which is authorized by the limitation clause appended to the guarantee of that right.<sup>37</sup> It partially prohibits items of “gainful benefit” which are “solely” used with the view to secure votes. Hence the balance of proportionality is not affected. As it is not a blanket ban of the right, it does not violate Article 14 of the Constitution of India.

**ii.) The right created should not be arbitrary or excessive in nature.<sup>38</sup>**

28. The phrase “reasonable restriction” connotes that the limitation imposed upon a person in enjoying a right should not be arbitrary or of an excessive nature beyond what is required in the interest of the public.<sup>39</sup> It seeks to strike a balance between the freedom guaranteed by article 19(1) of the Constitution of India and the social control permitted by 19(2).

29. This law provides a platform for free and fair elections to candidates who have principled motives to win elections on formulation of policies and performances and for small party candidates who do not have enough resources to distribute freebies. Additionally,

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<sup>34</sup> Bachan Singh v. State of Punjab, AIR 1980 SC 898; 2 DD BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 2416 (Wadhwa Nagpur 2007).

<sup>35</sup> 3 DD BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 3273 (LexisNexis 2014).

<sup>36</sup> People's Union for civil Liberties (PUCL) & Ors. v. Union of India & Ors, AIR 2003 SC 2363.

<sup>37</sup> Om Kumar v. Union of India, AIR 2000 SC 3689.

<sup>38</sup> PP Enterprises v. UOI, AIR 1982 SC 1016.

<sup>39</sup> Dwarka Prasad Laxmi Narayan v. State of UP, AIR 1954 SC 224.

freebies distributed by governments drain the exchequer when the same money could have been used for implementation of new schemes or rewarding citizens who actually paid taxes on time rather than people who evaded their responsibility.

**iii.) The right created should be in the interest of the public.<sup>40</sup>**

30. Lastly, the law fulfils the criteria of catering to public interest when any action taken by the govt. with a view to give effect to any one or more of directive principles would ordinarily, subject to any constitutional or legal inhibition or other overriding consideration, qualify for being regarded as reasonable. So the concept of public interest must as far as possible receive its orientation from Directive Principles of State Policy<sup>41</sup> and has attained great significance in considering reasonableness.<sup>42</sup>

31. Article 38 of the Indian Constitution<sup>43</sup> asserts that the state shall protect the economic interest of the people and strive to minimize the inequalities in income, status and opportunities. Farmer suicide is increasing at a fast pace and has become a national ignominy.<sup>44</sup> Section 123(9) was essentially made in the interest of the weaker sections of the society and for the purpose of safeguarding the rights of the farmers and protecting them from exploitation by politicians who take undue advantage of their position.

32. Furthermore, distribution of freebies works against the interest of the public. Respondent, Nation Builder, asserts that the idea of farm loan waiver is economically and legally ill-founded. Distribution of freebies creates a sense of idleness amongst the masses as they expect to receive amenities from the state for free and lose the desire to work, even regarding farm loan waivers, it discourages farmers to work and pay off their loans in the

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<sup>40</sup> Papanasam Labour Union v. Madhura Coats Ltd., AIR 1995 SC 988.

<sup>41</sup> Fateh Chand Himmatlal v. State of Maharashtra, AIR 1977 SC 1825; Keshavnanda Bharati v. State of Kerala, AIR 1973 SC 1461.

<sup>42</sup> N.K. Bajpai v. Union of India, AIR 2012 SC 11310.

<sup>43</sup> INDIA CONST. art. 38.

<sup>44</sup> Moot Proposition, ¶1.

hopes that the loan will be waived off under a “freebie act” in the next election process. Political parties need to focus on introducing schemes to reduce the burden on farmers caused due to draughts, heavy loans, etc. as loan waivers is only a small part of freebies. Freebies include distribution of alcohol, monetary cash for attending political rallies which does not give other candidates a chance to fight elections on political performance and becomes a race of distribution of freebies. As freebies cannot be distributed to each and every person, this causes favoritism and benefits like farm loans or scholarship cannot be availed by all as compared to governmental schemes which makes no such differentiation.

33. A country has an obligation to implement the international rights that it has ratified through appropriate legislation. Under Article 23(3) of the Universal Declaration of Human Rights,<sup>45</sup> the farmers have the right to favourable remuneration to conduct his profession with dignity. The respondents assert that, to provide social protection, rather than supplementing them with empty promises, political parties can come up with government schemes to reduce farm loan rates, providing subsidiaries, etc. as loan waivers are only temporary solutions to the larger problem, instead they should look for a permanent solution to resolve the problem once and for all.

**B) Promises made by political parties solely for the benefit of gaining votes is in violation of level playing field.**

34. The meaning of manifestos has changed over the due course of time. Manifesto stood for the ideologies and course for reformation for a country to which it has changed to way to secure as many votes as possible. Promises made by a political party of any gainful benefit solely with the view to secure votes are in violation of level of playing field. In

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<sup>45</sup> G.A. Res. 217 (III) A, Universal Declaration of Human Rights (Dec. 10, 1948).

the case of *S. Subramaniam Balaji Vs Govt. of Tamil Nadu and Others*<sup>46</sup>, it was held that “distribution of freebies of any kind, undoubtedly, influences all people. It shakes the root of free and fair elections to a large degree”. Hence, it is in violation of Article 14<sup>47</sup> of the Constitution of India and is arbitrary and discriminatory because it denies a level playing field to other candidates who do not resort to such means.

35. These freebies are targeted at the rural population and it is not common knowledge for them to understand that all the things promised in a manifesto are not enforceable. Further, this can easily be persuaded to vote for a specific party solely on the basis of the benefits promised to them. Hence this puts other candidates at a disadvantage as they are deprived of equal opportunity to conduct free and fair election. Due to which, when moving towards a new policy dispensation, it is necessary to ensure a level playing field which can be ensured through prohibiting such practices.

#### **IV. SECTION 168A OF THE REPRESENTATION OF PEOPLE ACT IS NOT IN VIOLATION OF ARTICLE 25.**

36. Unprincipled defections are not protected under the Freedom of Conscience (A). Section 168A reduces the burden on the exchequer and ensures the electoral verdict is not negated (B).

##### **A) Unprincipled defections are not protected under the Freedom of Conscience.**

37. Bharat Nadu has been facing political instability due to defections, corruptions, spilt in political parties, etc<sup>48</sup> which undermines the very foundation of democracy and the

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<sup>46</sup> *S. Subramaniam Balaji v. Govt. of Tamil Nadu and Ors*, (2013) 9 SCC 659.

<sup>47</sup> INDIA CONST., art 14.

<sup>48</sup> Moot Proposition, ¶1.

principles which sustain it.<sup>49</sup> Bharat Nadu is a country with the highest potential to become a world leader provided it effectively addresses its political crisis.<sup>50</sup> Section 168A has been introduced through the Radhakrishnan committee through the directions of the Supreme Court, which is meant for outlawing defection and fulfilling the above assurance. The provisions are intended to strengthen the fabric of Parliamentary democracy by curbing unprincipled and unethical political defections.<sup>51</sup> The law is targeted at addressing unprincipled defections, which cannot be protected under freedom of conscience or the right to dissent or intellectual freedom.<sup>52</sup>

38. It is the duty of the state to take necessary measures to fulfill its obligation towards its citizens by making political parties more accountable and promote internal democracy within the political parties.

39. A political party functions on the strength of shared beliefs.<sup>53</sup> Its own political stability and social utility depends on such shared beliefs and concerted action of its members in furtherance of those commonly held principles. Any freedom of its members to vote as they please independently of the political party's declared policies will not only embarrass its public image and popularity but also undermine public confidence in the party which, in the ultimate analysis, is its source of harm to its very survival.<sup>54</sup> A public image of disparate stands by members of the same political party is not looked upon, as a desirable in political tradition.<sup>55</sup>

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<sup>49</sup> Subodh Uniyal & Ors. v. Speaker Legislative Assembly & Ors., 2016 SCC OnLine Utt. 465.

<sup>50</sup> Moot Proposition, ¶1.

<sup>51</sup> 10 DD BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 12243 (Wadhwa Nagpur 2007).

<sup>52</sup> no citation

<sup>53</sup> 10 DD BASU, COMMENTARY ON THE CONSTITUTION OF INDIA 12244 (Wadhwa Nagpur 2007).

<sup>54</sup> *id.*

<sup>55</sup> Narsingrao Gurunath Patil & Ors. v. Arun Gujarathi & Ors., 2003 (1) Bom CR 363.



40. Additionally, the people who are responsible for making policies should be held accountable, which in turn, will also aid in effective designing and implementation of policies during the tenure of the party.
41. Hence the law recognizes the role of political parties in a parliamentary democracy. This is premised on the assumption that when elections happen, it is the political parties that go before the electorate with particular programs or manifestoes, set up their candidates and spend funds on election campaigning. When these candidates get elected, political propriety demands that they continue to support the party and its policies, promoting party discipline. Hence, this promotes loyalty of party members towards the political party that aided in their successful election.
42. Mr. Belliyappa is known for shifting sides for political benefits<sup>56</sup> which goes against the spirit of democracy and violates the sacred space of freedom of conscience for his own gainful benefits. Such acts have made the public distrustful in the legislature. 168A aims at bridging the gap between personal and political conduct of political parties.
43. Additionally, the bar for violation is low with the contention of freedom of conscience. The effective enforcement of this guarantee involves a nexus between individual, society and State. Hence, its implementation of 'freedom of conscience' is problematic due to lack of certainty/consistency in while interpreting this provision in relation to purely 'conscience' issues.
44. This is because conscience, unlike religious belief which lays down established practices to be recognized, can never have a set standard which may be attributed to a class of citizen. Humans conscience is bound yield different approaches to moral, ethical, legal and political issues.

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<sup>56</sup> Moot Proposition, ¶11.

**B) Section 168A reduces the burden on the exchequer and ensures the electoral verdict is not negated.**

45. Firstly, when a candidate contests election from another party before the completion of his term, there is a need to host elections for the seat that he has vacated. This is a never ending cycle which increases the strain on the exchequer. The election commission has a certain budget that has to be spent on elections. A large part of it goes into deployment of security personnel and polling staff, setting up polling stations, purchase of electronic machines and issuance of photo identification card.
46. The idea behind amendment brought by 172(3) is to synchronize the elections, solely for the purpose of reducing the burden on the exchequer but the process of contesting elections through another party in the same term defeats the entire purpose of this amendment. Separate polls for a single seat also increase the workload of the Election Commission. Additionally, political parties hold separate election campaigns and common people suffer as they do not have a medium to approach their grievances until the seat is filled. Furthermore, it is a waste of the valuable time of the citizens as they will have to vote twice for the same seat. Additionally, this will also discourage candidates from contesting election from more than one constituency. Hence this continuous change in the political landscape is not healthy for a democracy.
47. Secondly, not having a concrete set of rules makes it difficult for a party who attained majority to form a government as it negates the electoral verdict. A party which fails to get majority in the house through election may yet be able to maneuver a majority in the house and form the government by inducing defections from other parties. Thus, a party which may have won a majority through election, and got the mandate from the people to form the government, may yet fail to do so because a few of its members defect from the party.

48. Furthermore, this law helps to reduce political corruption and bribery, and ensure that there is some degree of stability in our government institutions. Often legislators are offered ministerial positions, or personal benefits, to help topple the government of the day by defecting from their political party. This fixes the indifference of the defectors toward political propriety and public opinion.

**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 104<sup>th</sup> Amendment by the Parliament is in harmony with the Basic Feature of the Constitution.
- II. Section 29D is not Violative of Freedom of Association of Political Parties under Article 19(1)(c).
- III. Section 123(9) of the Representation of the People's act, 1951 is not violative of Article 19(1)(a) of the Constitution of Bharat Nadu.
- IV. Section 168A of the Representation of People Act is not in violation of Article 25.

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 Respondents