

**3RD SURANA & SURANA & KLE LAW COLLEGE NATIONAL  
CONSTITUTIONAL LAW MOOT COURT COMPETITION – 2019**

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**BEFORE THE HON'BLE  
SUPREME COURT OF BHARAT NADU**

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**ORIGINAL JURISDICTION  
WRIT No. \_\_\_ OF 2019**

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**WRIT PETITION UNDER ARTICLE 32 OF THE CONSTITUTION OF UNION OF BHARAT NADU  
READ WITH O.XLVII, R.5 OF THE SUPREME COURT RULES, 1966**

**IN THE MATTER OF**

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**UNITED NATIONAL CONGRESS PARTY AND OTHERS** .....PETITIONER 1

**BHARATH NADU YOUTH PARTY** .....PETITIONER 2

**MR. BELLİYAPPA** .....PETITIONER 3

**RAITHMITRA** .....PETITIONER 4

*versus*

**UNION OF BHARAT NADU** .....RESPONDENT

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**MEMORANDUM ON BEHALF OF THE COUNSEL OF RESPONDENT**

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**TABLE OF CONTENTS**

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<b>LIST OF ABBREVIATIONS.....</b>	<b>i</b>
<b>INDEX OF AUTHORITIES.....</b>	<b>ii</b>
<b>STATEMENT OF JURISDICTION .....</b>	<b>vii</b>
<b>STATEMENT OF FACTS .....</b>	<b>viii</b>
<b>ISSUES RAISED.....</b>	<b>ix</b>
<b>SUMMARY OF ARGUMENTs.....</b>	<b>x</b>
<b>BODY OF ARGUMENTS .....</b>	<b>1</b>
ISSUE I: The Constitution (104 <sup>th</sup> Amendment) Act, 2019 Is Consistent With The Constitutional Provisions Of Bharat Nadu. ....	1
1.1] There Exits A Presumption In Favour Of Constitutionality .....	1
1.2] The Act does not affect the Federal Structure of Bharat Nadu .....	1
1.3]The Act does not affect the Democratic Structure of Bharat Nadu .....	5
ISSUE II:Whether The Section 123(9) Of The Representation Of The People Act, 1951 Is Constitutionally Valid.....	9
2.1] Corrupt practices under Sec. 123 should be interpreted to include political parties. .	9
2.2] Promise of Gainful Benefits amounts to undue influence.....	10
2.3] Sec. 123(9) of the RP Act, 1951 is consistent with Part III of the Constitution.....	10
ISSUE III:Whether The Section 29D, 29E And 168A Of The Representation Of The People Act, 1951 Is Constitutionally Valid. ....	13

3.1] Secs. 29 D & E are not violative of art. 19(1)(c) of the constitution ..... 13

3.2] Sec. 168A of The Representation of People Act is Constitutionally Valid ..... 14

PRAYER ..... xi

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**LIST OF ABBREVIATIONS**


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<b>ABBREVIATION</b>	<b>EXPANSION</b>
HON'BLE	HONOURABLE
¶	PARAGRAPH
¶¶	PAGES
ART.	ARTICLE
SEC.	SECTION
SECS.	SECTIONS
No.	NUMBER
VOL.	VOLUME
ED.	EDITION
MOOT PROP.	MOOT PROPOSITION
SC	SUPREME COURT
v.	VERSUS
SCC	SUPREME COURT CASES
AIR	ALL INDIA REPORTERS
I.E.	THAT IS
LTD.	LIMITED
&	AND
RP ACT	REPRESENTATION OF THE PEOPLE'S ACT
SR.	SERIAL
MCC	MODEL CODE OF CONDUCT
UNCP	UNITED NATIONAL CONGRESS PARTY
BNJP	BHARATH NADU JANATA PART
BNYP	BHARATH NADU YOUTH PARTY
EC	ELECTION COMMISSION
DPSP	DIRECTIVE PRINCIPLES OF STATE POLICY

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**INDEX OF AUTHORITIES**


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**I. CASE LAW**

<i>A.P Dairy Development Corpn.Federation v. B. Narayana Reddy</i> , (2011) 9 SCC 286.....	14
<i>A.P.H.L.C. Shillong v. Sangma</i> , AIR 1977 SC 2155. ....	13
<i>Allahabad Bank v. Canara Bank</i> , (2000) 4 SCC 406. ....	10
<i>Automobile Transport (Rajasthan) LTD., ETC. v. State of Rajasthan</i> , (1963) 1 SCR 491... 2, 4	
<i>BabulalParate v. State of Maharashtra</i> , AIR 1961 SC 884.....	11
<i>BandhuaMuktiMorchav.Union of India</i> , (1984) 3 SCC 161. ....	12
<i>Berubari Union (I), Re</i> , (1960) 3 SCR 250 .....	2
<i>CharanjitLal v. Union of India</i> , AIR 1951 SC 41 .....	1
<i>CharanjitLal v. Union of India</i> ; AIR 1951 SC 41. ....	1
<i>CharanLalSahoo etc. etc. v. Union of India &amp;Ors.</i> , AIR 1990 SC 1480.....	8
<i>Chief Information Commissioner v. State of Manipur</i> , AIR 2012 SC 864 .....	11
<i>District Mining Officer v. Tata Iron and Steel Co.</i> , AIR 2001 SC 3134.....	9
<i>Francis Coralie v. Delhi</i> , AIR 1981 SC 746. ....	12
<i>G. Vishwanathan v. Hon'ble Speaker, Tamil Nadu</i> . ....	15
<i>Ganga Ram Moolchandani v. State of Rajasthan</i> , AIR 2001 SC 2616.....	2
<i>Girdharilal and Sons v. BalbirnathMathur</i> , (1986) 2 SCC 237.....	9
<i>Government of NCT of Delhi v. Union of India &amp;Anr.</i> , (2018) 8 SCALE 72.....	3, 6
<i>I.R. Coelho (dead) by L.R.s v. State of Tamil Nadu</i> , AIR 2007 SC 861. ....	9
<i>ICAI v. Shanuk H. Satya</i> , (2011) 8 SCC 781.....	11
<i>Id.</i> .....	11
<i>In re, Hindu Women's Right to Property Act</i> , 1937, AIR 1941 FC 72. ....	1
<i>Indian Olympic Association v. Veeresh Malik</i> , 2010 SCC OnLine Del 35.....	14
<i>Indian Soaps and Toiletries Makers Association v. Ozair Husain</i> , (2013) 3 SCC 641.....	11
<i>ITC Ltd. v. Agricultural Produce Market Committee</i> , AIR 2002 SC 852. ....	2
<i>Jindal Stainless Ltd. &amp;Ors. v. State of Haryana &amp;Ors.</i> , AIR 2016 SC 5617 .....	3
<i>Julius v. Lord Bishop of Oxford</i> , (1880) 5 App. Cas. 214.....	8
<i>KedarNath Singh v.The State of Bihar</i> , AIR 1962 SC 955. ....	1
<i>Kesavananda Bharati &amp;Ors.v. State of Kerala &amp;Anr.</i> , AIR 1973 SC 1461 .....	8

<i>Kesavananda Bharati v. State of Kerala</i> , AIR 1973 SC 1461 .....	2
<i>Kharak Singh v. State of U.P</i> , AIR 1963 SC 1295 .....	12
<i>KihotoHollohan v. Zachillhu</i> , (1965) 3 SCR 53.....	14
<i>KihotoHollohan v. Zachillhu</i> , 1992Supp (2) SCC 651 .....	15
<i>Krishnamoorthy v. Sivakumar</i> , (2015) 3 SCC 467. ....	11
<i>KuldipNayar v. Union of India</i> , AIR 2006 SC 3127.....	15
<i>KuldipNayar&amp;Ors.v. Union of India</i> , AIR 2006 SC 3127.....	2
<i>KuldipNayar&amp;Ors.v.Union of India</i> , AIR 2006 SC 3127.....	3
<i>M Nagraj&amp;Ors. v. Union of India &amp;Ors.</i> , (2006) 8 SCC 212.....	8
<i>MadhuLimaye v. State of Bihar</i> , AIR 1971 SC 2486.....	11
<i>Maneka Gandhi v. Union of India</i> , (1978) 1 SCC 248. ....	12
<i>Minerva Mills Ltd. v. Union of India</i> , (1980) 2 SCC 591. ....	5
<i>Mohd. HanifQuareshi v. State of Bihar</i> , AIR 1958 SC 731 .....	1
<i>Mr.Subhash Chandra Agrawal v. Indian National Congress</i> , 2013 SCC OnLine CIC 8915. 14	
<i>Munn v. Illinois</i> , (1877) 94 US 113 .....	12
<i>Naval Kishore Mishra v. High Court of Judicature at Allahabad</i> , AIR 2015 SC 1332.....	8
<i>Navtej Singh Johar v. Union of India</i> , (2018) 10 SCC 1.....	8
<i>O’Gorman &amp; Young v. Hartford Fire Insurance</i> , 282 U.S 251 (1931). ....	1
<i>Olga Tellis v. Bombay Municipal Corporation</i> , AIR1986 SC 180.....	12
<i>P. Rathinamv.Union of India</i> , (1994) 3 SCC 394.....	12
<i>PadmasundaraRao v. State of Tamil Nadu</i> , AIR 2002 SC 1334.....	9
<i>PatangraoKadam v. PrithvirajSayajiraoYadavDeshmukh</i> , (2001) 3 SCC 594. ....	10
<i>People’s Union for Civil Liberties v. Union of India</i> , (2013) 10 SCC 1.....	10
<i>Peoples Union for Civil Liberties v. Union of India</i> , (2013) 10 SCC 1.....	6
<i>Pradeep Jain v. Union of India</i> , AIR 1984 SC 1420.....	2
<i>Prithi Pal Singh v. Union of India</i> , AIR 1982 SC 1413.....	9
<i>R.Perumal v. Chief Election Comissioner, New Delhi and Ors.</i> , 2016 SCC OnLine Mad 3596 .....	10
<i>RMD Chamarbaugwala v. Union of India</i> , AIR 1957 SC 628.....	9
<i>S. R. Bommai v. Union of India</i> , (1994) 3 SCC 1 .....	3
<i>S. Subramaniam Balaji v. Government of Tamil Nadu &amp;Ors.</i> , (2013) 9 SCC 659. ....	6
<i>S.R Bommai v. Union of India</i> ,AIR 1994 SC 1918.....	7
<i>S.R. Chaudhuri v. State of Punjab.</i> ,(2001) 7 SCC 126 .....	15

<i>S.SubramaniamBalaji v. State of Tamil Nadu</i> , (2013) 9 SCC 659 .....	10
<i>Sajjan Singh v. State of Rajasthan</i> , AIR 1965 SC 845. ....	8
<i>Samsher Singh v. State of Punjab</i> , AIR 1974 SC 2192.....	8
<i>Sat Pal v. State of Punjab &amp;Ors.</i> , AIR 1981 SC 2230.....	2
<i>Schedule Caste and Schedule Tribe officers Welfare Council v. State of UP</i> ,AIR 1997 SC 1451 .....	6
<i>Secretary, Ministry of Information and Broadcasting, Govt. of India v. Cricket Association of Bengal</i> , AIR 1995 SCC 1236.....	11
<i>Shamsher Singh v. State of Punjab</i> , AIR 1974 SC 2192.....	3
<i>Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar&amp;Ors</i> , 1958 AIR 538.....	1
<i>Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar&amp;Ors.</i> , AIR 1958 SC 538. ....	1
<i>Smt. Indira Nehru Gandhi v. Raj Narain</i> , AIR 1975 SC 2299.....	5
<i>State Bank of India v. Santosh Gupta</i> , (2017) 2 SCC 538.....	3
<i>State of Bhopal v. Arif</i> , AIR 1974 SC 255.....	11
<i>State of Karnataka &amp;Anr.v. Dr. Praveen BhaiTogadia</i> , AIR 2004 SC 2081.....	8
<i>State of Karnataka v. Union of India</i> , AIR 1978 SC 68 .....	2, 3
<i>State of Kerala and another v. N.M. Thomas and others</i> , AIR 1976 SC 490. ....	8
<i>State of Punjab v. G.S Gill</i> AIR 1997 SC 2324 .....	6
<i>State of Rajasthan v. Union of India</i> , AIR 1977 SC 1361 .....	2
<i>State of West Bengal v. Union of India</i> , AIR 1963 SC1241.....	2
<i>Supdt. Central Prison v. Ram ManoharLohia</i> , AIR 1960 SC 633. ....	11
<i>Tamil Nadu Education Department Ministerial and General Subordinate Services Association &amp;Ors.v. State of Tamil Nadu &amp;Ors.</i> , AIR 1980 SC 379.....	8
<i>Union of India v. Elphistone Spinning and Weaving Co. Ltd.</i> , AIR 2001 SC 724.....	10
<i>Union of India v. H.S. Dhillon</i> , AIR 1972 SC 1061. ....	2
<i>Union of India v. SankalchandHimatlalSheth</i> , (1977) 4 SCC 193.....	8
<i>Union of India v. V Sriharan</i> , (2016) 7 SCC 1. ....	2, 3
<i>United Bank of India, Calcutta v. Abhijit Tea Co. Pvt. Ltd.</i> , AIR 2000 SC 2957 .....	10
<i>United Democratic Movement v. President of the Republic of South Africa and Others</i> , 2003 (1) SA 495.....	15
<i>Venkataswami Naidu, R v. NarasramNaraindas</i> , AIR 1966 SC 361 .....	9
<i>Vishnu Pratap Sugar Works (Private) Ltd v. Chief Inspector of Stamp, U.P.</i> , AIR 1968 SC 102 .....	9

I. LEGISLATIONS AND

S. No.	TITLE OF LEGISLATION AND LAW REPORTS	PP.
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2.	REPRESENTATION OF THE PEOPLE ACT, 1951	
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**STATEMENT OF JURISDICTION**

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*THE PETITIONER AND THE RESPONDENT HAVE THE HONOUR TO SUBMIT THE FOLLOWING  
DISPUTE TO THE SUPREME COURT OF BHARAT NADU, PURSUANT TO ORIGINAL JURISDICTION  
UNDER ARTICLE 32 OF THE CONSTITUTION.*

***ARTICLE 32 Provides for 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 guaranteed.
- (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 clauses (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.

***THE PRESENT MEMORANDUM SETS FORTH THE FACTS, CONTENTIONS AND ARGUMENTS IN  
THE INSTANT CASE.***

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## STATEMENT OF FACTS

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**BACKGROUND:** Bharath Nadu is a federal country with a multiparty system and a parliamentary form of government. The Country is facing political instability due to defections, corruptions, split in the political parties, etc. and farmer's suicide is on the rise. A prison inmate wrote a letter to the SC of Bharath Nadu urging to bring reforms in the Electoral Laws to address the concerns including criminalization of politics, and unjustified burden on the exchequer due to multiple unsynchronized elections. The SC constituted a committee which opined that the present Electoral Law is not in tune with the constitutional values and principles, hence there is a need for reform. The report was sent to Union Government, State Governments, and all the political parties for their consideration.

**CHANGE:** BNJP, a party, after coming to power, initiated reforms in the Electoral Law. It initiated an online referendum seeking the opinion of the people on the proposed reforms in the Electoral Law and got huge response in its favor. To bring the proposed reforms in the Electoral Law, the Parliament enacted the Constitution (104th Amendment) Act, 2019 inserting Article 172 (3). The Parliament also inserted Section 29D, Section 29E, Section 123 (9) and Section 168A in the RP Act, 1951.

**CHALLENGES:** The Constitution (104th Amendment) Act, 2019 was challenged for violating the Basic Structure. Section 123 (9) of the Act was challenged on the ground that it is violative of Article 19 (1) (a), section 29D of the Act on the ground that it violates Article 19 (1) (c) of the Constitution, Section 168A of the Act as violative of his freedom of conscience, section 123 (9) of the Act as violative of fundamental rights of the farmers. Nation Builder, an income taxpayers' association, welcomed Section 123 (9) of the Act was welcomed by Nation Builder, the respondent. SC admitted all the petitions and clubbed them together for a common hearing. The matter is posted for final hearing on 30th and 31st March 2019.

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**MEMORANDUM ON BEHALF OF RESPONDENTS**

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**ISSUES RAISED**

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**ISSUE I**

**WHETHER THE CONSTITUTION (104<sup>TH</sup> AMENDMENT) ACT, 2019 IS CONSISTENT WITH THE  
CONSTITUTIONAL PROVISIONS OF BHARAT NADU.**

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**ISSUE II**

**WHETHER THE SECTION 123(9) OF THE REPRESENTATION OF THE PEOPLE ACT, 1951 IS  
CONSTITUTIONALLY VALID.**

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**ISSUE III**

**WHETHER THE SECTIONS 29D, 29E AND 168A OF THE REPRESENTATION OF THE PEOPLE  
ACT, 1951 IS CONSTITUTIONALLY VALID.**

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## SUMMARY OF ARGUMENTS

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### **ISSUE I: WHETHER THE CONSTITUTION (104<sup>TH</sup> AMENDMENT) ACT, 2019 IS CONSISTENT WITH THE CONSTITUTIONAL PROVISIONS OF BHARAT NADU.**

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It is humbly submitted before this Hon'ble Supreme Court on behalf of the respondents that the Constitution (104<sup>th</sup> Amendment) Act, 2019 is consistent with the constitutional provisions of Bharat Nadu as, *firstly*, there exists a presumption in favour of constitutionality, [1.1] *secondly*, It does not affect the federal structure of Bharat Nadu and [1.2], *thirdly*, It does not affect the democratic structure of Bharat Nadu [1.3].

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### **ISSUE II: WHETHER THE SECTION 123(9) OF THE REPRESENTATION OF THE PEOPLE ACT, 1951 IS CONSTITUTIONALLY VALID.**

It is humbly submitted before this Hon'ble Supreme Court on behalf of the respondents that Section 123(9) Of The RP Act, 1951 is Constitutionally valid as *firstly*, a promise of gainful benefits amounts to undue influence [2.2] and *secondly*, the said section is consistent with part III of the Constitution [2.3].

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### **ISSUE III: WHETHER THE SECTIONS 29D, 29E AND 168A OF THE REPRESENTATION OF THE PEOPLE ACT, 1951 IS CONSTITUTIONALLY VALID.**

It is humbly submitted before this Hon'ble Supreme Court on behalf of the respondents that Sections 29D, 29E And 168A Of The Representation Of The People Act, 1951 is Constitutionally valid as firstly Sections 29 D and 29 E does not violate freedom of association [3.1] and secondly Section 168 A is not violative of the Constitutional Provisions as it furthers the ideals of a democracy [3.2]

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## BODY OF ARGUMENTS

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### **ISSUE I: THE CONSTITUTION (104<sup>TH</sup> AMENDMENT) ACT, 2019 IS CONSISTENT WITH THE CONSTITUTIONAL PROVISIONS OF BHARAT NADU.**

1. It is humbly submitted before this Hon'ble Supreme Court on behalf of the respondents that the Constitution (104<sup>th</sup> Amendment) Act, 2019( hereinafter referred to as 'The Act') is consistent with the constitutional provisions of Bharat Nadu in so far as, firstly, there exists a presumption in favour of constitutionality, [1.1] secondly, It does not affect the federal structure of Bharat Nadu [1.2] and, thirdly, It does not affect the democratic structure of Bharat Nadu. [1.3]

#### **1.1] THERE EXISTS A PRESUMPTION IN FAVOUR OF CONSTITUTIONALITY**

2. The doctrine of presumption of Constitutionality<sup>1</sup> has been upheld by this hon'ble Court in multiple cases<sup>2</sup>. This doctrine puts the onus of proving that an act or statute is in violation of the Constitution, on those who challenge its validity<sup>3</sup> for it is presumed that Legislature understands and correctly appreciates<sup>4</sup> the needs of its own people and does not exceed its jurisdiction<sup>5</sup>.

#### **1.2] THE ACT DOES NOT AFFECT THE FEDERAL STRUCTURE OF BHARAT NADU**

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<sup>1</sup>*O'Gorman & Young v. Hartford Fire Insurance*, 282 U.S 251 (1931).

<sup>2</sup>*CharanjitLal v. Union of India*, AIR 1951 SC 41; *Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar&Ors.*, 1958 AIR 538; *Mohd. HanifQuareshi v. State of Bihar*, AIR 1958 SC 731; *KedarNath Singh v. The State of Bihar*, AIR 1962 SC 955.

<sup>3</sup>*CharanjitLal v. Union of India*; AIR 1951 SC 41.

<sup>4</sup>*Shri Ram Krishna Dalmia v. Shri Justice S. R. Tendolkar&Ors.*, AIR 1958 SC 538.

<sup>5</sup>In re, *Hindu Women's Right to Property Act, 1937*, AIR 1941 FC 72.

3. The Act does not affect the Federal Structure of Bharat Nadu as, firstly, [A] Bharat Nadu is quasi-federal in nature and, secondly, [B] The Act does not tinker with 7<sup>th</sup> Schedule and thirdly, [C] The Act does not undermine local issues.

#### **A] BHARAT NADU IS QUASI-FEDERAL IN NATURE**

4. The nature of the Federation of Bharat Nadu is a peculiar one. Though it is a Federation<sup>6</sup>, the States have been divided for administrative convenience and Bharat Nadu remains an integral whole<sup>7</sup>. K.M Munshi, while discussing about elections in the Constituent Assembly, stated that though the provincial sphere remains autonomous, it should only be subject to national power<sup>8</sup>. Bharat Nadu's Federalism is categorically different from the Federalism practiced in other federations<sup>9</sup>. Even Art.1, that refers to Bharat Nadu as "union of states"<sup>10</sup>, has the word "federation" missing from it.

5. The Constitution of Bharat Nadu does not propound *absolute federalism*. It is not federal in the traditional sense of the term, even though it contains some traditional characteristics in it<sup>11</sup> as each state does not have a separate constitution and the Constitution holds supreme for every state and it can only be altered by the Union Parliament<sup>12</sup>. Any residuary powers, by virtue of Art. 248 and Entry 97 in List I of the Seventh Schedule, vests in the hands of Union, unlike in the United States where it vests with the States<sup>13</sup>. On any conflict between state law

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<sup>6</sup>Proposition, ¶1.

<sup>7</sup>Motion re.Draft Constitution, 4th November 1948; Constituent Assembly Debates, Vol. VII (Lok Sabha Secretariat, 2014) 4<sup>th</sup> November 1948; *Berubari Union (I), Re*, (1960) 3 SCR 250.

<sup>8</sup> Constituent Assembly Debates, Vol. VIII, (Lok Sabha Secretariat, 2014) 16<sup>th</sup> June 1949.

<sup>9</sup>*Berubari Union (I), Re*, (1960) 3 SCR 250; *State of Rajasthan v. Union of India*, AIR 1977 SC 1361; *State of Karnataka v. Union of India*, AIR 1978 SC 68; *KuldipNayar&Ors.v. Union of India*, AIR 2006 SC 3127; *Union of India v. V Sriharan*, (2016) 7 SCC 1.

<sup>10</sup>*Automobile Transport (Rajasthan) LTD., ETC. v. State of Rajasthan*, (1963) 1 SCR 491.

<sup>11</sup>*Kesavananda Bharati v. State of Kerala*, AIR 1973 SC 1461; *Sat Pal v. State of Punjab &Ors.*, AIR 1981 SC 2230; *Pradeep Jain v. Union of India*, AIR 1984 SC 1420; *Ganga Ram Moolchandani v. State of Rajasthan*, AIR 2001 SC 2616; *ITC Ltd. v. Agricultural Produce Market Committee*, AIR 2002 SC 852.

<sup>12</sup>*State of West Bengal v. Union of India*, AIR 1963 SC1241.

<sup>13</sup>*Union of India v. H.S. Dhillon*, AIR 1972 SC 1061.

and union law, the state law is held void to the extent of repugnancy<sup>14</sup>. In addition to this, the constitution is heavily laden with unitary features like executive power of appointing constitutional officials like SC and High Court judges, power to direct the State governments, dissolve it during emergencies, contingency-based power of Rajya Sabha over State Legislatures under Art. 249<sup>15</sup>, duty to ensure that government of every state is in accordance with provisions of Constitution<sup>16</sup>, etc. It has features of pragmatic federalism, so that it permits practicability, realism and sensibility for achieving constitutional goals<sup>17</sup>. The court has held that Bharat Nadu is Quasi-federal in nature as it is a melange of both unitary and federal characteristics, with a tilt towards the latter<sup>18</sup>. It has also been held that owing to vast diversity of Bharat Nadu, it is sine qua non to have a strong Centre so that in the presence of internal disturbance or external aggression<sup>19</sup>, the interest of Nation is protected<sup>20</sup>.

6. Even Art. 328, which enables the States to make laws with respect to all matters related to or in connection with the elections to the Assemblies, is subject to provisions of the Constitution and the laws made by the Parliament<sup>21</sup>. All of this furthers the contention that the Constitution lays states in a secondary position vis-à-vis the center. ShriBrijeshwar Prasad, a member of constituent assembly, noted that the Constitution is “partly federal and partly unitary, and more unitary than federal in character.”<sup>22</sup>

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<sup>14</sup> Article 254, The Constitution of Bharat Nadu, 1950.

<sup>15</sup> *KuldipNayar&Ors.v.Union of India*, AIR 2006 SC 3127.

<sup>16</sup> Article 355, The Constitution of Bharat Nadu, 1950.

<sup>17</sup> *State of Karnataka v. Union of India*, AIR 1978 SC 68; *Government of NCT of Delhi v. Union of India &Anr.*, (2018) 8 SCALE 72

<sup>18</sup> *S. R. Bommai v. Union of India*, (1994) 3 SCC 1; *Jindal Stainless Ltd. &Ors. v. State of Haryana &Ors.*, AIR 2016 SC 5617; *State Bank of India v. Santosh Gupta*, (2017) 2 SCC 538; *Shamsher Singh v. State of Punjab*, AIR 1974 SC 2192.

<sup>19</sup> Article 355, Constitution of Bharat Nadu, 1950.

<sup>20</sup> *Union of India v. V Sriharan*, (2016) 7 SCC 1.

<sup>21</sup> Article 328, Constitution of Bharat Nadu, 1950.

<sup>22</sup> Constituent Assembly Debates, Vol. VIII 2014, (Lok Sabha Secretariat, 2014) 20<sup>th</sup> May 1949.



7. Bearing in mind all the aforementioned contentions, read with the Preamble which refers to Unity and Integrity of the Nation, it is apposite to conclude that the constitution leans more towards a strong centre in distribution of powers. The Constitution of Bharat Nadu has used “federalism” not in a *stricto sensu* to enable flexibility of movement from a federal to a Unitary plane, to catalyse national integration and social, political and economic progression.

#### **B] THE ACT DOES NOT ABROGATE THE 7<sup>TH</sup> SCHEDULE**

8. It has been held that the evolution of the prevailing quasi-federal structure entails distribution of powers and a basic part of the Constitution of Bharat Nadu relates to the distribution done with the three legislative lists under the seventh schedule<sup>23</sup>. Federalism is limited to the legislative competence of Union and States given in the three lists. Entry 72 of List-I vests in Parliament the power to make laws regarding elections to Legislature of States<sup>24</sup>. Entry 37 of List-II states that the State has power to make laws regarding elections to the legislatures of state subject to the provisions of any law made by Parliament<sup>25</sup>.

9 Art. 172 (3) which vests in Parliament the power to curtail or extend the tenure of State legislature in order to synchronize it with elections to House of People does not alter or tinker with any of the entries in the seventh schedule.

#### **C] THE ACT DOES NOT UNDERMINE LOCAL ISSUES**

10. Synchronization of elections does not result in undermining local issues by putting national agendas on a higher pedestal. This is corroborated by the fact that National Parties have to contest for seats to both the House of the People and the State Assemblies. This, if anything, provides an upper hand to the local parties and therefore, they can easily put local

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<sup>23</sup> *Automobile Transport (Rajasthan) LTD., ETC. v. State of Rajasthan*, (1963) 1 SCR 491.

<sup>24</sup> Seventh Schedule, Constitution of Bharat Nadu.

<sup>25</sup> Seventh Schedule, Constitution of Bharat Nadu.

issues to the forefront. Voting is a complex phenomenon driven by various underlying factors<sup>26</sup>.

11. Therefore, it is humbly submitted by the Respondents that in so far as the Act does not interfere with the legislative competence of the Centre or the States and does not lead to undermining local issues, the Court hold the contention that it abrogates the quasi-federal framework of Bharat Nadu devoid of any merit.

### **1.3] THE ACT DOES NOT AFFECT THE DEMOCRATIC STRUCTURE OF BHARAT NADU**

12. The Preamble of the Constitution of Bharat Nadu assures to its citizenry, a polity based on Democratic principles. Democracy is not an *empty dream*. It brings under its ambit indispensable attributes recited in the preamble such as social, economic, political justice and a sense of fraternity to promote unity of nation<sup>27</sup>. The Act and its underlying purpose to bring about Simultaneous Elections, instead of affecting, in fact, promotes democracy in so far as it, firstly, [A] promotes free and fair elections, secondly, [B] results in an increase of voter turnout, thirdly, [C] promotes smooth functioning of democracy and fourthly, [D] the Act upholds the principle of Transformative Constitutionalism.

### **A] THE ACT PROMOTES THE PRINCIPLE OF FREE AND FAIR ELECTIONS**

13. Free and fair elections are an essential feature of democracy<sup>28</sup>. Free and fair<sup>29</sup> elections are deemed to be a barometer to measure the strength and vitality of a healthy democratic life<sup>30</sup>. The principle of keeping the elections free and fair is breached due to frequent elections as

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<sup>26</sup>BIBEK DEBROY & KISHORE DESAI, ANALYSIS OF SIMULTANEOUS ELECTIONS : THE “WHAT”, “WHY” AND “HOW” ANALYSIS OF SIMULTANEOUS ELECTIONS : THE “WHAT”, “WHY” AND “HOW.”

<sup>27</sup>*Minerva Mills Ltd. v. Union of India*, (1980) 2 SCC 591.

<sup>28</sup>*Smt. Indira Nehru Gandhi v. Raj Narain*, AIR 1975 SC 2299.

<sup>29</sup>*Thirubhuvanam Silk Handloom Weavers' Co-operative Production and Sales Society Ltd.*, 1991 SCC OnLine Mad 502.

<sup>30</sup>*S. Raghbir Singh Gill vs Gurcharan Singh Tohra*, 1980 Supp SCC 53.

the parties take up populist measures like declaring loan waivers, free housing, electricity *et cetera*, instead of nationalist ones<sup>31</sup>. Such practices carried out with the intention of alluring the voters go against the principle of free and fair elections<sup>32</sup>. As simultaneous elections reduce the frequency of elections, focus will shift from individual benefits to taking up measures which shall be directed towards the welfare of public at large. Synchronized elections will also reduce the constant pressure on Election Commission which will be conducive to conducting and managing elections in a more free and fair manner. Allegations of biasness on the Election Commission will also reduce<sup>33</sup>. The focus will shift from elections to good governance. Due to increase in stability of government, difficult decisions can be taken for the greater good instead of short-term policies undertaken merely to appease the masses<sup>34</sup>.

#### **B]THE ACT SHALL INCREASE VOTER TURNOUT**

14. Voting is deemed to be an expression of will of the electorate<sup>35</sup> and this will is of paramount significance in a democracy. For the efficient working of a representative democracy<sup>36</sup>, it is sine qua non to have a high percentage of voter turnout. A study undertaken by a professor of Concordia University concluded that separate elections decrease the participation of people in the democratic process<sup>37</sup>. It has been shown that simultaneous

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<sup>31</sup>Bhairon Singh Shekhawat, FREQUENT ELECTIONS IMPACTING GOVERNANCE OUTLOOK INDIA, <<https://www.outlookindia.com/website/story/frequent-elections-impacting-governance/220697> (last visited Mar 8, 2019).>

<sup>32</sup>*S. Subramaniam Balaji v. Government of Tamil Nadu & Ors.*, (2013) 9 SCC 659.

<sup>33</sup>Law Commission of India, Draft Report Simultaneous Elections, 30 August 2018 <<https://barandbench.com/wp-content/uploads/2018/08/Law-Commission-Draft-Report-on-Simultaneous-Elections-watermark.pdf>>.

<sup>34</sup>BIBEK DEBROY & KISHORE DESAI, ANALYSIS OF SIMULTANEOUS ELECTIONS : THE “WHAT”, “WHY” AND “HOW” ANALYSIS OF SIMULTANEOUS ELECTIONS : THE “WHAT”, “WHY” AND “HOW.”

<sup>35</sup>*Schedule Caste and Schedule Tribe officers Welfare Council v. State of UP*, AIR 1997 SC 1451; *State of Punjab v. G.S Gill* AIR 1997 SC 2324; *Peoples Union for Civil Liberties v. Union of India*, (2013) 10 SCC 1.

<sup>36</sup>*Government of NCT of Delhi v. Union of India & Anr.*, (2018) 8 SCALE 72.

<sup>37</sup>Sai Manish, ONE NATION, ONE ELECTION: WHY MODI GOVT WANTS TO GO FOR SIMULTANEOUS POLLS BUSINESS STANDARD (2018), [https://www.business-standard.com/article/current-affairs/onenation-one-election-why-modi-govt-wants-to-go-for-simultaneous-polls118012500184\\_1.html](https://www.business-standard.com/article/current-affairs/onenation-one-election-why-modi-govt-wants-to-go-for-simultaneous-polls118012500184_1.html) (last visited Mar 6, 2019).; Response Paper and

elections have a positive impact on voter turnout because political parties undertake a more focused approach towards campaigning centred on tackling a plethora of issues as the stakes are higher<sup>38</sup>. Furthermore, it will be more convenient for people working away from their constituency. It shall also be conducive to voting rights of NRIs as they shall be able to vote for both State and Centre on the same day.

### **C] THE ACT PROMOTES SMOOTH FUNCTIONING OF DEMOCRACY**

15. Model Code of Conduct (MCC) is imposed to ensure free and fair elections. However, imposition of MCC often causes disruption in welfare activities and vital developmental schemes. Simultaneous elections will result in limiting the application of MCC which will avoid delay in delivery of such schemes. Elections have been opined to give rise to casteism, communalism, capitalism and corruption. Synchronization of elections will help limit this polarization<sup>39</sup>. This will reduce disruptions in social, political, economic and civic spheres. Frequent elections have been criticized for being an expensive exercise for both the country and the contesting individuals<sup>40</sup>. Due to unsynchronized elections, huge amount of expenditure must be incurred twice in five years. The court has observed that frequent elections violate democratic principles by making contesting of elections a privilege of the affluent<sup>41</sup>.

### **D] THE ACT UPHOLDS THE PRINCIPLE OF TRANSFORMATIVE CONSTITUTIONALISM**

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Recommendation By Select Editors and Members # of the NUJS Law Review available at: [http://nujlawreview.org/wp-content/uploads/2018/05/NUJS-Law-ReviewWorking-Paper\\_Response-Paper-to-Law-Commission-Draft-Recommendations-onSimultaneous-Elections.pdf](http://nujlawreview.org/wp-content/uploads/2018/05/NUJS-Law-ReviewWorking-Paper_Response-Paper-to-Law-Commission-Draft-Recommendations-onSimultaneous-Elections.pdf)

<sup>38</sup> Arjan H. Schakel&RégisDandoy, Electoral Cycles and Turnout in Multilevel Electoral Systems, West European Politics, 37:3, 605-623 (2014)

<sup>39</sup> “Holding Simultaneous LS, Assembly Polls Desirable, but not feasible” available at <<https://www.thequint.com/voices/opinion/holding-ls-assembly-polls-together-isdesirable-but-not-feasible> (last seen on 23 July 2018)>

<sup>40</sup>Law Commission of India, Draft Report Simultaneous Elections, 30 August 2018 <<https://barandbench.com/wp-content/uploads/2018/08/Law-Commission-Draft-Report-on-Simultaneous-Elections-watermark.pdf>>.

<sup>41</sup>*S.R Bommai v. Union of India*, AIR 1994 SC 1918.

16. The principles enshrined in the Preamble to the Constitution of Bharat Nadu act as a guide to understand transformative constitutionalism<sup>42</sup>. Constitution of Bharat Nadu is deemed to be revolutionary in its aim to transform a medieval society into a modern democracy<sup>43</sup>. The democratic framework of any country is prone to evolve continuously in order to mature into a vibrant democracy. The Court has held that once the principle is found to be rational, few adversities that might arise on either side cannot be a ground to invalidate it<sup>44</sup>. The paramount goal of all laws, state action and the Constitution is to promote the welfare of the people and not any single individual<sup>45</sup>. The power bestowed upon our representatives is coupled with a duty to act and exercise it when invoked<sup>46</sup>. The Court has referred to “Merchant of Venice” by Shakespeare and observed that in order to do a great right, it is sometimes permissible to do a little wrong<sup>47</sup>. Simultaneous Elections are something being done for the greater national interest. People against it might engage in pedantic fault-finding, but when it is seen from a broader perspective, the promotion of welfare of the country becomes conspicuous.

17. Basic Structure includes under its ambit Supremacy of Constitution, Democratic form of government, Federal character of the Constitution and Unity and Integrity of the nation<sup>48</sup>. The Preamble, which states Bharat Nadu to be a Democratic Republic, has been held to be an epitome of basic features of the Constitution<sup>49</sup>. Parliament cannot exercise its power of

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<sup>42</sup>*Navtej Singh Johar v. Union of India*, (2018) 10 SCC 1.

<sup>43</sup>*State of Kerala and another v. N.M. Thomas and others*, AIR 1976 SC 490.

<sup>44</sup>*Tamil Nadu Education Department Ministerial and General Subordinate Services Association & Ors. v. State of Tamil Nadu & Ors.*, AIR 1980 SC 379.

<sup>45</sup>*State of Karnataka & Anr. v. Dr. Praveen Bhai Togadia*, AIR 2004 SC 2081.

<sup>46</sup>*Julius v. Lord Bishop of Oxford*, (1880) 5 App. Cas. 214.

<sup>47</sup>*Charan Lal Sahoo etc. etc. v. Union of India & Ors.*, AIR 1990 SC 1480.

<sup>48</sup>*Kesavananda Bharati & Ors. v. State of Kerala & Anr.*, AIR 1973 SC 1461; *M Nagraj & Ors. v. Union of India & Ors.*, (2006) 8 SCC 212; *Samsher Singh v. State of Punjab*, AIR 1974 SC 2192; *Union of India v. Sankalchand Himatlal Sheth*, (1977) 4 SCC 193; *Naval Kishore Mishra v. High Court of Judicature at Allahabad*, AIR 2015 SC 1332.

<sup>49</sup>*Sajjan Singh v. State of Rajasthan*, AIR 1965 SC 845.

amendment under Art. 368 to destroy the essential features of the basic structure of the Constitution or change the identity of the constitution<sup>50</sup>.

18. In the light of all the aforementioned contentions, the Respondents find it felicitous to conclude that the Constitution (104<sup>th</sup> Amendment) Bill, 2019 is not inconsistent with any of the constitutional provisions of Bharat Nadu and in fact, is beneficial for the Quasi-Federalist, Unitary and Democratic framework of the country, which forms part of the Basic structure. Therefore, The Act does not stand in violation of the Basic Structure of the Constitution of Bharat Nadu.

**ISSUE II: WHETHER THE SECTION 123(9) OF THE REPRESENTATION OF THE PEOPLE ACT, 1951 IS CONSTITUTIONALLY VALID.**

19. It is humbly submitted before the Hon'ble court that Sec. 123(9) of the RP Act is constitutionally valid as firstly, promising gainful benefits leads to undue influence which in turn hamper the conduct of free and fair elections *secondly*, Sec. 123(9) is consistent with Part III of the Constitution of Bharat Nadu.

**2.1] CORRUPT PRACTICES UNDER SEC. 123 SHOULD BE INTERPRETED TO INCLUDE POLITICAL PARTIES.**

20. A statute being a mandate of the Legislature<sup>51</sup> should be construed according to the intent of its makers<sup>52</sup>, *itsmens legis*. Thus if the provision of a statute is open to more than one interpretation the court has to choose the interpretation which represents the true intention of

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<sup>50</sup>I.R. Coelho (dead) by L.R.s v. State of Tamil Nadu, AIR 2007 SC 861.

<sup>51</sup> Vishnu Pratap Sugar Works (Private) Ltd v. Chief Inspector of Stamp, U.P., AIR 1968 SC 102; PadmasundaraRao v. State of Tamil Nadu, AIR 2002 SC 1334.

<sup>52</sup>RMD Chamarbaugwala v. Union of India, AIR 1957 SC 628; Prithi Pal Singh v. Union of India, AIR 1982 SC 1413; Girdharilal and Sons v. Balbirnath Mathur, (1986) 2 SCC 237.

the Legislature<sup>53</sup>. Legislation is aimed at curbing public evil by the removal of some mischief or at simply giving effect to some public benefit.<sup>54</sup> Therefore the legislative intent can be derived only by considering the language used in an enactment in the light of its discernible purpose or the mischief which the enactment is directed at rectifying.<sup>55</sup> This is the *cardinal principle of construction*.<sup>56</sup>

21. It is humbly submitted Sec. 123 (2) of the Act which defines *undue influence* in terms of an individual candidate must be interpreted to include the undue influence which results from the promises of a political party in their manifestos, as it inhibits the conduct of free and fair elections.

## **2.2] PROMISE OF GAINFUL BENEFITS AMOUNTS TO UNDUE INFLUENCE**

22. It is humbly submitted that this Hon'ble court has held that the purpose of Section 123 of the RP Act is to ensure free and fair elections<sup>57</sup> in order to guarantee the growth of democracy in the country.<sup>58</sup> The promises by a political party of the distribution of freebies, in practice, influences the voters<sup>59</sup> and in turn the outcome of the elections. Furthermore, the country of Bharat Nadu is facing an increase in the number of farmer suicides<sup>60</sup> and the same can result in farm loan waivers becoming a tool for influencing the general public for electoral gains.

## **2.3] SEC. 123(9) OF THE RP ACT, 1951 IS CONSISTENT WITH PART III OF THE CONSTITUTION.**

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<sup>53</sup>*Venkataswami Naidu, R v. NarasramNaraindas*, AIR 1966 SC 361; *District Mining Officer v. Tata Iron and Steel Co.*, AIR 2001 SC 3134.

<sup>54</sup>*United Bank of India, Calcutta v. Abhijit Tea Co. Pvt. Ltd.*, AIR 2000 SC 2957; *Allahabad Bank v. Canara Bank*, (2000) 4 SCC 406.

<sup>55</sup>Justice G P Singh, *Principles of Statutory Interpretation* (12<sup>th</sup> ed. Lexis Nexis 2010).

<sup>56</sup>*Union of India v. Elphistone Spinning and Weaving Co. Ltd.*, AIR 2001 SC 724.

<sup>57</sup>*PatangraoKadam v. PrithvirajSayajiraoYadavDeshmukh*, (2001) 3 SCC 594.

<sup>58</sup>*People's Union for Civil Liberties v. Union of India*, (2013) 10 SCC 1.

<sup>59</sup>*S.SubramaniamBalaji v. State of Tamil Nadu*, (2013) 9 SCC 659; *R.Perumal v. Chief Election Comissioner, New Delhi and Ors.*, 2016 SCC OnLine Mad 3596.

<sup>60</sup>Proposition, ¶12.

23. It is most humbly submitted before the Hon'ble court that Section 123 (9) of the RP Act is consistent with Part III of the Constitution of Bharat Nadu as *firstly*, it does not violate Art. 19(1)(a) of the Constitution in so far that it imposes a reasonable restriction on the actions of the political parties and *secondly*, there is no violation of Art. 21 as Sec. 123(9) seeks to safeguard social and moral public interest.

**A] SEC. 123(9) DOES NOT VIOLATE ARTICLE 19(1)(A) OF THE CONSTITUTION.**

24. It is humbly submitted before the Hon'ble court that Art.19(1)(a) of the Constitution which guarantees the right to freedom of *speech and expression*, is subject to reasonable restrictions on the grounds of *public order, decency and morality* as mentioned in Art.19(2). The expression public order has been held to include *public peace, safety and tranquility*<sup>61</sup> wherein the citizens of the country can pursue their normal avocation of life.<sup>62</sup> Anything that disturbs peace or tranquility disturbs public order.<sup>63</sup> Furthermore, *anticipatory action* to prevent such disorders in the society has been held to be permissible and within the ambit of Art. 19(2).<sup>64</sup>

25. It is further submitted that the right to receive information guaranteed by Art. (19)(1)(a)<sup>65</sup> includes the right to rightful information<sup>66</sup>. Free and fair elections are not possible in the absence of *free and fairly informed voters*<sup>67</sup> and disinformation, misinformation and one-sided information all contribute to the creation of an uninformed public which is against the basic principles a democracy.

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<sup>61</sup> *Supdt. Central Prison v. Ram Manohar Lohia*, AIR 1960 SC 633.

<sup>62</sup> *State of Bhopal v. Arif*, AIR 1974 SC 255.

<sup>63</sup> *Madhu Limaye v. State of Bihar*, AIR 1971 SC 2486.

<sup>64</sup> *Babul Parate v. State of Maharashtra*, AIR 1961 SC 884.

<sup>65</sup> *Chief Information Commissioner v. State of Manipur*, AIR 2012 SC 864; *ICAI v. Shanuk H. Satya*, (2011) 8 SCC 781; *Secretary, Ministry of Information and Broadcasting, Govt. of India v. Cricket Association of Bengal*, AIR 1995 SCC 1236; *Indian Soaps and Toiletries Makers Association v. Ozair Husain*, (2013) 3 SCC 641.

<sup>66</sup> *Krishnamoorthy v. Sivakumar*, (2015) 3 SCC 467.

<sup>67</sup> *Id.*



26. It is humbly submitted that Sec. 123(9) of the RP Act does not violate the right to freedom of speech and expression of the political parties in so far that it simply imposes a reasonable restriction in order to maintain the public order and further acts as a safeguard of the right to receive information of the citizens of the country.

#### **B] SEC. 123(9) DOES NOT VIOLATE ARTICLE 21 OF THE CONSTITUTION**

27. The right to *life and personal liberty* guaranteed by Art. 21 of the Constitution has become an inexhaustible source of many other rights<sup>68</sup> due to its progressive nature. The right to life guaranteed under Art. 21 embraces not only the physical existence of an individual but also a quality of life<sup>69</sup> and a right to live with human dignity<sup>70</sup> which takes within its folds the *fine graces civilization* and make an individual's life worth living<sup>71</sup>. Furthermore the right to live with human dignity<sup>72</sup>, derived from the DPSPs enshrined in articles 39 and 41, includes the protection of health and strength of the workers.<sup>73</sup>

28. It is humbly submitted before the Hon'ble court that Sec.123(9) only seeks to curb the promises of freebies and loan waivers political party make solely with a view to secure votes<sup>74</sup> as the same aggravates the miseries of the farmers. Furthermore, data based on empirical studies<sup>75</sup> indicates that are not effective in resolving the woes of the farmers and instead emphasis should be based on government policies are a better means to spend the funds of the public exchequer.

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<sup>68</sup> *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248.

<sup>69</sup> MP Jain

<sup>70</sup> *Francis Coralie v. Delhi*, AIR 1981 SC 746.

<sup>71</sup> *P. Rathinam v. Union of India*, (1994) 3 SCC 394; *Olga Tellis v. Bombay Municipal Corporation*, AIR 1986 SC 180.

<sup>72</sup> *Munn v. Illinois*, (1877) 94 US 113; *Kharak Singh v. State of U.P.*, AIR 1963 SC 1295

<sup>73</sup> *Bandhua Mukti Morcha v. Union of India*, (1984) 3 SCC 161.

<sup>74</sup> Proposition, ¶8(3).

<sup>75</sup> *Farmer Suicides An All India Study*, Department of Agriculture, Cooperation & Farmers Welfare, Government of India, New Delhi; *An Economic Strategy for India* (14 December 2018), <https://www.bloombergquint.com/global-economics/an-economic-strategy-for-india-by-rajana-gopinath-and-others-full-report#gs.Ipdoms> (Accessed on 19<sup>th</sup> March 2019).

**ISSUE III: WHETHER THE SECTION 29D, 29E AND 168A OF THE REPRESENTATION OF THE PEOPLE ACT, 1951 IS CONSTITUTIONALLY VALID.**

29. It is humbly submitted before the Hon'ble court that Secs. 29 D, 29 E and 168 A are consistent with the provisions of the Constitution as firstly, Secs. 29 D & E do not violate the right to freedom of association guaranteed under Art. 19(1)(c) of the Constitution [3.1] and *secondly*, Sec. 168 A is not violative of the Constitutional Provisions in so far that it furthers the ideals of a democracy.[3.2]

**3.1] SECS. 29 D & E ARE NOT VIOLATIVE OF ART. 19(1)(C) OF THE CONSTITUTION**

30. It is humbly submitted before the Hon'ble court that in the present case Article 19(1)(c) of the Constitution is not violated as *firstly*, it is a reasonable restriction under article 19(4) [A] and *secondly*, sections 29 D & E promote internal democracy. [B]

**A] REASONABLE RESTRICTION UNDER ARTICLE 19(4)**

31. Internal democratic functioning of a political party refers to the substantive aspect of the democratic theory.<sup>76</sup> The political parties are the central mechanism in a democratic form of government<sup>77</sup> and play a *determinative and creative role*<sup>78</sup> in the formation as well as the workings of the government. They provide a connecting link between the executive, the parliament and the people and hence become an indispensable feature of parliamentary democracy<sup>79</sup> the success of which depends on the organization of the political parties as they provide leadership to public offices through elections.<sup>80</sup> It is humbly submitted that Art. 19 (4) provides for reasonable restrictions on the grounds of public order. The country of Bharat

<sup>76</sup> Law Commission of India, *Electoral Reforms*, Report No. 255 (March 2015).

<sup>77</sup> *A.P.H.L.C. Shillong v. Sangma*, AIR 1977 SC 2155.

<sup>78</sup> Elmer Eric Schattschneider, *Party Government* (1942).

<sup>79</sup> D.D Basu, *Commentary on the Constitution of India* (9<sup>th</sup> ed. Lexis Nexis 2015).

<sup>80</sup> *Id.*

Nadu being faced with the problem of instability, it becomes imperative to tackle the problem at the grass-root level by regulating the structure of the political parties as the freedom guaranteed under Art. 19(1)(c) is not restricted to the freedom of association, but the effective functioning of the association so as to enable it to achieve the lawful objectives.<sup>81</sup>

### **B] SECTIONS. 29 D AND 29 E PROMOTE INTERNAL DEMOCRACY**

32. It has been recommended by the 255<sup>th</sup> Law Commission that political parties *cannot be a dictatorship internally and democratic in its functioning outside*<sup>82</sup> and hence must be organized internally in adherence to the democratic principles, a recommendation that was supported by the NCRWC.<sup>83</sup> Furthermore it has been held that political parties qualify as public authorities under the ambit of the Sec 2(h) of RTI Act, 2005<sup>84</sup> on account of their functions being largely public in nature wherein they play a critical role in the democratic set up of the country and them being funded by the central government.<sup>85</sup>

33. It is humbly submitted before the Hon'ble Court that Sec. 29 D & E of the RP Act do not violate the right to freedom association guaranteed under Art. 19(1)(c) in so far that it aims to bring about transparency and reforms in the internal democratic structure of the political parties which are the central, essential units in the parliamentary form of government.

### **3.2] SEC. 168A OF THE REPRESENTATION OF PEOPLE ACT IS CONSTITUTIONALLY VALID**

34. It is humbly submitted before the Hon'ble court that the anti-defection law contained in the tenth schedule of the constitution<sup>86</sup> was added with the objective of curbing political

<sup>81</sup> *A.P Dairy Development Corpn.Federation v. B. Narayana Reddy*, (2011) 9 SCC 286.

<sup>82</sup> Law Commission of India, *Electoral Reforms*, Report No. 255 (March 2015).

<sup>83</sup> Chapter 4, *Electoral Processes and Political Parties*, Report of the National Commission to Review the Working of the Constitution.

<sup>84</sup> *Mr.Subhash Chandra Agrawal v. Indian National Congress*, 2013 SCC OnLine CIC 8915.

<sup>85</sup> *Mr.Subhash Chandra Agrawal v. Indian National Congress*, 2013 SCC OnLine CIC 8915. ; *Indian Olympic Association v. Veeresh Malik*, 2010 SCC OnLine Del 35.

<sup>86</sup> Constitution 52<sup>nd</sup> Amendment Act, 1985.

defections which undermine the democratic principles of the Constitution<sup>87</sup> and lead to political instability, which has been plaguing Bharat Nadu for a span of two decades due to multiple factors including defections and split in political parties<sup>88</sup>.

35. It has been held that an elected member of a political party who continues to remain a member of that party even after his expulsion and the said member is subject to disqualification only when he voluntarily joins another party.<sup>89</sup> In the present scenario Article 168 seeks to penalize a member of the Parliament or Legislative Assembly only when he seeks to contest elections from another party *before the completion of the term*.<sup>90</sup> This not only leads to political instability but also disrupts the composition of the legislative council which is based on proportional representation<sup>91</sup>. Furthermore, in the representative form of government wherein candidates are chosen by the public largely on account of their affiliation to a certain party accountability of a candidate is not limited to his political party but also to his constituency and *infidelity to the party is infidelity to the people*<sup>92</sup>. It is also submitted that the said article furthers the object of the tenth schedule of the constitution which has been held to be constitutionally valid.<sup>93</sup>

It is humbly submitted that Sec. 168A of the RP Act is constitutionally valid as it curbs political instability and furthers the ideas of democracy as laid down by our Constitution.

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<sup>87</sup> *KihotoHollohan v. Zachillhu*, (1965) 3 SCR 53.

<sup>88</sup> Proposition, ¶1.

<sup>89</sup> *G. Vishwanathan v. Hon'ble Speaker, Tamil Nadu*.

<sup>90</sup> Para 9 of moot prop

<sup>91</sup> *KuldipNayar v. Union of India*, AIR 2006 SC 3127; *S.R. Chaudhuri v. State of Punjab*, (2001) 7 SCC 126; *United Democratic Movement v. President of the Republic of South Africa and Others*, 2003 (1) SA 495.

<sup>92</sup> *V.V. Verghese v. Kerala State Election Commission*, 2009 SCC OnLine Ker 2541.

<sup>93</sup> *KihotoHollohan v. Zachillhu*, 1992Supp (2) SCC 651.

**PRAYER**

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*Wherefore, in the lights of the Issues raised, Authorities cited and Arguments advanced, it is most humbly and respectfully requested that the Hon'ble Supreme Court of India be pleased to declare that:*

1. The Constitution (104<sup>th</sup> Amendment) Act, 2019 Is Consistent With The Constitutional Provisions Of Bharat Nadu.
2. Section 123(9) Of The Representation Of The People Act, 1951 Is Constitutionally Valid.
3. Section 29D, 29E And 168A Of The Representation Of The People Act, 1951 Is Constitutionally Valid.

**AND/OR**

PASS ANY ORDER, DIRECTION, OR RELIEF THAT IT MAY DEEM FIT IN THE BEST INTERESTS OF  
JUSTICE, FAIRNESS, EQUITY AND GOOD CONSCIENCE.

*FOR THIS ACT OF KINDNESS, THE PETITIONER SHALL DUTY BOUND FOREVER PRAY.*

Date:.....2019

S/d

Place; Supreme Court of Bharat Nadu

Counsels for Respondent