

MONEY BILLS AND JUDICIAL REVIEW-A FRAUD ON THE CONSTITUTION

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INTRODUCTION

The Constitution of India empowers the Parliament as a law making body. Any bill which is intended to attain the status of law, has to be approved by both houses i.e., *Lok Sabha* (Lower House) and the *Rajya Shaba* (Upper House). The Parliament of India is thus the manifestation of the democratic ethos of our country and paves for a good governance which constitutes the basic principles of our constitution. Parliament has today become an integral part of our national life and evolved as the success of democracy by facing challenges and emerging trends of modern life. The paper deals with the concept of colourable legislation of money bill and how procedural illegality leads to a fraud on the Constitution and the Constitutional relationship between Parliament & judiciary in case of money bills.

“Each house has full authority to regulate its own procedure within the limits of the Constitution. Neither House, by itself, constitutes Parliament. It is the two houses together that are the Parliament of India. The successful working of our Constitution, as of any democratic structure, demands the closest cooperation between the two houses”.

-Pandit Jawaharlal Nehru

MONEY BILLS

Constitutionally, Money bills are defined under Article 110(1). *Article 110(1)* states that a bill shall be deemed to be a money bill if it contains only provisions dealing with all or any of the following matters, namely:

- a) the imposition, abolition, remission, alteration or regulation of any tax;
- b) by the regulation of the borrowing of money or the giving of any guarantee by the Government of India or the amendment of the law with respect to any financial obligations undertaken or to be undertaken by the Government of India;
- c) the custody of consolidated fund or the contingency fund of India, the payment of money from any such fund;

- d) the appropriation of moneys out of the consolidated fund of India;
- e) the declaring of any expenditure to be expenditure charged on the consolidated fund of India or the increasing of the amount of any expenditure;
- f) the receipt of money on account of the consolidated fund of India or the public account of India or custody or issue of such money or the audit of the accounts of the Union or of a States; or,
- g) any matter incidental to any of the matters specified in sub-clauses(a) to (f).

PROCEDURES INVOLVED IN PASSING OF MONEY BILL

The special procedure involved in respect of money bills is explained under *Article 109*.

- A money bill prohibits introduction in the upper house. It can be introduced in the lower house only.
- It must be passed to the upper house for its recommendations. The upper house must within 14 days of such receipt return the bill to the lower house with its recommendations. The house is not bound by recommendations made by upper house. The final bill is passed with or without amendments by upper house and shall be deemed to have been approved by both the houses. If the upper house fails to return the bill within *14 days*, the bill as passed by lower house will be deemed to have been passed by both the houses. Further, under *Article 110(3)*, if any question arises whether a bill is a money bill or not, the decision of the speaker of the house shall be final and when it placed before the president for his assent (*Article 111*), the certificate shall be endorsed on the money bill and signed by the speaker.

ERADICATION OF THE ROLE OF RAJYA SABHA IN MONEY BILLS

The framers of the Indian Constitution designed in such a way that only limited role is given for Rajya Sabha when comes to a money bill. The Parliament system in India is borrowed from that of commonwealth system. It is similar to the practice followed in the United Kingdom. The house of Lords in UK Parliament can neither amend nor reject money bills that are passed by the house of commons. The idea being that the Lok Sabha, as directly elected by the people must have a greater role to examine, to scrutinise and to pass the money bills.¹

ARBITRARY POWER OF THE SPEAKER

The usage of the concept of “money bill” for the enactments of numerous legislations in India by exercising the exclusive power of the speaker under Article 110(3) has come to the

¹ <https://scroll.in/...>parliament.deadlock> viewed on 15/3/2018

forefront in the Courts of Law. The Apex Court from the time being has consistently refrained from exercising its judicial review powers to check the erroneous certification as money bill. The Court observed that the Parliamentary proceedings which are found to suffer from substantive illegality are unconstitutional cannot be held protected from judicial scrutiny by Article 122. The power of the speaker to pass and certify a bill as a money bill is certainly not immune from judicial review. The *procedural illegality* is that when bill not even distantly related to money bill is certified as money bill. If the Constitution of India prescribes the procedure to be followed by a house (for example, money bill), violation of such Constitutional procedure is not immune from judicial review under *Article 122*. The Supreme Court itself has held that some of these “final decisions” by the President, Governor, Law empowered authorities & Speakers are “*judicial*” in nature and subject to judicial review. If a house commits breach of any procedure in any rule made by itself or in any legislation that the houses themselves had passed, such breach is an internal matter for house and not open to Judicial Review. It is submitted that the speaker incorrectly certifies a bill as “money bill” under Article (104) or 199(4), such incorrect certification is a breach of cardinal constitutional provision. In *Raja Ram Pal vs. Hon’ble Speaker, Lok Sabha* ², the five judge constitutional bench, there is a clear distinction between procedural irregularity & substantive illegality or unconstitutionality. There are conflicting views in the observation by the Supreme Court and till now there is no scope for clarity regarding the arbitrary power exercised by speaker.

IMPORTANT DECISIONS ON JUDICIAL REVIEW OF SPEAKER’S CERTIFICATION

The Supreme Court has dealt with three important cases whether it can exercise the power of judicial review in case of violation of constitutional provisions in passing money bills and it has delivered judgements in a negative manner based on erroneous understanding .In case of *Mangalore Ganesh Beedi works Vs. State of Mysore*³ and followed by *Mohammed Saeed Siddiqui Vs. State of Uttar Pradesh*⁴, the Court relied on *incorrect obiter* and held that the validity of any proceedings in a state legislature cannot be called in question and the bill in question was held to be “money bill” and there should not be any interference by the Court as as said in Article 212. It was again upheld by *Yogendra Kumar Jaiswal vs. State of Bihar*⁵ brushed aside the plea to review speaker’s certification of the bill as a “money bill”. There are cases where SC exercised judicial review over decision of speaker on account

² WP (CIVIL) 1 OF 2006

³ 1974 AIR 1832, 1974 SCR (3) 221

⁴ WP (CIVIL) No.410 OF 2012

⁵ SEE, SUPREME COURT OF INDIA, 2015 (<https://indiankanoon.org/doc> viewed on 15/3/2016).

of tainted with substantive illegality or unconstitutionality these judgements exhibit internal contradiction on this issue.

DOCTRINE OF COLOURABLE LEGISLATION

The doctrine of Colourable Legislation is based on the maxim that *what cannot be done directly cannot also be done indirectly*. The doctrine becomes applicable when a legislature seeks to do something in an indirect manner what it cannot do directly. It becomes a big issue only when a legislature having no power to legislate a legislation and it frames a law so camouflaging the same so as to make it appear fall within its competence, the legislation enacted may be regarded as Colourable Legislation. The doctrine of colourable legislation is built upon the founding stones of doctrine of separation of powers and thus maintains balance of power. Whenever, legislature acts in a manner to shift the powers towards itself, then it leads to *legislative accountability*. In *State of Bihar Vs. Kameshwar Singh*⁶, the court held that the failure to comply with constitutional conditions for exercise of legislative power is considered to be fraud on the Constitution . An ordinary bill which do not get votes in the other house, it is converted to money bill and thus leading to colourable legislation i.e., becomes law in an indirect manner.

RISING ISSUES OF MISUSE OF MONEY BILLS

Two issues which would be competent to be discussed here are passing of finance bill 2017 and Aadhar bill 2016.

Passing of Finance Bill as a Money Bill

Firstly, the Finance bill became law called Finance Act in the year 2017. The main issue in this bill was that Government merged several administrative tribunals & assumed power to appoint & remove their chiefs and this move by Government undermined the independence of tribunals⁷. Tribunal is supposed to develop greater expertise in a specific branch of litigation which it required to deal. The rationale behind the replacing and merging tribunals is unclear. The amendment of Finance bill 2017 was that central government may make rules for appointment, qualification, terms of office, salaries, resignation, removal etc... which was argued that it affects interests of tribunal as there is *executive interference*, the Supreme Court order in *Madras bar association vs. Union of India*⁸, held that appointment to tribunals must be free from executive interference. But

⁶ 1952, 1 SCR 889.

⁷ www.prsindia.org/uploads/media/A..... viewed on 15/3/2018

⁸ (2010) 11 SCC 1

the Finance bill with amendments was made to law in the year 2017 under the scope of “money bill” which added fuel to fire.

Passing of Aadhar Bill as a Money Bill

Another issue is the case of *Jairam Ramesh vs. Union of India*, it is Court examining the constitutional validity of Aadhar Act 2016. Aadhar (targeted delivery of financial & other subsidies, benefits and services) Bill, 2016 was cleared as money bill by the speaker and it passed to Rajya Sabha. The house recommended several amendments in the lower house. The oppositions main concern was the competence of the house to legislate the bill and it was considered as *beyond the “legislative authority”* of the house. Mr. Jairam Ramesh, the member in the upper house moved the Supreme Court challenging the treatment of Aadhar bill as a money bill. The government’s stand in the Supreme Court’s judgement in the *Mohammed Saeed Siddiqui Vs. State of Uttar Pradesh*, the Court ruled that a speaker’s decision to classify a draft statute as a money bill was not judicially reviewable, even if the classification was incorrect. According to experts, the contents of Aadhar Act go far beyond the features enumerated in Article 110 and speaker’s decision to confirm the Government’s classification is therefore an error that is not merely procedural in nature but unmitigated flouting of Article 110. There are flaws in the above judgement as it brushes aside the verdict of a Constitution bench in *Raja Ram Pal case (2007)* where the Court had ruled that it does not altogether oust the Court’s jurisdiction in determining finality. If the speaker choice is grossly illegal or disregards basic constitutional mandates or the where the speaker’s decision is arrived at through dishonest intentions such as non-compliance with principles of natural justice & perversity. In this case, prima facie, that the has government has taken the money bill route to bypass the powers of upper house. It was argued before the Supreme Court that Government can introduce the Aadhar bill again as an ordinary bill, if they want. It was also argued that the conditions are clear that a bill can be certified as a money bill if it contains ‘only’ such provisions that deal with the aspects, mentioned under Article 110. It was put forth that the decision of the speaker could be deemed to be final only in cases of procedural irregularities. In 1968, the speaker of Punjab legislative assembly passed some bills as money bills, the Court stated that the protection did not extend to breaches of mandatory provisions. By using this logic, Article 110(1) is a *mandatory provision* and a breach of its provisions could lead to an interpretation that the Supreme Court can question an erroneous decision by the speaker of the Lok Sabha to certify a bill as money bill. In *Mangalore Ganesh beedi works Vs. State of Mysore (1962)*, *Mohammed saeed siddiqui Vs. State of Uttar Pradesh (2014)* and *Yogendra kumar Vs. State of Bihar (2015)* Supreme Court held that the speaker can certify each and every bill to be a ‘money bill’ and the supreme court cannot question the speaker’s decision as it is ‘final’. This position of law developed by the Supreme Court is incorrect because denying

judicial review is unconstitutional. For instance, in *Kihoto Hollohen Vs. Zachillhu*⁹, the final decision regarding the disqualification of members of house under the tenth schedule of Indian constitution was considered to be subjected to judicial review. There are 17 types of “final” decision in the constitution, out of which there are only 3 instances specifically mentions that validity of such ‘final’ decision cannot be questioned. The decision of the speaker, whether a bill is a money bill or not is not one of them. Moreover, the supreme court has held 5 types of ‘final’ decision to be subject to judicial review. Thus the supreme court has held erroneously that the violation of the constitutional procedure for money bill is a mere ‘procedural irregularity’& cannot be questioned by Courts.

CONCLUSION

In *Jairam Ramesh Vs Union of India*, the Supreme Court has first decided to review the speaker’s ‘final’ decision on the certification of money bills which is a welcome step. Bills passed as money bills without any oversight from the Rajya Sabha is a fraud on the Constitution. The Constitution reposes faith in speaker’s fairness and objectivity. Any decision with containing an erring provision cannot be proper under Article 110(3). *Jairam Ramesh Vs Union of India* offers the Supreme Court to rectify the flaws in its own jurisprudence and settle the law regarding its powers of judicial review of the speaker’s certification of a bill as ‘money bill’.

“If the speaker says blue is green, we will ask the speaker to say it is blue...that we will set right.”

-Former Chief Justice of India J S Khehar.

⁹ AIR 1993 SC 412