MONEY BILL, NON-MONEY MATTERS AND DAMAGE TO DEMOCRACY

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Abstract

Separate provisions relating to money bill in the constitution were kept for a purpose by the constitution makers however on different occasions it has been noted that governments, both centre and state, choose to amend general or special laws through money bill. Such blatant and authoritarian use of power by the government jeopardizes democratic norms and restricts further academic evaluation. A challenge to the Constitutionality of Finance Act 2017(decision expected anytime in 2019) being similar case, provides enough reason for Supreme Court to reconsider its stand and question speaker`s decision in this case.

Key words

Money Bill, Non Money Matter, Speaker`s Decision, Amendment, Unconstitutionality, Supreme Court

I. INTRODUCTION

The Finance Act 2017 was passed by lower house and most of the provisions came into force on the 1st day of April, 2017. Generally finance bill is passed each year as money bill since it gives effect to tax changes and related matters proposed in the union budget. This is evident from the preamble of the Act itself which reads as 'An Act to give effect to the financial proposals of the Central Government for the financial year 2017-18.'Preamble of the previous Finance Acts has been similar as that of 2017.

Constitution of India prescribes different norms and procedures for money bills. Article 109 of the Constitution provides that money bill shall not be introduced in the council of states. With regard to money bill, lower house enjoys absolute privilege as it can reject or accept any of the recommendations of the council of states on money bill. In either case money bill will be considered as passed by both the houses. According to Article 110, for a legislation to be classified as a money Bill, it must comprise of 'only' provisions dealing with the following matters: (a) imposition, regulation and abolition of any tax, (b) borrowing or other financial obligations of the government of India, (c) custody, withdrawal from or payment into the Consolidated Fund of India (CFI) or Contingent Fund

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of India, (d) appropriation of money out of CFI, (e) expenditure charged on the CFI or (f) receipt or custody or audit of money into CFI or public account of India; or (g) any matter incidental to any of the matters specified in sub-clauses (a) to (f). Sub clause (3) of Article 110 says that "If any question arises whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final."

Except money bill and other financial bills, a bill may originate in either house of the parliament and need to be passed by both the houses. Procedure for making any amendment in an existing law also needs to observe the same procedure. However, many times it has been noted that amendments were made in several laws through money bills (latest being the finance Act 2017) although amended law can hardly be related to any of the matter enumerated in Article 110. Such blatant and authoritarian use of power by the government jeopardizes democratic norms and restricts further academic evaluation. It is also needless to mention that this route is generally adopted by governments only when it falls short of majority in the other house. Such practices are not new to the Indian legal system; it has been vehemently used by state governments on different occasions. In the back drop of these observations this article proceeds to evaluate the permissibility, if any, of judicial review of power of speaker and constitutionality of such practices by governments.

I. JUDICIAL REVIEW AND POWER OF SPEAKER

In a democracy conferring privileges to the lawmakers is necessary for them to function freely. The powers, privileges and immunities of either House of the Indian Parliament and of its Members and committees are laid down in Article 105 of the Constitution. Article 194 deals with the powers, privileges and immunities of the State Legislatures, their Members and their committees. The language of Article 105 is "mutatis mutandis" the same as that of Article 194 except that for the expression "Parliament" in Article 105 the expression "legislature of a State" is used in Article 194. Hence, a discussion on Article 105 would be relevant to Article 194 also. Taking note of the complexities in defining privileges constituent assembly had decided to leave the powers, privileges and immunities of each house of the parliament and state legislatures and as well as their members and committees to be defined by law by the respective house from time to time.[1] During the constituent assembly debates, H.V. Kamath and others had argued for a schedule to exhaustively codify the existing privileges. However, Dr. Ambedkar pointed out that it was not possible rather practicable to enact a complete code on privileges and immunities of the parliament as a part of the constitution. Therefore British Parliamentary practice was retained in the constitution. Shri G.V. Malvankar opined that[2]

"It is better not to define specific privileges just at the moment but to rely upon the precedents of the House of Commons. The disadvantage of codification at the present moment is that whenever a new situation arises, it will not be possible for us to adjust ourselves to it and give members additional privileges. In the present set up any attempt at legislation will very probably curtail our privileges. Let us therefore, content ourselves with our being on par with the House of Commons"

[1]Constitution of India, 1949; Sub clause (3) of Article 105 and 195

[2]Chatterjee, A.P. (1971) Parliamentary Privileges in India, Calcutta, New Age Publishers, p.116.

In the absence of an exhaustive code various cases came before the courts to determine the extent of privilege enjoyed by parliamentarians. In the last few decades, a judicial position has emerged that it can exercise limited degree of scrutiny over privileges.[3] For example in *P.V. Narsimha Rao v. State*, the court accepted that the privilege of immunity extends even to bribes taken by members of parliament for the purpose of voting in a particular manner but this privilege is not available to the member who even after giving/taking bribe did not participate in the voting.

Article 122 prohibits the courts from questioning the validity of any proceedings in parliament on the ground of any alleged 'irregularity' of procedure. This privilege is strictly limited to irregular proceedings and shall not apply to illegal proceedings. In the case of *Raja Ram Pal v. The Hon`ble Speaker, Lok Sabha*,[4] the Supreme Court while dealing with Article 122, held that proceedings which may be tainted on account of substantive or gross irregularity or unconstitutionality are not protected from judicial scrutiny.

This issue was further dealt by Supreme Court in *Mohd. Saeed Siddiqui v. State of U.P. and Anr*.[5] This petition, Under Article 32 of the Constitution of India was filed by the Petitioner seeking a writ of *quo-warranto* against Mr. Justice N.K. Mehrotra (retd.), then Lokayukta for the State of Uttar Pradesh for continuing as Lokayukta after 15.03.2012. The Petitioner has also challenged the constitutional validity of the Uttar Pradesh Lokayukta and UP-Lokayuktas (Amendment) Act, 2012 to the extent being ultra vires to the provisions of the Constitution of India. The petitioner argued that the Amendment Act is violative of the provisions of the Constitution of India and the same was wrongly introduced as a Money Bill in clear disregard to the provisions of Article 199 of the Constitution of India. Article 199 and 212 of the constitution make it clear that the finality of the decision of the Speaker and the proceedings of the State Legislature being important privilege of the State Legislature, viz., freedom of speech, debate and proceedings are not to be inquired by the Courts.

The court held that the decision of the speaker of state legislative assembly, in determining a bill to be a money bill, could not be judicially reviewed and that the procedure adopted by the state legislature was beyond judicial review by virtue of Article 212. Supreme Court has ruled that even if it is established that there was some infirmity in the procedure in the enactment of the Amendment Act, in terms of Article 255 of the Constitution the matters of procedures do not render invalid an Act to which assent has been given to by the President or the Governor, as the case may be.Judicial review on the ground that certain provisions of the Act are inconsistent with the rest and are not compatible the preamble of the Act can also be argued in a limited sense. As a matter of general practice parliament has seldom used such methods to pass any bill or to make an amendment in other laws.

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[3]Amber Sinha, Can the Judiciary Upturn the Lok Sabha Speaker's Decision on Aadhaar? Available at https://thewire.in/110795/aadhaar-money-bill-judiciary/

[4](2007) 3 SCC 184

[5]A I R 2014 SC 2051

I. PROTECTION FOR 'IRREGULARITY OF PROCEDURE' NOT FOR 'ILLEGALITY'

As noted above Supreme Court in the Raja Ram case has clearly made a distinction between procedural irregularity and illegality in the context of Article 122 (1). The court observed that Article 122 (1) extends its protection only to matters of procedural irregularity and not an illegality.

Between 'illegal' and 'irregular' there lies great difference. Illegality makes an act or transaction null and void ab initio. On the other hand, irregularity is pardonable and the defect can be cured. In *United Bank of India v. Naresh Kumar*[6] the Supreme Court held that procedural defects that do not go to root of the matter should not be permitted to defeat a just cause.

Question that need to be addressed is whether inclusion of non money matters in money bill would be procedural irregularity or illegality. In *Sat Pal Dang v. State of Punjab*, Supreme Court made a difference between 'mandatory' and 'directory' provisions of the constitution. Court further said that only violation of mandatory provision will lead to judicial scrutiny and no immunity will be provided in such cases. By that logic, if Article 110 (1) is seen as a mandatory provision, a breach of its provisions could lead to an interpretation that the Supreme Court may well question an erroneous decision by the speaker of the Lok Sabha to certify a legislation as a money Bill. The use of the word "shall" in Article 110 (1), the nature and design of the provision, its overriding impact on the other constitutional provisions granting the Rajya Sabha powers are ample evidence of its mandatory nature.[7]

IV. NON MONEY MATTERS IN FINANCE ACT, 2017

Finance Act, 2017 not only included money matters but also provided for amendments in almost forty other laws. Some of the matters that were included in the finance Act were proposal for enhanced power to taxmen by allowing them not to disclose the 'reason to believe' for a search to an individual. Proposal to make the furnishing of Permanent Account Number (PAN) mandatory for filing of tax returns from July 1, along with provisions for the merging of tribunals are the other controversial subject matters passed through Act. Finance Act has also been criticized for pushing more confidentiality in contribution made to political parties by the companies. The government removed the cap for companies for their contributions to political parties by making amendments in Companies Act, 2013. Although companies are still required to disclose the amount of contribution but requirement for disclosure of name of beneficiary party is now done away with.

Carrying out a major institutional change through the Finance Bill, the government has

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[6](1996) 6 S.C.C. 660

[7]Dr. Anup Surendranath, Aadhaar Act As A Money Bill -- Judicial Review Of Speaker's Determination Concerning Money Bills,

available at: http://ccgdelhi.org/doc/(CCG-NLU)%20Aadhaar%20Money%20Bill.pdf (accessed on 18.09.2019)

not only merged some tribunals, it has also proposed to regulate the appointment process of officers of tribunals. The amendments propose that the government may make rules for qualifications, appointments, term of office, salaries and allowances, resignation, removal and other conditions of service for these tribunals including chairperson, vice-chairpersons and members of specified tribunals, appellate tribunals, and other authorities. This has raised the apprehension for bigger executive role in the affairs of tribunals.

Challenging the constitutional validity of finance Act a writ petition was filed by Mr. NipunSinghvi before Gujrat High Court. The petitioner has requested the court that the provisions of the finance Act, particularly sec. 156 to Sec. 189, which relate to certain laws to merge tribunals and the appointment of their member, should be held as unconstitutional because it violates the doctrine of separation of power and independence of judiciary.[8]

Sec. 156 to 189 of the Act and the Tribunal, Appellate and other Authorities (Qualifications, Experience and other conditions of Service of Members) Rules, 2017 were further challenged by Madras Bar Association.[9] The petition contends that these provisions are not matters relating to money bill and hence should have been legislated through separated legislations and bills with the assent of Rajya Sabha.

The petition says thatthe Lok Sabha has firstly certified a Financial Bill as a Money Bill and thereafter adopted the special procedure laid down for Money Bills in Article 107 of the Constitution and effectively negating any sort of interference from the Rajya Sabha and

Council of States. It is thus submitted that when proceedings which are tainted on account of substantive illegality or unconstitutionality, the same cannot be immune from judicial scrutiny and review. Since the Finance Bill, 2017 was wrongly voted as a Money Bill despite the fact that it is not, the passing of the Finance Bill, 2017 is illegal, invalid and a fraud on the Constitution".

In the philosophy of Indian constitution, amending powers of a statute by parliament are subject to only 'basic structure doctrine' as propounded by Supreme Court in the famous case of Keshvanand Bharti. Extent and ambit of the term 'basic structure' was left open to be decided in each case by the constitutional courts. Madras bar Association has argued that the present Finance Act, 2017 insofar as it amends the structure and re-organisation of various Tribunals including the 19 Tribunals set out in the Schedule of the Impugned Rules, 2017 is unconstitutional and violative of the basic structure of the Constitution. The impugned provisions and the Impugned Rules, 2017 violate the principles of separation of powers which is not only part of basic structure but also an elementary component of the rule of law.

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[8]TNN, Merger of Tribunals through Finance Act Challenged in High Court, June 29, 2017 https://timesofindia.indiatimes.com/city/ahmedabad/merger-of-tribunals-through-finance-act-challenged-in-hc/articleshow/59359861.cms

[9]Apoorva Mandhani, 'Any Appointments to 19 Tribunals Under Finance Act Would be Subject to Outcome of Challenge: Madras HC'June 29, 2017

http://www.livelaw.in/appointments-19-tribunals-finance-act-subject-outcome-challenge-madras-hc/

Writ Petition 15147 Of 2017 Madras Bar Association v. Union Of India.

The Information Technology Act, 2000 was passed in the wake of UNCITRAL Model Law particularly to give effect to provisions relating to e commerce and related issues. However, Indian Legislature back then had chosen to enact an exhaustive law to cover maximum issues relating to Information Technology and Internet. The Act was granted overriding effect on other statutes.[10] Information Technology Act was first amended in 2008 which came in effect in 2009. Amendment in the IT Act in 2008 has followed the same procedure as envisaged for passing of a bill in the Constitution. Second amendment in the Information Technology Act was made through Finance Act 2017 which is a money bill.

Comparing it with *Mohd. Saeed Siddiqui case*, where validity of second amendment bill was sought to be established on the ground that first amendment bill was also passed through money bill, will brings us at a confusing state. If we go by the same logic with regard to second amendment in Information Technology Act, it fails to follow the process adopted in the first amendment.

I. CONSTITUTIONALITY OF INCLUSION OF NON MONEY MATTERS IN MONEY BILL

Use of the word 'only' in Article 110 is important one. A bill can be called as money bill 'only' if it incorporates certain specific matters. During the constituent assembly debates Mr. Ghanshyam Singh Gupta argued for removal of this term but his demands were

rejected. It shows that constitution makers were of the view that money bills has limited ambit and separate provision for money bill were for specific purpose. These provisions and procedures cannot subvert other parts of the constitution. The arguments raised by G.V. Mavalankar, the first speaker of House of the People, that the word 'only' must not be construed so as to give an overly restrictive meaning is naïve one. He was of the view that matters enumerated in Article 110 are the 'core' matters. While dealing with these 'core' matters the money bill may touch other ancillary or closely connected issues. But most of matters (as discussed above) included in finance Act 2017 are either not connected or remotely connected with the core matters therefore not making a sufficient nexus with the preamble of the said Act.

I. CONCLUDING OBSERVATION

In the light of said observation it may be said that inclusion of non money matters in money bill which do not establish sufficient connection with matters enumerated under Article 110 is a blatant misuse of constitutional silence. As discussed above, speaker`s decision being a qualified privilege need to be judged at occasions when settled constitutional procedures and norms are avoided. The discretion casted on the speakers has to be exercised judiciously and mere rubber stamping of such bills as money bill has resulted into violation of various rights such as right to caste vote, right to information, right to object etc. of the Upper House members. Therefore, in such matters where there is gross misuse of procedure Court must intervene and restrain the legislature to act against the constitutional objectives and democratic norms.

[10]According to Sec. 81 of the Act, "The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force. Provided that nothing contained in this Act shall restrict any person from exercising any right conferred under the Copyright Act, 1957 (14 of 1957) or the Patents Act, 1970 (39 of 1970).