



News Editorials (27 Apr, 2019)

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Misuse of Money Bills in India

(This editorial is based on the article 'Trickeries of the money bill' which appeared in 'The Hindu' on 11th April, 2019. The article talks about ambiguities affecting various types of bills and tries to analyse the constitutional provisions related to money bill.)

The Constitution is not only an embodiment of charter of rights but also a foundation for republican governance. It establishes provisions which give clearer idea of the type of polity our nation aspires to setup.

However the Constitution's tricky nature has been a source of antipathy to many. It has been called too long, too rigid and its tricky legal language leaves enough loopholes which hampers in smooth functioning of various organs of government.

Finance Act, 2017 is one such act which not only undermined the provisions of separation of power which is an essential feature of Indian polity but it also creates a sense of totalitarianism where one stream of authority becomes powerful enough to sweep away everything else in the time of a flood.

The Case in Point

Ordinarily, the Finance Act is enacted at the beginning of every accounting year to give effect to the government's fiscal policies. In 2017, however, the state wielded the statute in an arbitrary manner. While it set the fiscal agenda for the year ahead, it also changed the existing regime governing the working of 26 different judicial bodies such as National Green Tribunal, National Company Law Appellate Tribunal, Income Tax Appellate Tribunal etc.

Until recently, each of these panels was governed by a separate statute, and those laws individually contained a set of principles providing for, among other things, the criteria employed to select and remove members to and from these bodies, and for salaries, allowances and other such service conditions of the members.

The Finance Act not only abolished some of the tribunals but also altogether repealed the standards provided in the different statutes which governed their functioning and divested this power to the executives.

What is Finance Act?

Finance Bill is a secret bill introduced every year in Lok Sabha (Lower chamber of the Parliament) immediately after the presentation of the Union Budget, to give effect to the financial proposals of the Government of India for the immediately following financial year.

It is presented at the time of presentation of the Annual Financial Statement before Parliament, in fulfillment of the requirement of Article 110 (1)(a) of the Constitution, detailing the imposition, abolition, remission, alteration or regulation of taxes proposed in the Budget.

A Finance Bill is a Money Bill but not all money bills are Finance Bills

There are four types of Bills, namely:-

- **Constitution Amendment Bills:** These are Bills which seek to amend the Constitution.
- **Money Bills:** A Bill is said to be a Money Bill if it only contains provisions related to taxation, borrowing of money by the government, expenditure from or receipt to the Consolidated Fund of India. Bills that only contain provisions that are incidental to these matters would also be regarded as Money Bills.
- **Financial Bills:** A Bill that contains some provisions related to taxation and expenditure, and additionally contains provisions related to any other matter is called a Financial Bill. Therefore, if a Bill merely involves expenditure by the government, and addresses other issues, it will be a financial bill.
- **Ordinary Bills:** All other Bills are called ordinary bills.

How are these bills passed?

- **Constitution Amendment Bills:** A Constitution Amendment Bill must be passed by both Houses of Parliament. It would require a simple majority of the total membership of that House, and a two thirds majority of all members present and voting. Further, if the Bill relates to matters like the election of the President and Governor, executive and legislative powers of the centre and states, the judiciary, etc., it must be ratified by at least half of the state legislatures.
- **Money Bills:** A Money Bill may only be introduced in Lok Sabha, on the recommendation of the President. It must be passed in Lok Sabha by a simple majority of all members present and voting. Following this, it may be sent to the Rajya

Sabha for its recommendations, which Lok Sabha may reject if it chooses to. If such recommendations are not given within 14 days, it will deem to be passed by Parliament.

- **Financial Bills:** A Financial Bill may only be introduced in Lok Sabha, on the recommendation of the President. The Bill must be passed by both Houses of Parliament, after the President has recommended that it be taken up for consideration in each House.
- **Ordinary Bills:** An Ordinary Bill may be introduced in either House of Parliament. It must be passed by both Houses by a simple majority of all members present and voting.

Finance Bill Vs Financial Bill

Finance Bill is different from a “Financial Bill” which is defined under article 117(1) of the Constitution. Money bills including Finance Bills are a subset of “Financial Bills”.

Whereas a Money Bill deals solely with matters specified in article 110(1) (a) to (g) of the Constitution, a Financial Bill does not exclusively deal with all or any of the matters specified in the said article. It may contain some other provisions also.

Financial Bills can be divided into two categories:

- In the first category are Bills which contain provisions attracting article 110(1)(a) to (f) of the Constitution. They are categorized as Financial Bills under article 117(1) of the Constitution. It is a Bill which has characteristics both of a Money Bill and an ordinary Bill.
- As in the case of a Money Bill, firstly, it cannot be introduced in Rajya Sabha, and secondly, it cannot be introduced except on the recommendations of the President.
- Except these two points of difference, a Financial Bill in all other respects is just like any other ordinary Bill. That is other restrictions in regard to Money Bills do not apply to this category of Bills. **Financial Bill under article 117(1) of the Constitution can be referred to a Joint Committee of the Houses.**

In the second category are those Bills which contain provisions which on enactment would involve expenditure from the Consolidated Fund of India. Such Bills are categorised as Financial Bills under Article 117 (3) of the Constitution.

- Such Bills can be introduced in either House of Parliament. However, recommendation of the President is essential for consideration of these Bills by either House and unless such recommendation is received, neither House can pass the Bill.

- Such Bills are more in the nature of ordinary Bills rather than the Money Bills and Financial Bills mentioned earlier. The only point of difference between this category of Financial Bills and the ordinary Bills is that such a Financial Bill, if enacted and brought into operation, involves expenditure from the Consolidated Fund of India and cannot be passed by either House of Parliament unless the President has recommended to that House the consideration of the Bill.

In all other respects this category of Bills is, just like ordinary Bills, so that such a Financial Bill can be introduced in Rajya Sabha, amended by it or a joint sitting can be held in case of disagreement between the Houses over such a Bill. There is, in other words, no limitation on the power of Rajya Sabha in respect of such Financial Bills.

Issues Involved

It has been argued that as many of these tribunals perform roles that are originally undertaken by the higher judiciary assigning their functions to the executive's whims therefore is detrimental to the basic principle of separation of powers.

Despite the Supreme Court's previous ruling that the chairperson of a judicial tribunal ought to be equivalent to the Chief Justice of the high courts, as a result of the rules now made in furtherance of the Finance Act, in 13 different tribunals, a person who is merely qualified to be appointed as a judge of a high court can be selected as the presiding officer thus eroding the sanctity of these institutions.

The act not merely challenges the separation of power but the manner of its passage is also dubious. It has been argued that substantive matters concerning the governing of tribunals can scarcely be considered as a fiscal measure. Yet the draft law which introduced these provisions was classified as a money bill.

One such clause, Article 110(1), grants to the Lok Sabha Speaker the authority to certify a draft law as a money bill so long as such legislation **deals only with all or any of the matters specifically listed in the provision** and his decision cannot be questioned and is beyond judicial review.

An immunity from judicial scrutiny would effectively allow the government to elude the Rajya Sabha's constitutional checks by simply having the Speaker classify a draft law as a money bill regardless of whether it, in fact, meets the conditions stipulated in Article 110(1) or not.

Way Forward

The idea behind a money bill is derived from British parliamentary custom. But unlike in Britain, where judicial review of the Speaker's opinion is unambiguously prohibited, in India, Article 110 avoids creating any such bar.

Money bills exist simply to ensure that the Rajya Sabha isn't allowed to bring down a government by refusing it access to the exchequer for everyday governance.

To use it as a means to nullify the Upper House's democratic role in making substantive legislation undermines the Constitutional form which Ambedkar and the Constituent Assembly envisaged.

Meanwhile the finality accorded to the speaker's decision in assigning Money bill too cannot be ousted from the court's jurisdiction as the Supreme Court has repeatedly held that Judicial Review is a part of Basic Structure Doctrine and it is the constitutional duty of the Supreme Court and the High Courts to review governmental actions, and issue prerogative writs.

It is imperative that Supreme Court continues to provide a sense of sanctity to the Constitution's carefully structured arrangements so that smooth functioning in governance can be realised.
