



CENTRE FOR COMMUNICATION GOVERNANCE AT NATIONAL LAW UNIVERSITY, DELHI

AADHAAR ACT AS A MONEY BILL -- JUDICIAL REVIEW OF SPEAKER'S DETERMINATION CONCERNING MONEY BILLS

*-- Dr. Anup Surendranath**

The primary hurdle in determining the constitutional validity of introducing the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, (hereinafter, “the Aadhaar Act”) as a money bill is whether courts can judicially review the decision of the Lok Sabha Speaker that it was a money bill. If the Supreme Court does not have the power to judicially review the decision of the Speaker in this context, then it is irrelevant whether the Aadhaar Act is in substantive compliance with Article 110. Without such a power for the Supreme Court, the Speaker’s determination that the Bill before her was a Money Bill would be final and binding without any scope for legitimate judicial review. This note, however, argues that the Supreme Court has the power to judicially review the Speaker’s decision in this regard and it is essential to lay down that foundation before the court examines the substantive compliance with Article 110 (the non-compliance with the terms of Article 110(1) is relatively an easier case to make).

**Dr. Anup Surendranath teaches Constitutional Law at National Law University, Delhi. The research assistance for the note was provided by Anwasha Choudhury and Maria George.*

Protection for ‘Irregularity of Procedure’ but not for ‘Illegality’

In support of the position that there can be no judicial review of the Speaker’s decision that a particular Bill was a Money Bill, decisions of the Supreme Court in *Mohd Saeed Siddiqui v. State of UP* (2014),¹ and *Yogendra Kumar Jaiswal v. State of Bihar* (2016)² are likely to be cited. The Supreme Court held that the decision of the Speaker (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(1)³ [a similar provision exists for the Parliament under Art. 122(1)]. The Supreme Court in *Siddiqui*, while identifying the reasons for such a lack of power, took the view that such matters (like whether the Bill fell foul of the provisions on ordinary bills and money bills) were an irregularity of procedure and that irregularities of procedure could not be reviewed by the court.⁴ It is important to note that the Supreme Court’s power of judicial review in this context depends entirely on whether the matter at hand is an ‘illegality’ or whether it is a ‘procedural irregularity’. The Supreme Court in *Raja Ram Pal v. Hon’ble Speaker, Lok Sabha* (2007),⁵ has drawn a very clear distinction between ‘procedural irregularity’ and ‘illegality’ in the context of Art. 122(1). The Court rightly observes that Art. 122(1) extends its protection only to matters of procedural irregularity and not an ‘illegality’.⁶

¹ (2014) 11 SCC 415.

² (2016) 3 SCC 183.

³ Art. 212, Courts not to inquire into proceedings of Legislature (1): The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure.

Art. 122(1) is the corresponding provision for proceedings of the Parliament.

⁴ The Supreme Court, at ¶ 43: “...the decision of the Speaker of the Legislative Assembly that the Bill in question was a Money Bill is final and the said decision cannot be disputed nor can the procedure of the State Legislature be questioned by virtue of Article 212.”

⁵ (2007) 3 SCC 184.

⁶ The Supreme Court, at ¶ 362: “...Article 122 does contemplate control by the courts over legality of parliamentary proceedings. What the provision intended to prohibit thus were cases of

What constitutes an ‘illegality’ in this context?

The question to be answered in the context of the Aadhaar Act being introduced as a money bill is whether the alleged violation of Art 110 would be an ‘illegality’ or whether it would be an ‘irregularity of procedure’. The Supreme Court has thrown light on the manner in which this determination might be made. Responding to this issue in *Babulal Parate v. State of Bombay* (1960),⁷ a Constitution Bench of the Supreme Court in the context of Art. 122(1) developed a broad response under which any violation of a constitutional provision was considered to be beyond the scope of protection afforded by Art. 122(1). However, this was further refined by the decision of a Constitution Bench in *Sat Pal Dang v. State of Punjab* (1969).⁸ In *Dang*, the Supreme Court drew a distinction between ‘mandatory’ and ‘directory’ provisions of the Constitution and held that it was only violations of ‘mandatory provisions’ that were beyond the scope of protection afforded in Art. 212(1) [and by extension of Art. 122(1) as well].

Is Art. 110(1) a ‘mandatory provision’?

The Supreme Court in *Dang* had to decide the question of whether Art. 199(4) [equivalent to Art. 110(4)] -- certificate from the Speaker in a Legislative Assembly on a money bill -- amounted to a mandatory provision of the Constitution. The Constitution Bench in *Dang* imported a framework developed in *State of UP v. Babu Ram Upadhyaya* (1961)⁹ in the context of legislative provisions to answer this question. To determine whether a constitutional provision is a mandatory one, the Court identified the following considerations from *Upadhyaya*:

interference with internal parliamentary proceedings on the ground of mere procedural irregularity.”

⁷ (1960) 1 SCR 605.

⁸ (1969) 1 SCR 478.

⁹ 1961 (2) SCR 679.

*When a statute uses the word “shall”, prima facie, it is mandatory, but the Court may ascertain the real intention of the legislature by carefully attending to the whole scope of the statute. For ascertaining the real intention of the Legislature the Court may consider, inter alia, the nature and the design of the statute, and the consequences which would follow from construing it the one way or the other, the impact of other provisions whereby the necessity of complying with the provisions in question is avoided, the circumstance, namely, that the statute provides for a contingency of the non-compliance with the provisions, the fact that the non-compliance with the provisions is or is not visited by some penalty, the serious or trivial consequences that flow therefrom, and, above all, whether the object of the legislation will be defeated or furthered.*¹⁰

Therefore, the status of Art 110(1) will have to be decided along the terms laid down above. On a consideration of the factors that received the approval of the Supreme Court in *Dang*, it would be difficult to argue that Art. 110(1) is not a mandatory provision. Given the potential impact that such violations of Art. 110(1) could have on nullifying other provisions of the Constitution dealing with the powers of the Rajya Sabha and the constitutional balance on federalism, Art. 110(1) must be considered as a ‘mandatory provision’ of the Constitution.

Adopting this framework of arguments would allow the possibility of arguing the broader constitutional consequences of violating Art. 110(1). Before the court can get into whether the terms of Art. 110(1) have been violated, it needs to be established that the court can indeed undertake that exercise through its judicial review powers. The argument constructed above, i.e. that the court’s judicial review power is excluded under Art. 122 (1) only when ‘procedural irregularities’ are in question does not apply to Art. 110(1). By virtue of being a ‘mandatory provision’ in the manner discussed above, the

¹⁰ *Ibid*, at ¶ 29.

court does have judicial review over the manner in which the power under Art. 110(1) read with Art. 110(3) is exercised.

The mandatory nature of Art. 110(1) is also highlighted by the manner in which the Rules of Procedure and Conduct of Business in Lok Sabha (2014) deals with the power of the Speaker in this regard. The proviso to Rule 96 Cl.2 makes it evident that the Speaker has to first determine that the Bill does fall within the meaning of a Money Bill under Art. 110(1) before exercising the power under that Rule.

Understanding the Finality Clause

Art. 110(3) states that if a question arises as to whether a Bill is a Money Bill, the decision of the Speaker in this regard shall be final. However, there have been significant judgments from the Supreme Court which establish that such finality clauses do not exclude judicial review.¹¹ The Constitution Bench in *Raja Ram* held that the “...ouster clause attaching finality to a determination does ordinarily oust the power of the court to review the decision but not on grounds of lack of jurisdiction or it being a nullity for some reason such as gross illegality, irrationality, violation of constitutional mandate, mala fides, non-compliance with rules of natural justice and perversity.”¹²

Introducing and passing the Aadhaar Act as a Money Bill amounts to a gross illegality because there is no manner in which the contents of the Act can be justified under the terms of Article 110(1). Many commentators have rightly pointed out that the use of the word “only” in Article 110(1) prevents the Aadhaar Act from falling under its scope.

¹¹ *Union of India v. Jyoti Prakash Mitter*, (1971) 1 SCC 396; *Union of India v. Tulsiram Patel*, (1985) 3 SCC 398; *Kihoto Hollohan v. Zachillhu*, 1992 Supp (2) SCC 651.

¹² (2007) 3 SCC 184, at ¶431. The Court also cited other provisions in the Constitution with similar clauses that have been subject to judicial review like Arts. 217(3) and 311(3), see ¶376.