

## THE LEGAL QUAGMIRE SURROUNDING MONEY BILLS: AN ANALYSIS OF K.S. PUTTASWAMY V. UNION OF INDIA

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### INTRODUCTION

The extant constitutional scheme concerning money bills has seen a trend of misuse by the executive. In case of a money bill, the Constitution carves out an exception to the general principle of bicameralism where a bill is scrutinised by both houses of the parliament. A money bill, contrary to an ordinary or financial bill, can be enacted into law without the due consensus of the Rajya Sabha. This is because the Constitution provides that the money bill can only be introduced in the House of the People (Lok Sabha). The Rajya Sabha only has the power to make recommendations that may or may not be accepted by the Lok Sabha. Furthermore, if the Rajya Sabha does not return the money bill within 14 days, it is deemed to have been passed at the expiry of that period. The Rajya Sabha's powers are therefore only recommendatory and the true power lies with the Lok Sabha.<sup>2</sup> A bill can be certified as a money bill *only* if provisions of the bill fall exclusively within the categories laid out under Article 110. The Constitution vests with the Speaker of the Lok Sabha the power to certify a bill as a money bill and such decision of the Speaker shall be final.

The unique nature of money bill has the effect of denuding the power of the Rajya Sabha as well as depriving the power of the President to return a bill for reconsideration. The peculiar character of money bills, therefore, calls for a strict and narrow construction of the word 'only' in Article 110. Such a strict interpretation becomes even more crucial in the current political scenario where the central government does not have a majority in the Rajya Sabha giving them an incentive to pass as many bills as money bills to avoid the scrutiny of the Upper House.

This article does not focus upon the justiciability of the decision of the Speaker in designating a bill as a money bill as it has rightly been settled by the apex court in *K.S. Puttaswamy*

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<sup>2</sup> M.P. Jain, *Indian Constitutional Law* 71 (Lexis Nexis, 2014).

*v. Union of India*<sup>3</sup> by overruling *Mohd. Saeed Siddiqui*<sup>4</sup> and *Yogendra Kumar Jaiswal*.<sup>5</sup> This article instead advocates for a narrow interpretation of the word ‘only’ in line with the basic structure of the Constitution.

## **ANALYSIS OF K.S. PUTTASWAMY V. UNION OF INDIA**

### ***Background***

The rampant use of money bills as a tool to achieve ulterior political motives by those in power came to the forefront with the enactment of the Aadhaar Act, 2016.<sup>6</sup> The validity of the Act came to be challenged before the Supreme Court in the *Puttaswamy* judgement. While much of the judgement dealt with the issue of privacy as a fundamental right, one of the significant issues within the judgement, which in my opinion, was erroneously decided was the designation of the Aadhaar Bill as a money bill.

### ***Arguments put forth by the Petitioners***

The designation of the Aadhaar Bill as a money bill was challenged on the ground that while Section 7 of the impugned bill provided for subsidies, benefits and services from the Consolidated Fund of India, some other provisions of the bill, namely, Sections 23(2)(h), 54(2)(m) and 57 did not fall under any of the clauses under Article 110 of the Constitution. The petitioners were in favour of strict construction of the word ‘only’. They relied on the precedent *Saru Smelting Ltd. v. Commissioner of Sales Tax* where the word ‘only’ was interpreted by the Apex Court.<sup>7</sup> A notification under the U.P. Sales Tax Act provided that ‘only copper, tin, nickel, zinc or any other alloy containing any of these metals’ were entitled to a reduced rate of sales tax. The questions before the court were whether Phosphorous Bronze could be exempted from sales tax. The Court considered the expression ‘only’ to be of prime importance in the instant case. Phosphorous Bronze contained Phosphorous, even though in small quantity, and therefore could not be said to fall under the said entry.

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<sup>3</sup> K.S. Puttaswamy v. Union of India, (2019) 1 SCC 1.

<sup>4</sup> Mohd. Saeed Siddiqui v State of Uttar Pradesh, AIR 2014 SC 2501.

<sup>5</sup> Yogendra Kumar Jaiswal v State of Bihar, AIR 2016 SC 1474.

<sup>6</sup> Pratik Datta, Shefali Malhotra & Shivani Tyagi, *Judicial Review and Money Bills*, 10 NUJS L. REV. 1-36 (2017).

<sup>7</sup> Saru Smelting Ltd. v. Commissioner of Sales Tax, 1993 Supp (3) SCC 97.

It was also contended by the Petitioners that the Rajya Sabha was an essential part of the constitutional federalism and a part of the basic feature of the Constitution. By-passing the Rajya Sabha by the enactment of bills under the guise of money bills was therefore unconstitutional.

### ***Arguments put forth by the Respondent***

The government, on the other hand, contended that Section 7 of the Aadhaar Act was the “heart and soul” of the Act. This section dealt with subsidies, benefits and services, the expenditure for which was to be incurred from the Consolidated Fund of India satisfying the criteria laid down in Article 110 and argued that all other Sections were merely incidental to Section 7. The government based their argument on the doctrine of “pith and substance” and stated that the bill, in its pith and substance, should pass the test of being a money bill.

The Court accepted the Government’s argument and held that the Act had been rightfully designated as a money bill. Justice Chandrachud, however, dissented with the majority opinion stating that the Act traversed beyond the narrow confines of a money bill. He highlighted the importance of bicameralism as a check on majoritarianism and the need for adequate representation of federal States.

### ***Issues with the Judgement***

The author argues that the majority judgement in the context of the money bill is erroneous on several grounds. *Firstly*, the doctrine of pith and substance is applied to adjudicate legislative competence and has no role to play in examining whether or not the requirements of Article 110 are satisfied.<sup>8</sup> *Secondly*, according to the judgement of the majority, Section 7 of the Act conforms with Article 110(e) as the expenditure is made from the Consolidated Fund of India and all other challenged provisions are merely incidental to Section 7 is fallacious. Such a holding fails to take into account the use of the word ‘only’ in Article 110. The expression ‘only’ implies the provisions of the bill should deal with only those matters which are enumerated in the Article. A broad interpretation of Article 110 will have negative ramifications as any governmental activity would satisfy Article 110(e) given that most governmental functions are funded by the Consolidated Fund

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<sup>8</sup> Suvrith Parthasarathy, *The Aadhaar Judgement and the Constitution – III: On Money Bill*, INDIAN CONSTITUTIONAL LAW AND PHILOSOPHY (Oct. 1, 2018); <https://indconlawphil.wordpress.com/2018/10/01/the-aadhaar-judgment-and-the-constitution-iii-on-the-money-bill-guest-post/>.

of India. Therefore, now, if a bill contains an element of one of the clauses enumerated in Article 110, it could be designated as a money bill. This would effectively give a free hand to the majority in the Lok Sabha to enact laws without any scrutiny or say of the Rajya Sabha undermining the very fabric of our Constitution.

The Constitution, apart from the money bills, provide for the financial bills, which can also only be introduced in the Lok Sabha. A financial bill, unlike a money bill, deals with both, matters enumerated in Article 110 and other extraneous matters. The intent behind financial bills was to secure the position of the Rajya Sabha, who can affect amendments to a financial bill and any dead-lock between the two houses can be resolved by a joint session. The drafting intent behind this was to prevent the Lok Sabha from passing the ordinary bills with some financial clauses as a money bill, denuding the power of the Rajya Sabha. By the very existence of the financial bill, it becomes clear, that a bill not exclusively dealing with the clauses in Article 110 cannot be designated as a money bill. The rationale of the Court in *Puttaswamy*, therefore, goes against the very drafting intent of Article 110, and such an interpretation would be a fraud on the Constitution.

## CONCLUSION

The object of this article has been to highlight the importance of strict interpretation of Article 110 in consonance with federalism. Rajya Sabha occupies an important position in a federal polity like ours. By-passing the Rajya Sabha would be against the idea of deliberative dialogue, transparency and public interest. The apex court recently took cognizance of the ambiguity surrounding money bills in *Rojer Matthew v. South Indian Bank Ltd.*<sup>9</sup> The Court recognized that a liberal interpretation of Article 110 in *Puttaswamy* could not align with the bicameral parliamentary system envisaged by the Constitution. A seven-judge bench has therefore now been constituted to decide the correctness of passing of the Aadhaar Act as a money bill. As noted by Justice Chandrachud in his dissent, “delicate balance of bicameralism lies at the very heart of India’s parliamentary democracy.” It, therefore, becomes essential for a strict interpretation of the word ‘only’ in Article 110 of the Constitution and conferring greater scrutinising power to the Rajya Sabha.

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<sup>9</sup>Rojer Matthew v. South Indian Bank Ltd, 2019 (15) SCALE 615.