The imperial cabinet and an acquiescent court

This article is related to General Studies-Paper -II (Governance)

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"The Supreme Court has squandered the chance to rein in an increasingly powerful Central executive."

In the last six months, the Supreme Court has frequently found itself in the headlines. In September, it handed down four landmark judgments on fundamental rights: decriminalising same-sex relations and adultery, opening up Sabarimala to women of all ages, and (partially) upholding Aadhaar. And soon after that, the court was in the eye of a political storm. Its Rafale and Central Bureau of Investigation judgments were subjected to intense scrutiny, and continue to be debated.

After the dust has settled, however, and these blockbuster cases consigned to memory, the most important legacy of the 2018-19 Supreme Court may lie elsewhere: in two decisions that have attracted less attention. These are the court's findings on the legal status of "money bills" (a part of its Aadhaar judgment), and its judgment on the distribution of power between the Central government and the government of Delhi. These two decisions were about constitutional structure: about the balance of power between the different organs of the state, the federal character of the Republic, and fundamental questions of democratic accountability.

We are often tempted to think that our rights and freedoms depend upon the Constitution's fundamental rights chapter, and the judiciary's willingness to enforce it against the state. There are other important ways, however, in which a Constitution guarantees freedom. It does so, also, by dividing and distributing political power between state organs in order to avoid concentration of authority, and to ensure that these different organs act as checks and balances upon each other. The surest dam against totalitarianism is to guarantee that no one stream of authority becomes powerful enough to sweep away everything else in the time of a flood.

Money bills

Therefore, away from the glamour of fundamental rights adjudication, and away from the thrill of political controversy, it is in cases involving constitutional structure that courts often exercise significant influence upon the future direction of the Republic. And it is in this context that we must examine the recent decisions on money bills and on federalism.

First, money bills. Despite strong protests, the Aadhaar Act was passed as a money bill. This affected a crucial element of our constitutional structure: bicameralism. Bicameralism, in our parliamentary democracy, requires that a bill must be scrutinised and passed by both Houses of Parliament before it becomes law. The Lok Sabha represents the voice of the democratic majority. The Rajya Sabha represents the interests of the States, as well as perspectives free of immediate, electoral interests. The basic idea is that law-making is a balanced and deliberative process, not an exercise in pure majoritarianism. The crucial purpose of the Rajya Sabha is to act as a check and a balance upon the Lok Sabha, by scrutinising bills in a more deliberative and reflective manner, and raising concerns that may have been glossed over or evaded in the Lower House.

The role of the Rajya Sabha becomes even more important when we consider a unique Indian innovation: anti-defection. In the 1980s, it was decided that the only way to combat party defections was to disqualify members who voted against the whip, except under very tough conditions. This effectively meant the end of intra-party democracy: individual MPs could no longer vote according to their conscience, and had to follow the diktats of the cabinet. Consequently, where there is a single-party majority in the Lok Sabha, the executive can effectively rule by decree, as it is in no threat of losing a vote if it fails to persuade its own party members. With the Lower House no longer able to check the government, the only remaining legislative forum that can then do so is the Rajya Sabha.

A money bill, however, takes the Rajya Sabha out of the equation: it only needs Lok Sabha approval. In combination with the anti-defection law, this places absolute power in the hands of the executive, and skews the democratic process. Hence, its use must be restricted to the most limited of circumstances. This was what was argued in the Aadhaar case: that the terms of the Constitution (Article 110) mandated that money bills be narrowly limited to those that fell exclusively within the categories set out in Article 110. The Aadhaar Act, which established a biometric database and set up an authority (the UIDAI) to administer it, could not in any sense be called a "money bill" simply because the funds for the Authority came from the Consolidated Fund of India. The majority judgment in the Aadhaar case, however, allowed the Act to stand as a money bill (after taking out a provision allowing private party use), and thus, effectively, gutted the Rajya Sabha's role in the democratic process. After the court's judgment, governments wanting to bypass Rajya Sabha scrutiny on a range of important issues can simply insert a provision specifying that money for a project is to come from the Consolidated Fund.

Federalism

Meanwhile, the court was also considering another issue of democratic structure: the dispute between the central government (acting through the Lt Governor) and the government of Delhi. This dispute effectively turned upon the text of Article 239AA of the Constitution, a somewhat ambiguously drafted provision establishing Delhi as a hybrid federal entity — somewhere between a State and a Union Territory. In July 2018, while considering the overall constitutional position, a five-judge bench of the Supreme Court made it clear that, wherever the constitutional text was capable of more than one interpretation, the court would favour a reading that increased democratic accountability: that is, in case of doubt, power would lie with the government that had been directly elected by the people (in this case, the Delhi government).

When it came to applying this principle to the specific disputes between the two entities, however, a two-judge bench of the Supreme Court seemed to resile from this fundamental democratic principle. The February 2019 judgment bears very little evidence of democratic concerns: the heart of the dispute was about control over the civil services, which directly impacted day-to-day governance. While the constitutional provisions themselves were ambiguous, one judge held that the Delhi government had no control over civil servants above a certain rank, while another judge held that the Delhi government had no control over civil servants at all.

Fear of an imperial executive

In 1973, the American historian Arthur M. Schlesinger coined the term "Imperial Presidency", to characterise the increasing concentration of power in the office of the President, at the cost of other democratic institutions (such as the U.S. Congress and the Senate). Over the last few decades, many scholars have noticed this drift towards the increased powers of the political executive, across liberal democracies.

The Supreme Court's decisions on Articles 110 (money bills) and 239AA (status of the federal unit of Delhi) have concentrated greater power in the hands of the executive. By expanding the scope of what counts as money bills, the court has set the cabinet down the road of transforming itself into a Roman-style imperator. And by privileging the centralising tendencies of the Constitution over its federalising ones, the court has squandered the chance to develop a strong jurisprudence on the federal structure, that could have been of use in future disputes between the Central government and various federal units. The impact of these decisions will not be felt immediately, but in the long run, unless set right, one enduring legacy of the recent court — and, in particular, of Justice A.K. Sikri, who authored both decisions and who retired this week — might be the judicial facilitation of an imperial executive.

Money Bill

Why in the discussion?

- Last year, the opinion of the Supreme Court judges was divided on the controversy over the passage of the Aadhar bill as a money bill .
- Where Justice Chandrachud did not call it a money bill, Justice Sikri has said that the Aadhar Bill can be passed as a money bill.
- Justice Chandrachud said that Parliament has the right to make laws, but in the absence of security, it become the reason of violation of varios rights.

What did the judges say?

- Justice DY Chandrachud said that declaring ordinary bill as money bill is a violation of the rights of the Rajya Sabha. Therefore, the Aadhaar Act can not be called a money bill.
- Justice Chandrachud said that the Aadhaar Act is not in accordance with Article 110 (1) of the Constitution.
- Justice Sikri said that there is a need to make minor changes in the Aadhaar Act.
- He said that the government or any company can not keep the Aadhaar number for more than six months. That is, if you give the Aadhaar number to open a bank account or to get a SIM card, then that Aadhar number can not be stored for more than 6 months. Earlier it was a matter of keeping the data for five years.

What is the money bill?

- Under Article 110 (1) of the Constitution, money bills are those bill in which only money related proposals lie.
- Under this, matters related to revenue and expenditure come. Such bills may be discussed in the Rajya Sabha but voting can not be done on it.
- When a proposal is placed in Parliment to make law, then it is called a bill. There are also two types of bill - ordinary bill and money bill.
- There is a difference between the two bills. Other bills except the money bill are called ordinary bills.

The bill related to the following matter is money bill-

- Bill related to impose tax, increase or decrease the tax or amendment in tax, etc.
- Debt or system of putting economic burden on the Indian government.
- With a system of accumulate, spend the money from India's consolidated or contingency fund.
- To keep the burden of expenditure on India consolidated fund or to got the approval of spending money from consolidate fund.
- To deposit money in the government account, or spend from it, its inquiry, etc.
- The Speaker of the Lok Sabha has the right to decide that if any bill is money bill or not.
- The process of passing both, the ordinary and money bill, is different in the Parliament.

How does the money bill pass?

- In the Articles 107 to 122 of the Indian Constitution, law making process is mentioned.
- The draft or the format that is presented before the Parliament to make the law is called a bill. The other procedure has been fixed for the money bill, which is totally different from the procedure of ordinary bill.
- The basic principle of democracy is that the Lok Sabha has control over the national finance. Therefore, in India also, there is the control of Lok Sabha over the national finance.
- Due to this, money bill can be presented first in the Lok Sabha, not in the Rajya Sabha.

Expected Questions (Prelims Exams)

1. Consider the following statements-

1. The joint session of Parliament can be summon to pass ordinary bill and Constitution amendment bill.
2. Lok Sabha Speaker decide on the advice of Prime Minister that any bill is money bill.
3. India is indestructible Union of destructible states as-well-as, Union of States.
4. Recetly Aadhar related bill introduced in Parliament as money bill.

Which of the above statements is/are correct?

(a) Only 3
(b) 2, 3 and 4
(c) 3 and 4
(d) All of the above.

Expected Questions (Mains Exams)

Q. What is money bill? Discuss the role of government of majority part in the changing format of money bill in recent time.

(250 Words)

Note: Answer of Prelims Expected Question given on 5 Mar. is 1(b)