



# **DAILY NEWSPAPER ANALYSIS**

**THE HINDU**

**(11<sup>th</sup> April, 2019)**

**Topic: GS2 - Misuse of Money  
Bill**



**THE HINDU**  
**Daily News Paper**

## Trickeries of the money bill

### Context:-

- The Supreme Court has now heard oral arguments in Revenue Bar Association (RBA) v. Union of India, in which the validity of the **Finance Act of 2017**, insofar as it affects the structure and functioning of various judicial tribunals, is under challenge.
- The case will likely have a profound **bearing on India's constitutional arrangements**.

### Issues involved with Regards to Finance Act:-

- Delegation of Legislative Power to Executive, Pernious to the Basic Principle of Sepration of Power:
  - Ordinarily, the Finance Act, which is enacted at the beginning of every accounting year, seeks to give effect to the government's **fiscal policies**. In 2017, It not only set the fiscal agenda for the year ahead but it also toppled the existing regime governing the working of **26 different judicial bodies**. Until recently, each of these panels was governed by a separate statute.
  - And moreover, Finance Act,217 vested in the Central government an absolute, untrammelled power to make rules to effectively govern the operation of the tribunals.
  - The new law, in their belief, deputed to the executive what was really an essential legislative function.

- **Judicial Independence, Again Pernicious to the Basic Principle of Separation of Power:**
  - The new law runs sharply athwart judicial independence.
  - Many of these tribunals, which included the National Green Tribunal (NGT), the Income Tax Appellate Tribunal, the National Company Law Appellate Tribunal, and the Industrial Disputes Tribunal, performed roles that were originally undertaken by the higher judiciary.
  - Now the task of establishing the criteria employed in selecting members to the panels and to provide for the members' service conditions was assign to the executive. This is pernicious 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.
- **Undermining of Parliamentary Democracy:** Substantive matters concerning the governing of tribunals, one would think, can scarcely be considered as a fiscal measure. Yet the draft law which introduced these provisions was classified as a money bill, and the **sanction of the Rajya Sabha was altogether dodged**. The consequences are enormous, travelling, as they do, to the heart of India's democratic apparatus.

### **Cause of the Problem:-**

- **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.
- The clause clarifies that a draft law will not be a money bill for the reason that it also provides for the imposition or abolition of a tax. In other words, substantive laws, which are not merely incidental to the subjects enlisted in Article 110(1) cannot be finagled into a bill that also happens to contain taxing rules. It is precisely such trickery that the petitioners contended the Finance Act of 2017 indulges in.
- Article **110(3)**, which states that in cases where a dispute arises over whether a bill is a money bill or not, the **Speaker's decision shall be considered final**.
- But, as the **Supreme Court** has repeatedly held, the finality accorded to the Speaker's decision does not altogether oust the court's jurisdiction.
  - The **irrevocability of such decisions operate only within the realm of Parliament**. For the Constitution expressly vests in the Supreme Court and in the high courts the power to review governmental actions, and issue prerogative writs every time those actions exceed the Constitution's remit

### Need to Cultivate Constitutional Morality:-

- In **B.R. Ambedkar's vision**, the Constitution embodied not only a charter of rights but also a foundation for republican governance.
- His worries that **democracy** in India was “**only a top-dressing on an Indian soil, which is essentially undemocratic**”, saw him lay stress on a need to diffuse constitutional morality among India's citizens. Citing the classical historian, **George Grote**, while moving the draft Constitution on November 4, 1948, Ambedkar said **constitutional morality** had to be seen as representing “**a paramount reverence for the forms of the Constitution**”. Since such reverence had to be cultivated, he thought it imperative that the Constitution commend the minutiae of administration rather than leave such matters purely to the legislature's wisdom.
- In the absence of such prescriptions, democracy, he feared, would wallow in decline.

### Conclusion:-

- 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 denigrates the Constitution's form which Ambedkar and the Constituent Assembly considered inviolate.