

LEGALFOXES LAW TIMES

CONSTITUTIONALITY OF THE PROCEDURE TO PASS FARM BILLS IN THE PARLIAMENT

By Smeet Kamble

Introduction

The fact scenario deals with the controversial bills passed in the Parliament, namely Farmer's Produce Trade and Commerce (Promotion and Facilitation) Bill, Farmers (Empowerment and Protection) Agreement of Price Assurance and Farm Services Bill and Essential Commodities (Amendment) Bill, 2020, together hereinafter referred to as the 'Farm Bills'.

The controversy regarding the Farm Bills has two dimensions. Firstly, the resignation of the Minister of Food Processing from the Union Cabinet as a form of protest against the Central Government for not tabling the Bills to a Parliamentary Standing Committee and passing it through the Lok Sabha where the BJP enjoys majority. Secondly, after being passed in the Lok Sabha, the Bills were presented in the Rajya Sabha, the presiding officer passed the Bills through a voice vote only, even though several Members of the Parliament requested that it be sent to a Parliamentary Committee. Even more surprisingly, several opposition members requested that voting be done through division rather voice vote but the presiding officer Deputy Chairman of the Rajya Sabha passed the vote through voice vote only. This created a ruckus in the Parliament and eight members were suspended.¹ These controversies have identical undertones of high-handedness, authoritarianism and impunity.

Few questions arise from the above-mentioned controversies. Why are the Opposition members adamant to refer the Bills to a Parliamentary Standing Committee? How much of the Deputy Speaker's action were legal? What are the legal remedies available to the Opposition members in the Parliament? Can the Judiciary intervene in such circumstances and stop the law being passed? These are the questions this research paper will try to answer.

¹ "Rajya Sabha Suspends 8 Opposition MPs" The Hindu, 21 Sept. 2020, <https://www.thehindu.com/news/national/rajya-sabha-suspends-8-opposition-mps/article32657429.ece>.

Parliamentary Standing Committees

Parliamentary Standing Committees play a crucial role in the functioning of the Parliament. The committees help the Parliament by drawing out facts through data collection, scrutinizing proposed bills, their budgets, recommending policy changes and their implementation. They were formed so that legislators can form small groups and discuss technical nature of laws which would benefit the Parliament by having a broad view on the relevant policy. The committees have the facilities to do the same by calling in expert witnesses, issue reports and study draft legislations.² Also, these committees meet up throughout the year, meanwhile the Parliament only meets in session. So, the committees have more time to think about the legislation and thus provide more insight into the policy. This explains why the Opposition members as well as the Minister of Food Processing were adamant to refer the Bills to a Parliamentary Standing Committee. They felt that the Bills were not scrutinized enough, required more discussion and policy changes.

But is the ruling party required to listen to this demand of the opposition? Can the ruling party not refer to the Parliamentary Standing Committee? Unfortunately, the ruling party is not required to refer bills to the Committee. They are not legally bound to refer Bills to the Committee. Rule 331H(b) of the Rules of Procedure and Conduct of Business in Lok Sabha, the Committee is only to consider Bills referred to them by Chairperson of Rajya Sabha or the Speaker of Lok Sabha. As in the given case, the Chairperson did not refer Bills. Hence, they are not legally bound. Moreover, they play a subordinate role in passing a legislation, because their approval is not a requirement to pass it as a law. This takes out all the sting from the scrutinization and deliberation.

But just because its approval is not required does not mean that it should be completely ignored. Even though Rule 331H(b) of the Rules of Procedure provide the Speaker's or Chairman's discretion, Rule 125 of Rules of Procedure for Rajya Sabha provides that if any member moves an amendment that a Bill be referred to a Select Committee, this Bill shall be referred to a select committee. This was completely denied in the current scenario. Scholars have warned that the standing committees should be taken seriously, or else legislators will become discouraged and less involved in the future.³ That would ultimately lead to decline of Parliament as a law-making body.⁴ By not referring Bills to a Parliamentary Standing Committee, the ruling party would be breaking a regular parliamentary practice which began 31 years ago in 1989.⁵

This highlights the impunity with which the ruling party is passing laws. By rushing through laws without necessary scrutiny and deliberation undermines the Democracy itself. The Parliament chosen by the people will not be able to adequately have a say in the legislations. Instead, the law will come from the political elites who represent the elites only. This directly puts Democracy in a threatening position.

²Arthur G. Rubinoff, *The decline of India's parliament*, 4 *The Journal of Legislative Studies* 13–33 (1998).

³Manoj C G, Ghulam Nabi Azad interview: 'Why attend Parliament if Bills rushed through without scrutiny?' (2019), <https://indianexpress.com/article/india/ghulam-nabi-azad-interview-why-attend-parliament-if-bills-rushed-through-without-scrutiny-5849448/> (last visited Dec 2, 2020).

⁴ Arthur G. Rubinoff, *India's New Subject-Based Parliamentary Standing Committees*, 36 *Asian Survey* 723-38 (1996).

⁵Varghese K. George, *Why are parliamentary standing committees necessary?* *The Hindu* (2019), <https://www.thehindu.com/news/national/whither-house-panels/article28621493.ece> (last visited Dec 2, 2020).

Presiding Officer of the Rajya Sabha

The Chairperson of Rajya Sabha and the Speaker of the Lok Sabha are both constitutionally envisaged posts under Article 64 and 93 respectively. The fact that they are constitutionally envisaged suggests that they have to perform a non-partisan function in the Parliament, even though usually candidate of the ruling party is elected. The non-partisan nature also arises from a constitutional convention- a rule not written down in the Constitution, but something all parliamentarians know to follow. In India's Parliamentary system, the presiding officers regulate the conduct of the business of the Houses and are the only authority for every procedural decision.⁶ Essentially, the Parliamentary system in India is wholly based around the non-partisan nature of the presiding officers.

However, in the present fact scenario, the conduct of the presiding officer, Deputy Chairman of the Rajya Sabha was not non-partisan at all. The Bills were passed through very quickly, without any heed to the Rules of Procedure and Conduct of Business. Mainly because BJP does not enjoy a majority in the Rajya Sabha, and particularly over this issue. But this is not an isolated instance, but a general trend shown by the presiding officer. Previous instances like Amendment to the RTI Act⁷ and Lok Sabha Speaker's controversial decision to certify the Aadhar Bill as a money bill etc. indicate the same. Constitutional conventions require presiding officers to be non-partisan. But they have not complied to this convention. Can these conventions be applied to the presiding officers?

Scholars have argued that courts can play a spectrum of roles while enforcing conventions, starting from a Quarantined court, which would avoid all questions of conventions, a Bystander court which would acknowledge that deciding legal questions sometimes requires judicial recognition and employment of conventions because of which they are willing to engage with conventions but only till that extent. Next in the spectrum is Advisor courts who advise the political actors but do not really enforce the conventions. Lastly, the Guardian courts, who guard the constitution and protect the institutions.⁸ However, they posit that the Executor court is perhaps the best one to enforce constitutional conventions. These courts will only enforce those conventions which are "power-shifting", meaning that they transfer power from those who have legal power to those who can legitimately wield it.⁹ For example, it would be from the President who legally has the power to the Prime Minister who conventionally has the legitimacy to wield it. Following this approach, the Supreme Court cannot enforce a constitutional convention of a non-partisan presiding officer because there can never be transfer of that power or power-shifting under the Constitution.

However, the Supreme Court has differed from this approach. The issue of a partisan Speaker has come up in the Supreme Court, although not in this context. The context generally is of Legislative Assembly

⁶Pranav Dhawan & Amal Sethi, *Rethinking role of presiding officers in Lok Sabha, Rajya Sabha will lead to better functioning of Parliament* - India News, Firstpost (2020), <https://www.firstpost.com/india/rethinking-role-of-presiding-officers-in-lok-sabha-rajya-sabha-will-lead-to-better-functioning-of-parliament-8904341.html> (last visited Dec 2, 2020).

⁷Prannv Dhawan, *RTI Act Amendment: Hasty Passage and Controversial Events* NewsClick (2019), <https://www.newsclick.in/RTI-Act-Amendment-Hasty-Passage-Controversial-Events> (last visited Dec 2, 2020).

⁸Farrah Ahmed, Adam Perry & Richard Albert, *Enforcing Constitutional Conventions*, 17 International Journal of Constitutional Law 1146–1165 (2019).

⁹ Ibid.

Speakers, deciding on disqualification of MLAs based on the Tenth Schedule. The constitutional validity of the Tenth Schedule was being decided in *KihotoHollohon v. Zachillhu*¹⁰. The decision of the Supreme Court was to uphold the validity of the Tenth Schedule, though it enabled judicial review for disqualification of MLAs. Nonetheless, it stills puts wide discretionary powers to the Speaker. Justice JS Verma in his minority opinion, was sceptical on conferring so much of power on the Speaker. He argued that the Speaker's term was dependent on the ruling majority, because of which he cannot be an unbiased independent adjudicator. He had a realistic view of how the Speaker would be influenced by reigning political alignments.¹¹ Similarly in *Mohd. Saeed Siddiqui v. State of U.P*¹² the Supreme Court had ruled that the decision of the Speaker that the Bill is a Money Bill cannot be disputed. Based on this, it is clear that the Supreme Court has largely avoided enforcing constitutional conventions and do not intervene in the Legislature. Therefore, there is no one to check the presiding officers on their partisan motives, not even the Supreme Court. This directly flows into the part of this paper.

Scope of Judicial Review in the procedure of the legislature

Under Article 118 of the Constitution, each house of the Parliament can make rules for regulating its procedures and conduct of its business. Under this Article itself, Rules of Procedure and Conduct of Business in Rajya Sabha and Lok Sabha are created. Following this, under Article 122 of the Constitution, courts are barred to inquire into the proceedings of the Parliament on the basis of any alleged "irregularity of procedure". Article 122(2) further provides that any officer who is vested the power under the Constitution for regulating procedure or conduct or order in Parliament is not subjected to the jurisdiction of any court. The analogous Articles for the State Legislatures are Article 208 and Article 212 respectively.

These Articles ensure separation of power between the Legislature and the Judiciary, and lets the Legislature to handle its own affairs. According to Article 118 inquiry for any "irregularity of procedure" is barred. What constitutes an "irregularity of procedure"? As decided by a five-judge bench of the Supreme Court in *State of Bihar v. Sir Kameshwar Singh*¹³ that omission of a motion even though specifically envisaged in the Rules of Procedure for that State Legislature, is merely an irregularity of procedure. Based on this, all the rules given in Rules of Procedure and Conduct of Business are procedural rule and if they are violated in the proceedings of the Parliament, courts cannot question such violation under Article 122.

In *Special Reference No.1 of 1964*¹⁴ the scope of judicial review is clarified even more. The Court says that a citizen can question the validity of any proceedings under Article 212(1) as long as the proceedings suffer not from mere irregularity of procedure but from an illegality. If the procedure is illegal and unconstitutional, then only the courts have the authority to question the legislature.¹⁵ Corresponding

¹⁰ 1992 SCR (1) 686.

¹¹ Alok Prasanna Kumar, *How the increasingly partisan role of the speaker compromises democracy*, The Caravan (2018), <https://caravanmagazine.in/politics/partisan-role-speaker-compromises-democracy> (last visited Dec 2, 2020).

¹² (2014) 11 SCC 415

¹³ AIR 1952 SC 252 [61].

¹⁴ AIR 1965 SC 745.

¹⁵ Ibid. [61].

Article 212 with Article 122, this judgement shows that the court is not absolutely barred from questioning the Legislature, but only with regards to procedural matters. An illegal and unconstitutional conduct of the Legislature can still be questioned by the courts of law.

Furthermore, in *Ram Pal v. The Hon'ble Speaker, Lok Sabha*¹⁶ the court decided that procedural irregularities cannot be used by the court to undo or vitiate what happens within the four walls of the Legislature. The court said that procedural irregularity is very much different than 'substantive illegality' which cannot form the part of 'irregularity of procedure' and that this is the constitutional mandate on this subject. The court further refers to the Constitutional Assembly Debates over Draft Article 101 which is now Article 122 on 23rd May 1949 as a categorical clarification of the fact that despite Article 122, the court has the authority over the legality of Parliamentary proceedings and that the Article is envisaged to curb interference in Parliament proceedings because of mere irregularity.¹⁷

These rulings of the courts indicate the scope of judicial review on Legislature proceedings- which is that violations of Rules of Procedure and Conduct of Business are considered to be irregularities in procedure, that courts are not barred from questioning Legislature about illegal and unconstitutional affairs and that irregular procedure cannot be used to undo proceedings of the Legislature. Based on this understanding of the scope of judicial review, important question arises that whether the conduct of the presiding officer in the given fact scenario was mere irregularity or substantial illegality.

Assuming all constitutional conventions are intact, the conduct of the presiding officers in the fact scenario will not amount to substantive illegality or unconstitutional. Because the Constitution always assumes that the presiding officer will perform a non-partisan role in the Parliament, his decision is always considered to be the correct one. If he considers that a voice vote is enough to pass a law, even though MPs are asking for division, then the Parliament would have to live with that decision, even though it violates Rule 252 and 254 of Rules of Procedure and Conduct of Business in Rajya Sabha. Violation of these rules would only amount to procedural irregularity and not substantive illegality.

But this only when assuming that the presiding officer is unbiased and non-partisan according to the conventions. Constitutional conventions and judicial review are built upon a basic premise that the constitutional functionaries like the presiding officers would implement the conventions and function unbiasedly. This presumption of non-partisanship is the basis of another convention- that the courts should not interfere in the matters of the Legislature. But as established earlier, presiding officers are increasingly partisan and bias. What would the courts do then? Conventions require the Judiciary to stay out of the Legislature, but the same conventions are not being followed in the Parliament.

Conclusion

What can be the overarching ramifications of the conduct of the ruling party? Their conduct is directly undermining and is a threat to crucial Democratic institutions. Firstly, the Farm Bills not referred to a Parliamentary Standing Committee is a very problematic development. Standing committees ensure proper participation of all members of the Parliament, brings bipartisan consensus over the legislations and therefore undergo scrutinization. The ruling party omitting this process indicates that the laws being

¹⁶ Manu/SC/0241/2007 [235].

¹⁷ Ibid. [236].

passed have controversial elements which would have been heavily criticized. By bypassing standing committees, they can bulldoze over these laws without much changes, which is an important element to achieve their possible ulterior motives.

This was possible for them to do in Lok Sabha where they enjoy majority, but in Rajya Sabha, where they are in minority, they had to come up with something different. The presiding officer acting completely in a partisan manner achieved this. By passing off the Bills through a voice vote even though members called for a division under Rule 252 and 254, the ruling party again forced the Bills through. This act completely undermines the reason why an Upper House was envisaged in the first place and belittles the importance of bicameralism. Because Rajya Sabha seats are indirectly elected by State Legislatures, they represent the states in the Parliament, thus insulating any populist Lok Sabha politics and only after vetting of the laws by both Houses are laws passed from the Parliament. But by creating a complete mockery of the voting process in the Rajya Sabha, ruling party again bypasses the envisaged function of bicameralism.

This indicates that the Farm Bills were so controversial and disputed that they in normal conditions would not have gotten popular mandate of the Parliament. But the fact that they were still somehow passed through the Parliament and are now laws of the land, is worrisome. This sets out a bad precedent for the future bills which will be passed, that they can push through any law in the Parliament. This has the potential to make the Parliament just a procedural thing to do, rather than a democratic institution where substantive changes are made to the law, thus declining the law-making capacity of the Parliament.



LEGAL FOXES

"OUR MISSION YOUR SUCCESS"