WHEN COURTS ENTER PARLIAMENT: JUDICIAL REVIEW OF LEGISLATIVE PROCEDURE AND PARLIAMENTARY AUTONOMY IN INDIA AND SOUTH AFRICA.

by

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ABSTRACT

In India, a Bill certified by the Speaker as a Money Bill can become law without the Rajya Sabha's approval, and the Indian Constitution says the Speaker's decision is final. Can courts check that decision? This article studies the question through Articles 110(3) and 122, the drafting history and the Supreme Court's cases. In India the abuse of the Money Bill classification under Article 110(3) to bypass the Rajya Sabha shielded by the procedural immunity clause of Article 122 has created a crisis of bicameral balance and democratic accountability. It argues that the Court separates illegality from irregularity in privilege cases but not in Money Bill cases, where it relies on an unexamined remark. A comparison with South Africa, whose courts review the classification of Bills, helps to suggest a clearer test courts should review procedure that the Constitution itself requires, and leave alone procedure that a House makes for itself.

Keywords: Money Bill; parliamentary autonomy; judicial review; Article 122; Speaker's certificate.

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I. INTRODUCTION.

Every legislature has rules about how it must make laws. Who should enforce those rules,the legislature itself, or the courts? India's Money Bill procedure shows why this question matters.

Most Bills need the approval of both Houses of Parliament. A Money Bill is the exception. If the Speaker of the Lok Sabha certifies a Bill as a Money Bill, the Rajya Sabha has only fourteen days to suggest changes, and the Lok Sabha is free to reject them. Article 110(3) adds that the Speaker's decision on whether a Bill is a Money Bill shall be final.[1]

This power is now used far beyond taxation. Finance Acts passed as Money Bills have changed the make up of tribunals, created new regulatory bodies and allowed electoral bonds.[2] The Aadhaar Act, 2016 also became law this way. The Supreme Court upheld it by majority, while one judge warned that the route had been misused.[3] A later bench has doubted the majority's reasoning and sent the question to a larger bench.[4] The question has not yet been settled.

The difficulty goes deeper than one Act. Article 122 protects parliamentary proceedings from challenge for *irregularity of procedure*. In privilege cases, the Supreme Court has said that *illegality* can still be reviewed. In Money Bill cases, it has refused to look at the Speaker's certificate at all. The same Court therefore speaks in two voices, and the line between the two is unclear.

South Africa offers a useful contrast. Its Constitution has no clause making the Speaker's view final. It links parliamentary autonomy to constitutional duties, and its Constitutional Court reviews how Bills are classified and made.[5]

This article asks whether Indian courts may review the Speaker's certificate, and what India can learn from South Africa on the point. It first reviews the literature and states the research gap and questions. It then studies the Indian position in detail, turns to South Africa, compares the two, and ends with suggestions and a conclusion.

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II. LITERATURE REVIEW

1. Datta, Malhotra and Tyagi (the Money Bill)

[1] Constitution of India, arts. 109, 110(3),110(4), 111(1950).
[2] Pratik Datta, Shefali Malhotra & Shivangi Tyagi, Judicial Review and Money Bills, 10 NUJS L. Rev. (2017).
[3] K.S. Puttaswamy v. Union of India, (2019) 1 SCC 1.
[4] Rojer Mathew v. South Indian Bank Ltd., (2020) 6 SCC 1
[5] South African. Constitution, 1996, sec 57(1), 77, 167(4)(e).

The authors trace the Speaker's Money Bill certificate from the British Parliament Act 1911 into the Indian Constitution. They argue that Article 122 protects only procedure a House makes for itself, and that the Supreme Court's refusal to review the certificate contradicts its own privilege cases.[6]

2. Shubhankar Dam(Parliamentary Privileges as Facade)

The article studies Raja Ram Pal[7], where the Court held that Parliament can expel members but that this power is open to judicial review. It notes that the Court refused to import the House of Commons privilege, because the Indian Constitution scheme is different. It then asks why the Court reached the opposite result in the earlier Narasimha Rao case, and answers that both decisions must be read against the Court's wider push for political reform.[8]

3.Radley Henrico (Judicial Review in South Africa and India)

In this article Henrico studies the boundaries of constitutional enforcement exercised by the Supreme Courts of India and South Africa, evaluating whether their powers of judicial review infringe on excessive political activism. He states that executive incompetence and failures of parliamentary accountability often cause intense judicial intervention that is unavoidable. The article show how both judiciaries use progressive constitutional interpretation to protect democratic values without entirely compromising the separation of powers.

III. RESEARCH GAP AND PROBLEM

The article leaves three gaps. Others show the contradiction in Indian case law, but they do not offer a clear test for deciding which procedural defects courts should review. Second, writing on India rarely compares it with South Africa, where the Constitution links parliamentary autonomy to constitutional duties and courts review the classification of Bills. Third, the position after *Aadhaar* and the reference on Money Bills has not been brought together with the older case law.

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The main issue is uncertainty. The Supreme Court says that illegality is reviewable and irregularity is not, but it has not said how to tell them apart. A member can challenge an expulsion from the House, yet cannot on the Court’s reasoning in the Money Bill cases, challenge a Bill that skips the Rajya Sabha.

[6] Pratik Datta, supra note 2.
[7] Ram Raj Pal v Honourable speaker Lok Sabha (2007)3 SCC184
[8] Shubhankar Dam, Parliamentary Privileges as Facade: Political Reforms and Constitutional Adjudication, vol.49,no.1,Sing. J. Legal Studies,(2007).

IV. RESEARCH QUESTIONS

1. Does the finality of the Speaker's certificate under Article 110(3), along with Article 122, stop courts from reviewing whether a Bill is a Money Bill, and is the Supreme Court's present approach consistent with its own cases on illegality and irregularity?
2. What can India learn from South Africa's review of how Bills are classified and made, and what should it not copy?

V. METHODOLOGY

The article use doctrinal method. It reads the constitutional text, the drafting history and the judgments of the Supreme Court of India, and compares them with decisions of the Constitutional Court of South Africa and other countries. The comparison is functional it asks how each system deals with the same problem, namely who may check whether a legislature followed the proceedings of the Constitution.[9] South Africa is chosen because its text differs sharply from India's, though both have a supreme constitution and strong courts. The study relies on reported judgments and secondary writing.

VI. THE INDIAN POSITION

A. Where the Money Bill Rule Came From

The idea of money bills comes from Britain. After the Lords rejected the 1909 Budget, the Parliament Act 1911 allowed the Commons alone to pass Money Bills. It defined a Money Bill as one that in the opinion of the Speaker contained only certain money matters. The Speaker was to consult two senior members, and the certificate was conclusive for all purposes and not to be questioned in any court of law.[10]

India'sConstitution framers took the Speaker's certificate from this Act, and the idea of a *final decision* from the Irish Constitution of 1937. They left out two things. They did not copy the words *not to be questioned in any court*, and they did not copy Ireland's way of settling disputes, under which the upper House can ask a committee chaired by a Supreme Court judge to decide whether a Bill is a Money Bill.[11] The Expert Committee on Financial Provisions wanted the certificate mainly to avoid arguments *about the matter outside the Lower House*.[12]

[9] Konrad Zweigert & Hein Kotz, Introduction to Comparative Law (Tony Weir ., 3d ed. 1998).
[10] Parliament Act 1911, 1 & 2 Geo. 5, c. 13, sec 1–3 (UK)
[11] Irish Constitution., 1937, art. 22.
[12] Datta., *supra* note 2, pt. III.A.

B. What the Constitution Says

Money Bills may start only in the Lok Sabha. The Rajya Sabha has fourteen days to return the Bill with recommendations, and the Lok Sabha may accept or reject them. If the Rajya Sabha does not return the Bill in time, it is treated as passed. The Speaker's certificate must be endorsed on the Bill when it is sent to the Rajya Sabha and again when it goes to the President. The same scheme applies in the States.[13] Article 110(1) defines a Money Bill as one containing *only* provisions on listed money matters such as taxes, borrowing and the Consolidated Fund. The word *only* gives a court something concrete to apply.

C. What Articles 122 and 212 Protect

Article 122 says that the validity of proceedings in Parliament cannot be questioned on the ground of *irregularity of procedure*. Article 212 does the same for State legislatures. The question is what *procedure* means. Articles 118 and 119 let each House and Parliament make rules for procedure. Article 122 most naturally protects breaches of those *house made* rules. It does not obviously protect breaches of procedure that the Constitution itself lays down, such as the special route for Money Bills.[14] Article 255, which saves a law when a required recommendation or sanction was missing, speaks only of recommendations and sanctions. It says nothing about the Speaker's certificate.[15] The Constituent Assembly debates point the same way. Dr. Ambedkar said that the only place where Parliament's proceedings can be questioned legally is a court, which shows that Article 122 was meant as a limit on courts, and that the limit lies in the words *irregularity of procedure.*[16]

D. Why "Final" Does Not Mean "Beyond Review"

There are reasons to support the view that Article 110(3) does not completely shut out the courts. Britain could make the certificate unquestionable because its Parliament is sovereign. India's Parliament is not it works under a written constitution that courts enforce. Making the Speaker's view unquestionable would give a judicial task, deciding what the Constitution requires, to one officer of one House. That sits badly with the separation of powers.The Constitution itself requires the Money Bill route to be followed. If no authority could check the Speaker, the rule

[13] India Constitution. arts. 109–111, 198–200.
[14] Datta, *supra* note 2, pt. III.B.2.
[15] India Constitution. art. 255.
[16] Datta, *supra* note 2, pt. III.A

that ordinary Bills need both Houses could be bypassed at will.[17] On this reading, *final* tells the two Houses and the President that the question is settled inside Parliament. It does not tell the courts to look away.

E. Cases on Privilege: Review Is Possible

The Supreme Court first read Article 212 broadly, refusing to examine proceedings in the Bihar Assembly.[18] It changed course in the *Keshav Singh* reference, where the Uttar Pradesh Assembly had ordered the arrest of two High Court judges. The Court said that proceedings which are illegal and unconstitutional, as opposed to merely irregular, can be examined by a court.[19] Raja Ram Pal repeated this when MPs were expelled after a sting operation. The Court held that Article 122 does not protect proceedings tainted by substantive illegality or unconstitutionality, though it upheld the expulsions.[20]

F. Cases on Money Bills: Review Is Refused

The Money Bill cases went the other way. In the following cases the court refused to review whether a Bill was properly passed as a Money Bill. In *Mangalore Ganesh Beedi Works*, the Court held that a law was not a tax law, which decided the case. It then added that even if it were, a breach of the Money Bill procedure could not be raised, because of Articles 212 and 255.[21] That addition was an *obiter* remark. In *Mohd. Saeed Siddiqui*, a three judge bench treated the remark as a rule and dismissed a challenge to a Uttar Pradesh Lokayukta amendment passed as a Money Bill, saying the question could be raised only inside the Assembly.[22] In *Yogendra Kumar Jaiswal*, a Division Bench followed it, and said that *Keshav Singh* was about different facts.[23] None of these decisions asked why a constitutional requirement should count as mere *irregularity.*

G. The Limits of Finality.

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Finality is not an obstacle anywhere else. The Court has reviewed the President's *final* decision on a member's disqualification under Article 103, the Governor's under Article 192, the President's decision on a High Court judge's age under Article 217(3), and the Speaker's decision

[17] Datta ., *supra* note 2, pt. III.B.1.
[18] Pandit M.S.M. Sharma v. Shree Krishna Sinha, 1959 Supp. (1) SCR 806 (India).
[19] In re Keshav Singh, AIR 1965 SC 745.
[20] Supra note7
[21] Mangalore Ganesh Beedi Works v. State of Mysore, 1963 Supp. (1) SCR 275 .s
[22] Mohd. Saeed Siddiqui v. State of Uttar Pradesh, (2014) 11 SCC 415 (India).
[23] Yogendra Kumar Jaiswal v. State of Bihar, (2016) 3 SCC 183 (India); see Datta et al., supra note 3, pt. III.E.

under the Tenth Schedule.[24] The Money Bill certificate is the odd one out it is the only *final* decision of the Speaker on a constitutional question that the Court has refused to examine.[25]

H. Money Bills in Practice

The concern is not merely theoretical. Other than the Aadhaar Act, several important legislative changes have been introduced through Finance Acts certified as Money Bills. It include the creation of a Payments Regulatory Board, the introduction of electoral bonds, changes to the structure of the Securities Appellate Tribunal, the merger of the Forward Markets Commission with SEBI, and changes to the allocation of foreign exchange powers. The classification of the 2017 GST laws and the demonetization related legislation as Money Bills has also attracted attention, while questions were raised about whether the Insolvency and Bankruptcy Code could have been passed through the same route[26]. The more reforms are passed this way, the weaker the Rajya Sabha's role becomes.

I. Aadhaar and After

The Aadhaar case brought the issue before a Constitution Bench. The majority upheld the Act as a Money Bill, while the dissent held that the Speaker's certificate can be reviewed and had been misused.[27] In *Rojer Mathew*, a later Constitution Bench doubted the majority's approach and referred the question to a larger bench.[28] The Court left it unresolved again in *Vijay Madanlal Choudhary*.[29] Recent reports suggest the issue is still pending ,while legislation continues to be passed as Money Bill.[30]

J. The Speaker's Wider Role.

The Money Bill issue also raises concerns about the Speaker's neutrality. Under the Tenth Schedule, the Speaker decides whether MPs should be disqualified for defection. The courts can review these decisions and have said that Speakers should normally decide such cases within three months. The courts generally allow the Speaker to make the initial decision[31]. This raises

[24] Brundaban Nayak v. Election Comm'n, AIR 1965 SC 1892 (India); Union of India v. Jyoti Prakash Mitter, (1971) 1 SCC 396 ; Kihoto Hollohan v. Zachillhu, 1992 Supp. (2) SCC 651 .
[25] Datta., supra note 2, pt. III.D (Table 1).
[26] Datta., supra note 2, pt. I.
[27] *supra* note 3.
[28] Rojer Mathew v. South Indian Bank Ltd., (2020) 6 SCC 1 (India).
[29] Vijay Madanlal Choudhary v. Union of India, 2022 SCC OnLine SC 929 (India).
[30] Bar & Bench, Money Bill or Constitutional Shortcut? The Supreme Court Judges Bill and Parliamentary Integrity (2026),
[31] Keisham Meghachandra Singh v. Hon'ble Speaker, Manipur Legislative Assembly, 2020 SCC OnLine SC 55

concerns when the Speaker belongs to the ruling party and must decide whether the government's own Bills qualify as Money Bills.

VII. SOUTH AFRICA.

South African Constitution deals with parliamentary autonomy in a different way from India. Section 57(1) of its Constitution allows the National Assembly control its own procedures, but with due regard to participatory democracy, accountability and public involvement. Section 167(4)(e) lets the Constitutional Court decide whether Parliament has failed to meet a constitutional duty. Section 77 defines Money Bills and section 75 sets their procedure. There is no section making the Speaker's view final.[32]

The Court has used these powers in two ways. First, it enforces duties. In *Doctors for Life*, it struck down laws because the legislature had not made reasonable efforts to involve the public, while suspending the order to avoid disruption.[33] Secondly it reviews the classification. In *Shuttleworth*, it asked whether a levy was a tax needing the Money Bill procedure and found it was not,[34] in *Tongoane*, it invalidated a law that had followed the wrong procedure for its subject.[35] On purely internal matters such as scheduling a non confidence motion, it has been cautious.[36] It has also held Parliament to account in the Nkandla and impeachment cases.[37]

VIII. COMPARISON

The courts of both countries accept that Parliament needs their autonomy, and both reject absolute immunity. In India parliamentary action begins with a bar and carves out exceptions, so its law is a question of labels. South Africa begins with a duty, so its law is a question of purpose. In India, the Money Bill certificate has been treated as beyond review but in South Africa, the classification of Bills is a normal question for the Court.

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This difference follows from the Article 110(3) that calls the Speaker's decision *final*, while South Africa's Constitution has no such clause and gives its Constitutional Court the power to decide whether Parliament has met its duties. For India, the lesson is that review of how Bills are

[32] South Africa. Const., 1996, sec, 57(1), 75, 77, 167(4)(e).
[33] Doctors for Life Int'l v. Speaker of the National Assembly 2006 (6) SA 416 (CC) (South Africa.).
[34] South Africa Reserve Bank v. Shuttleworth 2015 (5) SA 146 (CC) (S. Africa)
[35] Tongoane v. National Minister for Agriculture. & Land Affairs 2010 (6) SA 214 (CC)
[36] Oriani Ambrosini v. Sisulu 2012 (6) SA 588 (CC); Mazibuko v. Sisulu 2013 (6) SA 249 (CC) .
[37] Economic Freedom Fighters v. Speaker of the National Assembly 2016 (3) SA 580 (CC) .

classified and made is workable, and that it works best when it asks what the Constitution requires of the legislature.

The differences have historical causes. India inherited Westminster ideas of privilege and later limited them with constitutional supremacy. South Africa wrote its Constitution in reaction to a parliamentary sovereignty that had enabled apartheid.

IX. SUGGESTIONS

Based on the Indian cases and the South African experience, this article suggests a clearer way for courts to decide which parliamentary procedures they may review.

Article 122 should protect procedure that a House makes for itself under Articles 118 and 119. It should not protect procedure the Constitution itself requires, such as the Money Bill route. This fits the text of the Constitution, the Court's own privilege cases and the South African approach.

Apply the word *only*. Under Article 110(1), a Bill is a Money Bill only if it contains nothing beyond the listed money matters. A court can check this without questioning policy, and can respect the Speaker's view in borderline cases. A larger bench should also say that Mangalore Ganesh Beedi Works and the cases that followed it rest on an unexamined remark.

Add safeguards. The Speaker could be required to record reasons for certifying a Bill, as the British Speaker must consult senior members before doing so. Courts could also use suspended orders, as South Africa does, so that laws already in force are not suddenly undone.

South Africa should not be copied blindly. Its Constitution names specific duties, such as public involvement, that India's text does not. Duty based review can drag courts into political fights, as the Nkandla litigation showed. The Indian Supreme Court's heavy docket means a narrow rule is wiser than an open invitation to every procedural complaint. And India's Article 122 and Article 110(3) already exist the aim is to read them properly, not to replace them.

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X. CONCLUSION

The Speaker's certificate lets the Lok Sabha pass a law without the Rajya Sabha. The Constitution calls the decision *final*, but it does not say that courts may not question it, and Article 122 protects only *irregularity of procedure*. The Supreme Court has accepted this reading in its privilege cases and has applied the opposite reasoning in its Money Bill cases, which rest on a passing remark. The question now awaits a larger bench.

Our practical suggestion is a clear test courts review procedure that the Constitution requires and respect procedure that a House sets for itself. Our theoretical point is that autonomy and constitutional supremacy fit together once autonomy is understood as a power exercised within constitutional duties. South Africa shows that such review is workable, though India must adapt it to its own text and institutions.

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