



The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

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EXAMINING THE CONSTITUTIONAL VALIDITY OF THE SPEAKER'S CERTIFICATION POWER VIS-À-VIS ARTICLES 110 AND 122

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ABSTRACT

Article 110 of the Constitution defines a 'Money Bill' narrowly, confining it to matters like taxation, borrowing, and the Consolidated Fund, while Article 110(3) further makes the Speaker's certification of a Bill as a Money Bill. To round off such protection, Article 122 further ensures that the validity of Parliamentary proceedings cannot be called into question on the allegation of "irregularity of procedure". In recent years, this mechanism has been used to pass legislation with substantial non-financial content (such as the Aadhaar Act, 2016 and provisions of the Finance Act, 2017 that restructured tribunals). Consequently, this has triggered litigation on the constitutional constraints on the same, such as in K.S. Puttuswamy v. Union of India, and Rojer Mathew v. South Indian Bank, where the Supreme Court expressed serious doubts about the practice but left the matter unresolved, referring it to a larger bench that remains pending. This project examines whether the Speaker's certification is genuinely beyond judicial review, and whether the unrestrained usage of such power can be justified in terms of constitutional morality.

INTRODUCTION

The Indian Constitution established a bicameral Parliament – a legislative body with an upper and lower house. While the Houses were created equal for the most part, this equality seems to falter when it comes to financial legislations. As under Article 109 of the bare text, the Rajya Sabha's role over Money Bills is restricted to a fourteen-day window, where they're only allowed to send recommendations to the Lok Sabha, with the latter having the choice to either

adopt or reject them.¹ Furthermore, Article 110 narrowly defines what *constitutes* a money bill, restricting it to matters of tax, Government borrowings, appropriation of the Consolidated Fund and Contingency Fund of India.²

This practice can be traced back to the United Kingdom, with their bicameral Parliamentary system divided between the House of Commons and the House of Lords, where the privilege of deciding matters relating to fiscal legislations rests solely with the former.³ The Commons' may choose to waive their financial privilege in certain cases, but at the end of the day, it remains a choice that has to be made by their lower house.⁴ The notion underlying such a privilege/restriction is that, when it comes to handling the money of the common masses – be it through taxation or handling the country's funds – the final word should rest with the house that was democratically elected, the House of Commons, as opposed to the House of Lords who are appointed through other means.⁵ Similar intentions would hold true for the Indian counterpart as well.

When a dispute arises regarding whether a specific bill qualifies as a Money Bill or not, Article 110(3) vests the Lok Sabha Speaker with the power to certify the same, with the provision expressly declaring such a decision of the Speaker as "final".⁶ This finality clause operates alongside Article 122, which provides that, "*the validity of any proceedings in Parliament*" cannot be called into question for any, "*alleged irregularity of procedure*".⁷ Similarly, no member of Parliament whose powers have been vested by way of the Constitution for, "*regulating procedure or the conduct of business, or for maintaining order, in Parliament shall be subject to the jurisdiction of any court in respect of the exercise by him of those powers*".⁸ Article 212 does the same for State Legislatures.⁹ Read together, thus, Articles 110(3) and 122 have historically been understood to erect an aegis of sorts around the Speaker's certification power, treating it as an internal parliamentary matter falling exclusively within the domain of legislative procedure rather than substantive constitutional law.

¹ INDIA CONST. art. 109.

² INDIA CONST. art. 110.

³ Sir Malcolm Jack & Richard Reid, FINANCIAL PRIVILEGE: THE UNDOUBTED AND SOLE RIGHT OF THE COMMONS (The Constitution Society, 2016).

⁴ *Ibid.*

⁵ BBC News, '*What is the House of Lords, how does it work and how is it changing?*' (Published on 5th September, 2024).

⁶ INDIA CONST. art. 110(3).

⁷ INDIA CONST. art. 122(1).

⁸ INDIA CONST. art. 122(2).

⁹ INDIA CONST. art. 212.

In recent years, this aegis has come under scrutiny as governments have utilised this loophole to route legislations with substantive non-Money Bill content, sidestepping the Rajya Sabha's overview completely. Setting aside natural questions regarding the challenges such an act poses to the bicameral nature of the Indian Parliamentary structure, this paper questions the constitutional validity of such a process. The prominent instances of the same is the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016 (hereinafter referred to as the "Aadhaar Act"), which was certified as a Money Bill by the Lok Sabha Speaker of the time, Sumitra Mahajan. Such certification came despite containing unrelated provisions on biometric data collection, establishment of a regulatory authority, et cetera — matters that tangentially, *barely*, have some semblance of a connection to the Consolidated Fund.

The same could be observed with the Finance Act of 2017, which used the Money Bill route as a misdirect for restructuring the composition, et cetera, of numerous tribunals across several statutes, with non-fiscal provisions being amended. These instances suggest a problematic pattern; a government commanding a numerical majority in the Lok Sabha can, in principle, virtually enact *any* legislation by labelling it a Money Bill so long as the Speaker – typically a member of the ruling party as well – certifying it as such, with Article 122 closing off any opportunity for judicial review or eventual correction. *This* is the issue that this paper seeks to explore.

AN INSIGHT INTO THE INNER WORKINGS OF THE INDIAN PARLIAMENT VIS-A-VIS THE SPEAKER

Indian Independence – a matter often discussed and often considered to be another topic subject to rote learning for young students – carried with it certain seminal implications, especially with respect to the country's Parliament, its primary legislative body. While the Indian Constituent Assembly decided to continue with the parliamentary form of governance in India post 1947, there were marked differences in terms of the structure as compared to its contemporary, the Westminster model. The British approach tends to favour parliamentary superiority alongside constitutional flexibility, while the Indian parliament structure appears to favour its constitutional framework, leaning towards rigidity. Furthermore, while the Indian system banks on its three-pillared approach between the legislature, the executive and the

judiciary, the U.K. does not have a formal separation of powers doctrine, allowing the Parliament to reign supreme.

India has a bicameral parliamentary system, which means that the primary legislative body is composed of two houses — the *Lok Sabha* (India's lower house of Parliament, or the House of the People), and the *Rajya Sabha* (the upper house, or the Council of States). An important institution seated right at the heart of such a bicameral system, is the Chair of the two Houses — an elected Speaker in the Lok Sabha,¹⁰ and the Vice President of India serves as the “Chairperson” for the Rajya Sabha,¹¹ a role similar to that of the former (the Chairperson shall also hereinafter be referred to as one of the two speakers of the Indian Parliament).

As the presiding officers of both houses, the speakers are allowed important powers under the Constitution. For example, the Speaker's Officer, the focus of this chapter, have the final authority to certify a bill as a money bill; Article 110 of the Indian Constitution provides for the factors that make up the same:

1. The imposition, abolition, regulation, etc. of any tax;
2. The custody/appropriation of moneys out of the Consolidated Fund of India;
3. The regulation of the borrowing of money or the giving of any guarantee by the Government of India; et cetera.

As stated under Article 110(2), a Bill cannot be deemed a Money Bill solely because it imposes a pecuniary penalty (if that were the case, several penalising legislations would be considered Money Bills as well, despite being well outside the jurisdiction of the Finance Ministry).¹² Article 110(3) provides that, “*if any question arises on whether a Bill is a Money Bill or not, the decision of the Speaker of the House of the People thereon shall be final*”.¹³ The Rules of Procedure and Conduct of Business in Lok Sabha (hereinafter referred to as “the Rules”), further empower the Speaker with powers relating to the conduct of the parliamentary business, including the management of the Lok Sabha’s legislative functions.¹⁴ The Rules confer upon the Speaker the power to admit questions, resolutions, et cetera.

GV Mavalankar, the first Speaker of the Lok Sabha post-independence, rightly pointed out that his position in the parliament is one that is peculiar — naturally, his authority is supreme,

¹⁰ INDIA CONST. art. 93.

¹¹ INDIA CONST. art. 89.

¹² INDIA CONST. art. 110(2).

¹³ INDIA CONST. art. 110(3).

¹⁴ Rules of Procedure and Conduct of Business in Lok Sabha, 1957 r.25-31 (India).

making the Speaker the only autocrat since he is of no obligation to exercise his authority only post-consultation, with his word being left unchallengeable.¹⁵ While his concept of the Speaker's Office has remained true for the most part, the Supreme Court's intervention in matters where the Constitution grants absolute authority to the Speaker has somewhat muddled the supposed unchallengeable nature of the position's power. This shall be further explored in the paper's second chapter.

It still holds largely true that the Speaker's Office remains unimpeachable, with neither the Constitution nor the Rules providing any inbuilt appeal mechanism, or a process to challenge its decisions. One would be forced to note that this allows them a level of security seldom achieved by Indian judges, whose decisions could always be subject to review by larger benches, following which they may be reversed or overruled. When a majority of the house believes the Speaker to be incapable or unworthy of the office, they may pass a resolution endorsed, "*by a majority of all the then members of the House*" asking the Speaker to vacate their Office.¹⁶ No action of the Speaker can be singled out and challenged.

THE SPEAKER'S CERTIFICATION POWER AND THE INDIAN JUDICIARY — A STRUGGLE

Mangalore Ganesh Beedi Work v. the State of Mysore (1963) was the first case where the Court had the chance to question its own power to review the Speaker's certification.¹⁷ The primary question related to the revision of the appellant's tax liability under the Mysore Sales Tax Act, 1948; without dealing with the question in a detailed manner, however, the Court dismissed the challenge, holding that the Constitution forbids any such review on the grounds of alleged irregularity of procedure.

The same viewpoint – of irregularity of procedure as opposed to illegality – set the tone for *State of Punjab v. Satyapal Dang*,¹⁸ which went a step ahead and concretised it. It dealt with the legality of a Deputy Speaker's certification of a money bill. Similar to *Mangalore Ganesh Beedi Works*, however, the appropriateness of the action was decided before the Court noted that constitutionally, under Article 122, they were barred from hearing the matter at all. The

¹⁵ Anmol Jain, 'Judicial Obliqueness: the Supreme Court, the Office of the Speaker, and the Politics of Constitutional Abstraction', SSRN (2025).

¹⁶ *Ibid.*

¹⁷ *Mangalore Ganesh Beedi Work v. the State of Mysore* (1963) 14 STC 198.

¹⁸ *State of Punjab v. Satyapal Dang* (1969) 1 SCR 478.

pattern repeated itself in *Mohd. Saeed Siddiqui v. State of Uttar Pradesh*,¹⁹ and *Yogendra Kumar Jaiswal v. State of Bihar*.²⁰

The first shift in the judiciary's thinking can be traced back to the 2019 judgment, *KS Puttuswamy v. Union of India*,²¹ a five-judge bench decision of the Indian Supreme Court dealing with the constitutionality of the Aadhaar Act. The bench delivered three different opinions – the majority opinion penned by Justice Misra, Sikri, and Khanwilkar; the concurring opinion by Justice Bhushan; and the dissenting opinion by Justice Chandrachud.

The majority adopted an interesting approach to the questions raised in the case — rather than visiting whether the Court has the power to review the Speaker's certification, the majority started with deciding on whether the Aadhaar Act could be rightfully certified a Money Bill in the first place. Placing heavy reliance the word "only" in Article 110, the majority found the core provisions of the Aadhaar Act, particularly Section 7, to satisfy the conditions required for a Money Bill to qualify as such, as enshrined in the Constitution. When the petitioners justifiably contended that other provisions seemed to be unconnected to the factors listed under Article 110, the majority opined that the same are incidental to the Act's core provision, thus positively determining it to be rightfully introduced as a Money Bill. After deciding on the same, it was observed that, "*it is not necessary for us to deal with other contentions of the petitioner, namely, whether certification by the Speaker about the Bill being Money Bill is subject to judicial review or not...*".²²

While the majority did note that judicial review could be admissible under certain circumstances, "*having regard to the law laid down by this Court in various judgments...*",²³ it makes no move towards answering whether the Speaker's certification power would count towards such a "circumstance". One aspect of the majority's decision is flimsy in the sense that their order of decision making – concluding that the classification of the Act as a Money Bill was the correct move by the Speaker, over first deciding on whether the judiciary has the power to review it in the first place – is a backward exercise. The Court cannot determine the correctness of the Speaker's certification without establishing that it *has* the power to do so in the first place, leaving the action to be largely senseless.

¹⁹ *Mohd. Saeed Siddiqui v. State of Uttar Pradesh* (2014) 11 SCC 415.

²⁰ *Yogendra Kumar Jaiswal v. State of Bihar* (2016) 3 SCC 183.

²¹ *KS Puttuswamy v. Union of India* (2019) 1 SCC 1.

²² *Ibid*, ¶ 472.

²³ *Ibid*, ¶ 464.

Justice Bhushan, in his concurring opinion, differed from the majority on two primary points, *firstly*, that the finality clause of Article 110(3) does not make the Speaker's certification immune to judicial review;²⁴ *secondly*, that Article 122 protects only irregularities of procedure, not substantive illegality.²⁵ Dissenting from precedents such as *Mohd Saeed Siddiqui* and *Yogendra Jaiswal*, Justice Bhushan holds that a wrongful certification is a direct violation of constitutional provisions, that goes against the basic principle of accountability and the democratic, lawmaking process. On the question of whether the Aadhaar Act was correctly certified to be a Money Bill, however, Justice Bhushan agreed with the majority and answered in the positive.

Most importantly, we move to Justice Chandrachud's dissenting opinion, where he furthered Justice Bhushan's line of argument on whether the Court has the power to review the Speaker's certification; referring to the values of bicameralism, accountability, non-arbitrariness, et cetera, he noted that the Indian Constitution is rooted in checks and balances, not providing absolute power to any institution. Justice Chandrachud opined that no decision of the Speaker can sidestep constitutional morality, thus, the individual's power to decide what constitutes a Money Bill cannot be left unchecked. On the specific question of the Aadhaar Act, Justice Chandrachud dissented from the other four judges, holding that the Act does not *only* deal with what lies in Article 110. Essentially, Chandrachud outlined that the Speaker's certification power *should* be subject to judicial review, and the Aadhaar Act was an unjustifiable exercise of such power.

In *Roger Mathew*, the Supreme Court analysed the constitutional validity of Part XIV of the Finance Act, 2017 — Part XIV, passed as a Money Bill, had amended several existing legislations governing tribunals and provided for the formulation of new rules to govern them.²⁶ Other than the validity of the Chapter, the Court was also asked to examine the issues surrounding the financial independence of the Speaker, and by extension, the Lok Sabha, as this Act had also been certified a Money Bill by the former, perhaps erroneously.

The judgment was unanimous on most questions; that the Court *can* review the Lok Sabha speaker's decision of certifying a bill as a Money Bill; that the question of whether the Bill was a valid Money Bill should be referred to a larger Bench, et cetera. Evidently, the majority left the core issue of whether Part XIV was validly enacted as a Money Bill unresolved, leaving a

²⁴ *Ibid*, ¶ 892.

²⁵ *Ibid*, ¶ 895.

²⁶ *Roger Mathre v. South Indian Bank Ltd* (2020) 6 SCC 1.

larger bench to decide on the same. Along the same line, it also observed that the *Puttuswamy* judgment's majority decision to classify the Aadhaar Act as a Money Bill was also dubious, recommending it to also be referred to a larger bench. Regardless of whether or how the larger bench decides on the validity of the Aadhaar Act and the Finance Act, for the purposes of this chapter, we can note how the Court has positively interpreted the right to review the Speaker's certification under Articles 110 of the Constitution.

A CRITICAL ANALYSIS

As established under the first chapter, no individual action of the Speaker can be challenged separately, thus, leaving the only *theoretical* check to the Speaker's Office to be the vote of the house majority — *which would naturally be the ruling party*, which holds the numerical majority of the seats either through direct election or through the formation of coalitions. The Speaker's Office is designed in a way that demands a nonpartisan approach to the position, such that upon the individual's election, they would rise above the affiliations of the party so as to function independently and impartially. Which, essentially, may be a poor choice if such power is allowed to exist with a corresponding set of safeguards.

While one may presume that, when vesting such immense power to a single position within the largest law-making body of the country, there would also be structural safeguards within the Constitution that were also put in place to restrict such an individual from corruptly carrying out their own party's agenda, one would be gravely mistaken. Critically, *no such provision has been included in the Indian Constitution*, despite independence and impartiality making up the core principles required for the smooth functioning of the country's parliament.

Textually, or perhaps more fitting, *legally*, there are loopholes the Speakers can abuse to disregard such notions of neutrality and retain their partisan interests. Article 93 of the Constitution is interesting to note in that aspect, since it requires that the Speaker and Deputy Speaker be elected in the Parliament through a simple majority²⁷ (typically composed of the ruling party/coalition). After having won through such a basic process, there are no further requirements that a legislator need fulfil before assuming a position as consequential as the Speaker of the House. Thus, on paper, there appear no bars against the Speaker retaining their party connections or performing their duties in a partisan manner.

²⁷ INDIA CONST. art. 93.

When it comes to the judiciary's opinion on the Speaker's Certification power, the trend has shifted towards a more positive interpretation of its right to review the Speaker's certification under Article 110. However, they have framed the issue of wrongful certification as an abuse of power rather than identifying the structure that allows for the Speaker to participate in the democratic process in a partisan way. The usage of the Money Bill loophole increases in times when the ruling party lacks majority support in the Rajya Sabha.²⁸ Thus, against such a backdrop, the Speaker abusing his power isn't the cause of the problem, but merely the symptom of a much larger issue. The primary issue remains the structural flaw that allows legislators to elect Speakers who can go on to perform their functions with their party connections virtually intact, unrestricted. Subsequently, for their own protection and further political growth, the Speakers will naturally give primacy to their parent parties' interests over the opposition.

Such institutional vulnerability has direct implications on the standard of review the judiciary ought to apply when it comes to the Lok Sabha speaker. If the Speaker's certification was genuinely exercised by a neutral third-party rather than someone who has been chosen from among the parties' that make up the Lok Sabha itself, thus providing structural incentives towards favouring their own side, the constitutional safeguard essentially becomes a 'get-out-of-jail-free-card' of sorts. The structural flaw as laid out in this chapter was not meant to explain *why* Money Bill misclassification occurs, but rather to argue why Article 122's finality cannot be used to extend to the Speaker's subjective decision of what *can* be fit into the scope of Article 110(1). Thus, the pending reference to a larger bench as recommended in *Rojer Mathew* must resolve the matter of whether a review is available, while also setting the levels to which such reviews should be conducted.

CONCLUSION

This paper set out to examine whether the Speaker's certification of a bill as a Money Bill under Article 110(3) is genuinely immune from judicial review, given the theoretical shield provided by Article 122. The Constitutional design, as established in Chapter 1, was formulated in such a way so as to allow for total finality of the Speaker's certification, leaving any such decision of their office to exist outside of the judiciary's purview or oversight. No appeal mechanism

²⁸ Anmol Jain, 'Political Process Failure in the Indian Parliament: Studying Abuse of Power by the Chair and How it can be Addressed', 6 Cons. & Admin. L.J. 87, 91-92 (2022).

exists within the Constitution or the Rules of Procedure, leaving the only formal check on the Speaker's Office to be a resolution of the House itself — the Speaker can be removed through a simple majority vote, the same way they were voted in by the Lok Sabha members, whose majority would typically comprise the members of the ruling party/coalition.

The second chapter traced how the judiciary's stance on this aegis shifted from immediate dismissal of a review in *Mangalore Ganesh Beedi Works* through the *Puttuswamy* judgment, finally culminating in *Rojer Mathew*, which held that the Speaker's certification is not beyond the Court's reach, so as to keep with democratic values of accountability, transparency and a fair system of checks and balances. Yet, despite such a shift, it has stopped short of solving the problem directly; while the question of availability of review has been resolved to an extent, its *intensity* has yet to find any unanimity within the Indian judiciary, with the larger bench reference on both the Aadhaar and the Finance Act remaining pending years later.

The third chapter argues *why* such a system of checks and balances on the Speaker's powers are sorely needed: their office carries no constitutional requirements of independence from party ties, with the incentivising structure of Indian parliamentary politics guaranteeing that the Speaker would tend towards partisan attitudes rather than a neutral reading of Article 110(1). This paper concludes that Article 122's bar on questioning "irregularity of procedure" cannot extend to a Speaker's determination of whether a bill falls within the exhaustive, narrow definition as provided in Article 110(1), as the same would go against constitutional morality.

Until the pending reference is decided, the Money Bill route remains available as a mechanism to bypass the Rajya Sabha's revisory role with minimal risk of judicial intervention. Resolving such a fatal gap would require the courts to establish their position on the matter, holding that a review is permissible, but such that it is objective enough to test the certification against the actual text of Article 110(1), rather than taking the Speaker's side if even the against the actual text of Article 110(1), rather than taking the Speaker's side if even the flimsiest of connection to the Consolidated Fund, etc. can made out.