Legislative Procedures

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1 Introduction

In the modern democratic state, the society is governed based on Rule of Law. The law making process, therefore, occupies the crucial place in orderly functioning of society and nation. In India, Parliament is the most important institution, having the authority to enact laws, which is applicable in the entire territory of India.

Apart from the Parliament, the Constitution empowers the President and the Governor to promulgate ordinances to meet any immediate situation if it is necessary in public interest, provided the respective legislature is not in session.

2 Ordinance Making Power

A. Provisions and Need:

The Constitution under Article 123 and Article 213 provides for the promulgation of ordinance by the President or the Governor of a state, when the Parliament or the State Legislature, as the case may be, is not in session, in times of emergency. Thus, it is largely an emergency provision which has to be used sparingly.

B. Recent Controversy and its misuse:

This largely an emergency provision in the hands of executive, has come to be misused by respective governments at the Center and states to bypass the normal legislative procedure, thereby going against the principle of checks and balances.

There have been cases in some states, where same ordinance was passed repeatedly without enacting the law on the subject for years. Similarly, at the center there have been instances where the amendments were effected in the well-established laws just for political expediency. These instances indicate that a well-intentioned provision may be misused.

The ordinances promulgated over the years shows how Article 123 becomes a handy tool of governance once in power. Till now 646 ordinances have been promulgated since 1952. While ordinance route may be justified when the opposition disrupts the working of the Parliament so that much needed legislations couldn’t be passed. Promulgating ordinances, when either there is no urgent need to do so, or when the Parliament worked smoothly, is the greatest disservice to the Constitution. For example, ordinance to amend TRAI Act, just for the sake of making way for the appointment of former TRAI Chairman as the Principal Secretary to the Prime Minister.

The newly elected government at the Centre promulgated 9 ordinances in a period of a little over 7 months, some of which have been promulgated in the fortnight after the close of the Winter Session of Parliament. For example, Ordinance amending the Land Acquisition Act, which was passed with great deliberations inside and outside the Parliament, without an attempt to take the Bill first to Parliament, even though the Lok Sabha had functioned largely disruption-free. Even the President conveyed sharp reminder on ordinance limits to the newly appointed ministry.

C. Should Ordinance making power be restrained by law?

Though, such instances do reflect the need to restrain the ordinance power of the executive. It is argued that neither the British nor the US government has the power to issue ordinances.

However, it is difficult for the following reasons-

a) It is a much needed emergency measure in the hands of executive to meet any unforeseen situation.

b) It is difficult to demarcate as to which measure is urgent and to what extent restrictions can be put. Therefore, it’s not practically feasible.
There may be instances where certain issues have been adequately deliberated upon in the Parliament, but enactment of which could not be passed due to obstructionist approach of the opposition. In such cases ordinance route may be used, because huge amount of money and are resources are spent in just one day’s functioning of the Parliament. If such efforts and resources are allowed to be wasted, it would be against public trust and public interest.

D. Possible Safeguards?
Thus, it might remain a necessary evil, where the possible safeguards could be:

1) The good will of the executive to not misuse the ordinance provisions.
2) There is a need for the political class to evolve a shared vision for a modern and developed nation. Unless there remains suspicion among the ruling and non-ruling parties, there would remain the obstructionist approach by some sections of the legislators.
   a. Some specific parliamentary guidelines should be evolved which would provide a clear picture as to what are the situations in which ordinances can be promulgated.
3) Awakened public opinion, media scrutiny, assertive civil society, and active judiciary could be the best check on the misuse of any provision of the constitution.

3 Parliamentary Legislative Procedure

Generally legislative procedure for introduction and passage of all bills are same in both the houses of Parliament except Money Bill. The bill can be introduced by either a minister or a private member in either house of Parliament except Money Bill. It is in order to briefly discuss the provisions regarding the Money Bill.

A. Money Bill:

Article 110 of Constitution deals with Money Bill. It broadly deals only with matters concerning money and taxes. The Money bill can be introduced by a minister only and can’t be introduced in Rajya Sabha. If any question arises whether a bill is money bill or not, the decision of Speaker of LS shall be final. Rajya Sabha effectively has no say in the enactment of the Money Bill. It can only make its recommendation that too within 14 days of receiving the Bill. Such recommendations may not be accepted by the Lok Sabha.

Such provisions have been made to ensure the principle of “No taxation without representation”. However, these are amenable to be misused to bypass the legislative powers to the Rajya Sabha.

B. Recent Controversy:

In the face of lack of majority enjoyed by the government in the Rajya Sabha for the government, a statement was made by the Union Finance Minister about money bills. He is reported to have said that money bills, over which the Rajya Sabha has limited powers, are the answer to the obstructionist ways of the Opposition in that House. This statement by the Finance Minister came to be interpreted as an attempt to classify most of the crucial bills which go to the Rajya Sabha as money bills to prevent them from being rejected by that House. This has triggered a new controversy.

The apprehension among the Members is that the government may bring bills with financial provisions and push them through as money bills in order to circumvent the situation in the Rajya Sabha.

C. Are Safeguards adequate?

The Constitution makes it abundantly clear that money bills should contain only the matters contained in Article 110 and nothing else. If a bill is a combination of any of these and some other provisions not incidental to those matters, it cannot be called a money bill. Such a bill needs to be passed by both the Houses of Parliament.
At first, the apprehension of the Members of the Opposition seems out of place because the Speaker of the Lok Sabha is required to apply her mind to the true character of the bill objectively. The Constitution clearly defines the money bill and the Speaker cannot circumvent it. The word “only” used in article 110 (1) strictly limits the scope of a money bill and rules out any liberal or politically convenient interpretation of this term.

Nevertheless, the possibility of non-money bills being certified as money bills and the power of the Rajya Sabha being curtailed cannot be ruled out. It is rather incongruous that the Chairman of the Rajya Sabha — the Vice-President — is placed in the position of having to accept the decision of the Speaker on the money bills issue unquestioningly. The Constitution has vested this power in the Speaker in conformity with the traditions in all parliamentary democracies. Neither the Constitution nor the House rules lay down any procedure with regard to certifying a money bill. This situation is rather unsatisfactory.

**D. What is the Way Forward then?**

If it is said that the Speaker has absolute power and she does not have to consult anyone, it is tantamount to accepting even a wrong decision by her, maybe even a mala fide decision. The Constitution of India does not confer such absolute power on any authority.

The question is whether there is no remedy if a wrong decision actuated by political considerations is taken by a Speaker — not an impossibility. It may be a bona fide mistake but it renders the Rajya Sabha helpless. An example can be cited from this year’s Finance Bill, which contains a chapter amending the Money Laundering Act. By no stretch of imagination can it be said to conform to the stipulations laid down in Article 110 regarding a money bill.

It is therefore necessary to evolve a proper procedure for the Speaker to arrive at a decision. A committee of the secretaries-general of both Houses may examine in detail the given bill and submit their views to the Speaker before she takes a final decision.

There may or may not be any truth in the Opposition Members’ contention that all the non-money bill provisions were put in the Finance Bill to avoid the Rajya Sabha obstructing the passage of these bills. The only matter of importance here is that the Rajya Sabha should not be deprived of its legitimate rights through legislative stratagems.

It may be remembered that Article 122 provides immunity against challenges to the proceedings only on the grounds of procedural irregularities. A wrong decision taken under Article 110(3) is not a procedural irregularity and hence does not grant any immunity to the Speaker’s decision.