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ANOMALIES OF THE 2017 FINANCE BILL: IS IT REALLY A MONEY BILL?

We may call the finance bill the most important bill on the annual agenda of the finance ministry. Financial policy decisions are first taken by the revenue department with the assent of the finance minister. These decisions are then conveyed to the drafters. Finance Bill is not something created by the finance minister at once, but is the result of the efforts of dozens of officers for hundreds of hours. Most of such time is spent pouring over the draft to ensure that, the bill appropriately mirrors the prior policy decisions.

However when we discuss the 2017 Finance Bill, there are three pertinent issues:

First, a finance bill is a money bill as defined under Article 110 of the constitution of India. Nevertheless, a question arises as to whether the Finance bill 2017 is a money Bill. Art.110 states that “a Bill shall be deemed to be a money bill, if it contains only provisions dealing with all or any of the following, namely,

- a) The imposition, abolition, remission, alteration or regulation of any tax;
- b) The regulation of the borrowing of money or the giving of any guarantee by the government

of India or the amendment of any law relating to any financial obligations undertaken or to be undertaken by the government of India

- c) The custody of the Consolidated Fund or the Contingency Fund of India, the payment of monies into or the withdrawal of monies from any such fund
- d) The appropriation of monies out of the Consolidated Fund of India
- e) The declaring of any expenditure to be expenditure charged on the consolidated Fund of India or the increasing of the amount of any such expenditure
- f) The receipt of money on account of the Consolidated Fund of India or the public account of India or the Custody or issue of such money or the audit of the accounts of the union or of a state or
- g) Any matter incidental to the matters specified in clauses (a) to (f)”

In view of this definition, we may reasonably doubt, that whether, this Finance Bill is a money Bill, especially when we go by the post-constitution legislative history. It is evident from the definition that if a bill contains any other

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matter than the matters enumerated in the Article, it is indisputably not a Money Bill. Throughout the post-constitution period, Finance Bills were strictly restricted to taxation matters, and no other matter was given attention to unless it was absolutely consequential.

On the contrary, the Finance Bill 2017 contains 55 clauses which have nothing to do with the matters enumerated in Art.110. Neither these 55 clauses are ancillary or supplementary to the other clauses of the Finance Bill.

Undoubtedly these clauses have been cloaked in the Finance Bill, in order to escape the scrutiny by the Rajya Sabha. A money bill does not go to the Rajya Sabha for discussion, but only for recommendations which can be rejected by Lok Sabha. This assumes more importance in view of the fact that the ruling coalition is in a minority in Rajya Sabha and that five such amendments proposed by Rajya Sabha to the Finance Bill have been so rejected. It has put into question the legal and political conscience of the Finance Minister.

Another anomaly is that, 2017 Finance Bill confers certain arbitrary powers upon the income tax officers. Until now, the tax officer was duty bound to record the reasons and to disclose such reasons to the assessee for conducting raids. The assessee may challenge such reasons before a court of appropriate jurisdiction, and if the court upholds that the reasons were insignificant, unjustified, and arbitrary or absent, the court would dismiss the proceedings.

However this Finance Bill has brought about a significant alteration in the position of law. The clauses 50 and 51 are an explanation to sections 132 and 132 A of the Income Tax Act. The effect of these clauses is that, the reason to believe as recorded by the income tax authority is not to be disclosed to any person or any authority or any appellate tribunal. Most controversial part of this explanation is that, it is given retrospective effect from 1st October 1975. The possible consequence of this is that political rivalries, journalists and even human rights and information activists could be intimidated with such arbitrary raids.

As has been pointed out by one of the Parliamentarians, “unbridled powers given to tax officials for search and seizure will lead to harassment of taxpayers” and “Inspector Raj will come back when even a junior level officer gets enormous powers”. But there are many who argue that this move will protect whistle blowers from incurring the wrath of political goons.

No different is the position with respect to the amended Securities Contracts (Regulation) Act and Depositories Act. The adjudicating officer under these Acts will, under the bill, retain power to impose penalties on those failing to furnish information or documents related to their income. This will empower the executive to target anyone on the opposite side of those who have power. Yes, we may soon be living in a ‘Police State’.

The third issue that concerns us is that at present a company may contribute up to 7.5% of the average net profit in the last three financial years,

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to political parties. However, in doing so, the company needs to disclose the amount it has contributed to political parties in its balance sheet. This should also include the name of the political parties to which the contribution is made. But the Finance Bill 2017 does away with these requirements.

Companies can make such contributions only through cheques, bank drafts, electronic means or any other schemes notified by the Government. The bill seeks to introduce electoral bonds to make contribution to political parties. A private company can now purchase Electoral Bonds, and only the issuing bank will know the name of such donor or purchaser. If the donor donates the bond to a political party, both the donor and the donee are not required to disclose the names in their returns. This will lead to massive money laundering and will defeat the goal of transparency in governance.

As was pointed out by a politician of the left wing, the Finance Bill, by lifting the restriction on money donated to political parties by big businessmen would lead the later to float fake companies for money laundering.

The bill contains around 40 amendments to various laws. The amendments included not only amendments to the tax legislations, but also structural alterations of several tribunals, appellate tribunals, boards and authorities constituted under 17 different legislations. Some of these includes the taking over of the functions of certain tribunals by other existing tribunals and some of them are

for empowering the central government to make provisions for appointment, removal, tenure and reappointment of the members of some of such tribunals. Ironically, the Finance Minister failed to provide any rationale for this replacement. This will have a direct impact upon the independence of these tribunals. The executive will have significant sway in deciding the outcomes of the proceedings in these tribunals.

The bill makes Aadhaar compulsory from July 1, 2017 for filing income tax returns and to obtain and retain Permanent Account Number. In short, one will not be able to pay taxes, if one does not possess the Aadhaar card. Nevertheless, we should not fail to appreciate the fact that compulsory use of Aadhaar will ensure an electronic trail of all high value transactions.

The bill also proposed to curb the cash transaction limit per day per person per event to 3 lakhs. A subsequent amendment moved to it on March 21 lowered it further to 2 lakhs. This is claimed to curb black money and corruption.

Similarly, the Bill proposes to make the rules that regulate charitable organisations run by companies more stringent. Clause 8 of the bill proposes to amend Section 11 of the Income Tax Act relating to income from property held for charitable or religious purposes. Subsection 1 of Section 11 states that voluntary contributions made by a trust to any other trust or institution except those made out of accumulated income is considered as application of income for the purposes of its object. The bill provides for the

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insertion of a new explanation 2 under subsection 1 so as to provide that, in respect of any amount credited or paid out of income referred to in clause (a) or (b) read with explanation 1, being contributions with a specific direction, that they shall form part of the corpus of the trust or institution, shall not be treated as application of such contribution to charitable or religious purposes.

However, it has been criticized that this amendment is part of the campaign against NGOs.

This amendment will come into effect from 1st April 2018 and therefore, will apply to the assessment year of 2018-19 and the subsequent years.

In short, what the bill reflects is, at least in some of the proposals, nothing but strong authoritarian tendency. But, it is not denied that the bill has equally strong reformative proposals. However, we may not discuss them, since it is the political obligation of a government to ensure 'greatest satisfaction of the people with minimum friction'.

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