Voice Vote as Constitutional Subterfuge

What is the issue?

- The Karnataka Prevention of Slaughter and Preservation of Cattle Bill was recently passed by the State's Legislative Council by voice vote.
- The practice of resorting to voice vote and passing bills despite lack of a majority is increasing, and here is a constitutional assessment of it.

How was the Bill passed?

- The law was passed by the Upper House despite the lack of a majority.
- A division vote based on actual voting is the usual practice and the Opposition members had demanded the same.
- But, instead of this, the presiding officer just declared the Bill passed by voice vote without any division.

Why is this notable?

- A similar process was followed to pass the controversial farm laws (by the Rajya Sabha) in September 2020.
- Here too, the government seemed to lack a majority to pass the bills in the Upper House.
- And instead of a division vote, a voice vote was deemed to be adequate by the Deputy Speaker of the House.
- In both cases, the disturbance caused in the House by the Opposition was used as a pretext to resort to a voice vote.
- Given the controversy around the farm laws, the government has repeatedly invoked multiple consultations around these laws.
- However, the fact that the pieces of legislation were passed without an actual legislative majority voting has not been given due attention.
- These two sets of laws passed with a voice vote seem like a new template for bypassing the constitutionally envisaged legislative process.
- Indeed, both were first passed as ordinances.
- And once they were tabled in the legislature, the governments insisted on the Bills not being referred to the legislative committees in either case.
    - This was despite the fact that the Opposition repeatedly raised the demand.

What is the Money Bill route used in recent days?

- The voice vote method supplements the other technique repeatedly deployed over the last few years to bypass the Upper House of the Parliament.
- It is the Money Bill route, which is increasingly used in instances even where the laws concerned would not easily fit within that definition.
- Most notoriously, the Aadhaar Bill was passed in this manner.
- The other controversial laws passed in the same manner include:
    - laws pertaining to electoral bonds
    - retrospective validation of foreign political contributions
    - the overhaul of the legal regime relating to tribunals

What do these practices imply?

- The increasing use of the Money Bill route was defended by the Leader of the Rajya Sabha.
- He condemned the repeated questioning by the indirectly elected Rajya Sabha of the wisdom of the directly elected Lok Sabha.
- Underlying this common sentiment is a tendency to devalue bicameralism itself.
- The Lok Sabha is seen as directly representing the will of the people, and the Rajya Sabha as standing in its way.
- Democracy itself is seen purely in terms of parliamentary majority in the Lower House.
- So, the countervailing function of the Upper House is rarely seen as legitimate.

How significant has Rajya Sabha been?

- The Rajya Sabha has historically stopped the ruling party from carrying out even more significant legal changes.
- The notorious Emergency-era 42nd Constitutional Amendment could not be repealed in toto by the post-Emergency Janata regime.
- This is essentially because the Congress continued to have a strong presence in the Rajya Sabha.
- The Rajiv Gandhi government's proposed 64th Constitutional Amendment Bill on Panchayati Raj was narrowly defeated in the Rajya Sabha.
    - This was even though it enjoyed the highest ever majority in Lok Sabha.
- But neither of these governments resorted to constitutional subterfuge or attacked the Rajya Sabha's constitutional role.
- Indeed, the Rajya Sabha is undoubtedly imperfect.
- This is partly because of constitutional design and partly because of obviously undesirable practices.

- However, forms of constitutional fraud that reduce its role to nothing cannot be overlooked.
- It is important to understand the crucial constitutional role that such a body plays.

Why is bicameralism crucial?

- The two Houses are chosen by different processes of representation and elected on a different schedule.
- The very questioning of the monopoly of the Lower House to represent the 'people' makes bicameralism desirable.
- In India, the Rajya Sabha membership is determined by elections to State Assemblies.
- This leads to a different principle of representation, often allowing different factors to prevail than those in the Lok Sabha elections.
- The second chamber's performance of a review role becomes particularly important.
- This offers the opportunity for a second legislative scrutiny.
- The other merit of bicameralism is especially significant in a Westminster system like India, where the Lower House is dominated by the executive.
    - The Rajya Sabha holds the potential of a somewhat different legislative relation to the executive, making a robust separation of powers possible.
- Given these, it is high time that India preserves the sanctity of its legislative procedures.

Source: The Hindu

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