

# Guest Post: Judicial Review of Parliamentary Process in Dr Sunil Kumar Singh v. Bihar Legislative Council

[indconlawphil.wordpress.com/2025/03/01/guest-post-judicial-review-of-parliamentary-process-in-dr-sunil-kumar-singh-v-bihar-legislative-council](https://indconlawphil.wordpress.com/2025/03/01/guest-post-judicial-review-of-parliamentary-process-in-dr-sunil-kumar-singh-v-bihar-legislative-council)

Gautam Bhatia

March 1, 2025

[This is a guest post by **Anmol Jain**.]

---

## Introduction

In a recent Supreme Court **judgment** dealing with the determination of the Court's power to review the decision of the Bihar Legislative Council to expel one of its members—Dr Sunil Kumar Singh—from the membership of the House on account of calling Nitish Kumar *paltu ram*, among other things, the Court made certain important remarks on the interpretation Article 212 of the Indian Constitution. Beyond the facts of this case and the question of expulsion—and punishment in general—of the members of legislative assemblies, these observations are of critical relevance to other matters concerning the relationship of the legislature with the judiciary and the scope of judicial oversight of legislative actions. One such matter is the scope of judicial review of the Speaker's decisions, including that of certifying a bill as a money bill. In the following paragraphs, I show how the interpretative framework adopted by the Court to creatively delimit the boundaries of Article 212 could help it answer the question about its power to review the decisions of the Speaker in the affirmative.

## The Existing Jurisprudence of the Court and Its Problems

Before I move further, it is of benefit to reproduce Article 212 of the Constitution:

212. Courts not to inquire into proceedings of the Legislature. (1) The validity of any proceedings in the Legislature of a State shall not be called in question on the ground of any alleged irregularity of procedure. ...

By way of Article 122, a similar restriction is also envisaged for the proceedings of parliament. In the existing jurisprudence, the Court has introduced the idea of separating procedural irregularities from substantive illegalities to hold that Articles 122/212 only shield the former from judicial review. Any action of the legislature, if it could be classified

as substantively illegal and goes against the constitutional text or mandate, cannot be saved from judicial scrutiny. In other words, the Court has clarified that the legislature cannot use the garb of Article 122/212 to engage in unconstitutional decision-making.

If we particularly consider the judgments dealing with the Speaker's decision to certify a bill as a Money Bill, the Court has consistently held that any wrongful certification would be a mere procedural irregularity until the two dissenting opinions in the Aadhaar case (2019), which observed that such wrongful certification should rather be treated as illegality. This position was further substantiated in **Rojer Mathews v South Indian Bank Ltd**, where the Court held that Article 122 of the Constitution does not envisage a bar against challenging the decision of the Speaker on the grounds of substantive illegality. However, the Court created a very high bar to be met for one to succeed with this challenge:

It must be emphasized that the scope of judicial review in matters under Article 110(3) is extremely restricted, with there being a need to maintain judicial deference to the Lok Sabha Speaker's certification. There would be a presumption of legality in favour of the Speaker's decision and onus would undoubtedly be on the person challenging its validity to show that such certification was grossly unconstitutional or tainted with blatant substantial illegality. Courts ought not to replace the Speaker's assessment or take a second plausible interpretation. Instead, judicial review must be restricted to only the very extreme instance where there is a complete disregard to the Constitutional scheme itself. It is not the function of Constitutional Courts to act as appellate forums, especially on the opinion of the Speaker, for doing so would invite the risk of paralyzing the functioning of the Parliament.

Therefore, under the existing jurisprudence, while a judicial review of the Speaker's decision is possible, the standard to be met is very high. Additionally, as I have argued **elsewhere**, there are two further problems with the existing approach of the Court. First, as it has approached the question of reviewing the decision of the Speaker largely in matters dealing with the money bills, its approach has remained skewed and blind to other possible avenues for the abuse of power. The Court has linked every challenge to the 'gross violation of the constitutional mandate', making it uncertain as to whether it would consider the violation of parliamentary rules by the Speaker enough for a judicial challenge. Consider, for example, situations wherein the Speaker may wrongfully deny the division of votes. Second, under the existing doctrine, the review of legislative action is dependent on the Court's determination of whether the action is substantively illegal or is a mere procedural irregularity. As the history of the Supreme Court's performance with regard to money bills shows, this exercise is necessarily subjective (or discretionary) and does not involve an objective assessment on the part of the Court.

### **The Decision of the Court in *Dr Sunil Kumar Singh***

I propose that the decision of the Supreme Court in **Dr Sunil Kumar Singh v Bihar Legislative Assembly** must be read against this doctrinal and analytical backdrop. This judgment suggests another interpretative gymnastic to support the Court's review power; however, it approaches this question in a far more objective manner. In this case, the Court differentiated the aspect of 'proceedings in the legislature' from that of 'legislative decision' and held that the restrictions envisaged in Articles 212/122 are applicable only to the former. The Court observed:

12. To simplify the understanding of the embargo postulated under Article 212(1), we deem it appropriate to distinguish the terms—'Proceedings in the Legislature' and 'Legislative Decision'. These terms represent distinct concepts, each serving a different function in the law-making process.

13. To further explicate, the 'Proceedings in the Legislature' comprise the formal steps, debates, and motions undertaken to facilitate deliberations within the House. It is a structured mechanism that ensures due consideration of a proposed measure, allowing for discussion, amendment, and scrutiny before reaching a final resolution. These procedural steps are not ends in themselves but are designed to channel legislative discourse towards a definitive outcome. Article 212(1) of the Constitution provides immunity for the manner of such proceedings, and hence, Constitutional Courts would exercise restraint when such proceedings are called into question on the grounds of procedural irregularity.

14. A 'Legislative Decision', on the other hand, is the culmination of the legislative procedure—the formal expression of the will of the House on a given matter. While Proceedings of the Legislature provide the framework within which members exercise their deliberative functions, the Legislative Decision is the authoritative determination that follows such deliberation. **These decisions of the Legislature, though emanating from a coordinate branch of Government, are not immune from scrutiny by Constitutional Courts.** (Emphasis supplied)

In the context of money bills, the determination by the Speaker can be classified as a legislative decision. For other matters where the Speaker has the decision-making power, we can perhaps refer to the Calcutta High Court decision in **Ambika Roy v The Hon'ble Speaker, West Bengal Legislative Assembly**, where the High Court observed that the decision of the Speaker to overlook the constitutional convention of appointing a member from the opposition as the Chairperson of the Public Accounts Committee could be challenged judicially. From the framework of the decision in *Dr Sunil Kumar Singh*, this would necessarily mean that the decision of the Speaker to appoint a legislator as the Chairperson is also a legislative decision. It is true that it is not the culmination of the will of the House; however, it is the 'culmination of the legislative procedure' as envisaged in the Constitution. As the Court notes further in paragraph 16, essentially by adopting a Dworkinian approach, if a decision-making authority, '*be it the Legislature or otherwise,*' acts in manners that violate the Constitution, violate fundamental rights, or are in excess of the constitutional authority, such actions would be subject to judicial review '*to preserve the integrity in the legal system by preventing excess and abuse of power.*' Any wrongful

determination of a bill as Money Bill would be an express violation of Article 110 of the Constitution, allowing the Court to intervene and adjudicate on the correctness of the Speaker's determination within this framework.

Further, the primary reason for the Court's intervention in this particular matter was on account of the fact if such actions of the legislature/Speaker are not checked judicially, it would '*not only undermine democratic values by depriving the member from participating in the proceedings of the House but also affect the electorates of the constituency who remain unrepresented*' (¶58). Though it could count as a far stretch, a set of similar considerations are involved when a Speaker wrongly certifies a bill as a money bill. First, it undermines the democratic and deliberative values attached to the legislative processes as it wrongly reduces the weight of the recommendations of the Rajya Sabha by deeming them non-binding on the Lok Sabha. Second, while the aspect of representation works differently when it comes to the Rajya Sabha (as the members are representing the state legislatures rather than the people), the fact that a form of representation is nevertheless present, a wrongful certification virtually makes the voices of the states unrepresented. Third, and from a politically realistic perspective, a wrongful certification also denies the opposition (assuming that it controls the Rajya Sabha) its rightful chance to control the legislative agenda and decisions, thus negating the principle of majoritarianism in the Rajya Sabha in favor of a perverted exercise of majoritarianism in the Lok Sabha.

In summation, one could argue that the non-interference by the Court results in the possibility of the Speaker affecting the democratic fabric of the legislative decision-making processes, thus, making the underlying principles developed in *Dr Sunil Kumar Singh* directly relevant for the ongoing judicial determination about the meaning and scope of money bills, wherein the Court may also get the opportunity to think more deeply on the questions of judicial review. While similar arguments can be made when the Speaker engages in a blanket disregard of the parliamentary rules; however, such an extension cannot be made conclusively from the language of *Dr Sunil Kumar Singh*.