

Whether Amendment of the Constitution is a Political Question and not Justifiable?

Article 107 is a provision for introduction of a Bill and the passing thereof by the House of the People and the Council of States. Article 111 relates to the presentation of such a Bill to the President for his assent. The Rules of Business of either House provide for authentication as to the passing of the Bill and the assent thereto by the President. Article 122 of the Constitution says:

"The validity of any proceedings in Parliament shall not be called in question on the ground of any alleged irregularity of procedure."

Indeed the fact that the Bill appertaining to Constitution (Twenty-Fourth Amendment) Act, 1971 was duly introduced and passed and the amendment obtained the ratification by the legislatures of not less than one-half of the States by resolutions to that effect passed by those legislatures before the Bill was presented to the President for his assent, and such assent was given thereto by the President, is clear. All the above functions are Federal functions. They are necessarily political questions. In a case appertaining to the Amendment of the Constitution of United States of America, Hughes, Chief Justice, speaking for the Supreme Court remarked:

"We think that in accordance with the historic precedent, the question of the efficacy or ratification by State legislatures in the light of previous rejection or attempted withdrawal should be regarded as a *political question* pertaining to the political departments, with the ultimate authority in the Congress in the exercise of its control over the promulgation of the adoption of the Amendment."

Now what happens when a Bill for the Amendment of the Constitution is initiated by the introduction thereof in either House of Parliament and it is passed in each House by a majority of the total membership of that House and by a majority of not less than two-thirds of the members of that House present and voting and is ratified by the legislatures of not less than one-half of the States by resolutions to that effect passed by those legislatures and is then presented to the President for his assent, who gives his assent thereto?

As already observed none of the above matters can be called in question in a court of law. The Constitution proclaims that upon such assent being given to the Bill the Constitution shall *stand amended* in accordance with the terms of the Bill. Evidently the Parliament here is not making a law under the provisions of Part XI of the Constitution. Hence the Lists in Schedule VII of the Constitution do not come into play. The Amendment, on the assent to given by the President, *eo instante* (at that very instant) becomes a part of the Constitution. Brandies, J., in similar circumstances observed in the Supreme Court of United States:

"The proclamation by the Secretary certified that from official documents on file in the Department of State, it appeared that the proposed Amendment was ratified by the legislatures of 36 States, and that it 'has become valid to all intents and purposes as a *part* of the Constitution of the United States'."

And in a later case, Chief Justice Hughes held:

"The Court takes judicial notice of the fact that the ratification of the 21st Amendment of the Constitution of the United States, which repealed the 18th Amendment was consummated on December 5, 1933 . . . Upon the ratification of the 21st Amendment, the 18th Amendment at once became inoperative. Neither the Congress nor the Courts could give it continued vitality. The National Prohibition Act to the extent that its provisions rested upon the grant of authority to the Congress by the 18th Amendment, immediately fell with the withdrawal by the people of the essential constitutional support."

Hence no justiciable question arises when the President signified his assent to the Constitution (Twenty-Fourth Amendment) Act, 1971. It is political question simpliciter.

Speaking for the Supreme Court, White, J., observed very recently:

"We must remember that when the validity of an act of the Congress is drawn in question and a . . . serious doubt on constitutionality is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided."

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