



RULING OF THE CHAIR

SEEKING LEAVE OF THE HOUSE TO INTRODUCE A CONSTITUTION AMENDMENT BILL

This ruling flows as a consequence of the debate on interpretation of Rule 131 of the Rules of Procedure and Conduct of Business in the Senate, 2012, hereinafter called "The Rules, 2012" read with Article 239 of the Constitution, held in the sitting of the Senate on 31st May, 2021. Through this Ruling the question of interpretation is addressed.

Mr. Zaheer Ud Din Babar Awan, Adviser to the Prime Minister on Parliamentary Affairs, on a point of order raised the question on introduction of two Private Members' Constitution Amendment Bills on the said day. His argument was that the amendments to the Constitution and a simple legislation have different parameters i.e. to amend the Constitution, 2/3rd majority of the total membership of the House is required whereas the simple legislation can be made with majority of the members present and voting. He was of the view that in order to uphold the supremacy of the Constitution, the framers had given separate parameters for the constitution amendment and the simple legislation. His main argument was that when the Motions for consideration and passage of a Bill seeking amendment to the Constitution requires 2/3rd majority of the total membership of the House to be carried then there should be the requirement of 2/3rd majority of the total membership of the House for introduction of such Bills seeking amendment to the Constitution.

The Hon'ble Leader of the House, while taking forward the argument of the Adviser, was of the view that there must be a debate in the House to settle this legal question.

The Hon'ble Leader of the Opposition was of the view that such a legal question can be answered after hearing the jurists from both the sides.

After hearing the arguments from both sides at length, my ruling on this legal question is as under:-

Article 238 of the Constitution provides that the Constitution can be amended by an Act of Parliament (Majlis-e-Shoora). Article 239 of the Constitution provides in detail the procedure to move a Bill seeking an amendment to the Constitution which clearly provides that such Bill can be

originated in either House and shall be passed by the votes of not less than two-thirds of the total membership of the House.

Article 67 of the Constitution provides that subject to the Constitution, a House may make rules for regulating its procedure and the conduct of its business.

Adhering to the requirement of Article 67 of the Constitution and being conscious of the fact that these Rules, bearing the constitutional sanctity, are at a higher pedestal than other delegated legislation. The Rules of Procedure and Conduct of Business in the Senate were framed by the House, for the first time, in the year 1988 as previously the Senate was being regulated by the Rules which were framed by the President on 12th April, 1973 in pursuance of clause (2) of Article 67 of the Constitution. The 1988 Rules were repealed by the new Rules which were adopted on 8th March, 2012 and are still in effect with certain amendments from time to time.

Rule 131 of the Rules, 2012 deals with the Constitution Amendment Bills in addition to the provisions of rules 118 to 125, 128 and 129 *ibid*. Sub-rule (2) of Rule 131 clearly mentions that each clause or schedule, or clause or schedule as amended, as the case may be, shall be put to the vote of the Senate separately and shall form part of the Bill if it is passed by the votes of not less than two-thirds of the total membership of the Senate. Sub-rule (4) of Rule 131 provides that if the motion in respect of such Bill is that the Bill or as the case may be, the Bill as amended, be passed, then the motion shall be deemed to have been carried if it is passed by the votes of not less than two-thirds of the total membership of the Senate.

However, sub-rule (3) of Rule 131 provides that amendments to clauses or schedules shall be decided by a majority of members present and voting in the same manner as in the case of any other Bill. Now the question arises here that what was the wisdom and intent of the framers of these Rules that they have not put the restriction of 2/3rd majority of the total membership of the House for the decision for the amendment to be moved in a clause or schedule. Moreover, what was the intent of the legislators/framers of these Constitution and these Rules for not mentioning the requirement of 2/3rd majority of total membership of the House for seeking leave to introduce the Constitution Amendment Bill.

The intent of the legislators and the framers of the Constitution is very clear. Although, keeping in view the supremacy and sanctity of the Constitution they had put the requirement of 2/3rd of the majority of total membership of the House for making every clause and schedule as part of the Bill and for passing of the Bill but at the same time they had not snatched the right of an individual

legislator to float his proposal/idea in the form of introduction of a Constitution Amendment Bill or in the form of moving an amendment to a certain clause or schedule to a Constitution Amendment Bill. I am afraid that if the framers had put this requirement of $2/3^{\text{rd}}$ majority of total membership of the House even for seeking leave to introduce the Bill or to move an amendment to a clause or schedule of the Bill then the Constitution may not have been amended even once.

The introduction of a Bill is the first step towards the long constitutional/legislative journey of a Bill to become an Act of Parliament. A Bill after introduction passes through many stages where the same comes under extensive discussion and deliberation by all the stakeholders, which do not solely comprise the legislators. So the condition of $2/3^{\text{rd}}$ majority at this first step would amount to seizing the very basic right of a legislator. The putting forth of an idea by way of a Bill and open debate on the same cannot be barred by imposing such a restriction that most of the time becomes almost impossible to fulfill by a single member. Imposition of such restriction at the stage of seeking leave to introduce the Bill would deprive the members belonging to small parties in particular from their right as legislators to present their legislative ideas in the shape of Bills.


MUHAMMAD SABIQ SANJRANI
Chairman Senate

Dictated in Chamber
Announced in the House on 11th June, 2021
312th Session