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amendment to the Constitution. If a Bill is sought to be introduced under article 110, it is a Money Bill and is under the Constitution. Whenever such right is sought to be exercised even by the Government, as in the case of the Budget demands for grants, it must be sanctioned by the President, that is, any expenditure. For that, if a Bill is sought to be introduced here, it must equally have the recommendation of the President. All those acts are under the Constitution, which is the Constitution for the time being.

So far as this Bill is concerned, this is not under the Constitution, but it seeks to modify the Constitution. If the provisions in this Bill had infringed or invoked any of the items contemplated in article 110, there might be some force in the argument that a recommendation of the President may be necessary. As I see it, what is sought to be done is to give power to the Centre, that is, to the Union, to impose tax on sale of articles. That is removed from the State List. The authority or power to impose such taxes is given either to the one or the other. Either one should do it or the other should do it. That is all the point here.

Therefore, I do not find that this comes strictly within the mischief of article 110, and, therefore, no recommendation of the President is necessary.

The question is :

"That leave be granted to introduce a Bill further to amend the Constitution of India".

*The motion was adopted.*

**Shri M. C. Shah :** I introduce the Bill.

**TRAVANCORE-COCHIN APPROPRIATION (VOTE ON ACCOUNT) BILL**

**The Minister of Revenue and Civil Expenditure (Shri M. C. Shah) :** I beg to move :

"That the following amendment recommended by Rajya Sabha in the Bill to provide for the withdrawal of certain sums from and out of the Consolidated Fund of the State of Travancore-Cochin for the service of a part of the financial year 1956-57, be taken into consideration :

*New Clause 4.*

That at page 1, after clause 3, the following new clause be inserted :

'Repeal of Ordinance 4 of 1956 4. The Travancore-Cochin Appropriation (Vote on Account) Ordinance, 1956, is hereby repealed.'

**Mr. Speaker :** The hon. Minister will explain what exactly the matter is. The House may agree or disagree with him. Therefore, let him say what exactly the matter is.

**Shri M. C. Shah :** As the House is aware, the Travancore-Cochin Appropriation (Vote on Account) Bill was passed by this House on the 29th March 1956. At that time, the Rajya Sabha was not in session and the expenditure had to be incurred from the Consolidated Fund of Travancore-Cochin from 1-4-56. Therefore, under article 123(1) of the Constitution, the President promulgated an Ordinance authorising the withdrawal from the Consolidated Fund of Travancore-Cochin for the service of a part of the financial year. That Ordinance was laid on the Table of the Rajya Sabha when it assembled on the 23rd April 1956. That Ordinance can remain in force for six weeks from the date of the Houses of Parliament re-assemble. That date is to be considered from the date that the Rajya Sabha again met on the 23rd April 1956. Therefore, that Bill was presented to the Rajya Sabha. An amendment was moved by Government there that the Ordinance be repealed. That was accepted, and the Bill was returned by the Rajya Sabha.

The President can withdraw the Ordinance, but in view of the past practice, it was considered better to place the matter before both Houses of Parliament. Therefore, this Bill has now come before this House as returned by the Rajya Sabha with the amendment that the Ordinance be repealed.

**Mr. Speaker :** As the other House was not in session, it was necessary to promulgate an Ordinance. When that House re-assembled, it considered this matter. The Ordinance is no longer necessary. It is a formal affair.

The question is :

"That the following amendment recommended by Rajya Sabha in the Bill to provide for the withdrawal of certain sums from and out of the Consolidated Fund of State of Travancore-Cochin for the service of a part of the financial year 1956-57, be taken into consideration :

*New Clause 4*

That at page 1, after clause 3, the following new clause be inserted :

<p>4. The Travancore Cochin Appropriation (Vote on Account) Ordinance, 1956, is hereby repealed."</p>	<p>4. The Travancore Cochin Appropriation (Vote on Account) Ordinance, 1956, is hereby repealed."</p>
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*The motion was adopted.*

**An Hon. Member :** What about copies of the Bill?

**Mr. Speaker :** Whenever the agenda is distributed, hon. Members will kindly go to the counter and get copies of the papers mentioned therein.

**Shri M. C. Shah :** I may remind the House that this is an amendment recommended by Rajya Sabha.

I beg to move :

"That the amendment recommended by Rajya Sabha be agreed to."

**Mr. Speaker :** Motion moved :

"That the amendment recommended by Rajya Sabha be agreed to."

**Shri Sadhan Gupta** (Calcutta South-East) : This Ordinance apparently is for appropriation of certain funds for the expenses on account of the Travancore-Cochin State. This is a financial provision. The Ordinance would be a Money Bill under these circumstances, and I do not know how the Rajya Sabha can either repeal or make any provision regarding a Money Bill. If it is a Money Bill, the repeal has to be effected by this House. I therefore submit that the amendment should again be brought before this House in the form of a separate Bill.

**Shri M. C. Shah :** This is simply the recommendation of the Rajya Sabha to repeal the Ordinance, and I do not think there can be any objection to it. Otherwise, the President has got powers under article 123(2)(b) to withdraw the Ordinance.

**Shri Kamath** (Hoshangabad) : This Ordinance cannot be withdrawn by the Rajya Sabha.

**Shri Velayudhan** (Quilon cum Mavelikkara—Reserved Sch. Castes) : It must come here.

**Shri M. C. Shah :** According to past practice, we have thought it fit to place the matter before both Houses rather than advise the President to withdraw that Ordinance.

**Mr. Speaker :** Here, the relevant article is the article relating to the Appropriation Bills. Additional or excess grants are governed by article 115 and Vote on account and exceptional grants are governed by article 116.

So far as the repeal of the Ordinance is concerned, it is open to this House to do so. It is not denied. The only point that is urged is that this is a Money Bill and, therefore, the other House has no right either to pass a Money Bill or to withdraw it.

**Shri M. C. Shah :** If the Ordinance is kept intact, then, there will be two laws on the same subject.

**Mr. Speaker :** Even in a Money Bill, a recommendation can be made by the Upper House and I treat this as a recommendation.

**Shri S. S. More** (Sholapur) : May I make a submission, Sir? They can make a recommendation about a matter which has been introduced here and referred to them. But this amendment was not introduced here but was introduced there and whatever decision they may come to cannot be treated as a recommendation unless the Bill is re-introduced here.

**Mr. Speaker :** The position is this. Hon. Members would know that this House passed the Appropriation Bill at a time when the other House was not in session. An Appropriation Bill has to be assented to within 14 days; otherwise, it will lapse. Certain moneys had to be withdrawn. Under those circumstances, it was thought necessary that there should be an Ordinance. The Ordinance was issued. Later on, the Bill was passed by that House formally and all

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that had to be done has been done now. It is not a Bill of that House. The Ordinance should not be treated as a Bill of that House; it is the President's Ordinance and it has all the effect of validating this Appropriation Bill during the interregnum. Now, the repeal of the Ordinance was found necessary and they make the recommendation. Therefore, I do not find any force in the objection. At the time the Bill was introduced here, the Ordinance was not there. But the House can always take note of subsequent things. Shri More is aware that certain subsequent events are taken notice of in cases where those matters go to the very root of the case. Here, the Ordinance was promulgated for the purpose of doing something which the Rajya Sabha could have done had it been in session then. To avoid that difficulty, the Ordinance was passed. Subsequently, there was no need for the special law to continue when the original Bill was passed. Originally, it was not there.

**Shri S. S. More :** The Appropriation Bill was introduced here and passed by this House. I quite appreciate the difficulties due to which that House did not apply its mind under the relevant provisions, and an Ordinance had to be promulgated. What is the effect of the Ordinance with respect to the original Appropriation Bill that we passed here?

**Mr. Speaker :** The Appropriation Bill is there. The Ordinance only enabled whatever moneys had to be drawn. It is not as if the Ordinance substitutes the decision of the other House or does with the jurisdiction of the other House.

**Shri S. S. More :** My submission for your consideration is this. Ordinance is also a method of legislation but not by the Legislature. It is by the President. When the President legislated effectively, the Bill which was passed here became infructuous and, therefore, if the Bill has to be replaced by a competent statute, then the Bill will have to be re-introduced here. It will have to pass through the whole gamut.

**The Minister of Legal Affairs (Shri Pataskar) :** The facts are these. An Appropriation Bill was introduced in this House and it was passed by this house. But, before it could be passed by the other House, that House had adjourned. So naturally, we could not say that the Bill had become an Act. Under those

circumstances, an Ordinance had to be issued and that was done; and certain expenditure was incurred. After that, this Bill was passed by the other House and has now become an Act.

**Some Hon. Members :** No; no.

**Shri Pataskar :** That is my information. You cannot have on the statute-book an Act as well as an Ordinance on the same subject. Therefore, they have recommended that this Ordinance be repealed.

**Shri S. S. More :** It is a point to which I would request you to give your deepest consideration. The Minister of Legal Affairs does not seem to have taken this fact into account. Two things cannot be pending at the same time. We passed an Appropriation Bill. For certain reasons, owing to certain difficulties over which we had no control, the President had to issue an Ordinance. The Ordinance is legislation. It is full-baked legislation while the other one was half-finished legislation. The position reduces itself to that. My submission is that the Ordinance being a full and effective piece of legislation, it effaced the half-finished Appropriation Bill which we had passed and which had not gone through all the necessary formalities. If it has been effaced as I say, then, no notice can be taken of a half-finished piece of legislation. All the previous proceedings terminated by the issue of the Ordinance. Now, in order to replace that Ordinance, we must pass another competent Bill. For that purpose, another Bill will have to be introduced in this House and the whole procedure has to be gone through again; and, then only can the Ordinance be replaced.

The Minister of Legal Affairs seems to suggest that there was a vacuum for some time without any Appropriation Bill and during this interregnum the Ordinance stepped in and the vacuum disappeared the moment the other House took up the Bill and the Ordinance also automatically lapsed, and we went through the further stages. My submission is that you cannot keep certain things hanging and ask the President to legislate. The Ordinance was effective legislation and the effect of that legislation is to wipe out, as far as we are concerned, whatever measure we had passed, which remained incomplete due to certain difficulties.

**Shri Kamath :** May I draw your attention to article 123?

**Shri Pataskar :** There is some amount of confusion so far as facts are concerned. There was an Appropriation Bill which was passed by this House. But, it could not become law unless it was passed by the other House as well. So, an Ordinance had to be issued by the President. It was issued and there is no doubt about the legality of that. After the Ordinance was issued, the other process was continued by which the Bill was passed by that other House because a Bill has to be passed by both Houses. Naturally, when the Bill was taken up and passed by the other House when it met, it became an Act. Now, there cannot be an Act as well as an Ordinance. In view of the fact that there is already an Act—a bill passed by both Houses—the recommendation of the other House is that the Ordinance may be repealed or withdrawn.

The argument of my hon. friend comes to this that because an Ordinance was issued all the proceedings that were gone through in this House with regard to the Appropriation Bill have become nullified. But, that is not the correct position. When the Bill had not been passed by both Houses, it did not become a legal statute and therefore, it was open to the President to issue the Ordinance. It is equally open for us to complete the process which was started here.

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**Shri Kamath :** Article 123 of the Constitution is clear, categorical and imperative. It says that such ordinances shall be laid before both Houses of Parliament and not in one House. It must come here, whether it was made subsequently or earlier. Sub-clause (2) reads:

“An Ordinance promulgated under this article shall have the same force and effect as an Act of Parliament, but...” This ‘but’ is very important—...every such ordinance shall be laid before both Houses of Parliament...”

So, it is not either this House or the other House. It should come here also.

**Shri Gadgil (Poona Central) :** Since this seems to be a very important point, you may hold it over and, if necessary, request the Attorney-General to elucidate the point before the House.

**Mr. Speaker :** May I know if the Ordinance has been laid on the Table of this House?

**Shri M. C. Shah :** It was laid on the Table of the Rajya Sabha.

**Mr. Speaker :** From the *Bulletin* issued on the 14th April 1956, I find that the Travancore-Cochin Appropriation (Vote on Account) Ordinance, 1956 promulgated by the President on 31-3-56 was laid on the Table of the House under the provision of article 123 (2) of the Constitution.

Now, what happened is this. Soon after the Budget Demands are granted, the Appropriation Bill has to be introduced and passed by this House and sent to the other House. The other House may send some recommendation. It is open to this House to accept or not to accept it. Then the Bill will become law. If it does not transmit its recommendation within fifteen days, even then the Bill will become law. Unless the Appropriation Bill is passed, no money could be paid or utilised even though the Demands for Grants might have been passed. That is the situation.

The Demands for Grants were passed by this House. The Appropriation Bill could not be passed by both the Houses. Therefore, there is no Appropriation Bill. Government cannot expend any money unless the Appropriation Bill is passed. Under those circumstances, the powers given under article 123 were invoked by the President to promulgate an Ordinance which took the place of the Appropriation Bill, empowering the Government to spend moneys from the Consolidated Fund in accordance with what had been passed by the Budget Demands. They were granted by this House.

Whenever an Ordinance is promulgated, it has to be laid on the Table of both the Houses. So, it was laid on the Table of this House. We are now considering the Appropriation Bill. It is open to this House to accept it or reject it; it may pass a Bill agreeing with the provisions contained therein and giving regular validity to those provisions, or it may not.

Now, the Ordinance was placed on the Table of both the Houses. The other House considered it and has made a recommendation. It is for us to accept it. Or, we may say that we are

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not going to pass this Bill. If we refuse to pass a Bill, then the concerned Ordinance will be there for some time and then evaporate. The provisions of the Bill and the Ordinance are the same here. There is no want of jurisdiction. The other House has only recommended a certain thing. It is for us to accept it or reject it. Article 123 (2) (a) says that every such Ordinance shall be laid before both Houses of Parliament and shall cease to operate at the expiration of six weeks from the reassembly of Parliament, or, if before the expiration of that period resolutions disapproving it are passed by both Houses, upon the passing of the second of those resolutions. Now, that House has accepted it, and this House may accept it or may not accept it. I am not able to see any other difficulty.

**Shri S. S. More :** My point is this.

**Mr. Speaker :** Order, order. How long am I to hear these things? Hon. Members must themselves make up their minds. I find it very embarrassing. I allowed hon. Members to go on exchanging things regarding this matter. I cannot say that any particular ruling will at any time give cent. per cent. satisfaction to every hon. Member. There should be an end to it. How can I go on hearing the same thing? They should be reasonable. Under these circumstances, my ruling is that there is nothing objectionable here. *(Interruptions.)*

**Shri S. S. More :** We are working under a written Constitution and it is the democratic privilege given to us to see that the Constitution is respected. We are not out to waste the time of the House; we are as anxious as you are not to do so.

**Mr. Speaker :** There is no misunderstanding on that score.

**Shri S. S. More :** My suggestion is this. An Ordinance has been promulgated; it has the force of an Act passed by the legislature. It has been laid on the Table of the House. Then, can we take into consideration the half-action which preceded the laying on the Table of the Ordinance? My submission is that the Appropriation Bill which was passed by this House before this Ordinance was laid on the Table is not valid.

**Mr. Speaker :** So long as a Bill has not been passed, it is pending. If the Bill is not pending in this House, we will assume, it is still pending in the Rajya

Sabha. So, we have not finally disposed of this. When a Bill is pending, an Ordinance has been issued. Under those circumstances, there is not any technical objection. We are not going into the other matter. It is open to the House to pass a resolution approving the Ordinance. So, I think there is no objection, either of substance or of law. I shall now put the motion to the House.

The question is :

“That the amendment recommended by Rajya Sabha be agreed to.”

*The motion was adopted.*

#### HINDU SUCCESSION BILL *Contd.*

**Mr. Speaker :** The House will now take up further clause-by-clause consideration of the Bill to amend and codify the law relating to intestate succession among Hindus, as passed by Rajya Sabha. Out of 20 hours allotted for this, 5 hours have already been availed of and a balance of 15 hours, remains.

In this connection I would like to make a suggestion and know the views of the House. There are a number of clauses to this Bill. Some clauses are not so important as the other clauses. There are a large number of amendments to the clauses which have been tabled by hon. members and a larger number of amendments have been tabled to particular clauses than to other clauses. We have been going on without any particular scheme. In many cases, whenever Bills of this kind came up, the Business Advisory Committee used to sit and allot time for particular clauses or group of clauses out of the total time allotted for the clause-by-clause consideration. That has not been done in this. Therefore, if it is the will of the House and the desire of hon. Members, while other hon. Members are speaking, some of the hon. Members who have tabled amendments and who are taking interest in this Bill, may sit together and decide which are the clauses or group of clauses for which more time has to be allotted and let me know. In that case I shall only be too willing, in accordance with the wishes of the House, to stick to that allocation. Otherwise, it will go on as it is.