

**RESULT OF ELECTION TO THE
CENTRAL ADVISORY COMMITTEE OF
THE NATIONAL CADET CORPS**

MR. CHAIRMAN: Dr. H. N. Kunzru being the only candidate nominated for election to the Central Advisory-Committee of the National Cadet Corps, I declare him to be duly elected to be a member of the said Committee.

**MOTION FOR ELECTION TO THE
NATIONAL FOOD AND AGRICULTURE
ORGANISATION LIAISON
COMMITTEE AND PROGRAMME
THEREOF**

THE DEPUTY MINISTER OF AGRICULTURE (SHRI M. V. KRISHNAPPA): Sir, I beg to move the following motion: —

"That in pursuance of Resolution No. F. 16-72/47-Policy, dated the 8th November, 1948, of the Ministry of Agriculture (now Food and Agriculture), as subsequently amended, this House do proceed to elect, in such manner as the Chairman may direct, one member from among themselves to be a member of the National Food and Agriculture Organisation Liaison Committee."

MR. CHAIRMAN: The question is:

"That in pursuance of Resolution No. F. 16-72/47-Policy, dated the 8th November, 1948, of the Ministry of Agriculture (now Food and Agriculture), as subsequently amended, this House do proceed to elect, in such manner as the Chairman may direct one member from among themselves to be a Member of the National Food and Agriculture Organisation Liaison Committee."

The motion was adopted.

MR. CHAIRMAN: I have to inform Members that the following dates have

been fixed for receiving nominations and for holding election, if necessary, to the National Food and Agriculture Organisation Liaison Committee:—

1. Number of members to be elected. One.
2. Last date and time for receiving nominations. 31st August, 1959 (up to 3 P.M.)
3. Last date and time for withdrawal of candidature. 1st September, 1959 (up to 3 P.M.)
4. Date and time of election. 3rd September, 1959 (between 3 P.M. and 5 P.M.)
5. Place of election. Room No. 28, Ground Floor, Parliament House, New Delhi.
6. Method of election. Proportional representation by means of the single transferable vote.

**THE INTERNATIONAL MONETARY
FUND AND BANK (AMENDMENT)
BILL, 1959—continued**

SHRI AMOLAKH CHAND (Uttar Pradesh): Sir, if you will permit me, I may recapitulate the constitutional point which I raised day before yesterday evening when the House was rising so that the Law Minister may answer that. If you permit, I may say what the points are to which he may reply and the House may be able to follow what the objection was and what it should do.

Now in the year 1945 when the International Monetary Fund and Bank Ordinance was promulgated, there could be three kinds of legislation by the Centre:

- (1) Acts of the Indian Legislature;
- (2) Acts made by the Governor General under section 77B of the Government of India Act;
- (3) Ordinance promulgated by the Governor General under section 72 of the Government of India Act.

[Shri Amolakh Chand.] This Ordinance which is sought to be amended by this Bill falls under this last category, that is, an Ordinance promulgated by the Governor-General under the India and Burma (Emergency Provisions) Act. It was promulgated by the Governor-General on the 24th December 1945 as an Ordinance not of limited duration by virtue of the provisions of the India and Burma (Emergency Provisions) Act. So, this Parliament can make any changes under article 372 of the Constitution. This Parliament can make any changes in the Ordinance as it can do in the case of an Act of the Legislature. Now, it has been proposed to convert this Ordinance into an Act although it is not necessary to do so for the present purpose of the Ministry of Finance. The proper course for converting the Ordinance into an Act would have been to re-enact the provisions of the Ordinance into an Act of Parliament of the year 1959. But the Government have adopted a novel procedure. It is proposed to amend the preamble and the enacting formula of the Ordinance and to substitute the word 'Act' for the word 'Ordinance' wherever it occurs. The effect of this is that the Ordinance will now be known as the International Monetary Fund and Bank Act, 1945. It has already been pointed out that in the year 1945 an Act could be enacted by the Indian Legislature or by the Governor-General under section 67B of the Government of India Act. Obviously, this Ordinance is not going to be treated as an Act of the Governor-General under the said section 67B, but the intention is that it will be known as an Act of the Indian Legislature passed in the year 1945. Now, the question is, can we call it an Act of the Indian Legislature passed in the year 1945 although it was not actually passed by the two Houses and assented to by the Governor-General. I could have understood if a provision was made in the Bill that the Ordinance will be deemed to be an Act of the Indian Legislature passed in the year 1945, which is also not being proposed.

DR. RAGHUBIR SINH (Madhya Pradesh):
How can that be done?

SHRI AMOLAKH CHAND: Parliament is sovereign. It is proposed to substitute for the enacting formula of the Ordinance the words 'Be it enacted as follows'. It does not say that the Ordinance would be deemed to have been enacted. We cannot turn the Ordinance into an Act of the Indian Legislature of the year 1945 by merely changing the enacting formula as stated above and substituting the word 'Act' for the word 'Ordinance'. There is no precedent for this kind of legislation. It is a backdoor process of obtaining the seal of Parliament for re-enacting the provisions of the Ordinance. This procedure, if adopted, will deprive the House of the opportunity of considering the entire provisions of the Ordinance and taking a decision whether the Ordinance should be included in the Statute Book as an Act of the Legislature. I think we should not therefore set up a bad precedent like this. I am further doubtful if this process of converting the Ordinance into an Act will have the effect of making it a Central Act as defined in the General Clauses Act. Now, there is a definition in the General Clauses Act in section 3(7) as to what is supposed to be a Central Act. A 'Central Act' is defined in the General Clauses Act as follows:

"A 'Central Act' shall mean an Act of Parliament and shall include:

(a) an Act of the Dominion Legislature or of the Indian Legislature passed before the commencement of the Constitution".

Therefore this will not come under (a) of the above section. Then (b) says:

"(b) an Act made before such commencement by the Governor-General in Council or the Governor-General acting in a legislative capacity."

Therefore, I may further point out that the preamble of the Ordinance after it is amended as proposed would

fee incomplete as it is sought to take out from the preamble the paragraph which previously recited that the enactment is intended to implement the I provisions of the agreement, in extra-ordinary circumstances.

I would, therefore, suggest, as I have just given notice of moving three amendments, that clauses 2 and 3 of the Bill should be omitted and clause 4 should be amended as suggested.

Thank you very much, Sir.

DR. RAGHUBIR SINH: Sir, I fully endorse what Shri Amolakh Chand said just now and I would also like to know why the need has arisen now of converting this Ordinance into an Act. I believe there are some other Ordinances also and there may be need for converting those Ordinances also into Acts. Before we consider whether this is the correct process for changing such Ordinances into Acts, we would like to know from the hon. Law Minister why this need has arisen now and whether this is a step which "would be right from the constitutional point of view, and whether we would be creating a correct constitutional precedent. I hope the hon. Law Minister will clarify these points.

SHRI BHUPESH GUPTA (West Bengal): Sir, ...

MR. CHAIRMAN: Please be very brief.

SHRI BHUPESH GUPTA: Sir, it is a legal matter and a difficult one ... I

THE MINISTER OF LAW (SHRI A. K. 'SEN): You are a lawyer.

SHRI BHUPESH GUPTA: I would, therefore, like this discussion to be suspended for some time so that the Law Minister who was not present, I believe, the day before yesterday when this House debated this matter ...

MR. CHAIRMAN: He has read the proceedings.

SHRI BHUPESH GUPTA: He has read the proceedings? But he did not hear me, of course.

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But Sir, this here raises an important constitutional question. Here is an Ordinance before us. This Ordinance issued by the British Governor-General in 1945 was issued at a time when he had assumed legislative power to himself. I do not know what happened afterwards. Obviously, it remained as an Ordinance. After that two Parliaments came and also a Provisional Parliament was there. It seems from the Statement attached to this Bill that this particular Ordinance never went to any Parliament or to the Provisional Parliament, in order to be endorsed or to be dealt with in whatever manner was deemed fit. It was not endorsed by Parliament. And now it has come before this Parliament.

First of all, I raise the point whether it is right, whether this is the right thing to do, whether constitutionally this Ordinance is valid, an Ordinance which under the Constitution is supposed to be laid on the Table of the House, irrespective of its origin—I am not going into that question now—as soon as the House meets, and which otherwise lapses. Why was not this Ordinance laid on the Table of the House as soon as Parliament met at that time? Then, not having done that, I would like to know whether the Government could claim that this was the law in force. Normally, following the analogy of Ordinances under the Constitution, this particular Ordinance should have lapsed, not having been placed on the Table of the House, not having come before Parliament. Somehow or the other, this was not done and now it is sought to enact it into a law. That is my point number one to which I want a proper answer.

Probably, it will be said by some kind of refinement of law that it has been adopted as a law, and certain agreements might be referred to to show that some of the Ordinances and other things under the old British regime, prior to the transfer of power,

[Shri Bhupesh Gupta.] became something like an Act. But this is not an Act, It is still described here as an Ordinance, and now we are amending an Ordinance. And this leads me on to my second point.

My second point is whether we can at all amend an Ordinance in this manner, without going into the whole thing, the whole Ordinance. When an Ordinance is placed before the House we are entitled to accept or reject the whole thing, and of course, simultaneously, we may be called upon to amend certain provisions of the particular Ordinance while making the law or while* considering the Ordinance in Parliament. Therefore, the whole thing seems to be a little strange for us here.

SHRI P. N. SAPRU (Uttar Pradesh): The Governor-General was a parallel legislative authority in those days.

SHRI BHUPESH GUPTA: Pardon?

SHRI P. N. SAPRU: The Governor-General or the Governor was a parallel legislative authority in those days.

SHRI BHUPESH GUPTA: Well, Sir, he was parallel many things then. I don't know whether this gentleman was parallel this or horizontal that. But had he the capacity to enact an Act of Parliament? We know that under the Government of India Act, the Governor or the Governor-General, could assume • legislative authority, and they used to exercise such authority by means of issuing Ordinances. Here also this is an Ordinance. It is not an Act. And how is it that suddenly this Ordinance became an Act and as if it is an Act we are proceeding to amend it? Who passed it, if at all it was an Act? These are very intricate questions for us who are not very conversant with the law as the hon. Law Minister is.' It is very difficult and I think a proper answer should be given. Otherwise we would be committing an improper thing. Why did not the Government come with a Bill of its own, forgetting

this Ordinance, a *de-novo* Bill of its own? And if they wanted, they could have given it retrospective effect also. But it seems this has the effect of law and it has come to us and therefore, somehow or the other we must pass it. That position I cannot understand.

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Besides, this is the first time that this has come to this House before us. We should be entitled to discuss the whole thing and it is not as if we are conditioned by the fact that it was once a law and we have to pass it, just amending it. I cannot accept this position. I am sure the Law Minister will make a fairly long speech to explain these points. I do hope the position will be made absolutely clear. If it is not made clear, I would request that its further discussion may be deferred.

MR. CHAIRMAN: Diwan Chaman Lall.

DIWAN CHAMAN LALL (Punjab): Sir, I am thankful to you for giving me this opportunity to say a few words before the Law Minister gives his explanation of the charges made by Mr. Amolakh Chand and those made—'some correctly and some incorrectly—by my hon. friend the Leader of the Opposition. Mr. Gupta apparently is forgetting that this is not an Ordinance of the type that he is talking about, that this is an Ordinance whose validity continues beyond the period of six months, under article 372 of the Constitution. The law was of a different kind under the old Act. It was an Ordinance promulgated by the Governor-General in the shape of an Act or an Act passed by the Legislature, and so on and so forth. All that he will find in sections of the old Government of India Act. This particular measure is valid until now, until today or until such time as it is amended by Parliament, and it continues to be valid under article • 372 of the Constitution. I hope my hon. friend has got a copy of the Constitution before him.

MR. CHAIRMAN: He does not look into ancient history.

SHRI BHUPESH GUPTA: Sir, I take the hon. Member's word, I never challenge his word.

DIWAJ* CH AMAN LALL- I am very grateful to my hon. friend, but it is not my word, it is the word of the Constitution. Therefore, one cannot challenge the validity of the Ordinance as it stands. What has been challenged is something much more. What is being challenged is the procedure adopted in order to convert the Ordinance into an Act, which cannot be done in the manner in which it is sought to be done. That is the basic point at issue.

DR. RAGHUBIR SINH: That is what I said.

DIWAN CHAM AN LALL: Yes, I understood my hon. friend to say that. I am only trying to repeat it in simpler language so that everybody might understand what the point at issue is. There is no doubt about it. But what will be the result of doing what we are trying to do? The result would be what Mr. Amolakh Chand quite clearly pointed out by reading a statement regarding this matter. It is a very complicated matter and therefore, I am very glad he read out the statement. What would happen is this. If we had said that the Ordinance of 1945 may be deemed to be an Act of the Legislature, then we would have been perfectly within our right in going ahead with the legislation as it is before the House. But, not having said that, we cannot convert an Ordinance into an Act of the Legislature of 1945. It is therefore that Mr Amolakh Chand has given these two amendments to delete these two particular clauses. I should have thought that the time has come, as I have said repeatedly before, for the Law Ministry to appoint competent draftsmen to deal with legislation so that no lacuna of any kind is left. I have no doubt that there are able men in charge of drafting in the

Ministry but I think the Ministry needs to reinforce its staff in regard to competent draftsmanship by people who are experienced in this matter, let us say, people who have got some experience in the House of Commons in regard to legislation of this kind. It is necessary. This thing would not have happened if due care and attention had been paid to this particular aspect of the matter.

Therefore, I submit that my hon. friend, the Law Minister, may be pleased to withdraw this Bill and bring in another Bill without any reference to the Ordinance.

SHRI S. V. KRISHNAMOORTHY RAO (Mysore): Mr. Chairman, I was in the Chair when this question cropped up day before yesterday. I agree with my hon. friend, Shri Amolakh Chand, in regard to the point he has raised. There is every force in it. In fact, this ordinance is an Ordinance of unlimited duration. You can continue it as an Ordinance after accepting the two amendments of Mr. Amolakh Chand. The Ordinance can be converted into an enactment only by an Act of Parliament. I concede that under article 372 of the Constitution, this Parliament has every power to re-enact it as an Act of this Parliament but we cannot re-enact it as an Act of a Legislature which existed in 1945. That Legislature did not enact this as an Act but this was promulgated as an Ordinance by the Governor-General. The Law Minister may say that this is only a technical objection but I am afraid, Sir, that this is not a technical objection. I fear this has got great potentialities of mischief because we are dealing with a Money Bill and as mentioned by the mover of the Bill, we borrow money both for the public and private undertakings. Suppose some party goes to the Supreme Court or any court of justice and says that this Act is *ultra vires*, then it will involve the society and the Government in very heavy financial losses. For this, I quote no

[Shri S. V. Krishnamoorthy Rao.]

less an authority than Mr. Herbert Morrison. He says:

"I have had a fairly long experience as a Minister, both in preparing and piloting Bills through Parliament and, as Leader of the House of Commons, in organizing and time-tableing the legislative programme. It is profoundly to be desired that a finished Act of Parliament should be word-perfect. For, if mistakes are made, the Government may be involved in administrative embarrassment or confusion or, worse, the Government, and indeed the community, may be placed in grave difficulties as a result of legally correct but unexpected and disturbing decisions of the Courts of Law."

Legally, I am of opinion this is not correct. It is incorrect and it is unconstitutional. This matter may go before a court of Law. We do not know but it may go to a court of law and the Government of India may be involved in very heavy losses. I feel that Parliament must do the correct thing and the only correct thing that I can think of is to accept the two amendments and continue this measure as an Ordinance. If they want to convert this measure into an Act, then the whole thing will have to be re-enacted as an Act of this Parliament and not of the Legislature that existed in 1945.

I fully support the view taken by Mr. Amoiakh Chand.

SHRI A. K. SEN: Mr. Chairman, may I start with an appreciation of the able exposition of the difficulties dealt with by Mr. Bhupesh Gupta. Though he says he is not a lawyer, he has done it very ably but I am afraid, Sir, that the points on which he has employed his arguments do not appear to be of much substance as I shall explain in a moment. It appears . . .

SHRI V. K. DHAGE (Bombay): The main objection is that of Mr. Amoiakh Chand.

SHRI A. K. SEN: I am answering Mr. Bhupesh Gupta.

MR. CHAIRMAN: He comes from the same Bar.

SHRI A. K. SEN: I am entitled to choose to answer Mr. Bhupesh Gupta first and then take the other.

This Ordinance was promulgated under section 72 of the Government of India Act, 1935, which empowered the then Viceroy to legislate by means of Ordinance after the declaration of an emergency, as defined in the Government of India Act. Now, this was one of the measures which the Viceroy enacted as an Ordinance in 1945. The Government of India Act, 1935, provided that such Ordinances would expire within six months after the emergency period was over. There was an official declaration, you remember, Sir, some time in September, 1945, which extended the emergency to about the end of December, 1945, or may be a little earlier than that. I forget the exact date. This Ordinance should have expired, if nothing happened in the meantime to continue it, at the end of the emergency period which was, say, 31st December, 1945. This was not the only legislative measure passed by the Viceroy as a measure of emergency. There were many others which were intended to cover subjects which were more or less of a permanent nature and, therefore, it was thought desirable that this, like others, should not be allowed to expire but must necessarily continue even after the expiration of the emergency. That is why a Parliamentary Act, called the Indian and Burma (Emergency Provisions) Act (3 and 4 Geo. VI, Chap. 33) was passed because the Government of India Act, which was a Parliamentary Act, had fixed the period of the currency of these measures as co-extensive with the period of the emergency. Therefore, if it was to continue beyond the emergency, a Parliamentary Act was necessary to give it permanency. By this Parliamentary Act, all ordinances in force at the time of that Act, including this one, were given permanent leases of life and that is the reason why this particular Ordinance, though

it was originally born as an Ordinance i to expire—within six months of the j end of the emergency, became a per- manent measure and continues as an ' Ordinance to be in force now, first of all by reason of the Independence Act j of 1947 as a law in force before the 15th of August, 1947 and then, i after the Constitution, by virtue of article 372 of the Constitution which continues ispo facto as valid laws all i laws which were in force at the date of the commencement of the Constitu- I tion. This, therefore, was continued after the 26th of January, 1950, as a permanent legislative measure. Whatever you may do or feel about it, it is a permanent law now on the Statute Book and it can only be repealed by another Parliamentary Act. That is the position. It is a permanent law though it is called an Ordinance.

SHRI AMOLAKH CHAND: That is admitted.

MR. CHAIRMAN: Nobody has questioned the validity of the Ordinance. It is a permanent legislative measure but still it is an Ordinance.

SHRI A. K. SEN: It is not an Ordinance but it is called an Ordinance.

MR. CHAIRMAN: It goes under the name of an Ordinance.

SHRI A. K. SEN: It is an appellation which it bears. That is all. If Parliament so chooses, that appellation may be taken away and some other appellation may be given to it.

MR. CHAIRMAN: That is what they want.

DR. RAGHUBIR SINH: It is still called an Ordinance.

RAJKUMARI AMRIT KAUR (Punjab) : I only want to know why this thing is still called an Ordinance.

SHRI A. K. SEN: Because the Parliamentary Act chose to call it an Ordinance.

SHRI BHUPESH GUPTA: I want to ask one question, Sir. The hon. Minister said that this is an appellation and that it could be taken away. Is it possible for me to call this measure as, shall we say, "The International Monetary Fund and Bank (Amendment) Ordinance, 1959"? We do not pass Ordinances here. We pass only Acts.

SHRI A. K. SEN: I will answer that later on. Let me go step by step.

[MR. DEPUTY CHAIRMAN in the Chair.]

Now, Sir, all laws which were permanently in force before 1950, may be either under the General Clauses Act or under any other law, may have been described as Acts. Let us take the General Clauses Act.

SHRI V. K. DHAGE: Sir, there is one difficulty in my mind. I want to rise on a point of order.

MR. DEPUTY CHAIRMAN: Let him finish.

SHRI V. K. DHAGE: But this is something very important. You, as a Member of the House, expressed your opinion with regard to this measure and that opinion was that the Government should withdraw this measure.. Now, you have occupied the Chair . . .

MR. DEPUTY CHAIRMAN: I did not say, withdraw the measure.

SHRI BHUPESH GUPTA: You said, accept the amendment; you questioned the Government action.

SHRI V. K. DHAGE: You expressed certain opinion with regard to this measure. I may not say what that opinion is. Now, if your opinion is contradicted or something happens here, will you be able to give any other ruling in the matter except what you now expressed as your opinion?

MR. DEPUTY CHAIRMAN: My opinion is not a ruling.

SHRI V. K. DHAGE: May not be a ruling; but you may have to change your opinion as Deputy Chairman.

SHRI AMOLAKH CHAND: Why? Any hon. Member can change his views after hearing the other side, and the Chair is not debarred from that.

SHRI V. K. DHAGE: I think to my mind it is rather an awkward situation, so far as I am able to see. Therefore, I would like to know from you whether it would be proper in the circumstances for you to continue to occupy the Chair when this matter is being discussed.

MR. DEPUTY CHAIRMAN: Anyway, I do not see anything awkward.

SHRI BHUPESH GUPTA: On a point of order, it is very embarrassing.

MR. DEPUTY CHAIRMAN: I don't feel any embarrassment.

SHRI BHUPESH GUPTA: You are becoming a judge in your own case by sitting there. You have expressed an opinion and what is that opinion?

MR. DEPUTY CHAIRMAN: You may or may not accept it.

SHRI BHUPESH GUPTA: That is a different matter.

SHRI JASWANT SINGH (Rajasthan) : He may change his opinion.

SHRI BHUPESH GUPTA: Do you think he changes his opinion as people change their clothes?

SHRI JASWANT SINGH: After hearing the other party, he may.

SHRI BHUPESH GUPTA: Sir, you understand the position. You have gone there. We may ask you at some stage after listening to the speeches of the Law Minister for a ruling. We ask a ruling on certain grounds and we shall adopt the same grounds as you have given as a Member of this House from this seat. Now, I do not think that if these grounds are given by us or adopted by us from this place when you are there, it will be open to you to arrive at some other

conclusion than what you had arrived at just now. It is a very peculiar position. Therefore, I suggest that you may call a Vice-Chairman to occupy the Chair. (*Interruptions*). I would like you to stand here and argue along with us our case.

MR. DEPUTY CHAIRMAN: Order, order. There is no point of order.

SHRI JASPAT ROY KAPOOR (Uttar Pradesh): May I submit, Sir, that though there may not be a point of order strictly speaking, you may consider whether it is not a point of propriety? It may not be technically a point of order.

SHRI BHUPESH GUPTA: We have full faith in you.

SHRI JASPAT ROY KAPOOR: It may be absolutely legal for you to continue to conduct the proceedings as Deputy Chairman, but would it not be better, more advisable and more proper that on an occasion like this . . .

MR. DEPUTY CHAIRMAN: There is absolutely no embarrassment.

SHRI BHUPESH GUPTA: You are not embarrassed?

SHRI JASPAT ROY KAPOOR: . . . if you are pleased to direct somebody out of the panel of Vice-Chairmen to preside on this occasion? Otherwise . . .

MR. DEPUTY CHAIRMAN: If at all, that question comes up only when there is equality of votes.

SHRI BHUPESH GUPTA: No, Sir. Again on a point of order. We are not asking for votes. We may ask for a ruling and a ruling is not based on the votes of the House.

MR. DEPUTY CHAIRMAN: There is no point of order. Please continue, Mr. Sen.

SHRI A. K. SEN: Sir, let us see whether it is not an Act. Let us take section 3 of the General Clauses Act which has cited by my hon. friend, Mr. Amolakh Chand.

Section 3(7) says:

"Central Act shall mean an Act of Parliament and shall include—

(a) An Act of the Dominion Legislature or of the Indian Legislature passed before the commencement of the Constitution; and

(b) An Act made before such commencement by the Governor-General in Council or the Governor-General acting in a legislative capacity."

Now, it is not strictly an Act when the Governor-General acts in a legislative capacity. He issues an Ordinance.

MR. DEPUTY CHAIRMAN: No; there are certain Acts.

DIWAN CHAMAN LALL: The Governor-General can pass an Ordinance and the Governor-General can also pass an Act in his legislative capacity. And this is an Ordinance and not an Act.

SHRI V. K. DHAGE: He merely means to say, what is in a name?

SHRI AMOLAKH CHAND: Sir, when I quoted this section . . .

MR. DEPUTY CHAIRMAN: Order, order. Let him continue.

SHRI A. K. SEN: There are two parts there. The first part of clause (b) says, 'An Act made before such commencement by the Governor-General in Council'. The second part says: 'or the Governor-General acting in a legislative capacity'. The first portion refers to Acts made by the Governor-General in Council before the commencement of the Constitution and that is what my friend, Diwan Chaman Lall, has in mind. The second portion which says 'or the Governor-General acting in a legislative capacity' must include the power to legislate by Ordinance.

DR. RAGHUBIR SINH: No, Sir. I do not think so.

SHRI A. K. SEN: The hon. Member may not think so but the Privy Council has stated on numerous occasions that the Viceroy or the Governor-General actually legislates when he issues an Ordinance.

DR. RAGHUBIR SINH: He legislates but does not enact.

SHRI A. K. SEN: The hon. Member may not agree. I am only explaining what the position in law is. And fortunately the matter is beyond doubt because the Governor-General really legislates when he issues an Ordinance.

DR. RAGHUBIR SINH: He legislates but does not enact.

MR. DEPUTY CHAIRMAN: You please read section 30 of the Act. Where was the necessity to include section 30 if what you say is correct?

DIWAN CHAMAN LALL: Section 30 says:

"In this Act the expression 'Central Act' wherever it occurs except in section 5, and the word 'Act' in clauses (9) (13) (25) (40) (43) (52) and (54) of section 3 and in section 25 shall be deemed to include an ordinance made and promulgated by the Governor-General . . ."

SHRI A. K. SEN: That actually helps my argument because here it is said that it shall be deemed to include an Ordinance. That means it is open for Parliament to say (*Interruptions*). Suppose we include a new provision . . .

MR. DEPUTY CHAIRMAN: There is a specific provision for Ordinance. Where was the need for that?

SHRI A. K. SEN: That is what I am saying. It is open for Parliament to choose to call it as an Ordinance or as an Act if it chooses to do so. That is the position if it is a question of competence. If it is a question of propriety, it is a different matter altogether. I can understand that if it is a matter of propriety, it may be

[Shri A. K. Sen.] questioned. But now I am answering the question of competence.

MR. DEPUTY CHAIRMAN: Competence, nobody questions.

SHRI A. K. SEN: It was questioned. Mr. Bhupesh Gupta himself said that we cannot call it an Ordinance. (*Interruptions*) I can understand your point of view that it is not really proper to do so . . .

DR. RAGHUBIR SINH: That is what I said.

MR. DEPUTY CHAIRMAN: Order, order.

SHRI A. K. SEN: The hon. Member should have a little patience and hear me and then I shall be ready to answer all the doubts that he may feel' about it. The point is the question resolves itself into two parts. First of all, is the Parliament competent to call an Ordinance passed by the Governor-General or Viceroy before the 15th August, 1947, an Act 'of 1945? I say the Parliament is competent.

MR. DEPUTY CHAIRMAN: Article 372 is also clear.

SHRI A. K. SEN: The General Clauses Act itself says that some of the laws, which are not Central Acts in the sense that they have been passed by the Legislature, are still described as Acts.

The next question is whether it is proper to do so or not. Now, I am coming to answer really the point that, I think, you raised. You have expressed your opinion as to the propriety of this matter. You are perfectly competent to sit in the Chair and preside over the deliberations. The question is whether a permanent measure, which became a permanent law by reason of article 372, and which would continue to be permanent if we did not touch it, should be allowed to remain only as an Ordinance. In fact, all Ordinances passed before August 15, 1947 or even after August 15, 1947, which ere of a permanent nature, and which are in our

Statute Book, like other Acts of Parliament as permanent measures, should really be renamed. Otherwise, it creates confusion, as it created in the minds of many of the hon. friends who are not lawyers. They thought that this Ordinance would expire within a period of six months. But it was continued. It was made permanent by another Act of Parliament. Then, it was Continued by article 372 of the Constitution. As a matter of drafting, I think, this anomaly should be removed as quickly as possible. All permanent measures, which have become permanent by an Act of Parliament before the 15th August, 1947, were originally Ordinances and were measures of temporary duration. They should really be called Acts now. Otherwise, it creates confusion in the minds of many people. We have on our Statute Book many such Ordinances which are of a permanent charcter and these might create confusion in our courts of law. In fact, talking about drafting by our Law Ministry and the drafting by the House of Commons, a point raised by Diwan Chaman Lall, I think more criticism may be levelled against Parliament's draftsmanship where this word 'Ordinance' has been used. They should have really called them Acts of Parliament instead of merely continuing the 'Ordinances' and saying that they would continue to be called Ordinances and yet would assume the character of a permanent Statute.

SHRI P. N. SAPRU: But they used the word 'Ordinance', because the Governor-General had power. I know that your point is right.

SHRI A. K. SEN: If I were drafting . . .

DR. W. S BARLING AY (Bombay): May I ask a question? I fully appreciate what the hon. Minister says, but the question I want to ask is: As a matter of formal drafting, would it not be better, if you had said that this original Ordinance is now being substituted by' an Act? That would have-saved all the botheration.

MR. DEPUTY CHAIRMAN: All these points have been raised, Dr. Barlingay.

SHRI A. K. SEN: That is what we ask for in substance. That is the purport of this Bill. Now, if I were drafting the Parliamentary law

SHRI J. S. BISHT (Uttar Pradesh): May I just point out one point?

MR. DEPUTY CHAIRMAN: Order, order. The hon. Law Minister is on his legs.

SHRI A. K. SEN: After all the doubts have been raised, I shall answer.

SHRI J. S. BISHT: The power of the Governor-General to enact legislation, under the Government of India Act, 1935, was by way of an Ordinance and also by way of passing an Act. Section 43 gives him power to promulgate . . .

MR. DEPUTY CHAIRMAN: All these points have been raised, Mr. Bisht. Order, order. He is speaking now. He is replying.

(Interruptions)

SHRI A. K. SEN: I am quite aware that there were two sets of measures open to the Governor-General under the Government of India Act, 1935, and this was one of the measures, namely, an Ordinance—which was of a temporary duration. It became permanent by virtue of a Parliamentary Act passed by the British Parliament. If I were drafting the Act, then I would have said that henceforth these Ordinances would be called Acts, because they become permanent. That is a question of draftsmanship and I do not see why the draftsmen of the House of Commons . . .

MR. DEPUTY CHAIRMAN: This has already become permanent.

SHRI A. K. SEN: Still they are permitted to be called Ordinances. They should have said that henceforth

these should be regarded as Central Acts.

MR. DEPUTY CHAIRMAN: Again, your Ministry should have done it.

SHRI A. K. SEN: No, Sir. That was the British House of Commons. We are doing it now. In fact, it is my desire to call henceforth all Ordinances, which are of a permanent nature, as Acts. The point will be the same whether it is a different Bill or not. By either making a general provision in the General Clauses Act or by adding an explanation in section 3 (7) (b) where it says the Governor-General 'or the Viceroy acting in a legislative capacity, or some such appropriate thing, it could be done, so that all Ordinances which are really Statutes may not be still known as Ordinances . . .

MR. DEPUTY CHAIRMAN: The question now is whether you call it as an Act of 1945 or 1959.

SHRI BHUPESH GUPTA: It must be an Act of 1945.

SHRI A. K. SEN: -It cannot be a Parliamentary Act of 1959. Therefore, I was surprised when Mr. Gupta suggested that. We give it permanency. We change its name. Nevertheless, it is a measure which was passed in 1945. How can you say it is an Act of 1959? *(Interruption)*. If the Ordinance of 1945 is a permanent law today, we change the word 'Ordinance' to 'Act', but we cannot make it a Central Act of Parliament, as if the Parliament has passed it in 1959. This amendment is not open to Parliament . . .

MR. DEPUTY CHAIRMAN: Why?

SHRI A. K. SEN: If it is an Act of 1959, then it must be an Act passed by Parliament in 1959.

MR. DEPUTY CHAIRMAN: You are converting the Ordinance into an Act.

SHRI A. K. SEN: We are changing the name. We are not converting it. In fact, it is an Act. It is a permanent law.

DIWAN CHAMAN LALL: It is not an Act of 1945. It is an Ordinance of 1945.

SHRI V. K. DHAGE: He says Ordinance.

SHRI A. K. SEN: It became an Act afterwards. It became permanent in substance. Now, Sir, I cannot possibly call it an Act of 1959. It became permanent in 1946 and we still call it an Ordinance.

DR. R. P. DUBE (Madhya Pradesh): Because it was an Ordinance.

SHRI GOPIKRISHNA VIJAIVAR-GIYA (Madhya Pradesh): Let us go by the Law Minister's opinion.

SHRI A. K. SEN: It cannot be an Act of 1945, and it cannot also be an Act of 1959.

SHRI P. N. SAPRU: The Government of India Act makes a distinction between Statutes which were passed as law by the Governor-General and Statutes which were passed by the Legislature. The type of Statute passed by the Governor-General is called an Ordinance and it has the same force as an Act. Really, there should be no distinction between the two.

SHRI A. K. SEN: When they become permanent, there is no distinction, in fact. The name only remains the same and we are changing that name. I am afraid we cannot introduce the word '1959' as Mr. Gupta suggests. That will be only going against the face of facts.

SHRI AMOLAKH CHAND: Sir, may I point out that if you accept the amendment proposed, it will be Act 47 of 1945 because you say that where-ever the word "Ordinance" occurs it should be "Act". So the title will become Act 47 of 1945. And how can an Ordinance be changed into an Act?

SHRI A. K. SEN: I can always call it by some other name.

SHRI AMOLAKH CHAND: You -vant this amendment to be accepted by ihe House that wherever the word "Ordinance" occurs it should be substituted by "Act".

SHRI A. K. SEN: As I said, the question of competency is admitted. It is now a question of propriety. I am answering the question of propriety. The question put by Mr. Amolakh Chand is that we cannot do it—I do not know if I have understood him correctly.

MR. DEPUTY CHAIRMAN: If you call it 1945, this House was not in existence in 1945 nor had it been passed by the House that was in existence at that time. I think it is creating an anomaly.

SHRI A. K. SEN: Nevertheless, take the General Clauses Act. Things which have not been passed by this House, things which have not been passed by the Legislature then are certainly regarded as Acts. Th^ General Clauses Act is not only a constitutional document but it is also an Act of the Legislature.

MR. DEPUTY CHAIRMAN: This is an Ordinance of the Governor-General acting in his legislative capacity.

SHRI A. K. SEN: This was the Governor-General acting in his legislative capacity.

MR. DEPUTY CHAIMAN: This has all along remained an Ordinance.

SHRI BHUPESH GUPTA: The Governor-General's action is thers , . .

SHRI A. K. SEN: Because it is a permanent measure, so we think that it should be called an Act and not an Ordinance.

SHRI V. K. DHAGE: It could be deemed to be an Act.

SHRI A. K. SEN: The hon. Member has no objection to deem it an Act. yet in calling it an Act he has objection. He says that it can be deemed an Act but that we cannot call it an Act. I do not see the reason.

SHRI BHUPESH GUPTA: It is continuing for the last several years.

SHRI A. K. SEN: Therefore, I say that this should remain.

SHRI BHUPESH GUPTA: Sir, on a point of order. I think it is unconstitutional for the hon. Minister to have sponsored this Bill in this manner in this House.

MR. DEPUTY CHAIRMAN: There is no point of order.

SHRI BHUPESH GUPTA: My point of order is we cannot discuss a thing which is begging our Constitution. This is my point of order. The House has no jurisdiction to discuss the Bill which is patently unconstitutional. Private Members' Money Bills could not be allowed to be discussed here. If a Money Bill is sought to be introduced in this House, you will not allow it to be discussed. My point of order is this that having regard to all the arguments and despite the effort that has been made to create confusion from the Treasury Benches . . .

MR. DEPUTY CHAIRMAN: What is the order that has been infringed?

SHRI BHUPESH GUPTA: It is unconstitutional.

MR. DEPUTY CHAIRMAN: I want you to take the rules and orders of the House and show me the definite rule.

SHRI BHUPESH GUPTA: Because here we are asked . . .

MR. DEPUTY CHAIRMAN: I want you to show a definite rule.

SHRI BHUPESH GUPTA: Sometimes constitutional commonsense is also there. Always we cannot go by the letter. Sometimes the written constitution is there and it has got soaked into our head. And commonsense is there, I am standing on that. What do you say, Sir? The hon. Member, Mr. Krishnemoorthy Rao, from here said that it was unconstitutional.

MR. DEPUTY CHAIRMAN: You can support that Member and vote against the Bill.

SHRI BHUPESH GUPTA: I support the hon. Member, Mr. Krishnamoorthy Rao's viewpoint that it is unconstitutional. I entirely endorse his view.

MR. DEPUTY CHAIRMAN: No further argument.

SHRI BHUPESH GUPTA: It is unconstitutional, and therefore, Sir, you rule it out.

DR. W. S. BARLINGAY: Sir, may I say a few words?

MR. DEPUTY CHAIRMAN: No further speeches now.

DR. W. S. BARLINGAY: Sir, I want to say a few words in support of what the Law Minister has said.

MR. DEPUTY CHAIRMAN: I think we have had enough discussion.

DR. W. S. BARLINGAY: I want to say a few words. Why don't you allow me, Sir? I like to congratulate the hon. Minister of Law on his subtle argument and I also want to congratulate those people who have drafted . . .

MR. DEPUTY CHAIRMAN: Just wait a minute. Mr. Bhupesh Gupta, you raised a point of order. I hold that there is no point of order. He has only explained the constitutional position, and it is for the House to accept it or not accept it. There is no point of order.

DR. W. S. BARLINGAY: Sir, I want to say . . .

MR. DEPUTY CHAIRMAN: The Minister has to reply.

SHRI V. K. DHAGE: On the constitutional position what have we to say?

SHRI BHUPESH GUPTA: Do I understand . . .

MR. DEPUTY CHAIRMAN: I hold that there is no point of order.

SHRI BHUPESH GUPTA: Constitutionally is it valid and therefore should the House accept it?

MR. DEPUTY CHAIRMAN: I do not express my opinion.

SHRI BHUPESH GUPTA: Sir, your ruling must be weighted on reason. I want the ruling to be circulated.

MR. DEPUTY CHAIRMAN: The hon. Minister was replying to the debate when this point was raised. This point has been discussed and the Law Minister has explained the position. The Law Minister usually comes in the end. So, there is no need for any further statement.

DR. W. S. BARLINGAY: There are a few points which I want to elucidate.

MR. DEPUTY CHAIRMAN: He has explained the position. Why do you again intervene? Do you want him to reply again? It is very irregular.

DR. R. P. DUBE: I am pointing out to what the Minister himself has agreed. An opportunity has been taken to convert the Ordinance into an Act.

MR. DEPUTY CHAIRMAN: I am not allowing any further observations on this point. Mrs. Sinha, have you got anything further to say in reply?

THE DEPUTY MINISTER OF FINANCE (SHRIMATI TARKESHWARI SINHA): No, Sir.

MR. DEPUTY CHAIRMAN: The question is . . .

DIWAN CHAMAN LALL: Sir, I hope you will join us.

MR. DEPUTY CHAIRMAN: I join you only if there is an equality of

votes. The question is:

"That the Bill further to amend the International Monetary Fund and Bank Ordinance, 1945, as passed by the Lok Sabha, be taken into consideration."

(After a count)

Ayes—27

Noes—10.

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall now take up clause by clause consideration of the Bill.

Clauses 2—Substitution of the word "Act" for the word "Ordinance".

SHRI AMOLAKK CHAND: Sir, I beg to move:

"That the Rajya Sabha recommends to the Lok Sabha that the following amendment be made in the International Monetary Fund and Bank (Amendment) Bill, 1959, as passed by the Lok Sabha, namely:—

"That at page 1, existing clause 2 be deleted."

MR. DEPUTY CHAIRMAN: The clause and the amendment are before the House.

SHRI AMOLAKH CHAND: Sir, I have voted for the consideration of the Bill. The Law Minister to my mind has not replied to the valid points which I raised. Therefore, I want the Law Minister to convince the House; otherwise by changing the word "Ordinance" into "Act" you are going to create havoc. As I have tried to point out, let us see what would be the position. If we accept this amendment which I say should be deleted, the position would be that it will become Act No. 47 of 1945. Now, what I could understand from the speech of the Law Minister was that he could change an Ordinance into an Act. There is no dispute about that, but the procedure and the manner in which it is being done I object to it. I have objected to it and I do still hold that it is not

proper to do it in a backdoor fashion. I am not yet convinced as to what would be its effect. Now, when you make it an Act, Act, 47 of 1945, any sensible man who looks into the Statute Book of the year 1945, what will he find? He will find 1 P.M. nothing. So the effect would

be that the number and title of this Ordinance would be wrong. Now, we are going to legislate for the purpose of the International Monetary Fund and Bank which are international organisations, and our Statute should be such that if anybody in any foreign country wants to look into the Act, he should be able to find out what the position is. The position would be, "The International Monetary Fund and Bank Act, 1945—Act No. 47 of 1945." If he looks into the Statute Book of 1945, he will find that it is all blank there. The purpose for which this amendment has been brought, as the Deputy Finance Minister in her speech stated, is to raise the share capital from four hundred million dollars to eight hundred million dollars. If my amendment is accepted, the Government is not going to lose anything at all. What I say is, you have changed it into an Act, but bring the whole provision before us and we will pass it.

Sir, the other point which I raised yesterday was—the hon. Minister of Law has not replied to it because I think he would not have probably read the whole proceedings of the day before coming here and replying—that you say that in clause 4, the addition should be "paragraphs (a) and (c) of Article II of the Bank Agreement." Where is that Article II? The House does not know what they want to include. About that, I will speak later on when I come to clause 4.

But the main point is Whether at this stage, the Government does feel it necessary to change it Into an Act. I say, for practical purposes, it is not at all necessary that

this clause should remain in the proposed form.

The other objection which the Law Minister and the Finance Minister who is present here might take, is that it will delay its passage. If they accept my amendment, they will only have to send the Bill back to the Lok Sabha and get it altered there, and not put both the House in a position to accept such a proposition, which is patently wrong.

DR. R. P. DUBE: Delay should not be any reason at all.

SHRI AMOLAKH CHAND: I entirely appreciate the anxiety of the Government.

MR. DEPUTY CHAIRMAN: Will you take more time?

SHRI AMOLAKH CHAND: I have to speak on this and I will certainly take more time.

MR. DEPUTY CHAIRMAN: You please continue after lunch.

We will meet at 2 o'clock because we have the Food Debate. We will meet at 2 o'clock instead of at 2.30 P.M.

SHRI V. K. DHAGE; At 2.05 P.M.

MR. DEPUTY CHAIRMAN: All right. The House stands adjourned till 2.05 P.M.

The House then adjourned for lunch at three minutes past one of the clock.

The House re-assembled after lunch at five minutes past two of the clock, MR. DEPUTY CHAIRMAN in the Chair.

SHRI AMOLAKH CHAND: Mr. Deputy Chairman, Sir, before adjourning for lunch I was speaking about my proposed amendment. But during the lunch interval I had talks with the hon. the Finance Minister. I

[Shri Amolakh Chand.] told him that I was not convinced by the arguments that had been advanced by the Law Minister. He was good enough to explain the whole position to me. With his permission, I would like to add with regard to the objection which I took to the Ordinance No. 47 of 1945 being made into an Act it was explained by him that this title would not remain, and for that we need not worry. Therefore, as far as that part is concerned, I am satisfied. Therefore, what I feel is that if the objection which I had is taken away I think I need not press my amendment any further.

DIWAN CHAMAN LAL: Which particular objection is the hon. Member referring to which is now being withdrawn?

SHRI AMOLAKH CHAND: I moved Amendment No. 1 in the List. That relates to the change of words, namely:

'That the Rajya Sabha recommends to the Lok Sabha that the following amendment be made in the International Monetary Fund and Bank (Amendment) Bill, 1959, as passed by the Lok Sabha, namely—

'That at page 1, existing clause 2 be deleted'."

As far as other things are concerned there was no particular objection except about the title itself, namely, Act 47 of 1945. As this title is not going to remain, I am not going to press the amendment. As I am told and as is the practice, it is not a part of the Statute; the title is not a part of the Statute. If the Law Minister had explained it in his speech, probably I would not have moved this amendment thereafter.

THE MINISTER OF FINANCE (SHRI MORARJI R. DESAI:) Sir, may I say that in this matter the doubt that has arisen has some foundation? I do not deny that there is no material for that doubt. But if it is carefully

seen, it will be found that nothing wrong is being done by this amending Bill. On the contrary, we are trying to see that what would appear wrong is set right. The Ordinance of 1945 has the effect of an Act, is an Act, as a matter of fact, by adaptation by an article of the Constitution. It was also done in 1950. If at that time steps had been taken to change the names of such Ordinances into Acts, this difficulty would not have arisen. But even if that would have been done, that would have been done in the same way, namely, Act so and so of 1945. It could not have been called anything else. Until now, as no occasion arose to amend this particular law, we did not take any step. As a general step was not taken, we did not want to take any steps for different Acts. Today when we have to amend this law for the particular purpose of giving larger subscription to the International Monetary Fund, we cannot do it without amending this law. Therefore, we took this opportunity of not allowing this law to be called again in future an Ordinance.' it is better that it is called an Act. It is, therefore, that we take this opportunity by this amending Bill of changing it into an Act, and that is how the provision is there.

Objection may be taken to the heading of the whole thing as Act No. so and so of 1945 when there were not those Acts. Therefore, it cannot be called as such. That can be easily understood by the fact that in the Statute Book, where all these amendments are given and the amended Acts are given, there is always shown against them that this amendment was done in 1959. Therefore, it will be obvious that it has begun to be called an Act only in 1959. Before that it was Ordinance No. so and so of 1945.

Again, in all the agreements that we have entered into with the International Monetary Fund, this has been mentioned as Ordinance No. so and so. That change ought to remain. Now, it will be different. Therefore, by

what we have proposed we are not doing anything wrong to set it right so that "it will be properly called an Act. That, Sir, is the purpose of this amendment. That is what I explained to my hon. friend during the lunch hour.

SHRI AMOLAKH CHAND: Sir, I beg leave to withdraw my amendment.

SHRI JASPAT ROY KAPOOR: No leave of the House is necessary because this amendment is itself of a negative nature.

MR. DEPUTY CHAIRMAN: It is not of a negative nature.

*The Amendment was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: The question is:

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

MR. DEPUTY CHAIRMAN: Mr. Amolakh Chand, you are not moving your other amendment?

SHRI AMOLAKH CHAND: I do not move it. But, certainly, with your permission, I would just say a few words.

MR. DEPUTY CHAIRMAN: It is the same thing. It is not necessary.

Clauses 3 to 5 were added to the Bill.

Clause 1, the Enacting Formula and the Title were added to the Bill.

SHRIMATI TARKESHWARI SINHA: Sir, I move:

"That the Bill be returned."

*For text of amendment, *vide* col. 1978 *supra*.

MR. DEPUTY CHAIRMAN: Motion, moved:

"That the Bill be returned."

SHRI T. S. AVINASHILINGAM CHETTIAR (Madras): Sir, I want to say a few words.

MR. DEPUTY CHAIRMAN: No. We have already exceeded the time limit.

SHRI T. S. AVINASHILINGAM CHETTIAR: I may be allowed to say just a few words.

MR. DEPUTY CHAIRMAN: You have already had so much time.

SHRI T. S. AVINASHILINGAM CHETTIAR: Not much time will be lost by a few more words.

MR. DEPUTY CHAIRMAN: It is not necessary at this stage.

SHRI T. S. AVINASHILINGAM CHETTIAR: If you do not mind I would say just a few words.

(*Dr. W. S. Barlingay rose.*)

MR. DEPUTY CHAIRMAN: You can say a few words later.

SHRI T. S. AVINASHILINGAM CHETTIAR: Sir, I do not want to say anything about the main Bill. That has been accepted. But I do think, Mr. Deputy Chairman, that the point which you raised and the point which was raised by Mr. Amolakh Chand do require consideration. We have accepted it today, but I do not think that this should serve as a precedent for future. I hope the Government will take care, and you know what considerations appeal to us when you ask Members of the party to withdraw amendments even when the amendment is proper because an appeal is made. It is made by members of the Government party on our side. We did withdraw it. But that itself must be a consideration in the minds of the people who are in charge I that legislation is not brought this [way. And, if I may appeal through I you, Mr. Deputy Chairman, to the

[Shri T. S. Avinashilingam Chettiar.] Government, this should not become a precedent for the future—Ordinances, whatever may be their history, by an amending thing like this being converted into an Act when the legislature of that time never thought of it.

I hope this will be remembered at least for future guidance.

DR. W. S. BARLINGAY: Mr. Deputy Chairman, I would not have liked to make any remarks so far as this Bill was concerned at this particular stage, but I have to do so because of what has come from the mouth of my hon. friend, Mr. Chettiar.

Sir, it seems to me that this entire controversy and misunderstanding have arisen on account of the very unfortunate use of the word 'Ordinance' in connection with that International Monetary Fund and Bank Ordinance, 1945. The whole mischief has been done because of the word 'Ordinance' there. For instance, if, instead of the word 'Ordinance', we had the word 'Act', then there would have been no difficulty whatsoever. The difficulty has arisen because we are now confusing 'Ordinance' with 'Act'. Now, for the information of my hon. friend, Mr. Chettiar, I want to quote a few sections of the Government of India Act and also one section of the General Clauses Act. I will not take more than two minutes.

SHRI JASPAT ROY KAPOOR: You can take more time because the Food Minister is not there.

DR. W. S. BARLINGAY: If I am allowed more time, that is a different thing. But I do not want to take the time of the House unnecessarily.

Sir, if we refer to section 317 of the Government of India Act, 1935, it

"The provisions of the Government of India Act, as set out with amendments in the Ninth Schedule to this Act, shall, subject to those amendments, continue to have effect, notwithstanding the repeal of that Act, by this Act, i.e., the Act of 1935."

Then, Sir, section 72, which is a part of the Ninth Schedule, says:

"The Governor General may in case of emergency make and promulgate ordinances for the peace and good Government of British India or any part thereof or any ordinance, and any ordinance so made shall have the like force of law as an Act passed by the Legislature."

So, Sir, when you read both these sections together, it is quite clear that the so-called Ordinance does not really partake of the nature of an Ordinance at all. It is not an Ordinance, as we ordinarily understand the word here. It really is a law, and that makes all the difference.

Now, let us go on to the General Clauses Act.

MR. DEPUTY CHAIRMAN: That was the Law Minister's argument. You are simply repeating it.

DR. W. S. BARLINGAY: The point that was made by the Law Minister was so very subtle that probably it went over the heads of many of us. For that matter, Sir, I would plead guilty to that charge myself. The point that was raised by Mr. Amolakh Chand was independently raised by me some three days ago in the lobby of this House.

MR. DEPUTY CHAIRMAN: All that is over. Now, it is irrelevant.

DR. W. S. BARLINGAY: I say this I only for the benefit of some of my friends here.

Now, Sir, if you kindly see the General Clauses Act, section 3(7) (b) says "an Act made before such commencement by the Governor-General in Council or the Governor-General, acting in a legislative capacity." Now, Sir, we know that the Governor-General had several legislative capacities, and in one of those capacities, he could promulgate an Ordinance.

DIWAN CH AMAN LALL: There are two types of Ordinances and one type of Act under the Governor-General's special powers.

DR. W. S. BARLINGAY: That is true. But of those two types of Ordinances one was an Act and not an Ordinance. That is the whole point. There were two types of Ordinances undoubtedly. But one was not really an Ordinance in the ordinary sense of the term. It was an Act. Now the point is that this was not an Ordinance.

MR. DEPUTY CHAIRMAN: We need not go into all these things now.

DR. W. S. BARLINGAY: I do not want to waste the time of the House. But the argument is very simple to mind. Supposing it had been the case of an amendment to the Indian Penal Code. . . .

MR. DEPUTY CHAIRMAN: Dr. Barlingay, all this is superfluous at this stage. We are now in the third reading stage of the Bill, and you are raising these points which have already been discussed here.

DR. W. S. BARLINGAY: Very good, Sir. I will end by saying that actually the point is so very subtle that I must congratulate the Law Minister and the Drafting Section of the Law Ministry because they have so carefully gone into this whole matter, and have drafted it extremely carefully.

SHRI MORARJI R. DESAI: Sir, I have nothing to say beyond telling my 48 RSD—4.

hon. friend to the right that he can always expect

SHRI BHUPESH GUPTA: But nobody has spoken from that side.

SHRI MORARJI R. DESAI: He does not know that some hon. friend spoke just now. He was absent-minded for once at least. So, Sir, I only want to tell my friend to the right that we have always been very respectful to the opinions expressed by this honourable House and we do whatever we can and whatever has to be done. Whatever we cannot do, we respectfully say "We won't be able to do it."

MR. DEPUTY CHAIRMAN: The question is:

"That the Bill be returned." The motion was adopted.

MOTION REGARDING FOOD SITUATION

SHRI BHUPESH GUPTA (West Bengal) : Sir, I beg to move:

"That the food situation in the country be taken into consideration."

Sir, since the time I gave notice of this motion, an important event has taken place, namely, the resignation of the Union Food Minister, Shri Ajit Prasad Jain. This resignation, as is well-known, has been welcomed throughout the country. Under him, Sir, the Food Ministry became an inefficient, spineless and pro-hoarder institution with an astonishing capacity to prevaricate and bluff. If the resignation means an opening of some window in that Ministry for some new approach or some fresh ideas to enter, then naturally everybody would be very happy. But then, Sir, the crux of the matter is not the resignation of a Minister and his replacement by another. What is important