

*Clause 1—short title and commencement*

SHRI Z. R. ANSARI : Sir, I move :

"That at page 1, line 4, for the figures '1987' the figure '1988' be substituted."

*The question was put and the motion was adopted.*

THE VICE-CHAIRMAN (SHRI JAGESH DESAI) : Now, the question is :

"That Clause 1, as amended, stand part of the Bill."

*The Motion was adopted.*

*Clause 1, as amended, was added to the Bill*

#### ENACTING FORMULA

SHRI Z. R. ANSARI : Sir, I move :

"That at page 1, line 1, for the word 'Thirty-eight' the word 'Thirty-ninth' be substituted."

The question was put and the motion was adopted.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI) : Now, the question is :

"That the Enacting Formula, as amended, stand part of the Bill."

The motion was adopted.

*The Enacting Formula, as amended, was added to the Bill.*

SHRI Z. R. ANSARI : Sir, I move :

"That the Bill, as amended, be passed."

*The question was put and the Motion was adopted.*

THE PUNJAB PRE-EMPTION (CHANDIGARH AND DELHI REPEAL) BILL, 1988

THE MINISTER OF STATE IN THE MINISTRY OF HOME AFFAIRS (SHRI SANTOSH MOHAN DEV) : Sir, I move :

"That the Bill to repeal the Punjab Pre-emption Act, 1913, as in force in

the Union territories of Chandigarh and Delhi, be taken into consideration."

Sir, the Chief Commissioner's Province of Delhi was created out of certain areas taken from the former Province of Punjab in 1912. The Pre-emption Act was enacted in Punjab in 1913 and it was extended to the said areas of Delhi which were earlier part of former Province of Punjab. The Act continued to be in force in the areas of the Union territory of Delhi to which it had been originally extended, with the exception of the areas to which the Delhi Land Reforms Act, 1954 became applicable subsequently. This latter Act now governs right of pre-emption in respect of agricultural land in the areas to which it applies. The areas to which the Punjab Pre-emption Act 1913 is now applicable in Delhi are the walled city of Delhi, 51 urbanised villages and urbanised portions of 18 other villages.

The Union territory of Chandigarh was earlier a part of Punjab, the Punjab Pre-emption Act, 1913 is applicable in that territory also.

The Act specifies the categories of persons, in the order of priority, who have the right of pre-emption in respect of rural and urban immovable property whenever it is proposed to be sold or transferred.

Sir, due to the following reasons, its repeal has been proposed in the Union territories of Delhi and Chandigarh :—

(i) it is an archaic piece of legislation which does not fit in the present day society;

(ii) it places unreasonable restrictions on the free transfer of property and is also against the spirit of the socialistic pattern of society; and

(iii) it leads to unnecessary and undesirable litigation.

Sir, the law of pre-emption is based on certain customs according to which strangers should not be allowed to own property in a Mohalla to maintain "Purdah

[Shri Santosh Mohan Dev]

System". This Act enables a person having preferential right to purchase all properties in a Mohalla. The custom of not allowing strangers to own property in a Mohalla to maintain "Purdah System" has become out of date. The Punjab Pre-emption Act, 1913 has, therefore, been repealed in the State of Punjab.

The Metropolitan Council of Delhi has considered and recommended the repeal of the Punjab Act. It is considered necessary to repeal the Act in the Union territories of Chandigarh and Delhi.

Sir, it is a very simple Bill to repeal the Punjab Pre-emption Act, 1913 as in force in the Union territories of Chandigarh and Delhi, as it does not fit in well in the present circumstances.

I commend this Bill to the House for consideration and acceptance

*The question was proposed.*

**SHRI MURLIDHAR CHANDRAKANT BHANDARE** (Maharashtra) : Mr. Vice-Chairman, Sir, as I rise to support this Bill, I find that the Opposition has walked out. I can understand that walk out these days is accepted as some mark of protest against something. But I cannot understand any Member of the Legislature walking out for the whole day, abdicating his functions, the principal functions, the prime functions of legislating. We have debated legislated and we are going to vote upon two important Bills and whatever may be their reasons to which I will come a little later, for a walk-out...*(Interruption)*.

**THE VICE-CHAIRMAN (SHRI JAGESH DESAI)** : No no. You need not mention that.

**SHRI MURLIDHAR CHANDRAKANT BHANDARE** : No, no. I do want to say that the time has come when we should have some norms about the walk-out and the duration of the walk-out so that it does not reflect dereliction of duty on those Members walking out in legislating in this august House. I feel very strongly about it. Just as I feel strongly about their feeling.

I appreciate them for a walk-out. But that does not mean that gives them a licence to walk-out for the whole day. I wish, some of them were present here. In any case, they will take another occasion to meet the point which I have made.

This Bill has not come a day sooner. In fact, the Punjab Act was abolished as early as in 1973 in Punjab and it has been held to be archaic; it has been held to be inconsistent with the modern times; it has been held to be totally abridging the fundamental rights under the Constitution; it has been held to be not in harmony with the modern times where we have introduced the land ceiling on agriculture lands as it is right to hold agricultural property restricted by the land ceiling all over the country and it has also been held contrary to the socialistic values which were enshrined by the 42nd amendment, by amending the Preamble. I will presently refer to a Supreme Court judgment where it struck some portions of this Act. But what pinched me is this and I hope, the hon. Minister will consider my suggestion to delete a portion of the objects and the reasons. I will firstly refer to paragraph 3, which says, "that the law of pre-emption is based on Mohammedan law and custom, according to which a stranger should not be allowed to own property in a Mohalla to maintain "Purdah System." Now, I am objecting to this statement. There is no basis as I will come in a minute to the various authors and authorities. There is no basis that pre-emption was introduced for the purpose of maintaining the Purdah System and I may also mention that this custom of pre-emption exists even among the Hindus and the Christians. That is why, it was enacted in varieties other parts of India. Therefore it pained me as if we are going to interfere, in manner or the other, with the customs which are prevalent in a community in our country.

"This Act enables a person having preferential right to purchase all properties in a Mohalla. The custom of not

allowing strangers to own property in a Mohalla to maintain 'Purdah System' has become out of date."

I do not think there is either any basis or any reason to include this. Therefore, I would earnestly request the hon. Minister to delete it. In the statement of objects and reasons, the portion in paragraph 3 starting from "The law of pre-emption" till "Purdah System' has become out of date" should be deleted. The remaining two sentences really make out the objects and reasons, namely:

"The Punjab Pre-emption Act, 1913 has, therefore, been repealed in the State of Punjab by the Punjab Pre-emption (Repeal) Act, 1973. There does not also appear to be any need for the law of pre-emption in the parts of Delhi in which it is in force at present, as well as in the whole of the Union Territory of Chandigarh."

Now, to substantiate my point that there is no basis for it, I may first quote from "Mahommedan Law by Justice Ameer Ali", who was one of the greatest jurists India produced and who became a Privy-Councillor. He says:

"The right of pre-emption or *shufa's* means the right possessed by one person to acquire a property sold to another in preference to that other by paying a price equal to that settled, or paid by the latter; and the Mahommedan system owes its origin to motives of expediency and a desire to prevent the introduction of a stranger among co-sharers and neighbours likely to cause inconvenience or vexation."

"The Sunni Hanafi Law of Pre-emption was introduced in India with the Mahommedan Government, and in certain places it has become a part of the *lex loci*; for example in Bihar, parts of the Punjab and the United Provinces, both Hindus and Mohammedans are entitled to claim the right of pre-emption. And so well-established is that right, that

it is almost invariably recorded in greater or less detail in the village-administration-papers called the *Wajib-ul-Arz*."

I will also quote from Mulla, another greatest jurist. He says:

"The right of *shufa* or pre-emption is a right which the owner of an immovable property possesses to acquire by purchase another immovable property which has been sold to another person." At this stage, I want to tell this House what the position in Pakistan is so that it may be clearly understood that there is no intention to interfere with *shariat* or personal law of any community at all. Mr. Vice-Chairman, you may kindly bear with me even if I have to take a little time of this august House. And I quote from Mulla's Mohammedan Law "In Pakistan, the rules of Mohammedan Law of pre-emption do not fall within the category of religious usages or institutions as envisaged by section 2 of the West Punjab Muslim Personal Law (Shariat) Application Act, 1948 or of section 5 of the Punjab Law (4/1872)." Therefore, the right of pre-emption is outside Shariat. I want to make it very clear. I quote further: "The right of pre-emption in the Punjab Act has nothing to do with the Mohammedan Law of pre-emption. There is a marked contract between the statutory law of pre-emption in Punjab and the rules of Mohammedan Law of pre-emption in many respects and the Courts are bound to administer the statutory law. The law of pre-emption is applied to Azad Jammu and Kashmir by the Jammu and Kashmir Right of Prior Purchase Act." This shows that even in the occupied territory of Jammu and Kashmir it is applied by an Act it has ceased to be a customary law. Therefore, let there not be any misunderstanding that we are, in any manner, trying to touch, trying to deal with any customary law of any section of the public and I took the floor mainly to assure that 4 p.m. Standing here and, as I said, believing in secularism and respecting all religions. I want to assure the House that when I support this Bill

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there is no question of in any manner hurting or interfering with any of the customary laws of any community whatsoever.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI): But you said in the Statement of Objects and Reasons.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: These three lines should be deleted. I cannot move an amendment. They should be deleted because they are first of all baseless and they have no reason to be there...

SHRI SANTOSH MOHAN DEV: On this point some other Members of the House also have drawn my attention. We have no intention of imputing anything to any religion or any group of people. I have checked up with your Secretariat. I am sorry it is not the intention. It does not come as a part of the Bill. I regret for what has been written. It will not come as a section.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: I am extremely grateful and I appreciate the gesture. I am glad that others have mentioned it...

SHRI BAHARUL ISLAM (Assam): I will take only one minute. He is not entirely wrong. The law of pre-emption applies to all kinds of land, agricultural as also residential. When the law of pre-emption applies to agricultural land, there is no question of other systems arising. If it is applied to a residential house where brothers and sisters live together and a part of it is sold, then the question of possession may arise. The honourable Minister cannot be said to be entirely wrong. The suggestion of Mr Bhandare is welcome.

SHRI SANTOSH MOHAN DEV: We are not standing on prestige. Right or wrong, since the point has been raised from a sentimental point of view, we agree to it.

SHRI VISHWA BANDHU GUPTA (Delhi): I would like to associate myself with Mr. Bhandare's point of view. The point raised by him must be given due consideration.

SHRI MURLIDHAR CHANDRAKANT BHANDARE: I would end by quoting what the Supreme Court has said in its judgment. These are my thoughts. Is the Supreme Court had put my thoughts in print earlier. These are the thoughts of everyone here.

"The right of pre-emption is a relic of the feudal past. It is totally inconsistent with the constitutional scheme. It is inconsistent with modern ideas. The reasons which justified its recognition a quarter century ago namely..."—here also it does not speak of purdah system—

"...the preservation of the integrity of rural society, the unity of family life and the agnatic theory of succession are today irrelevant."

I submit that this irrelevance is now removed from the statute book for which I welcome the measure and I support it.

SHRI RAOOF VALIULLAH (Gujarat): I rise to support the Punjab Pre-emption (Chandigarh and Delhi Repeal) Bill, 1988" but with some reservations. Before introducing the bill in this House I am sure the Government has taken the view of the minorities of Delhi and if they are convinced and the leaders of the minorities have given their consent, as the honourable Minister pointed out that it was already passed in the Metropolitan Council, then I have nothing to say. But let not the impression be created, as has been pointed out by the honourable Shri Bhandare as mentioned in the Statement of objects and reasons that purdah system is reactionary. Let me put in on record. I am also speaking in support of the Bill. Let it be put on record—that the law of pre-emption as based on Mohammendan law as thought out by the Statement, is discriminatory—let not this impression be created.

Sir, secularism is not negation of religion. When we talk of such Bills and

when they come to this House, we always talk in the name of socialism and secularism. Secularism is not negation of any religion. It is equal treatment to all religions. To practice one's religion is a Fundamental Right enshrined in the constitution of India. Therefore, I plead that before this Bill is introduced in the other House, the Government should discuss this Bill, particularly with the Muslim MPs and the other leaders of the minority community. I would have had no objection if the Act was repealed for Punjab in 1973 because, after Partition there was no question of majority and minority in Punjab. But, in Delhi, there are at least seven lakh Muslims in the Fort area and many people came to me this morning saying that the Statement of Objects and Reasons attached with this Bill contained certain remarks and I am very happy that the honourable Minister has seen to it that those things will not be there. The law of pre-emption which is based on the Mohammadan law and custom has a social and economic content also other than the Purdah System, as pointed out by Mr. Bhandare. Sir, not allowing strangers to buy property is only to preserve social harmony and it was also observed that this would preserve the social harmony. Therefore, it is most fortunate that the honourable Minister has given as an assurance that the word, "The custom of not allowing strangers to own property in a Mohalla to maintain 'Purdah System' has become out of date." will be deleted. I am very very happy because this has nothing to do with the law of pre-emption and, therefore, I would only request the honourable Minister to see that before the Bill is brought in the other House, a consensus is arrived at as to whether it is necessary for Delhi also that the pre-emption law should be repealed in this part.

I would also like to tell the honourable Minister that special care and precaution

should be taken in the case of mosques and religious institutions and I would earnestly request the honourable Minister again that this assurance also may be given by him. Thank you, Sir.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI) : Yes, Mr. Minister.

SHRI SANTOSH MOHAN DEV : Sir, I am grateful to the honourable Member, Shri Bhandare, who has made my task lighter and easier by quoting eminent jurists as also the other country's law. As has been stated in the Statement of objects and Reasons, this law has become irrelevant at the present state of affairs in our society and on this certain observations have been made before the Bill came up for discussion. I have also made it clear to all the honourable Members that we have no intention whatsoever to wound the sentiments of any community. As I clarified earlier, I have discussed it with the Legislative Branch who have said that this will not be on the record. So, I think that if there is any unhappiness in any sector, they will forget it and I that they will not keep it in mind.

Sir, as I have stated earlier, the Metropolitan Council of Delhi, which is the representative body for Delhi, has debated this subject and they have recommended the same. Previously, it was repealed in Punjab and Haryana also.

Sir, it is a very simple Bill and, as Mr. Bhandare has very rightly said, in many of the courts this particular Bill has contested and it is now also lying before the Supreme Court and the feeling in the country is that it should not continue and it is an Act which has no relevance today. Therefore, I would request the House to consider and pass this Bill. Thank you, Sir.

THE VICE-CHAIRMAN (SHRI JAGESH DESAI) : The question is :

"That the Bill to repeal the Punjab Pre-emption Act, 1913, as in force in the Union territories of Chandigarh and Delhi, be taken into consideration."

*The Motion was adopted.*

THE VICE-CHAIRMAN (SHRI JAGESH DESAI) : We shall now take up clause-by-clause consideration of the Bill.

Clause 2 and 3 were added to the Bill.

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

SHRI SANTOSH MOHAN DEV : Sir, I move :

"That the Bill be passed."

*The question was put and the Motion was adopted.*

WATER (PREVENTION AND CONTROL OF POLLUTION) AMENDMENT, BILL 1988.

THE MINISTER OF ENVIRONMENT AND FORESTS (SHRI Z. R. ANSARI).

Sir, I beg to move :

"That the Bill to amend the Water (Prevention and Control of Pollution) Act, 1974, as passed by the Lok Sabha, be taken into consideration."

As the Hon'ble Members are aware, the Water (Prevention and Control of Pollution) Act, 1974 is meant to ensure the prevention and control of water pollution. The power to legislate on water rests with the State legislatures under entry 17 of the list II, State List. Therefore in order to enable the Parliament to make a law in regard to water, the State Legislatures of twelve States passed the necessary resolutions under Article 252(1) of the Constitution. The Parliament passed the Water (Prevention and Control of Pollution) Act, 1974 and many other States later adopted the Act by passing resolutions under Article 252(1) of the Constitution.

This Act has been amended in 1978 to remove certain lacunae after following the procedure under Article 252(2) of the Constitution.

Subsequently, a number of administrative and practical difficulties in the implementation of the Act have been brought to the notice of the Government by the State Governments and Central and State Boards

for Prevention and Control of Water Pollution. The issues in this regard have been examined thoroughly by the Government in consultation with the States, the State Boards, the Central Board and the concerned Central Departments. Taking into account their suggestions, certain amendments in the Act have been proposed. I would like to explain the main features of these amendments.

The definition of "occupier" is proposed to be amended on the lines of the definition in the Environment (Protection) Act, 1986.

From the practical experience of the implementation, it is considered desirable to empower the Central Board to exercise the powers and to perform the functions of a State Board in a State for a specified period for specific purposes, in circumstances such as persistent default by a State Board in complying with any direction issued by the Central Board under 18, as a consequence of which default a grave emergency has arisen or is likely to arise. This would, however, be without prejudice to the normal functioning of the State Boards in areas other than those taken over by the Central Board for a specified period.

At present, a person is required to obtain consent from the Board concerned only when he brings into use an outlet or begins to discharge effluents. In order to ensure pollution control measures even at the stage of establishment of a plant, it is proposed to make it obligatory to obtain consent even while establishing industrial plants.

Though the implementation of the Act is the responsibility of the Central and State Governments and the Boards, public cooperation is essential to effectively implement the Act. The Hon'ble Members are aware that the Environment (Protection) Act, 1986 and the recently enacted Air (Prevention and Control of Pollution) Amendment Act, 1987 provide the right to any citizen to file a complaint before a competent court regarding violation of the provisions of those Acts. It is proposed to