

*INDIAN MINORITY
IN SOUTH AFRICA*

Indian
Minority
in
South Africa

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PEOPLE'S PUBLISHING HOUSE

MARCH 1959

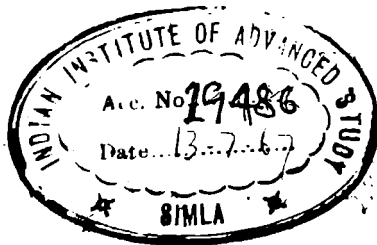
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323.1254066
MS96I



Printed by D. P. Sinha
at New Age Printing Press, 5 Jhandewala
Rani Jhansi Road, New Delhi
and published by him for
People's Publishing House (Private) Ltd.
Rani Jhansi Road, New Delhi

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FOREWORD

DURING the past century the world has seen the great colonial empires of the major European powers reach their greatest extent with Britain, Russia and France between them controlling the greater part of Africa, Asia and Australia. More recently it has seen the vast transformation of major parts of those empires into a large number of self-governing and, in most cases, sovereign states. In most of these new autonomous states the result has been that all the different communities within their borders, minorities as well as majorities, have been allotted their due share in the government and administration. In a few countries unfortunately minority communities still suffer from discrimination and justifiably feel aggrieved. And in one single country amongst these many new self-governing countries the majority community as well as important minority communities suffer under very grievous disabilities and are denied any real share in either government or administration and only a very meagre share of the national wealth. I refer, of course, to the Union of South Africa, where the indigenous African population, accounting for some 70 per cent of all the citizens of the country, is being rapidly reduced to serfdom.

Alongside the African population and the considerable number of people of mixed descent known as the Cape coloured community, dwells an Indian community of some four lakhs, noted for their industry and frugal living. The one major ambition of this community is to be recognised as an integral part of the South African nation and to be permitted to play its full part in harmony with the other communities in the national development. During the past sixty or seventy years the community has not only been prevented from fulfilling its ambition, but an ever increas-

ing number of ordinances and acts of parliament have been directed against it with the only too apparent aim of making the continued existence of Indians in South Africa impossible and thus of compelling them to leave the land of their adoption or in most cases of their birth and go to India.

During the past fifty years the Indian government has become increasingly concerned about the difficulties of the South African Indians and since independence the national government has striven vigorously to arouse world opinion on this issue. India's representatives have taken up the cause of the South African Indians in the United Nations and have most wisely and generously drawn attention to the plight not only of the Indians but also of the Africans and Cape coloured folk, all of whom are suffering from a very grave deprivation of those human rights which the United Nations has declared should belong to all men. The Indian cause has won world-wide sympathy and within the United Nations, where many countries now officially support the Indian case, the 'South African Question' comes up with monotonous regularity. South Africa is indeed a test case for the United Nations. If racialism, if the permanent domination of a majority by a minority, if the permanent denial of democratic government are all to be condoned here, then world opinion will have little right and little power to condemn what are in fact lesser injustices in other parts of the globe.

But in order to understand and to follow the course of events in South Africa, it is necessary to know the historical background and for this we need factual and unbiased chronicles of the events and legislations of the past century in South Africa, especially as they concern the Indian community. Such a chronicle has now been produced by my friend, Professor S. B. Mookherji, after many months of patient study and research. It is a most useful addition to the small number of valuable books on this subject, amongst which I should mention particularly *Indians Overseas* by C. Kondapi, *Indians in the Empire Overseas* by N. Gangulee and the excellent chapter in *India in World Affairs* by K. P. Karunakaran. Research students should find Professor

Mookherji's contribution valuable in directing them to the many important legislative enactments, resolutions, conferences and inter-governmental Notes relating to the Indian struggle. The book is indeed excellently documented and, as might be expected from a historian of Professor Mookherji's integrity, is notably free from any kind of national prejudice. He is content to state the facts and to leave his reader to draw his own conclusions.

PETER WRIGHT

Delhi,
2 August 1957.

INTRODUCTION

It is now about a hundred years since the Government of Natal and the European community there first invited Indian labourers to South Africa. Prospects in that strange, faraway land were painted in rosy colour. Working terms seemed attractive enough to the poverty-stricken Indian labourers. The Indian labour played a vital rôle in building up the prosperity of Natal and, indeed, a not unimportant part in the development of the Union of South Africa as a whole.

What has been the reward? Right after right has been taken away from and disability after disability has been imposed on the Indian community in South Africa. It has been reduced to the position of 'hewers of wood and drawers of water.' The Union Government's Indian policy has been a black one, indeed. It cannot claim any moral justification. Promises made in all seriousness have been violated again and again without qualms of conscience. The pages of South African history, so far as its citizens of Indian origin are concerned, are strewn with 'fragments of broken pledges.'

The *Pravda* (Moscow) wrote in 1946 :

'For sixty years (from 1885) Indian residents in South Africa have been deprived of elementary social rights. Their access to schools and universities has been restricted, but the last law passed by the Union of South Africa (The Asiatic Land Tenure and Indian Representation Act or the Ghetto Act, 1946) on May 29 greatly aggravates Indian inequality and renders their living conditions absolutely unbearable.'

The Government of India complained to the United Nations against the Ghetto Act. The Union Government have so far defied the verdict of that august body on the Indian problem on the specious plea that the problem, a domestic concern of the Union of South Africa, is beyond

the jurisdiction of the United Nations. The 1956 session of the General Assembly was boycotted—only a token delegation stayed on—by the Union Government because the Indian complaint had been included in the agenda.

One of the principal arguments of White South Africa against the Indian settlers is that they are foreigners in South Africa. 'The Asiatics,' wrote Lord Milner years ago, 'are strangers forcing themselves upon a community reluctant to receive them.' Hardly has so monstrous a lie been told with so admirable an economy of words. Between eighty-five and ninety per cent of the living generations of Indians in South Africa have been born and brought up in that country. A majority knows no home other than South Africa. Return to India is never contemplated by them. They have a typically South African outlook. Indian in blood and colour as they are, they are good South Africans as well, at least, as good as any other, 'in taste, in opinions, in morals and in intellect.' They constitute an indispensable element in the socio-economic set-up of the country. By no stretch of imagination can they, therefore, be regarded as aliens in South Africa, the land of their adoption.

Lord Milner's contention is untenable from a historical point of view as well. Indians went to Natal only twenty years after the Britons and to the Transvaal only twenty years after the Dutch. It is, therefore, bad logic to brand the Indians as aliens and to regard the Britons and the Dutch as the children of the soil. Did not many of these latter settle down in South Africa long after the Indians? Then again, Indians are believed by many to have laid the foundation of civilization in South Africa. The Zimbabwe ruins are, in the opinion of Professor Forbenius, a relic of Indian culture.

Indians are accused of entering into unfair economic competition with the whites. They, it is further alleged, have an abnormally low standard of living. The first of these allegations has no leg to stand upon. The secret of the Indian trader's success lies in his thrift, industry, contentment with comparatively small profits, cheap rates and

consideration for his customers. Cheap rates of Indian stores attract customers and are a blessing to the middle and poorer classes of people. They sell more reasonably than European stores and provide for easy terms of payment. The popularity of Indian establishments causes heart-burning to the Europeans. They accuse the former of rate-cutting and unfair commercial practices. Indian employers, it is alleged, pay starvation wages to their employees. It should be remembered, however, that the Indian employer generally provides his employees with free bed, free board and free clothes in addition to money wages. The real wages of the employees in an Indian firm are, therefore, much higher than their nominal wages. The salary paid to white girls by Indian concerns are, on an average, not lower than those paid by European concerns.

Lord Crewe, the secretary of state for India, exposed the hollowness of the charge that the Indians have a low standard of living when he told the Imperial Conference in 1911 :

‘There is nothing morally wrong in a man being a vegetarian and a teetotaller, and his family also, and being able to live very much more cheaply than the people who adopt the European standard of comfort. . . . If a man is content on rice and water and does not require pork, beef and rum, he naturally is able to support his family on a very much lower scale. Consequently, you have to convert the entire Indian nation to a theory of economics which they do not hold at present and to which I think it would be extremely difficult to convert them.’

The average Indian standard of living, if at all low in comparison with the European, is due not a little to Europeans themselves. Sir Benjamin Robertson, the Government of India’s representative, told the Asiatic Enquiry Commission in 1914 :

‘He (i.e. the Asian) is blamed as a poor spender, but any attempt to find an outlet for expenditure is either resented or prohibited.’

Indians are generally debarred from residing in expensive hotels and from dining in good restaurants. They are, in consequence, forced to patronise the cheaper and less

desirable places. Disabilities thus compel Indians to practise economy. The meagre wages paid to Indian agricultural labourers are a scandal. The quarters provided by the mills and plantations for their Indian employees are a disgrace.

An oft-repeated argument in favour of the anti-Indian policy of White South Africa is that the maintenance and extension of the Western civilization in the Union of South Africa necessitates the total exclusion of Indians and their civilization from there. The argument is casuistical. True it is that Western civilization predominates South Africa today. But it is equally true that its roots have gone so deep that it cannot be uprooted from South Africa. Every non-European community in the Union tries as best as it can to adapt itself to Western standards. The Indian community is no exception to the rule and an overwhelming majority of Indians in South Africa have adopted European manners and customs. Their mode of living is more Western than Oriental. They claim—not wholly unjustifiably—that their standards of living are not lower than that of the European settlers.

The majority of South Africa's more than four lakhs of Indian population are concentrated in Natal. The Natal Indian may, therefore, be rightly regarded as the prototype of the Indian in South Africa. The Indian Colonisation Enquiry Commission (the Young Commission) appointed by the Union Government in the early thirties said of the Natal Indian :

'Generally speaking, the Natal-born Indian is educationally and socially in advance of his parents... while retaining his religion (he) has become largely westernised and is no longer content to live as his father did on the limited rewards of rough and unskilled labour.'

Mrs Vijaya Lakshmi Pandit, the leader of the Indian delegation to the 1946 session of the General Assembly, called the bluff when she observed in course of one of her speeches to the assembled delegates :

'When South Africa contends that the presence of Indians in that country constitutes a threat to Western civilization, what is meant, of course, is that it is a threat to European

domination. It is not the (Western) civilization that is threatened, but the doctrine of white supremacy. Safeguarding white supremacy means, in effect, safeguarding the domination of a particular race over all others.'

'South Africa,' Mrs Pandit continued, 'uses the pretext of Western civilization to retain control over 8,000,000 (the number is about a crore) non-Europeans. This is a classic example of the State representing the wishes of those who control it.'

The European settlers in South Africa themselves support this contention when they argue that Indian immigration into the Union must stop as this will, in the long run, liquidate European supremacy by making the Indian community a power in South African politics. But the apprehension is absolutely baseless. Neither the proportion of the Union's Indian population to the European, nor the former's rate of increase as compared with that of the latter warrants the fear. The table given below speaks for itself:

PROVINCE	YEAR	EUROPEANS	INDIANS
The Cape	1911	582,377	6,609
	1921	650,609	6,498
	1931	749,231	6,500
Natal	1911	98,114	133,030
	1921	136,838	141,336
	1931	177,449	163,400
The Transvaal	1911	420,562	10,048
	1921	543,385	13,405
	1931	696,120	15,500
The Orange Free State	1911	175,189	106
	1921	188,566	100
	1931	205,375	100

The figures show that there has been very little change in the numerical strength of Indian settlers in the Cape and the Orange Free State since 1911. The Transvaal shows an increase of 33.4 per cent between 1911 and 1921. The European population of the Union, however, increased by about 43 per cent during the period under review. The Indian population, on the other hand, increased by about 25 per cent during the same period. Other communities have grown much faster than the Indian in recent years

and the fear of South Africa being swamped by Indian immigrants has absolutely no foundation in fact. The following table showing the population-growth in the South African Union during 1921-36 bears us out.

COMMUNITY	POPULATION-GROWTH
African	39%
European and Coloured	38%
Indian	30%

It should be noted further that the Immigrants Regulation Act of 1911 absolutely prohibits immigration of Asians into the South African Union. The Smuts-Gandhi Agreement (1914) and the Cape Town agreements (1927 and 1932) accept the principle underlying the Act and concede the Union's right to determine the composition of its own population. We fail to understand how Indians can threaten the 'whiteness' of South Africa under the circumstances. From 1914 only a handful of Indians—mostly teachers and priests—have been admitted into the Union.

The Lange Commission (1930) and the Young Commission reports leave no room for doubt that Indians occupy so insignificant a position in the Union of South Africa's political life that they will thank their stars if only normal human rights are granted to them. Thus, for example, in the year 1933-34, there were only 13 Indian parliamentary voters in Natal and 1,471 in the Cape. Indians in the Transvaal and in the Orange Free State are in a still more pitiable condition. The 29 Asians in the Orange Free State in 1945 had neither parliamentary nor municipal franchise. They had no land rights either. So also was the case with the Transvaal Indians. How can the Indians in the Union, who are numerically weak and are denied the most elementary rights of citizenship, 'whose very existence trembles in the midst of danger,' be a menace to European supremacy in South Africa?

The exponents of the anti-Indian policy further argue that Indians exercise an unwholesome influence on European character by intruding upon the European society and are therefore harmful to European interests. The charge is no

more true than the other anti-Indian allegations examined above.

The South African Indians have, by and large, adopted the Western mode of living. Their contacts with Europeans are purely professional. They are less intimate and more formal than Anglo-Indian contacts in India before and after 1947. If a handful of whites in India were and are in no social danger from more than three hundred million Indians, how can they be so in South Africa where Indians are so few in number—fewer than Europeans themselves—and are handicapped by all sorts of restrictions, prohibitions and disabilities? Some of the European witnesses examined by the Lange Commission (1930) alleged that Indians had extra-marital relations with European women. But they could not substantiate the charge. Some clergymen, however, cited a few cases of such illicit connection. They had to admit at the same time that the European women concerned were all uneducated, backward and extremely poor. The Commission observed :

‘Such occurrences are admittedly rare, and would probably be found as frequently amongst the coloured population of the country as amongst the Asiatics. The evidence did not certainly disclose any serious grounds for the fear of miscegenation in the future which was expressed by some of the witnesses. Apart from other considerations, differences of religion would go a long way towards averting such a danger.’

There were only 54 Euro-Asian marriages as against a total of 392,949 marriages registered in the Union of South Africa during the period 1926-36.

Europeans allege that Indians have a bad moral character and that their stay in the Union is an undiluted evil. They are, therefore, undesirable and must quit bag and baggage. But no less a man than Henry Burton, a South African delegate to the Imperial Conference, 1918, called the bluff when he told the Conference :

‘It is only fair to say—and it is the truth—that we have found that the Indians in our midst in South Africa, who form... a very substantial part of the population, are good, law-abiding, quiet citizens; and it is our duty to see...

that they are treated as human beings with feelings like our own, and in a proper manner.'

Are Asians more criminally inclined than Europeans? The table given below tells a different tale.

RACE	CONVICTION FOR SERIOUS CRIMES	
	1934	1939
European	3,312	2,093
Native	23,931	20,376
Asian	322	272
Coloured	4,258	3,887

The Indian in South Africa has his virtues and vices, his weak points as well as strong ones. He is not an angel. Nor is he a devil either. He is just human. The Indian in South Africa is on the whole progressive. He has freed himself from the shackles of prejudice and superstitious customs that he had carried from across the Indian Ocean. Heavy odds notwithstanding, there has been some progress in education and the community has thrown out a middle class, which supplies leadership to the community. The Indian settler in South Africa wants racial equality and equality of opportunities with Europeans. He is no longer willing to accept a second or third class citizenship in the land of his adoption. 'A comprehensive solution of the Indian problem in all its aspects,' points out Sir Shafa'at Ahmad Khan, an ex-high commissioner of India in the Union of South Africa, 'is a vital necessity and the time has arrived when it should be studied in a dispassionate manner. Segregation is no solution of the Indian problem in South Africa.'

Indian settlers in South Africa — and in other foreign countries as well — must unite and pursue a course of concerted action in defence of their racial and economic interests. They must realise that the anti-Indian policy is but one of the facets of racial arrogance, which involves the colonial peoples of the world in general — the African, the Arab, the Creole and the like — and is, in essence, an economic one. Racialism and colonialism will never rationalise themselves unless checkmated by the united front offered by the colonial peoples themselves, peoples whom an Un-

kind Providence has condemned — with what justice we know not — to *de facto* helotry in their own homes.

The powers that be will do well to bear in mind that 'Men and women all over the world are on the march physically, intellectually and spiritually. After centuries of ignorance and dull compliance, hundreds of millions of people... have opened the books. They are beginning to know that man's welfare throughout the world is interdependent. ... Men and Women... are conscious of their potential strength.' (Wendell Wilkie, *One World*.)

History confronts the white rulers of South Africa, among others, with a mighty challenge. Posterity will size them up by the manner in which they respond.

My sincere thanks are due to Mr J. C. Bagal for having first drawn my attention to the tragic story of Indians in South Africa. Thanks are also due to my teacher Mr T. Chakravorty of the Department of History, Calcutta University, and my friend Mr H. K. Dev for the encouragement I received from them. Professor Peter Wright, Head of the Department of African Studies, Delhi University, has placed me under a deep debt of gratitude by having gone through the typescript and having written the Foreword.

The Board of Editors of the *Calcutta Review* did me the honour of publishing chapters of the present volume in their journal. I am thankful to the Board.

S. B. MOOKHERJI

Amritsar,

15 August 1958.

CHAPTER I *Beginnings
of Bitterness*
(1860—1900)

Mr Gandhi, you are preaching to the converted, it is not vices of Indians that Europeans in this country fear but their virtues.

SIR LIONEL CURTIS

THE Union of South Africa,—*Unie Van Suid Afrika*, as the Boers call it—a member of the Commonwealth of Nations, was constituted in 1910 following the Act of Union passed by the British parliament in 1909. It is an amalgam of four provinces—Natal, the Cape province, the Transvaal and the Orange Free State. The first two were British colonies whereas the last two self-governing Boer republics under British suzerainty before the union. British influence is still strong—but diminishing—in the first two. Boer influence holds sway in the third and the fourth. The Union, excluding the contested area of South-West Africa, covers about 470,000 square miles. It is, in other words, about the size of France, Germany and Italy put together.

The Union has a total population of 12,646,375 divided into following racial groups :

Africans	8,500,000
Europeans	2,600,000
Coloureds	1,000,000
Indians	410,000
Cape Malays	40,000

(The figures are approximate.)

The European in the Union is thus outnumbered by a

ratio of about 4 : 1. The ratio between Europeans and non-Europeans is more extreme all over Africa, 'but nowhere has the disparity between the numbers of blacks and whites produced such turmoil, anguish and strain.'¹ This tension is due in the main to the racial policy of the Government of South Africa, which rules out all ideas of racial partnership. Field-Marshal Smuts justifies the policy in the following words :

'(The native Africans) have not the inner toughness and persistence of the Europeans, nor those social and moral incentives which have built up European civilization in a comparatively short period. But they have a temperament which suits mother Africa....'

'Nothing could be worse for Africa than the application of a policy the object or tendency of which would be to destroy the basis of this African type, to de-Africanize the African and turn him either into a beast of the field or into which suits mother Africa....'

'... the British Empire does not stand for assimilation of its peoples into a common type, it does not stand for standardization, but for the fullest (and) freest development of its peoples along their own specific lines. This principle applies not only to its European, but also to its Asiatic and African constituents.'²

The European settlers in South Africa are divided into two none too friendly groups—the Afrikaners and the Britons. The former, roughly 1.5 million in number, are descendents of the early Dutch, Flemish, French Huguenot and German settlers. The latter, who number a little more than a million, are, on the other hand, of British descent. Afrikans, the local language derived from Dutch, is the principal language of the former. English is the principal language of the latter. The two groups are separated 'not only by their background and language, but by bitterly intense emotional, economic and political differences.'³

South Africa, as noted above, is no believer in racial partnership. It denies the most elementary rights and pri-

¹ John Gunther, *Inside Africa*, p. 444.

² Jan Christian Smuts, *Africa and Some World Problems*.

³ Gunther, *op. cit.*, p. 444.

vileges to nearly ten million of its black and brown citizens. Its racial policy is, in fact, a challenge to the conscience of civilized humanity. We are, however, concerned here with the policy of the Government of the Union of South Africa towards the South African citizens of Indian origin.

The Indian problem in South Africa, if it is a problem at all, is the creation of the government and the European settlers of Natal. Half a century before the formation of the Union of South Africa, Natal, then a Crown Colony, had invited Indian labour to work on her mines and plantations.

Natal, in the thirties and forties of the 19th century, says E. A. Walker, 'was exuberant. First wool displaced ivory at the head of the list of exports, and coffee and cotton made a good modest footing; but soon sugar became king in the tropical coast-belt and in the legislative council (of Natal). And with sugar came Indian coolies.'⁴ The Zulus of Natal, accustomed as they were to a leisurely pastoral life, were not suitable for work on the sugarcane plantations. The planters thought of importing convict-labour from England. The settlers addressed a petition to Queen Victoria in 1855 for the necessary permission. The request was, however, turned down. The scheme of importing destitute children from England for work in the fields of Natal too came to nought.⁵

The Government of India were first requested in March, 1856, to send Indian labourers. The governor-general-in-council turned down the request on 2 January 1857, 'as no useful purpose' was to be 'gained by authorising such emigration.' The refusal of the Government of India to export labour to Natal was followed by an unsuccessful attempt to utilise local African labour by raising the hut-tax from 7 s. to 11 s. per annum. A local company imported a few Chinese labourers. But they had to be sent home before long.

The Government of India were approached once again. The governor-general-in-council wrote (31 March 1858):

⁴ *A History of South Africa*, p. 4.

⁵ Cf. 'Beginning of Emigration to Natal' by Iqbal Narain, *India Quarterly* (Vol. XI. No. I), pp. 31-55.

'After a careful consideration of the subject we have come to the conclusion that if the colony agrees to the rules which we have considered sufficient in regard to other colonies it will be unjust to it and to Indian labourers not to allow them to go to the colony if they can be prevailed upon by legitimate offers to do so.'⁶

The Government of Natal then passed two ordinances 'authorising and regulating the immigration of Indian labourers.' The ordinances were followed by legislative enactments in 1859. Law 13 of 1859 dealt with the import of coolies from territories east of the Cape of Good Hope, not from India. Law 14 of 1859 authorised the Government of Natal to import labour from India. Law 15 of 1859 enabled private individuals to introduce at their own expense immigrants from India. The laws obtained Royal assent in October, 1859. These Acts of the Natal legislature were followed by legislation by the Government of India. Act XXXIII of 1860 passed by the Government of India on 21 July 1860, permitted the emigration of Indian labourers to Natal. The Act came into effect on 7 August of the same year.

The first batch of Indian labourers to Natal sailed from Madras by *S. S. Truro* on 13 October 1860. They landed at Port Natal (Durban) on 16 November 1860. They included a statutory proportion of women and were imported at the public expense of Natal. The labourers, on their arrival, were assigned to different employers for a period three years—later extended to five years by law No. 17 (Natal), 1864—under indenture. The indenture system, as P. S. Joshi puts it, 'was an invention of the British brain to substitute it for forced labour and slavery.' The indentured 'coolies were half-slaves, bound over body and soul by a hundred and one inhuman regulations.'⁷ An indentured labourer was to receive a wage of 10s a month in the first year of indenture with free board and bed. The wages were to rise to 12s in the third year. On the expiry of the third year, the labourer had to serve a fourth year of indenture either

⁶ Home (Public) Letters to Court, No. 44 of 1858, 31 March 1858.

⁷ *Verdict on South Africa*, p. 43.

under his old master or under a new employer. He might serve a fifth year, if he chose to. He was, however, given the option to compound at the rate of £2.10 a year for the fourth and the fifth years. At the end of the five-year period, the labourer could live and work freely. He was then entitled either to a free passage home or to a grant of Crown land in Natal in lieu of the free passage. In Gandhiji's words, 'They were under no obligation to labour after the expiry of that period (of 5 years) and were entitled to work as free labourers or (to) trade in Natal, and settle there, if they wished.'⁸ The freedom of the indenture-expired 'coolies' was in practice restricted and hampered in a thousand ways. An indenture-expired coolie had to obtain a permit which alone would enable him to move about from place to place. If he married and desired that the marriage should be recognised as legally valid by the Natal authorities, he had to register the marriage with the Protector of Indian Immigrants. He was subjected to a number of other restrictions. C. W. M. Gell pointed out :

'It is also clear from Bishop Ferguson Davie's pamphlet that Natal did not get Indians on terms which the Europeans altogether approved. But, in fact, if they wanted Indian labour, they had no choice in the matter of terms, for those were imposed by the Government of India as the conditions on which alone it was prepared to sanction indentured emigration. The evidence of this is the correspondence between the governments of Natal and India which preceded the opening of coolie immigration, the text of Law 14 of 1859 and the further assurance for the proper performance of the terms which the Natal Government had to give to the Government of India before the latter permitted the resumption of emigration in 1874. There were some in those days in Natal—and more particularly at the time of the Wragg Commission ten years later—who believed, as others like to believe today, that Natal got its Indians on the understanding that they must re-enter indenture on the expiry of their contracts or immediately return to India. Many Europeans, then, as today, feared Indian economic competition, though a few saw that it might be in the interests of the community as a whole. But the Government of India

⁸ M. K. Gandhi, *Satyagraha in South Africa*, p. 42

confronted Natal either with the cessation of Indian immigration or with allowing the Indian to choose at the end of his five years' indenture to remain in South Africa or a free passage. Throughout this early period the benefits occurring (accruing?) from Indian labour were so obvious and immense that Indian immigration was welcomed almost unanimously despite its (from a European racial point of view) attendant disadvantages.⁹

The indenture system had, in the opinion of the late G. K. Gokhale, six principal features. The indentured recruit bound himself to go to a distant, unknown land. He had to work for any employer to whom he might be assigned and had no choice in the matter. He had to live on the employer's estate and could not leave the estate without a special permit. He had to do any work he was asked to do, however difficult and unpleasant it might be. The indentured labourer could not voluntarily withdraw from the contract during the period of his indenture. He had thus no means of escape from the hardships of indenture, however intolerable they might be. He bound himself to accept arbitrarily fixed wages—10s a month plus free board and bed in the first year of the indenture rising to 12s a month plus free board and bed in the third year—throughout the period of contract. The wages given to him were invariably lower than those paid to free labourers around him. Indentured labourers were at the same time placed under a special law which imposed on them a 'criminal liability for the most trivial offences of negligence or carelessness, liable to imprisonment with hard labour.'¹⁰ 'Such a system,' Gokhale pointed out, by whatever name it may be called, 'must really border on the servile.' The system 'was responsible for increasing the rate of suicide from ten to twelve times what it was among those classes in India from whom the indentured were drawn.'¹¹

Section 51 of Act II, 1870 (Natal), provided for free grants of land to the indenture-expired Indians if they com-

⁹ 'The Creation of a Historic Myth,' quot. in *Modern Review*, (December 1952), pp. 433-34

¹⁰ Cf. Joshi, *op. cit.*, p. 43

¹¹ *Ibid.*, pp. 43-44 (quoted).

mutated their right to a free return passage to India. Not a few took advantage of the law and accepted free grants of land instead of a free return passage to India. Of these, 'some remained in employment, others established themselves on the land or became traders or interested themselves in some other enterprise.'

The Indians, it must be noted here, did not force their way into Natal against the will of its inhabitants. Large sums of public money were spent on their travelling expenses. The Government of Natal actually 'undertook to pay from public funds £10,000 a year towards the cost of the transport of these immigrants, an arrangement which certainly appears to involve an inequitable subsidy to a particular class of employers. But the fact that it continued for over thirty years is a certain proof of the anxiety of the colony of Natal to secure Indian labour.'¹²

Each batch of indentured immigrants had, by statute, to include a certain proportion of women. The Government of Natal had 'specifically undertaken' that once the immigrants had worked out their indentures, 'they should be free to engage in any ordinary occupation and should not be subject to any discriminatory legislation.'¹³ The Government of Natal should have foreseen that such conditions would inevitably produce a permanent Indian population in the colony. They did not realise the consequences of their policy and have been trying to evade them 'as soon as they became irksome.'

The labourers were followed by traders from India and Mauritius and by Indians of other professions. Whereas the mass of Indian labourers were low-caste Tamils, the traders were mostly from Gujarat and Kathiawar and had a higher social standing. It was these latter, who principally pushed over the Drakensburg into the Transvaal. Indian traders in Natal gradually became a permanent factor in the economic life of the colony. They often did well in South

¹² Mabel Palmer, *Natal's Indian problem*, p. 8

¹³ *Ibid.*

Africa and grew comparatively wealthy.¹⁴ An increasing number of ex-indentured Indian labourers began to settle down as free labourers in Natal on the expiry of their indenture. It began to dawn on the Natal Europeans that the Indians in Natal were not a merely migrant labour force, that they were in Natal to stay.

The stay of the Indians in Natal was, in fact, a great boon to the colony. The Wragg Commission observed in 1886 :

'We are content to place on record our strong opinion, based on much observation, that the presence of these Indians had been much beneficial to the whole colony, and that it would be unwise, if not unjust, to legislate to their prejudice.'

Sir J. Liege Hulett, an ex-prime minister of Natal, said in 1903 :

'The condition of the colony (of Natal) before the importation of Indian labour was one of gloom, it was one that then and there threatened to extinguish the vitality of the country and it was only by the government assisting the importation of labour that the country at once began to revive.

'The coast had been turned into one of the most prosperous parts of South Africa. They could not find in the whole of the Cape and the Transvaal what could be found on the coast of Natal—10,000 acres of land in one crop—and that was entirely due to the importation of Indians. ... Durban was absolutely built up by the Indian population.'

The Indian traders set up retail business for the benefit of Indians settled in Natal and in other regions of South Africa. They did well on the whole. The prosperity of free

¹⁴ European writers on South Africa's Indian problem generally attribute the success of the Indian traders partially to their lower standard of living and various questionable practices. 'Probably they (Indian traders) did not feel that intense sense of superiority to the native which animated the white man, and were more willing to treat them with courtesy and consideration. But part of their success was certainly due to their lower standard of living and one is tempted to wonder whether they also took advantage of the native by undue credit facilities or direct money-lending, a development which might be expected under the circumstances' (Palmer, *op. cit.*, p. 9).

Indians and Indian traders frightened the Europeans. Systematic attempts were made by them from the eighties to curtail the rights of the free Indians and to stop further Indian immigration. Attempts were made to prevent the rise of a class of free Indians, which might compete with the Europeans on terms of equality and also with the natives in certain cases. The emergence of educated professional classes 'extended the frontiers of the struggle from the economic to the political arena.' Sir Thomas Hyslop frankly summed up the European attitude when he said, 'We want Indians as indentured labourers but not as free men.' It should, however, be admitted in fairness to the European community that it was afraid of the Indians for reasons more than one. These were the fear of an unfair economic competition by Indians, of political domination by Indians created by the rise of professional classes, of racial juxtaposition and of racial intermixture due to a grave disparity in the numbers of Indian men and women. Last but not least, there was—and there still is—the feeling of collective superiority of the South African Boer and English settlers over all coloured races—black and brown alike.¹⁵ To sum up :

'The socio-cultural differences due to divergences in race, religion, language and civilization, among Indians, Europeans and the indigenous communities complicated the above issues and further widened the psychological cleavages. . . . economic, political and racial considerations in their turn led to statutory restrictions on Indian immigration and settlement, on acquisition, occupation and alienation of land, on trading and other professions, and on the recognition of Hindu and Muslim personal law of marriage, inheritance and divorce. Adequate educational facilities were denied and the elementary rights of franchise and representation were denied or restricted. Added to all these were the innumerable inherent problems of labour as so many manifestations of the general question of capital versus labour. The surprising diversity of the problems ranges from parliamentary representation to ceremonial cremation.'¹⁶

¹⁵ Cf. C. Kondapi, *Indians Overseas, 1838-1949*, p. 7

¹⁶ *Ibid.*, p. 7

Right after right was taken away from the Indians in contravention of the letter and spirit of the conditions on which the Government of Natal had obtained the Government of India's consent to the emigration of Indian labourers.

'Beginning from 1895 measures were taken with the sole object of reducing persons of Asian origin to a position of permanent inferiority vis-a-vis Europeans.'¹⁷

The year 1880 witnessed the beginnings of anti-Indian bitterness in South Africa. The Government of Natal was requested by the English settlers to impose restrictions upon the indenture-freed Indians who chose to settle down in Natal. Some suggested that the Indian labourers be sent back to India on the expiry of their term of indenture. Others advocated the imposition of a poll-tax upon them. An anti-Indian agitation, which came into existence about this time, steadily grew in volume and intensity. It became so vehement that a Commission—the Wragg Commission—had to be appointed in 1886 'to enquire into the truth or otherwise of the anti-Indian allegations.' Representative Englishmen examined by the Commission were of opinion that the Indians were very helpful to the colony of Natal and its European settlers. Sir Henry Binns, one of the witnesses, declared :

'Were coolie immigration to be permanently stopped. . . . in a very short time after such stoppage, there would cease to be as much employment for Europeans, as there is now. Tropical cultivation never has been and never will be carried on without Indian labourers.'¹⁸

Sir J. Leige Hulett, whom we have quoted once before, told the Commission :

'The free Indians, at present in the colony, are an immense benefit being largely engaged in agricultural pursuits. I do not think the competition of the free Indians has interfered in the slightest degree with the development of the country by English Settlers.'¹⁹

¹⁷ **Spotlight on South Africa** (Government of India Publication), p. 5

¹⁸ Joshi, *op. cit.*, p. 48 (quot.).

¹⁹ *Ibid.*, p. 48

The findings of the Commission were in favour of the Indians, who were praised for their 'commendable industry' in agriculture. 'In fairness to the free Indian,' the Commission reported,

'we must observe that the competition (of Indians and Europeans) is legitimate in its nature, and it certainly has been welcomed by the general community. There can be no doubt that Natal is admirably suited, whether as a temporary or a permanent home, to Indian immigrants. We are impressed with the necessity, at a time when the colony is labouring under a depression of the most serious nature, of so moving that its agricultural development shall not be restrained. We are anxious not to imperil the interests of those persons, who have been induced, by an abundant and continuous supply of Indian labour, to invest their capital in large industries of undoubted benefit to the whole colony.'²⁰

The Commission observed further that to legislate against the free Indians 'would be unwise, if not unjust.'

Matters in the South African Republic (the Transvaal) had been taking an evil turn for the Indians in the meanwhile. Many of the free Indians, who had followed the indentured labourers into Natal, had pushed farther inland into the South African Republic to explore new fields for trade and had settled down as merchants, traders, hawkers and manual labourers of various categories. The Indians, it should be borne in mind, could lawfully enter, live and trade freely in the Transvaal. Article 14 of the London Convention (1884) between Her Majesty's Government and the South African Republic laid down :

'All persons other than natives conforming themselves to the laws of the South African Republic (a) will have full liberty with their families to enter, travel or reside in any part of the South African Republic; (b) will be entitled to hire or possess houses, manufacturing warehouses, shops and premises; (c) may carry on their commerce either in persons or by any agents whom they think fit to employ; (d) will not be subject in respect of their commerce or industry to any taxes whether general or local

other than those which are or may be imposed upon Burghers of the said Republic.'

'The above article, it may be noted, is in accord with Article 4 of the Queen's Proclamation (1 November 1858), issued on the occasion of the transfer of India from the East India Company to the Crown in 1858. Article 14 of the London Convention is, in fact, a confirmation on the international plane of the spirit underlying the said Article of the Queen's Proclamation, which runs as follows :

'We hold ourselves bound to the natives of our Indian territories by the same obligation of duty which bind us to all our other subjects; and these obligations by the blessing of Almighty God we shall faithfully and conscientiously fulfil.'

The Indian settlers in the South African Republic soon became an eyesore to the Boers, who sought to get rid of the 'unwanted' intruders by all means within their power. The hands of the Republican government were strengthened by a European agitation against 'the threatened invasion of Asiatics such as already has commenced in Pretoria.' The agitators pointed out the danger to the European community of allowing these Asians to settle in the centre of the townships owing to their 'neglect of sanitary measures and loathsome mode of living' and urged that they should be 'isolated within their own location quite separated from the white population.'

Sir Hercules Robertson, the British high commissioner in the South African Republic, recommended to the Colonial Office in January, 1885, that Article 14 of the London Convention (see above) should be so amended as to deny the rights guaranteed by the said Article to the Africans, the Indians and the 'Chinese coolie immigrants'. Lord Derby, the secretary of state for colonies, agreed.

The amendment was followed by Law 3 of 1885. It imposed a number of humiliating and discriminatory disabilities upon the Indians among others, and reads as follows :

- '1) This law applies to persons belonging to any of the aboriginal races of Asia, including thereunder the so-

called coolies (i.e. Indians), Arabs, Malays and Mohammedan subjects of the Turkish Empire.

'2) With respect to persons referred to in section 1, the following provisions shall be in force :

- 'a) They should not acquire citizenship in the South African Republic;
- 'b) They shall not be owners of landed property in the Republic. This provision has no retrospective effect;
- 'c) Those who settle in the Republic with the object of trading, etc., shall have to be inscribed in a register to be specially kept by the Landrosts of the respective districts, according to the model to be prescribed by the Government.

'A sum of £25 is payable with the registration to be effected within eight days after arrival—punishment in default will be a fine varying from £10 to £100 and in default imprisonment for not less than fourteen days and not more than six years.

'Those settled in the Republic before the law becomes operative are to be registered without payment.

- 'd) The Government shall have the right to assign to them special streets, wards and locations for habitation. This provision shall not apply to those who reside with their masters in whose service they are.'

The Indians protested against the Law. Sir Hercules Robertson advised Her Majesty's Government to acquiesce in the Law, 'as it appeared necessary for the protection of public health.' The latter declared in 1886 that they would not raise any objection to anti-Asian legislation.

Law 3 of 1885 was certainly a flagrant violation—both of the letter and the spirit—of the original London Convention and the Queen's Proclamation. Its only redeeming feature from the Indian point of view was that it recognised the right of Indians to settle in the Transvaal for purposes of trade.²¹

²¹ '... It appears that Indians were permitted not only to trade but to reside outside locations. They were allowed also to own property outside locations through a nominal European trustee' (**Report of the Asiatic Inquiry Committee, 1921**).

The Law was amended by an Ordinance of the South African Republican Government in 1887. Articles (b) and (d) of section 2 of the said Law were amended as follows :

Section 2, Article (b). 'They shall not be owners of landed property in the Republic except in those streets, wards and locations that the Government for sanitary purposes shall assign to them.'

Section 2, Article (d). 'The Government shall have the right for sanitary purposes to assign to them special streets, wards and locations for habitation.'

'Sanitary purposes,' were, however, a camouflage. 'The motive behind Law 3, 1885, as well as the Ordinance of 1887, was in reality an economic one. A petition to the president of the South African Republic from the European citizens of the Republic about this time confirms the above suspicion. The petition says, *inter alia* :

'We firmly believe that the agitation (against Indians) owes its origin not to their habits as regards sanitation, but to trade jealousy, because owing to their frugal and temperate habits, they have been able to keep down the prices of necessaries of life, and have therefore been an inestimable boon to the poor classes of the society in the state.'

Another representation of the Europeans to the Republican Government pointed out that they recognised in the Indians 'a peaceful and law-abiding and therefore desirable class of people. To the poor they are a veritable blessing inasmuch as by their keen competition they keep down the prices of the necessaries, which they can do owing to their thrifty and temperate habits.'

It was pointed out further that the withdrawal of the Indians from the Republic would cause not a little hardship to the Europeans, specially those who lived far away from the centres of business as they depended upon the Indians for the supply of their daily wants. The representation concluded with an appeal to the government not to do anything that might 'scare away the Indians from the Transvaal.' The government, however, ignored the representation and the sage counsel it gave. *The Press*, organ of the Transvaal government, was of opinion that the Indians were the canker eating into the very vitals of the community. It also expressed the fear that the Europeans might run the risk of exposing

themselves to leprosy and syphilis which many Indians were alleged to be suffering from.

Expert medical opinion established that the segregation of Indians for sanitary purposes was wholly unwarranted. H. Prior Veale, B. A., M. B., B. C. (Cantab), a medical practitioner with five years' practice in Pretoria in 1895 and with considerable practice among Indians observed in course of a statement that he had found the Indians

'generally clean in their persons, and free from the personal diseases due to diet or careless habits. Their dwellings are generally clean, and sanitation is generally attended to by them... the lowest class Indian lives better and in better habitation, and with more regard to sanitary measures than the lowest class white... Generally, in my opinion, it is impossible to object to the Indian on sanitary grounds, provided always the inspection of the sanitary authorities is made as strictly and regularly for the Indian as for the white.'²²

C. P. Spink, M.R.C.S., L.R.C.A. (London), a medical practitioner of Johannesburg, observed in 1895 that Indian residences were quite up to the mark from a sanitary and hygienic point of view and might be safely inhabited by any European. He said further: 'I have resided in India... their habit here are far superior to those of their native country.'²³ Another medical practitioner, Namacher, M.D., observed in 1895 that the better class of Indians at Johannesburg 'are as clean in their habits and domestic life as white people of the same standing.'²⁴

It is obvious to any student of the problem that commercial rivalry lay at the root of anti-Indian feeling and agitation. The Indian traders by their economic and temperate habits were able to sell necessaries at lower prices. This angered the European businessmen who were accustomed to make large profits. Indian traders were almost all, teetotallers. They were men of simple habits and were con-

²² Quoted in the petition submitted to Lord Ripon by the British Indians in the South African Republic in 1895.

²³ *Ibid.*

²⁴ *Ibid.*

tent with small profits. This is why the European mercantile community turned hostile to them.

The Indians in the South African Republic requested the government in June, 1888, to exempt them from the operation of the law which ordered that 'kafirs' should not be in streets after 9 in the evening. The request was turned down. A few months later, in August, 1888, the high court decided in the case of Ismail Sulieman and Co. that Asians could carry on business only in locations. The Indians felt uneasy. They lodged a protest to Her Majesty's Government against the judgment and the dispute was submitted to arbitration. Mellius de Villiers, the chief justice of the Orange Free State, was appointed arbitrator. He upheld the decision of the high court and observed that

'the South African Republic was entitled to give full force and effect to Law 3 of 1885, subject to the sole and exclusive interpretation in the ordinary course by the tribunals of the country.'

The Volksraad passed a resolution in September, 1893, authorising itself to devise ways and means to enforce compliance with Law 3 of 1885. A Commission, appointed in August, 1895, to investigate the question of the administration of the said law, recommended that Law 3 of 1885 should be immediately applied and rigorously maintained. The recommendation was adopted by the Volksraad by a resolution in November, 1896.

Law 3 of 1899 forbade mixed marriages, i.e. marriages between whites and non-whites. The law, needless to say, affected the Indian along with all other non-Europeans in the South African Republic. An Indian trader, Yakub Hajee Mohammed, sued the government in August, 1898, for a declaration of rights in course of an appeal before the high court against the refusal of a trade licence in Church Street, Pretoria. The court upheld the action of the government.

Law 15 of 1898 laid down that 'no coloured person might be a licence-holder, or in any way connected with the working of the diggings.' Section 130 of the law prohibited a European, who alone could acquire a leasehold in

a stand, from transferring or sub-letting the right to a coloured person, permitting him to reside on or occupy ground under such right. Section 131 laid down that no coloured person should be permitted to reside on the proclaimed land in the mining district of Witwatersrand except in bazars, locations, mining compounds and such other places as the mining commissioner might set apart.

The Orange Free State outdid the South African Republic by passing a law in 1891, which prohibited 'an Arab, a Chinaman, a coolie or any other coloured person from Asia' from carrying on business or farming in the Orange Free State. Indian business houses were forced to close down after the expiry of a twelve-month period ending on 11 September 1891, and the Indian mercantile community had to move out without being given any compensation whatever.²⁵

The malicious propaganda against the Indians begun before the enactment of the above law, however, continued. It was contended, for example, 'As these men enter the state without wives or female relatives the result is obvious. Their religion teaches them to consider all women as soulless and Christians as natural preys.'²⁶

Natal, which had first invited Indians to South Africa, was not to lag behind the South African Republic and the Orange Free State. The *Natal Advertiser* observed²⁷ that while 'the real coolie' was indispensable to South African economy, 'The sooner steps are taken to suppress, and, if possible, to compel the Indian trader, the better. These latter are the real canker that is eating into the very vitals of the community.'

The Indians in Natal were fast growing in number over the Europeans in 1891. Two-thirds of them were free

²⁵ This, however, does not agree in all details with the following: '...passed a law prohibiting any Asiatic from trading or farming and the Indians settled there were **forthwith** deported without any compensation' (Kumari Mukul Mukherjee, *Our Countrymen Abroad*, p. 198).

²⁶ *Green Book*, I, 1894, p. 30, presented to the O.F.S. Volksraad.

²⁷ Dated 15 September 1893.

men. Some had municipal and parliamentary franchise.²⁸ The European colonists were frightened by the increasing number and growing prosperity of Indian settlers. The majority of the European settlers, observed the Wragg Commission, 'were strongly opposed to the presence of free Indians as rivals either in agricultural or commercial pursuits.' The governor of Natal, therefore, proposed that the Indians be compelled to return to India on the expiry of the period of indenture. The proposal was not accepted by the Government of India. The Government of Natal next proposed that the period of indenture be extended. The Government of India, however, did not agree. The proposal, they contended, would deprive the Indian immigrant of the option of returning home on the completion of the five-year period of indenture. The proposal, the Government of India argued further, would prevent the Indian immigrant from making the best use of the second five years of his stay in Natal. It may be noted here that under the existing law the indentured Indian immigrant had to complete this period to earn the privilege of a free return passage to India. Return home after the first five years would, therefore, deprive the Indian labourers of the right of a free return passage.

The first step to keep down the number of Indian settlers in Natal by preventing future settlement was taken by an Act of 1891, which repealed section 51 of Act II of 1870. The section offered land to the Indian labourer at the end of ten years after arrival in Natal. Natal, which was granted self-government in 1893, sent the Binns-Mason deputation to the Government of India in the same year. The deputation requested the Government of India to agree to the compulsory return of Indian labourers from Natal on completion of their period of indenture. The Government of India told the deputation that they (i.e. the Government of India) would not object to the insertion of a condition in all future contracts that the labourers must return to India on the expiry of the last terms of their indentures 'provided

²⁸ Walker, *op. cit.*, p. 522.

that failure to fulfil this condition should not constitute a criminal offence.'

The Government of India themselves did not know how to compel the indenture-expired labourers to return to India. They wrote to the secretary of state for India, 'We believe, however, that refusals to return will probably be rare, that they may be reduced to a minimum by imposing a tax on residence of Indian immigrants in the colony.'²⁹ The latter, however, pointed out in his reply that the initiative in the matter should come from the Government of Natal and that the Government of India should not propose or approve the imposition of a tax on Indian immigrants for residence in Natal. He suggested at the same time what he thought to be a simple and more effective method to compel the indentured labourer to contribute from his earnings a certain proportion of the cost of the return passage and to provide for the forfeiture of such contribution in the event of not returning within some reasonable period. The India Office rightly

'apprehended the possible imposition of a special tax on emigrants choosing to remain in the colony (Natal), contrary to the terms of their undertaking, as also the extension of such special tax to free Indians, who went to the colony at their own expense and without conditions, for purposes of trade.'³⁰

The Colonial Office, however, wrote that

'such tax would be in effect a penalty for enforcing contracts voluntarily made by the coolies in India and might be justified on the ground, but that it would not follow that the allowance of such a measure would preclude disallowance of a law imposing a special tax on free Indian emigrants to Natal.'³¹

Because the Government of India insisted on immunity from criminal prosecution of the indenture-expired Indians, who stayed back in Natal, the Binns-Mason deputation re-

²⁹ Government of India Despatch, dated 22 May 1894.

³⁰ Kondapi, *op. cit.*, p. 23.

³¹ Selection of Papers Regarding the Indian Problem in South Africa for the Use of the Government of India Delegates (1926), p. 21, Despatch 1020 J and P. 4 July 1894.

commended a residence-tax on them. The Natal legislative assembly accepted the recommendation and passed Act 17 of 1895. The Act modified the Indian Emigration Act 25 of 1891 in some important respects. Section 110 of the latter provided for a free passage back home to an Indian labourer who had spent ten years in Natal and had completed five years of service, if he or she applied within twelve months after the expiry of the indenture. Section 114 provided for the forfeiture of this privilege under certain circumstances. Section 13 of Act 17, however, nullified both the sections under reference. The Act, no doubt, provided for a free return passage to India, but disallowed the grace period of twelve months granted under section 110 of Act 25 of 1891. An ex-indentured Indian was allowed to stay in Natal whether he took out a licence or not. Section 6 of Act 17 proposed a licence-fee of £25 per annum. The Government of India, however, objected and the fee was fixed at £3 per annum. Every ex-indentured Indian above 16—if a man—and above 12—if a woman—had to pay the fee if he or she wanted a licence to stay in Natal.

The imposition of a licence-fee of £3 a year bordered on the barbarous. Wages of Indians were still very low. They were kept down by the continuing influx of fresh indentured immigrants at an initial wage of 10s a month. The impost drove not a few Indians to lives of sorrow and dishonour. Sir Liege Hulett, an ex-prime minister, declared on the floor of the Natal legislature that it (the licence-fee) had the effect of driving many Indian women to lives of shame. The late G. K. Gokhale remarked, 'This cruel impost caused enormous suffering, resulted in breaking up families, and driving men to crime and women to a life of shame.'

A redeeming feature—perhaps the only one—of Act 17 of 1895 was that it recognised the right of ex-indentured labourers to stay in Natal even if he or she did not obtain a licence for the purpose. Those who did not take licence could not be forcibly sent back to India. Nor did the Act make any provision for penalising them. Ex-indentured Indians could not therefore be directly forced back to India.

But the Act provided that each fresh Indian immigrant entering Natal under an indenture should agree either to return to India on the expiry of his indenture or to re-enter into a contract for work on hire.

The grant of self-government to Natal in 1893 has been referred to above. This was the signal, as it were, of flinging wide open the flood-gates of anti-Indian activities of the Government of Natal. The helpless Indian community was deprived of many of the rights and privileges it enjoyed under the old regime. The first session of the first parliament of self-governing Natal passed a Bill depriving all Asian immigrants of the parliamentary franchise so long enjoyed by them. The Bill was submitted to the Colonial Office for Royal assent (1894).

A new star had in the meanwhile appeared on the South African horizon. It grew in brilliance from day to day till at last it became a beacon for humanity at large, a symbol of hope for downtrodden and disinherited humanity all over the world. Mohandas Karamchand Gandhi, a young Indian Barrister, was at this time in South Africa on a purely professional call. He came across the Bill by accident at the farewell party in Durban on the eve of his departure for India. 'At the farewell entertainment held by Dada Abdulla in my honour,' writes Gandhiji,

'someone put a copy of the Natal *Mercury* into my hands. I read it and found that the detailed report of the proceedings of the Natal legislative council contained a few lines on Indian franchise. The local government was about to introduce a Bill to disfranchise Indians... I read out the report to the traders and others present and explained the situation as well as I could, suggesting that Indians should strenuously resist this attack upon their rights. They agreed but declared that they could not fight the battle themselves and therefore urged me to stay on. The same night I drew up a petition to be presented to the legislative council. A telegram was sent to the government requesting them to delay the proceedings. A committee was formed with Sheth Abdulla Haji Adam as chairman and the telegram was sent in his name. The further readings of the Bill was postponed for two days. The petition was the first ever sent by Indians to a South African legislature. It was South African In-

dians' first experience of such a mode of procedure and a new thrill of enthusiasm passed through the community. Meetings were held every day. The requisite funds were soon over subscribed: Within a month a memorial with 10,000 signatures was forwarded to Lord Ripon and the immediate task I had set before myself was accomplished.³²

Mahatma Gandhi founded the Natal Indian Congress at this time (1894). The Natal legislative council ignored the Indian representation and as observed above, passed the Franchise Bill and sent it for Her Majesty's approval. Gandhiji's efforts, however, did not go in vain. Joseph Chamberlain, Her Majesty's secretary of state for colonies, refused to advice Royal assent to the Bill. His letter to the prime minister of Natal will be read with interest:

'Electors of important constituencies in Great Britain have considered Indian gentlemen worthy not merely to exercise the franchise, but to represent them in the House of Commons. I desire, however, to guard myself from the supposition that I regard this question merely from the point of view afforded by the experience of his country, and that I have not paid due regard to local considerations. It is manifestly the intention and desire of your Government that the destinies of the colony of Natal shall continue to be shaped by the Anglo-Saxon race; and that the possibility of any preponderant influx of the Asiatic voters should be averted. . . . But the Bill under consideration involves in a common disability all natives of India without exception, and provides no machinery by which an Indian can free himself from this disability, whatever his intelligence, his education or his state in the country, and to assent to this measure would be but an affront on the people of India such as no British parliament could be a party to.'³³

The Bill, modified on the advice of Chamberlain, was re-introduced in the Natal legislature in 1896. Sir John Robinson, the mover of the Bill summed it up in the following words: 'This Bill will disqualify all persons who are precluded by virtue of their experience from the exercise of the high privilege of citizenship.' The Bill was an improvement upon its predecessor inasmuch as it left the

³² M. K. Gandhi, *Satyagraha in South Africa*, pt. I, ch. VI.

³³ S. Waiz, *Indians Abroad Directory*, p. 478 (quoted). Also in Joshi, *op. cit.*, pp. 54-55.

'door open for the admission of Indians to the parliamentary franchise as soon as India became a self-governing dominion.'³⁴ Even before the acquisition of self-government by India, the governor of Natal might make exceptions in the cases of those Indian settlers whose names were already on the voters' roll and who were 'otherwise qualified and competent.' The Bill, passed by the Natal legislature, received Royal assent in due course and was placed on the statute-book as the Franchise Act, 1896, (Act VIII, 1896). A handful of Indians, whose names were on the voters' roll at the time, continued to enjoy parliamentary franchise even after the passing of the Act. But no Indian, who was not already a voter in 1896, could acquire parliamentary franchise in future.

White Natal became more and more anti-India. Tension in Natal went on mounting in consequence. In the closing years of the 19th century, the Indian population in the colony was almost equal in number to the European. The number of free or 'passenger' Indians had been on the increase for some time. The European settlers felt uneasy and the smouldering fire of fear and hatred finally burst out in anti-Indian riots in 1897. Gandhiji had come back to India in the middle of 1896. He utilised his stay in India by meeting prominent national leaders and by addressing a number of public meetings. He had also published a pamphlet on the Indian question in South Africa. Indians at home were thus acquainted with the grievances of their compatriots abroad. Incorrect reports of Gandhiji's activities reached Natal and England. The *Reuters* cabled to Natal that Gandhi had made European Natal appear in India 'as black as his own face.' The latter became furious.

The Indian settlers wanted Gandhiji to be back in their midst. A cable to this effect reached him while he was in Calcutta. He responded to the call and immediately sailed for Durban with his family. Two ships—*S. S. Courland* and *S. S. Naderi*—steamed into port Natal on the 18th or 19th of December, 1896, with about 800 Indian immigrants on

³⁴ Kondapi, *op. cit.*, p. 385.

board. Half of them were bound for the Transvaal. Gandhiji and family were on *S. S. Courland*. Gandhiji, it must be noted, had nothing to do with the immigrants. His arrival simultaneously with them was a coincidence pure and simple.

There had been cases of plague at Bombay at the time the ships weighed anchors. They were therefore put under quarantine for five days. But the quarantine order had more than sanitary reasons behind it, for the passengers were not allowed to disembark on the expiry of the period of quarantine.

The European residents of Durban had been in the meanwhile agitating for the repatriation of the passengers on board the *Naderi* and the *Courland* and their agitation was one of the reasons for the quarantine order. As Gandhiji put it,

'Durban had become the scene of an unequal duel. On one side there was a handful of poor Indians and a few of their English friends and on the other were ranged the white men, strong in arms, in numbers, in education and in wealth. They had also the backing of the state, for the Natal government openly helped them. Mr Harry Escombe, who was the most influential of the members of the (Natal) cabinet, openly took part in their meetings.'³⁵

Gandhiji was the real target of the attack. There were two charges against him : (a) That during his stay in India in 1896, he had indulged in unmerited condemnation of the Natal Europeans and (b) 'that with a view to swamping Natal with Indians he had specially brought the two shiploads of passengers to settle there.'

The quarantine of the *Courland* and the *Naderi* was not, as observed above, prompted by sanitary considerations alone. The chief aim was to force the passengers aboard the steamers to return to India by intimidating them or Dada Abdulla and Co., the proprietors of the *Courland* and the agents of the proprietors of the *Naderi*. The passengers were threatened with dire consequences if they landed. 'If

³⁵ M. K. Gandhi, *The Story of My Experiments with Truth*, (Phoenix Press, London), pt. III, p. 158.

you do not go back, you will surely be pushed into the sea. But if you consent to return, you may even get your passage money back.³⁶

To make a long story short, the Indian passengers were at last allowed to disembark on 13 January 1897. Gandhiji and family were advised by Escombe to land at dusk, when the port superintendent would escort them to their destination. On the advice of Laughton, a Durban lawyer and an old friend, Gandhiji decided otherwise. His wife and children were sent to the house of his friend and client, Rustomji. Gandhiji himself landed at about 4-30 p.m. in the company of Laughton and proceeded on foot to Rustomji's place about two miles from the port.

Here is what followed, told in Gandhiji's own words :

'As soon as we landed, some youngsters recognised me and shouted 'Gandhi', 'Gandhi'. About half a dozen men rushed to the spot and joined in the shouting. Mr Laughton feared that the crowd might swell and hailed a rickshaw... But the youngsters... frightened the rickshaw-boy out of his life and he took to his heels. As we went ahead, the crowd continued to swell, until it became impossible to proceed farther. They first caught hold of Mr Laughton and separated us. Then they pelted me with stones, brick-bats and rotten eggs. Someone snatched away my turban, while others began to batter and kick me. I fainted and caught hold of the front railings of a house and stood there to get my breath. But it was impossible. They came upon me boxing and battering. The wife of the police superintendent, who knew me, happened to be passing by. The brave lady came up, opened her parasol though there was no sun then, and stood between the crowd and me. This checked the fury of the mob, as it was difficult for them to deliver blows on me without harming Mrs Alexander (the wife of the police superintendent).

'Meanwhile an Indian youth who witnessed the incident had run to the police station. The police superintendent Mr Alexander sent a posse of men to bring me round and escort me safely to my destination.'³⁷

The police took him first to the police station, which

³⁶ *Ibid.*

³⁷ *Ibid.*, pp. 160-61.

lay on the way to Rustomji's house. Alexander suggested that Gandhiji should take shelter in the police station. The latter, however, expressed his desire to proceed to Rustomji's place. He thanked the Alexanders and said that his assailants would certainly 'quiet down' when they realised their mistake and that he had trust in their sense of fairness.

Escorted by a police force, Gandhiji reached Rustomji's house safely. He had bruises all over, but no abrasions except in one place.

White hoodlums got to know of Gandhiji's place of residence and surrounded Rustomji's house. They demanded the surrender of Gandhiji. The presence of mind of Alexander, who had arrived there in the meanwhile, saved the situation and averted what might have been a terrible tragedy. He sent Gandhiji to the police station under the disguise of an Indian police constable. The mob dispersed after making sure that Gandhiji was not in the house.³⁸

The British government informed the Government of Natal that the assailants of Gandhiji should be prosecuted. Gandhiji, on his part, surprised all by issuing a statement on the tension prevailing in Natal and by refusing to initiate legal proceedings against his assailants. A 'coolie' from enslaved India spoke in the voice of the Son of Man! The new star had risen well above the horizon.

Gandhiji next tried to acquaint the British public with the South African Indian question. He wrote to Dadabhai Naoroji, Sir William Wedderburn, Sir William Hunter and Sir Mancherjee Bhabnagri and to various departments of the British government.

The monster of racialism set in motion by the Government of Natal moved on in the meanwhile. The disfranchisement of Indians was followed by Act I of 1897, which prohibited immigration into Natal except on certain conditions. All fresh immigrants had to pass a prescribed dic-

³⁸ Cf. M. K. Gandhi, *Satyagraha in South Africa*, (pt. I, ch. VI) and *Story of My Experiments with Truth* (pt. III), pp. 160-63.

tation test in a European language. Each such immigrant had further to be in possession of a specified amount of money at the time of his or her entry into Natal. The right of free entry into South Africa granted by the London Convention of 1884 was thus nullified by Act I of 1897, which was approved by Her Majesty's government. The secretary of state for India, however, wrote at the time of the promulgation of the First Immigration Restriction Ordinance by the Government of Natal in 1897 that it could be accepted only if 'it is applied equally to immigrants from all countries and is not based on differences of race and colour.' He however blessed the prohibition of immigration in principle in his Despatch of 21 July 1897 in the following words:

'We regret the necessity for restrictions which exclude the British Indian subjects from South Africa, but accept the prohibition of further immigration in order to secure the fair treatment of those who are lawfully settled there. We are therefore entitled to demand fair and equitable treatment involving complete equality before the law for those Indians who have already been allowed to settle in Natal, or who might hereafter under the new immigration law be permitted to do so.'³⁹

The Dealers' Licence Act, 1897, (Act XVIII, 1897) sought to impose restrictions on Asian trade in Natal for the first time. It laid down that all traders—Asian and otherwise—must obtain trade licences in future. The actual granting of licences, however, made all the difference. The licensing officer of the Durban municipal council admitted, perhaps with a feeling of pride (1921): 'A European licence is granted as a matter of course, whereas an Indian licence is refused as a matter of course, if it is a new one.'⁴⁰ Act 18, it should be noted, governed the issue of licences in municipal areas only. Trade licences were withheld from those who failed to keep their books in English. Licensing officers were appointed by town councils or town boards to issue annual licences in boroughs and townships to whole-

³⁹ Joshi, *op. cit.*, p. 57 (quoted).

⁴⁰ Bhaskar Appasamy, *Indians in South Africa*, p. 20 (quoted).

sale and retail traders. These officers had the sole discretion of granting or refusing licences. Appeals against their decisions did not lie in any court of law. Section 6 of the Act, however, permitted appeals against the decisions of a licensing officer to the town council or the town board, which employed him, or to a special board of three persons appointed by the administrator. Rightly did the secretary of state for India observe:

'A law which requires a licence to be taken for carrying on any wholesale or retail trade of whatever description and leaves it in the absolute discretion of one or two authorities to grant or refuse such licences as they think fit, unfettered by any rule or principle, is without precedent.

'Such law would obviously be open under any circumstances to grave abuse and the danger of its abuse is inevitably increased when it is liable to be used only against one section of the population, and when the final decision on any question arising under it is entrusted to a municipality or other local body.'⁴¹

The secretary of state for India requested at the same time that the grounds on which licences might be refused should be specified in another Act, if the law in question was at all thought necessary.

Act XVIII, 1897, was grossly abused. On appeal against refusal of licences in a number of cases, the judges passed severe strictures on the licensing authorities. Chief Justice Sir Walter Wregg remarked in course of his judgment on the appeal of Somnath Maharaj that a licensing officer should not be in the employ of a town council. Nor should he be, the judge continued, in the confidence of the council.⁴² The proceedings of the town council were quashed by the learned judge and the appeal was admitted. 'What struck one as being wrong in this case was,' he observed,

'that the copy of the record should be withheld. The application was made to the council by the appellant for a copy

⁴¹ Confidential Memorandum submitted by the Government of India Deputation to the Government of South Africa, 14 May 1926, p. 41.

⁴² *Ibid.*, p. 49.

of the record and the reasons why the licence had been refused. There was nothing wrong in the application. It was one, which, in the interests of justice, should have been granted. But it was refused. And when the appellant's counsel (Gandhiji) came before the Court, he was in the dark as to the record and he did not know what was operating in the mind of the licensing officer.⁴³

The action of the town council was characterised by Sir Walter as 'oppressive,' 'unjudicial' and 'improper.'

The year 1898 was a bad one for the Indian traders in Natal. A large number of Indian licence-holders in Durban and New Castle were refused renewals of their licences. The chief justice of Natal held that the supreme court had appellate jurisdiction over the decisions of the town councils in their capacity as licensing authorities. The privy council disagreed. The secretary of state for colonies observed that it was unfortunate that aggrieved parties should be deprived of the right of appeal because there was a difference of opinion over the interpretation of a statute. He suggested that the Government of Natal should issue a circular to all local authorities that unless they exercised with 'reasonable liberality' the powers given to them by Act 18 of 1897, the Act itself might be reconsidered. The Government of Natal agreed and circulated the local bodies accordingly. The circular had a salutary effect, albeit temporary.

The secretary of state for colonies wrote to the Government of Natal in May, 1899, that the dealers, who were refused licences, should be given the right of appeal to Natal supreme court. Emigration from India, he feared, might otherwise stop.⁴⁴ The Government of India too wrote a similar letter to the Government of Natal one year later (July, 1900). The licensing authorities would not, however, mend their ways. In Durban, writes L. E. Neame,

'the Act (Act XVIII. 1897) has been admittedly utilised in order to prevent Indian merchants opening up shops in particular streets. The licensing officer is the servant of a body of white shop-keepers. He... can hardly be expected to

⁴³ *Ibid.*, p. 50.

⁴⁴ *Ibid.*, p. 54, letter 12991, 20 May 1899.

sacrifice his appointment by opposing those who employ him.⁴⁵

The tables below show how Indians were discriminated against in the matter of issuing trade licences :

LICENCES ISSUED IN DURBAN

<i>Year</i>	<i>Indian</i>	<i>Non-Indians</i>
1895-1908	11,765	20,472

NUMBER OF LICENSED DEALERS IN NATAL

<i>Year</i>	<i>Indians</i>	<i>Non-Indians</i>
1904	1,334	1,930
1908	1,008	2,034

In 1900, the Government of Natal ordered that adult children—male and female—of indenture-expired Indians must each pay an annual tax of £3 for stay in Natal. A similar tax, the reader may remember, had already been imposed on the parents of such children in 1895.

Thus ended the nineteenth century on the South African scene, with ominous prospects for the Indian settlers. They had been pushed out of the Orange Free State. Natal, which had invited Indians to South Africa less than fifty years ago, and the South African Republic (the Transvaal), reduced them to a position of perpetual inferiority to the European settlers. They were given to understand that they were undesirable outlanders, unwanted interlopers. Greater hardships and more severe degradation awaited them.

The anti-Indian feeling of white South Africa is an amalgam, an outcome of economic competition, racial prejudice and fear complex, among others. Chamberlain wrote in 1895:

'I believe them (the Indian settlers) to be a peaceable, law-abiding and meritorious body of persons, and I can only hope that, even as matters stand, their undoubted industry and intelligence and their indomitable perseverance will suffice to overcome any obstacles which may now face them in the pursuit of their avocations.'⁴⁶

⁴⁵ *The Asiatic Danger in the Colonies*, p. 35.

⁴⁶ Letter to Sir Hercules Robinson, 4 September 1895.

Bishop Fisher observed in an article in the *Modern Review* (Calcutta, 1927):

‘There is no greater cultivator of the land in the world than the Indian. There is no agriculturist so patient. There is no agriculturist more industrious and steady.’

But the wages paid to him were scandalously low. £2.10 a month was almost the maximum he could expect in 1927. The barracks or living quarters on the plantations were very often unfit for human habitation.

Gandhiji’s masterly analysis of the genesis and nature of anti-Indian feelings in Natal is well worth quoting:

‘... the Indians gave more than had been expected of them. They grew large quantities of vegetables. They introduced a number of Indian varieties and made it possible to grow the local varieties cheaper. They also introduced the mango. Nor did their enterprise stop at agriculture. They entered trade. They purchased land for building, and many raised themselves from the status of labourers to that of owners of land and houses. Merchants from India followed them and settled there for trade...’

‘The white traders were alarmed. When they first welcomed the Indian labourers, they had not reckoned with their business skill. They might be tolerated as independent agriculturists, but their competition in trade could not be brooked.

‘This sowed the seed of the antagonism to the Indians. Many other factors contributed to its growth. Our different ways of living, our simplicity, our contentment with small gains, our indifference to the laws of hygiene and sanitation, our slowness in keeping our surroundings clean and tidy, and our stinginess in keeping our houses in good repair, all these combined with difference in religion, contributed to fan the flame of antagonism. Through legislation this antagonism found its expression in the disfranchising bill and the bill to impose a tax on the indentured Indians. Independent of legislation a number of pinpricks had already been started.’⁴⁷

Mabel Palmer observes that European Natal’s attitude and policy can be understood and even excused, if we

⁴⁷ M. K. Gandhi, *The Story of My Experiments with Truth*, pt. II, pp. 129-30.

remember the position of the early settlers in the colony. They were a microscopic minority among an overwhelming majority of barbarians. 'Segregation a hundred years ago,' says Palmer,

'was probably necessary if the standards of white civilization were to be preserved.... The tragedy is that a policy intended to prevent the whites from being pulled down to the level of the Bantu is now being applied to prevent brown and black from rising to the standard of European civilization, and is indeed undermining white civilization itself in South Africa by basing it on the exploited labour of semi-servile classes.'⁴⁸

⁴⁸ *Op. cit.*, pp. 10-11.

CHAPTER II *Birth of*
Satyagraha
(1900 — 1914)

'Often there is justice in the working of history. India, though not of its own volition, had given to South Africa one of its most difficult problems. South Africa in its turn, likewise not of its own volition, gave to India the idea of civil disobedience.'

S. RADHAKRISHNAN

The nineteenth century was an unhappy one for the Indian community in South Africa, the twentieth has been even more so. It has been characterised by increasingly shrewd, determined and well-thought-out onslaughts on the Indian's right to live as honourable citizens of their land of adoption, the land which owes its prosperity, as much, if not more, to them as to any other section of its population.

A monstrous lie is deeply ingrained in the soul of South Africa — the lie that one race or group is superior to any other. Until this notion is rooted out, 'we shall live in a society confused by fear, suspension and self-interest driven from day to day to a barely disguised injustice' (Rev. Roymond Raynes, Sermon in St Mary's Cathedral, Johannesburg, 4 December 1955).

The second Anglo-Boer War broke out in 1899. The ill-treatment of British-Indian subjects by the Boer authorities of the South African Republic (the Transvaal) was publicly declared by responsible English leaders to be one of the causes of that war. Lord Lansdowne, the secretary of state for war, and an ex-viceroy of India, for example, told a Sheffield audience that of all the misdeeds of the Boers, none made him so angry as their treatment of the British-Indians. England's failure to remove the injustice, he added, would have its repercussions in India. Mahatma Gandhi, during

his pre-Boer War stay in Pretoria had often been assured by the English high commissioner, Sir Alfred Milner (later on, Lord) that if the Transvaal became a British colony, Indian grievances would be remedied at once.

The disabilities of the Indian nationals in South Africa were — they still are — ‘a melancholy record, galling to their self-respect, and unworthy of those who permit them.’¹ The Indian National Congress, from 1894 onwards, pointed out year after year,

‘how we were not permitted to travel without a pass, not allowed to walk about in the night after 9 p.m., how we were consigned to locations where refuse was shot in (the) Transvaal, how we were denied admission to the first and second classes on railways, driven out of tramcars and pushed off footpaths, kept out of hotels, and refused the benefit of public parks and how we were spat upon, hissed, cursed, abused and subjected to a variety of other indignities which no human being could patiently bear.’²

The Transvaal and the Orange Free State were annexed to the British Empire in 1900 and became Crown Colonies. The Anglo-Boer hostilities, however, dragged on for some time till the peace of Vereeniging (31 May 1902).

Mahatma Gandhi had, on the outbreak of the war, offered to organise an Indian Ambulance Corps. The Natal government had at first refused the offer on the grounds of incapacity of the Indians. Correspondence followed and the offer was finally accepted. Gandhiji organised an Ambulance Corps of about 400 Indians and entered the Transvaal with the British forces. The corps displayed marvellous courage and discharged the duties assigned to it with conspicuous gallantry. It was mentioned in the despatches from the front.

‘It was officially estimated that at the outbreak of the (Second Boer) War, the minimum Indian population of the (South African) Republic was fifteen thousand, besides some thousands of other Asiatics, mostly Chinese.’³

¹ Joshi, *op. cit.*, p. 59 (quoted).

² B. Pattabhi Sitaramayya, *The History of the Congress*, Vol. I, p. 47.

³ H. S. L. Polak, H. N. Brailsford and Lord Pethick-Lawrence, *Mahatma Gandhi*, p. 11.

The majority had left during the war. Some had gone to Natal and some to the Cape Colony. Others had come back to India.

The Indians naturally hoped after the war that they would have, if not a square deal, at least better treatment, than before. Many Europeans too shared their hopes and assured that the law prohibiting the purchase of land by the Indians outside Asiatic locations under Law III of 1885 could no longer be enforced. Land was therefore sold to Indians in the open market. The registration department however invoked Law III of 1885 and refused to register the sale deeds. Worse, however, was that many other anti-Asian provisions of the law, which the Boers applied with leniency or with some friendly discriminations in particular cases, were now enforced with strictness and rigidity. Indian immigration into the Transvaal was unrestricted in pre-Boer War days (1899-1902). A single payment of £25, soon reduced to £3, entitled an Indian to entry into and residence in the Transvaal. A certificate — a simple receipt 'without identification of the holder otherwise than by name' — would be granted on payment of the above fee.

Sir Henry Cotton, President of the Indian National Congress (1904), rightly observed:

'...the British rulers of the Transvaal have applied themselves with British vigour and precision to the task of enforcing Boer laws. In dealing with Indian colonists, their little finger has been thicker than Mr Kruger's loins, and where he had whips, they have chastised with scorpions.'

Carefully restricted numbers of Indians were allowed to return to the Transvaal shortly after the British occupation of the Colony during the war in 1900. Lord Roberts, the commander-in-chief, ordered that all Asians in the Transvaal must be registered anew. He however promised that their grievances would be investigated into and redressed as soon as civil government had been properly established.

The Peace Preservation Ordinance of 1903 required all immigrants — old and new alike — to provide themselves with permits for entry into the Transvaal and residence therein. For the first time, the permits were to be somewhat descriptive of the holders. Europeans — old settlers

and new entrants — obtained permits easily. Non-Europeans had a different experience however. A new department called the Asiatic immigrants department was set up by the government at Pretoria. Manned largely by British officials from India, it imposed a number of restrictions upon the entry of Indians. A few wealthy and enterprising Indians, however, managed to bribe their way to their pre-war homes and resumed their occupations.

Gandhiji, who had left South Africa for India towards the end of 1901, was called back to Natal towards the end of 1902 by the Indian residents there. Joseph Chamberlain, the colonial secretary of England, was soon to visit Natal in connection with the post-war settlement. Chamberlain arrived shortly after Gandhiji's return. An Indian deputation, with Gandhiji as their principal spokesman, waited on him. Gandhiji had also drafted the memorandum submitted to Chamberlain on the occasion. It strongly protested against the disabilities imposed by the colonial government upon the Indians in Natal. But 'Mr Chamberlain,' observes Gandhiji, 'had come to get a gift of thirty-five million pounds from South Africa, and to win the hearts of Englishmen and Boers. So he gave a cold shoulder to the Indian deputation.'⁴ He told the deputation, 'You know the Imperial Government has little control over the self-governing colonies. Your grievances seem to be genuine. I shall do what I can, but you must try your best to placate the Europeans, if you wish to live in their midst.' The advice was uncalled for. Was it a threat, albeit indirect?

Natal Indians next requested Gandhiji to transfer his activities on their behalf to the Transvaal. With great difficulty and only through the influence of his old friend Alexander, the police chief of Durban, did Gandhiji obtain permission to enter the Transvaal. He settled down at Johannesburg and started practice as an attorney of the supreme court of the Transvaal (1903).

Anti-Indian sentiment, which lay dormant during the

⁴ M. K. Gandhi, *The Story of my Experiments with Truth*, p. 213.

Boer War, had again raised its head in the Transvaal. Europeans traders in a number of towns complained that non-domiciled Indians in large numbers had been illegally migrating into the Crown Colony (the Transvaal). The government was called upon to take adequate preventive measures.

The chief secretary of permits, however, assured Lord Milner, the governor, that any but the smallest influx was impossible. But the latter, in his eagerness to allay the suspicions and imaginary fears of the Europeans, consulted the Indian leaders and suggested that the Indian community in the Transvaal should re-register itself voluntarily and that the documents should give full details of the identity of the registered. He assured the Indians:

“Registration gives you the right to be here and a right to come and go. Therefore, to me, registration seems a protection to you as well as a help to the government and in any law passed I should like to see registration included. Once on the register, your position is established and no further registration is necessary, nor is any fresh permit required.”⁵

The assurance was accepted at its face value. The Indians accepted the advice and re-registration was completed to the satisfaction of the authorities. New registration certificates were issued only to the holders of Peace Preservation Ordinance Permits and after the closest scrutiny. The certificate bore the permit number and gave the holder's name, family, caste or community, height, occupation, age, impression of the right thumb and father's name. Each certificate was signed and dated by the issuing officer. The census returns of the Transvaal, April 1904, show that the Indians in the Transvaal numbered less than ten thousand. It is evident that many Indians, who lived in the Transvaal before the Second Boer War and had subsequently left, had not been re-admitted by the English rulers of the Colony. The census figures thus give the lie to the propaganda of an ‘Asiatic influx.’

The Asiatic Law Amendment Ordinance (Transvaal) of 1906 proposed fresh humiliations and restrictions for the

⁵ Neame, *op. cit.*, (quoted).

Indian community. The Ordinance conferred no new rights on them. Many an existing one, on the contrary, was taken away in a manner that 'put an unnecessary affront' to a loyal, peaceful and useful element of the population. It widened the scope of Law III of 1885. But, 'Still worse was the condemnation as criminal of all against whom it operated, for it required the surrender and cancellation of all existing permits and registration certificates, and the taking of a complete set of fingerprints even from women and children over eight years, as if they had been condemned prisoners.'⁶ Lord Selborne, the governor of the Transvaal, explained that the object of re-registration was to 'provide for issue to those who are lawfully residents here (in the Transvaal) of a certificate of registration, which will be clear evidence of their right to be and remain here (in the Transvaal).'

A mass meeting of the Indians was held under Gandhiji's leadership at Johannesburg on 11 September 1906. Gandhiji himself was the principal draftsman of the resolutions placed before the meeting. One of these declared solemnly that the Indians would not submit to the Ordinance, if it became law, and that they would face all consequences of the defiance.

The Transvaal legislative council passed the Ordinance in due course. It was however not to apply to women.⁷ The Ordinance was sent for Royal assent. A two-man deputation consisting of Gandhiji and H. O. Ally sailed for England to place the Indian point of view before the British government and the British public. The mission was successful and Lord Elgin, the secretary of state for colonies, refused to recommend the Ordinance for Royal assent.

The triumph of the Indians was, however, short-lived. In the same year 1906, Lord Elgin, on the suggestion of Lord Selborne, advised Lord Morley, the secretary of state for India, to approve of legislation banning the entry of

⁶ Polak and others, *op. cit.*, p. 53.

⁷ The exemption of women was the outcome of an Indian deputation to the colonial secretary of the Transvaal. He agreed to amend the original proposal by exempting women.

Indians into the Transvaal in future. Morley agreed with viceroy Lord Minto that the suggestion of Lord Selborne was the only practical solution of the Indian question.

Responsible government was granted to the Transvaal as from 1 January 1907. Lord Elgin had already assured Sir Richard Solomon, the attorney-general of the Transvaal, that though it was the duty of the Imperial Government to disallow the Ordinance of 1906 on grounds of racial discrimination, it was extremely unlikely that they would intervene in the matter when self government was in operation and a responsible government was in power.

The assurance was in fact a betrayal of the Transvaal Indians by the Imperial Government. It was an encouragement, if not an inducement, to the Europeans to resume their anti-Asian offensive. The latter took the cue and started an anti-Indian *jihad*. General Botha, the Boer candidate for the premiership of the Transvaal under the new set-up, is reported to have publicly declared in one of his election addresses in the beginning of 1907 that if his party were voted to power, it would pack the 'coolies' out of the country within four years. Botha's ablest colleague and collaborator, General Smuts, had written a little earlier to a prominent Natal politician, 'The Asiatic cancer, which has already eaten so deeply into the vitals of South Africa, ought to be resolutely eradicated.' The leader of the British Progressive Party came out with the statement that he believed with others that the expulsion of the Asians was a right thing. He welcomed the day when all Asians would have to leave the Transvaal. Sir Richard Solomon, regarded as a strong rival of General Botha for the premiership went out of his way to suggest that the 'reservation clauses' in the new Transvaal constitution would be a dead letter in practice. The views of these leaders, needless to say, were but an echo of the Anglo-Boer public opinion. The shape of things to come had begun to emerge in bold outlines.

The first parliament of the Transvaal under responsible government met in March, 1907. General Botha headed the government. General Smuts became his colonial secre-

tary in charge of Asiatic affairs. The Ordinance of 1906 was re-introduced and passed by both houses of the Transvaal parliament within twenty-four hours and without any discussion worth the name. Indian representations against the measure were ignored. Indians had offered to re-register voluntarily. The offer was not accepted. European Transvaal hailed the law. One of the most influential Johannesburg dailies commented:

'It is a case of intense satisfaction to us, and, we doubt not, to men of all parties, that the first legislative enactment of the new parliament should be one which asserts the right of the colony to manage its own affairs.'

Lord Selborne, the governor of the Transvaal, one of whose constitutional functions was to protect those who were unrepresented in the Transvaal parliament, gave his blessings to the legislation, which came to be known as the Asiatic Law Amendment Act or Act II, 1907. It obtained Royal assent without much difficulty.

If the Peace Preservation Ordinance, 1903 (Transvaal), was the Indian's reward for the notable part played by the Indian Ambulance Corps during the Second Boer War, Act II, 1907, was no less so for the notable part played by the stretcher-bearer company during the so-called Zulu rebellion in Natal (1906). The rebellion was, in fact, a no-tax campaign by the Zulus.

A principal consideration for Royal assent to Act II 1907, argues Polak, 'was the probability of the resignation of the Botha government and the refusal of any other party to take office if the measure were again disallowed.'⁸

Act II of 1907, rightly called the 'Murderous Act,' by Gandhiji, was to come into effect on and from 1 July 1907. Indians were to register themselves under the Act by 31 July. The Indian community rose as one man, determined to resist the Act, also known as the Black Act. Mass meetings of Indians all over the Transvaal took a pledge of non-submission to the Act. A passive resistance association was organised.

The pledge of non-submission to the Black Act was the

⁸ Polak and others, *op. cit.*, p. 56.

beginning of a new chapter in the history of the Indians in South Africa. The era of prayers and petitions against injustice and oppression was at an end. That of resistance to racial antagonism was to begin. The idea of satyagraha was born in the crucibles of the sufferings and humiliations of the Indians in South Africa. Satyagraha, generally translated as 'passive resistance,' and regarded as a 'weapon of the weak,' is, according to Gandhiji, an 'expression of soul force.'

Indian volunteers picketed the registration offices. They had been instructed not to threaten anybody, nor to use violence. They were to persuade, not to coerce. If the police intervened, they were not to resist. The volunteers of the Passive Resistance Association helped in creating an enlightened Indian public opinion in South Africa. They distributed literature explaining the implication of registration under the Black Act, i.e. Act II of 1907. Very few Indians came forward for registration. The Indians memorialised General Botha offering voluntary re-registration conditionally upon the suspension of the operation of the Act and the subsequent repeal thereof if voluntary re-registration was successful. The General remained firm, however. William Hosken, a Liberal M.P. of the Transvaal, attended a mass meeting of Indians at Pretoria on 31 July 1907. Hosken, a friend of the Indian community, and later on, the chairman of a committee of European sympathisers with the Indian cause, carried a message from General Botha. He addressed the meeting and explained how difficult Botha's position was 'in the face of all but unanimous views of the European legislators and the solid support of public opinion.' He told his audience how powerful the government was and explained at length the consequences of a struggle. He expressed his sympathy for the Indians and urged them to prove their loyalty and love of peace by submitting to the obnoxious Act.

Gandhiji translated Hosken's speech word for word. He explained at the same time the significance of the note of warning sounded by the speaker. The meeting was next addressed by an Indian merchant, Ahmed Mohamed

Cachalia by name. An obscure figure in public life at the time, Cachalia made great sacrifices for the community—he courted financial ruin and insolvency — and became the most trusted leader of the Transvaal Indians, second only to Gandhiji. He declared in an impassioned speech that having once taken the pledge of non-submission to the Black Act, he would keep it even at the cost of his life. The speech was acclaimed with loud cheers. The meeting decided unanimously to defy the Act and continue the struggle.

As if the Black Act was not enough, the government passed the Immigration Restriction Act—Act XV of 1907—to further humiliate the Indians. Read with the former, it treated as 'prohibited immigrants' even those who could pass its tests but were ineligible for registration under the former. Section II (4) of the Act defined a 'prohibited immigrant' as a person unable to write out or sign in a European language an application for permission to enter the Transvaal. The Act ignored the right of residence of those who had paid £3 before 1899 to the Boer government for settlement under Law III of 1885 but were not able to return to the Transvaal after the War for the obstacles placed in the way of their securing permits under the Peace Preservation Ordinance (1903). Section II (4) of Act XV (1907), prevented the entry into the Transvaal of Asians not provided with permits under the above Ordinance. Though it did not mention Asians, it was plainly directed against them as was confirmed by subsequent legal interpretations.^o

New immigrants from Asia ineligible for registration under Act II (1907) were included in the category of 'prohibited immigrants' under Act XV (1907). Act II, originally meant to be temporary, was made permanent by the very first section of Act XV. The latter gave discretionary power to the colonial secretary of the Transvaal to remove certain categories of undesirable persons from the colony. An Asian, who neglected or was unwilling or unable

^o C. D. 5363 of September, 1910, Letter of General Smuts, dated 26 August 1909. Vide Kondapi, *op. cit.*, pp. 190-92.

to obtain legally a certificate of registration under Act II, was among the undesirables. Act XV amended Act II to the serious disadvantage of the Indians. The latter had provided for a notice of removal from the Transvaal and for imprisonment for three months or a fine of £100, in case the notice was ignored. Section VI (b) of Act XV, however, provided for physical and forcible deportation involving the confiscation of the property of those failing to register themselves under Act II. The Act was based on the presumption of illicit Indian influx. The Indians asked for a commission to investigate into the alleged influx. This request was turned down. They next offered to undergo voluntary registration, provided Act II was repealed. Gandhiji pleaded that in all other British colonies the right of entry and residence of a person was decided judicially and not by administrative officers and that the Transvaal should be no exception. The Botha government, however, insisted on treating all holders of Dutch registration certificates and pre-Boer War Indian refugees as had not yet returned to the Transvaal as 'prohibited immigrants.' The declaration of responsible British officials that the domiciliary rights of pre-Boer War Asians residents would be respected was thus nullified.

The Indians had already made up their mind to resist the Black Act and to get it removed from the Statute Book. Act XV did not worry them much. They knew that with the repeal of the former all special obstacles to the entry of educated Indians would be removed.

The governmental machinery was soon set in motion. A number of comparatively little known Indians were summoned before a Pretoria magistrate to show cause why they should not be ordered to leave the Transvaal for having failed to apply for registration within the prescribed time limit (31 July). They were declared 'prohibited immigrants' and ordered to leave the country within a specified period. They all disobeyed and were sentenced to short terms of simple imprisonment.

The *Indian Opinion*, started by Gandhiji in Natal in 1904, proved 'a most useful and potent weapon' in the Indian

struggle. It educated the Indian community all over South Africa and kept Indians at home and the British public opinion in touch with the happenings in South Africa. The details, the objectives and the technique of the Indian struggle were openly discussed in the columns of the *Indian Opinion*. It may be recalled with interest that the officials of the Transvaal Asiatic Immigrants Department were among the more serious and careful readers of the *Indian Opinion*.

Mahatma Gandhi and a number of his well-known associates including Quin, the president of the Transvaal Chinese Association,¹⁰ were asked to show cause why they should not be dealt with as the Indians noted above. They appeared before a magistrate on the day fixed for their case (27 December 1907). All were asked to produce certificates of registration under the Black Act or to leave the Transvaal, some within 48 hours, some within a week and others again within two weeks.

The order was defied and Gandhiji with several others attended the court on 10 January 1908, to receive punishment. All pleaded guilty to the charge of having defied the magistrate's order. All were sentenced to imprisonment, Gandhiji being awarded two months' simple imprisonment. The imprisonment of the leaders, far from demoralising the rank and file, gave further impetus to the satyagraha movement. More and more Indian prisoners poured into jails. In the beginning, only simple imprisonment would be awarded. Later on, however, everyone hauled up for resistance to Act II of 1907 were sentenced to rigorous imprisonment. No leniency was shown even to women resisters.

Of the more than 10,000 Transvaal Indians, not more than 500, a bare 5 per cent, may be even less, registered themselves under the Black Act. The rest faced the consequences of resistance—loss of the right to trade, incarce-

¹⁰ There were between 300 and 400 Chinese in the Transvaal at the time. They were mostly cultivators and businessmen. The Black Act was applicable to them as well. So they too joined the satyagraha. But they worked through their own organisation to the last. Cf. M. K. Gandhi, *Satyagraha in South Africa*, Pt. I, Ch. XX.

ration and deportation. Indian hawkers refused to show their licences¹¹ to the police. According to Gandhiji, more than 150 Indians courted imprisonment. A contemporary estimate, however, puts the number at 120.

Life in the jail was hard for the Indian prisoners. They were lodged in the African wards. The cells were verminous and over-crowded. In one small yard in a Johannesburg jail 'a hundred and fifty Indians occupied the space meant for forty-five.'¹² Food was bad. The medical superintendent was indifferent. It is interesting to recall that the famous Gandhi-cap is a replica of the head gear that Gandhiji wore as a coloured prisoner in South African jails.

The government was alarmed by the rising tempo of the Indian struggle. General Smuts, who refused to see Gandhiji not long ago, had to change his mind and opened negotiations through Albert Cartwright, the editor of the *Transvaal Times*. Cartwright, a well-wisher of the Indian community, was also a personal friend of Gandhiji. He had on his own initiative seen General Smuts after Gandhiji's imprisonment. The General had gladly accepted Cartwright's offer of mediation. Cartwright had also met the Indian leaders still at large. They had told him that they could not do anything without the advice of their spokesman, Gandhiji. Cartwright carried with him the terms of a settlement, which had perhaps the approval of General Smuts. The terms proposed were :

- (i) that the Indians should register themselves voluntarily and not under Act II, 1907;
- (ii) that the details to be given in a certificate of registration should be decided after consultation between the government and the Indian community; and
- (iii) that if the majority of the Indians registered themselves voluntarily, Act II, 1907, would be repealed

¹¹ These licences were issued only on the strength of the certificate of registration under the Black Act and had to be produced on demand by the police.

¹² S. G. Millin, **General Smuts**.

and the government would take steps to legalise the voluntary registration.

There was some vagueness about the condition regarding the repeal of the Black Act. Gandhiji sought clarification and suggested an amendment. Cartwright was hesitant and said that General Smuts regarded the draft as final. Gandhiji consulted his colleagues in jail and insisted on the amendment. The proposed alteration was signed by them and Cartwright agreed to place it before Smuts for his consideration and consent.

On 30 January 1908, exactly forty years before his assassination, Gandhiji was taken from Johannesburg to Pretoria for an interview with Smuts. The two met for the first time. In a long talk they discussed the original draft and the suggested amendment in details. It is clear from Gandhiji's account of the interview¹³ that he thought Smuts had accepted the proposed amendment to the original draft and undertaken to repeal Act II, 1907, as soon as most of the Indians had been voluntarily registered.

Gandhiji and all the Satyagrahis in jail were released immediately after the Smuts-Gandhi meeting. A public meeting was held in the Transvaal Mosque grounds at about midnight on 30 January 1908. Indian leaders outside jail had been met by Gandhiji immediately after his release. They had been acquainted with the latest development and were in agreement with what had been done. Gandhiji himself was, however, assailed with suspicions and misgivings:

'What if General Smuts broke faith with us? The Black Act might not be enforced, but it would always hang over our heads like Damocles' sword. If, in the meanwhile, we registered voluntarily, we would have knowingly played in the adversary's hands, and surrendered the most powerful weapon in our possession for resisting the Act. The right order for the settlement was that the Act should be repealed first, and then we should be called upon to register voluntarily.'¹⁴

¹³ Cf. M. K. Gandhi, *Satyagraha in South Africa*, p. 242.

¹⁴ *Ibid.*, pp. 245-46.

Gandhiji addressed the meeting. Hardly had he finished his speech when a stalwart Pathan rose from among the audience and put a number of questions to Gandhiji. 'Shall we have to give the ten finger-prints under the settlement?' Gandhiji replied that those, who had a conscientious objection to the giving of finger-prints or those who thought it derogatory to their self-respect, would not be obliged to do so. 'What will you do yourself?' The reply was, 'I have decided to give ten finger-prints. It may not be for me not to give them myself while advising others to do so.' Further questions followed and Gandhiji tried to explain how the situation was now vitally different from what it would have been under Act II, 1907, which was to be repealed.

The questioner would not accept any explanation whatever. He shouted, 'We have heard that you have betrayed the community and sold it to General Smuts for £15,000. We will never give the finger-prints nor allow others to do so. I swear with Allah as my witness, that I will kill the man who takes the lead in applying for registration.' Gandhiji took up the Pathan's challenge. He made it clear that he would help in all possible ways anyone who objected to giving finger-impressions. Gandhiji protested at the same time against the Pathan's threat. He also told his audience that as the principal party responsible for the settlement and as a servant of the community, he regarded it as his duty to take the lead in giving finger-impressions.

The opposition from the Pathan was symptomatic. Gandhiji points out in his *Satyagraha in South Africa* that many a black-sheep among the Indians in the Transvaal were against a compromise between the government and the Satyagrahis. They wanted a prolongation, if not a perpetuation, of the conflict. These were the few Indians who had meekly submitted to Act II, 1907, and those who had secretly made their way into the Transvaal without permits. The latter had been earning a lot by helping others to enter the Transvaal without permits or with forged documents.

The Pathan's interrogation made little impression on the assembly and the settlement was endorsed almost

unanimously. But on his way to the registration office with a few friends including Yusuf Mian, the president of the Passive Resistance Association, Gandhiji was assaulted by a group of Pathans (10 February 1908). Mir Alam, an old client of Gandhiji, was among the assailants. Gandhiji fell down unconscious and would have been killed but for the timely intervention of some European passers-by, who caught hold of the rowdies and handed them over to the police. Gandhiji was carried to a European friend's office nearby. He was still unconscious. After he had come back to his senses, he was removed to the house of a Baptist missionary friend of his, Rev. Joseph J. Doke. The Dokes nursed him back to recovery. Gandhiji asked for the release of the Pathans before his removal to the Dokes'. The police, however, did not agree. The Registrar of Asiatics who had come to see Gandhiji after the assault, registered him on his own request on the same day (10 February 1908). Gandhiji gave his finger-impressions and obtained a certificate of registration. He next sent a telegram to the attorney-general of the Transvaal requesting him to drop the proceedings against the Pathans. He further informed the attorney-general that if they were prosecuted, he (Gandhi) would not depose against them. He was informed in reply that the Pathans would be released. The attorney-general had to change his decision later on, under the pressure of the Europeans of Johannesburg. The law took its course. Some Europeans were summoned as prosecution witnesses. Six months' hard labour¹⁵ was awarded to each of the assailants.

Gandhiji proceeded to Natal after his recovery. Some Pathans tried to assault him in a public meeting at Durban. He was saved only by the timely intervention of some friends. During his absence in Natal almost all the Transvaal Indians registered themselves voluntarily.

The Transvaal Indians, naturally enough, now hopefully looked forward to the repeal of the obnoxious Act (Act II, 1907). It was not repealed, however. A new Bill was introduced in the parliament instead. It validated the volun-

¹⁵ Three months, according to Polak, but it was six months according to Mahatma Gandhi himself.

tary registrations and the certificates issued after the date fixed (31 July 1907) under Act II, 1907. Those who had taken out registration certificates voluntarily were not to be affected by the new law, which 'made further provisions for the registration of Asiatics.'¹⁶ 'In effect,' observed Polak, 'there were to come into force two concurrent laws having the same objects, freshly arriving Indians as well as later applicants for registration still being subject to the Black Act.'¹⁷

Gandhiji wrote to General Smuts that the Bill was a breach of the compromise. He drew the General's attention to a passage in a public speech delivered by the latter within a week of the settlement:

'The Indians' second contention was that they would never register unless the Law had been repealed.... He had told them (Indians) that the Law (Act II, 1907) would not be repealed so long as there was an Asiatic in the country who had not registered.... until every Indian in the country had registered, the Law would not be repealed.'¹⁸

Gandhiji rightly characterised the action of the government as 'foulplay' and asked the Indian community to get ready for a renewal of the satyagraha.

A petition against the Bill was submitted to the parliament on behalf of the Indians. It declared that if Act II, 1907, were not repealed and the decision to that effect not communicated (to the petitioners) by 10 August 1908, the Indians would burn their certificates of registration and 'humbly but firmly take the consequences.' Polak sums up the European reactions to the Indians' petition in the following words:

'The document was held to contain two grounds of offence. One was that it prescribed a time-limit for a reply. The other was the audacity of a non-white community in challenging a decision taken by a white government, responsible to a legislature composed solely of Europeans representing an entirely European electorate. To many

¹⁶ The Bill was duly passed and came to be known as the Asiatic Registration Amendment Act or Act XXXVI of 1908.

¹⁷ Polak and others, *op. cit.*, p. 67.

¹⁸ *Ibid.*, p. 68.

South African Europeans these were unpardonable faults, requiring condign punishment. A few, however, congratulated the Indians on their courage.¹⁹

A largely attended meeting of the Indians was held in Johannesburg Mosque grounds two hours after the expiry of the time-limit on 10 August. Gandhiji addressed the meeting. After his speech Mir Alam, the Pathan who had led the assault on him on 10 February, and had been just released from jail, publicly expressed regret for what he had done. He handed over his original certificate²⁰ to be burnt. Thousands of certificates were then collected and thrown into a huge cauldron, which was set ablaze by the president of the meeting. A journalist who was present in the meeting and reported the proceedings, compared the bonfire of certificates to the Boston Tea Party of 1773, which finally led to the American War of Independence resulting in the loss of Britain's empire in the New World.

The struggle started afresh with Ahmed Mahomed Cachalia as one of its leaders. His European creditors demanded that he should either pay them immediately or dissociate himself with the satyagraha. He would do neither and was threatened with insolvency proceedings. Gandhiji tried a compromise. He failed. The motive of the creditors was political and the debtor did not bend. Nor did he accept offers of loan from Indian friends to meet the demands of his European creditors. Insolvency proceedings were instituted against Cachalia. His finances were in good order. His debts were fully covered. Yet he was declared an insolvent on purely technical grounds. Insolvency made Cachalia more popular and more respected than before.

The new struggle was directed against the Asiatic Registration Amendment Act (Act XXXVI, 1908). It treated as 'prohibited immigrants' those who could pass the education tests under the Immigration Restriction Act (Act XV, 1907), but were ineligible for registration under the Black

¹⁹ M. K. Gandhi, *Satyagraha in South Africa*, p. 301.

²⁰ The certificate granted to all Asians on payment of £3 by the South African Republican Government under Law III, 1885. Mir Alam had not taken out a certificate under the agreement of January, 1908.

Act (Act II, 1907). The result was that no newly arrived Indian could enter the Transvaal, however high his educational qualifications might be. Two measures—Acts II and XV of 1907—were in operation against him. The Indians would not have demanded the amendment of Act XXXVI (1908), had Act II (1907) been repealed. The Indians and their European sympathisers made futile representations to the government. Smuts was adamant. Gandhiji, he said, was a 'cunning fellow' and might do his worst. He would neither repeal Act II nor amend Act XXXVI, come what might.

A section of the Transvaal Indians demanded that the struggle should be directed against all anti-Asian legislation throughout South Africa. Gandhiji dissuaded them from pressing the demand, not very easily, however.

The renewed satyagraha movement being directed against Act XXXVI, 1908, it was necessary to challenge that Law as well as Act II, 1907, after due notice to the authorities. Accordingly, some leading Indian traders of Natal, who had earlier *domicile* rights in the Transvaal, and some educated Natal Indians crossed into the Transvaal after due notice to the government. They were all arrested as they entered Transvaal territory and sentenced to rigorous imprisonment. The Satyagrahis registered in the Transvaal sought new methods of courting arrest. Under the laws of the Transvaal, pedlars—Asian and otherwise—had to obtain licences for hawking. The Satyagrahis took to hawking without licences. The offenders were arrested and jailed. The jails were soon over-crowded by Indian Satyagrahis. Most of them were given terms of rigorous imprisonment. The prison officials did everything to harass the prisoners. They had to break stones and make roads. Food was poor and inadequate. Prisoners were separated from friends and kept in solitary confinement. Gandhiji himself suffered many of these hardships during one of his terms of imprisonment.²¹

²¹ Smuts sent him some books on another occasion to relieve the dull monotony of jail life. Cf. Polak and others, *op. cit.*, p. 72.

The Satyagrahis were not to be demoralised in this way. Many of them courted imprisonment again and again. Many were financially ruined. Not a few were driven out of their homes. The jail held no terror for the Satyagrahis. There were more prisoners than the jails could accommodate. Government expenses were mounting.

The Government decided to send the law-breakers back to India. Acts II and XV of 1907²² had armed them (the government) with the power to do that. A 'prohibited immigrant' under the Acts could be dealt with in three ways—fines, imprisonment and deportation. Batches of Satyagrahis were arrested and escorted across the Transvaal borders into the Orange Free State, the Delagoa Bay, and Natal. The 'trespassers' from Natal would be escorted beyond Volksrust, the last railway station in the Transvaal on Natal-Transvaal border. These deportations made the Satyagrahis more determined than ever.

The government, therefore, hit upon the idea of deporting the Satyagrahis to India. A number of them were arrested and shipped to India. The question of the deportation of Indians to India without allowing them the right of appeal against the decisions of lower courts was referred to Lord Crewe by Lord Morley. One was at the time the secretary of state for colonies and the other, the secretary of state for India. The reply of Lord Crewe was not helpful. He cited the Transvaal supreme court decision in Randeria's case²³ that no right of appeal existed against such an order. The deportations were continued on a large scale in 1910. Most of the deportees had been voluntarily regis-

²² The former provided for compulsory registration or in default for a fine of £100 or imprisonment up to three years. The latter provided in section 6 (b) for physical and forcible deportation involving confiscation of property of those failing to register themselves under the former. Lord Elgin, the secretary of state for India, commented at the time, 'His Majesty's Government were convinced that no precedent for such power exists in legislation of any responsibly governed colony.' Lord Seiborne, the governor of the Transvaal, admitted that these provisions were really stringent.

²³ Further Correspondence, C. M. D. 5363, September 1910, p. 19, letter dated 20 May 1909.

tered under the January 1908 settlement and their registration had been validated by Act XXXVI of 1908. The Transvaal supreme court held in the case of Naidoo and others vs. Rex²⁴ that deportations in such cases and under such circumstances were unlawful. Lord Crewe drew the attention of the governor-general of the Union of South Africa, which had come into existence in 1910, to the serious political results likely to follow from further deportations and suggested the suspension thereof. If, however, that was not possible, at least such deportations to which reasonable exception might be taken should be suspended. The Transvaal ministers replied that with regard to future deportations instructions had been given to the police to be very careful that the voluntarily registered Indians were not in any way affected.

Deportation and imprisonment of the Satyagrahis, however, continued. The leaders of the movement remained firm. But the rank and file showed signs of demoralisation. Many dropped off out of fear, defeatism or sheer 'war-weariness.' The government too had lost face. For one thing, it was clear that an unarmed minority refused to bow down to the laws of the government, which the latter tried to enforce by threats, harassment and punishment. For another, the courts of the same government had condemned the action of the government in a number of cases as illegal.

The Union of South Africa comprising Natal, the Orange Free State, the Transvaal and the Cape Colony had been taking shape while the struggle was on. A draft Union Constitution had been drawn up and accepted by the English and the Boer leaders. They now approached the Imperial Government for approval and assent. The Transvaal Indians feared that their lot would be more miserable in the proposed Union of South Africa. A two-member Indian delegation composed of Gandhiji and Seth Haji Habib was sent to England by the Transvaal Indian community to place the Indian point of view before the British 'public and parliament. The delegation met Lord Crewe, Lord Morley, several members of the parliament, and a number

²⁴ *Ibid.*, p. 113, Telegram dated 8 June 1910.

of men prominent in public life. The delegation contacted the British press as well. Lord Ampthill, the president of the South African British Indian Committee, and a sincere friend of India, acted as the intermediary between the Indian delegation and General Botha, General Smuts and other South African leaders, who were in England at the time. Lord Ampthill informed the Indian delegation that General Botha was prepared to grant one or two minor concessions to the Indians; but he (Botha) would neither repeal Act II, 1907, nor amend Act XXXVI, 1908. Nor would he abolish the existing colour bar. Smuts was in agreement with Botha. The late G. K. Gokhale gave out in a public meeting in India shortly afterwards that Smuts had told Lord Crewe that he (Smuts) was not prepared to admit even the theoretical equality of Asians and Europeans.

Lord Ampthill pointed out to Gandhiji that the rejection of the concessions offered would mean further useless sufferings for the Indians. Seth Haji Habib, who claimed to voice the opinion of the majority of the Transvaal Indians, expressed his willingness to accept the concessions offered. But Gandhiji told Lord Ampthill that he (Gandhiji) and the Satyagrahis would know no rest till they had obtained not only practical relief but the recognition of the principle involved as well.

A delegation of the Transvaal Indians was to visit India about this time. H. S. L. Polak, whom Gandhiji had come to know in South Africa and had won over to the Indian cause, was to lead the proposed delegation of four. But all the members except Polak were arrested and imprisoned before the departure of the delegation. Polak, a trusted lieutenant of Gandhiji, was at this time the editor of the *Indian Opinion*. Polak alone came to India and acquainted Gokhale and other Indian leaders with the condition of Indians in South Africa and what they were fighting for.

Public opinion in India was roused and Polak was invited to address the twenty-fifth session of the Indian National Congress at Lahore in 1909. In the same session

Gokhale moved a resolution of encouragement to and sympathy for the Indian Satyagrahis in the Transvaal. He urged,

'the necessity of prohibiting the recruitment of indentured labour for any portion of the South African Union, and of dealing with the authorities there in the same manner in which the latter deal with Indian interests, so long as they adhere to the selfish and one-sided policy which they proclaimed and practise, and persist in their present course of denying to His Majesty's Indian subjects their just rights as citizens of the Empire.'

It may be noted in passing that Polak made a mistake when he said that this was the first occasion when India advocated a policy of retaliation against the Government of South Africa. A resolution in an almost identical language had been adopted by the twenty-fourth session of the Indian National Congress (Madras) one year earlier (1908). It does not, however, specify South Africa and runs as follows:

The Congress begs earnestly to press upon the British parliament and the Government of India the desirability of dealing with the self-governing Colonies in the same manner in which the latter ruthlessly deal with Indian interests, as long as they adhere to the selfish and one-sided policy which they proclaim and practise, and persist in their present course of denying to His Majesty's Indian subjects their just rights as citizens of the Empire.'

A similar resolution was adopted by the twenty-sixth session of the Indian National Congress (Calcutta) in 1911. The policy enunciated in 1908 was given concrete shape about forty years later in the Indian Reciprocity Act, 1943.

Gokhale had more than once raised the South African Indian question in the Imperial Legislative Council. He moved a resolution in the Council on 25 February 1910, recommending that the recruitment of indentured labour in British India for Natal should be stopped. The resolution was passed unanimously. The government, too, accepted it. Negotiations with the South African government began. But the Botha ministry set its face against any concession to Indians in any vital or fundamental matter. The Govern-

ment of India, therefore, prohibited indentured emigration to Natal with effect from 1 July 1911.

Gandhiji returned from England to the Transvaal in 1909. The Indians got ready for another round of fight against the Botha government. Gandhiji gave up his legal practice. For one thing, preoccupied with politics that he was, he could not pay much attention to his clients. For another, 'to earn a livelihood from a profession which finally made an appeal to the policemen or the jailer to enforce the decrees of the courts was, in his view, a denial of *ahimsa*.'²⁵

Many of the Satyagrahis had, as noted above, dropped out of the struggle for one reason or another. The faithful few were imprisoned again and again. It was necessary to make provision for their families. Kallenbach, a German architect of Johannesburg and a friend and admirer of Gandhiji, had a large farm about 21 miles from Johannesburg. Kallenbach placed the farm at the disposal of Gandhiji. This was the famous 'Tolstoy Farm—the name was given by Gandhiji—where the Satyagrahis and their families lived together under Gandhiji's guidance 'in a brotherly spirit, each playing his proper part in the community life, each offering service and sacrifice in a noble cause.'

There was a lull in the struggle in 1911. Gandhiji had been trying for sometime to persuade Gokhale to pay a visit to South Africa to study the situation at first hand. Gokhale agreed and went to South Africa in October, 1912. The visit was a landmark in the history of the Indians in South Africa. The European leaders of South Africa came in direct contact with a great Indian national figure for the first time.

Gokhale was hailed as the 'Coolie King' on his arrival (22 October 1912). He met prime minister Botha, General Smuts and other members of the Union Government in a conference at Pretoria. Gandhiji purposely stayed away from the conference. He had, however, fully briefed Gokhale on the Indian question in South Africa. Polak observed:

²⁵ Polak and others, *op. cit.*, p. 78.

'Gandhi expressly raised the question of the repeal of the £3 tax on the ex-indentured Indians (in Natal) and their families not because he wished to include it in the present satyagraha campaign, but because, sooner or later, it would have to be raised, both on account of its serious effect on the economic conditions of the bulk of Natal's Indian population, and because of the humiliation it inflicted on the Indian community at large.'²⁰

Gokhale was fully satisfied with the results of the conference. He returned in high spirits and told Gandhiji, 'You must return to India in a year. Everything has been settled. The Black Act (Act II, 1907) will be repealed. The racial bar will be removed from the immigration law. The £3 tax will be abolished.'

The great Gokhale had reckoned without his host. But Gandhiji had his own misgivings and told Gokhale that he doubted very much if the government would abolish the £3 tax. Gokhale, however, sought to reassure him: 'What I have told you is bound to come to pass. General Botha promised me that the Black Act would be repealed and £3 tax abolished. You must return to India within twelve months, and I will not have any of your excuses.'

Gokhale was mistaken. It was hoped that the government would pass the necessary laws in the following session of the parliament. The hopes were belied. General Smuts gave out that Natal Europeans were against the abolition of the £3 tax. It should, however, be borne in mind that the members from Natal were in a minority in the Union Parliament. Could not they be out-voted on the issue? Not a few wondered and doubted if the government had at all promised anything to Gokhale. Gokhale's cable that a promise had actually been made by the government set all speculations at rest.

The breach of promise by the government changed the situation completely. Gandhiji and his followers realised that the abolition of the £3 tax must be included in their programme for two reasons. In the first place, here was a clear breach of promise by the government. In the second

²⁰ *Ibid.*, p. 81.

place, the breach of promise was an insult to India through its great representative Gokhale.

The Indian satyagraha had been so long limited in scope and application. It was directed against Act II, 1907, and Act XXXVI, 1908. The Transvaal Indians and they alone were permitted to offer satyagraha. No Indian from Natal,²⁷ the Cape Colony and other places were allowed to participate in the struggle. Indentured and indenture-expired Indians had been expressly advised to keep off the movement. But the breach of promise by the government widened the scope of the struggle and Natal Indians were welcomed to the ranks of the fighters. To add to the woes of Natal's Indian population, the government of the Colony had passed an Act in 1905 which prohibited the employment of Indian servants without first making sure that they had paid the £3 poll-tax. Gandhiji's justification for widening the scope of the Indian struggle at this stage well bears quotation:

'A law of progression applies to every righteous struggle. But in the case of satyagraha the law amounts to an axiom. As the Ganges advances, other streams flow into it. . . . So also, as a satyagraha struggle progresses onward, many another element helps to swell its current, and there is a constant growth in the results to which it leads.'

The Union Immigrants Act of 1913 gave a new affront to the Indian community. It authorised the Union minister of the interior to declare certain classes of persons as 'prohibited immigrants' on 'economic grounds' or 'on account of their standards and habits of life being unsuited to the requirements' of the Union of South Africa. The Act prohibited the free movement of Asians from one province to another within the Union. The minister of interior abused his power by declaring all Asians to be 'prohibited immigrants.' Needless to say, the Indians felt aggrieved. They resented most the loss of the right of entering the Cape Colony, a right enjoyed by them for many years. But a general strike of the European workers called in 1913, led

²⁷ Barring the few who had entered the Transvaal in 1908 after due notice to the government.

to the suspension of the satyagraha for a time. Gandhiji was opposed to the very idea of taking advantage of the adversary's extremity. Gokhale, who was at this time in London, ably represented the Indian case to the British authorities. He was aided in the matter by Polak. Lord Curzon and Lord Ampthill protested in the Lords against the latest developments in the Union of South Africa. The Indian question was given wide publicity in the press and as Polak put it, 'it was clear where British sympathies lay.' But the Union, being a dominion, could not be coerced by the home government.

The question of the immigration of Indian women into the Union of South Africa was also being debated at the time. A Natal law had empowered the government in 1886 to appoint 'Maulavies' to officiate at Muslim marriages. The law however remained a dead letter. The Indians had been demanding all these years that they should have their own priests to solemnise their marriages. Far from conceding the demand, the Union Government added insult to injury by its refusal to recognise marriages consecrated in the Indian way, i.e. unregistered marriages, as legally valid. The Union supreme court, too, decided that such marriages were not valid.²⁸ Indian wives, in the eye of the law, were therefore mere concubines. Their children were not legitimate.

Here was a new and uncalled for insult to the Indian community. The affront scandalised them. It outraged their moral and religious sentiments. The social and the economic implications of the findings of the supreme court mentioned above were fatal. Appeal against the award was contemplated. Gandhiji, however, was against any appeal. Appeal, he said, would serve no useful purpose. The idea was therefore abandoned. The Passive Resistance Association decided to have recourse to satyagraha 'to compel an amendment of the law as interpreted by the supreme court and the removal of the stigma attaching to all Indians excepting those of the Christian faith.'

A fight against the £3 tax was also in the offing. Natal became the nerve-centre of the satyagraha movement. The

²⁸ Searle Case (1910).

Phoenix Settlement founded by Gandhiji towards the end of 1894 became the headquarters of the Satyagrahis. The Tolstoy Farm was closed down.

A few Indian women had offered to participate in the satyagraha of 1907. Gandhiji was against such participation. In the first place, the jails in a foreign land were deemed unsuitable for women. Secondly, Gandhiji, on his own admission, had not the courage of sending women to jail. He did not understand why women should court arrest and imprisonment. Last but not least, men would degrade themselves, Gandhi argued, by sending women to jail for the removal of a law applicable to men alone.²⁹ But the supreme court judgment in the Searle case (1910) was a challenge to the honour of Indian womanhood. That honour must be vindicated. Women could not, therefore, be kept out of the struggle. They were, on the contrary, invited to join the fray.

Gandhiji invited the women inmates of the Tolstoy Farm to offer satyagraha. The risk involved in the step was fully explained to them. They were cautioned against the hardships and humiliations they would have to put up with in jails. Undaunted, sixteen women-inmates of the Tolstoy Farm³⁰ offered to join the satyagraha. One of them was with child. Six suckled babies. Four women-inmates of the Phoenix Settlement³¹ decided to stand by their men-folk in this hour of trial. Kastur Mohandas Gandhi, Gandhiji's wife, was the foremost among them. A number of women Satyagrahis crossed the Transvaal-Natal border without permits. Some entered Natal from the Transvaal, while others entered the Transvaal from Natal. The authorities ignored them at first. Some of them then took to hawking without licences. The guardians of law and order were yet inactive.

To force the hands of the government, some of these Satyagrahis went to New Castle, the coal-centre of Natal,

²⁹ Gandhi, *Satyagraha in South Africa*, Pt. II, Ch. XIV.

³⁰ For names see Gandhi, *Ibid.*, Ch. XV.

³¹ For names see *Ibid.*

and asked the miners to go on strike in protest against the £3 poll-tax on all indenture-expired Indian labourers and their wives and children. The response was instantaneous. A general strike was declared throughout the mining districts. A large number of miners poured into New Castle. The government could no longer remain indifferent or inactive. The women Satyagrahis were arrested. Each of them was awarded three months' hard labour (September and October, 1913). The imprisonment had a magic effect. Indians all over South Africa awoke fully to the realities of the situation. A new life began to throb in them. The repercussions of the imprisonment of women spread far beyond the Union of South Africa and reached the shores of the motherland. Sir Pherozeshah Mehta told a Bombay audience that India could not be a passive spectator to her daughters' suffering and sacrifice. Women's organisations raised their voice against the treatment of Indians in South Africa and brought pressure to bear upon the government of India to urge His Majesty's Government to have the whole question reconsidered by the Botha cabinet.

The women Satyagrahis were lodged in Meritzburg prison. They were treated very harshly. The food given to them was poor in quality and inadequate in quantity. They had to work as washerwomen. Their health deteriorated. One of them, Bhalimaya, a young girl of eighteen, came out with a deadly fever, to which she succumbed later on.

The strike spread like a wild fire. Gandhiji took charge of the situation. New Castle became his headquarters. The final phase of the struggle was about to open. At New Castle Gandhiji was faced with a situation the magnitude and difficulties of which he had not clearly foreseen. Strikers in thousands flocked thither from the mining districts around. The ill-treatment by the mineowners — flogging of the strikers still in their barracks, cutting off of electricity and water, forcible removal of the strikers' effects by the mines officials and the like — made it increasingly difficult for the strikers to live in the barracks. The only way out was to quit the barracks. That was Gandhiji's

advice too. The advice was promptly acted upon. Gandhiji as the propounder of satyagraha and the generalissimo of the army of Satyagrahis found himself faced with the moral responsibility of feeding and accommodating thousands of striking workers and also of maintaining order and discipline in their ranks. Sanitation was no less important.

The leader rose equal to the occasion. He organised a camp for those who had assembled at New Castle. The Indian traders helped him with money, foodstuff, utensils and the like. Gandhiji impressed upon the strikers the necessity of maintaining discipline at all costs. The significance and purpose of non-violence and satyagraha were explained to them. They promised full co-operation. Gandhiji decided to lead the Satyagrahis into the Transvaal. If they were not arrested on the way, they were to proceed to the Tolstoy Farm and settle there pending the redress of their grievances by the authorities.

It was decided to march on foot from New Castle to the Transvaal-Natal border thirty-five miles away. Some of the strikers were with families. They hesitated. Gandhiji advised them to go back to work. None, however, agreed. It was decided at last that those who were too weak for the trek would proceed by train to Charlestown, the last village in Natal on the Transvaal-Natal border. The rest would follow on foot and cover the distance in two days.

The owners of Natal collieries, greatly impressed and not a little unnerved too, perhaps by the suddenness and success of the strike and by the discipline and orderliness in the ranks of the strikers, invited Gandhiji to meet them at Durban. He accepted the invitation. But he did not expect much from the proposed meeting. He explained to the colliery-owners the history and consequences of the £3 tax. They could, if they so desired, he added, make the workers' cause their own and bring pressure to bear upon the authorities for the abolition of the tax. The strike was the only weapon the labourers could use in their fight against the inhumane tax. The tax, Gandhiji further pointed out, was designed to secure cheap and compulsory labour. It was meant to benefit the employers at the cost of the labourers.

He assured, however, that the strikers would remain peaceful and non-violent under all provocations. Gandhiji frankly told the colliery-owners at the same time that he had no intention of calling off the strike before the strikers achieved their objective.

It was an agreeable surprise for Gandhiji to discover on his return to New Castle from Durban that the determination and orderliness of the strikers had disarmed the initial hostility of the mine-officials at New Castle. Many of them wished the workers success. Strikers from all directions had been pouring into New Castle in an uninterrupted flow. Gandhiji made it clear to the workers that the step they were going to take was full of hazards. There was yet time to retreat for those who faltered.

The march from New Castle began on 28 October 1913. At Charlestown Gandhiji informed the authorities that he would lead the strikers to the Tolstoy Farm near Johannesburg in the Transvaal. He invited mass arrest at Charlestown. He however assured the government that the strike would be called off if the £3 tax was abolished. There was no response from the government. So the march had to continue. But Gandhiji made one more attempt at an amicable settlement. He rang up the secretary of General Smuts, the minister of interior to the Union Government at Pretoria. The secretary was requested to tell the General that the strikers had decided to enter the Transvaal immediately. But if the General promised to abolish the £3 tax, Gandhiji would stop the march. The reply came within half a minute: 'General Smuts will have nothing to do with you. You may do just as you please.'

The great march across the Transvaal border began on 6 November 1913, after prayer and dedication to God. A fateful day it was. There were in all 2,037 men, 127 women and 57 children in the party.³²

Gandhiji was the first to cross into the Transvaal. The party followed. The mounted police at the border did not interfere and the Satyagrahis reached Volksrust, the first Transvaal village on their way. Here a meeting of the

³² *Ibid.*, Pt. II, Ch. XX.

Europeans had been held two days earlier. The Indians had been threatened with dire consequences if they entered the Transvaal. Kallenbach, who was present in the meeting, had, however, eased the situation by his tact and firmness.

Gandhiji was arrested eight miles beyond Volksrust where the Satyagrahis had encamped in open air for the night. He was produced before a magistrate at Volksrust and charged with having aided and abetted 'prohibited immigrants' to enter the Transvaal knowing them as such. He was granted bail pending the framing of a case against him. Gandhiji rejoined the Satyagrahis. Arrested for a second time at Standerton, he was taken back to Volksrust. He was again bailed out pending the preparation of the case against him. He joined the Satyagrahis again and marched at their head to Hedelburg not very far from Johannesburg. Gandhiji was again arrested at Hedelburg and taken to Dundee on 11 November. He was produced in court and awarded nine months' rigorous imprisonment. There was no witness against him, Gandhiji's own testimony being the only prosecution evidence. He was transferred to Volksrust jail where he was tried on fresh charges. Polak and Kallenbach, who had been arrested in the meanwhile, were also tried at the same time (14 November 1908)

Each was sentenced to three months' imprisonment with hard labour. Gandhiji's conviction gave further fillip to the Indian struggle. A large number of Indians crossed from Natal into the Transvaal. They were all arrested and convicted. One among them was 75-year old Harbat Singh, who died in jail. The authorities isolated Gandhiji from the Satyagrahi prisoners by transferring him to Blomfontein jail. Blomfontein, by the way, is the capital of the Orange Free State, which had banged its doors against Indians long ago in 1891. There were not more than 50 Indians in Blomfontein in 1913. They were all waiters in hotels and restaurants. Gandhiji was the only Indian inmate of Blomfontein jail in 1908.

All the Satyagrahis with Gandhiji had been arrested at Hedelburg and taken to Natal. They were tried and sentenced to varying terms of imprisonment. But where were

the jails to put so many? The expenditure to feed so many Satyagrahis was a heavy one. In the meanwhile the coal mines had virtually closed down for want of labourers. The government hit upon a novel idea. They sought to solve the triple problem by transporting all the Satyagrahi convicts to the mine-compounds. The government sought to kill three birds — one more than the proverbial two — with one stone. The mines, surrounded with wire-nettings, were declared out-stations of Dundee and New Castle jails. European employees of the mines were appointed warders of these improvised jails. The strikers were driven underground. Attempts were made to compel them to work. Undismayed by severe flogging and a thousand acts of brutal terrorism, they remained firm in their resolve not to work. The tyranny of the government and the heroism of the workers had their repercussions all over Natal and beyond.

Gandhiji had advised his lieutenants not to allow or encourage a general strike. But the news of the arrest and imprisonment of the Satyagrahi-labourers and others — set Natal ablaze. E. Gitsham and J.F. Trembath gave an excellent account of what followed in Natal with an admirable economy of words:³³

‘One of the most remarkable industrial upheavals this country (South Africa) has witnessed took place in Natal in November, 1908 — generally referred to as the Indian strike. There were at this time, 22,000 labourers³⁴ working under indenture in the tea plantations and sugar farms, the collieries, railways and other important Natal industries.

‘Gandhiji’s programme included a grand march of the strikers to the Transvaal where they were apparently to be arrested for contravening the immigration law. Some two thousand men, women and children actively struggled into Volksrust, but the arrest of Gandhi, as well as of Polak and Kallenbach, his lieutenants, put an end to the expedition, and the labour was railed back to Natal. On some of the estates, attempts to arrest strikers led to bloodshed, some policemen being injured, and a few of the strikers killed and wounded.

³³ **A First Account of Labour Organisation in South Africa.**

³⁴ The number of Indian Labourers in Natal—indentured and otherwise—was about 60,000 at this time.

'In towns the Indian workers also gave a little demonstration in order to show their sympathy with the movement. For a few days Indian cooks and waiters in the Durban hotels took a holiday and left the guests to carry on as best as they could.

'Municipal cart-drivers ceased to drive; workers on the road left their jobs unfinished, and Indian tailors, saddlers and printers' assistants were missing from their workshops. The *dhobies* did not bother about their washing, the vegetable Sammies³⁵ neglected to market their produce, and even the Indian nurse girls ceased to look after their youthful charges.'³⁶

Strong measures were taken by the government to compel the estate-labourers to return to work. The military police were called in. They tried to break the strike. The strikers were forced back to their respective estates. Many refused to go back. In all, 2,000 Indians were arrested and sent back to their respective places. The strikers clashed with the police on a number of occasions. The police opened fire twice. Nine Indians were killed, twenty-five injured. But the morale of the strikers was as high as ever. It was not a little difficult for the Indian volunteers to persuade them to resume work. Not a few, however, refused to be persuaded. Many again went into hiding through fear.

The firmness of the Satyagrahis, the justice of their cause and their readiness to sacrifice everything for it won the sympathy and admiration of the fair-minded section of the European community in South Africa. Polak and Kallenbach shared incarceration with the Natal Satyagrahis. West, who was in charge of the English section of the *Indian Opinion*, and of keeping Gokhale — and through him, India — in touch with the developments in South Africa, too,

³⁵ 'Sammy' is the general name for an Indian in Natal.

³⁶ We have it, however, on the authority of Gandhiji that the Indians engaged in the sanitary services of Durban municipality such as sweepers and latrine-cleaners and attendants on hospital patients were persuaded by the Indians themselves not to go on strike. Domestic servants too were dissuaded from going on strike. 1,500 striking sugarcane plantation labourers returned to work only to save the sugarcane already cut and to take it to the mills for crushing. Vide Gandhi, *Satyagraha in South Africa*, Pt. II, Ch. XXIII.

received his share of attention from the guardians of law and order. He was arrested. But as no charge could be framed against him, he was let off. The Union Government was severely criticised by many for 'mishandling a situation which could have been avoided by wiser statesmanship.' Sir Patrick Duncan, a future governor-general of the Union of South Africa — the first South African to hold the office — was one of the bitterest critics of the government. It may be recalled that Sir Patrick Duncan as the colonial secretary of the Transvaal Crown Colony was the author of the notorious ordinance of 1906 mentioned earlier in this Chapter.

The British press too was sympathetic to and full of admiration for the Indian struggle. *The Times* (London) wrote, 'the march of the Indian labourers must live in memory as one of the most remarkable manifestations in history of the spirit of passive resistance.' The brutalities of the Union government were received with a chorus of condemnation in India. Gokhale, who had been kept fully informed of the march of events in South Africa by a cable almost every day after the arrest of Gandhiji, Polak and Kallenbach, sent C.F. Andrews and William Pearson to aid and advise the Indians.

Viceroy Lord Hardinge publicly condemned the policy of the Botha government. He observed in course of a public speech:

'Your compatriots in South Africa have taken matters into their own hands by organising what is called passive resistance to laws which they consider invidious and unjust. They have the sympathy of India — deep and burning — and not only of India, but of all those who like myself, without being Indians themselves, have feelings for the people of this country.'³⁷

The government of Lord Hardinge demanded the appointment of a commission of inquiry. The Botha government in general, and its strong man General Smuts, the minister of the interior, in particular, found themselves in a none too comfortable position. The latter was, in the words of Gandhiji, 'in the predicament of a snake that had made

³⁷ Quoted by Joshi, *op. cit.*, p. 75.

a mouthful of a rat which it can neither gulp nor cast out.³⁸ He had assured the Europeans that the £3 tax would not be abolished, nor would the anti-Indian laws be repealed or amended. But it was now clear that he would have to yield on both the points.

Nationalist India demanded a Royal Commission of inquiry. The accredited spokesman of the nation, the Hon. Nawab Syed Mohammed, the president of the Indian National Congress (Karachi, 1913), declared that India did not want a 'domestic court of inquiry composed purely of South African settlers... who are bred up in traditions which lead them to think that we (Indians) have no rights and consequently can have no grievances.'

The suggestion for a Royal Commission was not accepted. The Union government, however, appointed a three-member inquiry commission under the chairmanship of Sir William Solomon. The other two members, Col. Wylie and Eiselen, were notorious for their anti-Indian prejudices. The Indian leaders informed the government that they would boycott the Solomon Commission unless all the Satyagrahis were immediately released and unless the Commission was enlarged by the inclusion of Indian representatives.

General Smuts did not accept the conditions. One of the earliest advices of the Solomon Commission was that Gandhiji, Polak and Kallenbach should be unconditionally released. The advice was accepted by the government. Gandhiji, Polak and Kallenbach were released on 18 December 1913.³⁹ They sent a letter from Durban to General Smuts on 21 December. The letter welcomed the appointment of the Solomon Commission, but objected to its personnel and suggested that:

(i) Two more Europeans well-known for their public spirit and sense of justice — Sir James Rose Innes and the

³⁸ Gandhi, *Satyagraha in South Africa*, Pt. II, Ch. XXIII.

³⁹ This is the date as given by Gandhiji himself in his *Satyagraha in South Africa* (Pt. II, Ch. XXIII). According to Polak, the date is 14 December 1913 (*vide* Polak and others, *op. cit.*, p. 89).

Hon'ble W. P. Shriner — should be included in the Commission;

(ii) Satyagrahis still in jail should be released; and

(iii) If the government wanted the Indians to give evidence before the Commission, Indian leaders should be permitted to visit mines, plantations and factories, i.e. the places where Indian labourers were at work.

Failure to accept the conditions, the letter concluded, 'would result in the exploration of fresh avenues for going to jail.'

General Smuts sent a reply to the letter on 24 December. He informed that the Commission would not be enlarged. Preparations for a new march to court arrest on and from 1 January 1914 were, therefore, taken up. The Indians got ready for a fresh fight. Gokhale from India advised against the step. This would place Gokhale and the viceroy in an embarrassing position. Gandhiji was advised to appear, when called, as a witness before the Commission. He took counsel with Andrews and Pearson, who had reached South Africa in the meanwhile. A long cable was sent to Gokhale informing him that his advice could not be accepted. The Satyagrahis had already pledged themselves to renew the struggle. The cable was a great shock to Gokhale. But he as well as Lord Hardinge realised that under the circumstances the Satyagrahis had no option.

Three events that followed one another in quick succession about this time did much to ease the situation. The first in point of time was a strike by the European railway workers. Gandhiji made it clear that the threatened Satyagraha would remain postponed during the strike. The decision was clear evidence that the Indians had no intention of embarrassing the government by exploiting the difficulties unrelated to the struggle. They rose in the estimate of the adversary. Settlement became easier. What one of the secretaries of General Smuts told Gandhiji — half in jest and half in earnest — will be read with interest:

'I do not like your people, and do not care to assist them at all. But what am I to do? You help us in our days of need. How can we lay hands upon you? I often wish you took to violence like the English strikers, and then we

would know at once how to dispose of you. But you will not injure even the enemy. You desire victory by self-suffering alone and never transgress your self-imposed limits of courtesy and chivalry and that is what reduces us to sheer helplessness.⁴⁰

The second of the three events noted above was a Gandhi-Smuts interview. General Smuts had stated in his letter of 24 December mentioned above that in appointing the Solomon Commission the government had not been influenced by any party or group. They had consulted neither the Indians nor the coal and sugar magnates. Gandhiji had sought an interview with General Smuts. It was granted readily and the two met. A great change had come over the latter. He would 'have nothing to do with' Gandhiji a little less than two months ago. But he was now prepared to discuss the Indian demands with Gandhiji. The tide had turned. Smuts was willing to accept most of the Indian demands but he firmly turned down Indian demand for representation in the Solomon Commission on ground that concession on the point would undermine the prestige of the government. The two members of the Commission, — Wylie and Eiselen — of whom the Indians were rightly afraid, he assured, were not likely to take a line different from the government's. It was almost certain that they would make recommendations favourable to Indians, which the government would accept. If the Indians boycotted the Solomon Commission and did not appear as witnesses before it, the charges of ill-treatment made by the Indian strikers could not be dealt with. Gandhiji informed that he would not press the point if the obnoxious laws were repealed or suitably amended. He was prepared to advise the community accordingly.

Gandhiji was encouraged in his decision by the third event mentioned above. Sir Benjamin Robertson, sent by Lord Hardinge to represent the Government of India, reached South Africa. Robertson and Andrews rendered valuable help in interpreting the Indian point of view to General Smuts and the Solomon Commission. They were ably

⁴⁰ Quoted by Gandhi, *Satyagraha in South Africa*, Pt. II, Ch. XXIII.

helped by Gandhiji and his co-workers. Sir Benjamin Robertson, it may be noted in passing, was not free from the defects of the common run of Anglo-Indian bureaucrats. He tried to split the ranks of the Indians and to browbeat the Satyagrahis.⁴¹

After a second interview with Smuts, Gandhiji wrote a letter to him on 21 January 1914. He explained once more why Indians were unwilling to co-operate directly with the Solomon Commission or to appear as witnesses before it. They were pledge-bound. The letter at the same time appreciated the more sympathetic attitude of the authorities than before to the question of Indian representation on the Solomon Commission. It assured the government that during investigations by the Commission the Indians would render all help to Sir Benjamin Robertson, the representative of the Government of India, and would not create difficulties for the government by a renewal of the Satyagraha. Gandhiji, however, reminded General Smuts of the necessity of releasing the Satyagrahi prisoners with the suspension of Satyagraha. It was emphasised in the same letter that the demands of the Indians included the repeal of the £3 tax, legalisation of marriages solemnised according to Indian religious rites, the entry of educated Indians into the Cape Colony and an assurance that the existing laws specially affecting Indians would be fairly administered with regard to vested rights.

General Smuts replied on the same day. He recognised the difficulty of the Indians in giving evidence before the Solomon Commission, but repudiated the Indian charge of brutality towards the strikers. Gandhiji was further informed that the release of the Satyagrahis behind the prison bars has been ordered before the receipt of his letter under reply and that the government would await the recommendations of the Commission before taking further action.

Gandhiji's letter to General Smuts (21 January 1914) and the latter's reply thereto constitute the provisional settlement of the Indian dispute. Gandhiji himself regard-

⁴¹ Gandhi, *Ibid.*, Ch. XXIV.

ed it as a proper and honourable one under the circumstances. His colleagues agreed, though not without some initial opposition. They reminded him how previous pacts and pledges had been broken and dishonoured by the government. Gandhiji's argument was that a true Satyagrahi must attribute the better rather than the worse motive to his opponent, whatever the risk and cost might be. Distrust, he pointed out, was a sign of weakness, not of strength. He further pointed out that with Andrews and Robertson as witnesses, it was highly improbable that the provisional settlement would be violated by the Union government.

The Solomon Commission submitted its report in due course. Sir Benjamin Robertson had tried to persuade many Indians, with little success, to give evidence before the Commission. A very few had agreed. The report of the Commission criticised the Indians for their non-cooperation with it and dismissed the Indian complaint of brutality at the hands of the police and the military. The report, however, recommended that all the demands of the Satyagrahis should be accepted and that the Union parliament should legislate accordingly.

The recommendations of the Commission were incorporated in the Indian Relief Bill and placed before the Union parliament (1914). It provided for:

(a) The appointment of marriage officers to solemnise marriages according to the rites of Indian religions;

(b) The validation of a monogamous marriage upon a joint application (by both parties) to any magistrate or marriage officer;

(c) The refusal of permission to enter any province of the Union to the legal wife of an exempted person if he has a child or children in any other province (of the Union) by a woman, who is still living;

(d) The right of the government to grant free passage to India to any Indian, who abandons his own, his wife's and his minor children's right to domicile in South Africa.

(e) The acceptance of an Indian's thumb-impression on a certificate of domicile in Natal as the conclusive evidence of his (the Indian's) former residence or domicile; and

(f) The abolition of the £3 tax.

No steps were to be taken for the recovery of the amounts that might have been due prior to the commencement of the Act.

The Bill was long debated and discussed in the Union parliament. Member after member warned the government against the consequences of their policy of appeasement.⁴² Sixty voted for the bill, twenty-four against. Gandhiji and General Smuts had two more meetings at Cape Town. The discussions were for a final solution of the Indian problem. E.M. Gorges, secretary to the ministry of the interior, wrote a letter to Gandhiji on behalf of the minister (General Smuts) on 31 June 1914. Gandhiji's reply was sent on the same day.⁴³ The letter of Gorges and Gandhiji's reply thereto constitute the historic Smuts-Gandhi Agreement. An understanding — a gentlemen's agreement — between the Government of the Union of South Africa and the Indian community, it covered administrative matters which were not covered by the Indian Relief Act. They included the right of educated Indians to enter the Cape Province from other provinces of the Union; permission for 'specially exempted' educated Indians to enter South Africa; recognition of the status of educated Indians, who had entered the Union during the past three years; and the entry of existing plural wives (very few in number) to join their husbands in the Union of South Africa. The last but one paragraph of the letter of Gorges assured Gandhiji that 'with regard to the administration of the existing laws, it has always been and will continue to be the desire of the government to see that they are administered in a just manner and with regard to the vested rights.'

Gandhiji called the settlement the Magna Charta of 'our (Indians)' living in this land (South Africa)' and declared:

"The passing of the Indian Relief Bill and this correspondence (letter of Gorges, dated 30 June 1914, and Gandhiji's reply to it the same day) have finally closed the Satyagraha struggle which commenced in September 1907.

⁴² Joshi, *op. cit.*, p. 81-2.

⁴³ For copies of the letters see Appendix I.

and which to the Indian community cost much physical suffering and pecuniary loss, and to the government much anxious thought and consideration.'

The settlement was welcomed as an act of statesmanship by viceroy Lord Hardinge. Viscount Gladstone, the governor general of the Union of South Africa, observed in course of a speech at Johannesburg that the settlement proved that the existence of a free, responsible South African government was not inconsistent with the discharge of imperial obligations. The 29th session of the Indian National Congress (Madras, 1914) placed on record its gratitude to Lord Hardinge for the partial settlement of the South African Indian question and to Polak and Kallenbach for the sacrifices they had made in the Indian cause. The Congress also placed on record its appreciation of the work of Gokhale and Gandhiji and the latter's followers.⁴⁴

The settlement of 1914, it must be admitted, was not in fact so great a victory for the Indians as it appeared at first sight. Sarah Gertrude Millins asks, 'What was Gandhi's victory? For what had he striven through five (!) years?' She answers the questions herself. 'For a few things, such as voluntary registration, the remission of the three-pound tax in Natal, the admission of polygamous wives, which were now granted in the Indian Relief Act, but chiefly for deletion from the laws of the word Asiatic. Not the spirit.

⁴⁴ 'That owing to the scarcity of labour in India and the grave consequences resulting from the system of indentured labour which reduce the labourers, during the period of their indenture, practically to the position of slaves, this Congress strongly urges the total prohibition of recruitment of labour under indenture, either for work in India or elsewhere.

'(a) That this Congress begs to offer to H. E. the Viceroy, its respectful thanks for the noble and courageous stand made by him in the cause of our people in South Africa. and while expressing its grateful appreciation of the efforts of the Government of India, in obtaining relief in respect of some of the most pressing grievances of our Indian fellow-subjects and of the firm advocacy in the cause of India of Sir Benjamin Robertson, this Congress begs to place on record that no settlement can be wholly satisfactory or be deemed final, which does not secure equality of treatment between His

Not the fact. Merely the word.' The late Jan H. Hofmeyr agrees.

'Gandhi was unable to prevent Smuts from gaining his main objective, which was to terminate Indian immigration into South Africa. But Gandhi secured that Indians were spared the dishonour of being named specifically in the immigration law, and he also obtained the redress of several minor grievances of Indians already resident in South Africa. If he hoped that the settlement arrived at between Smuts and himself would lead to the disappearance of anti-Asiatic prejudice, he was destined to be disappointed. That prejudice is still a powerful force in South Africa today, and some of its manifestations are not to South Africa's credit.'

The fact, however, remains that the Gandhian leadership introduced a new life into the inert Indian community in South Africa. Gandhiji gave to the community 'a consciousness of pride of race which has never been effaced.' He taught his countrymen to walk with their heads erect in distant and hostile South Africa.

Gandhiji sailed for England on 18 July 1914, and reached England on 3 August 1914. The First World War broke out on the following day.

Majesty's Indian and other subjects in South Africa, and respectfully urges on the Government of India that steps may be taken as early as circumstances will permit to bring about such equality of treatment.

'(b) That this Congress place on record its warm appreciation of and admiration for, the heroic endeavours of Mr. Gandhi and his followers, and their unpralleled sacrifice in their struggle for the maintenance of the self-respect of India and the redress of Indian grievances.

'(c) That this Congress further expresses its gratitude to Messrs. Polak and Kallenbach for their voluntary sacrifices and suffering in the cause of India, and to the Rev. Mr. Andrews for his help under circumstances of great difficulty.

'(d) And, lastly, that this Congress records its appreciation of the invaluable services of the Hon. Mr. Gokhale throughout the struggle in bringing about the present settlement.'

CHAPTER III *Smuts-Gandhi*
Agreement
(1914 — 1927)

We, a handful of whites, are ring-fencing ourselves, first with an inner ring of black hatred and behind that with a ring of hatred of the whole of Asia.'

JAN CHRISTIAN SMUTS

THE Indian Relief Act passed by the Union of South African Parliament in 1914 removed some of the grievances against which the Indian community had carried on *satyagraha* from 1907 onwards under the leadership of Mahatma Gandhi. Letters exchanged between Gandhiji and General Smuts, the Union government's strong man, constitutes the historic Smuts-Gandhi Agreement (1914). The Agreement was an understanding between the Indian community and the Union government regarding administrative matters, not covered by the Indian Relief Act. These were, among others, the right of educated Indians to enter the Cape Colony from the Transvaal, the Orange Free State and Natal; permission to 'specially exempted' educated Indians to enter the Union of South Africa; recognition of the status of educated Indians who had entered the Union during the past three years; and the entry of existing plural wives (very few in number) to join their husbands in South Africa. Gandhiji was assured¹ that the existing laws would be administered 'in a just manner and with due respect to the vested rights.' The Union government further agreed to consult the Indians before the introduction of any Bill relating to them in the parliament.

The Smuts-Gandhi Agreement was hailed as the Magna

¹ Letter to Mahatma Gandhi from the secretary of the department of the interior, 30 June 1914.

Charter of Indian liberty in South Africa. Gandhiji said in a farewell message in 1914:

'A word about the settlement, and what it means. In my humble opinion it is the Magna Charta of our liberty in this land (South Africa). I give it the historic name not because it gives us rights which we have never enjoyed and which are in themselves new or striking but because it has come to us after eight years' strenuous suffering that has involved the loss of material possessions and of precious lives. I call it our Magna Charta because it makes a change in the policy of the government towards us and establishes our right not only to be consulted in matters affecting us, but to have our reasonable wishes respected. It moreover confirms the theory of the British Constitution, that there should be no legal racial inequality between different subjects of the Crown, no matter how much practice may vary according to local circumstances. Above all, the settlement may well be called our Magna Charta, because it vindicated passive resistance as a lawful, clean weapon, and has given in passive resistance a new strength to the community; and I consider it an infinitely superior force to that of the vote, which history shows has often been turned against the voters themselves.

'The settlement finally disposes off all the points that were the subject-matter of passive resistance, and in so doing it breathes the spirit of justice and fairplay. If the same spirit guides the administration of the existing laws, my countrymen will have comparative peace, and South Africa shall hear little of the Indian problem in an acute form.'²

The high hopes roused were belied and South African nationals of Indian origin have discovered at their cost that 'black (white!) takes no other hue.' Their position is more unsatisfactory in theory and practice today than it was at the turn of the century.

Indians made substantial contribution to South Africa's war efforts during the First World War (1914-18). General Smuts, one of the leading exponents of white superiority paid eloquent tributes to the Indian troops who had fought under him in East Africa against the Germans: 'I wish here publicly to repeat that I have had no more loyal, devot-

² Quoted by Joshi, *op. cit.*, pp. 87-88.

ed and brave troops under me than those troops from India"³ But the same General Smuts was afraid — was he really? — of an Asiatic inundation of South Africa and told the imperial war cabinet:

'In South Africa there has been this fundamental trouble, that the white community have been afraid to open the door wide to Indian immigration. . . . we are a white population on a black continent; and the settlers in South Africa have for many years been actuated by the fear that to open the door to another non-white race would make the position of the few whites in South Africa very dangerous indeed. It is because of that fear, and not because of any other attitude to the question of Asia, that they have adopted an attitude which sometimes, I am bound to admit, has assumed the outward form, although not the reality, of intolerance. . . . once the white community in South Africa were rid of the fear that they were going to be flooded by unlimited immigration from India, all the other questions would be considered subsidiary and become easily and perfectly soluble.'

The Indian question was discussed in the Imperial Conference in 1917 and again in 1918. India was represented by Sir (later Lord) S. P. Sinha and the Maharaja of Bikaner in both. South Africa was represented by General Smuts and Burton. Sir S. P. Sinha pleaded for the repeal of Law III of 1885 (Transvaal) which prohibited Indians in the Transvaal to take up residence except in segregated areas and denied all civic rights to them. The Act, amended subsequently in 1887, denied political and proprietary rights to them and segregated them in streets, wards and *locations*.' He requested further that a full right of appeal to the Union supreme court at Blomfontein should be granted to the Indians against the refusal of trade-licence by a municipality.⁴

In his reply, Burton expressed his sympathy for the Indian cause and pointed out that 'difficulties of substantial importance' notwithstanding, he did not despair of 'a satis-

³ *Ibid.*, p. 96.

⁴ *Vide* the Memorandum of Sir S. P. Sinha to the Imperial Conference, 1917.

factory solution.' Burton paid eloquent tributes to the Indian community in South Africa:

'It is only fair to say—and it is the truth—that we have found that the Indians in our midst in South Africa, who form in some parts a very substantial portion of the population, are good, law-abiding, quiet citizens, and it is our duty to see...that they are treated as human beings, with feelings like our own, and in a proper manner.'

The reciprocity resolution of the Imperial Conference (1918), affirmed the right of each empire-country to control the composition of its population by immigration restrictions. It was recommended, however, that facilities should be given to Indians for visits and temporary residence; that Indians domiciled abroad should be allowed to take their wives and minor children with them and that the civic and social disabilities of the Indian settlers abroad should be given an early consideration.⁵

The resolution was hailed as a triumph for the Indians in their fight for equality. The victory, however, was more apparent than real. It was, in fact, 'a fraud on India.' South Africa and other dominions accepted the so-called reciprocity resolution 'because through it the whole (British) Empire supported their policy of restricting Indian immigration, and because India itself accepted the policy without demur.'⁶ The dominions had nothing to fear from India's right of imposing restrictions under the reciprocity resolution on settlers from the dominion countries.

India had few such settlers. Besides, they had their staunchest champion and stoutest defender in the British government at New Delhi. India's spokesmen at the Imperial Conference of 1918—or for the matter of that at earlier and later ones—were no match for the seasoned diplomats who represented England and her dominions.

The Indians were not on the whole very badly treated during the pendency of the First World War. New trade licences were granted. Private companies with limited liabilities were organised in the Transvaal under the Trans-

⁵ Cf. Joshi, *op. cit.*, pp. 98-9, for the text of the resolution.

⁶ Joshi, *op. cit.*, p. 99

vaal Companies Act, 1909. These companies were allowed to acquire land and other fixed property. The acquisition of land and other immovable property by these companies did not go unchallenged, however. Justice Ward of the Witwatersrand Local Division of the Union supreme court held in the case of Reynolds vs. Osthurizen in 1916 that such acquisition was legal and that there was nothing in the law to prevent such private companies with only Asian shareholders from owning land in the Transvaal.

Much that could be, and should have been, done for the Indian was, however, left undone. The Indians were, observed Mabel Palmer,⁷

'a small community, less than that of one normal British town, set on the fringe of the great undeveloped spaces of South Africa. It would not seem to be an insoluble problem. The Indians, without being cut off from their roots in the age-old Indian culture, could have been helped to assimilate certain Western standards of health and education necessary, if they are to live harmoniously with their neighbours in a westernised community. Housing areas properly supplied with the usual amenities should, without any formal segregation, have been made available for them; education should have been improved; their position as market-gardeners and small farmers should have been taken into account, and agricultural training provided and agricultural co-operative societies started.'

Nothing however was done. Instead, a fresh agitation against them was started after the First World War.

The reasons are not far to seek. For one thing, South Africa, like the rest of the British Empire, had one and only one objective—an efficient and effective prosecution of the war in order to bring it to a victorious conclusion. It needed the co-operation of all sections of its population and, naturally enough, followed the path of least resistance. For another, the comparative prosperity of the Indian community during the war and after was an eye-sore to the white South Africans. Indian companies in the Transvaal had, before 1916, total assets worth £104,924. By March 1919,

⁷ *Op. cit.*, p. 15.

the figure had gone up to £479,327, giving an average of property worth £35 per Indian.

On a motion from the Krugersdorp municipal council in 1919, the supreme court restrained a European firm from permitting the residence of certain Indians on a stand leased to an Indian in Krugersdorp. A deputation of Indians laid their grievances before Sir Thomas Watt, the minister of interior. These related to the restrictions on the free movements of Asians throughout the Union, their difficulties in obtaining trade licences, the unsympathetic administration of the Immigration Regulation Act (1913), the status of 'exempted Indians' and the ownership of fixed property. The Indians submitted a petition to the parliament for relief against Krugersdorp municipality. The petition was referred to a select committee of the house of assembly. The select committee recommended that the vested rights of Indians, who had been carrying on business on proclaimed mining areas on 1 May 1919, should be respected and that Indians should have the right to transfer their existing businesses to other Indians legally residing in the Transvaal. The committee however was of the opinion that steps should be taken to make it impossible for any Asian or Indian to obtain in future a trading licence for a new business and that a register of licences and businesses held and owned by Indians and other Asians on 1 May 1919, should be maintained by the government. The select committee submitted along with its report a Bill, which included the above recommendations. The Bill was passed with minor modifications under the name of the Asiatic Land and Trading (Amendment) Act (Act XXXVII) of 1919. It amended Law III of 1885 in so far as it applied the prohibition of that law against the owning of fixed property by coloured persons through the formation and registration of limited liability companies. Act XXXVII prohibited Asians from owning fixed property anywhere in the Transvaal either directly or indirectly, i.e. through limited liability companies as nominal trustees except in such localities as the government might, for sanitary reasons, assign to the Asians for purposes of residence. Rights acquired by British Indians be-

fore 1908 and between 1908 and 1 May 1919, which the Gold Law (Act XXXV) of 1908⁸ did not permit or protect, were protected by excluding them from the operation of sections 130 and 131 of the Law. Indians, except those who had been carrying on a duly licensed business on proclaimed land and townships, were denied all scope of extending their commercial operations in those localities, which were the busiest and most prosperous areas of the province. Indians could, however, acquire leasehold, but not proprietary rights, with respect to immovable property in areas outside public diggings.

The law was thought necessary because of the alleged circumvention and evasion of the existing legislation through the formation of companies. The charge, however, loses much of its force when it is remembered that the government itself had indirectly encouraged such circumvention.⁹

The Transvaal British Indian Association requested governor-general Lord Buxton of the Union of South Africa to withhold his assent to Act XXXVII of 1919. The latter did not agree. The South African Indian Congress was founded at this time. The Congress held its first session at Johannesburg and protested against the Act.

In course of his reply to the address presented him by the Indians at Durban on 26 August 1919, General Smuts referred to the 'great irritation among the Indians here' and to 'a great deal of feeling in India' aroused by the said Act and alluded to the appointment of a commission 'to go into the whole matter.' He said further:

⁸The Act absolutely prohibited Indian traders to reside and carry on trade in proclaimed areas.

⁹"The practice arose from the case of an Indian firm (Mohammed Ismail and Company) who, in March 1888, purchased certain stands at Klerksdorp in a Government sale. When difficulties occurred regarding transfer to an Asian, the land was registered in the name of the Mining Commissioner, a Government officer, as trustee for the purchasers. This was done with the consent and at the instigation of the Government; and in subsequent cases of a similar nature, the Government officers were instructed to adopt the same course. Therefore, this system of indirect ownership of land by Asiatics became common."—*Report of the Asiatic Inquiry Commission, 1924, p. 7, para 28.*

'Now that the Indians are here, I hold that they should have fair treatment in all parts of the Union. We have to live side by side in conciliation, and we must endeavour to understand each other's viewpoint so that we may live together and grow together. We are members of one family and belong to the same Commonwealth.'

A section of South African Europeans held that Act XXXVII of 1919 did not go far enough. They organised the South Africans' League to combat the 'Asiatic evil.' L. J. Phillips, the president of the first general session of the League held in Pretoria, warned his audience against the 'Indian invasion' of South Africa:

'The watchful interest of the Indian government is of extreme importance, and unless the people of South Africa wake up to the effect of the Indian invasion upon this country... we shall be forced to accept the position that this sub-continent will become an expansion ground for the Indian Empire.'

The session expressed alarm at the continued encroachment of Asiatics, urged a strict enforcement of the Anti-Asiatic laws and demanded further legislative enactment in accordance with the objectives of the South Africans' League.

The League sent a deputation to prime minister Smuts. The latter assured the deputationists that he had long been conscious of the Asian menace. He however regarded certain questions — those on immigration and land-ownership — as closed, 'because the legislature had definitely and finally closed the door to Asiatic immigration and no Asiatic could legally own land, in spite of all their ingenuity.'

The South Africans' League held a conference again in 1920. Phillips observed in course of his address to the conference:

'India must learn that South Africa is not prepared to sacrifice her own future in order to provide homes for her (India's) surplus population. They must both learn that South Africa is not prepared to take the first steps in national suicide by admitting Indians to free and indiscriminate residence amongst white people.'

Phillips and his fellow-travellers forgot that it was Indian labour which had turned Natal into a 'Garden

Colony,' that the much-maligned Indians had developed semi-skilled industries, such as, painting, carpentry and cheap tailoring, which 'no white Afrikaner desired to soil his finger with.' The champions of white South Africa should remember that Indians did not a little to build up the prosperity of Natal and that Indian trade in the Transvaal has been immensely beneficial to the poor white, the coloured and the native inhabitants thereof.

An Asiatic Inquiry Commission under the chairmanship of Justice Lange was appointed by the Union government. The Commission was to report after enquiry on the laws affecting the Asians' rights of acquisition of land and their trade in the Union of South Africa. Sir Benjamin Robertson attended the sittings of the Commission as an observer on behalf of the Government of India. The Commission investigated all aspects of the alleged 'Asiatic menace' and concluded that there had been no material increase in Indian licences, that there were no serious grounds for the fear of miscegenation in the future, that the Asian bazars were insanitary and neglected by the municipalities, that the Indian merchants' standard of living was on a level with that of the ordinary well-to-do Europeans, that the Indian population could not increase anywhere in the Union of South Africa except by the normal excess of births over deaths and that the so-called 'Asiatic menace' was exaggerated and ill-founded.

The Commission was definitely against the compulsory segregation or compulsory repatriation of Indians. Its report reads, in part, as follows:

'We find ourselves wholly unable to support the policy of repression which was advocated by some of the witnesses. Indiscriminate segregation of Asiatics in locations and similar restrictive measures would result in eventually reducing them to helotry. Such measures apart from their injustice and inhumanity, would degrade the Asiatic and react upon the European.'

In the face of these findings it was only natural to expect that the Commissions' recommendations would be favourable to the Indians. The Commission, however, recommend-

ed that (a) Law III of 1885,¹⁰ the Gold Law of 1908¹¹ and Act XXXVII of 1919 should not be repealed; (b) Law III of 1885 should be applied to the districts of Vryheid, Utrecht and Paulpietersburg¹²; (c) anti-Asian Laws of Zululand and Transkei should be retained; (d) Immigration laws should be enforced without any relaxation; (e) the right of Asians to purchase land for cultivation should be limited to 20 or 30 miles only towards the hinterland from the coast; (f) if possible, a uniform licence legislation incorporating all the licence laws of Natal, the Cape and the Transvaal should be enacted and local bodies should be authorised to restrict the issue of licences; (g) a system of voluntary segregation should be introduced. The municipalities should be empowered to lay out separate residential and commercial areas to which Indians should be gradually attracted.

Sir Benjamin Robertson had suggested to the Commission that if the Union government accepted the need of a more constructive policy towards Indians, the administration of Asian affairs should be entrusted to a responsible official enjoying the confidence of the Indian community. The Commission accepted the suggestion and strongly recommended the appointment of an officer, who would collect full statistical information on all matters specially affecting the domiciled Indians, to keep in touch with them, to safeguard their interests and to give 'a ready ear' to their complaints.

The findings and recommendations of the Lange Commission were in many respects a study in contrast to the heroine in one of Goethe's classics, 'in whose lineaments every body saw the image of his own beloved.' Thus, the anti-Indian elements in South Africa were displeased because, in the Commission's opinion, the so-called 'Asiatic menace' was exaggerated and ill-founded. The Indian com-

¹⁰ The law prohibited Indians to take up residence anywhere except in segregated areas in the Transvaal. Amended in 1887, it denied all political rights to Indians in the Transvaal. It further denied them the ownership of properties in the Transvaal and segregated them in streets, wards and locations.

¹¹ See foot note 8.

¹² Northern districts of Natal, which once formed a part of the South African Republic (the Transvaal).

munity was disappointed because the anti-Indian laws in force were not to be repealed. On the contrary, they were to be tightened and further restrictions were to be imposed upon the Indians. The Government of India protested against the withdrawal of the right of Indian settlers to acquire land in the uplands of Natal, among others.

The Imperial Conference of 1921 reaffirmed the principle that each member of the British Commonwealth of Nations should have the unfettered right of determining the composition of its own population. It recognised at the same time that 'there is an incongruity between the position of India as an equal member of the Empire and the existence of disabilities upon British Indians lawfully domiciled in some parts of the Empire.' The Conference therefore concluded that 'in the interests of the solidarity of the Commonwealth, it is desirable that the rights of such Indians to "citizenship should be recognised".'¹³

The secretary of state for colonies was of the opinion that the stand was the only ideal the British Empire could set before itself. The South African delegation to the Conference, however, regretted its inability to share the sentiments and refused to accept the resolution. General Smuts, his 'more kindly' feelings towards the Indian population of South Africa notwithstanding, declared:

'The whole basis of our particular system in South Africa rests on inequality. . . . it is the bedrock of our constitution . . . you cannot deal with the Indians apart from the whole position in South Africa; you cannot give political rights to the Indians which you deny to the rest of the coloured citizens in South Africa.'

The Imperial Conference of 1923 refused to oblige General Smuts by abrogating the resolution of 1921. He was infuriated by his failure. He took up the Indian question soon after his return home from the Conference. It was asserted that the Indian question was a domestic affair of South Africa and that nobody had any right to meddle therewith. A fresh instalment of anti-Indian legislations follow-

¹³ F. Rushbrook Williams, *India in 1921-22*, p. 29.

ed. Natal, which owes more to Indian labour and enterprise than any other part of South Africa, showed the way.

The Natal provincial government issued three ordinances in 1924:

- (i) The Rural Dealers' Licensing Ordinance;
- (ii) The Townships Franchise Ordinance; and
- (iii) The Durban Land Alienation Ordinance.

What an unholy Trinity! It sought to cripple Indian trade in rural areas, to deprive the Indian community of municipal franchise in Natal and to enforce racial segregation by preventing Indians from possessing land in European areas.

The first gave arbitrary powers to rural boards to deal with Indian trading licences. The second deprived the Natal Indians of their municipal franchise, enjoyed by them under Natal Law XIX of 1872. The third empowered the Durban municipality to sell municipal land to Indians under restrictive conditions. The Boroughs Ordinance XIX of the same year (1924) took away from the Indians the right of franchise in the boroughs.

The Union government, too, did not lag behind. They rubbed Indian sentiments on the raw by violating the Smuts-Gandhi Agreement (1914), Act XXXVII of 1919 was put into operation. The South African air was surcharged with strong anti-Asian sentiments. There was an almost universal demand for restrictions on landholding, on residence in urban areas and on trading licences of Asians. The Lange Commission had approved these demands in general. It had emphasised in particular that Indian landholding and agriculture should in future be restricted to the coastal areas of Natal. The Commission had, however, deprecated compulsory segregation. The Commission's objection to compulsory segregation was ignored when Patrick Duncan, the Union minister of interior, introduced his notorious Class Areas Bill early in 1924. It aimed at compulsory segregation of Indians in urban areas, threatened them with the loss of trade, residence and land-rights in Natal and with an economic disaster in the Transvaal. The Bill further envisaged more strict restrictions on Indian immigration. A desire to

paralyse the Indian Community in the Union of South Africa was, in a word, writ large on each and every clause of the Class Areas Bill. The Bill, however, lapsed owing to the dissolution of the Union parliament shortly afterwards.

Sarojini Naidu paid a visit to the Union of South Africa early in 1924 on the invitation of the Indian community. She toured extensively over the Union and did not a little to put heart into her much-maligned, harassed and humiliated hosts. Fire-eating, fire-brand pigmentocrats cast common courtesy and chivalry to the winds and referred to her in the public press as a 'coolie woman.' A prominent South African leader even suggested that she should be packed out of the country. It was Sarojini Naidu, who originated the idea of a Round Table Conference for the settlement of all the outstanding issues between the governments of India and South Africa. The South African Indian Congress took the cue and passed a resolution to the effect in a subsequent session.

General Smuts was unseated in the general elections of 1924. His rival General Hertzog succeeded him as prime minister at the head of a Nationalist-Labour coalition.¹⁴ J. H. Thomas, Britain's secretary of state for dominions, paid a visit to South Africa about this time as a member of the Empire parliamentary deputation. The Indian question was the question of the hour. In course of a speech at Pietermaritzburg, Thomas suggested a Round Table Conference between the governments of India and South Africa for the solution of the Indian problem. Sarojini Naidu, too, had suggested the same thing.¹⁵

The Nationalist government interpreted the suggestion

¹⁴ There were three political parties in South Africa at the time. These were (i) the South African Party led by General Smuts, (ii) the Nationalist Party led by General Hertzog and (iii) the Labour Party led by Colonel Crosswell. None enjoyed the reputation of having a soft corner for the Indians. Each tried to turn the Indian question to its advantage during the election of 1924 by telling the voters what it would do to drive out the Indians.

¹⁵ Palmer, however, says that the idea was initiated by Thomas (*Op. cit.*, p. 16).

as an instance of external interference. There were two and only two ways, so thought the government, in which the Indian problem could be tackled. The Indians must either be sent out of the country or given the elementary human rights. General Hertzog and his cabinet chose the former. But the Indians could be driven out only if life were made a nightmare for them by drastic restrictions on their commercial and residential rights and by the imposition of immigration disabilities. Such restrictions would cripple them from the political, social and economic points of view.

D.F. Malan, General Hertzog's minister of interior, introduced the Areas Reservation and Immigration and Registration (Further Provision) bill in the Union parliament in July, 1925. It was in fact Patrick Duncan's Class Areas Bill with a vengeance. Duncan had denounced the Indians as economically undesirable. Malan went farther and dubbed them as aliens. 'I must say,' he observed in course of his speech introducing the Bill,

'that the Bill firmly starts from the general supposition that the Indian, as a race in this country, is an alien element in the population, and that no solution of the question will be acceptable to the country unless it results in a very considerable reduction of the Indian population in this country.'

He therefore sought 'to stop effectively the further encroachment of Indians.' The legislation proposed by him, he hoped,

'would go farther than that; that is, as a result of the exercise of pressure on the Indian, he (the Indian) will take advantage of the inducements which are held out to him to leave the country, so that the Bill is meant not only to stop further encroachment but actually to reduce the Indian population of the country.'¹⁰

The first chapter of Malan's Bill envisaged reservation of special areas for Indians. Municipalities were to suggest areas within their own jurisdictions for Indian trade or residence or both. A Commission was next to report on an area so suggested. The governor-general was to proclaim the area in question to be an Indian area within six months

¹⁰ Dr. Malan in an interview.

of the submission of the report. The Indians in such a 'proclaimed' area could not thereafter trade or purchase land in any other place. These clauses, contended the Natal Indian Congress, would 'cripple the whole life and trade of the Indian community ... crush out all Indian agricultural work, progress and prospects the fate of Indian is sealed and he is doomed.'

Chapter II of the Bill, which dealt with immigration and allied matters, left all Indians born and settled in South Africa to the tender mercies of a minister and an immigration official. It envisaged a whole series of torments and pinpricks for the hapless Indian. Thus, any Indian could be arrested and declared a 'prohibited immigrant.' An Indian punished by a law court with anything but a fine could be deported. An Indian settler, who did not return to South Africa within three years from the date of his departure from that country, was to lose his right of re-entry. Marriages and divorces according to Indian religious rites were to be invalid. The list, we hasten to point out, is only illustrative, not exhaustive.

Chapter III of the Areas Reservation and Immigration and Registration (Further Provision) Bill was entitled 'Registration of Asiatics.' It aimed at reducing the number of Indians in the Transvaal. If an Indian surrendered his registration certificate of his own accord, he was to lose his right of re-entry, residence or domicile in the Transvaal. The failure of an Indian to apply for a registration certificate was to effect his rights adversely.

With the Areas Reservation Bill still on the legislative anvil, the government added two new measures to the already formidable array of anti-Indian laws. The Colour Bar Act of 1925 drew a definite colour-line between the Europeans and the non-Europeans. The latter were debarred from handling steam and electricity-driven machines. The South African Indian Congress characterised the Act as an 'attempt to violate the liberty of the subject, his freedom to contract, his right to hold, possess, control and sell his own labour which is his property, and in a word...is sufficient

to throttle and stunt the growth of any community which comes under operation of this law.¹⁷

The Minimum Wages Act of the same year was based on the principle of equal wages for equal work. It fixed standard wages for all irrespective of efficiency and discouraged thereby the employment of Indians in higher paid jobs. No South African employer would like to employ a non-white worker on the same wages as a white worker.

Malan was not satisfied, however. He declared that the Indian question was extremely complicated and that the Areas Reservation Bill was the only solution thereof. The South African Indian Congress, which had received a copy of the Bill, condemned it as a violation of the Smuts-Gandhi Agreement of 1914. It demanded a Round Table Conference to consider the position of the Indians in general and arrive at an honourable and amicable settlement. The repercussions of the controversy over the Areas Reservation Bill reached Indian shores. The Government of India shook off its lethargy and began to take interest in the lot of Indians in far off South Africa. Let us not, however, anticipate the story.

A deputation of the South African Indian Congress waited on Malan (16 November 1925). The latter did not accept the deputationists' contention that the Areas Reservation Bill violated the Smuts-Gandhi Agreement and observed that 'no understanding was given or could have been given by any government that the laws would not be changed or that any laws with regard to any question would not in future be introduced.' 'Vested rights' of the Indians, he maintained, had been amply safeguarded 'in 1885 by the Old Transvaal Law... in 1908 by the Transvaal Gold Law... in 1919 and throughout the Bill that I have introduced existing rights and vested interests of Indians are also protected.'

Godfrey, the leader of the Indian deputation, differed and pointed out that the Bill did not protect the vested rights of the Indians. If the governor-general actually issued a proclamation about the fifty-mile limit in Natal — he could

¹⁷ Appeal of the South African Indian Congress to a joint session of the houses of the Union parliament.

do so under the provisions of the Bill — no business could be continued for any length of time. He told Malan point-blank that Indians could not agree to the Bill on principle and that they would accept neither voluntary nor compulsory segregation, come what might. Malan on his part would not budge an inch and refused to make any concession in regard to the principle of the Bill. The deputation was, however, advised to place its views before the select committee of the Union parliament to which the Areas Reservation Bill was to be referred.

A seven-men deputation headed by Dr. Abdur Rehman was sent to India by the South African Indian Congress in 1926. The Government of India, too, sent a deputation to the Union government at the same time. G.F. Paddison led the latter. G.S. Bajpai acted as its secretary. The Hon'ble Syed Reza Ali and Sir Deva Prasad Sarvadhikari were the other members of the deputation. The two missions crossed on the high seas.

The Paddison deputation, the reader will note, was the outcome of protracted negotiations and a none too pleasant controversy between the Indian and the South African governments. The former's proposal for a Round Table Conference between the representatives of the two governments, supported as it was by the British government, had been turned down by the Union government in 1925. It was pointed out by the said government that holding a conference 'without limiting its scope to some definite and concrete question' might be resented by the people as external interference. If, however, the scope of the conference were limited to a discussion of the question of repatriation of the Indians, no objection would be raised. The Government of India cabled back that it did not contemplate a conference the main object of which was to expedite the expulsion of Indians from South Africa.¹⁸ It, however, signified its willingness to accept such a conference if the preliminary investigation regarding the economic position and general

¹⁸ Correspondence between the Government of India and the Government of the Union of South Africa (1925), telegram 7, 9 October 1925.

condition of the Indians was allowed by the Union government.¹⁹ The point was raised again by the Government of India in the following year. The justice of labelling the Indian population of South Africa — more than 60 per cent of whom was South African by birth — as an extraneous element was questioned at the same time. The Class Areas Bill, it was pointed out, 'will destroy the hope of ever arriving at a solution acceptable to all communities in South Africa.' The Union government accepted the proposal of investigation, but informed the Government of India that 'under certain circumstances and without exercise of all due discretion' an enquiry of this nature might create difficulties for the Union government and cause irritation amongst the Europeans. It agreed, however, to submit the Class Areas Bill to a select committee of the Union parliament and to allow a Government of India deputation to lay the Indian case before the committee. The Paddison deputation was accordingly sent by the Government of India. Rev. C.F. Andrews had preceded the Paddison deputation to South Africa in an unofficial capacity. He had been there to help the Indian community. The Paddison deputation made an exhaustive study of the condition of the Indians in Natal, the Cape and the Transvaal and prepared itself for appearing before the parliamentary select committee. The South African Indian Congress rendered valuable assistance to the deputation. The laborious and the detailed statement prepared by the Congress threw a flood of light on the Indian question in all its aspects.

The Paddison deputation drafted an interim report of provisional conclusions and recommendations after an enquiry in Natal. The report pointed out that there was a *prima facie* case for some fresh enquiry before proceeding further with the Class Areas Bill. The Union government agreed to a fresh enquiry accordingly.

February 23, 1926, was observed as 'a day of humiliation and prayer' by the Indians all over the Union of South Africa. Business was suspended for the day and mass meetings were held in almost all important centres. The Church

¹⁹ *Ibid.*

was sympathetic and the bishops themselves conducted the prayers in quite a few places.

The anti-Indian elements, too, did not sit idle. A Durban city father, H.H. Kemp, declared that the only cure for the Asian problem was 'the surgeon's knife and a silver bullet.' The sole remedy he knew was 'to repatriate their Asiatic friends to Bombay. The Hertzog government would be well advised to spend five million pounds to get the Asiatics out of the country.'

With the Class Areas Bill still pending before the legislature, the Local Government (Provisional Power) Act was placed on the statute-book in 1926. It gave wide discretionary powers to the provincial councils to deal with subjects of local importance. The Act legalised the Health Ordinance passed by the Government of Natal sometime back and deprived the Natal Indians of the last remnant of civic rights — the right of representation on the health committees — enjoyed by them.

The Paddison deputation ably presented the Indian case before the parliamentary select committee. G.S. Bajpai declared in reply to a question by a member of the committee.

'We take up the challenge that the presence of the Indians affects the Europeans definitely from the point of view of trade, employment and industries. . . . The conclusion we arrived at is that the Indian trader is making no headway — in some places he has had a setback and the same, in the main, is true of the industrial competition in Natal. In the Transvaal things are much the same. So our enquiries tend to show that the legislation attempted now is not justified on the basis of the allegation that the Indian continues to oust the European from trade and industry.'

The deputation pointed out that the steps taken to depress the social and economic standards of the Asians would in reality intensify their competition and that the Class Areas Bill would give little economic relief to the European community in South Africa. The residential segregation envisaged in the Bill would be a tremendous setback to the Indians and would drive the Indian market-gardeners to areas where, for scarcity of land, they would be an economic drag on the whites. The white landlords would suffer

when their Indian tenants vacated their homes to go to the coast. The poor Asian quarters would be over-crowded and would be a menace to public health. A round table conference was suggested as the only way out of the tangle that the Indian problem proved to be.

The Durban municipal corporation fell in line with the views of the Paddison deputation. It had been thought at one stage that the Indian problem could be solved only by segregation or compulsory repatriation of the Indians. But neither was fruitful or practicable. The policy of compulsory repatriation, which had been very much in the forefront between 1895 and 1913, had been adversely criticised by the Lange Commission (1921) on the ground of the injustice involved as well as of the impracticability of the scheme. The Government of India had never contemplated or countenanced the policy. The Union government, however, had been following a policy of voluntary repatriation from 1914, and the initial response by the Indians made the former optimistic.

To sum up, a round table conference on governmental level was decided upon. Malan informed the house of assembly (the lower house of the Union parliament) that the round table conference was going to be held on the basis of finding out the best means of maintaining the European civilization in South Africa.

The Indian delegation to the Conference was composed of Sir Mohammed Habibullah (leader), the Rt. Hon'ble Srinivas Shastri, Sir Pheroze Sethna, Sir George Paddison, Sir D. Arcy Lindsay, Sir C. Corbet and Sir (then Mr) G. S. Bajpai (secretary). The South African delegation to the conference was representative of all the political parties in the country and was led by the redoubtable Malan himself. The conference met at Cape Town on 17 December 1926, and held its last session on 12 January 1927. The Habibullah delegation sailed back to India after a week on 19 January 1927. The agreement arrived at by the conference was published simultaneously in India and South Africa about the middle of February. The joint statement of the governments of India and the Union of South Africa put forth the follow-

ing points, among others, for a settlement of the Indian question:

- (a) The two governments reaffirmed the recognition of the right of the Union of South Africa to use all just and legitimate means for the maintenance of western standards of life.
- (b) The Union government agreed that Indians domiciled in the Union and prepared to conform to western standards of life should be enabled to do so.
- (c) The Union government agreed to introduce a scheme of assisted immigration to India or countries where western standards are not required. The Union domicile 'would be lost after three years' continuous absence.' This latter provision was to be applied generally and not to Indians in particular. An 'assisted emigrant' might return to the Union within three years of his emigration if he refunded the cost of the assistance granted to him under the proposed scheme of assisted emigration.
- (d) The Government of India recognised its obligation to look after the Indians on their arrival in India.
- (e) The Union government agreed not to proceed further with the Areas Reservation Bill.

The scheme of assisted emigration envisaged in the joint statement provided, *inter alia*, that any Indian of the age of sixteen and above might avail himself of the scheme and that each 'assisted emigrant' would receive a bonus of £ 20. The father was to take the decision in respect of his children under sixteen. Each 'assisted emigrant' under sixteen was to receive a bonus of £10. Each was to be transported free of charge from the starting point in the Union of South Africa to the destination in India. The Government of India would do what it could to settle an 'assisted emigrant' in an occupation most suitable to him. He might return to South Africa after one year and within three years of his departure from that country. He must in that case refund before his return the bonus and the cost of passage to some recognised authority in India. If he did not return within three

years, he would lose his Union domicile and forfeit his right of re-entry into the Union of South Africa.

To give effect to the Reciprocity Resolution of the Imperial Conference of 1918 mentioned above and which envisaged enabling an Indian to live a happy family life in the land of his adoption, the entry of the wives and children of a naturalised Indian in the Union was to be regulated by some well-defined principles. These were:

- (a) The Government of India should certify that each individual on whose behalf a right of entry into the Union is claimed, is a lawful wife or child of the claimant.
- (b) Minor children should be permitted to enter only if they are with their mothers, if alive.

Exceptions might, however, be made by the Union minister of the interior, if the mother of a minor was already in the Union and in special cases.

- (c) If a husband divorced his wife, no other wife of his was to be permitted to enter South Africa unless the divorce was proved to the satisfaction of the Union government.²⁰

The agreement thus arrived at constitutes the Cape Town Agreement (1927). By the 'uplift clause' of the Agreement, the Union government bound itself to adhere to the principle that 'it is the duty of every civilized government to devise ways and means to take all possible steps' to uplift the whole of its permanent population to the fullest extent of their capacities and opportunities. It declared further that the considerable number of Indians who would remain a part of the permanent population of the Union should not be allowed to lag behind any other section of the people. The Union government expressed its readiness to advise Natal provincial government to appoint an Indian education enquiry commission and to obtain the assistance of an educational expert from the Government of India for the purpose of the enquiry. It was also willing to consider sympathetically the question of affording better facilities for the higher education of Indians and to take special steps

²⁰ For the full text of the Agreement, see Appendix II.

under the Public Health Act for an investigation into the sanitary and housing conditions in and around Durban. The proposed enquiry into the sanitary and housing conditions included the questions of the appointment of an advisory committee of representative Indians and also the limitation of the sale of municipal land to restrictive conditions. The principle underlying the Industrial Conciliation Act (No. XI of 1924) and the Wages Act (No. XXVII of 1925) which enables all workers in South Africa to take their places on the basis of equal work for equal pay was to be strictly adhered to. The Union government further promised to give due consideration to the suggestion of the Indian delegation to the Cape Town Conference that the discretionary powers of the local authorities in the matter of granting trade licences might be limited in the following ways:

- (a) The grounds on which a licence may be refused should be statutorily enumerated.
- (b) The reason or reasons for which a licence is refused should be recorded.
- (c) There should be a right of appeal in all cases to the law courts or to some other impartial tribunal.

The maintenance of western standards of life, it must be borne in mind, was the cornerstone of the Cape Town Agreement, the first agreement of its kind in the whole history of South Africa. The Indian settlers in the Union might assimilate — if they would or could — western standards of life. The matter was left in their sole discretion. Those who would not or could not accept the western standards might stay on or they might avail themselves of the 'assisted emigration' scheme outlined in the Agreement. Those who wanted to leave South Africa for one reason or another, their ability and willingness to accept western standards notwithstanding, might also take advantage of the above scheme. Malan himself admitted that the repatriation of Indians was a secondary contingency applicable only to those who could not or would not accept the western ways of life and those who wanted to leave South Africa at all costs.

Repatriation, it is thus evident, was not the primary object of the Cape Town Agreement. Nor was the 'uplift

clause' in the Agreement contingent on the reduction of the Indian population to any given number. As Kondapi put it, 'The fact is that the (Cape Town) Agreement means only this — assimilation first, emigration last, but repatriation never.'²¹

The 'assisted emigration' scheme outlined in the Cape Town Agreement differs fundamentally from the compulsory repatriation of Indians practised between 1895 and 1913 and the voluntary repatriation introduced in 1914. Compulsory repatriation, as noted above, had come in for a lot of adverse criticism by the Lange Commission (1921) for its inherent injustice and impracticability. It was, in fact, 'throwing out Indians as sucked oranges and burdening India with her nationals in a humiliating position.'²² Voluntary repatriation required an irrevocable surrender of the Union domicile and this condition was among the principal causes of its failure. The absence of this condition was the chief merit of the 'assisted emigration' scheme. An '*assisted emigrant, when he chose to come to India, was an emigrant from South Africa and not a repatriated Indian.*' The right of re-entry within three years gave besides a *locus penitentiae* to the 'assisted emigrant.'

The Areas Reservation Bill was dropped. An agent-general (designated later on as high commissioner) of the Government of India in the Union of South Africa was to secure 'continuous and effective co-operation' between the two governments. The late Srinivasa Shastri was the first Indian agent-general in South Africa.

The Cape Town Agreement constitutes a landmark in the history of the Indians in South Africa. Hopes rose sky-high. Disillusionment was not, however, long in following.²³ An education commission — some of its members were

²¹ *Op. cit.*, p. 232.

²² *Ibid.*, p. 231.

²³ Several clauses of the Agreement were repudiated by the South African Government in less than three months and Malan declared, 'The whole object of the agreement is to get as many Indians repatriated as possible.... All other points were subordinate to this. The Union... can impose any legislation it likes in the event of the repatriation proposals not working satisfactorily.'

Indians — investigated the problem of Indian education in Natal and made recommendations for the improvement thereof. A few were accepted. The Cape Town Agreement, by and large, remained a dead letter. Sanitation and housing conditions of the Indian community are almost as unsatisfactory as ever. Indians have little scope for technical and vocational education in South Africa. Unless Indians go overseas for training — very few can, for obvious reasons — few occupations — mostly menial ones — are open to them.²⁴ A licensing officer boasted as late as 1945-46, 'that he had recently effected a drastic reduction in Indian hawkers' licences, which he appeared to regard as matter of pride.'

The working of the Agreement, a disappointment to the Indian community, was no less so to the Europeans of South Africa. Migration under normal conditions seldom reduces the population of a country perceptibly. Ireland is perhaps the only exception to this rule where the population had *shrunk* from eight million in 1841 to a little over four million in 1926 due, in part, to migration to America. But famines, which were chronic in Ireland, played a more important part in this shrinkage. In all 35,413 Indians were repatriated under the compulsory repatriation scheme. A further 20,234 were repatriated during 1914-1926 when the voluntary repatriation scheme was in force. Under the 'assisted emigration' scheme of the Cape Town Agreement, 16,209 Indians left South Africa during July 1927—February 1939. The Union government had thought of solving the Indian problem by getting rid of the Indians altogether. The plan however did not work. It could not. It was against all known laws of social evolution. South Africa has still an Indian problem and will continue to have one till a sense of justice and fair-play dawns on the white rulers of the country. The ghosts of colour complex and racial superiority must be exorcised. The idea of 'baaskap,' or complete white domination must be given up by the South Africa pigmentocrats. No signs thereof are, however, forthcoming as yet and the Union of South Africa stands arraigned at the bar of world opinion.

²⁴ Palmer, *op. cit.*, p. 17.

CHAPTER IV *Cape Town—
Lake Success*
(1927 — 1946)

'The Union of South Africa represents a political contradiction... South Africa is potentially the scene of one of the bitterest struggles for national freedom that can be found anywhere in the world. The forces making for this struggle are gathering strength, and unless there are some changes in the internal politics of the country, the struggle could break into tragic conflict....

'Despite traditional differences in tribal background, or racial, national and economic animosity (as between African and Indian, for instance) a national consciousness is developing....'

GEORGE M. HOUSER

THE Cape Town Agreement of 1927 stipulated (para VII) that representatives of the contracting governments would meet in future to review the working of the Agreement.¹ Representatives of the governments of India and South Africa accordingly met at Cape Town from 12 January to 4 February 1932. The Indian delegation, led by Sir Fazli Hussain, included, among others, the Rt. Hon'ble Srinivas Shastri, Sarojini Naidu and G.S. Bajpai, who acted as the secretary to the delegation. The South African delegation was led by D. F. Malan, O. Pirow, minister of justice, E. G. Jansen, minister for native affairs, Patrick Duncan and Heaton Nicholls were the other members. The secretary for the interior to the Union government and the commissioner

¹ 'The two governments have agreed to watch the working of the agreement now reached and to exchange views from time to time as to any changes that experience may suggest.'

of immigration and Asiatic affairs were invited to watch the proceedings and to assist the Union delegation.²

The delegations agreed that the scheme of assisted emigration agreed upon in 1927 had been a failure. The Cape Town Agreement of 1927 was, however, recognised as having done much to foster good relations between India and the Union of South Africa and was reaffirmed by their governments in a joint statement issued on 5 April 1932.

Sir Fazli Hussain, the Indian leader, badly let down his countrymen — unintentionally, no doubt — when he observed in course of his reply to the welcome by the mayor of Kimberley:

‘Both my government and yours have agreed that none of our people should permanently settle in this country, and having agreed to this and good will on both sides, we hope to reach a satisfactory settlement.’

The joint statement of the two governments referred to above made the following points, among others:

(a) ‘Both the governments consider that the Cape Town Agreement has been a powerful influence in fostering friendly relations between them and that they shall continue to co-operate in the common object of harmonising their respective interests in regard to Indian residents in the Union.’

(b) ‘It was recognised that the possibilities of the Union’s scheme of assisted emigration to India are now practically exhausted owing to economic and climatic conditions of India, as well as to the fact that 80 per cent of the Indian population of the Union are now South African-born. As a consequence the possibilities... of land settlement outside India have been further considered. The Government of India will co-operate with the Government of Union in exploring the possibilities of a colonization scheme for settling Indians both from India and from South Africa in other countries. In this investigation, which should take place during the course of the present year, a representative of the Indian community in South Africa will, if they so desire, be associated. As soon as the investigation has been

² Vide Joshi, *op. cit.*, p. 199.

completed the two governments will consider the results of the inquiry.'

(c) 'No other modification of the Agreement (of 1927) is for the present considered necessary.'³

The Asian community in the Transvaal had been accused of unlawful occupation of land and acquisition of property long before the second Cape Town conference. Some circumvention of the existing laws had no doubt taken place. But the government of the day were as much responsible for this violation as the Asians themselves. To quote a competent observer, the breach of laws was,

'the result, not necessarily or perhaps even largely, of deliberate evasion of the law but because of the force of circumstances, e.g., the termination of a former lease by the raising of the rent or the location of premises in which an Indian was protected by the Act of 1919 to take up premises on the opposite side of the street, which in some cases, happened to be in another township, or the lapse of trading owing to bankruptcy or absence.'⁴

The government did nothing to prevent this development. The select committee appointed to consider the Transvaal Land Tenure Bill, 1930, admitted in their report that the failure to enforce the laws was largely due to defects in the administrative machinery and that no department of state had so far discharged its duty of guarding public interest against contravention of public law. They therefore recommended that all existing interests should be protected in the same manner as by Act XXXVII of 1919, i.e. occupants and their successors in title should be guaranteed the privileges enjoyed by them.

The Transvaal Asiatic Land Tenure Bill of 1931 proposed segregation in respect of ownership as well as occupation of land by Indians. The Bill was amended as a result of the second Cape Town conference (1932) and passed as the Transvaal Asiatic Land Tenure Act, 1932. The amendment, it must be noted, was more formal than real. Clause

³ For the full text of the statement, which constitutes the Second Cape Town Agreement, see Appendix III.

⁴ 'Brief of Instructions' issued to the members of the Government of India delegation on the Transvaal Asiatic Tenure (Amendment) Bill, 1931, New Delhi, p. 8.

5 of the Bill, which embodied the principle of segregation, was deleted but 'the stigma of segregation was not removed' and the Act provided for segregated areas, which were to be called 'block exemptions'. The Government might, under the Act, permit certain areas to be owned and occupied by Indians. But these areas were to be recommended beforehand by a commission. A loophole in the Act left enough powers in the hands of a liberal-minded minister of interior to permit ownership of property to a few Indians outside the Indian locations. The Gold Law (Transvaal, 1908) was amended and the minister of interior might, after consultation with the minister of mines, withdraw any land from the operation of sections 130 and 131 of the said Law, insofar as they prohibited residence upon or occupation of any land by coloured persons. But the power was to be exercised only after enquiry into individual cases by an impartial commission. The commission, to be presided over by a judge, 'was to validate present illegal occupations and to permit exceptions to be made in future from occupational restrictions of the Gold Law. Fixed properties acquired by Asian companies on or before 1 March 1919, which were not protected by Act XXXVII of that year, were protected till 30 April 1939. Local bodies might refuse to issue to an Asian a certificate of fitness to trade on particular premises on the ground that he could not lawfully carry on business on the premises for which licence was sought. But if a competent government official certified that any land had been withdrawn from the restrictive provisions of sections 130 and 131 of the Gold Law, such a certificate had to be accepted as sufficient proof that the applicant or any other coloured person might legally trade on such land.

It has been contended by some that the Transvaal Asiatic Land Tenure Act (1932) marks the beginning of statutory segregation in the Transvaal.⁵ It should be remembered, however, that statutory segregation had been introduced in the Transvaal by Law III of 1885, Transvaal, which prohibited Indians to take up residence except in segregated

⁵ Anti-Segregation Council, *A Historical Synopsis of the Indian Question in South Africa*, Durban, p. 7.

areas and denied all civic rights to them. The Law, as amended later on, denied all political rights and the right to own properties to Indians. Under this amendment, they might be segregated 'in streets, wards and locations.' By the Gold Law, Transvaal (Act XXXV of 1908), Indian traders were prohibited 'to reside and carry on trade in proclaimed areas.' But these provisions were never enforced very strictly. The Acts in question, however, it should be noted, had been placed on the statute-book by the Boer government of the Transvaal (the South African Republic) before the birth of the Union of South Africa. The Act of 1932, on the other hand, was the first step taken by the Union government to introduce statutory segregation in the Transvaal.

The Feetham commission was appointed in 1932 to enquire into the facts and extent of coloured occupation in the gold mining area of Johannesburg. The commission was further to enunciate the principles guiding the grant of exemptions under the Transvaal Asiatic Land Tenure Act. It was also authorised to make proposals on the exercise of power conferred upon the minister of interior to exempt land from the Gold Law restrictions against occupation by coloured persons. The commission prepared a list of block areas in respect of which exemptions might be granted. Individual exemptions, the commission suggested, might be made by the minister of interior at his discretion. The recommendations of the Feetham commission, liberal as they were by South African standards, touched mostly the right of occupation, not of ownership.

The recommendations of the Feetham commission were incorporated in a Bill, which was duly introduced in the Union parliament. A select committee unanimously endorsed all the recommendations of the Feetham commission and agreed that coloured persons should have the right of ownership in (a) Asian bazars, (b) locations specially recommended by the Feetham commission and (c) areas exclusively or predominantly occupied by coloured peoples. The select committee further suggested that exemptions should be subject to the approval of the parliament. The Bill, thus re-

commended, was placed on the statute-book as the Transvaal Land Tenure (Amendment) Act, 1936.

Under the Gold Law (Act XXXV of 1908, Transvaal), Indians could not own and occupy land in the gold mining areas of the Transvaal. The Act of 1936, however, recognised their right to own and occupy land in these areas. They could, under the Act, own property not only in exempted areas but also in Asian bazars and locations set apart for Asians by the Act as well as in locations set apart for them under Law III of 1885 and the Municipal Amending Ordinance of 1905. Restrictive clauses against the occupation of land by non-Europeans in the title deeds of properties in exempted areas were cancelled. The Act authorised the Union minister of interior to take steps to ensure municipal administration of areas reserved for occupation by persons of Asian origin.

To quote Kondapi, 'The significance of the Act (of 1936) lies in the right conceded for the first time to Indians to own land, though it was confined to specified areas.'⁶ The concession, however, lost much of its effectiveness inasmuch as the areas where Indians could own and occupy land could be named only in consultation with local authorities and with the approval of both the houses of the Union parliament. The Act at the same time sought to put back the hand of the clock. The right of permanent exemption in the case of individual plots of land scattered about townships enjoyed by Indians under the Gold Law was substituted by a qualified and terminable right of occupation.

The Union government had in the meantime appointed a commission on 15 June 1933, under the chairmanship of James Young, a retired Johannesburg magistrate. The commission was (a) to undertake a preliminary investigation to explore the possibilities of a scheme of colonization for settling Indians from India as well as from South Africa in other countries and (b) to report on the countries suitable for the successful operation of such a scheme. Requested by the government to name their representative, the South African Indian Congress nominated S.R. Naidoo to the Young

⁶ *Op. cit.*, p. 256.

commission. A memorandum of the South African Indian Congress submitted to the Young commission at the time made the following points:

- (a) Indians constituted a small and steadily shrinking proportion of the total population of the Union;
- (b) Indian agriculturists in South Africa did not probably number more than 15,000 and that even this number was steadily declining;
- (c) Indians, a vast majority of whom were born in South Africa, were quickly 'assimilating western modes of thought and expression' and regarded 'South Africa as their permanent home';
- (d) The possibilities of the 'assisted emigration scheme' agreed to by the governments of India and the Union of South Africa in the Cape Town Agreement of 1927 were all but exhausted;
- (e) The Indian community did not constitute a menace to the Europeans of South Africa nor an impediment to their progress in any walk of life.

The report of the Young commission was published in July, 1934. Its conclusions had been communicated to the Government of India a few days before their publication in South Africa. The commission was of the opinion that economic pressure would finally compel the Indians to seek fresh avenues of occupation.⁷ The commission suggested at

⁷ "It is clear that the avenues of Indian employment are gradually closing. In all unskilled occupations the Indian is giving place to the native. In the semi-skilled and better paid occupations there has been no expansion of Indian employment, nor, owing to the white labour policy, is there any immediate prospect of further expansion. Meanwhile, the Indian population in Natal is steadily increasing. The natural inference from these facts would be that economic pressure which is now throwing the Indian more and more on his resources would sooner or later compel him to seek fresh avenues of occupation, either in Natal or elsewhere. The members of the younger generation are conscious of the progress which they have already made, ambitious and eager to continue that progress, and might be expected to avail themselves of new opportunities of doing so, whether in South Africa or elsewhere."—Extract from the Report of the Young Commission quoted by Joshi. *op. cit.*, p. 215.

the same time that British North Borneo, British New Guinea and British Guiana were the countries where 'further investigation as to the successful operation of a colonization scheme might advantageously be made.'

'The most striking feature about these suggestions' was, as the *Rand Daily Mail* (Johannesburgh) put it, 'their undisguised egotism.' Because South Africa had a prejudice, other parts of the British Empire were to help her to get rid of the community she was prejudiced against. Indian labour, she thought, was not as useful to her as before. The Indians, who had first gone to South Africa on the invitation of the European settlers there, were therefore to be shipped off to some of the most unhealthy regions of the world.

The proposals of the Young commission were received with a chorus of universal condemnation in India. The nationalist press was hostile. The *Bombay Chronicle* (Bombay), the *Searchlight* (Patna), the *Daily Herald* (Lahore), the *Justice* (Madras), among others, condemned the Young report in very strong terms.⁸

The Anglo-Indian press too joined the chorus. *The Statesman* (Calcutta) described the report as 'one of the most curious official documents of late years.' Referring to the co-operation of the South African Indian Congress with the Young commission, the paper observed, 'This showed a very nice spirit on the part of the Young committee (commission), the Congress and, indeed, all concerned, and no doubt India will be grateful. But it does look rather like the transfer of the boot to another foot, and is not a very helpful contribution to the solution of the South African problem.' *The Times of India* (Bombay) wrote:

'One feels on perusing the report that if the (Young) committee had had in its midst a nominee of the Government of India, it might have got, in truer perspective, the overshadowing idea of India's surplus millions taking ship to the next best thing to the Garden of Eden overseas. He could have told it, shall we say, that India is unlikely, for so far ahead as can be seen, to be able to put up the few million sterling which would be required for such an adventure.'

⁸ For some of the press opinions see Joshi, *op. cit.*, pp. 218-220.

The paper suggested in a sarcastic vein that the next commission on colonization 'might, perhaps, more appropriately open its investigations in Papua than in Pretoria.'

The council of state considered the Young report on 9 August 1934. Sir Fazli Hussain pointed out that the Government of India would have to spend thirty five hundred million rupees to finance a scheme of colonization if even one per cent of the Indian population decided to emigrate to a new colony. The Standing Emigration Committee of the central legislature met on the following day and rejected outright the Young recommendations. The Government of India thus refused to oblige White South Africa by packing off the Indian population of the Union.

Foiled in their attempt to get rid of the Indian population by colonization in other countries, the Union government sought to make their life more miserable than ever. If Indians wanted to stay on in South Africa, they must stay as pariahs to all intents and purposes. The Transvaal Land Tenure (Amendment) Act, 1936, was the outcome of this attitude. Further restrictions followed. The Transvaal Asiatic Land Tenure (Further Amendment) Act, 1937, provided for the appointment of an advisory committee to investigate any matter arising from the Feetham Commission's report or recommendations. The Johannesburg municipal council might, under this Act, transfer certain lands to the Asians. The rapid industrialisation of the exempted areas, however, resulted in their exclusion therefrom. Resolution 104 of 1871 of the Transvaal Volksraad⁹, a dead letter all these years, was revived at the same time.

The Asiatic Land Laws Commission (the Murray commission) was appointed by the Union government in 1938 to investigate alleged evasion by the Asians of laws which restricted or prohibited the use of occupation of land in the Transvaal, in the Northern districts of Natal and in the Orange Free State. The report of the Murray commission was published in March, 1939. The report proved that the charge of evasion of laws by Asians had no foundation in

⁹ The resolution banned the occupation of land in towns and villages by coloured persons.

fact. It showed that the occupation of areas by Indians constituted no evasion of any of the existing laws. As to ownership, it should be noted that direct ownership of land by Asians except in allocated areas had never been permitted. Indirect ownership through companies was not, however, banned till 1919 and through European nominees till 1932. It is not a little surprising that Asian ownership of land in prohibited areas through European nominees owed its origin to a suggestion of the Government of the South African Republic (the Transvaal). Not more than eight cases of infringement of the law prohibiting holding of land by Asians through European nominees were brought to the notice of the Murray commission. It was the considered view of the commission that the spirit of the law had not been violated in three cases out of the eight.¹⁰

In the face of the findings of the commission, it was only natural to expect that sanity would dawn on the Union government. It did not. Representations by the Government of India and the Indian community in South Africa notwithstanding, the Union government declared openly in 1939 that they would proceed with legislation involving racial segregation of the Indians in the Union of South Africa. The threat was not an empty one and was made good by the Asiatics (Transvaal Land and Trading) Act of 1939. The Act primarily 'sought to peg the position of Asian occupation and trading for a period of two years.' The Union government hoped to finalise their proposals by the time the two-year period expired. The Act gave legislative approval and sanction to the principle of segregation. It laid down, *inter alia*, that Asians could not hire or occupy any premises that were not occupied only by Asians or coloured persons on 30 April 1939. It was made obligatory for an Asian to obtain a permit from the minister of interior before applying for a licence to carry on business or for the removal of his business to new premises.

The outbreak of World War II in September, 1939, led to the fall of the Hertzog government (5 September) which was

¹⁰ For an excellent summary of the Murray commission's report see Kondapi, *op. cit.*, pp. 259-63.

in power at the time. Field-Marshal Smuts, who succeeded Hertzog, lost no time in declaring that no law involving racial segregation would be introduced during the War. Indian leaders gave an assurance to the ministry of interior in November that they would do their best to dissuade the members of the community from purchasing properties in predominantly European areas.

In spite of the stringent provisions of the Asiatics (Land and Trading) Act of 1939 and the above assurance by the recognised leaders of the community the agitation against the alleged Indian penetration showed no signs of abatement. The hands of the government were forced. Justice F.N. Broome was appointed in May, 1940, to enquire into 'whether, and, if so, to what extent, Indians have since 1 January 1927, commenced occupation of or acquired sites for trading or for residential purposes in predominantly European areas in the provinces of Natal and the Transvaal (excluding land proclaimed under the Precious and Base Metals Act, 1908, as amended, of the Transvaal)¹¹ and the reasons for such occupation and acquisition.'¹² These terms of reference are not a little surprising. The Union government were pledge-bound by the Cape Town Agreement (1927) to treat the Indian community as a permanent element of the South African population and to work for its upliftment. If they were sincere why did they want an inquiry on the above lines? Was it not because they were alarmed at the pace of progress of the Indians?

Of the eighty local authorities of the Transvaal and Natal, not more than twenty did submit any written evidence against the Indians to the Broome commission. Why? Common sense suggests that either they had no proof in support

¹¹ The Act is better known as the Gold Law. It forbade trading and residence by Indians in proclaimed areas. Sections 130 and 131 of the Act laid down, among others, that no coloured person except a bonafide servant should be allowed to reside on or to occupy proclaimed land. Section 130 applied to the mining districts of Johannesburg, Klerksdorp, Pietersburg, Barberton, Pilgrimsrest and Ottoshoop. Under the same section 130, no rights could be held or sublet to Asians or coloured persons.

¹² *The Hindu*, (Madras) 14 October 1941.

of the alleged Indian penetration into predominantly European areas or that the facts and figures at their disposal in support of such penetration were too meagre to carry conviction. The commission reported;

'We have estimated the present Indian population in the Transvaal as (sic!) 28,200 of which possibly one half or less reside on proclaimed land. They are a class almost entirely dependent on trade for livelihood. A trading class cannot subsist by trading only with its members. In these circumstances the occupation of 246 trading sites and 93 residential sites in the predominantly European portions of the Transvaal since 1 January 1927, does not disclose a situation which can by any stretch of imagination be described as critical.'

Dealing with Natal where statutory restrictions were in force on the acquisition of land by Indians only in the three northern districts of Vryheid, Utrecht and Paulpietersburg, the commission pointed out,

'if Indian advance into European areas before January, 1927, is described as a flood, the subsequent advance is little more than a trickle — twenty-three cases a year, or if agricultural land is added, 29. In Durban the sites acquired and occupied totalled 150 and sites acquired but not occupied, 362. *The number of trading sites occupied by the Indians is negligible.*' (Italics added).

Indian traders, the Broome commission observed, had nothing to do with the exodus of their European counterpart from certain smaller towns. Concentration of trade in larger centres, the improved means of communication they provided and the better conditions therein accounted for the withdrawal of European traders from smaller centres. The Indians subsequently occupied the areas vacated by the Europeans. Such occupations were beneficial to the townships concerned. It is thus evident that the European withdrawal from the smaller towns in question was the cause, not the effect, of Indians setting up business in these towns. To argue that the European traders were squeezed out by the Indians would be putting the cart before the horse.

Such penetration as had taken place was, in the opinion of the Broome commission, a direct outcome of the Cape Town Agreement (1927). The Transvaal Indians were en-

couraged by this Agreement to adopt the western ways of life. The joint family system — the traditional Indian family system — was almost the first casualty of the adoption. Sons left their fathers' roofs to set up independent homes for themselves. Indians, therefore, needed more land than before. Besides, the scope for the investment of surplus Indian capital has been always extremely limited all over South Africa. Many Indians therefore invested their surplus capital in immovable property.

A member of the South African parliament had ascribed Indian penetration to the failure of the government to enforce the past and existing statutory restrictions against Indians. The commission refuted the charge in the following words:

'The truth, however, is that occupation of trading and residential sites on unproclaimed land has taken place without any breach of the law and so could not have been prevented by the enforcement of any statutory restrictions. We unhesitatingly reject the view that there is among the Transvaal Indians any general desire to live among the Europeans. Where they have done so, the inducement has been the existence in European areas of either better trading opportunities or better living conditions. The main reason for penetration is nothing more than a normal desire among Indians to acquire wealth. All people irrespective of race or colour desire to improve their material position. The realisation of this fact will not cause the problem of Indian penetration to disappear, but it may, by dispelling some of its present sinister atmosphere, contribute towards its solution.'

Superior living conditions, better trading facilities and amenities of life were, in other words, the root cause of the penetration by Indians into predominantly European areas on a minor scale that had actually taken place. Discriminatory legislation made such penetration inevitable. Condemnation of Indians as a community for this might serve political purposes; but it was against all accepted notions of justice and morality.

The problem of Indian penetration, if it was a problem at all, was to a large extent the creation of the Union government. Had they honestly accepted the Indians as a

part of the permanent population of South Africa and had the Indian problem been tackled on the lines envisaged in the Cape Town Agreement of 1927, things might have taken a different turn altogether. Had the 'upliftment clause'¹³ of the Agreement been honestly implemented, had the Indians been enabled to adopt the western standards of life, they would certainly have been habituated to these standards and would not have competed with the Europeans in a manner calculated to lower the latter's standard of living.

The findings of the Broome commission called the bluff and proved that Indian penetration was not a problem at all. But the South African pigmentocrats refused to face facts and continued the anti-Asian agitation. The Durban city council represented to the ministry of interior that Indian penetration into areas in Durban found predominantly European by the Broome commission had increased since 1 October 1940. The first Broome commission, the reader may remember, covered the period between 1 January 1927 and 30 September 1940. The Smuts government yielded, not reluctantly, to the pressure of the Europeans and appointed the second Broome commission in 1943.

The Asiatics (Transvaal Land and Trading) Act, 1939, which was to expire on 1 April 1941, had been extended in the meanwhile to 1 May 1943. The pegging of the position of Asian occupation and trading in the Transvaal was in this way given a new lease of life. The Act was invoked in a number of cases to remove Indians from sites which they had occupied or where they had traded for a number of years. The Indians, it may be noted, in a few cases successfully challenged the Act in South African courts.

The second Broome commission was to find the extent of Indian penetration in Durban between 1 October 1940

¹³ The 'uplift clause' forms an important part of the Cape Town Agreement. By this clause the Union government accepted 'the view that in the provision of education and other facilities the considerable number of Indians who remain part of the permanent population should not be allowed to lag behind other sections of the people' (Annexure containing the summary of the conclusions reached by the Round Table Conference on the Indian question in South Africa, 1927, Section III, Clause I).

and 28 February 1943. The commission's terms of reference, strangely enough, provided for no inquiry into the causes of penetration. The Natal Indian Congress and the Natal Indian Association protested against this unjustifiable limitation of the scope of the commission's work and refused to co-operate with it.

The principal findings of the second Broome commission were:

- (1) That the Indians had acquired in all 195 sites in 1942 as against 78 in 1939. (In no year during the period 1 January 1927 — 30 September 1940, i.e. the period covered by the first Broome commission, had Indians acquired more sites than in 1939);
- (2) That the Indians had paid more for sites in European areas in January and February, 1943, than in any year covered by the first Broome commission;
- (3) That what the Indians had spent on sites during the twenty-nine months covered by the present (second Broome) commission (1 October 1940 — 28 February 1943) was not much less than their expenditure during the thirteen years covered by the first Broome commission (1 January 1927 — 30 September 1940).

The chairman held that the 'accelerated penetration' might be the result among others, of war conditions, which 'had left no other avenue of investment of non-interest-bearing nature.' The Indians argued that 'accelerated penetration' had been due to two other important reasons: (a) gross neglect, almost a complete denial, of housing and other civic amenities in Indian areas by the Durban city council and (b) the exercise of a usual right of citizenship by the Indians. A further point to be borne in mind is that the rumours of a fresh Pegging Bill in the near future had speeded up Indian penetration towards the end of the period covered by the second Broome commission.

Of the 326 sites acquired by Indians in the European areas of Durban, only one-sixth had been occupied by them. Five-sixths remained in European occupation as they had been before their acquisition by Indians. Though the Indians

constituted about 25 per cent of the population of Durban, they did not own more than 4 per cent of the total acreage of the Old Borough.

The anti-Asian agitation, which had led to the appointment of the second Broome commission, did not abate. The cry was for the extension of the pegging legislation to Natal. The government agreed and one more black measure was added to the already black legislative record of the Union of South Africa. The Trading and Occupation of Land (Transvaal and Natal) Restriction Act, 1943, was passed on 27 April 1943. It renewed sections 2 and 3 of the Asiatics (Transvaal Land and Trading) Act. They were to remain in force till 31 March 1946.¹⁴ The new Act contained pegging provisions for Natal as well, which were to apply in the first instance to the municipal area of Durban from 22 March 1943. These might be extended to other parts of Natal at a later date, if thought necessary, by proclamation after a commission specially appointed for the purpose had reported on the matter.¹⁵

The Pegging Act was a flagrant violation of the promise of Field-Marshal Smuts¹⁶ and of the Cape Town Agreement of 1927. The Indians in South Africa raised their voice of protest against the Act. The leaders of the South African Indian Congress had interviewed the government before the measure was finally enacted. They had pointed out that the Act was unjustifiable for reasons more than one. For one thing, the local authorities had failed to provide adequate housing facilities to Indians, a fact that had to be admitted even by the minister of interior. For another, the penetration by Indians into predominantly European areas that had actually taken place was negligible. Last but not least, the restrictions imposed by the Act upon the Indian community were harsh and undemocratic.

¹⁴ The Asiatics (Transvaal Land and Trading) Act of 1939 was due to expire on 1 May 1943.

¹⁵ For the text of the Act see Joshi, *op. cit.*, p. 312-17.

¹⁶ Field-Marshal Smuts became prime minister in September, 1939, within a few days of the outbreak of World War II. His Government lost no time in declaring that no law involving segregation would be involved during the War.

The Government of India too did not sit idle. They protested to the Union government; because they (the Government of India) had not been given an opportunity to comment on the Act before its enactment. It violated, besides, the earlier promise of the Union government to the effect that they would not proceed with any legislation involving controversial racial issues during World War II. The Act, the Government of India contended further, was unnecessary inasmuch as the Indian community in Natal had already expressed its willingness to support any scheme of voluntary restriction on purchase of properties likely to generate or accentuate racial acerbities. The Government of India represented twice more that 'the situation could have been met without restrictive legislation and by administrative steps calculated to give full publicity to any transaction regarded as undesirable and subject both the seller and the purchaser to the pressure of public opinion.'¹⁷

The representations and objections of the Government of India ignored, they did the only thing they could do under the circumstances. They passed the Reciprocity Act, 1943, which provided for the imposition of reciprocal restrictions on the nationals of those countries within the British Commonwealth, which placed restrictions on Indians. The attitude of the Government of India, however, changed before long and Sir Safat Ahmad Khan, the Indian high commissioner in South Africa, advised the Indians in South Africa that they 'should settle their own problems and should not rely on the Government of India for assistance.' They were further advised 'to give and take, and to accommodate (themselves) to the other points of view as far as these were consistent with (their) national liberty (dignity?).' The Government of India would not, however, forget the rights accorded under the Cape Town Agreement, and that Agreement would be invoked, if necessary.¹⁸

The Pegging Act was put into operation before long. The minister of interior refused to grant permits to Indians in many cases to occupy properties they had already pur-

¹⁷ Kondapi, *op. cit.*, p. 268.

¹⁸ Joshi, *op. cit.*, p. 323.

chased in the predominantly European areas of Durban. The 'illegal' occupiers of stands were hauled up before the court for the contravention of the Act. Local authorities all over South Africa were 'inspired to inaugurate housing schemes for the segregation of Indians and other races.' A section of the Indian population in Natal began to be steadily ousted from its economic footholds by the penetration of Europeans into Indian areas. That was the real problem in Durban. The penetration by Indians into European areas was no problem at all. The Indian market-gardeners began to be turned out of their little holdings by Europeans, who wanted sites for house-building or by industrialists, who were spreading along the coast. It was apprehended that Indians thus dispossessed would be driven into Durban's unskilled labour market.

The Natal Indian Congress met at Durban in February, 1944. The Congress expressed its indignation at the Pegging Act, which, in its opinion, was 'the negation of the most elementary human right and a violation of the principles of democracy and (also) those underlying the Cape Town Agreement of 1927.' The Congress resolved to oppose the Act, and

(i) to organise mass meetings all over Natal in protest against the Act;

(ii) to sponsor the signing of a mass petition to be presented to the Union government;

(iii) to seek the co-operation of Indian and other organisations in the Transvaal and the Cape Province;

(iv) to awaken world opinion in general and opinion in India and Great Britain in particular against the Act.

The Government of India was requested by the Congress to recall the Indian high commissioner in South Africa as a protest against the passing of the Pegging Act. Copies of the above resolutions were to be forwarded to the Government of India, the Indian high commissioner in South Africa and the national leaders of India, among others.¹⁰

¹⁰ 'That this conference expresses its strong indignation at the passing of Act 35 of 1943, commonly known as the Pegging Act which it considers to be the negation of the most elementary

Prime minister Smuts had suggested in his message to the 1944 session of the Natal Indian Congress the appointment of a commission to investigate the important issues affecting the Indian community. The latter was asked to co-operate with the commission. The Congress after a heated discussion gave its verdict in favour of co-operation with the proposed commission with certain reservations. Senator Clarkson, the minister of the interior, announced the appointment of the third Broome commission a fortnight later. It was composed of justice F. N. Broome (chairman), W. M. Power, Senator D.G. Shepstoen, S. R. Naidoo, A. I. Kajee and I. A. de Gruchy (secretary).

The commission was 'to enquire into and to report upon matters affecting the Indian community of the Province of Natal, with special reference to housing and health needs, civic amenities, civic status and provision of adequate residential, educational, religious and recreational facilities and to make recommendations generally as to what steps are necessary further to implement the uplift clauses of the Cape Town Agreement of 1927 and as to all matters affect-

human right and a violation of the principles of democracy and those underlying the Cape Town Agreement of 1927.'

'The Pegging Act has been sponsored by Anti-Asiatics with a view to strangling the Indian community economically, and this conference is firmly of the opinion that there existed no justifiable ground for the Union government to pass this most obnoxious legislation and hence demands the immediate repeal of the Pegging Act, and to give effect to this demand, resolves to carry on a mass campaign on the following lines, namely:

- '(a) Hold mass meetings of protest in every part of Natal;
- '(b) Sponsor the signing of a mass petition and present the same to the Union Government;
- '(c) Seek the co-operation of Indian and other organisations in the Transvaal and the Cape Province; and
- '(d) Awaken world opinion, particularly in India and Great Britain, against the Act.

'The conference resolves to request the Government of India to recall the high commissiomer in South Africa as a protest against the passing and the perpetuation of the Pegging Act of 1943 and that copies of this resolution be forwarded to the Government of India, the high commissioner, national leaders in India and to other quarters.'

ing the well-being and advancement of the permanent Indian population of Natal.²⁰

The appointment of the third Broome commission was followed by the Pretoria Agreement (19 April 1944). The Agreement was the outcome of negotiations between the Government of South Africa and the Natal Indian Congress. Under the Agreement, the Pegging Act was to be allowed to lapse on the expiry of its original term on 31 March 1946, and an Ordinance of the Natal Provincial Government was to take the place thereof. The Ordinance was to provide for the establishment of a licensing board of five—three Europeans and two Indians—to control the occupation of dwellings by licensing. Of the three European members of the board one was to act as the chairman.²¹

The Pretoria Agreement recognised the right of Indians to own and occupy property anywhere in Natal—a right denied by the Pegging Act—‘save and except in the case of occupation of dwellings for residential purposes in urban areas which was likely to engender racial bickering due to juxtapositional living.’²²

The control of the occupation of dwellings by Indians contemplated in the Pretoria Agreement was in respect of residential occupation only. G. Heaton Nicholls, the administrator of Natal, told a correspondent of the *Star* (Johannesburgh) after the signature of the Agreement: ‘Areas will be set up in which one race may not take the place of another in any dwellings. The Board will deter-

²⁰ **Review of Important Events Relating to or Affecting Indians in Different Parts of the British Empire During the Year 1943-44**, p. 1

²¹ ‘It was agreed that the situation would best be met by the introduction of an Ordinance into the Natal provincial council. This Ordinance would provide for the creation of a board consisting of two Europeans and two Indian members under the chairmanship of a third European, who will be a man of legal training. The object of the legislation will be to create machinery for the board to control occupation by the licensing of dwellings in certain areas; and the application of the Pegging Act in Durban is to be withdrawn by a proclamation on the passing of this Ordinance.’ (Official Statement issued on 13 April 1944, by the Government of South Africa).

²² Kondapi, *op. cit.*, p. 269.

mine these areas and will issue occupation licences.' The spirit behind the agreement was that Indians would accept *voluntary*—not statutory—segregation in Durban provided civic amenities of the same standard and on the same scale were available in Indian as well as European quarters. The acceptance was not to jeopardise in any way the inherent right to the ownership and occupation of property throughout the rest of Natal.

New Delhi reacted favourably to the Pretoria Agreement as it (the Agreement) accepted the principle of '*no statutory segregation of Indians.*' The Government of India pointed out at the same time that something more positive than the mere withdrawal of a threat was necessary for the improvement of the position of the Indians in the Union of South Africa.

Not a few in South Africa — Indians and Europeans alike — condemned the Pretoria Agreement with vehemence. It was condemned as an 'unpardonable crime,' a 'shameful betrayal of the Indian people' and a 'virtual sell-out of the Indian community.' The Colonial Born and Settlers Indian Association, the Nationalist Group of the Transvaal Indian Congress, the Liberal Study Group, the Communist Party, the anti-Segregation Council and some trade unions branded the Agreement as a stigma on India's national honour. On the European side, the Durban city council, among others expressed its disapproval of the Agreement on the ground that it was hostile to the best interests of the city of Durban and the country as a whole.

The Provincial Government of Natal took steps for the implementation of the Pretoria Agreement before long and published the Draft Occupation Control Ordinance on 2 June 1944, to replace the Pegging Act. The Ordinance, generally acceptable to the Natal Indian Congress, was not so to the Natal Europeans. It was the hostile attitude of the latter that forced the administrator to refer the Ordinance after the first reading to a select committee, though according to the South African Constitution, an Ordinance can be referred to a select committee only after the second reading.

The select committee modified the Ordinance radically

and submitted the same to the provincial council as the Residential Property Regulation Ordinance together with its report on the original Ordinance. The modifications were all against Indian interest. While the Pretoria Agreement was concerned only with the occupation of individual dwelling, the new Ordinance provided for the control of acquisition as well as occupation of residential properties. The Agreement envisaged the control of occupation in the city of Durban alone in the first instance and in other boroughs and townships only after an enquiry by the board to be set up under the terms of the Agreement and the provisions of the Draft Occupation Control Ordinance. The Residential Property Regulation Ordinance, on the other hand, envisaged the immediate control of occupation in boroughs and townships all over Natal. The Pretoria Agreement proposed to set up a machinery of a temporary nature to control the occupation of properties, whereas the new Ordinance provided for the establishment of a machinery of a permanent character.

The Natal Post-War Reconstruction Commission — an all-European body—had in the meanwhile recommended racial zoning in Durban. The Natal provincial council accepted the recommendation and promulgated the Natal Housing Board Ordinance and the Provincial and Local Authorities Expropriation Ordinance along with the Residential Property Regulation Ordinance (3 November 1944). The first provided for the establishment of a housing board with powers to acquire and sell property and the second empowered the local authorities of expropriate land. These ordinances violated the Pretoria Agreement in more respects than one. They sought to impose racial segregation. The Indians raised their voice of protest against them. Prime minister Smuts was approached by the Indians with a request to veto the Residential Property Regulation Ordinance as it did not conform to the Pretoria Agreement. The Government of India too shook off their indifference and imposed reciprocal restrictions on South African nationals in India in terms of section 2 of the (Indian) Reciprocity Act of 1943. The restrictions were to be effective on and

from 3 November 1944, i.e. the day on which the Natal Housing Board Ordinance, the Provincial and Local Authorities Expropriation Ordinance and the Residential Property Regulation Ordinance were promulgated. The Indian legislature demanded at the same time the imposition of economic sanctions on South Africa and the recall of the Indian high commissioner therefrom.

Prime minister Smuts admitted in his reply to Indian representations that the Residential Property Regulation Ordinance violated the Pretoria Agreement. He however thought that it (the Pretoria Agreement) had already lapsed 'as the Agreement specifically provided for proceeding by way of an Ordinance and made no further provision for its implementation.'²³ He said further that the Pegging Act stood unrepealed and was in force and that he would advise the Natal provincial government to reserve the Residential Property Regulation Ordinance for His Majesty's approval. The Natal Housing Board Ordinance and the Local Authorities Expropriation Ordinance were however to become laws straightaway.

The passing of the Residential Property Regulation Ordinance before the third Broome commission completed its labours was irregular. It meant in reality the pre-judging of matters which were *sub judice* to all intents and purposes. The Indian members of the commission, S.R. Naidoo and A.I. Kajee, therefore resigned from the commission on 7 December 1944.

The Natal Housing Board Ordinance, the Provincial and Local Authorities Expropriation Ordinance and the Residential Property Regulation Ordinance were finally declared *ultra vires* of the powers of the Natal provincial council. The situation created by the declaration was met by the South African Housing (Emergency Powers) Act passed by the Union parliament in 1945 (11 June). The Act conferred on the Natal provincial administration practically all the powers they had sought to assume by the ordinance under reference. It empowered the governor-general to issue regulations in respect of the powers of the Natal housing board to be set

²³ *Ibid.*, p. 270.

up by the provincial council. Local bodies were authorised at the same time to construct dwellings, expropriate property and 'carry out other incidental purposes.' The regulations, which were to be limited to a period of three years in the first instance, might be renewed by a resolution of both houses of the Union parliament. The minister of the interior retained the powers of expropriation. Section 4 of the Act empowered the Natal provincial council to set up a housing board by ordinance.

The Government of India and the Natal Indian Congress were assured on behalf of the Union government that they would be consulted at the time the governor-general framed regulations under the South African (Emergency Powers) Housing Act. The Union government said further that they had no knowledge of Natal's policy of racial zoning and that they did not contemplate introducing such a policy. The Natal provincial administration, they assured, could not inaugurate a policy of racial zoning without their (the Union government's) approval, and that the Natal Indian Congress would be consulted before the enforcement of the same. The Congress was satisfied by these assurances.

The Natal Housing Ordinance was passed by the Natal provincial council in September 1945. The Natal housing board to be set up under the Ordinance could appropriate land and prescribe conditions limiting ownership or occupation of land appropriated to persons of a specified class and prohibiting ownership or occupation of the same by persons of any other class. The Indians rightly feared that the expropriatory powers conferred on the government by the Natal Housing Ordinance might be used for purposes of racial discrimination and protested against the Ordinance. Prime minister Smuts, however, sought to allay the fears of the Indians. Explaining the policy of the government, he

'pointed to the safeguards provided in the form of stipulation for prior ministerial consent and for the same ministerial approval, in accordance with the regulation promulgated under the South African Housing (Emergency Powers) Act, 1945, for prescription by the Board of any conditions referred to above.'²⁴

²⁴ *Ibid.*, p. 272.

The prime minister assured further that these safeguards would be used to ensure 'a reasonable and equitable exercise of the powers and protection to every section of the community.'

The interim report of the third Broome commission had been published in the meanwhile on 11 June 1945. The commission had made one, and only one, recommendation:

'The only way out of the present impasse lies in the direction of a full and frank exchange of views between the Government of the Union and the Government of India and that the Union government should invite the Government of India to send to the Union a delegation composed substantially of Indians, for the purpose of discussion with the Union government and with such representatives as the Union government may appoint, with such other persons as the delegation may invite, (of) all matters affecting Indians in South Africa.'

The Union government had been thinking at this time of enfranchising the Indian community. Clarkson, the minister of interior, made a very important policy statement in the Union parliament in 1944. He emphasised the need of Indian representations in the parliament and said:

'...the first Indians came to Natal at the request of the Natal government and of the people of Natal, and the great bulk of the present Indian population are their descendants. They are South Africans; this is their home. They are not foreigners; they are Union nationals. We have an obligation to play the game. As minister, I intend to see that justice shall prevail. If we could only get the small opposing minorities of both sections to agree, I am sure this question could be settled to the satisfaction of the Indians and the Europeans without any loss of self-respect for either.'

Clarkson's speech infuriated many. There was a flutter in the South African dovecote. The racists and 'baaskap' went into tantrums. Clarkson was bitterly attacked in the parliament by F.H. Acutt, among others. 'Since the passing of the Pegging Act,' Acutt fulminated, 'a new minister

'had taken over Indian affairs and had been making speeches that had disturbed the minds of the European population. He had tried at Maritzburg, on 3 December, last year, to persuade municipalities to grant the vote to Indians. The history of the Indian question in South Africa was one long

list of concessions to the Indians from the day they were introduced into the country. If things developed as they were, it will only be a question of time, before the Indians swallow up the whole of South Africa.'

More lies have hardly been said in fewer words. Brazen-facedness could not perhaps go farther.

The third Broome commission, as noted above, recommended a round table conference between the governments of India and the Union of South Africa. The recommendation was ignored. Prime minister Smuts declared on 21 January 1946, that his government would introduce a Bill with the object of prohibiting the acquisition and occupation of immovable property by Indians in Natal except in certain exempted areas. The Government of India and the Indian community in Natal were not a little surprised as they had been given to understand that the Natal Housing Ordinance passed in September 1945 was a solution of the Indian problem and that the Pegging Act would not be renewed on the expiry of its term on 31 March 1946. The Government of India instructed their high commissioner in South Africa to request the Union government to postpone the introduction of the proposed Bill and to arrange a round table conference between the two governments as recommended by the third Broome commission to find out an alternative solution. The request was turned down by prime minister Smuts on the ground that 'it was a matter of essentially domestic policy for the Union.'

The South African house of assembly (lower house) passed the Asiatic Land Tenure and Indian Representation Act on 3 June 1946. The Act, better known as the Ghetto Act, replaced the Pegging Act of 1943 and divided Natal into two zones: (a) controlled areas and (b) exempted areas. The former were reserved exclusively for acquisition and occupation by the European community. Any one — European, Indian or Malay — could, on the other hand, purchase and occupy land in the 'exempted areas.' Only 350 acres of land were allotted to Indians and other non-Europeans in the old borough of Durban, though the Indians alone numbered 25,000 in the district. The 65,000 strong European community of the old borough, on the other hand, already

occupied 2,940 acres of land in the district. The provisions of the Pegging Act, which were of a temporary nature, were extended to the whole of Natal on a permanent basis.

The Ghetto Act in fact did a greater mischief. The provision for separate areas envisaged in the Act introduced the principle of racial segregation in Natal for the first time. Fixed property in the exempted areas could be freely transferred by non-Asians to Asians and vice versa. In other areas, any such transfer — both for acquisition and occupation — could take place only if the ministry of interior granted a permit to the effect. The Act further provided for a joint land tenure advisory board of two Indian and two European members. A third European was to act as the chairman of the board. The board was authorised to grant permits in certain 'controlled areas.' The Orange Free State and the Cape Province were excluded from the operation of the Ghetto Act. But in 1946 there were barely a dozen Indians in the Orange Free State and they were barred by immigration laws from entering and living therein. The exclusion of the Orange Free State from the operation of the Act was, therefore, a bluff. It meant nothing. As to the Cape Province, it may be noted that it had a comparatively small Indian population²⁵ and immigration prohibition against their entry into the province keeps down their number effectively.

The Act granted communal franchise to Indians. Indians who (a) were Union nationals and over 21 years, (b) had passed the sixth standard or its equivalent and (c) had an annual income of £84 or more or owned immovable property of the minimum value of £250 were to elect two European members to the senate (upper house) and three European members to the house of assembly (lower house) of the Union parliament. Indians in Natal, who fulfilled the above conditions, were to return two Indian members of the

²⁵ There were 282,539 Indians in South Africa in 1946. They were distributed as follows: (a) Natal 228,119, (b) the Transvaal 37,505, (c) The Cape Province 16,907 and (d) The Orange Free State 14.

Natal provincial council. The Indians were, however, given no representation in the Transvaal provincial council.

The Ghetto Act marked 'the culmination of the discriminatory policy of the Union of South Africa against Indians and other Asians which has been practised over the last half a century or so. It gave permanent recognition to the principle of segregation of Asians, which has been opposed by the Indian community and the Indian Government'²⁶ for more than a quarter of a century.

The Ghetto Act was in many respects more objectionable than the Pegging Act (1943) which it replaced. Let us illustrate. In the first place, the Pegging Act was applicable only to Durban, whereas the Ghetto Act was to apply not only to the whole of Natal, but to the Transvaal as well. Secondly, the Pegging Act was applicable only to residential land in urban areas; but the Ghetto Act was to apply to all kinds of land including agricultural land in rural as well as urban areas. Legislation before 1946 had aimed at controlling occupation of land by Indians; but the Ghetto Act went farther and sought to regulate acquisition as well as occupation of land by the Indians. Kondapi sums up the effects of the Ghetto Act in the following words:

'By thus laying the axe on the elementary right of Indians to inherit, acquire and occupy property anywhere they like, the Act annihilated the basic rights enjoyed by Indians for over 80 years and condemned them to economic servitude. As regards the franchise provisions, the Act offered communal franchise after infliction on them (Indians) a statutory racial stigma (Indians to be represented by Europeans in both houses of the Union parliament) which no franchise could alter.'²⁷

The Ghetto Act laid down, among others, that all transfers of land between Asians and non-Asians in Natal and the Transvaal except in the 'exempted areas' were illegal. No Asian could borrow on his property in a 'controlled area' more than 50 per cent of its value. Mortgage bonds in force

²⁶ Government of India, *Spotlight on South Africa*, p. 15.

²⁷ *Op. cit.*, p. 274.

at the time of the passing of the Act were, however, not to be affected by this provision. It was apprehended — and the apprehension was only natural — that in the long run Asians would have to sell their properties in the 'controlled areas' to Europeans.

The Cape Town agreements of 1927 and 1932 were treated as scraps of paper by the authors of the Ghetto Act, which was a negation of the basic principles of the agreements. It was, in short, 'the culmination of the South African European racial aggression against Indians and Asians.'

Feelings ran high on both shores of the Indian Ocean. Events moved fast. The Government of India terminated the Indo-South African Trade Agreement. Trade relations between the two countries were severed. The Indian high commissioner in South Africa was recalled. On 13 June 1946, the Indians in South Africa began passive resistance against the Ghetto Act and a batch of Indian women from the Transvaal entered Natal without permits. The Indian objection to the Ghetto Act was based on the following grounds, among others:

- (i) It abrogated the Cape Town Agreement of 1927 arbitrarily and unilaterally.
- (ii) It extended anti-Asian segregation laws for the first time throughout Natal and the old Transvaal republic.
- (iii) It threatened to reduce the Indian community to economic serfdom.
- (iv) It threatened to destroy 'whatever incentive there might have been in Natal to improve the living conditions of Indians, especially in urban areas' as it had already done in the Transvaal; because of the neglect of non-European interests by municipal authorities.
- (v) It reduced the Indians to a position of racial inferiority and subordination to the Europeans in all respects and for all time to come. India was on the verge of independence in 1946. Hence the Act was regarded as 'humiliation and a cause of provocation to India.'

- (vi) It closed to the Indians all avenues of advancement that had been gradually opening to them and was, therefore, sure to deprive the younger generation of Indian-settlers of all hopes for the future.
- (vii) The limited franchise and the small communal representation granted to the Indians under the Act would serve no useful purpose whatever.
- (viii) The Act was self-contradictory — it did not recognise the right of India to intervene formally on behalf of Indians in the Union of South Africa; but the right of equal citizenship was denied to them on the ground that they are Indians.
- (ix) The Act emphasised the colour-bar, intensified race-hatred, threatened internal security and endangered world peace 'by aligning peoples in terms of white and non-white — the one differentiation that can never be altered.'²⁸

The Government of India lodged a formal complaint to the United Nations against the Ghetto Act on the ground that it (the Act) was the 'culmination of racial discrimination against Indians in South Africa.' The situation created by the Act, the Government of India contended, was likely to impair friendly relations between two members — India and the Union of South Africa — of the United Nations. The secretary-general of the United Nations was requested to place the complaint of India before the general assembly, which was scheduled to meet on 23 October 1946.

Passive resistance by the Indians, launched in June (1946), continued in the meanwhile. The movement took the form of peaceful occupation of land in non-exempted areas by Indians in violation of the Ghetto Act. The resisters were arrested under the Riotous Assembly Act. In all, nearly 2,300 Indians — men and women — Europeans and Africans courted imprisonment. Eminent Indians like Dr. Yusuf Mohamed Dadoo, president of the Transvaal Indian Congress, Dr. G.M. Naicker, president of the South African Indian Congress, Dr. Kaisbal Goonam, a leader of the Indian

²⁸ **Spotlight on South Africa**, pp. 15-17.

Women's Association, among others, were sentenced to various terms of imprisonment. The Europeans took recourse to hooliganism to crush the movement. The camps of the Satyagrahis were raided during the night, ropes of tents were cut and tents removed or set fire to, camps were pulled down, blankets taken away and women Satyagrahis kicked. An Indian police constable of Durban, Krishnaswamy Pillay, was brutally assaulted by a gang of European hooligans. Pillay was removed to the hospital where he succumbed to his injuries.²⁹ Repression and hooliganism notwithstanding, the Indians remained firm in their resolve to resist the Ghetto Act.

The Europeans were furious. They thought of breaking the morale of Indians with economic weapons. An organised campaign to boycott Indian traders and to refuse employment to Indians in European firms was launched by the Europeans. Confined in the beginning to the Transvaal in the main, the movement spread before long to certain areas of Natal as well. Boycott-committees were formed in many places. A meeting of the Europeans at Petersburg on 10 February 1947, resolved to boycott Indian traders. European customers of Indian stores and European girls working in Indian establishments were to be 'tarred and feathered.' Similar meetings were organised in other places. The first Indian Boycott Congress met at Vereeniging in March 1947. A boycott meeting of Europeans in Ermelo (Transvaal) town hall issued an appeal to European parents to deem it a personal duty 'to instil anti-Asiatic sentiments into (their) children and to emphasise to them that it is a downright disgrace to trade with, or to be seen in or near an Indian store.' A systematic boycott of Indian trade in the western Transvaal began at the same time. European patrons of Indian stores were waylaid, 'fined' and intimidated. Two months later, in May 1947, a Congress of the South African Protection Movement (Indian Boycott Movement) adopted a constitution which aimed at:

²⁹ Swami Bhawani Dayal, 'Satyagraha in South Africa', *Modern Review* (Calcutta), September 1946.

- (a) Protecting 'western civilization in South Africa against oriental undermining and domination';
- (b) Ending 'all Indian immigration into South Africa'; and
- (c) Elimination of 'Indians from the economic life of South Africa.'

Retaliatory action was proposed against the European customers and employees of Indian stores. Many contributed liberally to the funds collected for conducting the boycott campaign. The boycott proved very effective at one stage. Intimidation, blackmail and coercion were freely resorted to make the boycott a success. A European farmer, who had voted in a meeting against the boycott was waylaid and manhandled.

Some responsible commercial and political organisations and individual Europeans condemned the anti-Indian boycott movement in strong terms. They requested the government to take counter-measures. The boycott agitators took the law in their own hands in not a few cases. The government, however, remained a passive, if not sympathetic, spectator. In reply to a question in the Union parliament, the minister of economic development said that the boycott of Indian traders in South Africa was not a matter with which the government was concerned.³⁰ H. G. Lawrence, minister of the interior, characterised 'the (Indian) passive resisters as dupes and pawns and their leaders as foreign ideologists.'³¹ Heavy odds notwithstanding, the Indian resistance campaign continued till June 1948, when the Joint Passive Resistance Council of the Natal and the Transvaal Indian Congress decided to suspend passive resistance temporarily pending an interview with Malan, who had just stepped into the shoes of Field-Marshal Smuts as the prime minister of the Union of South Africa. P. S. Joshi observes that a new phase of the passive resistance campaign had begun in January 1948, with the crossing of borders in violation of the 1913 Immigrants Regulation Act.³² This,

³⁰ Kumari Mukul Mukherjee, *op. cit.*, pp. 208-9.

³¹ P. S. Joshi, *The Struggle for Equality*, pp. 292-93

³² *Ibid.*, p. 292.

however, was no new development. The struggle had in fact begun with the violation of the said Act when on 13 June 1946, a batch of Indian women from the Transvaal had entered Natal without permits.

The United Nations had in the meanwhile taken into consideration India's complaint against the Union of South Africa and given its verdict thereon. The joint legal and political committee of the United Nations general assembly had passed by 24 votes to 19 a French-Mexican proposal asking the governments concerned to report at the next session of the assembly on the measures adopted by them to settle their dispute about the treatment of Indians in the Union of South Africa. The general assembly had accepted the proposal by the requisite two-thirds majority. Thirty-two voted for and 15 against the proposal.

The Union government, however, have refused to listen to the counsels of reason and moderation so far. Of this more anon.

CHAPTER V *Lake Success*
And After
(1946 —)

'No dilemma is more cruel than that faced today by the Union of South Africa. The situation is one of the most tragic, difficult and dangerous in the world, and the problems involved appear to be insoluble. Close to ten million black and brown people are denied the most elementary rights and privileges by a divided white minority. Put in crude terms the dilemma is triangular: (a) The white minority cannot kill off the black majority, even it should wish to do so. (b) The black majority cannot drive the white minority into the sea. (c) Apartheid, which is the Nationalist formula for solution, cannot be made to work except at the risk of poisoning the entire nation. Result: South Africa is not only a country gripped by crisis, but one tormented by the most paralysing kind of fear.'

JOHN GUNTHER

THE Government of India complained to the United Nations Organisation against the Asiatic Land Tenure and Indian Representation Act, popularly known as the Ghetto Act, passed by the South African government in May 1946. The general assembly took India's complaint into consideration in its session of 1946 (October-December). The Indian case was presented by a delegation, which included Vijaya Lakshmi Pandit (leader), M. C. Chagla, V. K. Krishna Menon and Sir Maharaj Singh. The South African Indian Congress also sent a delegation of its own to help the Indian team. The delegation was composed of A. I. Kajee, A. Christopher, P. R. Pather and H. A. Naidoo. The South African government delegation was led by prime minister Smuts himself. Heaton Nicholls, high commissioner of South Africa in England, senator D. G. Shepstone and Douglas Forsyth,

secretary for external affairs, were the other members of the delegation.

The Government of India contended that the Union of South Africa had placed on the statute-book 'certain discriminatory legislation against its Indian citizens, notably the Asiatic Land Tenure and (Indian) Representation Act of 1946. This segregated Indians both commercially and residentially.' It violated, India pointed out, the (United Nations) Charter's human rights provisions and the 1927 Cape Town Agreement between India and South Africa, which had defined the status of South African Indians. (The Agreement had been renewed in 1932.)

'A situation had therefore arisen, India maintained, which was likely to impair friendly relations between the two countries. It called on the Assembly to recommend "that the Union Government revise its general policy as well as administrative measures affecting Asians in South Africa, to bring them into conformity with the principles and purposes of the Charter." Further, the Assembly should request South Africa to report to the next session on the measures taken.'¹

The Union government, however, contended that the Cape Town Agreements of 1927 and 1932 were not 'instruments giving rise to treaty obligations.'

The 1946 session of the general assembly opened at Lake Success with the eyes of all mankind 'in their kindred desire for spiritual and economic freedom—for peace and pursuit of happiness—focussed on its deliberations.' The four hundred delegates to the session represented fifty-four different nations of the world, all of them members of the United Nations Organisation.

President Truman of the USA observed in course of his inaugural address:

'The peoples of the world know that there can be no real peace unless it is peace of justice for all—justice for

¹ *Every Man's United Nations*, p. 48.

² See D. K. Sen, *The Position of Indians in South Africa*, Ch. III, for a refutation of the South African contention.

small nations and for large nations and justice for individuals without distinction as to race, creed or colour—a peace that will advance, not retard, the attainment of four freedoms.

'We shall attain freedom from fear when every act of every nation brings closer to realisation the other freedoms—freedom of speech, freedom of religion and freedom from want. Along this path we can find justice for all, without distinction between the strong and the weak among nations and without discrimination among individuals.'

Noble sentiments eloquently expressed! But South Africa struck a discordant note when the Indian complaint was taken up. It *challenged* the authority of the United Nations to interfere in its (South Africa's) dispute with the Government of India. It was asserted that the question of the treatment of Indians in the Union of South Africa was out and out a domestic problem of the Union in the light of Clause 7, Article 2 of the United Nations Charter.³

The Union 'took the view that a state was not subject to outside control or interference in its domestic affairs. The legislation referred to, it said, concerned matters within its domestic jurisdiction, and did not fall within the competence of the Assembly. South Africa denied that the Cape Town Agreement was an instrument giving rise to treaty obligations. Nor, it added, had the Union Government violated any fundamental human rights within the terms of the Charter. As no internationally recognised formulation of such rights yet existed, and as the Charter did not define them, member-states did not have any specific obligations, in this respect, under the Charter.'⁴

Field-Marshal Smuts observed that the 'provisions of Article 2, therefore, give expression, in the form of a fundamental principle governing the whole Charter, to the recognised general rule of international law that, as a necessary corollary of its political independence, every state has the right to live its own life in its own way, so

³ 'Nothing contained in the present Charter shall authorise the United Nations to intervene in matters which are essentially within the domestic jurisdiction of any state or which require the members to submit such matters to settlement under the present Charter; but this principle shall not prejudice the application of matters under Chapter VII.'

⁴ *Every Man's United Nations*, p. 48.

long as it does not infringe the equal right of other states to do the same, and has jurisdiction over all persons and things within its territorial supremacy. Within the dominions of its domestic affairs a state is, as a general rule of international law and also according to the principles laid down in the Charter, not subject to control and interference, and its action may not be called in question, by any other state.⁵

It should be noted in this connection that under the Charter 'it is one of the basic obligations of the United Nations to promote the observance of human rights and fundamental freedoms.' The Charter 'expressly requires the general assembly to initiate studies and make recommendations for the purposes of implementing this obligation.' It is thus evident that the question of human rights and fundamental freedoms cannot be within the exclusive domestic jurisdiction of any state. Last but not least, the general assembly has the authority to decide any issue relating to the interpretation of any article of the Charter.

Vijaya Lakshmi Pandit opened the Indian case. She told the assembly that India did not aspire after domination over others.

'We seek no domination over others—we claim no privileged position over other peoples, but we do claim equal and honourable treatment to our people wherever they may go, and we cannot accept any discrimination against them.'

She declared in the name of the non-European peoples of the world, who looked to the United Nations for the prevention of racial strife and for the implementation of the principles of civilised life embodied in the Charter of the United Nations.

'We have brought before the assembly the treatment of Indians in South Africa. The way this assembly treats and disposes of this issue is open to the gaze, not of those who are gathered here, but of millions in the world—progressive people in all countries more particularly non-European peoples—who are the overwhelming sections of the human race.

⁵ For a detailed analysis and refutation of the contention, see D. K. Sen, *op. cit.*, ch. V.

'The issue we have brought before you is by no means a narrow and a local one, nor can we accept any contention that a gross and a continuing outrage of this kind against the fundamental principles of the Charter can be claimed by any one, least of all by a member-state to be a matter of no concern to this assembly.

'Bitter memories of racial doctrines are still fresh in the minds of all of us. Their evil and tragic consequences are part of the problems with which we are called on to deal.

'India firmly believes that imperialism, political, economic or social, in whatever part of the world it may be established and perpetuated, is totally inconsistent with the objects and purposes of the United Nations and its Charter.'

Mrs. Pandit clarified India's stand in course of an exclusive interview to the *Rand Daily Mail* (Johannesburgh) correspondent on 29 October:

'It (the Indian question) is a question of domination of white over black. The coloured man is on the march and will not tolerate the domination by the whites because of the colour of his skin. It is, therefore, a fundamental human issue, and it must go before a bar of world opinion. No one individual, however great, should deal with it.

'India stands for complete equality among the peoples of the world, and, as such, India will take up the cause of any nation or people whose fundamental human rights are denied.'

Field-Marshal Smuts preferred not to exercise his right of reply in the opening session of the assembly. He opened his barrage in the steering committee on 1 November. South African propaganda had not remained idle in the meanwhile. Two booklets—*Indians in South Africa* and *South-West Africa and the Union of South Africa*—had been widely distributed among the members of various delegations. They sought to explain facts from the South African point of view and were not altogether ineffective. Some delegations began to think seriously whether or not the Indian problem came within the domestic jurisdiction of a sovereign state that the Union of South Africa is. The question was viewed from different angles. Some interpreted India's complaint in terms of the question of national minorities, including Negroes in America. Some felt uneasy over

the strained relations and the conflict between India and South Africa. Others again were of the opinion that the dispute in question should be settled amicably. An amicable settlement was, however, out of the question as South Africa was wholly unrepentant and would by no means withdraw the Asiatic Land Tenure and Indian Representation Act, 1945 (the Ghetto Act).

Field-Marshal Smuts moved in the steering committee that the Government of India's complaint be deleted from the agenda as the question of Indians in South Africa was a domestic matter of South Africa. Vyshinsky (USSR) argued that the Indian question was not an internal question of South Africa and constituted in fact a breach of agreements between two governments. The Soviet delegation felt that the problem was definitely within the scope of the United Nations and that the Government of India's complaint should remain on the agenda. To make a long story short, the objection of Field-Marshal Smuts was brushed aside and the steering committee resolved to refer the Indian question in South Africa to the joint political and legal committee of the general assembly.

Mrs. Pandit pointed out during the debate in the joint political and legal committee that the Indian question in South Africa was an issue very directly affecting the existence of the United Nations Organisation and the peace of the world as a whole. She said that the Ghetto Act had impaired friendly relations between two members of the United Nations and that it was an infringement of the basic principles of the Charter. Experience shows, she contended, that every concession to the prejudices of South Africa's European community had led to fresh demands for racial discrimination. The issue was, in her opinion, a political, not a legal one. It was not merely an issue between two countries. Rather, it was a world issue. The dispute, racial in nature that it was, would not remain confined within the geographical limits of India and the Union of South Africa. Mrs. Pandit made it clear that her government did not deny that the Indians in South Africa were Union nationals. But the Government of India felt at the same time that they

had a moral obligation to those Indians whose ancestors had been sent to a remote land on the clear understanding that they and their descendants would enjoy equality of rights and opportunities with all other citizens of their land of adoption. The Government of India regarded segregation as the denial of an elementary human right—the right of an individual to own and occupy property within his means and according to his inclinations.

Field-Marshal Smuts contended in his reply that India's complaint raised two issues: One, of the facts of the case, and the other, of the legal position of the United Nations Organisation. He said that he was in a position to prove conclusively that the position of Indians in South Africa did not call for any action on the part of the United Nations. The Ghetto Act had to be passed to prevent frictions and clashes between Europeans and Indians in South Africa. The South African Indian question, the Field-Marshal continued, would never have assumed the importance that it had done, nor would it have ever reached the United Nations, but for its exploitation by India as a political weapon. He categorically denied the charge of his country or government having ever violated any human right and added that the United Nations had no authority to intervene in the internal affairs of its member-states. He sounded a note of warning that once such interference took place, many a member-state might find its position in the Organisation intolerable and impossible. He urged further that in the interest of the United Nations Organisation serious consideration should be given to the advisability of referring Clause 7 of Article 2 of the Charter to the International Court of Justice for authoritative interpretation. The Field-Marshal, however, had no objection to the discussion of India's complaint, if the United Nation's right to intervene in the dispute in question was not admitted.

Ukraine, China, White Russia and Egypt took part in the deliberations that followed. They all held that South Africa had violated the principles underlying the United Nations Charter, that the Ghetto Act discriminated against all peoples of Asia and that the matter under reference was not

therefore a purely domestic affair of South Africa and 'had become a sort of sore in the body politic of the family of nations.' South Africa, however, was supported by Britain, Canada and the United States of America. Poland and France, on the other hand, opposed her.

During the final debate in the joint legal and political committee on 2 December, Mrs. Pandit withdrew the original Indian motion, which read:

'That the treatment of Indians in the Union (of South Africa) should be in conformity with the international obligations under the agreements concluded between the two governments and the relevant provisions of the Charter.'

She voted for an alternative proposal sponsored by France and Mexico, which ran as follows:

'The general assembly, having taken note of the application made by the Government of India regarding the treatment of Indians in the Union of South Africa, and having considered the matter: first, states that, owing to that treatment, friendly relations are likely to be further impaired; second, is of the opinion that the treatment of Indians in the Union should be in conformity with the international obligations under the agreements concluded between the two governments and the relevant provisions of the Charter; third, therefore requests the two governments to report at the next session of the general assembly the measures adopted to this effect.'

The proposal was passed by twenty-four votes to nineteen with six abstentions. The general assembly accepted the proposal by the necessary two-thirds majority in its meeting on 8 December. Thirty-two nations voted for the proposal. Fifteen voted against. Seven abstained. An amendment to the French-Mexican proposal moved by Field-Marshal Smuts to refer the dispute to the International Court of Justice for a legal and factual investigation into the question had been thrown out by the general assembly on 7 December. The voting on the amendment had been twenty-one for and thirty-one against. Two had abstained from voting.

An analysis of the voting on the French-Mexican proposal in the general assembly shows that nine European.

nine Asian, three African, seven North and Central American and four South American countries supported the proposal; whereas one African, five North and Central American, three South American and one Australasian countries opposed it. Two European, one Asian, three South American and one Australasian countries remained neutral.

As requested by the general assembly, the Government of India submitted to the assembly on 2 September 1947 a report on the developments in Indo-South African relations since 8 December 1946 (i.e. the day the assembly had given its verdict on India's complaint against South Africa). The Government of India stated in their report that they had approached the Union government for the implementation of the 8 December resolution. Prime minister Nehru's personal letter to the Union prime minister, Field-Marshal Smuts, under date 24 April 1947, had expressed the Government of India's readiness to enter into any discussion initiated by the Union government assuring him (Smuts) of the co-operation of the Government of India. A later communication had further assured that the Government of India were willing to send their high commissioner back to South Africa, if the general assembly resolution of 8 December 1946, were accepted as the basis of discussion between the two governments. The Union government had, however, disagreed. No agreement on a common basis of discussion could be reached in consequence.

India's draft resolution in the 1947 session of the general assembly, which called upon the Governments of India and South Africa to meet at a round table conference on the basis of the assembly's 1946 (8 December) resolution and to invite the Government of Pakistan to participate in the discussions, failed to receive a two-thirds majority in the assembly.

In February, 1948, the steering committee of the United Nations rejected a South African suggestion to delete the Indian complaint from the agenda. India made a fresh representation to the United Nations in 1949 against the continued ill-treatment of Indians in South Africa, the Asiatic Land Tenure and Indian Representation Act, 1946, and the

amendment thereof by the Malan Government,⁶ which had imposed fresh disabilities on South African citizens of Indian origin. The amendment had altogether prohibited Asians from occupying new land or premises, though occupation for the exclusive purpose of business or trade was permissible under the original Act. The amendment had thus imposed territorial segregation for the first time in the sectors of trade and business.

In May, 1949, the political committee of the general assembly rejected by 33 votes to 5 with 12 abstentions a South African proposal that the subject of India's complaint was a matter of essential domestic concern of the Union of South Africa. The general assembly, on the other hand, adopted a French-Mexican proposal that India, Pakistan and South Africa be instructed to meet in a conference to find a solution, 'taking into consideration the principles of the Charter and Declaration of Human Rights' (adopted by the United Nations in December, 1948). South Africa alone voted against the proposal, while forty-seven nations voted for it. There were ten abstentions.

The Government of India, therefore, enquired of the Government of South Africa on 4 July 1949, if the latter would agree to a round table conference as provided for in the above resolution and, if they agreed, when the conference was to be held and where. The Union government replied that they were 'not averse in general to a discussion of the Indian question in South Africa' subject to certain reservations.⁷

The reservations 'coupled with the various amendments to the Asiatic Land Tenure (and Indian Representation) Act imposing further racial segregation' considerably restricted

⁶ In the general elections of May, 1948, the United Party of Field-Marshal Smuts was defeated by the National Party headed by Dr. D.F. Malan and the latter replaced the former as the prime minister of South Africa.

⁷ 'The South African government claimed that it had consistently contended that the so-called Indian question in South Africa is entirely a domestic matter.' It also desired to be assured that there existed reasonable prospect for a solution satisfactory to South Africa. Otherwise it would construe the pro-

the scope and diminished the usefulness of the discussions. The Government of India nevertheless agreed to the exploratory talks in South Africa suggested by the Union government. The latter was assured at the same time that the Government of India recognised 'that India can no more interfere in the domestic affairs of South Africa than the Union Government can in the affairs of India.' The Government of India, however, requested the Union government 'to look upon the problem as concerning both the governments of India and South Africa.' It was pointed out at the same time that the Indian problem in South Africa was one of international significance 'because of its racial implications.' The Union government wrote in their reply that their 'basically unalterable approach' had already been explained. They suggested that the discussions would have a better chance of success if the economic sanctions against the Union of South Africa were 'voluntarily withdrawn.'

While these negotiations were going on, the Government of South Africa enacted fresh anti-Indian laws and strictly enforced old ones. The condition of Indians in South Africa, which the Government of India sought to improve, deteriorated in consequence. The Government of India agreed nevertheless to have a joint preliminary discussion on the Indian problem in South Africa.

The preliminary talks took place at Cape Town from 6 to 11 February 1950. India, Pakistan and the Union of South Africa participated in the talks. Donges, the Union minister of the interior, who led the South African delegation, claimed at the outset that the discussions were not in pursuance of the 8 December 1946 resolution of the general assembly. They were possible, he held, 'by the good will

posed discussion as 'interference in the domestic affairs of an independent country.' Also, South African government recommended a sound realistic approach as opposed to an 'exaggerated emphasis' on the Declaration of Human Rights and abstract and often impracticable principles and ideals.' It was also suggested that preparatory talks could be held in South Africa 'if sufficient common ground was found among the parties.'--**Apartheid: Strategy of Race Discrimination** (Government of India publication), p. 10.

established during personal contacts between Pandit Jawaharlal Nehru and Dr. Malan in London.' All that South Africa expected from the conference was, he went on, 'a solution satisfactory to South Africa herself with the co-operation of an outside government or governments.' The earlier conferences at Cape Town in 1927 and 1932 had, in his opinion, one and only one objective — the reduction of the Indian population in South Africa.

Pandit Hriday Nath Kunzru, the leader of the Indian delegation, did not, however, accept the contention of Donges. He said in his reply that his government had agreed to discuss the Indian problem with South Africa only because the United Nations had called upon the parties concerned — India, Pakistan and South Africa — to settle their differences at a round table conference. The preliminary conference, he observed, was not the outcome of negotiations between the Indian and the South African Premiers. Nor were the Cape Town conferences of 1927 and 1932, he added, 'circumscribed by the limited purpose of reducing Indian population in South Africa.' India, Kunzru went on, would insist on a full discussion of the disabilities of Indians in the Union of South Africa. India and Pakistan on the one hand and the Union of South Africa on the other, suggested two different formulae for the agenda. A common formula incorporating all the items suggested by the parties was agreed upon in the end. A round table conference to 'explore all possible ways and means of settling the Indian question in the Union of South Africa' was to be convened.

It may be noted in passing that the South African contention that the proposed round table conference was not the result of the United Nations resolution admits of one and only one interpretation — 'the Union government did not look upon the round table conference as an obligation arising out of the resolution passed by the general assembly.'

Information reached the Government of India in March, 1950, that Malan's government 'were tightening up the enforcement of the Asiatic Land Tenure Amendment Act, 1949, and were also vigorously enforcing segregation in other ways by executive measures. It was also reported that the Union

government intended to introduce further legislation which would add to the disabilities of Indians in the Union of South Africa. In an *aide memoire* presented to the Union government, the Government of India expressed the hope that pending a round table conference, nothing would be done to vitiate the atmosphere and jeopardise the success of the conference. Towards the end of April (1950), the Union government published the Group Areas Bill. In their telegram of 29 April the Government of India requested the Union government to postpone the Group Areas Bill and in the meantime expedite the holding of the round table conference. The Union government did not agree to the request of the Government of India in regard to the Group Areas Bill and as regards the round table conference they stated that they could not attend any such conference if it was to be held before 15 September 1950, at the earliest. In effect, therefore, after the Group Areas Bill is passed into law the only subject that the round table conference could discuss would be the reduction of Indian population in South Africa, 'which was proposed by the Union government during the preliminary talks in February, 1950.'⁸ The Government of India, therefore, informed the Union government in June that no useful purpose would be served by the proposed round table conference. The conference in fact was not worth holding under the circumstances.

The treatment of Indians in South Africa was again discussed by the 1950 session of the general assembly. The assembly adopted the following resolution:

'...considering that a policy of "racial segregation" (apartheid) is necessarily based on doctrines of racial discrimination, the general assembly:

'(1) Recommends that the governments of India, Pakistan and the Union of South Africa proceed, in accordance with resolution 265 (3) with the holding of a round table conference on the basis of their agreed agenda and bearing in mind the provisions of the Charter of the United Nations and the Universal Declaration of Human Rights;

⁸ Communique issued by the External Affairs Ministry, New Delhi, 8 June 1950.

'(2) Recommends that in the event of the failure of the governments concerned to hold a round table conference before 1st April, 1951, or to reach agreement in the round table conference within a reasonable time, there shall be established for the purpose of assisting the parties in carrying through appropriate negotiations a commission of three members, one to be nominated by the Government of the Union of South Africa, another to be nominated by the other two or in default of agreement between these two in a reasonable time by the secretary-general of the United Nations;

'(3) Calls upon the Governments concerned to refrain from taking any steps which would prejudice the success of their negotiations, in particular, the implementation or enforcement of the provisions of "the Group Areas Act" pending the conclusion of such negotiations;

'(4) Decides to include this item in the agenda of the next regular session of the General Assembly.'

South Africa, however, was defiant and refused to listen to counsels of wisdom and moderation.

In December, 1954, India proposed a conference with South Africa. Prime Minister Nehru, while making the proposal, made no commitments whatever — 'certainly not to refrain from public criticism' of the policy of the Union government. The latter accepted the proposal for a conference. But they did not promise to 'ease apartheid measures.' Nor did they ease them. The negotiations were subsequently broken off by them on the specious plea that they (the negotiations) were 'deliberately wrecked by the prime minister of India.'

The Union government boycotted the United Nations commission of inquiry into the racial situation in South Africa. Appointed in 1952, the commission was composed of Dr. Herman Santa Cruz of Chile (chairman), Dantes Bellgarde of Haiti and Lagier of France. The commission observed in its third report (1954-55) to the general assembly of the United Nations :

'During the year (1954-55) a series of legislative measures were enacted which were consistent neither with the obligations assumed by the Union of South Africa under the

(United Nations) Charter nor with certain provisions of the Universal Declaration of Human Rights... The South African government is the only government in the world which believes that it can carry such a fabulous experiment (the policy of apartheid) successfully. South Africa is the only country in the British Commonwealth which does not accept universal suffrage even as an objective to be achieved gradually in the distant future. South Africa is the only country in Africa where the natives are not represented by their own kind in any legislative or consultative assembly. South Africa is the only country in the world where the natives are rigorously excluded from certain categories of employment by the legislation of a minority intent on reserving them for itself."

It might be noted here at the cost of a little digression that Dr. Herman Santa Cruz told the *Statesman* (Calcutta) during his recent visit to India,

'It is a pity that the U.N. commission (of inquiry into the racial situation in South Africa) was discontinued. Things are now getting worse. My impression is that in spite of the commission's boycott by the South African government, it had the effect of slowing down the apartheid policy. Even in a country as little preoccupied with world opinion as South Africa, the impact of what other nations thought was noticeable.'¹⁰

Important events have taken place in the Union of South Africa in the meanwhile, the 1948 general election being one of them, Field-Marshal Smuts and his United Party were thrown out of office. The Field-Marshal himself was unseated.¹¹ The National Party of Malan defeated the United Party as well as the South African Labour Party led by John Christie. Malan became prime minister (May, 1948).

The election manifesto of the National Party left no doubts in anybody's mind as to the shape of things to come.

⁹ *Reuter Despatch* from New York, 12 October 1955.

¹⁰ *The Statesman* (Calcutta), 16 July 1958.

¹¹ He failed to get himself elected from Standerton, a constituency held by him for 24 years. He was defeated by a Nationalist rival, W.C. DuPlessis, by a margin of 224 votes.

It stated in ambiguous terms that the Party would pursue a policy of separation of the races — a policy based on the 'Christian principles of justice and reasonableness!' The Party undertook 'to protect the white race properly and effectively against any policy, doctrine or attack, which might undermine or threaten its continued existence.' The manifesto was unequivocal and emphatic on the Indian question:

'The Party accepts as a basis of its policy the repatriation of as many Indians as possible and proposes proper investigation into the practicability of such a policy on a large scale in co-operation with India and other countries. In view of the seriousness of the problem, South Africa must be willing to make great financial sacrifices for the achievement of the aim.

'No Indian immigrant will be allowed to enter the country.

'So long as there are still Indians in the country a definite policy of separation (apartheid) will be applied as far as possible between the Europeans and Indians in every sphere as well as between Indians and other indigenous non-European groups.

'The Asiatic Land Tenure and Indian Representation Act of 1946 will immediately be revised and:

'(a) No representation will be given to Indians in the legislative bodies of the country.

'(b) Indians will be established in separate areas and will not be allowed to reside or own fixed property in the European areas.

'(c) Europeans will not be allowed to reside or to trade or to own fixed property in Indian areas.

'(d) So far as possible the policy of separation (apartheid) will be applied with regard to the Indians and indigenous races.

'(e) Proper compensation will be paid for properties which are expropriated in the European or Indian areas.

'(f) Facilities for trading outside their own areas and especially in European areas will be drastically curtailed.

'(g) Indian traders in Native areas or locations will gradually disappear. This right must be safeguarded for the Natives themselves.

'(h) The inter-provincial movement of Indians must be

effectively prevented. The protection which the Free State¹² enjoys must be maintained.

'The Cape Province must be properly protected against penetration by Indians, especially in regard to ownership of fixed property and trade. Finally allowances for Indians must be abolished.

'The Party will take drastic action against Indians who incite the non-European races against the Europeans.'

Voted to power, the Nationalists proceeded straight-away to implement the policy outlined above. Malan took the nation into confidence and outlined the policy and programme of his government in a nationwide broadcast over the South African Radio. His speech made the following points, among others:

(a) A distinctive South African nation being already a reality, the Nationalist government will inaugurate a policy of 'South Africa First' and will encourage the consciousness of nationhood and sentiment of national pride.

(b) External interference—even from the United Nations—in the internal affairs of the country will not be tolerated. The government will not allow any country or power or organisation to become the arbiter of the destiny of South Africa and the South Africans.

(c) To prevent the danger of interference in the domestic matters of the Union which has become a possibility through the accession of Asian members to the British Commonwealth, the Nationalist government 'desire separate contacts between individual members rather than through discussions at joint and inclusive conferences.'¹³

(d) The Nationalist government will make an all out effort to achieve apartheid.

The term 'apartheid,' which we have used more than once, needs a little explanation. Pronounced as 'apartate,' the word is of Dutch origin and means literally separateness or a state of separation. It is, as Alan Paton put it, 'in essence a rejection of man... in essence something done by

¹² The Orange Free State.

¹³ Joshi, *The Struggle for Equality* p. 217.

somebody with power to somebody without...can sometimes be a giving of something that is better, but it is always withholding of everything that is best.' Apartheid robs the non-whites of their land and liberty. It compels Africans to carry documents on their person at all times and in all places so that their movements may be restricted and their employment, controlled. It separates fathers from their children and husbands from their wives 'lest a migratory black labour force found families and homes in the towns.' Apartheid means the education of non-white children for kitchen and field, 'the drink-dazed coloured labourers in the vine yards of the western Cape and the private farm jails of the Transvaal.' It is a police man beating up an African for being 'cheeky.' It is tens of thousands of children who 'sicken and die when the winter comes to the cold, bleak corners of the shanty towns.' It is about thirteen million people of whom less than three million are white and an all-white parliament of 163 members.

The exponents of apartheid are of opinion that racial antagonism runs so high in South Africa that if it is not tackled with firmness and promptitude, it will defy all attempts at solution later on. They contend further that there can be peace in the Union only if the Europeans, the Africans and the coloured races live in mutual isolation. Such isolation is to be achieved by 'apartheid,' which seeks to divide South Africa into a number of water-tight racial compartments. 'There are several gradations of meaning within the word, which embodies the fundamental concept of the National Party and most of the Afrikaner community,¹⁴ namely, racial segregation. Colour-bar in a restaurant, or a sign on a park-bench, 'for Europeans only,' are examples of simple apartheid. There can be apartheid in schools, industry, in sports and so on. The Nationalist zealots stand for complete geographical apartheid, which would mean splitting South Africa into two separate entities, a 'Bantus-

¹⁴ Speaking broadly, Afrikaner means any South African of non-British descent, whose principal language is Afrikaans, a local language derived from Dutch. Most Afrikaners are of Dutch, Flemish, French Huguenot or German stock.

tan' for the blacks and the rest of the country for the whites. Such would be the culmination of the apartheid ideal.¹⁵

A. B. Xuma, the well-known African leader of South Africa, points out that apartheid is based on fear and is a device for deliberately creating and perpetuating that fear. To maintain the *status quo* in South Africa, the Nationalists must hate, and 'fear is a good mechanism for inducing hate.' Xuma says further, 'If any contact between the races was to be allowed, too many white people would discover that we are human beings.' He holds the Boer wars responsible for apartheid and is of the opinion that the 'more inflamed Afrikaners' want to put the Africans 'in their place'; because they think that the British pampered them (the Africans) and 'seek to reverse all the processes of history.'

The Malan government announced that the colonial and the African sections of the population would be completely separated from each other, that there would be apartheid on railways, that the Native Military Corps would be disbanded and that the coloured and the Africans would not be allowed to carry weapons. South Africa even objected to the inclusion of the Maoris in the New Zealand Rugby team which was to tour the Union in 1949. The Union parliament passed Malan's Asiatic Law Amendment Bill in September, 1949. They deprived the Indians of the limited communal franchise granted to them by the Ghetto Act. A. J. Stals, minister of social welfare, announced at the same time the withdrawal of family allowances for Indians.

The Group Areas Act passed on 7 July 1950, with the majority of a single vote lays down that all land in the Union of South Africa will be divided and controlled by the government for purposes of ownership and occupation by different racial groups. The entire population of the Union has been divided for this purpose into three principal categories, viz., white, native and coloured. The last, which includes Indians, has been further sub-divided. The Act empowers the government to establish by proclamation Group Areas for the exclusive ownership or occupation or both of any of the above categories. Disqualified persons

¹⁵ Gunther, *Op. cit.*, p. 446 (see also pp. 525-56).

and companies¹⁰ are debarred from acquiring fresh land in any Group Area not meant for them. If a disqualified company has any property in a Group Area at the commencement of notification, it shall surrender its ownership of such property after ten years. The minister of the interior shall 'sell such property compulsorily' after the expiry of the ten-year period. The property in a Group Area held at the commencement of the proclamation by a disqualified individual shall, after his death, have to be sold to a member of the group for which the area is reserved. No disqualified person can occupy land or premises in a Group Area without a permit after one year of notification with the exception of such persons as servants, guests and the like. Areas other than Group Areas and native locations will be 'controlled' in which no transfer of occupation and ownership between members of different racial groups will be permitted except under the authority of a permit. The Act does not differentiate between occupation for residence and occupation for trade. Trade licences are to be issued or renewed only on proof that an applicant can lawfully occupy the premises in the area where the trade is to be carried on. The Group Areas Act theoretically empowers the authorities to deal with all racial groups on the same basis. In practice, it exists for removing all but the 'pure' white from the places occupied by them in cities, towns, villages and farms, robbing them of their properties and economic interests and depriving them of their means of livelihood.

The government believed in 1950, i.e. the year of the passing of the Group Areas Act, that by 1955 they would be able 'to complete the framework of dividing the country into racial zones.' The Act, therefore, laid down that no Group Area 'could be proclaimed after five years from 1950 without the prior approval of the parliament.' But the work has been bogged down by the strenuous opposition of non-Europeans in general and the Indians in particular. The

¹⁰ Persons and companies in a Group Area, meant for those belonging to a different racial group are regarded as disqualified persons and companies. An Indian individual or company is thus 'disqualified' in a white or native Group Area.

opposition has shown that the government cannot violate the laws of the land; laws which still give some protection of the rule of law to the citizens of the Union of South Africa. The minister of the interior sought to remedy the 'deficiencies' found in the 'smooth running' of the Act by amendments in 1952 and 1956. The time-limit of five years has since been extended to fifteen.

The sponsors and the champions of the Group Areas Act contend that it is equally applicable to all communities without discrimination. But the record of White South Africa—the record is not so white after all so far as its policy towards the non-whites is concerned—has justly created a widespread suspicion that on the plea of 'progress along parallel lines' the Group Areas Act will condemn the non-European population of the Union of South Africa to live in inferior and neglected areas. Latest developments have hardened the suspicion into a conviction. The Indians have been hit hard—indeed, much harder than the other non-European communities—by the Group Areas Act. All skilled professions have long been closed to them by earlier legislation and they have been forced to fall back almost wholly upon trade and commerce. Indian businessmen have flourishing business—retail and wholesale—in the commercial districts of Durban, Johannesburg and Cape Town. It is almost certain that these districts will be declared white Group Areas. Some have already been so declared.¹⁷ Indian

¹⁷ The **PTI** correspondent at Johannesburg cabled on 7 November 1955:

'Another determined drive has been launched by the authorities to induce Johannesburg's Indian community to leave their present homesteads and move to the special Indian township of Lenasia, 22 miles away.

* * * *

'The new move has come in the form of extensive advertisements in local newspapers offering loans to the extent of 90 per cent of cost to individual members of the Indian community to build their own houses with immediate transfer of free-hold title. The loans, repayable in 30 years, carry 4½ per cent interest.

* * * *

'Th Transvaal Indian Congress has, however, refused to be drawn in by this offer and continues to oppose both the Lenasia housing scheme, where very few plots have been sold, and official

business houses have to close down and sell their properties in these districts sooner or later. Their employees will be thrown out of employment. After eviction, the Indians will have to move into Group Areas reserved for them or into 'controlled' areas. Indian Group Areas will be far away from the areas now occupied by them and from those occupied by other races. Indian trade will be confined in consequence to the Indian group. But no community can live by trade among its own members alone. Prospects in 'controlled' areas are hardly better. The Group Areas Act is therefore regarded—not unreasonably—as a shrewd device to get rid of the Indian population of the Union of South Africa. The Nationalist election manifesto of 1948 makes the above interpretation unassailable. The manifesto said, *inter alia*:

'The (National) Party holds the view that the Indians are a foreign and outlandish element which is unassimilable. They can never become part of the country and must, therefore, be treated as an immigrant community. *The Party accepts as a basis of its policy the repatriation of as many Indians as possible.*' (italics added.)

The proclamation of 'group areas' in the western suburbs of Johannesburg is 'the most important instalment in terms of the (Group Areas) Act' so far. It is the beginning 'of the culmination of the aims contained in it.' An analysis of this proclamation reveals the true nature of the sinister

efforts to move the Indians, alternatively, to an evacuated army camp at Lenz, 19 miles outside the city.

'The Congress has warned Indians that once they were established in Lenasia they would have no means of earning their livelihood as they would not be able to trade in European areas or carry on any business outside their own areas. Moreover, the Congress has pointed out, being debarred by racial legislation from becoming skilled workers, the only alternative for these Indians would be to get jobs as unskilled or semi-skilled workers.

'A high school has already been established at Lenasia, and children, who were attending an Indian school in Johannesburg, were turned out and told to attend the Lenasia school. But their parents resisted the move by raising funds to start an independent school in the centre of Johannesburg.

* * *

'The school was among a number of institutions raided during the recent 'treason' raids in South Africa. The teachers' residences were also subjected to searches.'

measure that the Group Areas Act is. It aims at uprooting the non-white races in order to force them into the ghettos where sure ruin awaits them. It affects 78,000 Africans, Indians, coloureds, Malays and Chinese living in the townships of Pageview (Vrededrop), Sophiatown, Newclare, Newlands, Newlands Extension, Albertsville, Albertskroon and Greymont. A notification in the *Government Gazette* (3 August 1956) makes it obligatory for all non-white residents of these localities to quit within a specified time-limit.

About 1,600 *morgens* of land on Farm Riefontein No. 48, which includes the township of Lenasia, is set apart as the Group Area, and proposed Group Area for the Indian community. Twenty-two miles away from Johannesburg, this is the only land made available to about 10,000 Indians (Pageview—5,000; Sophiatown—2,500; Newlands and Newlands Extension—800; Newclare—1,500. Figures are approximate).

The township of Lenasia was declared an Indian Group Area after it had come into existence. The township company had been granted an 'open' permit by the minister of the interior to sell land to Indians. The value of stands at Lenasia is not more than £10 each. They are actually sold at £350 each. An Indian high school was built at Lenasia in 1953. An Indian offer at the time to provide buildings for a high school in Johannesburg was summarily rejected by the Union ministry of education. Hundreds of Indian children in Johannesburg are being educated in inadequately equipped private schools. Some are not in school at all. Pressure is being exerted to compel Indian parents to send their children twenty-two miles out of town to Lenasia.

Lenasia is the only Group Area for Indians living in Johannesburg, Kliptown, Maraisburg, Roodeport, Krugersdorp, Randfontein and their neighbourhood. Two-thirds of the Indian population of the Transvaal are thus to be segregated in the barren and inhospitable veld of Lenasia and Farm Riefontein No. 48. Thousands have been thrown into confusion by a mere stroke of the pen. Ten thousand Indians must clear out of the western suburbs of Johannes-

burgh. They will be passive spectators of the ruin of their economic interests. 'After years of unparalleled thrift, arduous toil, intense self-sacrifice,' they will see 'their all snatched from them in the twinkling of an eye—as though an earthquake has suddenly come upon them, the earth had yawned, and had swallowed up the results of their labours.'¹⁸

Men, women and children, thus uprooted, must shift willy-nilly, to the special Indian area to starve in isolation there. Those living outside the western suburb of Johannesburg are not in a more enviable position. The Sword of Damocles hangs over their head.¹⁹

The fate of the Tomlinson Report²⁰ on Bantu Reserves in South Africa shows how insincere the Nationalist talk of 'progress along parallel lines' is. The report, in the

¹⁸ Dharam Yash Dev, *Our Countrymen Abroad*, pp. 21-22.

¹⁹ Vide Yusuf Chachalia, 'Ghetto Act Spells Ruin to Non-Whites,' *Africa South* (Cape Town), October-December, 1957.

²⁰ Shortly after the passing of the Group Areas Act in 1950, Malan's government appointed a commission under the chairmanship of Prof. F. R. Tomlinson of Pretoria University. The commission was to enquire into the 'socio-economic development of the (Native) Reserves' and to suggest how the 'over-crowded, over-stocked and much eroded Reserves could be rehabilitated and developed into a Bantu national home.' After a laborious and thorough-going enquiry, the commission submitted its report in March, 1956. It supported the policy of apartheid and recommended the conversion of the Reserves into a 'Bantu national home.'

The government, however, rejected some of the most vital recommendations of the Tomlinson commission, the most important being the commission's plea for the development of the Bantu Reserves, which envisaged an expenditure 104 million pounds over a period of ten years. The government voted a paltry three and a half million pounds for the first year and did not—because they would not—spend even this amount. The commission made individual tenure the cornerstone of its plans for the agricultural rehabilitation of the Native Reserves. The government rejected the plan outright. The commission's recommendation that private European capital should be allowed to assist the creation of new African industries in the Reserves was also rejected. The government declared that as the rate of development in the different fields of activity could not be determined in advance with any degree of certainty, they did not deem it advisable to fix the amounts needed for the various projects recommended.

opinion of many, it may be noted in passing, is perhaps the most important document ever published on the subject of apartheid.

Coloured and African leaders, too, have called the Nationalist bluff and exposed the insincerity of all talks of 'peaceful progress along parallel lines.' J. G. Golding, a moderate coloured leader, describes apartheid as a counsel of despair, as a vicious, bankrupt and dishonest policy. The Coloured Advisory Council declared some time back that apartheid, far from fostering fruitful harmony and cooperation, would lead to discontent, hatred and disaster. E. M. Gordon, an ex-president of the African People's Organisation, is more outspoken.

'To us in the A. P. O. apartheid could never mean anything else but segregation—segregation in the form of housing schemes with their poky little houses with cement floors and in some cases built-in cement tables; inferior health facilities, lack of proper sanitation, one water tap for hundreds of families, darkness, squalor and neglect, discriminatory laws, curfew and disfranchisement.'

The Union of South Africa has sought to enforce apartheid in recent years by passing a number of laws. The Group Areas Act (1950), amended in 1952, formalised the concept of apartheid. The Prohibition of Mixed Marriages Act (1949), forbids marriages between Europeans and non-Europeans. Any such marriage is invalid in the eye of South African law. Officiating at such marriages is an offence punishable with fines. The Immorality Amendment Act (1950), goes farther and makes illegal any sexual relationship between Europeans and 'any variety of non-whites,' i.e. coloured, Indian and native. 'These two Acts,' points out Gunther, 'embody legislation unparalleled in the world except by the Nuremberg Laws of Nazi Germany.'²¹ Extra-marital relations were formerly banned only between Europeans and Africans. The scope of the prohibition has been now expanded and today it is a serious offence for a European—even for a sailor off his ship calling in Cape Town—to have sexual intercourse with a non-European. Prostitu-

²¹ Gunther, *op. cit.*, p. 473.

tion along colour line is tabooed. There is, however, no legal bar to promiscuity among Indians, Africans and coloureds. The Immorality Amendment Act (1950), aims at preserving the purity of European blood by 'ramming all channels of contamination.' One curious result of the Act is 'that an extra-marital relation between two white people, no matter how flagrant, is perfectly legal, whereas a happy marriage between a white and a non-white is a crime.'²²

The Suppression of Communism Act (1950), makes the minister of justice the sole authority to determine whether a particular individual is a Communist or not. Any one 'named' a Communist is automatically debarred from holding any position in the public services or in any trade union. The Act empowers the government to take action not only against Communists, but against all, who, in the opinion of the government, encourage hostility between European and non-European races. The Act in fact seeks to suppress all just agitation by Indians and Africans for the redress of grievances. The Nationalists, whose racial bigotry and arrogance are daily driving the wedge deeper between the whites and non-whites, are, needless to say, the worst offenders under the Suppression of Communism Act. Their policy, and that alone, is more responsible than any other single factor for the current tension in South Africa. Every member of the Government of South Africa, observes the *Statesman* (1 October 1957, Calcutta) editorially,

'ought to be liable to prosecution. Not one has failed in speech and writing to arouse hostility between African and non-African (intent, we repeat, is irrelevant, even if lack of it could truthfully be pleaded), and the minister responsible for apartheid in Durban is doing the same between Indians and "coloured" people. Mr. Verwoerd, the minister for native affairs, should be facing a charge of blasphemy.'

The Act authorises the minister of justice to declare communistic any organisation, journal, publication or person. He may also prohibit any assembly, restrict movements of persons and deport non-nationals under suspicion. The

²² *Ibid.*

Population Registration Act (1950), requires every one over sixteen years of age to carry an identity card issued by the government. The card describes the holder's person and mentions the ethnic group he or she belongs to. It must be produced for inspection on demand by authorised police officers. The Population Registration Act thus provides for the registration of the entire population into racial groups, 'with people ticketed, photographed and identified according to race.' This, together with the Mixed Marriages Act, aims at ensuring the racial purity of the Europeans. Shoeman, the minister of labour and public works, declared immediately after the formation of the Malan government in June, 1948, that he would see that there were no mixed trade unions anywhere in the Union of South Africa and that Africans were no longer to be trained as artisans. Competition between Europeans and non-Europeans was to be eliminated in this manner. A directive issued a year later by the prime minister's office ordered the replacement of Africans by Europeans in public services. J. H. Viljoen, Malan's minister of education, arts and science, declared later on that the government would give no financial aid to the South African Association of Arts unless it enforced racial separation *at all times and in all places*. We have yet to know whether the ukase applies to the visitors only or to the visitors as well as to the exhibits. We do not know if a European painter can have African model and vice versa. Nor have we any information whether portraits of Africans by European artists and those of Europeans by their African counterparts may be exhibited. Can they be exhibited at all?

It may be mentioned in this connection at the cost of a little digression—not wholly irrelevant, however—that the Bantu Education Act (1953), gives the government complete control of African education. Schools run by various Christian missions 'will have to fall in line with government "inspanning"' or they must close down. The Separate Amenities Act (1953) gives legal sanction to the existing segregation patterns in public transports, public places and so on. The Public Safety Act of the same year has vested

the government with extraordinary powers. They can, under the Act, declare a state of emergency and make laws by proclamation, if necessary. The Criminal Law Amendment Act (1953) fixes the penalties for protesting against the racial laws or for inciting others to do so. It is a crime under this Act 'to support...any campaign for the repeal or modification of *any* law.' The Industrial Conciliation Act (1954) gives extensive powers to the minister of labour and public works 'to determine at his own discretion what occupations the members of any race may engage in.'²³ In other words, the industrial colour-bar may be made absolute by virtue of powers given to the minister of labour by this Act. The Industrial Conciliation Act (April, 1956), goes a step farther. It has actually introduced apartheid in the field of trade unionism by prohibiting the registration of racially mixed trade unions. It encourages European workers to break away from the existing mixed unions and form exclusively 'white' unions. It lays down at the same time that the existing racially mixed trade unions must have separate branches and separate meetings for the different racial groups within them and that the executives of mixed unions shall consist of Europeans only. In case more than 50 per cent of the workers in any undertaking, trade or industry break away and form their own racially exclusive union, the newly formed union will be entitled to legal recognition and to a share of the parent union's funds. The minister of labour and public works may, under the Act, take steps to 'safeguard the economic welfare of employees of any race.' He may reserve a work or categories of work for the workers of a certain race or races exclusively. The Act was hailed by the treasury benches in the Union parliament as 'introducing a new and specifically South African pattern in trade union movement.'²⁴ A Labour Party spokesman retorted that the new pattern was fascist, and fascist undoubtedly it is. The Strijdom government—Strijdom succeeded Malan in 1954—has succeeded in destroying the traditional rights of South African trade unions.

²³ Gwendolen Carter, *South Africa*, Foreign Policy Association.

²⁴ PTI report from Cape Town datelined 13 April 1956.

Two more recent Acts of the Union government, though they do not affect the Indians, deserve more than a passing notice. They are the Separate Registration of Voters Act (1951), and the High Court of Parliament Act (1952). These, along with later Acts in the same field, are the outcome of the government's attempt to make the parliament a higher constitutional authority than the supreme court. These Acts sought to remove some 48,000 coloured voters in the Cape from the common roll, a step, which would, in effect, disfranchise them.

The voting system in the Cape Province, it should be noted, is one of the two 'entrenched' clauses²⁵ of the South Africa Act (1909), the equality of the English and the Afrikaans languages being the other. Malan, the Union prime minister (1948-54), contended that the Statute of Westminster, 1931,²⁶ had suspended the South Africa Act. He had tried to remove voters of mixed parentage from the common roll by a simple majority. General Hertzog had already removed the African voters from the common roll. He had, however, followed the constitutional procedure, i.e. instead of having the removal approved by a simple majority, he had obtained the consent of a two-thirds majority

²⁵ The National Convention composed of representatives from Natal, the Transvaal, the Cape and Orange Free State, which drew up the South African Union Constitution, were divided on two issues namely, (1) the equality of the English and the Afrikaans languages and (2) the preservation of the liberal franchise laws of the Cape Province, which did not discriminate in policies on grounds of colour. It was finally agreed that both the controversial issues would be entrenched in the South Africa Act in such a way that they could be altered only by a two-thirds majority of both houses of the South African parliament at a joint sitting. The South Africa Act, passed by the British parliament in 1909, and brought into effect in 1910, entrenches the equality of the English and the Afrikaans languages and the existing franchise laws of the Cape Province.

²⁶ The Statute established complete equality between Britain and the Dominions and reduced the British Empire (so far as the Dominions were concerned) to a 'very loose alliance of equal states, bound together only by the formal link of the Crown and without any... clearly defined mutual obligations' (Ramsay Muir, *A Short History of the British Commonwealth*, Bk. XII, Ch. vii, Sec. 1, p. 862.

of both Houses of the Union parliament at a joint sitting. The appellate division of the Union supreme court declared Malan's action *ultra vires* of the Constitution. The Court ruled that a simple majority does not, even in the changed circumstances created by the Statute of Westminster of 1931, override the South Africa Act of 1909. Nothing daunted, the irrepressible Malan attempted to set up a high court of parliament and to invest it with the final authority in constitutional matters. The judges declared again that the step was illegal.

Strijdom, who stepped into the shoes of Malan in November, 1954, finally set the issue at rest by passing the Senate Act in 1955. The Act, however, did not go unchallenged. It has been challenged so far thrice in law courts by the United Party, which constitutes the opposition in the South African parliament. The senate was enlarged. It had 48 members so long. The number was raised to 89. Nearly all the 41 new seats went to the Nationalists. The South Africa Amendment Act passed with the help of the enlarged senate in February, 1956, removed the coloured voters from common electoral rolls to a separate 'segregation' list giving them representation in the parliament through European members.

The supreme court was also packed. The number of judges was raised from 6 to 11, 'making full quorum necessary in constitutional cases, majority opinion to prevail.'²⁷ The full story of Strijdom's machinations to gerrymander his country's Constitution by packing the senate and the supreme court is, as Gunther put it, 'one of the weirdest in contemporary history.'²⁸

The 1948 Nationalist election manifesto stated, *inter alia*, that the admission of Africans to 'European institutions together with European students must end.' Needless to say, the Nationalists wanted to deny even the meagre educational facilities given so long to the non-Europeans. And they have been denied already to all intents and purposes.

²⁷ *The Statesman* (Calcutta), 15 January 1956.

²⁸ Gunther, *op. cit.*, p. 474.

Of the nine universities in the Union of South Africa, only two — the University of the Witwatersrand and the University of Cape Town—are 'open.' In other words, these universities admit students of all races. But in the latter, the Africans are not admitted to the medical faculty. A fixed number of non-whites other than Africans are, however, admitted to the faculty every year. Natal University is 'segregated into sections for whites and non-whites.' Four of the universities do not admit non-white students. The Rhodes University does not normally admit non-whites. Fort Hare, an associate college of the Rhodes University, does not admit whites except in rare cases. The University of South Africa gives tuition by correspondence only.

Between 1948 and 1950, the Nationalist government of Malan took steps to restrict the number of a handful of non-white students at the 'open' universities. Such steps included the refusal of entry-permits to the South African Indian students to enter the Transvaal to study at the Witwatersrand, stoppage of bursaries to African medical students and the like. The students have since been collecting money in South Africa and throughout the world through the African Medical Scholarships Trust Fund, which renders financial assistance to the African medical students of the Witwatersrand University.

The government appointed the Holloway commission in December, 1953, 'to investigate and report on the practicability and financial implications of providing separate training facilities for non-Europeans at universities.' The commission reported in February, 1955, and was of opinion that 'apartheid was financially and practically unfeasible.' The government were not prepared to accept the findings of the Holloway commission and the minister of education, J.H. Viljoen, announced in November, 1955, the appointment of an inter-department committee of inquiry 'to re-examine the matter—specifically to consider the establishing of segregated tribal colleges for non-white groups — coloured (people of mixed race), Indians and two tribal groups of Africans.' This proposal had been rejected by the Holloway commission as it would constitute in the commission's opi-

nion, a 'material retrogression in regard to the university training of non-Europeans.'

The education minister announced in the senate in February, 1956, that the government would soon introduce legislation to enforce apartheid at the 'open' universities. He had said at Pretoria on 18 September 1951, that,

'the government agreed that it was desirable that the principle of apartheid should be observed in the Union's universities but could not agree to introduce legislation to enforce it. Such legislation would be a violation of the traditional independence of South African universities.'

The report of the inter-departmental committee was still in printing and was not available to the public till the end of 1956. Clear indications were nevertheless available that universities must face legislation early in 1957; because Verwoerd, the South African minister for native affairs, said in September, 1956, 'where there is no segregation, as is the position at certain universities it must be established or enforced.' He had said once before in July (1956) that apartheid would be established at universities '*regardless of cost.*' Strijdom told the Nationalist Party Congress at Pretoria in September 1956, that legislation to enforce apartheid would possibly be introduced in the January (1957) session of the South African parliament.²⁰

The government decided in 1949 that non-Europeans in the Union's permanent army should be non-combatants only. A number of first-class compartments in each train on South African railways are reserved for the exclusive use of European passengers. Apartheid has been introduced at Johannesburg railway station from July, 1949, by providing separate entrances for European and non-European passen-

²⁰ Open Letter from the presidents of the Students' Representative Council, University of the Witwatersrand, Students' Representative Council, University of Cape Town and National Union of South African Students, dated 31 October 1956 (published in the *Statesman*, Calcutta, 4 November 1956).

A PTI Despatch from Cape Town datelined 7 January 1957, says that the government will introduce legislation in the Union parliament during its session, which is to open in January (1957) 'to enforce apartheid at all South African universities as soon as possible.' Non-white students of 'mixed' universities 'will be allowed to complete their courses, but a date will be fixed after

gers. The central entrance is reserved for the former. The Union minister of posts and telegraphs announced years ago that steps would be taken to separate Europeans and non-Europeans at Cape Town general post office and in forty other post offices in the Cape Province. In 1952, apartheid was actually in operation in 847 of the Union's 1,250 post offices. The number must be much higher today. The Transvaal National Party Congress in its session of September, 1950, recommended apartheid in telephone booths. It was 'scandalous', a resolution of the Congress said, to allow 'Europeans and kaffirs' to use the same telephones. Apartheid has been in force in Durban race course from February, 1950, and enclosures have been set apart for the exclusive use of Africans, Europeans and Indians.

Air-hostesses on South African airlines have been warned for not observing the colour-bar properly. They have been ordered to do the same without fail. Linen head-rests used by African and Indian passengers must be removed immediately after use and sent for 'hygienic processing or dry cleaning' instead of the normal laundering applied to articles used by European passengers. Immediately after a plane has landed and non-European passengers have left, a red tag must be put on all articles used by them. Air-hostesses must not issue linen towels for use in wash rooms. Special towels are to be used instead because of the risk of both European and non-European passengers using the same linen towels.

Admission of African students from territories outside the Union of South Africa to missionary schools, colleges and

which "mixed" universities will not be allowed to accept any non-white student.' The Despatch adds: 'The Government plans to set up separate universities for Africans, Indians and coloureds. Africans will be further segregated into ethnic colleges.'

'The Indian university will be located in Natal, while the university for coloureds is likely to be set up in Western Cape Province....'

A later news from South Africa informs that the Strijdom government contemplates introducing legislation in the same session of the parliament to enforce apartheid in the nursing profession as well.

universities in the Union has been prohibited. Johannesburg city council has approved the principle that entry into places of public recreation should be restricted on racial grounds. Johannesburg, it may be noted in passing, has separate transport facilities for Europeans and non-Europeans.

* * *

What has been said above does not claim to be an exhaustive account of the disabilities — social, political and economic — of the non-European population, the Indian included, of the Union of South Africa. It does, nevertheless, give a more or less clear idea of the state of affairs in that part of the world. The Union of South Africa is, in fact, passing through a 'new barbarism.'

The Nationalists condemn the most innocent criticism as subversive, 'while themselves engaged in gerrymandering their own senate, courts and Constitution.' They have done their worst to impede foreign contact by an oppressive use of the State power over passports; indeed this and the pass laws seem to represent South African ideas of freedom of movement, just as the Bantu Education Act 'caricatures freedom of information.'

'The sacred trust of Article 73 of the United Nations Charter to promote to the utmost... the well-being of the inhabitants of non-self-governing territories, has been implemented by incorporating a League mandate into a racial society and loudly complaining that Britain has not also handed over Bechuanaland, Basutoland and Swaziland to its (the Union's) tender mercies.'³⁰

³⁰ 'Members of the United Nations which have or assume responsibilities for the administration of territories whose peoples have not yet attained a full measure of self-government recognise the principle that the interests of the inhabitants of these territories are paramount, and accept as a sacred trust the obligation to promote to the utmost, within the system of international peace and security established by the present Charter, the well-being of the inhabitants of these territories, and to this end:

'(a) to ensure, with due respect for the culture of the peoples concerned, their political, economic, social and educational

The European rulers of South Africa know and know it well that the steamroller of racialism and colour-bar is welding together the disinherited humanity of the Union into a compact whole. Not content, therefore, with imposing disability, heaping indignity after indignity upon the latter, they have started the game of *divide et impera*, which seeks to alienate the various non-European groups from one another. The Nationalists have tried and have been trying to do everything possible to set Africans against Indians. The harsh and discriminatory policy of the Union government has made Africans utterly discontented. The African discontent, which has been steadily mounting over a long period, 'has given rise to a feeling of hatred which does not necessarily vent itself against the actual perpetrators of evil.'³¹

The anti-Indian race-riots, which broke out at Durban on 13 January 1949, were the logical outcome of the racial policy of the Nationalist government. The commission appointed to enquire into the riots reported:

'The cumulative effect of emotion built up over a period of time caused by complaints and conditions, some real and some imaginary, fanned by propaganda culminated in the riots. A background to these riots was a strong feeling of

advancement, their just treatment, and their protection against abuses;

'(b) to develop self-government, to take due account of the political aspirations of the peoples, and to assist them in the progressive development of their free political institutions, according to the particular circumstances of each territory and its peoples and their varying stages of advancement;

'(c) to further international peace and security;

'(d) to promote constructive measures of development, to encourage research, and to cooperate with one another and when and where appropriate with specialised international bodies with a view to the practical achievement of the social, economic and scientific purposes set forth in this Article; and

'(e) to transmit regularly to the secretary-general for information purposes, subject to such limitations as security and constitutional considerations may require, statistical and other information of a technical nature relating to economic, social and educational conditions in the territories for which they are respectively responsible other than "trust territories."' (United Nations Charter, Ch. XI, Art. 73.)

³¹ *The Statesman* (Calcutta), 19 November 1955.

antagonism against government and control by the Europeans in all spheres of life formed a strong under current.'³²

The commission held 'above and beyond all cause the natives are dissatisfied with conditions under which they live and the repressive measures that hem them in at every turn.'

Speaking of the Durban riots of 1949, Field-Marshal Smuts pointed out that 'South Africa was tasting her first fruits' of the Nationalist government's 'racially repressive counter-actionary economic policies.'

When the riots broke out, Durban witnessed the none too dignified spectacle of European women dancing with joy in public streets. The Africans hauled up before the court for rioting frankly expressed their surprise at their arrest and prosecution. They had been assured, they said, that the rioters would be allowed a free hand and that the police would not intervene. The enquiry commission — an all-white affair — had to admit, not very willingly though, that there were Europeans who had actually incited the Africans to acts of violence against the Indians. The commission took care, however, to tone down the above finding by adding that such Europeans were exceptions.

It may be noted in passing that the Durban riots took a toll of 53 Indian lives. Five hundred forty-seven Indians were injured. The loss of property ran to about a million pounds. Three factories, 710 stores and 1,332 dwellings were damaged or destroyed. Eighty-eight Africans were killed and 55 wounded by the military and the police. The European casualties — killed and wounded — numbered about 32.³³

South Africa has witnessed in recent years a series of inter-racial disturbances.³⁴ The recurrence of riots should give food for thought to all genuine friends of the Union of

³² **Apartheid: Strategy of Race Discrimination** (Government of India publication), p. 19.

³³ **Vide Joshi. The Struggle for Equality**, pp. 233-34.

³⁴ Some of the more serious are the Newlands disturbances in January, 1950, the Newclare and Sophiatown disturbances in February, 1950, the Germiston disturbances in April, 1950, and the Zulu-Basuto clash in March, 1952. They took a heavy toll of lives. Hundreds were injured. Properties worth thousands of pounds were destroyed.

South Africa, to all friends of humanity in fact. They are a clear indication that the Union suffers today from a malaise within its own body-politic, that temper has already risen dangerously high. The Union, in fact, is a boiling cauldron today. South African politicians must give careful thought to W.S. Tsotsi's³⁵ note of warning: The government as well as the opposition in South Africa are 'heavy with the wine of racial superiority' and unless there is a quick reorientation of outlook and policy, nemesis will overtake them engulfing both in a common ruin.

The passive resistance movement led jointly by the African National Congress and the South African Indian Congress, which began on 26 June 1952, lends support to the view that the policy of the Union government has been steadily driving the black and the brown into the same camp. The movement, ended in failure as it did, portends much. Based on the Gandhian concept of civil disobedience, the movement was fully non-violent. What it wanted was to register as emphatic a protest as possible against the Group Areas Act, the Bantu Education Act, the Pass laws and other legislation against Africans and Indians. African and Indian volunteers took a pledge of non-violence. They invited arrest by breaking the various racial laws. Some would, for example, sit in European waiting rooms at railway stations. Others again, would attempt to get into public libraries. The government too hit back — they hit hard and hit with promptitude at that. Ten thousand Africans and Indians were arrested. The movement, it must be admitted, never became a proper mass movement. But it was ably-led and well-organised. The discipline and fortitude of the volunteers surprised the government. The movement reached its climax in September 1952. The arrest of late Manilal Gandhi, son of Mahatma Gandhi, and Patrick Duncan, son of Sir Patrick Duncan, a former governor-General of South Africa, was one of the striking episodes of the movement. Along with a group of Africans and Indians and seven Europeans — men and women — they offered themselves for

³⁵ A prominent South African leader, Tsotsi was the president of the All-African Convention in 1952.

arrest on 8 December 1952, by entering without permits an African location at Germiston near Johannesburg. The group sang *Africa*, the anthem of the African National Congress, and patiently awaited arrest. They had not to wait long. All were arrested and produced in court. Manilal was fined £50. He was to serve a prison-sentence of 50 days in default. Duncan was given a heavier sentence. A European and the son of a former governor-general, had he not committed an unpardonable crime by identifying himself with the dirty kaffirs and the unwanted 'coolies'? He was, therefore, to pay a fine of £100 or to serve a prison-term of 100 days. Duncan chose imprisonment 'in order to make the full sincerity of his motives manifest.'

The joint Indo-African passive resistance campaign died out before the end of the year. For the time being a similar movement cannot be possibly launched again successfully. Manilal's death on 4 April 1956, has considerably weakened Indians. On the African side, many leaders have been immobilised. The Criminal Law Amendment Act and various other laws have been passed to check effectively all movements against the government. Penalties for civil resistance were comparatively light till the end of 1952. The penalties for violating public security or segregation laws have since been enhanced and include long prison-sentences, confiscation of properties and flogging. It must be admitted, however, that to our knowledge none has been flogged so far in South Africa for a purely political offence.

The great treason trial now going on in Pretoria illustrate how the Nationalist government use the power of the state against their critics. In December 1956, 156 men and women — Africans, Indians, and Europeans — were arrested in early morning raids and imprisoned in the Johannesburg Fort, where attempts were made to deny them even visits by friends and legal advisers. Bail was at first refused; but granted later on condition that they surrendered their passports, reported to the police once a week and did not attend meetings. They were all charged with having committed acts of treason or, alternatively, with having contravened the Suppression of Communism Act and produced for

'preparatory examination' before a Pretoria magistrate (F. C. A. Wessel).

The accused were at first charged with having committed acts of high treason during 1953-54. But when the preliminary investigation was drawing to a close and the prosecution evidence alone totalled nearly 2,500,000 words, the Crown started leading evidence on matters prior to 1953. The original allegation that the accused sought foreign aid to subvert the government was apparently abandoned in the final stage. It was alleged instead that the hostile acts that resulted in the charge of high treason were that the accused hindered or hampered the government in their lawful administration by organizing or taking part in a campaign against existing laws and that they (the accused) adopted extra-parliamentary and unconstitutional means in endeavouring to secure their objectives. It was at no stage suggested that any part of such campaigns was unlawful or that any person was incited to commit offences. This is certainly an entirely novel conception of high treason. Defence counsel Berrange aptly pointed out that if this was crime, every church that opposes the apartheid laws, the Black Sash for its campaign against the Senate Act, the university professors who oppose the Separate Universities Bill, are all traitors. The learned counsel called the idea 'nonsense' and accused the government of formulating the charge in this manner in order to 'to stifle all public opinion, all freedom of expression, all acts which even in the state of our existing laws, are still legal, and which have as their object the eradication of laws that are an affront to Christian as well as to social conscience.'³⁶

If the Nationalist definition of high treason were correct, a most astonishing assortment of world leaders and thinkers — dead and alive — would have found themselves in the dock if they lived in the Union of South Africa. Sixty-one of the accused were discharged in December, 1957, with a statement by the attorney-general that there was no case against

³⁶ Quoted in *Africa South* (Cape Town), July-September, 1958, p. 56.

them. 'This,' observes Harry Bloom,³⁷ 'after a detailed preparation of the case had occupied a team of special branch detectives and prosecutors for two years, after ten thousand documents and millions of words of evidence had been led in proceedings that kept the accused in the Drill Hall (Johannesburgh) for a full year.'

Ninety-two of the 156 originally hauled up before the magistrate are now being tried by a special tribunal appointed by the minister of justice. The right of trial by jury has been denied to the accused.

The Indian community is faced today with a crisis of no mean magnitude. The solidarity of the community is threatened with division in its own ranks and before long it might present the sorry spectacle of a house divided against itself.³⁸ 'A wealthier section of the Indian community in the areas affected by the Group Areas Act seems to be prepared to accept residential apartheid in return for guarantees for trading rights.'³⁹ Mahomed Jajbhoy, an Indian millionaire, one of the 2,000 Asians given a year's notice in 1955 to leave Pageview⁴⁰, said in October, 1956, 'We are prepared to sacrifice our residential rights, and if we are guaranteed adequate compensation, we are prepared to go to Lenasia⁴¹ and make it a beautiful township.'

This move by the wealthier Indians to arrive at a compromise with the Nationalist government is not a new one. Early in 1956 some representatives of the South African Indian Organisation, the membership of which is primarily confined to the wealthier Indians, had a secret interview with prime minister Strijdom and placed a similar proposal before him. Strijdom, shrewd man that he was, is said to

³⁷ *Ibid.*, p. 51.

³⁸ *The Statesman* (Calcutta), 12 September 1956.

³⁹ *PTI* Cable from Johannesburg datelined 7 October 1956, published in the *Statesman* (Calcutta), 8 October 1956.

⁴⁰ An Indian area in Johannesburg from 1895 where free-hold rights were granted to Indians in 1937.

⁴¹ Twenty-two miles away from Johannesburg. Lenasia has been declared an Indian area under the Group Areas Act of 1950.

have asked whether the South African Indian Organisation represented the Indian community. The reply was in the negative. The Organisation is now said to be trying to enrol as many members as possible so that it may become a genuinely popular organisation.

The leadership of the South African Indian Organisation will do well to remember that if Strijdom accepts the proposal for only trading rights, he will do so merely with the object of disrupting the united front of Indians against the Group Areas Act. Rich Indians alone will benefit from the acceptance of the above proposal. All others—and they form the bulk of the community — will be uprooted. The acceptance of the proposal by the government will more over turn out to be a trick. Once residential apartheid is accepted, the government will pursue a policy of cancelling as many trade permits as possible and a wholesale expulsion of Indians from their present homes and places of business will be a *fait accompli* before long.

The South African Indian Congress has justly condemned the move of the South African Indian Organisation as suicidal and accused 'the wealthier Indians of trying to save their business at the expense of the rights of the rest of the Indian community.'

Racialism and colour-bar have been viewed from various angles. Not a few have discussed and debated them. The evils of a policy of racial discrimination are many and varied. The worst perhaps is that it very often drives the victims of discrimination into the folds of lawless, anti-social elements. Little wonder the rising generations of Africans in the Union of South Africa are swelling the ranks of criminals in an ever increasing number. Unless steps are taken for their training and ultimate absorption as useful citizens of the community, such potential citizens would be a burden, if not a menace, to the society which rejected them.

South Africa is faced today with the grave problem of dealing with thousands of non-European citizens, who, denied all opportunities of socio-economic betterment, have been turning in hopelessness and frustration 'to the idle and

lawless alternatives left to them.' The powers that be seem to be blind to the disastrous consequences of their racial policy. Not a few Europeans demand that lawless non-European youths should be deported from the townships and placed somewhere out of the way. Such a step, like the quack's prescription, which in reality it is, might work for a time. But it does not go to the roots of the problem. It is but a palliative at best, not a cure.

The European settlers in South Africa are rushing headlong to the abyss. They must not forget that all genuine revolutions are directed against the power and privilege of an exclusive group. They should remember in their own interest that 'even the most submissive people cannot stand, in the long run, the rule of others with whom they have no community of counsel or spirit, into whose ranks they cannot be admitted. They can be temporarily kept in check by force and diplomacy, but such a subjection can never be indefinitely maintained even through the most ruthless forms of slavery.'⁴²

Non-Europeans — the Africans, the coloureds and the Indians — are denied the enjoyment of a full life in South Africa. As Joshi puts it, 'under the pretext of civilisation, the Bantu has been robbed of his freedom, the coloured of his heritage, and the Asiatic of his equality.'⁴³

The day may not be far off when the more or less ten million non-Europeans in the Union of South Africa will rise against about two and a half million of its European population and the consequences are not pleasant to contemplate. Rightly did Mahatma Gandhi tell an Indian delegation from South Africa in the late forties: 'One day the black races will rise like an avenging Attila against their white oppressors unless someone presents to them the weapon of satyagraha.'⁴⁴

All friends of South Africa, of humanity and of world

⁴² H.J. Van Mook, **The Stakes of Democracy in South East Asia**, p. 74.

⁴³ **Apartheid in South Africa**, p. 50.

⁴⁴ Pyarelal, **Mahatma Gandhi, The Last Phase**, Vol. I, p. 247.

peace should read, re-read and ponder over what the late J.H. Hofmeyr, one of the most level-headed Afrikaner statesmen that ever lived, said years ago: 'We have to re-examine our prejudices and some of our traditional attitudes. We have to get away from the wickedness of exploiting colour prejudice for political purposes.'

Postscript

THE Nationalists won a comfortable victory in the 1958 (April) general elections. They polled more votes than in any previous election and have a much more substantial majority in the parliament than ever before. Arbitrary delimitation of constituencies coupled with the weakness of the opposition and the average South African voter's determination to maintain white supremacy accounts for the spectacular Nationalist success at the polls.

The defeat of the United Party, the principal rival of the Nationalists, was a foregone conclusion.

'Assiduously avoiding any real alternative to apartheid, the party salesmen peddled the shoddy underwear of Nationalist policy up and down the country, shouting or whispering its attractions according to the character of the audiences they addressed. In the event, the voters quite clearly preferred the original to the second hand, the established to the equivocal.'

Wherever the United Party won, it did so at the expense of Labour which lost all the seats contested by it and Labour is for the first time unrepresented in the Union parliament. The party, which has consistently fought against apartheid for the last ten years, thus paid dearly for its courage of conviction. The all-white South African electorate has a fanatical faith in white supremacy which it is determined to maintain at any cost and by any means, fair or foul. A South African political party with parliamentary aspirations can ignore this only at its peril. Labour ignored this and exile from the parliamentary scene for the next five years will be its lot.

The die is cast. The Nationalists are in for a third innings and more than ten million non-white South Africans will be ruled or misruled for half a decade by men who fanatically believe, 'Whom God has created separate shall never be joined' (D.F. Malan).

¹ *Africa South*, July-September, 1958.

Johannes Gerhardus Strijdom² (pronounced Stray-dom) the Lord of the Nationalist Hosts, is a self-appointed Messiah whose mission is to save white civilisation in South Africa. Able, energetic, ruthless and narrow-minded, he is a worthy successor and devoted disciple of Dr. Daniel Francois Malan, the arch-architect of the evil structure of apartheid. Strijdom heads the South African cabinet. He believes in 'rugby football (almost a religion in South Africa), the Dutch reformed church, republicanism, the Afrikaans language and apartheid. 'He makes no secret of his hatred for the British, the Jews, capitalism and royalty.' Apartheid and *baaskap* (domination of blacks by whites) are the principal planks of his policy. 'There is,' says Strijdom, 'no half-way house between domination and equality. Is there any one in South Africa stupid enough to believe that if there was equality, the white people would be able to maintain themselves in South Africa?'

Dr. Henrik Frensch Verwoerd, the minister for native affairs, is a fanatic and, like all fanatics, can see only one side of the argument, which, of course, is his own side. A major luminary of the 'Broederbund,' a secret society whose goal is a South African Republic 'with the Afrikaners on top, the British, the underdogs, and the coloureds, an inexhaustible pool of cheap labour.' Verwoerd would stop at nothing to achieve his object.

Believe it or not, South Africa too has a ministry of justice. Ministry of injustice would have been a more appropriate nomenclature for the department headed by the redoubtable Charles Robert Swart, a Nationalist stalwart, who brands every one opposed to Afrikaner ideas as a Communist. He would be satisfied with nothing less than the extermination of the 'traitors', i.e. opponents of the Nationalists. The notorious Suppression of Communism Act arms him with powers that might well be envied by the Romanovs and the Hapsburgs. It empowers him to name individuals, organisations and publications as communist or communistic and punish them as he thinks fit.

² Died on 24 August 1958.

Erik Hendrik Louw, the erstwhile South African representative at the United Nations, is another Nationalist worthy. He is a pillar of his party, who bursts with righteous (!) indignation because 'unscrupulous foreign correspondents...misrepresent South Africa abroad.' Louw would have us believe that every objective report on conditions in South Africa is a fabrication and, the reporter, a liar.

Dr. Theophilus Ebenaezer Donges, Strijdom's minister of the interior, is a perfect prototype of the late Senator McCarthy of the USA. Donges was instrumental in throwing the coloureds off the common voters' roll. He can forfeit the passport of any person without giving any reason. Time and again has he tried to override the decisions of the supreme court.

It is these men, their fellow-travellers and camp-followers, who dominate the South African scene today. In voting for them, the South African electorate voted for revolution no less than for apartheid. The long story of mankind suggests that a ruling minority cannot impose its will upon a hostile majority for all time to come. Attempts to do so will lead to the destruction of cherished social institutions built up through generations. The disintegration of the society itself cannot be ruled out altogether.³

³ For excellent thumb-nail sketches of the more important Nationalist leaders, see Harvey Day's article, 'These Mad Men Rule South Africa' in the *Hindusthan Standard* (Delhi), 13 July 1958.

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THE SMUTS-GANDHI AGREEMENT

Letter of E. M. Gorges, Secretary, Department of the Interior, to M. K. Gandhi

Dear Mr Gandhi,

Adverting to the discussions you have lately had with General Smuts on the subject of the position of the Indian community in the Union, at the first of which you expressed yourself as satisfied with the provisions of the Indian Relief Bill and accepted it as a definite settlement of the points which required legislative action, at issue between that community and the Government; and at the second of which you submitted for the consideration of the Government a list of other matters requiring administrative action, over and above those specifically dealt with in that Bill; I am desired by General Smuts to state with reference to those matters that:

1. He sees no difficulty in arranging that the Protector of Indian Immigrants in Natal will in future issue to every Indian, who is subjected to the provisions of Natal Act 17 of 1895, on completion of his period of indenture or re-indenture, a certificate of discharge, free of charge similar in form to that issued under the provisions of Section 106 of Natal Law No. 25 of 1891.

2. On the question of allowing existing plural wives and the children of such wives to join their husbands (fathers) in South Africa, no difficulty will be raised by the Government if, on inquiry, it is found, as you stated, that the number is a very limited one.

3. In administering the provisions of Section (4) (1) (a) of the Union Immigrants Regulation Act No. 22 of 1913, the practice hitherto existing at the Cape will be continued in respect of South African-born Indians who seek to enter the Cape Province, so long as the movement of such persons to that Province assumes no greater dimensions than has been the case in the past; the Government, however, reserve the right, as soon as the number of such entrants sensibly increases to apply the provisions of the Immigration Act.

4. In the case of the 'specially exempted educated entrants into the Union' (i.e. the limited number who will be allowed by the Government to enter the Union each year for some purpose connected with the general welfare of the Indian Community), the declaration to be made by such persons will not be required at Provincial borders, as the general declarations which are made in terms of

Section 19 of the Immigrants Regulation Act at the port of entry are sufficient.

5. Those Indians who have been admitted within the last three years, either to the Cape Province or Natal, after passing the education tests imposed by the Immigration laws which were in force therein prior to the coming into effect of Act 22 of 1913, but who, by reason of the wording of Section 30 thereof, are not yet regarded as being 'domiciled' in the sense in which that term is defined in the Section in question, shall, in the event of their absents themselves temporarily from the Province in which they are lawfully resident, be treated, on their return, as if the term 'domicile' as so defined did apply to them.

6. He will submit to the Minister of Justice the cases of those persons who have been in the past convicted of 'bonafide passive resistance offences' (a term which is mutually understood), and that he anticipates no objection on Mr de Wet's part to the suggestion that convictions for such offences will not be used by the Government against such persons in the future.

7. A document will be issued to every 'specially exempted educated entrant' who is passed by the immigration officers under the instructions of the Minister issued under Section 25 of Act No. 22 of 1913.

8. All the recommendations of the Indian Grievances Commission enumerated at the conclusion of their Report, which remain over and above the points dealt within the Indian Relief Bill, will be adopted by the Government; and subject to the stipulation contained in the last paragraph of this letter the necessary further action in regard to those matters will be issued without delay.

With regard to the administration of existing laws, the Minister desires me to say that it always has been and will continue to be the desire of the Government to see that they are administered in a just manner and with due regard to vested rights.

In conclusion, General Smuts desires me to say that it is, of course, understood, and he wishes no doubts on the subject to remain, that the placing of the Indian Relief Bill on the Statute Book of the Union, coupled with the fulfilment of the assurances he is giving in this letter in regard to other matters referred to herein, touched upon at the recent interviews, will constitute a complete and final settlement of the controversy which has unfortunately existed for so long, and will be unreservedly accepted as such by the Indian community.

*Department of the Interior,
Cape Town, Cape of Good Hope,
30th June, 1914.*

I am, etc.,
(*Sd.*) E. M. Gorges.

M. K. Gandhi's Reply

Dear Mr Gorges,

I beg to acknowledge receipt of your letter of even date herewith setting forth the substance of the interview that General Smuts was pleased, notwithstanding many other pressing calls upon his time, to grant me on Saturday last. I feel deeply grateful for the patience and courtesy which the Minister showed during the discussion of the several points submitted by me.

The passing of the Indian Relief Bill and this correspondence finally closed the Passive Resistance struggle which commenced in the September of 1906 and which cost the Indian community much physical suffering and pecuniary loss and to the Government much anxious thought and consideration.

As the Minister is aware, some of my countrymen have wished me to go farther. They are dissatisfied that the trade licence laws of the different provinces, the Transvaal Gold Law, the Transvaal Townships Act, the Transvaal Law 3 of 1885, have not been altered so as to give them full rights of residence, trade and ownership of land. Some of them are dissatisfied that full inter-provincial migration is not permitted, and some are dissatisfied that on the marriage question the Relief Bill goes no farther than it does. They have asked me that all the above matters might be included in the Passive Resistance struggle; I have been unable to comply with their wishes.

Whilst, therefore, they have not been included in the programme of Passive Resistance, it will not be denied that some day or other these matters will require further and sympathetic consideration by the Government. Complete satisfaction cannot be expected until full civic rights have been conceded to the resident Indian population.

I have told my countrymen that they will have to exercise patience and by all honourable means at their disposal educate public opinion so as to enable the Government of the day to go farther than the present correspondence does. I shall hope that when the Europeans of South Africa fully appreciate the fact that now, as the importation of indentured labour from India is prohibited and as the Immigrants Regulation Act of last year has in practice all but stopped further free Indian immigration and that my countrymen do not aspire to any political ambition, they, the Europeans, will see the justice and indeed the necessity of my countrymen being granted the rights I have just referred to.

Meanwhile, if the generous spirit that the Government have applied to the treatment of the problem during the past few months continues to be applied, as promised in your letter, in the adminis-

tration of the existing laws, I am quite certain that the Indian community throughout the Union will be able to enjoy some measure of peace and never be a source of trouble to the Government.

7, Buitencingel,
Cape Town,
30th June 1914.

I am, etc.,
(Sd.) M. K. Gandhi.

APPENDIX II

THE CAPE TOWN AGREEMENT OF 1927

Announcement made simultaneously in India and South Africa on the 21st February, 1927, of the terms of the Cape Town Agreement, 1927

1. It was announced in April 1926, that the Government of India and the Government of the Union of South Africa had agreed to hold a Round Table Conference to explore all possible methods of settling the Indian question in the Union in a manner which would safeguard the maintenance of western standards of life in South Africa by just and legitimate means. The Conference assembled at Cape Town on 17 December and its session finished on 12 January. There was, in these meetings, a full and frank exchange of views which has resulted in a truer appreciation of mutual difficulties and a united understanding to co-operate in the solution of a common problem in a spirit of friendliness and good will.

Both Governments reaffirm their recognition of the right of South Africa to use all just and legitimate means for the maintenance of western standards of life.

2. The Union Government recognises that Indians domiciled in the Union who are prepared to conform to western standards of life, should be enabled to do so.

3. For those Indians in the Union who may desire to avail themselves of it, the Union Government will organise a scheme of assisted emigration to India or other countries where western standards are not required. Union domicile will be lost after 3 years' continuous absence from the Union, in agreement with the proposed revision of the law relating to domicile which will be of general application. Emigrants under the assisted emigration scheme who desire to return to the Union within the 3 years will only be allowed to do so on refund to the Union Government of the cost of the assistance received by them.

4. The Government of India recognise their obligation to look after such emigrants on their arrival in India.

5. The admission into the Union of the wives and minor children of Indians permanently domiciled in the Union will be regulated by paragraph 3 of Resolution XXI of the Imperial Conference of 1918.

6. In the expectation that the difficulties with which the Union has been confronted will be materially lessened by the agreement now happily reached between the two Governments, and in order that the agreement may come into operation under the most favourable auspices and have a fair trial, the Government of the Union of South Africa have decided not to proceed further with the Areas Reservation and Immigration and Registration (Further Provision) Bill.

7. The two Governments have agreed to watch the working of the Agreement now reached and to exchange views from time to time as to any changes that experience may suggest.

8. The Government of the Union of South Africa have requested the Government of India to appoint an agent in order to secure continuous and effective co-operation between the two Governments.

Annexure Containing Summary of the Conclusions Reached by the Round Table Conference on the Indian Question in South Africa, 1927

I. SCHEME OF ASSISTED EMIGRATION

(1) Any Indian of 16 years or over may avail himself of the scheme. In case of a family, the decision of the father will bind the wife and minor children under 16 years.

(2) Each person of 16 years of age or over will receive a bonus of £20 and each child under that age a sum of £10. No maximum shall be fixed for a family. A decrepit adult who is unable to earn his living by reason of a physical disability may, at the discretion of the Union authorities, receive a pension in lieu of or in addition to the bonus. The pension will be paid through some convenient official agency in India out of a fund provided by the Union Government to such amount as they may determine.

It is expected that the amount required will not exceed £500 per annum in all.

In every case the bonus will be payable in India on arrival at destination or afterwards, through some banking institution of repute.

(3) Free passage, including railway fares to port of embarkation in South Africa and from port of landing in India to destination inland, will also be provided.

(4) Emigrants will travel to India via Bombay as well as via

Madras. Emigrants landing at Bombay will be sent direct from the ship to their destination at the expense of the Union Government.

Survey and certification of ships shall be strictly supervised and conditions on the voyage, especially in respect of sanitary arrangements, feeding and medical attendance, improved.

(5) Before a batch of emigrants leaves the Union, information will be sent to some designated authority in India at least one month in advance giving (a) a list of intending emigrants and their families, (b) their occupation in South Africa and the occupation or employment which they would require in India, and (c) the amount of cash and other resources which each possesses. On arrival in India emigrants will be (i) advised, and so far as possible, protected against squandering their cash or losing it to adventure, and (ii) helped, as far as possible, to settle in occupation for which they are best suited by their aptitude or their resources. Any emigrant wishing to participate in emigration schemes authorised by the Government of India will be given the same facilities in India as Indian nationals.

(6) An assisted emigrant wishing to return to the Union will be allowed to do so within three years from the date of departure from South Africa. As condition precedent to re-entry, an emigrant shall refund in full to some recognized authority in India the bonus and cost of passage including railway fares received on his own behalf and if he has a family, on behalf of his family. A pro-rata reduction will, however, be made (i) in respect of a member of the family who dies in the interim or a daughter who marries in India and does not return, and (ii) in other cases of unforeseen hardship, at the discretion of the Minister.

(7) After expiry of three years, Union domicile will be lost. The period of three years will run from the date of departure from a port in the Union and expire on the last day of the third year. But to prevent the abuse of the bonus and free passage by persons, who wish to pay temporary visits to India or elsewhere, no person availing himself of the benefits of the scheme will be allowed to come back to the Union within less than one year from the date of his departure. For purposes of re-entry within the time-limit of three years, the unity of the family group shall be recognised though in cases of unforeseen hardship the Minister of the Interior may allow one or more members of the family to stay behind. A son who goes with the family as a minor, attains majority outside the Union, marries there and has issue will be allowed to return to South Africa, but only if he comes with the rest of his father's family. In such cases, he will be allowed to bring his wife and child or children with him. But a daughter who marries outside the Union will acquire the domicile of her husband and will not be admitted in the Union unless her husband is himself domicile in the Union.

II. ENTRY OF WIVES AND MINOR CHILDREN

To give effect to paragraph 3 of the Reciprocity Resolution of the Imperial Conference of 1918 which intended that an Indian should be enabled to live a happy family life in the country in which he is domiciled, the entry of wives and children shall be governed by the following principles:

(a) The Government of India should certify that each individual for whom a right of entry is claimed is the lawful wife or child, as the case may be, of the person who makes the claim.

(b) Minor children should not be permitted to enter the Union unless accompanied by the mother, if alive, provided that (i) the mother is not already resident in the Union, and (ii) the Minister may, in special cases, permit the entry of such children unaccompanied by their mother.

(c) In the event of divorce no other wife should be permitted to enter the Union unless proof of such divorce to the satisfaction of the Minister has been submitted.

(d) The definition of wife and child as given in the Indians Relief Act (No. 22 of 1914) shall remain in force.

III. UPLIFTMENT OF INDIAN COMMUNITY

(1) The Union Government firmly believe in and adhere to the principle that it is the duty of every civilised Government to devise ways and means and to take all possible steps for the uplifting of every section of their permanent population to the full extent of their capacity and opportunities, and accept the view that in the provision of education and other facilities the considerable number of Indians who remain part of the permanent population should not be allowed to lag behind other sections of the people.

(2) It is difficult for the Union Government to take action, which is considerably in advance of public opinion, or to ignore difficulties arising out of the constitutional system of the Union under which the functions of Government are distributed between the Central Executive and the Provincial and minor local authorities. But the Union Government are willing:

(a) In view of the admittedly grave situation in respect of Indian education in Natal, to advise the provincial administration to appoint a provincial commission of enquiry and to obtain the assistance of an educational expert from the Government of India for the purpose of such inquiry;

(b) To take special steps under the Public Health Act for an investigation into sanitary and housing conditions in and around Durban which will include the question of (i) the appointment of advisory committees of representative Indians, and (ii) the limitation of the sale of municipal land subject to restrictive conditions.

(3) The principle underlying the Industrial Conciliation Act (No. 11 of 1924) and the Wages Act (No. 27 of 1925) which enables all employees including Indians to take their places on the basis of equal pay for equal work will be adhered to.

(4) When the time for the revision of the existing trade licensing laws arrives, the Union Government will give all due consideration to the suggestions made by the Government of India delegation that the discretionary powers of local authorities might reasonably be limited in the following ways:

(i) The grounds on which a licence may be refused should be laid down by statute.

(ii) The reasons for which a licence is refused should be recorded.

(iii) There should be a right of appeal in cases of first applications and transfers, as well as in cases of renewals, to the courts or to some other impartial tribunal.

IV. APPOINTMENT OF AGENT

If the Government of the Union of South Africa make representations to the Government of India to appoint an agent in the Union in order to secure continuous and effective co-operation between the two Governments, the Government of India will be willing to consider such a request.

APPENDIX III

THE CAPE TOWN AGREEMENT OF 1932

Statement Made in the Legislative Assembly (New Delhi) and the Council of State (New Delhi) on Tuesday, the 5th April, 1932.

(1) In accordance with paragraph 7 of the Cape Town Agreement of 1927, delegates of the Union of South Africa and of the Government of India met at Cape Town from 12 January to 4 February, 1932 to consider the working of the Agreement and to exchange views as to any such modifications that experience might suggest. The delegates had a full and frank discussion in the Conference which was throughout marked by a spirit of cordiality and mutual good will.

(2) Both Governments consider that the Cape Town Agreement has been a powerful influence in fostering friendly relations between them and that they should continue to co-operate in the common object of harmonising their respective interests in regard to Indians resident in the Union.

(3) It was recognised that the possibilities of the Union's scheme of assisted emigration to India are now practically exhausted owing to the economic and climatic conditions of India as well as

to the fact that 80 per cent of the Indian population of the Union are now South African-born. As a consequence the possibilities of settlement outside India, are already contemplated in paragraph 3 of the Agreement, have been further considered. The Government of India will co-operate with the Government of the Union in exploring the possibilities of a colonisation scheme for settling Indians, both from India and from South Africa, in other countries. In this investigation, which should take place during the course of the present year a representative of the Indian community in South Africa will, if they so desire, be associated. As soon as the investigation has been completed the two Governments will consider the results of the enquiry.

(4) No other modification of the Agreement is for the present considered necessary.

(5) Before passing on to the Transvaal Asiatic Tenure (Amendment) Bill, Honourable Members would, perhaps, like me to comment on the more important points in the settlement which I have just announced.

(a) Recognition by the two Governments of the need of continued co-operation in the common object of harmonising their respective interests in regard to Indians resident in the Union justifies the hope that friendly relations between South Africa and India, which are of such vital importance to the Indian community in the Union, will continue.

(b) It had become increasingly evident for some time before the Conference met at Cape Town that Indian opinion both in South Africa and in India had become unfavourable to the scheme of assisted emigration of Indians. This was due to no shortcoming on the part of either Government but primarily to climatic and economic causes, and the fact that 80 per cent of the Indian population of South Africa were born in the Union. The recognition of the Union Government that the possibilities of this scheme are now practically exhausted should be received with considerable relief by Indian opinion on both sides of the ocean.

(c) The proposal that the possibilities of land settlement outside India should be examined merely carries out an integral part of the 1927 Agreement. It may be welcomed on two grounds:

(i) If it results in a satisfactory scheme of land settlement, it may provide an outlet, especially to the younger generation of Indians in South Africa, in a country where they may have greater opportunities both for economic development and for political self-expression.

(ii) The association of a representative of the South African Indian Congress in the investigation will not only be a valuable safeguard for the inquiry, but constitutes an experiment in collaboration

between the Union Government and the Indian community in South Africa which, it is hoped, will be extended to other fields.

(d) The Agreement stands unmodified except as regards the scheme of assisted emigration to India, and the proposed exploration of the possibilities of land settlement elsewhere. This means, to mention only two points out of the last Agreement, that the Government of the Union continue to adhere to the policy of uplifting the permanent section of their Indian population, and that the Government of India will continue to maintain in South Africa an agent whose presence has admittedly proved most helpful alike to the Indian community in South Africa and to the promotion of friendship between the two countries.

(6) I shall now endeavour to deal with the Transvaal Asiatic Tenure (Amendment) Bill. The Conference decided that it should be considered by a sub-committee consisting of two representatives of each delegation. After discussion in the sub-committee Dr Malan, who was one of the Union representatives, agreed to place informally before members of the Select Committee, which had prepared the Bill, suggestions of the delegates from India. Results of this consultation may be summarised as follows:

(i) Clause 5 of the Bill which embodied the principle of segregation by providing for the earmarking of areas for the occupation or ownership of land by Asiatics has been deleted. Instead, the Gold Law is to be amended to empower the Minister of the Interior after consultation with the Minister of Mines to withdraw any land from the operation of sections 130 and 131 in so far as they prohibit residence upon or occupation of any land by coloured persons. This power will be exercised after inquiry into individual cases by an impartial commission presided over by a judge, to validate present illegal occupations and to permit exceptions to be made in future from occupational restrictions of the Gold Law. It is hoped that liberal use will be made of this new provision of the law so as to prevent the substantial dislocation of Indian business, which strict application of the existing restrictions would involve, and to provide Indians in future with reasonable facilities to trade in the mining areas without segregation.

(ii) The Bill has also been amended so as to protect fixed property acquired by Asiatic companies up to 1st March, 1930, which are not protected by section 2 of the Act of 1919. This will have the effect of saving many Indian properties which, though not acquired in contravention of the letter of the Act of 1919, were acquired contrary to its spirit.

(iii) Local bodies whom Clause 10 of the Bill required to refuse certificates of fitness to an Asiatic to trade on the ground that the applicant may not lawfully carry on business on the premises for which the licence is sought, shall have to treat a certificate issued

by a competent Government officer to the effect that any land has been withdrawn from the restrictive provisions of sections 130 and 131 of the Gold Law as sufficient proof that a coloured person may lawfully trade on such land. As it is proposed to maintain hereafter a register of all lands in proclaimed areas where Asiatic occupation is permitted, such a provision should prove a valuable safeguard to the Indian community.

(7) As against these important concessions, it has to be recognised that the recommendations of the Indian delegation that areas like springs and de-proclaimed land, to which the restrictions of clauses 130 and 131 do not at present apply, should not be made subject to them, and that leases for ten years or more should not be treated as fixed property, have not been accepted. On the balance, however, the amendments which, subject to ratification by the Union Parliament, have been made in the Bill, represent substantial advance on the original Bill.

(8) I must apologise to the House for the length of the statement. I have endeavoured to make it as brief as is compatible with clarity. The Government had hoped that it would be possible to make the announcement earlier, but this was found impossible as the results of the Conference have to be published in both countries simultaneously, and the Union Parliament re-assembles only today after the Easter recess. The Government trust, however, that keeping in view the difficulties inherent in the problem, and after consideration of the statement which has been made today, honourable members will feel satisfied with the results achieved.

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