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CORRESPONDENCE WITH MR. FISCHER

THE correspondence commences from the date of Justice Searle's judgment and covers all the points arising from the Immigration Bill.

Mr. Gandhi's letter to the Minister, 1st April, 1913:—

Mr. Justice Searle's decision regarding the validity of Indian marriages and the statement said to have been made by the Immigration Officer in Natal to the effect that no boys or girls claiming to be the children of resident Indians should be admitted unless they or their parents produced certificates of birth, have created great consternation among my countrymen. And passive resisters have also felt compelled to examine their own position.

According to Justice Searle's decision no Indian marriage whether celebrated in South Africa or elsewhere can be recognised unless it is in accordance with the marriage law of the Cape Province, i.e., every Indian marriage is invalid that is not registered before a marriage officer or celebrated according to the Christian rites. This, in my humble opinion, is an intolerable position and disturbs rights hitherto exercised by Indians. I need hardly draw the attention of the Honourable the Minister to the fact that marriages celebrated according to the Hindu, Mahomedan or Parsee rites are fully recognised in India by Indian Law.

With reference to children, it is a well-known fact that very few births are registered in India. Registration of births is not universally compulsory. And it is practically impossible to produce certificates of birth except in rare cases.

The practical result of both the cases is almost completely to prevent the entry of wives and minor children of domiciled Indians. In the circumstances, I venture to submit that, apart from other considerations, it is necessary, in order to give full effect to the provisional settlement, to so frame the new Immigration Bill as to restore the position as to wives as it availed before Justice Searle's decision and to revoke the instructions regarding children.

May I also suggest that it would be better if the leading members of the Community were consulted regarding proof required by the Government as to marriages or the age or sonship of boys. I am sure that the Indian Community has every desire to co-operate with the Government in facilitating the examination of relationships of wives and children so as to avoid fraud or deception.

The Minister's reply, 10th April:—

With reference to your letter of the 1st instant on the subject of the effect of Mr. Justice Searle's recent decision regarding the validity of Indian marriages, I am directed by the Minister of the Interior to state that it does not appear that any new principle has thereby been laid down, as from the earliest times,

following the introduction of European civilization into South Africa, the law of the land has only recognized as a valid union the marriage, by a recognized marriage officer, of one man to one woman, to the exclusion, while it lasted, of any other. A very old-established section of the Cape population, and a large one in point of numbers, viz., the Cape Malay Community, has always followed the Mahomedan faith and conducted its marriages according to the tenets of that religion; but such unions, unless solemnized by a Marriage Officer, are not recognised under the Marriage Order-in-Council or officially recorded in any way.

You will note that the law does not demand that unions before Marriage Officers should be in accordance with Christian rites in order that they may be duly recognized as marriages. The unions effected before such officers are by no means exclusively confined to persons holding the Christian faith. It is not possible, therefore, to accept your contention that marriages, according to Indian custom, but not celebrated before a Marriage Officer, have hitherto been recognized as valid here; nor is it possible to consider the introduction of any law which would have the effect of disturbing the position so far as it affects the Cape Malay or the Indian sections of the population.

As has already been intimated, the Government has no intention of departing from the present practice in regard to the introduction of the wives and minor children of British Indians lawfully resident in South Africa, and Immigration Officers have been so advised.

Mr. Gandhi's reply to above, 15th April, 1913:—

I have the honour to acknowledge the receipt of your letter of the 10th instant, in reply to mine of the 1st instant, on the question of Indian marriages.

With deference to the Honourable the Minister of the Interior, it is respectfully submitted that the Searle judgment, if my reading of it is correct, lays down a definitely new principle. Hitherto non-Christian Indian marriages have been recognised both by the Immigration Department and the Master of the Supreme Court. Issue of persons married according to the rites of their respective faiths, but not before marriage officers, have been hitherto accepted in intestate estates as lawful heirs. But such issue could not, according to the Searle judgment, be now so recognised. The Master of the Supreme Court, Natal Provincial Division, has already, as will appear from the report enclosed herewith, raised the question.

I am aware that the marriages registered before marriage officers have not necessarily to be Christian marriages. But the vast majority of non-Christian Indian marriages have never taken place before marriage officers. All these and the marriages celebrated and considered by the Indian law to be legal in India,

of Indians lawfully resident in the Union, seem to be adversely affected by the Searle judgment.

I trust that the Government do not expect that these marriages should be solemnized or registered before marriage officers in the Union, in order that they might be accepted as valid in the eye of the law here. I gratefully acknowledge the consideration that the Government propose to show by directing Immigration officers not to disturb the existing practice. But the relief that would be thus afforded would not sufficiently meet the case if only because no administrative action can deal with the legal consequences that are sure to arise from the Searle judgment.

In my letter, I did not raise the question of plurality of wives. That question does not affect vast issues as the one raised by the Searle judgment does. But as your letter seems to imply that South African law does not recognise plurality of wives, I may be permitted to draw the Minister's attention to Act 2 of 1907 (Natal) which countenances the practice among indentured Indians. I refer to Sections 6 and 7 of the Act which I copy and enclose herewith for the information of the Minister.

In my humble opinion the issue raised by the Searle judgment can be effectively dealt with only by amending the marriage laws of the Union so as to legalise marriages celebrated according to the rites of non-Christian religions and performed before non-Christian priests.

[The enclosures are omitted, having been printed in INDIAN OPINION, No. 16, page 93.—Ed. I.O.]

The Minister's reply, 9th May, 1913:—

I am directed by the Minister of the Interior to acknowledge the receipt of your letter of the 14th ultimo on the subject of the validity in South Africa of marriages celebrated according to the rites of Indian faith, and to inform you in reply that it would be entirely opposed to the principles of European civilization to pass legislation which would have the effect of disturbing in any way the position in regard to the solemnization of valid marriages, as it now exists in South Africa under the Roman-Dutch Law, by recognizing as valid any marriages solemnized under a form which permits of the union of one man with more than one woman.

The Minister is quite aware of the provision contained in Natal Act No. 2 of 1907, but that is special legislation intended to apply to a particular class of the community who, it was not contemplated, would become a permanent section of the inhabitants of South Africa.

Mr. Gandhi's telegram to the Minister, 9th April:—

Have just read Immigration Bill. It is open to serious objections from Indians' standpoint. It disturbs, contrary to provisional settlement, several existing rights. Section 3 takes away Supreme Court's jurisdiction hitherto possessed. Clause (a), sub-section 1, section 4, seems to take away the rights of educated Indians who have previously entered the Cape or Natal by reason of their education. Same clause also contemplates the prohibition of entry into the Free State, although the Immigrant may have passed the education test. Sub-section 3, section 4, materially restricts rights possessed by the Natal and the Cape Indians to re-enter at any port. Sub-section 1, section 5, deprives Natal Indians, not strictly domiciled but of long residence therein, of rights hitherto possessed. Proviso section 5 restricts the legal effect of Transvaal registration certificates and Natal residential certificates. Bill does not appear to protect rights of intermigration to the Cape or Natal of educated Indians under existing legislation and South African born Indians to enter the Cape under the existing Cape laws. Lastly Searle judgment requires amendment of the Bill recognising Indian Marriages celebrated according to Indian religions in order to protect lawful wives and minor children. Hope

above objections will meet the sympathetic consideration of the Minister and thus revival Passive Resistance and all consequent sufferings may be avoided.

Mr. Gandhi to the Minister, 9th April, 1913:—
Referring to my telegram of to-day, I just observe sub-section (g), section five, unlike previous Bill, does not protect wives and minor children of educated entrants. Bill also not clear that no declaration will be required from educated entrants into Free State, although they will remain liable to restrictions as to trade, farming and ownership of land. Could I know why words are added in second schedule extent repeal Act 2, 1907, which don't appear in last Bill?

The Minister's wire to Mr. Gandhi, 15th April:—

Your first telegram ninth. Minister desires me to reply to your points as follows. As to section three, boards of appeal take the place of courts except in question of domicile. There are well established precedents for this. As to Clause (a) Sub-section 1, Section 4, first point you raise appears is covered by section 5 (f) Prohibition of entry into Free State is no new proposal and was contemplated in previous Bill. Sub-section 3, Section 4, as to restriction to one port this provision is necessary for administrative purposes based on experience and is intended to prevent unauthorized entry via ports where Government has no satisfactory control over the movements of prohibited immigrants. Sub-section (f) Section 5, any alteration in the direction indicated by you would seem to confer a right which has not hitherto existed. As to Proviso to the Section, Minister cannot find in the case of Natal that residential certificate conferred any rights. In the case of Transvaal, Section 11 of Act 36 of 1908 gives rights which will, of course, be respected, but cannot see that such rights can be greater in the case of an Indian than in the case of a European who, by long absence, may lose his domicile in South Africa.

Regarding question of intermigration to the Cape and Natal of educated Indians who could pass education test at present imposed, position was clearly stated last year by the Minister of the Interior in his speech on the Second reading of the Bill, that restrictions on Interprovincial movement of Asiatics in South Africa would not be made greater than they are at present and there is no intention of departing from that policy which will be carried out either by granting exemptions or by other administrative action. With reference to Searle's judgment, Government has already intimated that it has no intention of departing from the present practice in regard to wives and minor children. With reference to your second telegram, the wife and minor children of selected educated entrant either come with him and are admitted with him or they arrive after he has acquired a domicile and thus fall under the exemption. Regarding declaration, as pointed out to you last year, the sworn declaration is not an Immigration provision and cannot therefore understand that any difficulty is likely to arise. There is no settled Asiatic community in Free State and it cannot be conceived that any of the educated entrants who are to be admitted in the interests of the Indian community as a whole will ever seek to settle in that Province. Casual visits are provided for without formality. Regarding last point, words were added as last year's draft was defective. In conclusion, Minister strongly deprecates references in your telegram and other communications to passive resistance. The threats therein contained might very possibly, in view of feeling throughout the Union on matter under consideration, lead to results far different from those anticipated by the representatives of the Indian community when making them.

Mr. Gandhi's reply, 15th April 1913:—

Am grateful for Government's full reply. Regret however that the reply is unsatisfactory. The community's experience of boards has hitherto been most

that there was no desire to introduce polygamy, the tendency was to approach the Supreme then, going to say to the privilege. In both the previous and the present Bill, the right of entry into the Free State is recognised. However convenient sub-section four may be, it constitutes a woman who enters from the existing law and practice. India's Immigration Act generally accepts three as a person's wife as equivalent to domicile. Recognition should be made for Natal cannot confer any right not already existing. In Natal an Indian absenting, no matter how many years, can legally re-enter, if he can establish previous domicile as it is liberally defined by the Natal Act. Provisional settlement never contemplated that existing Indian rights could be diminished by the New Bill, if European rights could also be diminished. As a matter of fact vast majority of Europeans cannot be affected by the proviso, but almost every Indian absenting himself over three years will assuredly lose rights of residence—a position which I submit is totally unacceptable. Intermigration is such a tangible right and can so easily be left undisturbed in the present Bill that a promise of mere administrative liberality will hardly satisfy those concerned. Effect of the Searle judgment can be wholly counteracted in my opinion only by legislation. It is submitted that wives and minor children of educated Indians should be protected by clear definition as in previous Bill. If Minister recognise the legal possibility of an educated Indian entering the Free State, declaration by him upon entering clearly unnecessary, and if insisted upon would undoubtedly be an Immigration declaration not required from other immigrants. While admission in fact to Free State may be unnecessary, existence of the right to enter, under a general Bill, is required for respecting the theory of equality in point of Immigration. Your reply does not cover the question of the existing rights of South Africa-born Indians to enter the Cape. Regret that reference to passive resistance has been interpreted as a threat and offended the Minister. Nothing can be further from my desire than to use threat or give offence, but in mentioning the possibility of a revival of passive resistance, I have only mentioned what I know is true. I had thought that by this time Government and people of South Africa had recognised that passive resistance by an unrepresented community and of the type practised by my countrymen was a clean and legitimate method of demonstrating intensity of feeling and securing redress. If it give offence either to the Government or to the people of South Africa, co-workers and myself can only take the consequence and undergo ordeal, however terrible, for a cause which is as dear to us as our own lives, and dearer still if possible.

To this, a reply was received saying that the matters therein raised were engaging the Minister's attention. Telegraphic correspondence was resumed on the 27th May, when Mr. Gandhi, upon reading the discussion on the Committee stage of the Bill, wired as follows:—

Invite Ministers attention to the Transvaal marriage law of 1871 which recognises European marriages celebrated outside South Africa no matter under what form. Similar provision can meet the Indian case. Beg to state that Indians do not demand legal recognition of polygamy. Amendments carried do not appear to protect rights of South Africa-born Indians to enter the Cape under section 4 sub-section (1) para (f) Cape Act 30 of 1906; nor does the Free State difficulty theoretical right appear removed. Submit at the risk of offending the Minister that passive resistance is a certainty if questions included in the provisional settlement are left unsolved in accordance therewith.

The Minister's reply 27th May.—

Yours to-day, amendment was accepted by the Minister to-day in Assembly on the question of recognition of marriages which he was assured by Sir

David Hunter and other speakers would entirely meet the case as advanced by you and other representative members of the Indian community. Regarding the point you raise about South Africa-born Indians entering the Cape this is quite a new question brought forward recently for the first time. There was no mention of it before and the position was exactly the same in last year's Bill and your telegrams of the first and seventh February and letter of the fifteenth February 1912 made great point of the question of intermigration of educated Indians which has been fully met in the present Bill by amendment adopted last week. You will have gathered from the discussion which then took place that the Cape Province is totally opposed to the addition of non-educated Indians. That portion of your telegram which refers to Free State is obscure and cannot follow you. Please elucidate. After the very substantial concessions which have been made in the Bill the Minister hopes he has heard the last of references to passive resistance and that all concerned will loyally accept what that measure provides.

Mr. Gandhi's telegram, 28th May:—

Beg to thank the Minister for the conciliatory tone of the message. Have no desire to hurt his feelings by reference to passive resistance. Yesterday's amendment will not solve the marriage difficulty as it contemplates registration in addition to religious celebration. There is no system of registration in India. Amendment after the Transvaal section quoted in my wire of yesterday would meet the case. Marriages recognised as lawful in India should be recognised here so far as one wife is concerned. It is true that no mention was made about South Africa-born Indians because of my oversight of the particular section of the Cape Act but the settlement is based upon my letter of the 22nd April, 1911, specially maintaining existing rights and General Smuts' reply of the same date. The community could never contemplate surrender of existing rights. Members who spoke during the debate, I fear, spoke in ignorance, believing there was new move to introduce South Africa-born Indians into Cape. There never has been any large desire on the part of Natal-born Indians to enter the Cape but it is inconceivable that they should be deprived of a right possessed by them for years. The matter was specially mentioned to the Honourable Gokhale. Apart from the removal of racial bar, essence of compromise is that existing rights should be maintained. Regarding Free State it is claimed that there should be no legal racial discrimination against Indians as to Immigration. Educated immigrants should therefore not be liable make declaration in section eighth, chapter thirty-three Free State Law. This point was clearly brought out in last year's correspondence. Without seeing the Bill in its amended form it is impossible to say whether the other points are satisfactorily met. If Bill will take time before being considered by the Senate and if Minister desire my presence in order to facilitate discussion and arrive at a settlement, will be pleased to come and wait upon him. Pray assure Minister that my earnest desire is to assist the Government to come to a lasting solution consistently with the honour of my countrymen.

Minister's reply, 29th May:—

Your telegram of the 27th instant. All points raised by you were fully considered by Government and Parliament. In regard to marriage question House of Assembly was not prepared to go any further than it has in the amendment recently adopted and if it is not satisfactory to the Indian community, Minister must seriously consider advisability of asking Senate to delete the provision in question and allow the matter to remain one for administrative treatment in future on the lines which the Minister has already stated he is prepared to adopt and is as a matter of fact now adopting. Minister went out of his way to

consider the amendment proposed by Mr. Alexander and only accepted it on the assurance that it would remove the grievances of the Indians. The contention you are now setting up with regard to the rights of South African-born Indians to enter and reside in the Cape province is one that Parliament will not agree to. None of the questions which led up to the settlement were connected with the position of Indians in the Cape and the Cape Parliament had the undoubted right to alter in any respect it chose the provisions of the immigration law it created and it is entirely in deference to public opinion in Cape Province that Parliament was not able to meet you in the points you raise. You must surely admit the entire reasonableness of the attitude of the Cape public. The Government has kept the door open for the educated Indian who can comply with the existing European language test and in doing so met what it thought was your great point about the intermigration of the educated person but Parliament after full discussion refused to agree to allow every Indian born in Natal the right to enter the Cape. As already intimated, the matter of declarations under Chapter xxxiii of the Free State laws can and will be dealt with administratively. Any suggestion specifically to alter the terms of the law would mean strenuous opposition on the part of the Orange Free State and the possible withdrawal of the Bill which is a contingency that the Government is not at this hour prepared to face. Minister much appreciates your offer to come to Capetown but does not think it necessary as he is fully aware of the attitude of all members of the legislature on the points you raise and can hold out no hope that Parliament will alter the Bill on any of the points under reference.

Mr. Gandhi's reply, 30th May:—

While I beg to thank Minister for exhaustive reply, feel bound respectfully to point out that amendments so far carried do not settle outstanding questions.—Am convinced that the marriage amendment requiring as it does the impossible condition of registration is totally useless. If therefore Government cannot see their way to remove registration clause, it would certainly be more honest to withdraw the amendment. As for South Africa-born Indians if original draft had respected existing rights no question would have arisen at the Cape. There was certainly no public demand for a Union Immigration Bill. Indian difficulty could be met by mere amendment of the Transvaal Immigration Law. Then Indians could not raise Cape, Natal, Free State points which they are bound to do now when considering Union Bill. But if European public or Government desire Passive Resisters to sell existing rights of their brethren for gaining freedom from imprisonment or worse, they must respectfully decline to accept a bargain so dishonourable to them. Present Bill not an ordinary bill where Parliament may legislate with freedom. Government if they wish to carry out terms of the settlement can only bring in a measure consistent with its terms and are, in my humble opinion, in honour bound to withdraw it, if Parliament will not accept it. I trust that Minister will excuse the frankness with which I have taken the liberty to express my sentiments.

The following telegram was despatched on the 29th ultimo to the Minister of the Interior:—
"From Committee, Colonial-born Indian Association, 156, Victoria Street, to Interior, Capetown.—Colonial-born Indians desire thank you for amendments to Immigration Bill. Unless principles statutory equality, full recognition status Indian wives preservation existing rights accepted, Bill even as amended will be unsatisfactory. Respectfully point out Minister's amendment section 5, sub-section (e), deprives almost all Natal-born Indians existing right under section 4, sub-section (f), paragraph (a), Cape Act."

Boksburg

The Health Committee of the Town Council on the 28th inst. just observe that "This Committee has made various Bill, to the old Asiatic Bazaar, the sanitary point of view, is practically declarations when reported upon by the Medical Officer into the in June, 1906, and as all previous efforts, restriction in the endeavour to close this Bazaar, could opinion that drastic steps should now be taken, to careful house to house inspection has been taken and steps taken to have structural alterations made to buildings where absolutely essential. There are several wells in this Bazaar which must be closed, and it is therefore necessary that water should be supplied by the Council. The Works Committee has furnished an estimate of the cost of laying a 2-inch mains down two streets, and connections can then be made to buildings at the usual charge, and accounts rendered in the ordinary way for water. Instructions have been given for this place to be put into as sanitary a condition as possible, and steps are being taken which it is hoped will result in its being put under the control of the Council. We recommended that a 2-inch water main be laid in the old Asiatic Bazaar, at an estimated cost of £200."

The Bill in the Senate

On the 30th ultimo, in the Senate, the MINISTER of the Interior moved the second reading of the Immigrants' Regulation Bill, covering practically the same ground he did when moving the second reading in the House of Assembly and explaining the amendments made in the latter place.

Senator De VILLIERS thought that it would be far better to state plainly that they desired to exclude Asiatics for economic reasons than include them among "undesirable."

Senator SCHREINER said that there was much in the Bill opposed to the principles he held. One had to remember that India was an integral part of the Empire. Legislation of such a character would be a blow to the Indian section of the Empire. It would be regrettable if a Bill were passed which did not coincide with the anticipations which Mr. Gokhale had when he left. They should bear in mind that an Indian was placed on a different footing from the alien, and therefore a right of appeal in the superior Courts should not be denied him. When in any country the superior Courts were prevented from taking steps to protect the liberty of the subject it was a wrong course. Here they were doing this to keep out certain people, and in that respect they were doing wrong. He hoped that the Minister would see the wisdom of not giving the narrowest possible jurisdiction to the superior Courts, as was intended. The Court should have powers to ask the Board to report on any points which required elucidation. If nothing were done, then the clause, which was supposed to be reconciliatory, would be nothing but a stone for bread. They should make it clear that not only the Minister, but also the immigration officers, should have power to decide who were prohibited immigrants, subject, of course, to the right of appeal. When the Bill was originally drafted Clause 5 included the words "any person born in any part of South Africa included in the Union." Such a person was not prohibited. The question then arose of a child who was born of parents in South Africa who were prohibited immigrants. He submitted that birth within the Union of parents who were British subjects precluded prohibition. Now the Minister had moved the words "whose parents were then domiciled in." Those words should be taken out. Otherwise they would only add to the injustice to the Indians as to a wife's position. He wished to empha-

size that there was no desire on the part of the Indians to introduce polygamy into South Africa. In India the tendency was towards monogamy. Were they, then, going to say to an Indian who brought his properly married wife to this country that they could not recognise her? That was the Indians' great grievance. He would suggest that they should provide that a woman who produced a certificate from an official in India stating that she was the legal wife of such-and-such a person should be admitted to this country. They should try to meet the reasonable complaints of the Indians.

At this stage the debate was adjourned.

The Bill passed the second reading on Thursday.—
Reuter.

From the Editor's Chair

THE BILL

THE correspondence between Mr. Fischer and Mr. Gandhi, published elsewhere, shows clearly that Mr. Fischer had fully intended to deprive us of almost every right that we have been enjoying under the existing Immigration Laws of the different Provinces. The only right that was to be left to us was for those who are at present physically residing in the respective Provinces, to live confined in their Provinces with little chance of being able to re-enter if they left their Province. Thanks, however, to the stubborn opposition from the Unionist Members and the fear of passive resistance, some slight modifications have been introduced into the measure. We wish that the Unionist Members had retained their firmness to the last. But Mr. Fischer successfully put them off the scent by telling them that the Imperial Government had already approved of the Bill. But the correspondence makes it clear that, in spite of the amendments, the Bill offers no settlement of the Indian question, that it leaves many big gaps and that if they are not filled up, passive resistance is sure to revive. Mr. Fischer must consider us to be a perfectly stupid community, if he thinks that, with vested rights taken away, we are going to accept his measure. The threat to withdraw the marriage amendment, if we do not accept his measure, is unworthy of a responsible Minister. Either the amendment is intended to remedy a fault or it is useless. If it is so intended, the attitude of the community cannot affect the necessity of the amendment. But it is perfectly true that the amendment is quite useless and it would be more honest to tell us that our marriages are not to be recognised than to mislead us, by an ineffective amendment, into believing that our wishes are being respected. This marriage difficulty, however, is only one of the many defects in the Bill. And, unless the Senate is prepared to adopt heroic measures, the Bill, which is supposed to have been designed to satisfy passive resisters, will simply compel them to revive the struggle, cost what it may.

THE BLOOD MONEY

THE two cases we publish in this issue regarding the incidence of the yearly exaction of £3 per head from every ex-indentured man and woman, and every child over a certain age, demonstrate its criminality. At Greytown, a poor woman has not only to undergo imprisonment, with hard labour, but to sell her jewellery to pay the arrears. At Maritzburg, a poor man, in order to escape the levy, wishes to go to India, but he is prevented from so doing because he has failed to pay the tax. A tax whose collection involves such cruelties can only be defended in countries where slave owning is no shame but an ordinary form of ownership. We are aware that the charge of slave owning will be indignantly repudiated by many. And,

whilst some of the outward tests of slavery are absent from the indentured labour of Natal, the spirit of slavery is undoubtedly present in the relations between the employers of indentured labour and their servants. And, as they cannot, like the slave owners of old, hold the bodies of their labourers in durance vile, if the latter wish to be free, they have devised the £3 tax, which General Smuts is loath to forego. The Maritzburg case proves quite clearly that the imposition is intended solely to make ex-indentured Indians re-enter into indentures. We hope that Sir David Hunter, who has so generously taken up the question of the £3 tax, will follow up the two cases.

The Present Position

Mr. Gandhi has supplied the *Natal Mercury* with the following statement respecting the Immigration Bill:—

If the Bill is not amended in several material particulars I feel that a revival of passive resistance is inevitable. The provisional settlement of 1911 contains two principal conditions to be fulfilled by the Government, namely, that existing rights should be maintained intact in any legislation that might be passed in order to satisfy the Indian claims, and that Transvaal Act No. 2 of 1907, subject to reservation of the rights of minors, should be repealed, and there should be no racial bar introduced in any such legislation. Both of these conditions are violated by the Bill even in its amended form. Our claim that existing rights should be maintained is fortified by a declaration of the Imperial Government, in their despatch dated Oct. 7, 1910, in which it is specially laid down that "any solution (of the Transvaal controversy) which prejudiced or weakened the present position of Indians in the Cape Colony and Natal would not be acceptable to his Majesty's Government," and Mr. Harcourt emphasised the point once more in his telegram of Feb. 15, 1911, in discussing the Immigration Bill of that year. That existing rights are jeopardised is clear from a consideration of the following facts:

South Africa-born Indians have, under the present Cape Immigration Act, the unconditional right to enter that Province. This right is now being taken away. If the Bill is not adequately amended, this deprivation will constitute a very serious grievance, and passive resisters will lose all title to respect if, for the sake of avoiding the hardships of gaol or any other penalty to which they might be liable, they were to accept such a bargain. I do not know what other fatal defects there may be in the Bill as amended. The question of domicile, for instance, may have been left in a most unsatisfactory position, and so also that of the right of appeal to the Supreme Court.

The marriage amendment moved by Mr. Alexander, and accepted by the Minister, will, I fear, frustrate the very purpose with which Mr. Alexander moved it in such a public-spirited manner. It requires the fulfilment of an impossible condition, namely, registration of marriage at the place of its celebration, in addition to proof of due performance of religious rites. There is, however, no system of State registration of marriage in India. As a matter of fact, a recent arrival from India endeavoured to obtain a certificate of marriage from a magistrate at Bombay, who refused to issue it, on the ground that he was not authorised by law to do so. Nor is this requirement necessary for any purpose whatsoever. The religious celebration is accompanied by so much solemnity, ceremonial, and publicity, that it is the best possible safeguard against collusive connexions. Finally, the strictness with which the marriage question has been dealt with by the Government is quite unwarranted by past experience. During my 20 years' experience in South Africa I have never known of the entry under the Immigration Law of a

single Indian woman belonging to the undesirable class.

The second condition of the settlement appears also to have been broken by the Government, in that a declaration is to be required of such Indian immigrants as may possibly be admitted into the Free State, it not being required of European immigrants. The declaration in question will be highly offensive and wantonly irritating, because, in the case of an educated Indian, who alone could enter that Province, it would be wholly unnecessary. It is merely a statement that the declarant shall not hold landed property, trade, or farm there, disabilities to which he is subject whether he makes the declaration or not. It will be remembered that it was the Free State difficulty that came in the way of a permanent settlement on the two previous occasions. Mr. Fischer cannot now settle the controversy by ignoring it as if it were not of the most vital importance. One can only hope that the Senate will perform its duty as a vigilance Chamber and the guardian of unrepresented interests, by insisting upon amendment of the measure, so as to fulfil both the letter and the spirit of the provisional settlement.

The "Mercury's" Comment

The Immigration Bill (says the *Mercury*) is as yet only partly through the Union Parliament. Mr. M. K. Gandhi addresses, through our columns, to-day, an appeal to the Upper House to perform its functions as a body of review, and adopt the means which it has at its command to see that the Government fulfil the explicit promises to which they are committed with respect to Asiatics domiciled in South Africa. With respect to the declaration by the Asiatics, reiterated by Mr. Gandhi to-day, that they will enter upon a renewed campaign of passive resistance against the Bill unless a number of its present provisions are modified, there are rumours that the Government are disposed to treat upon the matter. So long as it remains in the condition of a mere report we shall not deal with it further than to say that if it is really the case that the Cabinet are proposing to bargain with the Indians respecting the £3 licence in Natal, we hope they will be dissuaded. The tax is one that is universally admitted to be indefensible, and its repeal is both a moral and an actual obligation resting upon the Ministry, especially in view of the belief with which Mr. Gokhale was allowed to go away last November. If the Government have been allowing the matter to lie by pending a disclosure by the Asiatics of their feelings towards the Immigration Bill, their conduct is the reverse of admirable, and the only probability that it raises is that the Indians will adopt the £3 licence as an occasion for passive resistance, in addition to the Immigration Bill itself. The Committee stage of the Bill was accompanied by the acceptance on the part of the Government of several amendments aimed at meeting Asiatic objections, but from Mr. Gandhi's statement it appears that the Indians are very little enamoured of the measure still. Principally comes the question of existing rights, a matter which was the key to the situation when Mr. Smuts was negotiating the provisional settlement, and with regard to the encumbrances which the Bill places upon the right of entrance by South African-born Indians into the Cape Province, there is no doubt that the Ministry's previous undertaking has been infringed. Act 30 of 1906 of the Cape Colony confers the unconditional right of entry upon "any person born in South Africa," and the Bill now qualifies that right in the case of Asiatics by imposing an education test. Very largely, in all likelihood, this has been influenced by what has been proclaimed by Cape members in the recent debates as their fear of an immediate incursion of Natal Indians into the Province if they were not restricted, but, seeing that complete facilities for free movement have existed seven years without anything of the sort occurring, the Ministry seem to have seen more in the argument than is justified by the facts. The

Indians' plight has been, and is still, a hard one; they have endured it with patience and forbearance, and to treat the Asiatic now on the principle of taking away from him even that which he hath would be cruelty as well as political unwisdom.

Press Comments on the Bill

Our Durban morning contemporary gave the following leaderette in its issue of the 27th ultimo:—

We reproduce elsewhere in this issue an announcement published by the newspaper *INDIAN OPINION*, with reference to the attitude taken up by the Indian women in the Transvaal as to a recent decision in the South African Courts, which has become somewhat widely known as the Searle judgment. According to Mr. Justice Searle's finding in a case recently before him, the law of the Union cannot recognise Indian marriages which "have been duly consecrated according to the religious customs of the parties, and are recognised as legal in India." We quote the message from the Transvaal Indian Women's Association. As complementary to this may be observed a telegram which has been despatched to the Government, under the signature of Mr. William Hosken, in the name of the European Committee in Johannesburg, formed in connection with the Transvaal Asiatics' passive resistance movement. The latter remarks upon the Immigration Bill as being a measure which "interferes with rights at present secured by law, or are otherwise recognised," and express to the Minister its view that "the objections raised by the Indian community are sound." These are intimations of Transvaal opinion on the subject, and are notable if only in the character of their origin, but we believe that the bulk of fair-minded and experienced opinion in Natal also will respond with sympathy the request of the Indian women for such an amendment of the law as will meet, first of all, the position set up by the Searle judgment, and, secondly, such action by the Legislature as will secure a drastic overhaul of the Immigration Bill in the directions in which it interferes with the rights of domiciled Asiatics. The hindrances to European immigration which the Bill might provide are for the moment apart from the vigorous and deep-seated resentment which the measure has produced among the Indians in the country, and bearing in mind the experiences which the Transvaal underwent with these people six or seven years ago in connection with the Registration Ordinance, there will be very little public desire, we imagine, for a renewal of the passive resistance movement on the part of the Asiatics, especially with the extended scope which Union makes possible. The Indians are a peculiarly resolute race under circumstances of moral stimulation, such as enactments like the Immigration Bill might furnish, and the amount of success which the forces of repression applied by the Government would meet with in keeping the movement within bounds is wholly dubious. Mr. Gandhi has already made an open declaration that the male Indians will organise a general passive resistance against the Immigration Bill if it passes, and now it seems that the women are prepared to join them as a protest against the Searle decision. After all, mere simple justice is what will prove to be the solvent of this menace to South Africa's social peace, and if the Government disregard the warnings they have openly before their eyes they will be lamentably wanting in public duty.

"The Star"

This Asiatic question (says *The Star*, Johannesburg) is far too important and too irritating to warrant a continuance of the arbitrary, shilly-shallying methods of the past. If Mr. Fischer has any views of his own on the subject matter of his Bill, he has carefully concealed the fact in the two speeches which he has made. Indeed, anything more pathetically impotent

and undignified than Mr. Fischer's reply to the criticisms directed against certain of the more autocratic provisions has never been surpassed even by any of the unique precedents established by the Buxa Government. There is really no excuse for the unwillingness or the incompetence of the Minister of the Interior to face the problem in a straightforward and statesmanlike manner. He has had the unfortunate experience of General Smuts with his two abortive Bills to warn him of the pitfalls that lie in his path, and he has also had the advantage of several conferences with the Hon. Mr. Gokhale, the distinguished Indian publicist, and of a clear indication of the views of the Colonial and India Offices. More particularly fortunate has Mr. Fischer been in the fact that he has

been called on to regulate at a time when there is virtually complete agreement among all parties to the controversy that the Union is not alone entitled but—on economic and social grounds—justified in barring the gateways against Asiatic immigrants. As regards domiciled British Indians, all that their leaders now claim—unless they have again changed their ground—may be summed up as (1) the recognition of existing rights, (2) the repeal of the Transvaal Act of 1907, and (3) the abandonment of the principle of the Transvaal law which draws a clear-cut distinction between Asiatics and members of other races. For the most part the differences between the Asiatic leaders and the Government are chiefly sentimental; three-fourths of the trouble which led to or arose from the passive resistance movement would disappear if a settlement were effected in the spirit of the moderate speeches delivered by Mr. Gokhale during his South African tour.

But whatever doubts there may be as to the wisdom of bestowing powers of so drastic a character on any Minister or Department, these extend to the proposal to rob rejected immigrants of the right of appeal to the highest Courts of the land. Why should an applicant for admission to the Union be denied rights which are freely conceded to the meanest criminal? The Opposition—all parties in fact—should be prepared to make sacrifices in the interests of a permanent settlement of the Asiatic controversy, but no political body which has the slightest regard for democratic principles of government and for the liberty of the subject can acquiesce in the Minister of the Interior, his immigration officers, and his Immigration Appeal Boards—the last-mentioned a sensible innovation—being rendered entirely independent of the law and the Courts of the Union, except on points of domicile, in the enforcement of the Immigrants' Restriction Act.

"Rand Daily Mail"

The system is to be so autocratic (says the *Rand Daily Mail*) that even the right of appeal to a court of law is expressly denied. In other directions one has noted a disposition in the Union to push the principle of government by regulation to extremes. The fact that in the past certain departmental decisions have been upset by an appeal to the Courts, does not justify the elimination of so important a right—on the contrary, it is a strong argument in favour of its retention. Upon this point the Bill should certainly be altered. Then again it is not clear whether the "settlement" between the Indian passive resisters and General Smuts has been incorporated in the draft Bill. In Indian circles the outcry against the measure is loud, and a further resistance campaign is threatened. We have no sympathy with the passive resistance business but it does seem desirable that the Government should endeavour to maintain the peace which has lasted for several years. The public have no wish to treat the Asiatics in the Union badly, though they object to new concessions being granted and to further immigration. Mr. Fischer, however, is not at all clear as to the extent to which the new Bill coincides with the compromise effected by General

Smuts. Indeed there is a great deal of force in Mr. Duncan's complaint that the Minister has avoided replying to many of the criticisms launched against the measure, or explaining points upon which information has been desired. It seems to us that when the Committee stage is reached the Government will have to modify the measure considerably, if it is not to share the fate of earlier attempts at the solution of a difficult problem. The plea that the Bill may seem to be ultra-autocratic, but that it will be administered in such a nice manner that nobody will be treated harshly, is not satisfactory. Adequate safeguards against high-handed methods must be inserted in the law itself. It is not right to pass crude legislation and trust to future Ministers and officials to make it workable.

"Natal Mercury"

The decision given by Mr. Justice Gardiner, at Ladysmith, regarding the status of married Indian women as witnesses in causes in which their husbands are concerned will not, we fear, add to the reassurance of the Asiatics in this country (says the *Natal Mercury*). Mr. Justice Gardiner's ruling not only reaffirms the recent Searle judgment, but carries it further, by laying down that an Indian woman married by the rites of her religion, and with no marriage registered under the civil law of the Union, may be compelled to give evidence against her husband on a criminal charge. So we read the effects of the decision. Mr. Justice Gardiner has, of course, only given logical effect to the judgment of Mr. Justice Searle, but having regard to the accumulating disposition among the Indians to resist against laws which are capable of being construed in this way it is time that the Legislature took the matter in hand without longer hesitating. There is no knowing to what extent of inequity and injustice the principle laid down by Mr. Justice Searle may be carried; neither, therefore, the resentment on the part of the Indians arising out of it. There is perceptible evidence that the circumstances of Indian British subjects in the Colonies are becoming a subject of growing Imperial concern. That impression is borne out by the actions taken in London by the Committee there which specially looks after Indian immigration affairs as they apply to Canada. There is a similar Committee exercising supervision over the circumstances of the Indians in this country, and it is not stimulating to our self-esteem to find Sir Mancherjee Bhownagare stating before that body that the position of Indians in Canada is less humiliating and degrading than in South Africa. We are afraid that South Africa is not by way of diminishing the already unenviable reputation it has acquired in this respect. The Canadian Committee is taking steps to induce the Dominion Government's consent to the withdrawal of the "continuous journey" provision attaching to Indians in its Immigration Law, but though that is a hardship sufficiently rigorous upon coloured Asiatics from the British Dependency, amounting, in fact, to practical restriction, it does not touch the rights of Indians already domiciled in the country, and the conditions which the Union Government are creating for them here will probably give rise to considerably more impatience and dissatisfaction on the part of those outside than with-reference to the state of circumstances in Canada. Mr. Fischer strove to give the impression of preciseness in his recent statement on the Immigration Bill in Parliament that the Imperial Government had approved of the measure, but we have a good deal of inclination to believe that the case will be found in the result somewhat different from what the Minister of the Interior declared.

"East Rand Express"

We must confess to a feeling of uneasiness in regard to possible amendments to the Immigrants Restriction Bill (says the *East Rand Express*). The

name of the measure is anything but reassuring, and its provisions not encouraging, but the amendments would make it far worse. As far as we can see, the Government is anxious to enforce anti-Asiatic legislation, and therefore it is a pity the measure is considered a party one. The attitude of some of the speakers to the Bill shows that they have no sympathy with the East Rand's convictions as to Asiatics. On both sides of the House speeches have been made which would imply that the speakers desired to see the Transvaal thrown open to Asiatics from other provinces of the Union. This must be fought to the bitter end. We have had a terrible struggle to keep Asiatics out for many years, and are not going to haul the flag down now when, as regards this district, we are on the ~~eye of victory~~.

Sir Bisset Berry remarked that the Bill should be thrown out because if it was carried there would be trouble with the Indians. Of course there will be trouble, and always will be so long as we have an Asiatic in the Transvaal. We do not blame the Indians for the spirited fight they have put up—it reflects credit on them—but in a state of war such men as Sir Bisset Berry are traitors to the whites if they give the Indians hope that their passive resistance and threats will influence the laws of the country. It would be much better to have the Bill dropped altogether and to leave matters where they are at present. Whatever results, it cannot be too clearly made known that the East Rand district, with its 15,000 electors, will neither have further Asiatic immigration into South Africa nor inter-migration between the colonies, and in this it is heart and soul with the attitude of the Free State members. It must be remembered that the programme of the Indians as laid down by Mr. Gokhale after his return from South Africa is that the Indians, although satisfied for the present with what they had got, should still strive to get, in as short a time as possible, the rights for Indians to be able to leave and enter South Africa, to have liberty of movement from province to province, to be able to reside where they choose, be able to own land and other property, be able to trade, receive proper assistance from the State with regard to the education of their children, be free from special disabilities, enjoy municipal and political franchise, and have the Government service and public life open to them.

The "Natal Advertiser"

"It is to be trusted (says the *Advertiser*) that the Bill will receive the very gravest and most careful handling the House is able to provide. As the draft now stands, it is perfectly certain that it will satisfy neither public opinion in South Africa, nor the Imperial Government, nor the people of India. It is, nevertheless, for white South Africa, while rejecting full right of entry, to persevere steadily in establishing full individual justice for those allowed in."

In the course of another leading article on the Bill, the *Advertiser* says:—

"The British Opposition can, most emphatically, not consent to place a weapon in the hands of even so mildly racial a Government as General Botha's against the Asiatic, that might possibly be employed against the European also.

... we fully recognise that we must, for the sake of justice and our own reputation, deal absolutely fairly with such Asiatics, and especially such British Indians as have been allowed to acquire certain interests and a certain standing here already."

[We might add that our Durban contemporary says a good deal more; some of which shows a want of knowledge of the terms of the provisional settlement. Some, again, is utter nonsense.—Ed. I.O.]

£3 Tax Scandals

Our correspondent at Greytown writes that an Indian woman named Bitula, No. 103,588, was taken before the Magistrate of Greytown on the 28th of April and was sentenced to four weeks' imprisonment with hard labour for not paying her annual licence money amounting to £4 5s. This woman completed her term of imprisonment, had to sell her jewellery and pay the £4 5s.

Some months ago the Magistrate of Greytown made an order against this woman to pay 5s. a month; she paid for two months then she was unable to pay any longer and came away to Maritzburg, where the Magistrate Innes gave her a pass to say that she had lived in Maritzburg, she would not be troubled for her licence money. From Maritzburg she went up to Merrivale where she was arrested on a warrant from Greytown. She was released on the 27th of May, after doing four week's imprisonment and paying £4 5s.

Another Bad Case

In a recent case in the Court of the City Magistrate (says the *Times of Natal*) some light was thrown on the position of Indians whose indentures expire, and who desire to return to India. It is said that the case of the Indian in question is similar to that of many others. The Government claimed the £3 licence from this particular man, who had completed his period of service, but who had been endeavouring to get a passage to India. He had been obliged to wait several months for a ship, and in the meantime spent his money in paying for his maintenance.

Indentured Indians save money with a view to returning to India, and it is stated that owing to long delay in securing passages, after they are ready to sail, numbers of them are prevented from leaving the country. It is pointed out by persons who have become aware of this state of affairs that the tax of £3 on Indians remaining in the country subsequent to serving the indenture period was imposed in order to bring about the return to India of such free Indians, whereas, in consequence of the delay referred to, it is having the effect of keeping them in the Union.

The matter is considered one that should be looked into by the authorities, so that the legitimate wish of these people to leave South Africa may not be balked.

Kharwa v. Union Government

Judgment in this case was delivered by Mr. Justice Solomon, on behalf of the Appellate Court, on the 21st May last. After dismissing the appeal with costs, the judgment concludes:—

His Lordship felt bound, however, to express his opinion that the provisions of Section 10 were unnecessarily stringent. It surely would be sufficient to provide that the money should be deposited merely as security for the departure from the Colony of the immigrant in case he failed to obtain a certificate. The object of the Act was to keep out of the Colony prohibited immigrants, and that object was achieved if the immigrant, upon failure to secure a certificate, voluntarily left the country. There was no justification for mulcting the unfortunate immigrant in the sum of £100 in addition to excluding him from the country. These were matters, however, which could not affect the Court's decision, and for the reasons already given the appeal must be dismissed with costs.

The Chief Justice and Mr. Justice Innes concurred.

Mr. Nightingale for the Government then raised the question of costs in a previous preliminary skirmish and said that the appellant had applied in March last for leave to appeal, but the Court had ruled that leave was not necessary, and ordered that the question of the costs of the application should stand over. He asked that the appellant should now be ordered to pay the costs of that application.

The Chief Justice said that it was quite clear that the application was unnecessary, and there was no need for the Government to have opposed it. There would be no order as to the costs of the application.

Mr. Justice Innes and Mr. Justice Solomon concurred.

The Indian Bazaar

This Bazaar will be held at Johannesburg on the 2nd and 3rd July, and the Committee requests that merchants throughout South Africa, desirous to contribute articles for sale, should post their parcels so as to reach Johannesburg not later than the 20th instant, the parcels to be addressed to the Hon. Secretary, Transvaal Indian women's Association, Box 6522, Johannesburg.

News in Brief

On Wednesday, in the House of Assembly, the Minister of the Interior gave notice to introduce a Bill to amend in certain respects the Indian Immigration Laws in Natal.

An incident is reported in the Durban papers which does not reflect favourably on the courtesy or humanity of Europeans. A certain Mr. Sydney Brown ran down an Indian, who was working on the roads, with his horse and trap. The man was so injured that he had to be taken to the hospital. The Magistrate, in imposing a fine of £3, or three weeks' imprisonment commented upon the fact that accused did not stop.

In the House of Assembly, Sir DAVID HUNTER (Durban, Central) moved: "That the petition from Hajee Hafiz Hoosen and Mahomed Badat, representing the Mahomedan community of Natal, praying that some fit and proper person may be appointed as a marriage officer in the Province of Natal for the solemnisation of marriages of persons professing the Mahomedan faith; and that such marriages should in all respects be governed by Mahomedan law as set forth in the Koran, presented to this house on May 7, 1913, be referred to the Government for consideration." Sir David Hunter intimated that he understood that the Government had already received the petition. The motion was agreed to.—Reuter.

The Times, in an editorial article reviewing the South African Union during its first three years, remarks that, despite General Botha's defeat of Mr. Hertzog, the situation is still confused and illogical, citing among instances General Botha's attitude on the Immigration Bill, (meaning, evidently, the surrender to the Free Staters and the more drastic character than its predecessors.)

Mr. Merriman, in his speech on the Natives' Land Bill, in the House of Assembly, said:—The unfortunate thing was that, owing to this lack of information, all sorts of wrong ideas got about in regard to this Bill. The great difficulty was to find out what the natives thought; and he doubted whether there were more than one or two members in that House who could say that they could get into the mind of a native. What would they give if they could know what the native thought about this matter? He did feel that, before a measure like this was passed, they should find a means of giving the natives an opportunity of presenting their views.

The Natal Mercury Parliamentary Correspondent telegraphs:—"As the debate on the Natives Land Bill rolled on, it was followed during afternoon hours by a native—the only member of his race present—who sat in the gallery. His dress and manner argued him to be both civilised and intelligent. His single silent form

objectified in imagination the four million of his fellows outside these walls whose more vital interests were under discussion without one voice of their own being upraised to explain their view point."

Lately the Bombay High Court decided a case in which an English wife of a Parsee who did not live in India, could not legally claim maintenance from him (says the *Punjabee*). This is believed to be harsh and against the interest of English wives of Indians. No doubt it is. But Indian law does not prevent a willing husband or wife living together, whatever may be the nature of their marriage. But this is what the South African law has done in respect of the Indians married to more than one wife. The law there and in Canada has kept out the willing wife from an anxious husband. Who can deny this is still greater hardship and cruelty? The *Bombay Chronicle* in commenting on the case, writes:—"How any court within the British Empire can declare such a marriage void, on the ground that it was contracted on a polygamous basis is hard to understand, or is it merely another of those senseless pin-pricks which Colonial sentiment loves to apply to the Indian immigrant? In any view of the matter, the decision seems clearly wrong; and the Colonial Office should lose no time in adopting remedial measures."

That even to-day the women of India can not only distinguish themselves in learning, but also leave their male competitors behind them is shown by the signal success achieved by a young Brahmin lady of eighteen who stood first in the Vidvat examination held at Madras in 1912. Out of 250 candidates, men and women who appeared for this examination, Sreemati Kana Kamma stood first and obtained record marks in Literature, Science and History and carried away so many as six gold medals and Rs 126 in money prizes. It will not be out of place to mention here that she was widowed in her 10th year and has been receiving instruction in Telugu and Sanskrit at the feet of a Pandit who is a relative and is very pious and orthodox.

Every man in the United States who has 1 per cent. of negro blood in his veins is classed as a "nigger," says a writer in *Chamber's Journal* in an article on "The Colour Line." In some of the Western States, where negroes are few, they are treated with more toleration. Their place is there taken by the Chinaman, who is treated with great indignity. It is otherwise in the British West Indies, where the term "coloured man" and negro are not synonymous, the former generally referring to a person of mixed blood. Nor is the black man in the West Indies subjected to the indignities which fall to his lot in the United States. In the West Indies a white man may even marry a coloured woman without losing caste; though such a union is looked on with horror in the United States, and in some States is prohibited under heavy penalties. In Brazil, as well as in the Spanish-American Republics, blacks and whites live in perfect harmony; there is no racial feeling such as exists in the United States.

Taking account of these various groups of undoubted facts, many of which are so gross, so terrible that they cannot be overstated, it is not too much to say that our whole system of society is rotten from top to bottom, and the social environment as a whole, in relation to our possibilities and claim, is the worst that the world has ever seen.—Dr. Alfred Russel Wallace.

Above all, education should inculcate a spirit of tolerance, which was the one thing necessary in South Africa. History made us realise that every race and every nation brought something to the general store of humanity. It was not by depressing others, but by striving to raise ourselves, that we would truly achieve greatness.—Mr. Merriman at Stellenbosch.

ઇન્ડિયન ઓપિનિયન.

પુસ્તક ૧૧ મું.

ફ્રીડેસ, શનિવાર, તારીખ ૭ મી જુન, ૧૯૧૩.

અંક ૨૩.

અધિપતિની નોંધ

આ બીલની શું દશા થશે એ વળી નથી કહી શકાતું. સેનેટમાં ગયા પછી અટકી પડ્યું બીલ જોવામાં આવે છે. મી. ગાંધી સાથે જે પત્ર ને તાર વ્યવહાર મી. શ્રીશરે ચલાવ્યો છે તેમાંથી ચોખું દેખાઇ આવે છે કે યુનીયન સરકારે તે સંપૂર્ણ દગો દેવાનો ઈરોદિ રાખ્યો હતો. જો તેમાં કંઈ પણ ફેરફાર થયો છે તો તેને સાર પ્રતાપ સત્યાગ્રહનો ને યુનીયનિસ્ટ પક્ષના મેમ્બરોનો. પણ સુધારા આ છે તે પુરતા નથી. બાકીનું બધું સેનેટમાં મળી આવે એવો સંભવ ધણો થોડો જોવામાં આવે છે. એટલે આપણે લખવું પડશે એમ માનવું એજ સરળ રસ્તો જણાય છે. આ બીલની અનિશ્ચિત સ્થિતિમાં અમે વધારે ટીકા કરવા નથી ઇચ્છતા. એટલું જ કહીશું કે બીલ કેવું થશે તેના આધાર મી. શ્રીશર ઉપર નથી પણ આ બીલ ઉપર છે.

આ અધિપતિનો ચુકાદો મી. ખારવાની વિરુદ્ધ ગયો છે. જન્મે ના ઈરાવ ઉપરથી જોઈ શકાય છે કે કાયદાનો અર્થ કરવામાં જે ઉદારતા તેઓએ સીરીયનના કેસમાં વાપરી તેવી ઉદારતા આ કેસમાં નથી વાપરી. જન્મે ધારત તો મી. ખારવાના લાભમાં આપી શકત એવો અવકાશ કાયદામાં રહેલો છે. આ ઈરાવ નો અર્થ એ થયો કે જેણે પા. ૧૦૦ સરકારની સાથે મુક્યા હોય તે માણસ જો પોતાનો રહેવાનો હક સાબત ન કરે તો તે માણસ પાછો જાય તો પણ તેના પછિસા સરકાર ચોરીને પચાવી શકે છે. 'ચોરવું' અને 'પચાવવું' આ બંને શબ્દો આકરા છે. પણ રાખતના પા. ૧૦૦ વગર કારણે દાખી મુકવાની રીતને બીજું નામ આપી શકાતું નથી. જડને જે જો કે ચુકાદો મી. ખારવાના ગેરલાભમાં આપ્યો છતાં ટીકા કરી છે કે સો પાઉંડ રાખી મેલવાની કલમ જોઈ એ તેના કરતાં આકરી છે. દાખલ થનાર ધણી પોતાનો હક સાબીત ન કરી શકે તો તેની પાસેથી મળેલા પછિસા તેને યુનીયનમાંથી બહાર કઢાડવામાં વાપરવા એવી શરત બસ થવી જોઈએ. કાયદાનો હેતુ અટકાયત થએલા હોઈ નાતાલ માં ન રહી શકે એટલો છે. ને જો તેવો હોઈ પોતાની મેજે દેશ છોડે તો તે હેતુ પાર પડે છે. બીજારા હોઈને દેશની બહાર કઢાડી મુકવા ઉપરાંત તેને પા. ૧૦૦ દંડ કરવો એ બહુ અભુગતું ગણાય. આવી સખત ટીકા જડને એ કરી છે તેનો લાભ લઈ આ કેસ બાબત સખત પોકાર થવાની જરૂર છે. સરકારને આમ પછિસા ન ખાવા દેવાને ખાતર કામે આપતાં મગલાં બરવાં જોઈએ.

આ ત્રણ પાઉંડનો ખુની વેરો કેટલું દુખ આપે છે તે અમે આ અંકમાં બીજી જગ્યા ખુની વેરો એ જાણેલા જે કેસો ઉપરથી જોઈ શકાશે. એક કેસમાં એક ગરીબડી ઓરત ઉપર પા. ૪ ઉપરાંત ચડી ગયા હતા. તેને સખત મજુરીની કેદ મળી એટલું જ નહીં પણ તેના દાગીના વેચી તેની પાસેથી પછિસા વસુલ કર્યાં. આ ઓરતની આંતરડી જુલમગાર રાજ્યકર્તાને તો આશિવાંદ (?) દેતી હશે. આપણને તેનો કેવો આશિવાંદ મળે ? કેલાક હોઈ કહેશે કે એવા જુલમને સાર કંઈ સમસ્ત હોઈ કેમ જોખમદાર ગણાય ? અમે તો કહીશું કે દરેક હોઈ એ કર ને સાર જોખમદાર છે.

બીજા કેસમાં અંક મરદ ઉપર જુલમ ગુજર્યો. તેખીચારો કરના જુલમથી હોઈ જતો હતો. તેટલામાં તેને ઉતારી પાડ્યો. ને તેની ઉપર કામ ચલાવ્યું. સમટસ સાહેબ ખોલ્યા કે હોઈને હોઈ જવાની લાલચ આપવાનો આ કર છે. ઉપરનો કેસ ચોખું બતાવે છે કે હોઈને ફરી ગુલામી ખત લખી આપવાની સખતીનો આ કર છે. આ ગરીબ નિરાધાર હોઈને ન્યારે તેની ઉપર જુલમ થયો ત્યારે નહીં કહ્યું હોય ? "અહીંની સરકાર તો ઠીક જ છે. તેણે તે કર સુધ્યો ને હવે ઉધરાવે. પણ મારા સુખી ને તવંગર ભાઇઓ શું કરતા હશે ? તેની ફરજ નથી કે મારા જેવા ગરીબડાને સાર તેઓ કંઈક કરે ?" અમારે તો કહેવું પડશે કે આ હોઈને સવાલ વાસ્તવિક ગણાશે. અથવા તો એકમજલ હોવા નો, સહુ ભાઇ હોવાનો ને અહીં હકો માગવાનો દાવો આપણે છોડી દેવો જોઈએ.

કોલોનીયલ ગોવર્ન ઈન્ડિયન એસોસિએશને સરકારને કાગળ લખ્યો છે. હોઈ છુટાસા સલાયે પણ જનરલ સમટસના ભાષણ ઉપર લખ્યું છે. બીજા મંડળો શું કરે છે ? તેઓ કેમ તાર નથી મોકલતા ? અમે જાણ્યા છે તે કેસ ટાંકાને તેઓ સખત રીતે લખી શકે છે કે આ કર નીકળવો જોઈ એ. તેઓ કહી શકે છે કે મી. સમટસનું ભાષણ મી. ગોખલે ની સમજુતી વિરુદ્ધ છે. મી. પોલાકે 'મરકયુરી' માં તે બાબત ઉપર સખત લખાણ કર્યું છે, પણ હોઈ લખાણો ને તારો પરખારા કેપટાઉન જનરલ સમટસને પહોંચ્યાં બટે છે.

મી. ગોખલે તા. ૪ મેએ લંડન પહોંચ્યા છે. કાનનું દરદ જે તેમને કેટલાક વખત થયાં પીડા આપે છે તેમાં મુસાફરી થી સુધારો થયો નથી. મિત્રોની બહામણથી તેમણે કાનના રોગ સમજનાર ડાક્ટરની સલાહ લીધી છે અને હાલ ઈસ્પી તાલમમાં છે. આ લખતી વખતે તેમની સામાન્ય તબીબતમાં સુધારો થતો જણાવાની આશાને લીધે કાપકુપ કરવાની જરૂર ન રહે એમ જણાય છે. 'ઈન્ડિયા'નો લખનાર જણાવે છે કે તેમની તબીબત સુધારવા માટે પુરી કાળજી રાખવામાં આવે છે. તેમની તબીબતમાં જલદીથી સુધારો થાય એવી અમારી ઇધર પ્રારથના છે.