

# Indian Opinion

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## THE STORY OF MY EXPERIMENTS WITH TRUTH

(BY M. K. GANDHI)

PART IV.

CHAPTER XXII.

### WHOM GOD PROTECTS

I HAD now given up all hope of returning to India in the near future. I had promised to my wife to return home within a year. The year was gone without any prospect of my return, and so I decided to send for my wife and children. On the boat taking them to South Africa, Ramdas, my third son, had in playing with the Captain of the boat broken his arm. The Captain had looked after him well and had him attended to by the ship's doctor. Ramdas had therefore landed with his hand suspended in a sling. The doctor had advised that as soon as we reached home the wound should be dressed by a qualified doctor. But this was the time when I was full of faith in my experiments in earth treatment. I had even succeeded in persuading some of my clients who had faith in my quackery to try the earth and water treatment.

What then was I to do for Ramdas? He was just eight years old. I asked him if he would mind my dressing his wound. With a smile he said he did not mind it at all. It was not possible for him at that age to decide what was the best thing for him, but he knew very well the distinction between quackery and proper medical treatment. And he knew my habit of home treatment and had faith enough to trust himself to me. In fear and trembling I undid the bandage, washed the wound, applied clean earth poultice and tied it up again. This sort of dressing went on daily for about a month until the wound was completely healed. There was no hitch, and the wound took no more time to heal than the ship's doctor had said it would under the usual treatment.

This and other experiments enhanced my faith in such household remedies, and I now proceeded with them with more self-confidence. I widened the sphere of their application, trying the earth and water and fasting treatment in the case of wounds, fevers, dyspepsia, jaundice and other complaints, with success in most cases. But now I have not the confidence I had in South Africa, and experience has even shown that these experiments involve obvious risks.

The reference here, therefore, to these experiments is not meant to demonstrate their success. I cannot claim complete success for any experiment. Even doctors can make no such claim about their experiments. My object is only to show that he who would go in for novel experiments must begin with himself. That leads to a quicker discovery of truth, and God always protects the honest experimenter. The risks involved in experiments in cultivating intimate contacts with Europeans were as grave as those in the nature cure methods. Only those risks were of a different kind. But in cultivating those contacts, I never so much as thought of the risks.

I invited Polak to come and stay with me, and we began to live like blood brothers. Mrs. Polak and he had been engaged for some years, but the marriage had been postponed for a propitious time. I have an impression that Polak wanted to put some money by before he settled down to a married life. He knew Ruskin much better than I, but his Western surroundings were a bar against his translating Ruskin's teaching immediately into practice. But I pleaded with him:

'When there is a heart union, as in your case, it is hardly right to postpone marriage merely for financial considerations. If poverty is a bar, poor men can never marry. And then you are now staying with me. There is no question of household expenses. I think you should get married as soon as possible.' As I have said in a previous chapter, I had never to argue a thing twice with Mr. Polak. He appreciated the force of my argument, and immediately opened correspondence with Mrs. Polak who was then in England. She gladly accepted the proposal and in a few months reached Johannesburg. Any expense over the wedding was out of the question, not even a special dress was thought necessary. They needed no religious rites to seal the bond. Mr. Polak was a Jew by birth and Mrs. Polak a Christian. Their common religion was the religion of ethics.

I may mention in passing an amusing incident in connection with this wedding. The Registrar of European Marriages in the Transvaal could not register marriages between black or coloured people. In the wedding in question, I acted as the bestman. Not that we could not have got a European friend for the purpose, but Polak would not brook the suggestion. So we three went to the Registrar of Marriages. How could he be sure that the parties to a marriage in which I acted as the bestman would be whites? He proposed to postpone registration pending inquiries. The next day was Christmas day, and to postpone the date of a solemnly arranged wedding on such a flimsy pretext was more than one could bear. I knew the Chief Magistrate who was head of the Registration Department. So I appeared before him with the couple. He laughed and gave me a note to the Registrar, and the wedding was at last duly registered.

Up to now the Europeans who lived with me had been more or less known to me before. But now an English lady who was an utter stranger to us entered the family. I do not remember having ever had a difference with the newly married couple, but if Mrs. Polak and my wife had some unpleasant experiences they were no more than what happen in the best regulated homogeneous families. And let it be remembered that mine would be considered an essentially heterogeneous family where people of all kinds and temperaments were freely admitted. When we come to think of it, the distinction between heterogeneous and homogeneous is discovered to be merely imaginary. We are all one family.

I had better celebrate West's wedding also in this chapter. At this stage of my life, my ideas about *brahmacharya* had not fully matured, and so I was interesting myself in getting all my bachelor friends married. When, in due course, West made a pilgrimage to Louth to meet his parents, I advised him to return married if possible. Phoenix was the common home, and as we were all supposed to have become farmers, we were not afraid of marriage and its usual consequences. Mr. West returned with Mrs. West, a beautiful young lady of Leicester. She came of a family of shoemakers working in a Leicester factory. Mrs. West had herself some experience of work in this factory. I have called her beautiful, because it was her moral beauty that at

once attracted me. True beauty after all consists in purity of heart. With Mr. West had come his mother-in-law too. The old lady is still alive. She put us all to shame by her industry and her buoyant, cheerful nature.

Just as I persuaded these European friends to marry, I encouraged the Indian friends to send for their families from home. Phoenix thus developed into a little village, half a dozen families having come and settled and begun to increase there.

## Conditions of Lease of Land

### For Training College for Indian Teachers

The following is the text of the lease signed by the Rt. Hon. Srinivasa Sastri for the ground provided by the Durban Town Council for the proposed Training College:—

1. The lease of the lot shall be for a period of twenty-five (25) years commencing on.....and expiring on.....subject, however, to the rights of renewal hereinafter provided for:

2. The rental for the land for the said period of twenty-five (25) years shall be the sum of £60 per annum payable half-yearly in advance at the office of the Town Treasurer, Durban, on the.....days of.....in each and every year.

3. The Lessees shall have the right subject always to the provisions of Clause 11 hereof to renew this lease; but only for one further period of twenty-five (25) years provided that they shall give to the Corporation notice in writing of their intention so to do at least six months before the expiry of this lease. The rental of the land in respect of the renewal period shall be determined by agreement between the parties and failing agreement by arbitration in the following manner: One Arbitrator to be named by the Council and one by such applicant and in the case of difference between such Arbitrators then such Arbitrators shall name an Umpire by mutual agreement or by lot as the case may require; the Lessees paying every expense of the new lease, including Arbitrator's and Umpire's fees. The decision of the said Arbitrators when unanimous, or in case of their disagreeing of the Umpire shall be final and binding as between the said Council and the said applicant for renewal. In other respects the terms and conditions of this lease, save as to the right of further renewal, shall apply to the renewal period.

4. The Lessees shall be debarred from availing themselves of any existing or future scheme for the conversion of the leasehold of this property into freehold and should the Lessees by reason of the provisions of the immediately preceding clause or otherwise howsoever have the right under and by virtue of any Law and/or Ordinance now or hereafter to be in force in Natal to claim a further renewal of this lease or a renewal in perpetuity or should they have the right to claim the addition to this lease of a covenant for renewal, they by their signatures hereto and of their absolute free will expressly waive, renounce and abandon such right and/or rights, declaring themselves to be fully acquainted with the meaning and intention of such waiver, renunciation and abandonment.

5. Brick or stone buildings to the value of at least £10,000 shall be erected upon the demised premises within two years from the date of sale. Building plans must be submitted for the approval of the Town Council before any building operations are commenced and all buildings must comply with the provisions of the then existing Bye-Laws.

6. The Lessees shall pay the rates imposed and levied on the land from the date of sale and upon the buildings when erected in terms of the Corpora-

tion's Rating Laws from time to time in force. It is agreed in terms of Section 92 (2) of Ordinance No. 19 of 1924 that in the third and each succeeding year, if buildings to the value aforesaid shall not have been erected, the Town Council may make and levy rates upon the said sum of £10,000 in addition to the rates levied upon the value of the land without prejudice, however, to its rights under Clause 11 should the Lessees fail to comply with the immediately preceding Clause No. 5. The Lessees, however, shall be entitled to claim any exemption from rates provided for in the said Rating Laws.

7. The premises hereby leased shall be used solely for educational purposes and whenever they shall cease to be so used, this lease shall immediately come to an end and the land revert back to the Corporation.

8. The Lessees shall take the demised land as it stands, and the Corporation shall not be liable for any damage to land or any buildings or erections thereon caused by tides, floodings, gales or any other cause whatsoever; neither shall the Lessees be entitled to claim compensation in respect of the period during which they may be deprived of occupation of the said land and/or buildings or erections either in whole or in part owing to such causes.

9. The Lessees shall lay out and raise the land to such levels as shall be determined by the Borough Engineer and shall erect all buildings and fences and keep the said land in good order and condition, and shall maintain and upkeep the same during the full period of this lease or any renewal thereof.

10. The Lessees shall not assign, set over or part with this lease, or any portion thereof or sub-let the whole or any portion of the property or any buildings thereon without the consent in writing of the Corporation first had and obtained.

11. Should the Lessees fail to pay any rent hereunder on the due date thereof or should they otherwise howsoever commit a breach of any of the terms and conditions hereof, the Town Council shall be entitled forthwith to cancel this lease and that notwithstanding the provisions of Clause 3 hereof. Should the Town Council so cancel, the Lessees shall have no claim against it for re-payment to them of the bonus or any part or of amounts paid by them as and by way of rent. Any such cancellation, however, shall be without prejudice to any claim by the Town Council against the Lessees for damages for breach of contract or otherwise howsoever.

12. Upon the expiry or sooner determination of this lease whether in terms of Clause 7 or 11 hereof or otherwise howsoever the land will revert back to the Corporation without payment or compensation of any nature whatsoever, for any improvements made thereon.

The Lessees will, however, be entitled to remove the buildings erected upon the said land upon due notice being given to the Corporation within a period of six months from the expiry or sooner determination hereof, failing which the said buildings will revert to and become the absolute property of the Corporation without any liability to compensate the Lessees therefor.

13. The Corporation and its Agent or Agents may at any time enter upon the demised premises or any portion thereof for the purpose of inspecting the same.

14. In addition to the foregoing conditions and covenants this lease is subject to the following general conditions upon which, *inter alia*, the Lessees purchased the same by public competition as aforesaid, that is to say:—

(a) The Lessees shall, at their own expense, in so far as the said premises are concerned, do such drainage as may be necessary, including sewerage where and when available; and such work must be carried out to the satisfaction of the Borough Engineer;

(b) The Lessees must protect themselves by fencing or otherwise against damage of cattle trespassing and against accidents by fire set to the grass on the Town Lands;

(c) The Corporation reserve to themselves the exclusive right to all minerals and clay found upon the land and the privilege of digging and working the same;

(d) The land is not to be subject to any process nor put to any use likely to be injurious to the public health of the Town, or of the inhabitants of lots on the Town Lands;

(e) The Corporation reserve to themselves all the rights regarding stormwater drainage of the area and the adjoining district and of making drains and of carrying other Corporation services through the land if such are necessary for the public good and convenience, but the Corporation shall restore as far as possible any of the grounds disturbed by the operations in connection with such drainage.

15. The Lessees declare that..... shall be their *domicilium citandi et executandi* for all purposes in connection with this lease.

16. The cost of and incidental to this lease shall be paid by the Lessees and it is declared that such costs include survey fees, fees for the preparation of the lease including stamps thereon, expenses of advertising of sale and expenses of any arbitration and the Lessees bind themselves to deposit at the office of the Town Treasurer, Durban, within one month from the date of sale all amounts due and payable by them in terms of this clause.

The lease will also be sold subject to the following conditions of sale :—

The above lease will be submitted at an upset bonus of £5, and any bidding will be on that sum as a minimum. The amount of bonus determined at the sale by public auction must be paid to the Town Treasurer before the execution of this lease, and within one month from the date of sale.

## The Indian Question In South Africa

### Mr. Kodanda Rao's Address To Students Christian Association

A very interesting stage on the Students' Christian Association Conference, held at the Show Yard, Port Elizabeth, was reached on Saturday July 7, when Mr. P. Kodanda Rao, M.A., Secretary to Mr. Sastri, Indian Government Agent in South Africa, addressed the delegates on "The Indian Question," says the *Eastern Provinces Herald*.

In introducing the speaker, the chairman Dr. B. B. Keet, said that they felt that the programme of the Conference would not be complete unless they received some more enlightenment on the Indian question in their midst. They approached Mr. Sastri, who was unfortunately unable to attend, but did the next best thing by sending his secretary. He wanted Mr. Rao to convey to Mr. Sastri the thanks of the Association for having acceded to their request.

Mr. Rao then spoke on the lines of the following paper he had written for the occasion :—

Indian immigration into this country began in the year 1860. The European sugar planters of Natal were sorely distressed for want of cheap and efficient labour and they sought such labour from India. The Governments of Natal and of India were parties to the system of recruitment of Indian labour known as the Indenture system. The system was in operation for the best part of fifty years, when it was abolished as it disclosed grave evils and

abuses as it offended the self-respect of India. Under the system some 152,000 Indians were introduced during the period 1860 to 1911. The survivors and their descendants to-day number some 126,000 out of a total Indian population of 174,000 in the Union.

The indentured Indian labourer was promised that, on completion of the term of indenture, he would be enabled to own a piece of land and cultivate it for himself. He would then be a free citizen of Natal. Thus grew the class of the small Indian agriculturist, which to-day owns some 50,000 acres, which works out as one acre in every 125 in Natal. The growth of this class created a spirit of resentment among the European planters, whose main object in importing Indian labour was to retain it as long as possible in their service and not see it set up business on its own. Then began a series of measures to induce the Indian labourer either to re-indenture or to return to India. If he did neither he was penalised to pay a special tax of £3 per annum. Natal would have the Indian as an indentured labourer, but not as a free, independent farmer.

In the wake of the indentured labourer came the Indian trader on his own, as a free immigrant and set up business in Natal. Being comparatively more educated and more enterprising, he crossed over to the Transvaal, then a republic. The Orange Free State from the very beginning set its face against Indian immigration and shut its doors firmly against it. The Transvaal imitated its neighbour's policy but failed to make it effective. The lure of the gold on the Rand was too strong, and the adventurous spirits of all nationalities flocked to the golden city by all manner of means. Soon a small Indian colony sprang into existence and the Boer Government passed a series of laws against them. The Indian community bitterly complained of the disabilities they had to suffer under, and as British subjects claimed the protection of India and Great Britain. The British Government advanced these disabilities as one of the causes of the Anglo-Boer War.

The prosperity and competition of the Indian trader created a feeling of apprehension in the minds of the European traders in Natal and the Transvaal and they succeeded in creating among Europeans a general anti-Indian feeling. The Indian trader was, however, welcomed by the poorer and less articulate members of the European and other communities.

The incorporation of the Dutch Republics in the Empire and of the four states into the Union did not improve the status of the Indian. In fact it steadily grew worse. Law after law was passed both by the Union Government and the Provincial Administration of the Transvaal and Natal with the object of making it increasingly difficult for the Indian to live and make a living in this land with the result that to-day in the Transvaal the Indian cannot own landed property, he must reside in locations and even there cannot own property but must rent it on temporary leases. No new trading licences are issued and though old licences are generally renewed, occasionally such renewals are refused. In Natal, Indians enjoyed the Parliamentary vote until 1896, when it was taken away; in 1924 the Municipal vote was taken away. Indians could acquire fixed property anywhere, but recently Municipalities were granted powers to debar, at their discretion, Indians from acquiring municipal land. It is, of course, quite common for private land to be transferred with anti-Asiatic clauses. New trade licences are refused "as a matter of course" as the Licensing Officer of Durban put it. In the matter of the education of Indian children, the Provincial Council went the length of passing a resolution a few years ago, that no increase of expenditure should be incurred, and even diverted for other purposes part of the subsidy that

the Natal Administration received from the Union Government on account of Indian children at school. No technical education of any kind is provided for Indian children. In trams and trains, in hotels and restaurants, in theatres and movies, Indians are excluded or segregated. No Indian is in practice admitted to colleges and universities, except the Native College at Fort Hare.

Indians are not free to migrate from one Province to another. Indians from Natal and Transvaal can enter the Cape on passing an education test, but no immigration in the reverse direction is permitted.

It is only the Cape Province, where Rhodes' ideal still struggles for supremacy, that the Indian has the municipal and parliamentary vote, can acquire property and trade freely, though even here trade jealousy of the European occasionally leads to refusal of licences.

As against these debit items must be set the credit items. Despite all the restrictions and disabilities the Indian in South Africa has, on the whole, prospered materially and, compared with corresponding classes in India, is certainly better off.

We shall now consider the case for South Africa and the case for India on the Indian problem and the resolutions offered by each and the settlement finally accepted by both. Let us first consider the magnitude of the problem. The Indian and European population are as follows:—

	Indian.	European.
Cape Province	6,500	688,000
Transvaal	15,500	595,000
Natal	152,000	155,000

The Indian population in the Cape Province is negligible, it is comparatively small in the Transvaal and only in Natal does it come very near the European population. Contact and competition between the European and the Indian is, therefore, greatest in Natal. The Europeans of Natal feared that if there was unrestricted Indian immigration and if the Indians had the political and municipal vote, they would swamp the Europeans and submerge western civilisation and institutions and convert Natal into an Indian colony. They have therefore adopted the rather unusual course of disfranchising the Indian—unusual because in all other countries political franchise has only known extension, not contraction.

In the Transvaal the mere number of Indians was no threat to western civilisation. All the same, Indians never had the vote. That Province has been under the sway of the doctrine that there shall be no equality between white and black in church and state, and the Indian if he was not black, was at any rate not white.

There are those who regret the introduction of the Indian into this country because it complicates the task of the European whose hands are already full with the Native problem. Unlike the Native, the Indian has a long civilisation behind him and is imbued with strong traditions of his own that it is almost impossible to assimilate him into European civilisation even if an effort were made. He does not come with a clean slate for the European to write on in his own style. Further, the Indian is an alien, has a country of his own across the Indian Ocean, has been brought here for a specific purpose, namely to labour for the European on the sugar plantations in Natal and not to colonise this country and add to the racial problems which the European has to solve. It will greatly add to the convenience of the European if the Indian would quit this country and get back to his own. The early Europeans of Natal committed a grave blunder in introducing the Indian, but why should the present and future generations of Europeans be penalised and inconvenienced for the short sighted policy of their forbears?

The Indian runs another argument, has a lower

standard of life, he can "live on the smell of an oil-rag" and is therefore an unfair competitor in industry and commerce with the European. He is an economic danger to the European, and must not, therefore, be tolerated. Self-preservation of the European must overshadow every other consideration, even that of bare justice. As a cheap labourer he brings down the level of wages and ousts the European labourer. As a cheap store-keeper or hawker or peddler, he undercuts the European rival and throws him out of business.

Again it is urged that the Indian has lower standards of sanitation and hygiene, and is, therefore, a source of danger to Europeans. He must be got rid of or at least segregated.

The commercial morality of the Indian trader is low. He circumvents and defeats all laws regulating trade and commerce, has less scruple to rush to the insolvency court and make his fortune. Further, he does not spend his money in this country, but he sends it out to his people in India. He is, therefore, a drain on this country. He does not make himself a South African, has always one foot in India and only the other in South Africa.

The Indian exhibits no self-help, does nothing for his communal welfare, but merely waits on the European to do it for him.

Indian civilisation is inferior to European and in India the class of Indians from whom the South African Indians are drawn, are treated with contempt as the depressed classes. They cannot expect better status in this country than they would receive in their own country.

There are some of the points urged against the continued presence of the Indian in this country. What are the solutions offered by South Africa? The very first step to take is to prohibit any further immigration into this country. The next is to consider what to do with Indians already in this country. Some extremists would like the Indian driven out of the country altogether, bag and baggage. Fortunately they are few. The very enormity of their brilliant brain wave staggers them in their sober moods. There are others who would compulsorily repatriate Indians but compensate them for loss of business and for disturbance. But that would involve such vast sums of money that it has not been seriously thought of. The third idea is to trust to voluntary repatriation and hold out inducements for it by offering a free passage and in addition a bonus to those who would return to India. This method is in operation. The idea is to reduce the Indian population, at least prevent its growth, by normal increase of births over deaths.

Yet another line of policy is segregation of Indians both for residential and business purposes. The result of this would be that the Indian would be compelled to live on each other's washings and thereby be economically ruined. Economic depression combined with life in locations, with their low efficiency of municipal services, would soon reduce to a low ebb such of the Indians who persist in remaining in this country, but a good many would be compelled by economic adversity to leave the country. It would be a case of compulsory repatriation or expulsion by indirect pressure without however any compensation. These would have been the inevitable consequences if Dr. Mulap's Areas Reservation Bill of 1925 had been passed. It is not surprising that the Indian community here and in India and the Government of India and the British Government were thrown into unprecedented agitation over the threatened doom. It was then that the Churches in South Africa at the instance of Mr. C. F. Andrews, joined in prayers to God on a particular day all over South Africa that the impending doom might be called off. And the prayers were answered.

Another method of squeezing the Indian out of the country is economic pressure; to make it

increasingly difficult for him to make a living by making it increasingly difficult for him to obtain or retain trading licenses, and by introducing the colour-bar and the white labour policy.

As regards trade, the policy is to increase the number of trades for which trade licenses are necessary, and then vest the power to grant such licenses in municipal bodies, on which Indians are not represented but their European trade rivals are, and then to reduce or eliminate the jurisdiction of courts in such matters. At the present moment large powers are vested in Municipalities to give or refuse licenses. An appeal to the judicial courts lies only on a few specified counts. Even this restricted and in some cases ineffectual interposition of the courts is resented and demands have been made that Municipalities should have absolute power in such matters and the jurisdiction of courts should be altogether eliminated. Not infrequently licenses have been refused for the sole reason that the applicant was an Indian, and the applicants, some of them of long standing, extending to over twenty years have been ruined thereby.

Another method is the colour bar. Recently legislation was contemplated, which would forbid the employment of Indians in all places where liquor is handled. Section 104 of the Liquor Bill would have thrown out of employment over 3000 Indians employed as waiters and cooks in hotels etc., and the profession, which by all accounts, the Indians have done very well in and to the satisfaction of their employers and customers would have been closed to them in future. The evicted Indian employees would have been compelled to seek repatriation to India, for they are unfit for any other work in this country, and few other vocations are open to them. Happily the section was withdrawn, for which the Indian community is grateful to the Government and the Capetown Agreement.

(To be Continued)

## Retrospective Effect of Clause 5

### Appellate Court Judgment

#### In the Case of Principal Immigration Officer vs. Purshotam

The following is the text of the dissenting judgment in the above case given by Mr. Justice Stratford:—

I have come to a different conclusion and desire to state my reasons shortly after doing so. In my judgment, it is by no means clear from the language of the amending section (5 of Act 37 of 1927) what view the Legislature took of the existing state of the law when enacting that amendment. And this being so it appears to me necessary first to ascertain the proper interpretation to be given to section 10 of the principal Act. For if that section has a clear meaning it would afford good ground for concluding that, in enacting the amendment, the Legislature had that meaning in mind and not an erroneous one.

Confining our attention then to the principal Act, what was the object of section 10? What operation had it in its context? It is curiously worded, for it starts with the words "No prohibited immigrant" and then follow the words which state that he (i.e., a prohibited immigrant) shall have no right to claim exemption from being treated as a prohibited immigrant because of certain facts. Pausing here for a moment it will be observed that if the section is intended to deal only with prohibited immigrants, it was not wanted, for on such a supposition it neither gives nor takes away any rights whatever. There is nothing in the Act, so far as I can see, that would have given a prohibited immigrant the right

to claim relief against being treated as one because of the fact that

- (1) He had not been informed that he could not enter or remain in the Union.
- (2) He had been allowed to enter or remain through oversight.
- (3) He had been allowed to enter or remain through misrepresentation.
- (4) He had been allowed to enter or remain because it was not known that he was a prohibited immigrant.

Indeed it seems to me almost absurd to suppose a prohibited would have the hardihood to make any of these claims. Now the section is couched in restrictive terms, that is, it is plainly intended to put further, *pro tanto*, restriction upon immigration to or the right of residence within the Union; therefore, to give it any operation at all we must substitute the word "person" for the words "prohibited immigrant." With that substitution the section has a plain and sensible meaning and operation. And if we turn to sub-section (f) of section 5, the reason for its provisions is at once apparent. Section 5 says:

"The following persons . . . shall not be prohibited immigrants . . .

"(f) any person domiciled in any Province . . ."

So that section 10 was inserted primarily to prevent reliance upon domicile based on residence starting in any manner stated in the section.

If on the other hand it is supposed that the section is only dealing with prohibited immigrants a person having acquired a domicile by residence, however commenced, would not be touched by the section, since he could claim under section 5 (f) that he was not a prohibited immigrant.

We have now to examine section 19 of the Act to see how it would operate on my reading of section 10. This section is drawn in the widest terms. Any person arriving or found in the Union is obliged, if called upon to do so, to satisfy the Immigration Officer that he is not a prohibited immigrant. Sub-section 1 (b) is important:

- (b) "The Immigration Officer may require any person to produce documentary evidence or other evidence relative to his claim to enter or be in the Union."

Sub-section (2) says what the Immigration Officer may do if he is not satisfied.

Let us suppose, then, a person is challenged by the Immigration Officer at a port of entry or inside the Union, and endeavours to satisfy that officer that he is not a prohibited immigrant by relying solely upon his domicile under section 5 (f). In such a case he would have to produce his evidence and if the Immigration Officer found that the domicile originated in any of the ways stated in section 10, he would declare him a prohibited immigrant.

I have said that the section was primarily inserted to prevent reliance on this sub-section, but the use of the word "misrepresentation" no doubt gives it a wider effect and would prevent reliance upon other sub-sections of section 5. For example, a person might satisfy an Immigration Officer or a Board under sub-section (g), but a decision in his favour, if obtained by misrepresentation could not justify his entry into, or residence in the Union, and when challenged the original decision could be reversed. This challenge would be made under section 19. Under that section an Immigration Officer has very wide powers. He can call upon any person to justify his entry or presence in the Union. Under sub-section 1 (b) he may require any person to produce documentary or other evidence relative to his claim to enter or be in the Union. If that evidence took the form of proving that he had already satisfied an Immigration Officer or Board that he was one of the persons mentioned in section 5, it would not avail him if in the enquiry it could be shown



that he had obtained that decision through misrepresentation. So that, in my view, before the amendment of 1927, section 10 was brought into play only under section 19.

Let us next consider what should be the effect of the production of a certificate of registration granted under Act No. 2 of 1907 (Transvaal) or the Transvaal Asiatics Registration Amendment Act of 1908, by a person challenged under section 19. That certificate would constitute his 'documentary evidence' relative to his claim to enter and be in the Union, under sub-section 1 (b) of section 19. And if section 11 of the Transvaal Act of 1908 is not repealed by the Act of 1913, that certificate must be accepted as conclusive evidence that the lawful holder thereof is entitled to enter and remain in the Transvaal. In my judgment it is clear that section 10 did not repeal or affect in any way this provision of the Transvaal Act of 1908. As I have already explained, the operation of section 10 was intended to be confined to section 5, which does not mention registration certificates, and full and reasonable effect can be given to it, without the assumption of this repeal by implication. Moreover, section 4 (2) (b) expressly recognises the validity of these certificates. So that in proceedings under section 19, if the person challenged produces such certificate the Immigration Officer is bound to accept it as "conclusive proof" of his right to "enter or remain" in the province of the Transvaal, and is not entitled to dispute its validity on the ground that it was obtained by misrepresentation. I see no reason to change the view I expressed in the case of Registrar of Asiatics v. Salajee (1925 T.P.D. 71), and accepting that decision as correct, as also the views I have expressed above, it follows that even under this Union Act of 1913 the validity of a certificate could not be attacked except on the ground of fraud of the holder in its procurement, and then only in proper proceedings in a Court of Law to have it declared a nullity.

On the assumption then that the above statement of the law as it existed after the passing of the Act of 1913, is correct, we have now to consider the effect of the amending section as introduced by Act 37 of 1927. There can, of course, be no doubt that the amendment materially altered the law as I have supposed it to be. It makes certificates of registration henceforth annulable on the ground of fraud even if the holder is innocent of fraud, and not only that, it gives for the first time the power to annul to a 'Board.' In both these respects there is a material interference with the rights hitherto possessed by the holder of a certificate.

It is said that in examining the retrospectivity of this amendment, it is more material to ascertain what was the opinion of the legislature as to the state of the law when it enacted the amendment than to ascertain what in reality the law was. I concede that if it is clear that in introducing the amendment the legislature took a certain view of the existing state of the law.....whether right or wrong, has a very direct bearing, when ascertaining the intention as to the operation of the amendment. But I am quite unable to see any indication in the terms of the amending section that the legislature took any other view than the one I have outlined above. There could clearly have been no idea that registration certificates could be set aside or disregarded by Immigration Officers under section 19 on the general ground of misrepresentation. For if that were in the mind of the legislature the amendment would, as far as I can see, be nugatory; it certainly would not be restrictive against immigration in any sense. It is far more reasonable to suppose that the legislature appreciated the existing state of the law and intended to alter it. And if it was understood to be what, in my judgment, it in reality was, then the law was admittedly altered and altered in substance and not in a matter of mere procedure.

The last question then arises whether this alteration must be taken to affect certificates granted in the future only, or should include those held prior to the enactment of this amendment contained in section 5 of Act 37 of 1927. The rule of interpretation is well established; it is that where in express terms or by necessary implication (which is much the same thing) the enactment is to have a retrospective effect, that effect must be given to it whatever the consequences may be. If, on the other hand, the clear intention to have a retrospective effect cannot be extracted from the words used in their context, then the enactment must be taken to affect pre-existing rights. The first sentence of the section is, in my view, clearly declaratory, for, as I have said, section 10 previously had its operation under section 19. The words that follow "if he is in possession of a registration certificate" presuppose the production of such certificate to an Immigration Officer under section 19, and the words that follow also imply, as also the proviso, that such officer may, now for the first time, reject the evidence, for it is only on such rejection that an appeal to the Board takes place. On such appeal the Board may cancel the certificate once and for all on the ground that it was obtained by fraudulent representation. The words, it is true, are clearly wide enough to cover certificates granted before the amendment, as well as those granted after it, but this fact is not decisive for it is a feature that must be present whenever there is a question of retrospectivity, for if the words used do not equally relate to the past the question of retrospective effect would not arise. Considering next the effect of making the section include the certificates already granted, it is clear that they would be extremely drastic and harsh. Even as regards future certificates, hardships will occur, but grantees in future will take their certificates knowing what dangers may lurk ahead and must realise how unimpeachable their evidence must be when procuring this document. But if the section relates to the past, the hardship is far greater. Many of those who have built their whole lives on the validity of their certificates and on a correct legal view of such validity, innocent of any wrong though they be, will suddenly find themselves liable to deportation. It is the final consideration which leads me to conclude that it was not the intention of the legislature to affect the position of existing holders of certificates but only those who obtain them in the future. The question is undoubtedly a difficult one. But being in doubt in my choice between the two views, I think it right to adopt that interpretation which works the least hardship and is the more equitable. In my opinion the appeal should be dismissed.

## Hanging as a Punishment

Dan Griffiths writing in the *Daily Herald* gives ten points against hanging:—

- (1) It ignores the social and individual causes of murder.
- (2) We do not destroy murder when we destroy the murderer.
- (3) Statistics and experience prove that it does not deter.
- (4) It gratifies cruel passions and brutalises the community.
- (5) It imposes too ghoulish a task upon our fellow-men—the hangman and the prison officials.
- (6) It tortures innocent relatives of the murderer.
- (7) It is by no means the only way to 'protect society' from murder.
- (8) In a sense, it is another murder—a judicial murder.
- (9) It is unworthy of the progress we have made in other realms.
- (10) It is an irrevocable penalty, which, in the case of error, can never be corrected or compensated.

### Miss Mayo's Mother India

Dr. B. P. Paranjpye in an article in the *Daily Mail* on "The Truth About Indian Women" replies to Miss Mayo's MOTHER INDIA "the lurid pages of which have caused deep resentment among the people who feel that she has taken some isolated facts, distorted others and shown altogether such disregard for truth, that no reasonable person should attach any weight to her account." As regards marriage, Dr. Paranjpye explains that the theoretical ban against girls remaining unmarried after puberty, has virtually disappeared, and as regards disparity in ages he says:—"The evil is rapidly disappearing, both because the marriage age of girls is rising and also because, to a certain extent, widow marriage is not so unpopular as it used to be." He says that the castes totalling eighty per cent. of the Hindus allow both the marriage of widows and divorce. If a widow leads a miserable existence, it is the exception and not the rule. Dr. Paranjpye adds:—"It is a foulest lie to say that widows in India habitually lead an immoral life. Their general behaviour compares very favourably with that of spinsters and widows in any country in the West. The Hindu loves the woman he marries, while the European marries the woman he loves. Dr. Paranjpye continues:—"This has saved India from the practical breakdown of the marriage system we see in America, where in some cities there is one divorce per every two marriages." Dr. Paranjpye admits that there are evils and India welcomes the help of foreigners like Dr. Besant, Mr. Andrews and Sister Nivedita, but resents "wholesale condemnation of our social system and libel upon our women at the hands of a woman, blind to similar evils among her own people." Referring to a recent press interview in Berlin, in which Miss Mayo said that she wrote the book, "from a sense of duty to India as well as to her own people," Dr. Paranjpye asks, "Is it too much to hope that she will next take up problems nearer home, and use her undoubted abilities to turn fierce light upon the condition of the Negroes and coloured races in America, to the state of law and order in Chicago, to divorce laws in the various States, to the activities of the Klu Klux Klan, to the administration of the Prohibition Law, to oil scandals, to various other evils in her own country and not to insult the manhood and womanhood of the whole country simply because it is down?"

### News In Brief

The sad and sudden death after a lengthy illness of Mr. Dawood Barmania took place in Durban last Tuesday night. The late Mr. Barmania was one of the oldest residents and a prominent merchant of Umzimkulu being there for the last 35 years. He took keen interest in Mr. Sastri's Education scheme towards which he donated a substantial sum. His interest in education was evinced by the good education he gave to his eldest son Mr. M. D. Barmania who is an M.A. of the Calcutta University. The funeral which took place on Wednesday afternoon was attended by a large number of prominent members of the Indian community. The late Mr. Barmania who died at the age of about 68 years leaves behind him a widow and two sons and a daughter to mourn their loss. We extend to them our deepest condolence.

In the course of a leading article on the Condonation Scheme the *Natal Witness* writes:—"As a fact, the fear, if it is a genuine fear, which we very much doubt, that the Government has

laid a diabolical plot and intends to use the scheme merely to secure the names of illegal entrants and those who have helped them, with a view to summarily deporting them, is obviously ridiculous. No Government could repudiate its pledges in the fashion suggested, and neither could its successors. We only hope so.

Two successful meetings were held in Johannesburg and Pretoria last week-end on the Condonation Scheme under the auspices of the Transvaal Indian Congress and Indians have begun to apply for protection certificates.

By proclamation in the *Union Gazette* dated July 18, the Public Health Amendment Act will come into operation on October 1.

Mr. Harry Norman Venn, Commissioner for Immigration and Asiatic Affairs has been appointed Protector of Indian Immigrants, Durban, in addition to his other duties, with effect from June 29, 1928.

Mr. Harry Robinson has been appointed Assistant Protector of Indian Immigrants and to act as Protector of Indian Immigrants, Durban, from time to time, whenever necessary, during the absence on duty, or leave, of the Protector, with effect from June 29, 1928.

It is further notified in the same *Gazette* that the Wage Board is about to investigate the wages, etc., of assistants engaged in shops in certain Municipal areas, excluding Native shops. The previous notice is withdrawn, and it is stated that no fresh returns will be called for, but employers and employees, or registered Trade Unions or employers' Organisations affected, or likely to be affected, by the investigation, are at liberty to submit further written representations on any matter covered by the inquiry, or to amend or supplement any written statements already presented to the Board under former notice. Any written representations should be forwarded to the Registrar and Secretary of the Wage Board, Union Buildings, Pretoria, as soon as possible. The following areas are affected:—Krugersdorp, Roodepoort, Maraisburg, Johannesburg, Germiston, Boksburg, Benoni, Brakpan, Springs, Pretoria, Capetown, Port Elizabeth, East London, Durban, Maritzburg, and Bloemfontein.

An Allahabad message says that Miss Shankumari Nehru, daughter of Pandit and Mrs. Shamlal Nehru and niece of Pandit Motilal Nehru, after a brilliant University career has headed the list of successful candidates at the last L.L.B. examination. She will join the Allahabad High Court Bar, and serve her apprenticeship under Sir Tej Bahadur Sapru. Miss Nehru will be the first practising lady lawyer in Northern India.

The India Office announces that India's representatives at the League Assembly this year are Lord Lytton, Nawab of Palanpur and Sir Basant Kumar Mullick. Substitute delegates are Sir Edward Chamier, Sir Kurma Venkat Reddi Naidu and Mr. Abuljaleel Yusuf Ali.

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