



NATAL INDIAN CONGRESS

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P. O. Box 670;
DURBAN.

14th. August, 1925.

To. The Secy of India Society.
Poona. India.

Sir,

The South African Indian Community are faced with impending repressive legislation which vitally affects their residence both legal and otherwise in this country. The Minister in introducing the Bill assumed the Indians were Aliens.

The vested interests of the Indian Community who have been here for nearly a century are large enough to necessitate immediate action and protest on our part, but being voteless, our protest so far can only be raised ineffectively. Our salvation lies wholly and entirely on the sober influences that you might exert upon the Indian and British Governments; and for this reason we ask that apart from our efforts here you for your part take immediate steps to prevent the proposed legislation ever becoming law. A copy of the proposed Bill which was introduced in the past Session of the Union Parliament was sent to you recently and with this letter we attach a further copy of same with a copy of the various sections of the laws which this Bill seeks to alter or add to, so that you may better appreciate the effects of the changes it seeks to create.

The present Bill is divided into four Chapters, the

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first Chapter deals with reservation of areas; the second with amendments to the Immigrants Regulation Act, the third with the registration of Asiatics in the Transvaal and the fourth being supplementary.

CHAPTER I.

Before discussing this Chapter, the reader must be told that at present in Natal and the Cape Provinces, an Indian is free to buy, sell or lease land. In Orange Free State and Transvaal certain limitations in this respect exist, but the avowed object of the Bill being to affect Indians, as openly admitted by the Minister upon the first reading, and Natal having a population of one hundred and forty thousand Indians, it is clear that we in Natal will particularly and immediately suffer because the present Bill provides for :

- (a) Areas to be set apart in towns and cities and only in such areas shall Indians be permitted to buy and sell land. They will also have to trade in these areas only and no other. All businesses now existing elsewhere under lease shall cease by effluxion of time of current lease or by death of present lessee. This means that within a very short period of time most Indian businesses will cease to exist outside of the area. Indian property owners who to-day are receiving fair rents will be deprived of their reasonable income because their business and residential places will not be taken up by the European Community at a fair rental. We would point out that this portion of the Bill deliberately takes away what we now have and practically compulsorily forces us into segregated areas

in towns and cities.

This Chapter further provides that the Governor-General may proclaim that no Indian shall buy or lease land more than 30 miles away from the Coast line except from an Indian within that 30 miles and if by proclamation areas are set apart within those 30 miles, then Indians will gradually in the same way as townships and cities by force of circumstances be compelled to go into these areas. This means that Indians will be debarred from purchasing or leasing properties anywhere in the Province as they now are entitled to do and will upon the completion of their present leases be compelled to give up their residence and to close down their businesses, or go into the area if there is one within the said 30 miles, and if there is no such area proclaimed that business must necessarily cease. On a hurried computation it is estimated that 500 to 700 Indian business premises in the country are likely to be affected, apart from this an Indian business or landed property outside of the 30 miles cannot be sold or leased to another Indian.

Moreover the Bill empowers the Governor-General not only to proclaim areas but also to deproclaim such areas in part or in whole which means that even after an area has been proclaimed and occupied, no sense of security is enjoyed because the Governor-General can deproclaim such area. It is clear the intention of the Bill is

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to oust the Indian from his present vested proprietary rights and give him practically nothing substantial in place thereof, but virtually makes him a squatter and that at the wish and will of the Minister.

The effect of the operation of these two clauses alone will cripple the whole life and trade of the Indian Community and absolutely without the shadow of a doubt crush out all Indian agricultural work, progress and prospects. In plain language without considering any other phase of the Bill the fate of the Indian is sealed and we are doomed to a legal if not physical death.

This Chapter is based upon the recent Class Areas Bill which the late Smuts Government had on the tapis, but which fell through when the Government changed.

CHAPTER II.

This Chapter deals with Immigrants Regulation. The drastic changes suggested absolutely places into the hands of the Minister and Immigration Officer almost unlimited power to deal with the entry and possible deportation of Indians who have lived in this country for many years.

Section 14. At present an Indian who outstays for a period of three years upon entering the port is required to prove his domicile, notwithstanding he may already then actually have his Certificate of Domicile. He is declared a prohibited immigrant and upon payment of a sum of money which by practice is £31 (Thirty-one

Pounds Stg.) is found sufficient to cover, and as up till now accepted, is allowed to procure the necessary evidence and prove his domicile.

Experience has shown that even this amount was not always easily obtained and our community is unaware of any Indians forfeiting this deposit and absconding and remaining in the country; the community therefore sees no reason for the Immigration Officer being empowered to make the deposit anything up to £100, (One Hundred Pounds Stg.) as this Section provides for. It is quite conceivable and with the present tension of feeling against us as a Community that the Officer might impose such an amount of bail as to effectively preclude an Indian Immigrant being free from custody to procure the necessary evidence to prove his domicile.

It is felt that a capricious officer can easily do tremendous injury to a large number of bona fide domiciled Indians who may seek entry.

Section 16. This Section seeks to revert certain two districts of Natal, namely, UTRECHT and VRYHEID to the Transvaal Province. The intention clearly is that the Minister shall be entitled so soon as he pleases to declare all Indians in these two provinces to be prohibited immigrants under what is now known as the "Deeming Order". (This Order was made by the Minister under Section 4 Sub-section 1 paragraph (a) of the Immigrants Regulation Act of 1913 by virtue of which he declared all Asiatics to be economically unsuited to the requirements of the Union and therefore prohibited immigrants. The validity of this Order was tested in the South

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African Appellate Court but it held the Minister's Order was correct in terms of the said Section). The effect of such an Order will be that hundreds of Indians now there will be compelled to return to their place of origin or domicile which may be Natal or India but most probably India, because as will be shown later, the majority of such persons there are Indians who are descendants of such Indians who originally came here under conditional residence under Act 17 of 1895 and have acquired no domicile in this country. By such an Order, hundreds of Indians can be disposed of without the hope of a successful appeal in view of the aforesaid "Deeming Order". We object to this because so long as these two districts remain as part of Natal, then a large majority may be able to claim domicile in Natal.

Section 16.

Subsection (c) With regard to Section 16 Subsection (c) in this Bill, it is sought to delete paragraph (d) of subsection 2 of Section 4 of Act 22 of 1913 which means that a large number of Indians who have entered Natal and Cape Colony under the education Test may be declared prohibited immigrants under the "Deeming Order" if they applied at the ports of the Union for entry. The deletion clearly takes away a right which we to-day enjoy.

Section 17.

Section 17 requires very close study and investigation to understand the full meaning and effect of it. It is far reaching and fraught with the gravest of consequences. The previous Minister as aforesaid has

declared

declared all Indians to be economically unsuitable. The Minister in introducing the present Bill has referred to Indians as aliens. If all Indians, that is to say, British Indians and Indians of the Native States are said to be aliens then all Indians are necessarily prohibited Immigrants; if the legal interpretation of the word "alien" be made use of, then Indians of the Native States who are here in large numbers will be undoubtedly prohibited immigrants.

The proposed new Section (c) speaks of prohibiting any person whose parents were at the time of his birth lawfully resident and such residence restricted to temporary or conditional residence by any law then in force.

Under Act 17 of 1895 large numbers of Indians came here under terms of conditional residence, and their offspring now the cream of the Natal born Indians numbering thousands born within the past 30 years may possibly be also prohibited immigrants, because at the time of their birth their parents were restricted to conditional residence.

We however think it proper to point out that the Indian Community may successfully meet this position by claiming that the Government through its Minister has issued certificates of discharge to those who came under conditional residence under Act 17 of 1895, thus waiving all claims of conditional residence. It was one of the points raised immediately after the 1914 settlement with Mr. Gandhi and correspondence shows that it was the Government's view to grant these

Indians

Indians complete domicile and the community certainly resents to have to face the ordeal of any test cases, not because of the result, but because of the inconvenience and expense. The question is why should a settled right be interfered with.

The proposed amendment continues to make a person a prohibited immigrant if he is a person who comes under the Deeming Order and/or who has acquired a domicile in a Province of the Union where he was not born. All Asiatics as such may be at the port of entry declared as prohibited immigrants and hundreds of Indians who have acquired domicile with vested interests in other Provinces of the Union and any such person returning to this Union even from a neighbouring Province will be a prohibited Immigrant; this means his domicile in the one Province counts for nothing and he cannot take advantage of his birth place because :

- (a) He has already given up his domicile of birth,
- (b) He is a prohibited immigrant,

he cannot therefore enter at all, notwithstanding any right of vested interests.

This Section proceeds to say that the wife or child of an exempted person returning to the Union within 5 years from 1st August 1925 or within 10 years of the first entry of such exempted person shall not be prohibited. This means that every Indian now in this Union must either before 1st August 1930 bring back his wife and children into the Union, or within 10 years of his first entry into the Union. The effect however is that an

Indian cannot after 10 years from now go to India, marry there, and bring back his wife. This is clearly an infringement and restriction of personal right and liberty.

Notwithstanding this new Bill gives an exempted Indian the right to bring back his wife within 5 or 10 years as the case may be, yet by a further provision in this new Bill he would be prevented from bringing in such wife if it could be shown that :

- (a) he already has a woman still living in the Union with whom there exists a union recognised by this government, or
- (b) any child or children in the Union by any woman at all is still living.

This means that an Indian marrying under the tenets of an Indian religion and not registering such marriage may have children and thereafter divorce this wife according to the Indian religion and thereafter she becomes the registered wife of some other man or remains unmarried, then the first husband cannot go to India and bring a legitimate wife because he has a child resident in the Union by a woman who is still living though not his wife. This heavy punishment is unjustifiable and unproportionate, and is a ban not imposed upon any community in the world.

The definition of 'the child under the age of sixteen' is such as to debar an illegitimate child whose parents later on marry and are looked upon as persons whose marriage could have been registered under Section 2 of the Indians Relief Act 1914, because the child was at the time of its birth not born of
parents

parents who were married at all. Under every law of civilised people it has been held that subsequent marriage legitimatizes birth, consequently the Indian community hold that all children born of parents who ultimately marry and whose marriage is recognised under the Relief Act should be treated as legitimate children.

Section 18. With regard to Section 18 of the new Bill which seeks to make an addition to Section 10 of Act 22 of 1913 we desire to point out that the addition is quite unnecessary, as the present practice is that an Indian even already in the Union may be arrested and declared a prohibited immigrant and dealt with under Section 19 of Act 22 of 1913. Many cases have already been so dealt with.

Section 19. As regards Section 19 of this Bill which makes the addition to Section 22 that for an offence for which imprisonment without a fine is imposed and that such person may be declared a prohibited immigrant, we desire to say that with this addition and the whole Section being read together, than any person in the Union who has ever been sentenced to imprisonment without the option of a fine whether before or after the passing of Act 22 of 1913 can be declared by the Minister to be an undesirable inhabitant and be deported.

If for any reason the Government do not exercise its authority harsh through it may be, the addition still is an incentive to the judicial functionaries influenced by the administrative section to impose

punishments without the option of a fine so as to provide ground for the Minister to secure his necessary number of victims for deportation. This power should never be given to anybody because many of the offences are sometimes best suitably dealt with by imprisonment only, but the circumstances of such offence may never be so grave as to justify deportation. The discretion given to the Minister may never be nor can be from past experience expected to be exercised in our favour.

ction 20. Section 20 of the present Bill will affect a large number of Indians, in that they will be compelled to give up a dual domicile in the Union, because many persons hold a domicile for instance in the Transvaal by birth or residence and have also similiarly by birth or residence have a domicile in Natal. This right will by operation of law cease to exist in three years, which means that large vested interests in one or other of the Provinces cannot be effectively dealt with or protected by the owner and such businesses must necessarily be closed down.

Again Indians including those born in the Union by their mere absence from the Union for more than 3 years at a time lose their domicile. This appears to be in conflict with all known law as regards to domicile because this Bill takes away and does not give effect to a man's legal intention as to his own domicile. This also entirely takes away the present established right preserved to an Indian by virtue of his Certificate of Domicile. In order to preserve domicile a person must return within the three years and then may immediately leave again for another three
years

years. What is to be done with a South African born Indian who absents himself for more than three years and thus loses his domicile? Where is he to go? This surely renders the Act farcical and places the Indian under great inconvenience and unnecessary expenses with no corresponding benefit to anyone. The same argument applies to those who under the amendment are required to return before 1st August 1928.

The provision empowering the Minister to issue permits for a longer period than three years is not obligatory and should he as we expect refuse all applications as a matter of course, then there is no relief from such decision. We feel that the whole of this Section deprives us of our common law rights of freedom and restriction of personal movements. This condition of things must not be allowed to come into existence.

CHAPTER III.

Chapter III applies to registration of Asiatics but deals only with those whose registration should be effected in the Transvaal. The present provisions of Act 36 of 1908 Transvaal gives a Magistrate a right to grant a period of 8 days to an Indian to have himself registered but the present amendment takes away this right and places an Indian's application wholly at the discretion of the Minister. It is felt that this is likely to operate adversely to the Indian and the present law should not be disturbed.

/CONCLUSION

CONCLUSION.

The last comment we make on the Bill is that it is to be made retrospective as from the 1st day of August 1925. The Minister in his first reading explains that he was doing this so as to prevent a scramble by the Asiatics to become possessed of vested interests before the Bill could become law. This retrospective operation is bound to effect all transactions in regard to land amongst the Indian Community. As a matter of fact it has already crippled and effectively restricted transactions in the buying and selling of freehold properties. It is superfluous to remark that this position is unprecedented in the annals of any country.

We shall by every fibre in our system endeavour to calmly and constitutionally protest against this Bill, but from past experience and from present knowledge of the existing race prejudice, we are constrained to believe that our representations will be futile. We however do believe that with concerted action of Indian influence from India and its Government acting with the British Government we may enjoy the protection which was preserved to us in the South Africa Act Section 147 which provides that :

"The control and administration of Native Affairs and of matters specially or differentially affecting Asiatics throughout the Union shall vest in the Governor-General-in-Council, &c. &c."

IS THIS PROTECTION TO MEAN NOTHING TO US ?

IS THE BRITISH GOVERNMENT A WEAK REED AND UNABLE TO-DAY

TO PROTECT ITS SUBJECTS ?

- IS THE INDIAN GOVERNMENT UNBLINDFUL OR INDIFFERENT TO ITS INDIAN SUBJECTS — OUTSIDE OF INDIA ?
- IS INDIAN REPRESENTATION ON THE LEAGUE OF NATIONS TO COUNT FOR NOUGHT ?

• If the answers to the foregoing questions are important, then we rely upon you obtaining those answers for us.

• We beg to remain,

Yours truly,

AMOD BAYAT,
* President.

SORABJI RUSTOJIJI,

V. S. C. PATHER,
Joint Hon. Secretaries.

NATAL INDIAN CONGRESS.

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