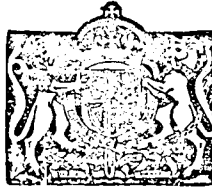


GOVERNMENT OF INDIA



Memorandum
on the Position of Indians
in
the Union of South Africa
submitted to
the United Nations

(1946)

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PART I

History of Indian Immigration into South Africa

The existence of the Indian population in South Africa is not the result of any forcible or illegal entry of Indians into that country. It is, on the other hand, the result of organised emigration mutually agreed upon between the Government of India and the Government of Natal.

2. About the middle of the last century there arose a great demand for labour for the newly started sugar plantations in Natal. Native labour was no longer available owing to the abolition of slavery by Parliament. Natal was then a colony. Efforts were, therefore, made by the Government of Natal to secure labour from India with the approval of His Majesty's Government. Neither the British Government nor the Government of India, however, showed any enthusiasm for sending Indian labour to Natal. At first the bills of the Natal Legislative Council providing for the importation of contract labour were vetoed by the Colonial Office. It was only after some years of agitation and correspondence that, at last, a law was enacted in Natal, to which the British Government gave its approval. The next step for Natal was to secure the Government of India's approval to emigration of Indian labourers. For this purpose Natal despatched one of her leading officials to negotiate with the Indian Government who, after some difficulty, was able to persuade the Government of India to agree to the importation of Indian labour into Natal. The importation of such labour, however, was subject to certain conditions. These were that the labourers were to serve under contract for three years, which was subsequently raised to five years. After the expiry of five years they could work as free labourers. At the end of ten years they were entitled to claim a return passage to India, if they so wished. Once they were free from their indentures, Indians were, however, to be entitled to the protection and benefit of the ordinary laws of the colony.

3. The first batch of indentured Indian labourers arrived in Natal in 1860. Their arrival was hailed in the Colony as guaranteeing its prosperity. "Coolie immigration", said the Natal Mercury, "is the vitalising principle".

4. Immigration of Indian labourers went on briskly until 1866. From 1866 to 1874 there was an interruption in the flow of Indian immigrants into Natal. This was partly due to the trade depression following upon the cessation of the American Civil War and partly to complaints of ill-treatment of the Indian labourers and violation of the terms of indenture by the employers. The stoppage of the emigration of Indian labourers resulted in considerable economic dislocation and distress in the Colony. "From 1866 to 1874, when immigration recommenced the native labour of the colony proved more and more unreliable. In 1874 crops were rotting on the ground, and although planters and others competed in endeavouring to obtain assistance from the Chiefs, they could secure no labour at any price.....This was the culminating point to a long series of protests and complaints and, in deference to the popular cry for the re-establishment of imported labour, the door was again opened to Indian immigration". Attempts were, therefore, made again by the Natal Government to secure Indian labourers. Both the Indian Government and the Commissioners for Land and Emigration in London refused to authorise any further emigration until Natal had made better arrangements for the treatment of the Indians. The Government of India wrote in 1872, "We cannot avoid expressing our hope.....that the Government of Natal will show itself more sensible of its responsibility to Indian immigrants than it has hitherto done. We cannot permit immigration thitherto be resumed until we are certified that the colonial authorities are awake to their duty towards Indian emigrants and that effectual measures

have been taken to ensure to that class of His Majesty's subjects full protection in Natal." The Natal Government appointed a Special Commission to enquire into the treatment of Indians. This Commission found that there was considerable need for reform in Natal and made certain recommendations. They recommended the appointment of a Protector of Indian Immigration in Natal with responsibility for investigating the grievances of indentured labourers and for looking after their welfare generally. It, however, required another mission by a leading official from Natal to India to persuade the Indian Government to permit the resumption of emigration of Indian labourers. To secure a steady flow of Indian labour, the Natal Government even undertook to pay from public funds £10,000 a year towards the cost of the transport of these immigrants. As a further inducement the Natal Government also passed a law to facilitate the grant of land to Indian labourers in lieu of a free passage to India, if they should wish to settle in the Colony after completing their terms of indenture.

5. After 1874, Indian indentured immigration continued steadily. In the wake of Indian labourers followed Indian traders, shopkeepers, and others to cater to the needs of the Indians in Natal. It has to be remembered that persons of these classes were free to proceed to Natal, as there was then no restriction on immigration into Natal. By dint of their industry and enterprise, such Indians, as also ex-indentured labourers who had settled in the Colony, gradually established themselves as moderately prosperous traders and farmers.

6. The settlement of the Indian as a free man, however, was not welcome to certain sections of the white population. As the numbers of permanent Indian settlers, including traders, increased, the opposition to both classes grew in volume and intensity. The years immediately preceding 1887 saw the beginning of anti-Indian agitation by the white settlers of South Africa. In 1887, a Commission appointed by the Government of Natal reported that "the majority of white colonists were strongly opposed to the presence of the free Indian as a rival and competitor, either in agricultural or commercial pursuits". Some demanded that Indian immigration should cease altogether, others favoured expedients which, while keeping open the supply of labour, would prevent the permanent settlement of Indians in the Colony. The latter view prevailed. In 1891 the Legislative Council of Natal recommended—

- (a) that for the future Indians should continue in service during the whole of their residence in the Colony;
- (b) that on the completion of their term of service, they should return to India; and
- (c) that if such changes in the law were found impracticable, the annual subsidy of £10,000 which the Natal Government had been paying since 1874 towards the cost of introducing Indian labour should cease.

The Government of India informed the Natal Government that they "found it impossible to approve the proposal". The Natal Government then deputed two representatives to India to discuss with the Government of India—

- (i) the terms of indenture of Indian labourers as provided by the law and
- (ii) the return to India of all indentured immigrants on the completion of their terms of service.

These representatives urged that unless "some plan could be arranged to prevent the settlement of emigrants, the growing hostility of the white population to Indian settlers was likely to result in the closure of Indian emigration altogether."

7. The Government of India agreed to a condition in the emigrant's contract that he would return to India at the end of his period of indenture, unless he re-engaged on a new indenture on a similar condition, but that if this was done, the Colony should undertake to provide a free passage at the end of the first and every other term of indenture at the end of which the emigrant might wish to return. But they were opposed to any proposal which would involve compulsion to return under penal laws.

8. The result of the delegation's visit was the passing by the Natal Legislature of Act 17 of 1895, which provided—

- (1) that each new Indian immigrant who came under indenture should agree either to return to India on completion of the term of indenture, or to re-enter into a covenant to work for hire;
- (2) that such immigrant should, on the expiry of the first or subsequent contract of indenture, be provided with a free passage to India; and
- (3) that, if such immigrant failed or refused to return to India and decided to stay in the Colony as a free man, he should take out each year a license on payment of £3.

9. The passage of this Act constitutes the first important attempt to prevent the settlement of Indians in Natal. In 1891 the concession of grant of land in lieu of return passage had already been withdrawn. Feeling against the Indians continued to grow. The Indian law did not regulate the emigration from India of persons who paid their own passage to an outside port. Therefore, the entry into Natal of this class was subject to no legal restrictions. The Natal Government took further steps to discourage immigration and settlement of free Indians in the country by passing in 1897 the Immigration Act (1 of 1897) and the Trade Licensing Act (18 of 1897). The former prohibited the immigration into Natal of anyone who could not pass a prescribed dictation test in a European language and who was not in possession of a specified sum of money. The latter attempted to restrict Asiatic trading by imposing on traders the requirement of Trading Licences.

10. The Boer War temporarily put a stop both to Indian agitation for redress of existing grievances and to anti-Indian pressure for the imposition of fresh disabilities. In 1900, the Government of India urged that while the recollection of the meritorious services of India and the Natal Indians for Natal during the war was still fresh in the minds of the colonists, a just settlement of outstanding differences should be attempted. Natal, independently, asked that emigration to Natal should be freed from certain legal restrictions, and asked to be placed on the same footing as Ceylon for purposes of emigration. This request was promptly refused by the Government of India mainly on the ground that in Natal "the settlement of labourers whose terms of indenture had expired was discouraged and subjected to penalties", that "all free immigrants were treated as being more or less on the level of aborigines" and "subjected to special treatment which was degrading and injurious to their self-respect"; and that the recent legislation was "inequitable in its effect on those who had been permitted to settle and acquire property in the country".

11. Neither the Licensing Law nor the Immigration Law of 1897 satisfied the white settlers and in 1903 the Natal Government sent a deputation to India to propose to the Government of India the compulsory repatriation of labourers on the expiry of the terms of indenture or re-indenture. The Government of India were prepared to accept the proposal if suitable guarantees could be given that the free Indian population which was already lawfully

domiciled in the colony, would receive fair and just treatment. They accordingly suggested the abolition of the £3 tax and an amendment of Trade Licensing Law of 1897 so as to provide for appeal to a Court of Law against any decision of the Town Council refusing a licence. Failing favourable consideration of these requests, the Government of India warned the Natal Government that they reserved the "fullest liberty to take at any time such measures in regard to emigration to Natal as they might think necessary in order to secure their subjects proper treatment in that colony." The Government of Natal declined to accept these conditions and their delegation returned empty-handed.

12. In 1904, again the Natal Government asked for certain facilities to promote the flow of labour from India. The Government of India declined to meet the wishes of the Natal Government until the treatment of Indian immigrants in that Colony was "substantially modified".

13. It may be questioned why the Natal Government did not stop Indian immigration when there was so much popular anti-Indian agitation. The obvious explanation is that the Natal Government could not ignore the planters whose prosperity mainly depended on the continuance of Indian labour. In 1908 a Bill was introduced in the Natal Legislature to discontinue indentured immigration from India. It received official benediction on the ground that "the measure was intended to terminate a state of affairs that had been the cause of growing anxiety in South Africa". Nevertheless it was withdrawn and the question referred to a Commission which reported that "Indian labour was essential to the maintenance of certain industries". It added, however, that "he, i.e., the Indian was not desirable in the Colony other than as a labourer". In the hope that the Government of India would grant special facilities for securing recruits, the Colonial Government of Natal amended the Licensing Law of 1897 as was suggested by the Government of India in 1903. This concession, however, failed to achieve its object as resentment in India against the treatment of Indians in South Africa had become acute.

14. The unreasonable attitude of Natal which while seeking Indian labour so essential to her prosperity denied it protection or reasonable prospects of social and economic advancement, compelled the Government of India to stop indentured labour to Natal. The Government of India had gone a long way to meet the popular prejudice against the permanent settlement of Indian immigrants in Natal by agreeing to confine residence of indentured immigrants to the term of indenture, if adequate safeguards of interests of Indians already settled in the Colony could be guaranteed. But their sustained and prolonged efforts to induce the Natal Government to redress legitimate Indian grievances had evoked little response. In 1910, power was, therefore, taken by amending the Indian Emigration Act to forbid emigration to any place where conditions were not favourable to the emigrants. In 1911 the power was exercised to forbid emigration of indentured labour to Natal. Indians other than labourers were, however, still free to emigrate to South Africa. Finally by the passage of the Immigrants Regulation Act of 1913 by the Government of the Union of South Africa, all further immigration of Indians into South Africa, came to an end.

THE TRANSVAAL

15. While Natal was still a colony, a few free Indians and Indian traders moved further and entered the South African Republic now called the Transvaal. They settled there as merchants, traders, hawkers, or as employees in various kinds of manual labour. They were within their rights in doing

so in accordance with Article 14 of London Convention of 1884 between Her Majesty and the South African Republic which provided as follows:—

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

16. **Present Population of Indians in South Africa.**—According to the census of 1936, the Union of South Africa has a total population of 9,589,898 composed of 2,003,857 Europeans, 6,596,689 native Africans, 219,691 Asiatics and 769,661 Coloureds. Over 98% of the Asiatic population consists of Indians. The Indian population as compared with the European is distributed in the provinces of the Union as follows:—

Province	Europeans	Asiatics
Cape	791,574	10,508
Natal	190,574	183,661
Transvaal	820,756	25,493
Orange Free State	200,978	29

According to the 1936 census the occupational composition* of the Indian population in the Union is as follows:—

Group	Percentage
1. Agricultural occupation	27·00
2. Mining occupation	1·34
3. Industrial occupation—	
(a) Metal workers	1·36
(b) Workers in wood and furniture	1·67
(c) Builders, etc.	1·69
(d) Textile workers and makers of clothing	6·14
(e) Makers of food, drink and tobacco	4·63
(f) Workers in other materials	2·32
4. Transport and Communications	2·52
5. Commercial and financial	26·89
6. Public administration	4·80
7. Professions	1·08
8. Sport and entertainment	·46
9. Personal service	11·91
10. Others and undefined	5·29
Total	100·00

*Excluding unemployed and children below 14 years.

**Treatment of Indians in South Africa : History of discriminatory measures :
against them**

SECTION I.—1860—1914

As stated in Part I, it was part of the conditions of immigration that after the expiry of indenture the Indian labourer was to become a free citizen and was to be subject to the same code of laws as other inhabitants of the Colony. As early as 1875, the Secretary of State for India, Lord Salisbury, announced the policy of His Majesty's Government in the following words :

"Above all things we must confidently expect, as an indispensable condition of the proposed arrangement, that the colonial laws and their administration will be such that Indian settlers, who have completed the terms of service to which they agreed, as the return for the expense of bringing them to the colonies, will be free men in all respects, with privileges no whit inferior to those of any other class of Her Majesty's subjects resident in the colonies."

Within a few years after the resumption of Indian immigration in 1874 there was substantial number of free Indians in Natal, both ex-indentured labourers and traders. The free Indians were successfully engaged in occupations like agriculture, fishing and market-gardening.

2. As the number of permanent Indian settlers increased, the opposition of the European settlers both to the free Indian and the Indian trader grew. The anti-Indian agitation in Natal started about the year 1880. A Commission was appointed to enquire into the truth or otherwise of the anti-Indian allegations. Not only did the report of the Commission hold the anti-Indian allegations to be unfounded but it praised the "commendable industry" of the Indians in agriculture. Giving evidence before the Commission Sir J. C. Hulett, an ex-premier of Natal, said :

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

3. The Commission's report, however, did not pacify the European settlers and the Natal Government embarked upon a series of anti-Indian enactments. A resume of the various measures undertaken by that Government to this end is given below :—

- (i) In 1891 the Natal Government repealed the Act of 1874 by which ex-indentured Indian labourers could be given land in lieu of free passage to India.
- (ii) Act 17 of 1895 provided that any Indian ex-indentured labourer who should choose to settle in the colony would be required to take out a licence on payment of £3 per year.
- (iii) In 1896, Indians were deprived of parliamentary franchise in Natal.
- (iv) By Act No. 1 of 1897, immigration into Natal of any one who could not pass a prescribed dictation test in an European language and who was not in possession of a specified sum of money was prohibited.
- (v) By Act 18 of 1897, traders were required to take out trading licenses which licensing officers appointed by Town Councils or Town

Boards had full discretion to grant or refuse. Appeals were only allowed to Town Councils or Town Boards. The discretionary power of the licensing officer soon began to be utilised to the disadvantage of the Indian.

(vi) In 1900 the Natal Government extended the three pound tax to all adult children of Indians liable to similar tax under the Law of 1895.

4. In 1908 the Natal Government proposed legislation to prohibit the issue of new licences and also renewal and transfer of trading licences to Asiatics after the 31st December 1918. The legislation was, however, disallowed by the Secretary of State for the Colonies who made the following observations :—

“It would be a matter of the greatest difficulty to enumerate any conditions under which it would be possible to justify the interdiction of a particular class in the State from engaging in normal legitimate and necessary occupations ; and it would be still harder to justify dispossessing them from their existing means of livelihood, however liberal might be the terms of compensation. But the imposition of such disabilities on a class which owes its presence in the Colony to the Colony's own necessities and whose numbers have been augmented by the voluntary action and indeed the settled policy of successive Colonial Governments, over a period of 15 years since the advent of self-government, would appear on its merits to constitute a hardship of a specially grievous character.”

THE TRANSVAAL

5. While Natal was still a colony, a few free Indians and Indian traders moved further inland and entered the South African Republic now called the Transvaal. They settled there as merchants, traders, hawkers and manual labourers.

The first anti-Indian measure was the Transvaal Law of 1885 (No. 3 of 1885). By this measure the native races of Asia were debarred from acquiring the rights of citizenship and from trading without registration, the registration fee being £25. Asiatics were also prevented from owning property except in such streets, wards and locations as the Government might, for the purpose of sanitation, assign to them. This Law was accepted by the British Government as a sanitary measure only and not applicable to persons of a superior mode of life. The Republican Government, on the other hand, claimed that it applied to all Asiatics without reference to their mode of living, and that it included business premises as well as residences. The latter view was upheld by the High Court of the Republic but was reversed by the Transvaal Supreme Court in 1904 which held that the Law did not apply to business premises but only to residences of Asiatics.

6. Law 3 of 1897 prohibited marriages between European and coloured persons. Under Law 15 of 1898 no coloured person might be a licence holder, or in any way connected with mining. A proclamation issued in 1899 set apart the streets, wards and locations for the use of Asiatic trade and residence. In the same year, the Republic prohibited coloured persons from walking in the side walks or *stoeps* serving as side-walks of the streets of its towns.

7. By this time the Anglo-Boer War had broken out. One of the causes of the Boer War as put down by Lord Lansdowne, an ex-Viceroy of India and Secretary of State for War, was the ill-treatment of the Indians by the Boers in the Transvaal.

8. In 1902 an Ordinance was introduced to restrict the entry of Indians in future by requiring each applicant for admission to pass a dictation test in a European language.

9. European agitation continued to increase and the Transvaal Legislative Council passed in 1906 an ordinance to "stem the tide of Asiatic immigration", which provided for the compulsory registration of all Asiatics and their identification by means of finger prints. The Indian community sent a deputation consisting of Messrs. Gandhi and Ali to England to represent their case and strongly opposed the measure. The Ordinance was ultimately disallowed.

10. The respite was however brief. One of the first acts of the responsible Government established in the Colony was to pass the Ordinance disallowed in 1906 as the Asiatic Law Amendment Act (Act 2 of 1907) substantially in the same form. Another Act more stringent than the Natal and the Cape Acts (legislation covering immigration) was passed the same year with a view to restricting immigration. The Government of India's representations concerning the severity of these measures did not have any effect.

11. In 1908 the Precious and Base Metals Act (No. 35 of 1908), commonly known as the Gold Law, was passed. Under this Act, Asiatics could not reside in or occupy any land in any district or proclaimed land except in a bazaar, location, mining compound or such place as the Mining Commissioner might permit. The Townships Act of 1908 (No. 34 of 1908) practically excluded Asiatic traders from stands inside townships held under a title converted into freehold under the Act.

12. Subsequent developments can most conveniently be discussed in connection with the Passive Resistance movement. When Mr. Gandhi waited in November 1906 on Lord Elgin, then Secretary of State of the Colonies, to protest *inter alia* against the Transvaal Asiatic Law Amendment Ordinance, which was disallowed in 1906 he informed his lordship that "rather than submit to the great degradation involved in it" Indians "would go to goal". After the passing of Act 2 of 1907 and the Immigration Restriction Act of the same year, the Indian community in the Transvaal, under Mr. Gandhi's leadership embarked on the passive resistance movement. The movement was directed against :—

- (i) compulsory registration as being repugnant to Indians as it placed them on the same footing as criminals ;
- (ii) the requirement that registered Indians should give their finger impressions as marks of identification which was galling to their self-respect ; and
- (iii) the Transvaal Immigration Restriction Act which had practically the effect of classing every Indian seeking to enter the Colony as a prohibited immigrant, and imposed a disability on him on racial grounds.

13. Passive resistance began in May 1907, and took the form of failure to take out registration certificates, of attempts to enter the Transvaal, and of hawking without licence. Many Indians—a contemporary estimate puts the figure at 120—including Mr. Gandhi, courted imprisonment and sent to jail. Feeling in India was roused and opinion in England also was much exercised. The British Government tried their best to bring about a settlement between the two parties. They made certain proposals including the repeal of the Act 2 of 1907, which the Transvaal Government declined to accept. Meanwhile the local authorities tried to enforce the law, and

complaints were received from the Indian community of harsh treatment of Indian prisoners in jail. Eventually, however, a provisional settlement was reached in April 1911 under which the Government agreed to introduce legislation repealing the Asiatic Law Amendment Act of 1907 (Act 2 of 1907) subject to the reservation of the rights of minor children. This closed the first stage of the passive resistance movement.

UNION OF SOUTH AFRICA

14. The four Colonies of Natal, Cape, the Transvaal and the Orange Free State were constituted into a Union by the South Africa Act of 1909 and the Government of the Union of South Africa came into existence in the year 1910. Henceforth matters affecting Indians, except in their local aspects, became a Union responsibility although the laws earlier enacted by the Colonial and Republic Governments of Natal and the Transvaal respectively, continued to be in force. It was expected that with the transfer of authority to the Union Government a broader outlook would be brought to bear on the Indian question than had hitherto been the case. This expectation, however, was not fulfilled. In spite of severe opposition of the Indian community the Union Parliament passed the Immigrants Regulation Act, 1913, under which the Minister of the Interior could declare certain classes of persons as prohibited immigrants on economic grounds or on account of their standards and habits of life being unsuited to the requirements of the Union. The Minister of the Interior under this provision has declared all Asiatics to be prohibited immigrants. This Act also prohibited movement of Asiatics from one province of the Union to another.

15. The passage of the Immigrants Regulation Act, 1913, led to the second passive resistance movement of Mr. Gandhi in 1913. The chief cause of the movement was the deprivation of the right hitherto enjoyed by the Indians of entering the Cape Colony. The movement took the form of non-payment of the £3 poll tax and strikes by labourers who on completion of their indenture became liable to pay the tax. Strikes started on the coal mines in Natal and then extended to the sugar plantations. On the 1st November 1913, Mr. Gandhi accompanied by strikers and their families, began a march into the Transvaal with the deliberate object of contravening the Immigrants Regulation Act of 1913. Mr. Gandhi was arrested and sentenced to nine months' imprisonment. 2,000 Indians were arrested and sent back to their respective spheres of work. By the middle of November the strike had spread to the sugar and other industries. Under Natal Law the strikers were guilty of criminal offences and liable to be arrested and punished. At various places, arrests were made which led to conflicts between the strikers and the police. On two occasions firearms were used by the police and in all nine Indians were killed and 25 wounded.

16. News of these happenings roused widespread resentment in India and the Government of India asked His Majesty's Government for a thorough and impartial inquiry. In December, a Commission, with Sir William Solomon, a Judge of the Supreme Court, as Chairman, was appointed by the Union Government to make a public judicial enquiry. The Government of India deputed Sir Benjamin Robertson to South Africa to watch the proceedings. Their request for the representation of Indian interests was not granted as the enquiry of the Commission was to be judicial.

17. As a result of the recommendations of the Solomon Commission and negotiations between Mr. Gandhi and General Smuts, who was then Minister for the Interior, an Indian Relief Bill was passed which, besides abolishing

the poll tax in Natal, rectified matters in regard to the application of marriage laws and entry into or movement within the Union of members of the domiciled community, or their wives and minor children. The crux of the settlement, however, was the assurance given by the Secretary for the Interior to Mr. Gandhi that it would always be the desire of the Government to see "that existing laws were administered in a just manner with due regard to vested interests". Mr. Gandhi made it clear that the Indian community could not treat the settlement as final and that opportunity would be sought at a favourable moment to press for the removal of such hardships as denial of the franchise in some parts of the Union, and the existence of disabilities regarding occupation and ownership of fixed property.

18. The Smuts-Gandhi agreement was accepted by the Indian community in the hope that once the European population was rid of the fear of unrestricted immigration from India, existing disabilities would slowly disappear. The Indian community therefore set great store by this agreement and interpreted the assurance given by General Smuts as implying that no new law would be passed, imposing fresh restrictions on Indians. The Government of India also held the same view. The subsequent history of the Indian position in South Africa is however one of the gradual whittling down of the terms of the Smuts-Gandhi agreement to the disadvantage of the Indians.

SECTION II—1914—1938

19. Between 1914 and 1918 little was heard of the Indian problem in South Africa, except in connection with the general question of the disabilities of Indians resident in the various self-governing dominions, which the representatives of India raised in the Imperial War Conferences in 1917 and 1918. In 1917 India was called to the Council Chamber of the Empire for the first time. In regard to the Indian question in South Africa General Smuts made an important statement in the following terms :

"There is still a difference of opinion on administrative matters of detail, some of which are referred to in the memorandum which is before us, and I have always felt sure, that, once the white community in South Africa were rid of the fear that they were going to be flooded by unlimited immigration from India, all the other questions would be considered subsidiary and would become easily and perfectly soluble. That is the position in which we are now that the fear which formerly obsessed the settlers there has been removed; the great principle of restricting immigration for which they have contended is on our Statute Book with the consent of the Indian population in South Africa and the authorities in India, and that being so, I think that, the door is open now for a peaceful and statesmanlike solution of all the minor administrative troubles which occurred and will occur from time to time".

In 1918 the representatives of the dominions and India accepted the so-called Reciprocity Resolution, which conceded to each country of the British Commonwealth the right to regulate the composition of its own population. The Government of India who had consistently declined to admit the right of the dominions to keep out Indians agreed to this in order to rid the dominions of the fear of Indian influx and thus prepare the way for the removal of the disabilities of the resident Indian communities. On this occasion Lord Sinha, a representative of India, also presented to the Conference a

memorandum which, among other matters, dealt at length with Indian disabilities in respect of trading and ownership of property in South Africa. The resolution itself referred those points to the sympathetic consideration of the Governments concerned. Mr. Burton, speaking on behalf of South Africa, undertook to give the memorandum "the most sympathetic consideration". The undertaking was in conformity with what General Smuts had said at the previous Conference in 1917. But European public opinion in South Africa evidently proved too strong for the Ministers to give effect to these assurances. In the mining areas municipalities challenged the right of Indians to lease premises for purposes of trade. Act XXXVII of 1919 was passed which while safeguarding existing interests, sought to prevent acquisition by Indians of new leases on proclaimed areas; or of property outside locations, either through nominal trustees or companies. The Government of India protested strongly against the measure. The Union Government announced that the question of Asiatic rights in respect of trade would be investigated by a Commission. The Government of India tried to have the whole question of Indian disabilities in South Africa included in the terms of reference of the Asiatic Enquiry Commission. They sent a representative, Sir Benjamin Robertson, to place the Indian case before the Asiatic Enquiry Commission. This Commission, presided over by Justice Lange, recommended against compulsory segregation of Indians. The Commission, went on further to say "we find ourselves wholly unable to support the policy of repression which was advocated by some of the witnesses. Indiscriminate segregation of Asiatics in locations and similar restrictive-measures would result in eventually reducing them to helotry. Such measures, apart from their injustice and inhumanity would degrade the Asiatic and react upon the European".

The Commission recommended voluntary segregation of the Indian community, consolidation of the trading laws, reservation of agricultural purposes of the coast belt in Natal for Indians and retention of the restrictions embodied in Act XXXVII of 1919.

20. In 1921 again the question of the status of Indians in South Africa was raised at the Imperial Conference held in that year. The Government of India claimed full political rights for the resident Indian communities in the various self-governing dominions. The Conference passed a resolution recommending "that in the interest of the solidarity of the British Commonwealth, it is desirable that the rights of such Indians to citizenship should be recognised". From this resolution the representatives of South Africa dissented. The representatives of India "while expressing their appreciation of the acceptance of the resolution recorded above, felt bound to place on record their profound concern at the position of Indians in South Africa and their hope that by negotiation between the Government of India and of South Africa, some way could be found, as soon as may be, to reach a more satisfactory position".

21. Feeling towards the Asiatics did not improve; on the contrary indirect pressure to exclude him from the Union of South Africa continued to be steadily applied. Thus in 1922 and 1923 respectively, the Durban Land Alienation Ordinance and the Borough and Township Land Ordinance were passed, empowering the local bodies concerned to lease or sell land belonging to them to members of a particular community. In January 1924, the Class Areas Bill was introduced, which aimed at the compulsory segregation of Indians in urban areas both for residence and trade, but the measure lapsed only owing to the dissolution of the Parliament. In 1924 the Natal Boroughs Ordinance

(No. 19 of 1924) was passed, which while safeguarding the electoral privileges of Indians already on the rolls, deprived the community of the right to acquire the franchise of a borough in future. This measure incidentally deprived the Indians of the only means by which they could bring the pressure of Indian opinion on the administration. In April 1925 the Governor General gave assent to the Natal Township Ordinance 1925 which had the same effect as the Natal Boroughs Ordinance in respect of Indian electoral rights in townships.

22. In the summer of 1925 the Union Government introduced the Areas Reservation, Immigration and Registration (Further Provision) Bill which purported to introduce segregation of Indians in Natal, besides stiffening the immigration law as regards Asiatics. This measure roused consternation among Indians in South Africa and widespread resentment in India. The Government of India tried to have the Indian problem in South Africa brought under examination by a conference on which they might be represented. After prolonged negotiations and exchange of deputations between the two countries, the representatives of both the Governments assembled in Cape Town at a Round Table Conference. Their deliberations resulted in the Cape Town Agreement of 1927.

23. The Cape Town Agreement is an important landmark in the history of relations between the two Governments and the position of the Indian community in South Africa. The joint communiqué issued by the two Governments stated :—

“There was, in these meetings, a full and frank exchange of views which resulted in a truer appreciation of mutual difficulties and determination to achieve solution of the main problem in a spirit of friendliness and goodwill”.

The two Governments specifically agreed as follows :

“Both Governments reaffirm their recognition of the right of South Africa to use all just and legitimate means for the maintenance of western standards of life.”

“The Union Government recognise that Indians domiciled in the Union, who are prepared to conform to western standards of life should be enabled to do so.”

“For those Indians in the Union who may desire to avail themselves of it, the Union Government will organise a scheme of assisted emigration to India or other countries where western standards are not required.”

“In the expectation that the difficulties with which the Union has been confronted will be materially lessened by the Agreement which has now happily been reached between the two Governments, and in order that the agreement may come into operation under the most favourable auspices and have a fair trial, the Government of the Union of South Africa have decided not to proceed further with the Areas Reservation and Immigration and Registration (Further Provision) Bill.”

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

“The Government of the Union of South Africa have requested the Government of India to appoint an agent in the Union in order to secure continuous and effective cooperation between the two Governments.”

In addition the Union Government gave an undertaking as follows :—

“The Union Government firmly believe in and adhere to the principle that it is the duty of every civilized Government to devise ways and means and to take all possible steps for the uplifting of every section of their permanent population to the full extent of their capacity and opportunities, and accept the view that in the provision of educational and other facilities the considerable number of Indians who remain part of the permanent population should not be allowed to lag behind other sections of the people”.

The principle of equal pay for equal work was also accepted.

24. The number of Indians who took advantage of the Assisted Emigration Scheme was below expectations. Early in 1932 representatives of both the Governments met in Cape Town to review the working of the Cape Town Agreement. Both Governments recognised that the Cape Town Agreement had been a powerful influence in fostering friendly relations between them and that they would continue to cooperate in the common object of harmonising their respective interests in regard to Indians resident in the Union and that the possibilities of the Union's scheme of assisted emigration to India were now practically exhausted owing to the economic and climatic conditions of India as well as to the fact that 80% of the Indian population of the Union were now South African-born. Both Governments agreed that the Cape Town Agreement was to remain valid.

25. Another subject, which was considered in this Conference was the position in the Transvaal created by the unlawful occupation of stands and acquisition of property by Asiatics. A Bill had been introduced in the Union Assembly in May 1930. Certain of its provisions were objectionable to the Indian community. In response to the request of the Government of India further consideration of the Bill was postponed till the forthcoming Round Table Conference. When the Conference met at Cape Town in January 1932 it was decided that the Bill should be considered by a Sub-Committee consisting of two representatives of each Delegation. As a result, the clause which embodied the principle of segregation by providing for the earmarking of areas for the occupation or ownership of land by Asiatics was deleted, and a clause was inserted instead amending the Gold Law to empower the Minister of the Interior to withdraw any land from the operation of the Gold Law in so far as it prohibited residence upon or occupation of any land by coloured persons.

26. In 1936 was passed another Act (No. 30 of 1936), which *inter alia* provided that no coloured person, residing on or occupying any land on May, 1930 (such occupation was illegal under Sections 130 and 131 of the Gold Law) in the Transvaal could continue, subject to the requirements of any other law, in residence or occupation after April 30, 1937, unless he had, before April 1, 1935, furnished to the Minister of the Interior a written notice of particulars about the said land.

SECTION III.—1938—1946

27. Towards the end of 1938 there was again an outburst of European agitation for the segregation of Indians in the Union. Early in 1939 a Government whip, gave notice of motion of a Bill to empower local authorities to demarcate residential and trading areas for Europeans only. The Indian community strongly protested against this proposal. No action was taken on this motion. The Government of the Union, however, pending permanent legislation, passed an interim measure, i.e. the Transvaal Asiatic (Land and

Trading) Act 1939, commonly called the Interim Act, to protect the European interests from further alleged penetration of Indians in the Transvaal. The permanent legislation when enacted was to apply to all the Provinces including Natal.

28. The Interim Act *inter alia* provided that Asiatics could not hire or occupy any premises that were not occupied only by Asiatics or coloured persons on April 30, 1939. It also compelled an Asiatic to obtain a permit from the Minister of the Interior before applying for a licence to carry on business or trade or removing his business to other provinces.

29. The last restriction was considered by the Indian community to be a breach of the Smuts-Gandhi Agreement of 1914 (which was embodied in Act XXXVII of 1919) and the Interim Act was held to be a breach of the Cape Town Agreement. The Indian community was much agitated and decided to launch a passive resistance movement. They however postponed the movement in view of the negotiations pending between the Government of India and the Union Government. The Government of India were in constant touch with the developments and made representations to the Government of the Union of South Africa. They protested in unequivocal terms against the proposals for segregation and urged that there was neither justification nor necessity for any legislation involving segregation on racial grounds.

30. The outbreak of war in the beginning of September 1939 which led to the resignation of the then Government and the formation of a new Government by General Smuts, brought about a change in the position. The Indian community now expected that the new Government would not take any step which would alienate any section of the population.

31. The Interim Act was regarded as a temporary measure for two years only to permit of investigations to be made. At the end of October 1939 there was renewed European agitation in Durban against Indian penetration. Soon after the close of the year, the Union Government announced their intention to appoint a fact-finding Commission in regard to the alleged penetration of European areas by Asiatics in the Provinces of the Transvaal and Natal and declared that no fresh statutory measures involving segregation would be introduced during the period of the war. Accordingly in May 1940, the Indian Commission with Justice Broome as Chairman, was appointed. Before the Commission could conclude its enquiries, the Interim Act was renewed in 1941 for two years.

32. The main conclusions of the Broome Report submitted on the 25 July 1941 were that in the Transvaal the extent of Indian penetration since 1937 did not appear to be alarming or even surprising while in Natal the extent of penetration was a little more than a trickle. The main reason for penetration by acquisition, according to the Broome Commission, was the desire to obtain good investments. The absence of other suitable forms of investment led Indians to invest their money in immovable property. This was enhanced by the feeling of security brought about by the Cape Town Agreement and by increased prosperity.

33. Hardly had these findings been published than the European agitation in Natal started a fresh agitation alleging that since the publication of the Broome Report Indian penetration in predominantly European areas had become a serious menace. They clamoured for the appointment of another Commission for Durban. A Commission with Mr. Justice Broome as Chairman was appointed to report on Indian penetration in Durban. The Commission reported that there had been some penetration by Indians

34. The European agitation against Indians acquiring and occupying property in European areas, however, gained momentum and pressure was brought to bear on the Government on the eve of the General Election to enact the Trading and Occupation of Land (Transvaal and Natal) Restriction Act, 1943, commonly known as the Pegging Act. This Act had the following effects:—

- (i) In the Transvaal it extended for a further period of three years the provisions of the Interim Legislation enacted in 1939 and extended for another two years in 1941, by which purchases of property by Indians in areas not already subject to other restrictions were prohibited without the special permission of the Minister.
- (ii) In Natal it prohibited Indians from purchasing property and Europeans from selling property to Indians in predominantly European areas in Durban without the Minister's permission and provided for the extension of similar provisions to other areas in Natal on sufficient cause being shown after enquiry.

35. The Pegging Act was passed in spite of Government of India's protests, and the Union Government's promise given in 1939 that no legislation of this kind would be introduced during war. Thus for the first time the Union Government imposed statutory restrictions on the acquisition of land by Asiatics in Natal.

36. There was strong and widespread resentment in India and popular demand for retaliatory action against South Africa. The Government of India, however, resisted such a demand as they did not want in any way to prejudice the war effort.

37. In March 1944 the Union Government appointed a judicial commission with Mr. Justice Broome again as Chairman the appointment of which had been foreshadowed during the passage of the Pegging Act. The terms of reference to the Commission were:

“To enquire into and report upon matters affecting the Indian community of the province of Natal with special reference to housing and health needs, civic amenities, civic status and provision of adequate residential, educational, religious and recreational facilities, and to make recommendations generally as to what steps are necessary further to implement the uplift clauses of the Cape Town Agreement of 1927, and as to all matters affecting the well-being and advancement of the permanent population of Natal.”

The local Indian community was on the whole inclined to give this Commission every assistance. About this time Field-Marshal Smuts agreed to receive a representative deputation of the Natal Indian Congress. From the discussions between General Smuts and the representatives of the Natal Indian Congress emerged an agreement known as the Pretoria Agreement which was announced on April 19, 1944.

38. According to the terms of this agreement, a Licensing Board of mixed composition was to control residential occupation in areas where the question of racial proximity arose. Apart from this, there were to be no further restrictions on Indian interests in land. All other restrictions contained in the Pegging Act were to be withdrawn. In particular it was made clear that there was to be no restriction on the right of Indians to acquire properties of any kind in the Province.

39. The Agreement had the Approval of representative Indians in South Africa and opinion in India also favoured giving the agreed compromise a chance to work. The Government of India did not regard the solution embodied in the Agreement as ideal but as it was accepted by a majority of the local Indians and as, for the first time, the Union Government also accepted the principle of dealing with such matters by voluntary agreement in preference to statutory compulsion, the Government of India acquiesced in the Agreement.

40. In June 1944 the Occupational Control Ordinance, the draft of which was approved by the Natal Indian Congress, was published in the Official Gazette for the purpose of implementing the Pretoria Agreement. The Select Committee, however, under pressure of strong European agitation, dealt so drastically with the draft ordinance that it was altered beyond recognition. The revised draft which was passed as the Residential Property Regulation Ordinance by the Natal Provincial Council, clearly contravened the Pretoria Agreement in several important respects. Simultaneously with this Ordinance two other ordinances namely, (i) the Natal Housing Board Ordinance, and (ii) the Provincial and Local Authorities Expropriation Ordinance were also passed by the Provincial Council. Under the former, the establishment of a Housing Board was envisaged. This Board was to have powers to acquire and sell property. The latter conferred on local authorities power to expropriate land. All these Ordinances were based upon the reports of the Natal Post-war Reconstruction Commission which had recommended racial zoning and on which Indians were not represented.

41. These Ordinances gave rise to bitter agitation among the Indian community in South Africa. On the 3rd November 1944 the Broome Commission which had been working in an atmosphere of goodwill and cooperation from the Indian community decided not to continue its public sittings in an atmosphere overcharged with racial bitterness. On the 7th December the two Indian Commissioners resigned from the Commission.

42. Public opinion in India was also shocked by the passing of the Ordinances. The Government of India represented to the Union Government that the new measure was unwarranted and likely to provoke serious repercussions in India, but their representations did not receive any attention. The Government of India were then constrained to have recourse to counter-measures which they had so far scrupulously avoided despite the pressure brought to bear on them by the Indian public, in the hope that the Union Government would after all find some satisfactory solution of the Indian problem. On the 3rd November 1944 the Reciprocity Act was brought into force against South Africa. Under this Act and the Rules made thereunder disabilities were imposed on South African nationals of non-Indian origin exactly reciprocal to those imposed on Indians in South Africa in respect of entry and acquisition and occupation of fixed property in India.

43. The Ordinances referred to in the preceding two paragraphs were ultimately not assented to by the Governor General as being *ultra vires* of the powers of the Provincial Council. Field Marshal Smuts also made a public statement in which he admitted that the Ordinances were contrary to the spirit of the Pretoria Agreement and declared that an alternative solution of the Indian question should be explored. He suggested that the Broome Commission should carry on its work as the Government attached much importance to that body.

44. In June 1945 the Housing (Emergency Powers) Act was passed by the Union Government to cope with the difficult housing problem. Under a provision of this Act an Ordinance entitled the Natal Housing Ordinance

was passed by the Natal Provincial Council in December 1945. The main object of this legislation was to make provision for better housing facilities for all classes of the population, including Indians, and to that end it empowered the National Housing Commission, Natal Housing Board and local authorities to construct dwellings, expropriate property and carry out other incidental purposes. The power of expropriation remained in the hands of the Union Minister. The High Commissioner and the representatives of the Indian community were taken into confidence at various stages of this legislation and although it contained certain provisions which were open to objections from the Indian point of view, the Government of India made no formal protest as assurances were given that the new measures would be worked without injustice to existing Indian interests. The Government of India were told that these new measures were designed to implement a long term programme which aimed at the extension of occupation of land by the several racial groups in areas contiguous to areas occupied by each at present. Such a programme would, it was stated, eventually solve the problem of juxtapositional residential occupation by racial groups which was the main issue to be solved.

45. Almost simultaneously with the passing of the Housing (Emergency Powers) Act the Third Broome Commission issued its interim report. The Commission recorded the opinion that the "only way out of the present impasse lies in the direction of a full and frank exchange of views between the Government of the Union and the Government of India" and the only recommendation made by the Commission was that "the Union Government invite the Government of India to send to the Union a delegation, composed substantially of Indians, for the purpose of discussion with the Union Government, and with such representatives as the Union Government may appoint, with such other persons as the delegation may invite, all matters affecting Indians in South Africa". In regard to the franchise question it stated "Natal Indians are not a backward race like the Bantu. Their racial pride would never permit them to accept communal representation by persons of a different race, as happens in the case of natives. The Commission is satisfied on the strongest possible evidence that any offer to Natal Indians of representation on a communal basis would be rejected immediately and unanimously. It went on to say "the only practical basis for negotiation and possible agreement which the Commission can see is the basis of the 'loaded franchise'."

46. On the 21st January 1946 the Prime Minister announced in the Union Parliament his intention to introduce during the current session of the Parliament a bill for the purpose of prohibiting occupation and acquisition of property by Indians in Natal, except in certain exempted areas.

This declaration of the Union Government comes as a surprise to the Government of India, as they were given to understand that in the Housing (Emergency Powers) Act and Natal Housing Ordinance a solution of the Indian problem had been found and that the Pegging Act would be allowed to lapse after the expiry of its present term viz. 31st March 1946. The Government of India therefore instructed their High Commissioner to urge upon the Union Government that the legislation should be postponed and as recommended by the Broome Commission the Union Government should meet a representative delegation of Indians to explore an alternative settlement of the question. All these representations were rejected by the Union Government. The Bill was introduced in the Union Assembly on 15th March 1946 and subsequently became law on 3rd June as the Asiatic Land Tenure and Indian Representation Act 1946. The Asiatic Land Tenure and Indian Representation Act marks the culmination of the discriminatory policy of the Union of South Africa against Indians, which has been

practised over the last half a century or so. It gives permanent recognition to the principle of segregation of Asiatics which has been opposed by the Indian community and by the Indian Government over the last 25 years. In Natal the effect of the land tenure provisions of the Act is that in areas specified in the Schedule to the Act (areas to be known as exempted areas) there would be no restrictions on transfer between Asiatics and non-Asiatics and in other areas transfers of fixed property between non-Asiatics and Asiatics both for occupation and acquisition is subject to a permit granted by the Minister.

In the Transvaal, the effect of the land tenure provisions is to retain the Interim Act (1939) position, with the exception that trade licences are no longer to require the Minister's permit but are to be made again subject to the licensing laws.

Thus the Act not only extends the temporary provisions of the Pegg- ing Act, 1943 to the whole of Natal province on a permanent basis but has also introduced a new principle of racial segregation by providing separate areas.

47. The "representation" provisions enfranchise male Indians who are
- (a) Union nationals over 21 years ;
 - (b) have passed the sixth Standard or equivalent ; and either
 - (c) have an annual income of £84 or
 - (d) own immovable property of the minimum value of £250.

The representation in Parliament to be accorded is 2 Senators, 3 Members in the House of Assembly and 2 Members in the Natal Provincial Council. The Indians in the Transvaal have not been given representation in the Transvaal Provincial Council. The members in the Senate and the Assembly must be of European descent, and thus Indians will be represented by Europeans in both Houses of the Union Parliament.

48. This legislation has led to bitter agitation both in India and among the Indian community in South Africa. The Indian community rejects franchise on communal basis which the Union Government seems to have given to them as *quid pro quo* for the rights taken away in regard to land tenure.

49. The Government of India was urged strongly by the Indian community in South Africa and public in India to recall their High Commissioner in the Union of South Africa and place the question before the United Nations Organisation. The Government of India have, in deference to strong Indian public opinion, decided to recall their High Commissioner for consultation. Again in deference to strong public opinion they have had to ban trade with South Africa with effect from the 17th July 1946, and they have submitted the question to the United Nations.

PART III

Disabilities to which Indians are subject in the Union of South Africa

I. FRANCHISE

(i) POLITICAL

Natal.—Indians were prevented from acquiring Parliamentary Franchise in 1896 by Act No. 8 of 1896 which disqualified from being registered as voters all persons who, not being of European origin, were natives of descendants in the male line of natives of countries which had not at the date of passing of the Act possessed elective representative franchise unless

an order from the Governor-in-Council exempting them from the operation of the Act was obtained. Indians whose names were already on the voters rolls at the time (1896) were excluded from the operation of this restriction, but their number dwindled down gradually so much so that in 1929 it was only 16. (The conditions in India have since changed.)

Under the Asiatic Land Tenure and Indian Representation Act, 1946, Indians will be represented in the Natal Provincial Council by two members. Indian voters are to be registered against the declared wishes of the Indian community on communal roll and not on common roll. The right of franchise is based on education and income or property qualifications, and is extended to only males. The European community whose population is about equal to Indian community, have 25 members in the Natal Provincial Council and in their case franchise is enjoyed both by men and women and is based on adult suffrage.

Cape Colony.—The only discrimination against coloured races including Indians is that while franchise for Europeans is based on adult suffrage and is enjoyed by both men and women, it is based on education and property or income qualifications in the case of Indians and is enjoyed only by males possessing requisite qualifications.

Transvaal.—All Asiatic races including Indians were deprived of citizenship rights under Law III of 1885. Consequently Indians have no franchise. Also under the Transvaal Constitution Letters Patent 1907 persons who are entitled to vote for the elected Legislative Assembly must be Europeans.

Orange Free State.—Settlement of Indians is practically prohibited under the Statute Law of the Orange Free State, Chapter XXXIII. Hence the question of franchise does not arise.

Union of South Africa.—Under the South Africa Act, 1909, no person who is not a British subject of European descent is eligible to become a member either of the Senate or of the House of Assembly. The Act provides that the qualifications of parliamentary voters, as existing in the several Colonies at the establishment of the Union, shall be the qualifications necessary to entitle persons in the provinces to vote for the election of members of the House of Assembly. As Indians do not enjoy the parliamentary franchise in any colony except the Cape Colony, they are not entitled to vote for election of members of the House of Assembly except those residing in the Cape Province.

Under the Asiatic Land Tenure and Indian Representation Act, the Indian community in Natal and Transvaal will be represented by 3 members in the House of Assembly and 2 in the Senate. These members must be of European descent. Indian voters will be registered on communal roll and not on common roll and their right of franchise is based upon education and income or property qualifications. European community is represented by more than 150 members in the House of Assembly and about 40 Senators and in their case franchise is enjoyed both by men and women and is based upon adult suffrage.

(ii) MUNICIPAL

Natal.—Indians were deprived of municipal franchise by Boroughs Ordinance of 1924 (No. 19 of 1924) and Township Ordinance of 1925 (No. 3 of 1925) (superseded by No. 11 of 1926) which limited municipal franchise to persons registered as parliamentary voters. The above two Ordinances have been superseded by the Local Government Ordinance of 1942 (No. 21 of 1942) which retains the same position.

Transvaal.—Under Section 8 (a) of Municipal Elections Ordinance of 1927 (No. 4 of 1927), none but white person is eligible to be registered as a voter.

Orange Free State.—Settlement of Asiatics is prohibited and those few who are already settled are not qualified to vote by reason of their race.

II. IMMIGRATION & INTER-PROVINCIAL MIGRATION

Immigration into the Union or any Province thereof is governed by the Immigrants Regulation Act of 1913 (No. 22 of 1913). It does not specifically prohibit entry of Indians into the Union but provides, *inter alia* that 'any person or class of persons deemed by the Minister (of the Interior) on economic grounds or on account of standard or habits of life to be unsuited to the requirements of the Union' shall be a prohibited immigrant. By an executive order issued by the Minister (General Smuts at the time) declaring all Indians to be unsuitable on the prescribed grounds, Indians are treated as prohibited immigrants under this clause. The Act also provides for a literacy test in any European language and those who fail in the test are described as prohibited immigrants. This is in fact, an effective weapon which can be applied to any body whose entry into the Union is not considered desirable.

As regards the resident Indian community in the Union, the Act restricts their movement from one province to another of the Union. In the Transvaal and the Orange Free State, no Indians who are not already lawfully settled there, are permitted to enter for permanent residence. The Law pertaining to the Orange Free State is the Statute Law of the State (Chapter xxxiii) which prevents any Asiatic from remaining in the Colony for more than two months. As regards the Transvaal, the laws detailed below restrict entry of Asiatics into the Colony and those who were already lawfully resident in the Colony till 1908 are required to register themselves.

1. Section 19 of Indemnity and Peace Preservation Ordinance, 1902 (No. 38 of 1902).
2. Asiatic Land Amendment Act, 1907 (No. 2 of 1907).
3. Asiatic Registration Amendment Act, 1908 (No. 36 of 1908).

III. ACQUISITION AND OCCUPATION OF LAND

Natal.—Under the Boroughs Ordinance 1924 (No. 19 of 1924) and Townships Ordinance of 1926 (No. 11 of 1926) respectively the Provincial Government were empowered to insert in the conditions of sale of any available land a clause prohibiting and restricting the ownership or occupation thereof to persons of any particular race. This power has been used to the disadvantage of Indians and the Municipalities and Townships have, under the powers, inserted an anti-Asiatic clause in their sale deeds executed subsequent to 1924. The clause usually reads as follows :—

"This transfer is passed subject to the condition that the transferee his heirs executors, administrators or assigns shall not sell, lease or allow occupation of the aforesaid property to any Asiatic or person of Asiatic descent".

The Borough Ordinance of 1924 and Township Ordinance of 1926 have been superseded by Local Government Ordinance of 1942 (No. 21 of 1942) which retains the same position.

Until 1943 there was no statutory disability with regard to acquisition and ownership of landed property by Indians in Natal. Under the Trading and Occupation of Land (Transvaal and Natal) Restriction Act, commonly known as the Pegging Act, in Durban Indians could not purchase and occupy property that was not occupied by Asiatics on the 22nd March 1943 without a permit from the Minister. The Pegging Act was superseded by the Asiatic Land Tenure and Indian Representation Act of 1946, which places similar restrictions on the acquisition and occupation of land by Asiatics in Natal, except in exempted areas, which have been so proclaimed in the schedule to the Act, or are to be proclaimed by the Governor-General-in-Council on the advice of the Land Tenure Advisory Board, or, after a period of five years, by resolution of Parliament. In non-exempted areas the terms of the restriction under this Act are that no Asiatics can, except under the authority of a permit, enter into any agreement with a non-Asiatic to acquire fixed property in the province of Natal, and no Asiatic can occupy and no person can allow any Asiatic to occupy any such land or premises in Natal which was not lawfully occupied on the 21st January 1946, by an Asiatic except under the authority of a permit.

Transvaal.—The first law that discriminated against Indians was Law 3 of 1885 which provided *inter alia* that Asiatics may not be owners of fixed property except in localities assigned to them for purposes of residence. It also empowered Government to assign special localities for this purpose.

The Municipal Amending Ordinance of 1905 is another segregatory measure which permits the alienation to Asiatics of land in areas to be set aside for their exclusive occupation by Municipalities.

The next legislation in this connection which affected Indians was Act No. 35 of 1908, commonly known as the Gold Law. This Act as amended upto date provides that coloured persons (this term includes Indians) may not acquire any right under the Act (which relates to prospecting and mining rights) or to reside on or otherwise occupy any land or ground in respect whereof any other person holds any right, and forbids transfers of any such rights to coloured persons. It also prohibits Coloured persons from residing on or occupying any proclaimed land in any mining district.

In 1919 the Gold Law of 1908 was amended to prohibit Asiatic Companies from holding any fixed property by the Asiatics (Land and Trading) Amendment Act, 1919 (No. 37 of 1919). It also prohibited foreign companies (companies registered or incorporated in a foreign country under the laws of that country) from acquiring any fixed property.

Various Acts noted below have subsequently been passed which amend the Gold Law of 1908 and further restrict the rights of Indians.

The Transvaal Asiatic Land Tenure Act, 1932 (No. 35 of 1932).

The Transvaal Asiatic Land Tenure Amendment Act 1935 (No. 35 of 1935).

The Transvaal Asiatic Land Tenure Amendment Act 1936 (No. 30 of 1936).

The Transvaal Asiatic Land Tenure Amendment Act 1937 (No. 32 of 1937).

The Asiatics (Transvaal Land and Trading) Act of 1939 which was renewed in 1941 and again in 1943 placed further restrictions in the way of trading licences of Asiatics by compelling an Asiatic to obtain a permit from the Minister of the Interior before applying for a licence to carry on a business or trade or removing his business to other premises. A permit was also required to be obtained before land or premises not in Asiatic occupation on 30th April 1939 could be let to or occupied by an Asiatic.

This Act has now been repealed by the Asiatic Land Tenure and Indian Representation Act, 1946, which retains the position so far as occupation of land is concerned.

Orange Free State:—Under Section 7 of Statute Law of the State (Chapter XXXIII), Asiatics are prohibited from owning any fixed property.

IV. TRADE

Natal:—In this Province the issue of trade licences in municipal areas is governed by Act No. 18 of 1897, which provides for the appointment of a licensing official by the Town Council or Town Board to issue annual licences in the Borough or Township, as the case may be, to wholesale or retail dealers. A licensing Officer has absolute discretion to issue or refuse licences applied for; and his decision is not liable to review, reversal or alteration by any Court of Law, except in the case of applications for renewal of licences which according to Act 22 of 1909, are appealable to the Supreme Court or Circuit Court. This Act was further supplemented by the Boroughs Ordinance of 1924 and the Townships Ordinance of 1926 under which Town Councils have full powers with regard to regulating, inspecting and supervising the carrying on of trades etc. Under the by-laws framed by the Councils for this purpose trading licences can be refused if the licensing officer is not satisfied.

- (i) that the locality of the premises is one in which it is desirable that the trade or business contemplated should be carried on by the applicant or at all;
- (ii) that the premises are in every respect suitable for the purpose of such trade or business whether as to structure, size, character, sanitation, ventilation, safety from fire, adequacy of fire appliances or emergency exists;
- (iii) that the applicant is a fit and proper person to hold such a licence or carry on such a business.

Similarly in rural areas under Ordinance 4 of 1923 as amended by Ordinance 14 of 1935, Rural Licensing Boards (whose members must be Parliamentary voters), consider applications for licences to trade. The Board may attach conditions to the licence and may refuse it on the ground that to grant it would depreciate surrounding property.

It is a notorious fact that licensing laws have been operated so as to refuse the grant or renewal of licences to Indians.

Transvaal:—Outside the proclaimed mining areas there is no legal racial discrimination against Indians except under the Asiatic (Land and Trading) Act (28 of 1939), the provisions of which are referred to under III above. But the Licences Control Ordinance 1931 gives complete discretion to Municipalities to grant or refuse a certificate of fitness which it is necessary to obtain before a trading licence is issued. As the European community of which the Municipalities are composed (Indians have no franchise) is hostile towards the Indian community, the latter is generally made to suffer and no new licences are granted.

As regards the proclaimed mining areas the Gold Law of 1908 does not permit a coloured person to acquire any rights under that Law or to reside or otherwise occupy any land or ground except in a bazaar, location, mining compound or any such other place as the Mining Commissioner may permit. Also Act No. 37 of 1919 practically prohibits the issue to Asiatics of certificates which are necessary to be obtained before trading licences are granted. The Act, however, safeguards the interests of those who occupied any land for business purposes or carried on business upto 1st May 1930.

Orange Free State.—Asiatics are prohibited by law to settle in the State for the purpose of carrying any commercial business or farming, either directly or indirectly.

V. EDUCATION

A policy of segregation is followed in the matter of education and Indian and other non-white races are not allowed to be admitted to Schools and Colleges intended for white children. There is also racial differentiation in the allotment of the rate of subsidy granted by the Union Government. For European pupils, the rate is £18-7-6, subject to certain conditions and for Indian and coloured pupils, it is only £5/5 per pupil.

In Natal, non-European teachers in Government employ are subject to racial discrimination in the matter of pension benefits. Till 1930 all the teachers in Government employ were governed by Ordinance No. 7 of 1913 which did not discriminate between European and non-European but in 1930 and 1931 two sets of Ordinances were passed by the Provincial Council one for non-European teachers, which apart from being a discriminatory legislation, provided higher benefits for European teachers.

VI. MARRIAGE

In the Transvaal, Law 3 of 1897 prohibits marriages between white and coloured persons.

VII. TRAVEL

Indian upper class passengers are required to travel in separate compartments reserved for Asiatics and Coloured people. In certain towns in Natal and the Transvaal Indians are only allowed to occupy certain seats on public transport vehicles reserved for non-Europeans.

VIII. INDUSTRY, PROFESSIONS AND OTHER OCCUPATIONS

The Mines and Works Amendment Act (25 of 1926) known as colour bar Act empowers the Governor General to make regulations about the grant of certificates of competency to certain classes of skilled workers (*e.g.* mechanical engineers and engine drivers) only to Europeans, Cape Coloureds, Cape Malays and Mauritius Creoles. Indians have been excluded.

The Apprenticeship Act of 1944 (37 of 1944) sets up a National Apprenticeship Board and Apprenticeship Committees to advise the Minister regarding apprenticeship: The Minister may prescribe whatever qualifications he considers necessary for apprentices which varies from trade to trade in which unapprenticed minors may not be employed without the consent of the Registrar of Apprenticeship, in consultation with the Apprenticeship Committees. This Act in practice excludes all non-Europeans from apprenticeship.

Owing to the prevalent colour bar attitude of the European clientele Indians are deterred from seeking apprenticeship with solicitors, chemists, architects, accountants and surveyors.

The Marketing Act of 1937 (26 of 1937) provides for meeting of producers in any area to which it is proposed to apply a 'scheme' for the marketing of produce. No person other than European shall be entitled to vote on the resolutions approving the scheme. This deprives the Indian Market gardeners of Natal of any say in the method of disposing of their produce.

IX. PENSIONS.

Till recently Indians were excluded from the benefits of the Old Age Pensions Act of 1928 (22 of 1928) and the Blind Persons Act of 1936 (11 of 1936) which applied only to Europeans and Coloured persons. In 1944 these Acts were made applicable to Indians also. But Europeans are provided higher benefits than Indians under these Acts.

X. EMPLOYMENT IN PUBLIC SERVICES

Although there is no statutory bar to the employment of Indians in public services, in actual practice Indians are almost completely debarred from employment except in a menial or subordinate service capacity. There are however Indian teachers in schools etc. exclusively intended for Indians. Indian interpreters are also employed in some law courts.

XI. LOCAL GOVERNMENT

Natal—The Durban Corporation Extended Powers Ordinance of 1924 (14 of 1924) empowers the Town Council of Durban to prohibit the use by Europeans for dwelling purposes of places or premises similarly used by Asiatics or Natives.

The Durban Extended Powers Ordinance of 1940 (16 of 1940) empowers the municipality of Durban *inter alia* to set aside tea and eating rooms for the sole use of Europeans, Asiatics or Natives.

Transvaal—The Johannesburg Municipal Ordinance of 1906 [II (Private) 1906.] constitutes Johannesburg Municipality and empowers it, *inter alia*, to establish bazaars for the exclusive occupation of Asiatics, in which plots may be leased for any term, not exceeding 33 years. It may make by-laws for licensing and regulating Asiatic tea rooms and eating houses, and may refuse to license certain premises for this purpose, on grounds of public interest etc.

XII. ARMS AND AMMUNITION

Union—Arms and Ammunition Act, 1937 (28 of 1937) provides that no licence to possess or deal in arms may be issued to any person other than a European or a European Company, and no arms may be supplied to a dealer who is not licensed to possess them.

XIII. MISCELLANEOUS

Land bank loans available to European farmers are not available to Indians. This is not a statutory discrimination but in actual practice this is the position.

In some places there are separate hospitals for Indians and Africans. In Government offices such as Posts and Telegraph offices and Railway Booking Offices there are separate counters for non-Europeans. Indians are not admitted to certain public libraries.

Serial Numbers of the books and their names
from the No. 746 to 767.

<u>Serial Nos.</u>	<u>Name the books.</u>
746.	Report of The Barriff Board regarding the Removal of the Import duty on Sulphur.
747.	Report by the Posts and Telegraphs Dept. Committee 1924-1925.
748.	The Government of India Act. 1935. Correspondence between to local Govts. & the Govts of India and the Secretary of State on the recommendations of the Niemeyer report, copies of which have been presented to Parliament by the Secretary of State.
749.	Report by the Govt. of India delegation to East Africa on the proposed Immigration Restrictions in Kenya, Uganda, Tanganyika and Zanzibar. 1946
750.	Report of the Adult Education Committee of the Central Advisory Board of Education 1939.
751.	Report of the Adult Education Committee of the Central Advisory Board of Education 1939 together with the decisions of the Board thereon.
752.	Report of the Wardha Education Committee of the Central Advisory Board of Education 1939.
753.	Report of the Second Wardha Education Committee of the Central Advisory Board of Education, 1939, together with the decision of the Board thereon.
754.	Studies in Indian Economics issued by the Office of the Economic Advisor to the Govt. of India. Second Series.
755.	Prospects of Indian Trade with the United States of America- Report.
756.	General principles of Air Raid Precautions in India issued by the Home Dept. Govt. to India.
757.	Report of the Scientific Terminology Committee of the Central Advisory Board of Education in India, 1940 together with the decisions of the Board thereon.
758.	The payment of Wages Act. 1936.
759.	A collection of statutes amending or supplementing the Govt. of India Act. 1935.
760.	Annual Report of the working of the Indian Immigration Act. 1922 for the year 1936.
761.	Indian Coffee Statistics. 1936-37.
762.	Annual Report of the Agent of the Govt. of the India in Burma for the year ending 31st December 1940.
763.	Do. Do. Do. Do. Do. for the year ending 31st Dec. 1939.
764.	Annual Report of the Agent of the Govt. of India in Malaya for the year 1938.
765.	Do. Do. Do. Do. Do. for the year 1937.
766.	Indian Bar Committee Report 1923-24.
767.	Memorandum of the position of Indians in the Union of South Africa submitted to the United States Nations.