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INDIANS OVERSEAS

1838-1949

BY

C. KONDAPI

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First published 1951

TO
SIR B. N. RAU

FOREWORD

The theme of this monograph was originally the subject of my research study from 1940 to 1942 in the Department of Politics and Public Administration, University of Madras. Since then the study has been considerably modified, and the position in the various countries brought up to the end of 1949. The crucial war-time and post-war developments in the various Indian immigrant countries and the attainment of Independence by India necessitated a radical revision of the original study and a different approach in bringing it up to 1949.

I wish to express my grateful thanks to Dr H. N. Kunzru, Mr G. S. Bozman, Mr A. V. Pai, Dr Eddy Asirvatham, Mr P. Kodanda Rao and Dr A. Appadorai for their kind interest and helpful suggestions. I might, however, add that the responsibility for the opinions expressed in this monograph is entirely mine.

New Delhi
15th July 1951

C. KONDAPI

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INDIANS OVERSEAS (1838 — 1949)

CHAPTER I

INDIAN EMIGRATION : ORIGIN AND PROBLEMS

(Indian emigration is as old as Indian maritime enterprise.¹ Instances are available of Indian settlement in the Eastern Archipelago and the Far East long before the second century A.D. Ptolemy's geography written in Alexandria about 50 A.D. shows extensive expansion of Indian colonization and commerce from Burma and Malaya to Indonesia and Indo-China.) The famous colony of Champa was the daughter of the city of the same name in the province of Anga on the lower reaches of the Ganges. That (this emigration and the consequent cultural contact were continued in later days) is obvious from the flourishing settlement of Angkor Vat, the colonization of Sumatra, Java and Bali and the encouragement of emigration to Kadaram (Lower Burma) by the Andhras and Cholas. The Indian colonists founded in their Far Eastern homes the great Indian centres of learning — Ayodhya, Kausambi, Sriksetra, Dwaravati, Mathura, Kalinga, Kambhoja, Gandhara etc. which scintillated through centuries Indian culture and civilization.² By 400 A.D., when Fa-hein visited India to write his book of travels, Indian cultural colonies had been well founded in Khotan, Turfan, Kucha, Tuen Huang and Honan in China. During the days of the Pala-Sena Empire (700-1200 A.D.) Bengali scholars and artists made Tibet and the neighbouring countries centres of Buddhist art and culture. (Contacts with countries like Babylonia, Assyria, Egypt and Phoenecia existed from ancient times.)

(Subsequently, owing to successive political upheavals and the resultant chaotic conditions in the country, the stream of such emigration ran dry. Social changes like the growing rigidity of caste, the growth of prejudice against crossing the seas and the *Purdah* system discouraged emigration. There were no causes like over-population and religious persecution as in the West to offset this tendency.)

(Early Indian emigration was largely cultural and commercial. The emigrants were the ambassadors of a great civilization and religion or traders in rare commodities. The emigration of modern times presents a pathetic but nonetheless striking contrast. The

1. Dr. R. C. Majumdar: *Ancient Indian Colonies in the Far East*. Vol. I, Champa, p. 1.

2. *Ibid*, pp. 21-22.

modern emigrant is an unlettered labourer setting out to sweat and live on an alien's estate.

The causes for this metamorphosis are mainly economic.)

(i. *The Demand for Plantation Labour*: In the first place the Industrial Revolution and the development of large-scale production in Europe had their repercussions on the existing social economy. The mercantile and industrial capitalism led to a scramble amongst the European Powers for territories, besides attempts at the exploitation of the colonies already acquired for the supply of raw materials for production and markets for the consumption of manufactured goods. The capitalist countries had vast territories and capital, but their manpower was not equal to the requirements. In 1760, an interesting discussion took place among the Directors of the Dutch East India Company over the relative advantages of European and slave labour. The decision went inevitably in favour of the latter. The British fell in line with the Dutch. But the abolition of slavery in the British Empire in 1833 reopened the problem. Attempts were then made in vain to secure free native labour for the developing plantations—African, Creole, Máltese, Polynesian etc. But the native could not be induced to give up his age-long communal life and become a mere cog in the wheel. His limited wants could never persuade him to reconcile himself to the hard nature of plantation labour. Nor had he the requisite skill for estate work. The substitution of white labour was considered out of the question because of climatic reasons. The abolition of slavery was therefore about to sound the death-knell of plantations. The British settlers wanted to 'adopt the indenture system under which the planters in South America and Cuba were obtaining Chinese labour from the Portuguese settlement of Macao. In this connexion the planters and the colonial governments were impelled to explore other avenues of labour supply such as India.³)

(ii. *The Decline of Handicrafts*: Indian economy could not escape the fateful effects of the Industrial Revolution in England. The industrial and commercial needs of England necessitated the transformation of India from a manufacturing power to that of a market for the supply of raw materials and the consumption of British manufactures.⁴)

To understand this it is essential to recall that (in the seventeenth century and the eighteenth, India supplied the markets of Asia and Europe with a number of manufac-

3. J. A. R. Marriot: *A History of Europe 1815-1923*, Second Edition (1933), p. 312.

4. L. C. Knowles: *Economic Development of the Overseas Empire*, Vol. 1, pp. 53-54.

tured goods.) Great travellers, writers and administrators like Tavernier, Baines, Sir George Birdwood and Sir Thomas Munro were amazed at the remarkable range and refinement of Indian manufactures and workmanship: (cotton and silk, calico printing and chintz, tanning and dyeing, building and brick-laying, carpentry and stone cutting, furniture and boat-building, working in iron and copper metals, gold and silver filigree work, wood-carving and bronze work, pottery and embroidery. Almost all these industries were domestic occupations and simple crafts of the hamlets. Spinning and weaving which constituted a great national industry gave employment to millions irrespective of all caste considerations.) Lakhs of Muslim women were engaged in the industry in Bengal and elsewhere.

(India flooded the British markets with her goods; repeated petitions went up to Parliament, in 1674 and 1696 for instance that such imports were destructive to the growing British industry.⁵ The British Government responded with heavy customs duties on Indian cotton in 1677, on Indian calicoes in 1658 and 1674 and on Indian silk in 1696.) The persistent imports necessitated an Act in 1716 prohibiting the smuggling of Indian muslin and calicoes.⁶ The year 1720 saw the absolute prohibition not only of the importation but also of the consumption of Indian cloth and this law held the field for half a century.)

The intention and effect of this policy on India was 'to change the whole face of that industrial country in order to render it a field of the produce of crude materials subservient to the manufactures of Great Britain'.⁷ (The British manufacturer 'employed the arm of political injustice to keep down and ultimately strangle a competitor with whom he could not have contended on equal terms'.⁸)

(iii. The Increase in Land Revenue and the Plight of the Agriculturist:—The grant of the *Diwanee* of Bengal to the Company in 1765 accentuated the economic distress on account of the excessive and fluctuating land tax. In Bengal, the land tax was fixed at over 90 p.c. and in north India at over 80 p.c. of the rental

5. P. J. Thomas: *Mercantilism and the East India Trade*, pp. 61-63.

6. Paul Mautoux: *The Industrial Revolution in the Eighteenth Century* (1927), p. 204.

7. Romesh Dutt: *The Economic History of India under Early British Rule* (Fifth Edition) quoting letter, dated 17 November 1769, p. 256.

The House of Commons Select Committee, Report, p. 4, quoting.

Vide Rohini Mohan Chaudhuri: *The Evolution of Indian Industries*, 1939.

Letter from the Court of Directors dated 18 February to the Governor of Bombay, p. 73, quoting.

Memorandum submitted by Henry Tucker in 1829 to the Court of Directors, p. 74, quoting.

8. Pramathanath Bannerjee: *Fiscal Policy in India* (1922), pp. 50-51.

between 1793 and 1822. In Madras the land tax first imposed by the Company was one-half of the gross produce of the land.) In the very first year of Wellesley's administration, the Company's demand was raised beyond that of Rs. 2,000,000 by the Nawab of Oudh in the Ceded Districts (Allahabad etc.). (Sir Thomas Munro showed that between 1800 and 1807 there was a gradual increase of revenue from £402,637 to £606,909 or an increase of 50 p.c. within 7 years in the Ceded Districts.) Sir Edward Colenbrook's Minute of 17 March 1820 shows a further steep increase between 1807-1818 in the Ceded Districts and the Conquered Provinces (the country between the Jumna and the Ganges). The Permanent Settlement with the southern Polygars in Tinnevely, Ramnad and other districts stipulated for exorbitant demands varying, from 41 p.c. to 51 p.c. of the gross rental. (Henry John Tucker⁹ and Sir Thomas Munro¹⁰ had alike condemned the excessively high assessment and the poverty-stricken plight of the Indian agriculturists.) The land revenue which remained much the same from Todar Mal's Settlement in 1582 to Sujakhan's Settlement in 1728 rose so high that (Col. Briggs wrote in 1830 that 'a Land Tax like that which now exists in India professing to absorb the whole of the landlord's rent, was never known under any Government in Europe or Asia'.¹¹)

(iv. *Famines*: The frequent visitation of famines — in 1770, 1784, 1804, 1837, and 1861 in Bengal and North India and in 1877, 1878, 1889, 1892, and 1897-1900 elsewhere — added to the misery. Warren Hastings and Captain Edwards' condemned this state of affairs) and Lord Cornwallis asserted that 'one-third of the Company's territory in Hindustan is now a jungle inhabited only by wild beasts'.¹² (The Nepal War, the Pindari War and the Mahratta War had also left behind a long trail of poverty and desolation.)

(v. *Other Factors*: To add to all these, caste exclusiveness and prejudice prevented people from taking to occupations other than those allowed by caste and custom. Moreover, a large percentage of the population depended on agriculture which, besides being subject to violent, seasonal fluctuations, provided work only for a third of the year. This exposed the large mass of agriculturists to serious economic risks in adverse seasons.¹³ Mass illiteracy rendered them unfit for any intellectual work; and in the absence of large-scale industries in the country, they were compelled to seek sustenance abroad. It was in such a predicament that the

9. Romesh Dutt, p. 133.

10. *Ibid*, Minute of Munro dated 31 December 1834, p. 160, quoting.

11. *Ibid*, p. x.

12. *Ibid*, p. 90.

13. Sir John Strachey: *India, Its Administration and Progress*, p. 417. *The Report of the Famine Commission 1880*, Vol. 1, p. 175.

planters from foreign countries approached the Indian Government through the imperial and colonial governments for a steady and continuous supply of Indian labour. The earnest entreaties and the rosy promises held out by the colonial planters and governments at a most psychological hour proved decisive.¹⁴ And organized emigration of Indian labour to the British colonies began from Bengal in 1838 under the supervision and direction of the Government of India. The active sympathy of the Government of India accelerated the pace of emigration. The colonial governments appointed professional recruiters who visited Indian villages stricken with failure of crops or pilgrim centres during days of huge religious congregations and entrapped poor Indians by dangling before them 'hopeful pictures of prospects in the colonies. They fulfilled the legal formalities with official connivance of the recruiting depots and then took them over for indentured service.

With the success of the British planters, the other colonial planters also became interested in Indian labour. Indian emigration was later extended to the French and the Dutch Colonies. The emancipation of 160,000 slaves by the French National Assembly in 1849, and the abrogation of the *Code Noir* in force since 1665, precipitated a crisis. The French sugar industry of Reunion and Antilles was driven to the brink of ruin. The French settlements in India were asked to explore the possibilities of securing Indian emigrant labour. The planters and the French Government approached the British authorities in India who, while showing reluctance to French competition in the beginning, later agreed with the result that the Convention of 1861 legalized the importation of Indian indentured labourers into the French colonies. The French merchants succeeded in taking away many workers, parti-

14. Parliamentary Paper No. 58, ordered to be printed 7 February 1840. Memorandum enclosed in Despatch No. 62 of Governor Nicolay dated 21 May 1839, p. 8.

Parliamentary Paper No. 66, ordered to be printed 7 October 1841. Quoting Despatch of the Governor to Lord John Russell dated 24 February 1841, p. 107, para 4; Petition of Planters to Queen Victoria enclosed in Governor's Despatch dated 18 May 1841, p. 111.

L. E. Neame: *The Asiatic Danger in the Colonies*. Durban Corporation Address to the Governor in 1859, p. 15, quoting.

Correspondence respecting the discontinuance of coolie importation from India to French Guiana C. 2053. 25 February 1878. Also letter No. 15 dated 3 May 1877, p. 16; Letter No. 19 dated 25 May 1877, p. 23; French Government's Despatch No. 6 dated 2 December 1878, p. 6.

Reports respecting the condition of coolies in Surinam, Slave Trade No. 3 (1877), Quoting. Despatch No. 7 dated 19 July 1873, p. 8, para 5: p. 9, para 13. Letter dated 4 January 1874, p. 16, para 1.

Papers Relative to Indian Immigrants in Grenada C. 2249. February 1897. Despatch of the Administrator dated 26 November 1878, p. 20. The Sander-son Committee Report, 1910, paras 94, 96, 219, 255.

cularly from Madras Presidency with the result that by 1851, there were about 23,000 Indian workers in Reunion. The Dutch also turned to India as the apprenticeship period of the Surinam Negro slaves who were emancipated in July 1863 drew to a close. Early in 1868, the question was referred to the Government of India. As a result of the Convention with the Netherlands Government, Indian emigration to Surinam began in 1872.

(Though the European planters succeeded in inducing the Government of India to permit Indian emigration, the large expenditure involved in importing labour across the seas to distant colonies like the West Indies, Mauritius and Fiji led the planters to devise a system in which the labourer could be chained to the employer. The adoption of the indenture system of recruitment and control served the purpose. But, as the tale of hardships and humiliations was unfolded by the returning emigrants, there was a progressive decline in Indian emigration culminating in a shortage of labour in the colonies. The only alternative to which the planters could resort was, therefore, the prevention of the Indian emigrants from returning home in some way or other. They induced the Indian workers to make the colonies their homes by facilitating their settlement through grants of small plots of agricultural and pasture land, and providing them with opportunities for the commutation of the return passages into grants of land and by imposing fines and thereby compelling them to work beyond the period of indenture. Indentured Indian emigration to all the distant colonies thus led to the permanent settlement of Indians.¹⁵)

(The position is different as regards Ceylon, Malaya and Burma. Indian emigration to these countries had been in the main rendered temporary by geographical contiguity and by season and crop conditions on both sides of the sea,¹⁶ though in recent times a large proportion of estate labour had tended to be permanently settled.¹⁷ In these countries, the *Kangany* and *Maistry* systems of recruitment came into vogue. The labourer was bound to the estate by being made to start life in debt to the middleman-employer and ultimately to the estate.) The systems came to be so devised as to almost exculpate the actual employer and throw the blame on the middleman who, whatever his sins, was blessed by the employers themselves for reasons of expediency. Despite the technical differences between these two systems on the one hand and the indenture system on the other, the fundamental problems of the Indian worker remained the same.

15. Radhakamal Mukherjee in the 'Twentieth Century' April, 1935, p. 681.

16. *Ibid.*

17. Administration Report of the Controller of Indian Immigrant Labour for 1931, para 130.

The one central idea which runs through all stages of Indian emigration has been expressed by Sir Thomas Hyslop as follows :

We want Indians as indentured labourers but not as free men'.¹⁸ This is because what the colonies required of the Indian was his labour. Attempts were, therefore, made to prevent the rise of free-Indian class which might compete on a footing of equality with the Europeans or, in certain cases, the indigenous community. The rise of the educated professional classes extended the frontiers of the struggle from the economic to the political arena.

Finally, (three issues came to the fore.¹⁹ In the first place, the gradual disruption of the communal life and primitive economy in colonies, and the increased willingness of the natives and Europeans to take up the work hitherto done by Indians gave rise to the fear of unfair economic competition by Indians. The emergence of the professional classes brought in its train the second issue, the fear of political domination. The rough and tumble of political exigencies helped to a great extent in giving birth to the third issue of racial juxtaposition. The enforced sex disproportion in the recruitment of labour gave rise to the fear of racial inter-mixture. This, together with the assumption of racial superiority by the Europeans as the ruling race, supplied the racial issue a crutch to lean upon. The socio-cultural differences due to divergences in race, religion, language and civilization, among Indians, Europeans and the indigenous communities complicated the above issues and further widened the psychological cleavages. These economic, political and racial considerations in their turn led to statutory restrictions on Indian immigration and settlement, on acquisition, occupation and alienation of land, on trading and other professions, and on the recognition of Hindu and Muslim personal law of marriage, inheritance and divorce. Adequate educational facilities were denied and the elementary rights of franchise and representation were denied or restricted. Added to all these were the innumerable inherent problems of labour as so many manifestations of the general question of capital versus labour. The surprising diversity of the problems ranges from parliamentary representation to ceremonial cremation! It must be noted in conclusion that the situation was aggravated by the constitutional limitations of the Government of India arising from its being till August 15, 1947, a subordinate government which made a just solution of the various problems difficult)

¹⁸ S. A. Waiz : *Indians Abroad* (Second Edition) Vol. I, I.I.C.A. Quoted by Mr. W. Hosken, p. 265.

¹⁹ Dr. Lanka Sundaram : *The International Aspects of Indian Emigration*, p. 44.

CHAPTER II

SYSTEMS OF RECRUITMENT OF INDIAN LABOUR

SECTION I — INDENTURE SYSTEM

The time and circumstances of the origin of indentured labour system of recruitment and emigration, as also the nature of the system which it was intended to replace, moulded mostly the character of the indenture system. Sir William Hunter stated that the indenture system was perilously near slavery. Eminent Indian public men like Gokhale, Mahatma Gandhi and C. F. Andrews described it as semi-slavery. The British Guiana Commission of 1871 said :

The indenture system differs from slavery principally in this respect — that of his proper civil rights those which are left to the slave, if any, are the exception while in the case of the indentured labourer the exceptions are those of which he is deprived. Hence it is the freedom of the slave and the bondage of the indentured labourer against which all the unforeseen incidents and accidents of law must tell.¹

Lord Olivier says :

It is notable that the West Indian Negro thinks the coolie more of a slave than we do. That is because the economic conditions of his life are freer than those of our proletariat who take themselves, as a rule, as the type of freeman and his standard of independence so much the higher.²

(The chief features of the indenture system were five years of stereotyped State regulated labour, denial of the right to change the employer or employment, recruitment of labour units and not families. gross disproportion of men to women emigrants, payment of emigration charges for recruitment by the employer and the denial of increased wages in spite of increased prices and profits. The employer was under a legal obligation to provide fixed wages, free housing, medical attendance and other amenities.)

MAURITIUS

Indenture emigration of Indian labour was first permitted by the Government of India in 1839 to Mauritius. Ever since 1838 several abuses were found in respect of the treatment of unindentured Indian labourers.³ T. Hugon of Bengal Civil Service reported

1. Dr. Lanka Sundaram, p. 31, Quoting.

2. *Ibid.* p. 33.

3. (Original) Legislative Dept. 1838, No. 9 of 1838. Despatch from the Court of Directors No. 9 dated 1 August 1838.

in the same year that whatever the means and extortion employed by the native crimps, the traders could not help acquiescing, in view of the risk involved in case of protest of the coolies being taken to other places. To remove these abuses, Hugon recommended that the labourer should instead of being bound by the contract as before, have the facility of avoiding it by a reimbursement of the expenses of his introduction reduced to the lowest sum possible by government interference.⁴ This recommendation was, however, not accepted. News of very serious irregularities in recruitment reached the Government of India. The latter appointed a Committee to inquire into the abuses alleged to exist in the exportation of coolies to Mauritius. The majority of the Committee reported affirming the practice of misrepresentation and deceit, incapacity of the coolies to understand the nature of contracts, deprivation of 50 p.c. of the wages, prevalence of kidnapping to a considerable extent, hostility of the magistracy and police to coolie population and the non-fulfilment of contractual obligations by the planters.⁵ J. Geoghegan of the Government of India stated that this Report

may be said to have proved that very grave abuses had prevailed in India, emigrants having been, in too many cases, entrapped by force and fraud, and systematically plundered of nearly 6 months' wages, nominally advanced to them but really divided, on pretences more or less transparent, among the predacious crew engaged in the traffic.⁶

On the basis of this report, the Government of India prohibited emigration to Mauritius in 1840. In February 1841, the Governor of Mauritius requested the Government of India to lift the ban on the specious ground that even the most ill-disposed planters could be controlled against the exercise of arbitrary or unjust power. But the latter rejected the request

as no amount of vigilance would prevent the frequent infliction of grievous oppressions and deceits upon large numbers of persons helpless from their poverty and from their utter ignorance and inexperience.⁷

The Colonial Office, however, felt that the ban was no longer necessary. Under the impression that the Government of India

⁴ Parliamentary paper 331, 28 May 1840, p. 185, para 11, Despatch dated 13 January 1840.

⁵ Report of the Commission to Inquire into Abuses Alleged to Exist in the Export of Coolies to Mauritius and Demerara, Vol. Oct.-Dec. 1840, pp. 88-90.

⁶ Export of Coolies, Return to an Order of the House of Commons, 12 February 1841, p. 155, Letter of the Collector of Malabar dated 19 September 1839 Correspondence Relative to the Introduction of Indian Labourers into Mauritius, 15 February 1842, para 3, Despatch No. 68 dated 7 July 1841. "

⁷ J. Geoghegan, (Note on Emigration from India 1873), p. 6.

7. Papers Respecting the Exportation of Hill Coolies, 22 September 1841, p. 9.

would not be averse to lifting the ban, His Majesty's Government passed an Order-in-Council permitting resumption of Indian emigration under certain conditions. But they were also careful to stipulate for a secure guarantee for return passages to emigrants wishing to return on the expiry of their indenture, full liberty being given to them to avail themselves of the same. Subsequently the Secretary of State for the Colonies addressed the Court of Directors who left the matter to be decided finally by the Government of India. The Indian Government prepared a draft Act and forwarded it to the Court of Directors. In March 1842 the Colonial Governor again urged the removal of prohibition of emigration. He promised that the views of the Government of India in regard to protection of emigrants would be 'carried into the fullest and most complete effect'.⁸ As a token of their *bona fides* the colonial Government sent a copy of an ordinance establishing a fund of £25,000 yearly to provide return passages and defray other expenses. They also expressed full concurrence with the draft ordinance of the Government of India. This led to the passing of Act XV of 1842 permitting emigration to Mauritius from Calcutta, Madras and Bombay under certain conditions.

The colonial Government thus succeeded in securing resumption of Indian emigration. They then turned their attention to the steps that should be taken to prevent the return of Indian labour. So they passed Ordinance No. 111 of 1843 increasing the indemnity for the passage money of Indian labourers, as it was 'presumed that a number of able and practised hands will thus be retained in the colony, with the probability enhanced of their becoming permanently established in it'.⁹

There was again a relapse to the old abuses. The Hon. Mr. Bird of the Government of India drew attention to the dangers in leaving emigration to the private speculation of planters themselves instead of conducting it, as was intended, solely through the officers of the Governments. He also stated that the emigrants 'are deprived of the benefit of that part of the law which was intended to secure on their arrival in the island the liberty of contracting for their labour with any party they might think proper'.¹⁰ The Government of India passed Act XXI of 1843 restricting emigration to the port of Calcutta and authorizing the appointment of a Protector at that port. C. Anderson, Acting Protector of Immigrants, Mauri-

8. Geoghegan, p. 11.

9. Correspondence Relative to Emigration of Labourers to the West Indies and the Mauritius, from the West Coast of Africa, the East Indies and China, p. 207, Despatch dated 22 March 1843.

10. Minute dated 8 November 1843.

tius, was deputed by the colonial Government to Calcutta to request the Indian Government to remove the restriction.¹¹

In 1845, the Council of Mauritius Government appointed a committee to report on the causes of the continued demand for labour in the colony despite large-scale immigration. This committee reported that the close competition to obtain labourers had led to the 'most mischievous consequences'¹² in the employment of *Sirdars* to procure them, in the enticing of men from the estates, and in rendering the employer completely dependent upon the labourer. They concluded that the same competition had put all classes to inconvenience, anxiety and expense. The committee quoted with approval the remedy suggested by a Select Committee of the House of Commons on West Indian colonies in 1842. The Select Committee recommended the promotion of immigration of a fresh labouring population, 'to such an extent as to create competition for employment'.¹³ The Mauritius Committee, while stating that many of the evils complained of by the planters would be remedied by adopting the suggestion of the Select Committee, also held that, under the then existing system by which the whole expense of their introduction fell upon the community at large, it was impossible that such a number should be introduced. This method to secure sufficient labour at low wages thus proved abortive due to financial reasons. The planters, therefore, invoked another recommendation of the Mauritius Committee, viz., an extension of the term or period of engagement beyond 12 months. But the colonial Governor held that this recommendation could not be adopted in view of the already enormous influence of the *Sirdars*, and also because of the evidence in favour of extension of the term which was in part furnished by landed proprietors. He, on the other hand, suggested that the coolie should be saddled with the cost of his passage to Mauritius. He was to forfeit his right to a fresh return passage at the end of 5 years, in case he should, at any time within that period, have abandoned agricultural labour for other pursuits. But the Government of India, supported by the Court of Directors, strongly resisted the introduction of the change.

Act XXI of 1843 began to make itself felt. From 1844 the Governor began to urge the resumption of emigration from Madras. The request was at first rejected. It was found later that the

11. Copies or Extracts of any Further Correspondence relative to the Emigration of Indian Labourers into Mauritius, 3 June 1844, p. 5, Despatch No. 199 dated 19 December 1843.

12. Copies or Extracts from the Despatch from the Governor enclosing the Report of the Committee appointed to inquire into state of Indian Immigrants, August 1845, p. 5, para 7.

13. *Ibid.*, p. 8, para 21.

required 6,000 labourers could not be provided by Bengal alone. Hence the concession was made by passing Act VIII of 1847, permitting emigration from Madras on the same footing as from Calcutta. Four years later, the Mauritius Government requested the Government of India to be relieved of the obligation to provide return passages. Curiously enough, the Government of India complied with the request on certain conditions. Geoghegan observes :

It seems however to have been, both at the time and ever since, overlooked that a return passage at the end of 5 years was made legally binding on the Colony by Section I, Act XV of 1842. . . . I find that in 1864 the Government of Mauritius did bring to the notice the discrepancy between the law and practice. But no action was taken in the matter.¹⁴

Indian emigration was resumed from 1850 under Act VIII of 1847. The terrible mortality of 284 out of 697 emigrants on board the *Hyderee* and *Futteh Mobarik*, due to gross negligence during the voyage, compelled the Government of India to suspend emigration in 1856. But the modification of quarantine rules led to the withdrawal of suspension the next year. In the same year, Advocate Savy charged the planters with the ill-treatment of coolies by holding wages in abeyance, and the magistracy with supporting the planters. The colonial Government appointed a Commission to inquire into these charges and on the basis of the report produced held that the charges had been disproved. Referring to this report Geoghegan stated: 'The admission in its very form shows that the colonial authorities were not alive to the absolute necessity for a thoroughly independent magistracy', and that the report 'bears witness to the existence of a system under which large arrears of wages were habitual. . . .'¹⁵

.. Subsequently the planters attempted to import labour on private account by sending their own recruiters and thus arrange for importation of labourers in excess of the number imported by the Government for allotment. But the Bill introduced for the legalization of this procedure was not passed into law. Though the planters were disappointed in depressing labour in this manner, they succeeded later in 1862 by introducing changes in the colonial law extending the period of contracts to five years.

In 1864 the Government of India passed Act XIII consolidating the then existing nineteen laws on emigration. The Act also affirmed the necessity for the essential equality between the two contractual parties in an indenture transaction. It stipulated that the labourer should, instead of being forwarded at once to the coast,

14. Geoghegan, p. 19.

15. *Ibid.*, p. 29

be taken before a magistrate who was to interrogate the former as to his comprehension of the engagement and willingness to fulfil it. It also provided for medical inspection, regular licensing of the recruiters and penalties of fine and imprisonment for any violation of those provisions. The Act entrusted the Protector, and not the Agent, with the power of licensing the recruiters. The Protector and the magistrate were required to refuse registering the name of an intending emigrant, who, in their opinion, did not understand the nature of the engagement or had been induced by fraud or misrepresentation to enter into it. The colonial Government protested against these two provisions, and also against the enforcement of the power taken by the Government of India under Sections 64 to 67, to suspend emigration to any country not providing for a return passage. They relied for support on the formal waiver of the claim in 1843. Though this condition became nominally binding also on Mauritius, back passages from Mauritius do not seem to have been given till the Governor in 1873 discovered the flaw and provision was made for their issue under orders of the Earl of Kimberly, the Secretary of State for the Colonies.

Though Act XIII was beneficial in removing the abuses at the time of contract, it proved very inadequate in helping the labourer to free himself from the unfair obligations after he had entered the colony. Ordinance XXXI of 1867 rectified this defect to a certain extent. This Ordinance provided for the delivery to every immigrant of a certificate of his engagement, and for the cancellation of indenture on showing a sufficient cause. It also authorized cancellation of engagements of infirm labourers, facilitated the recovery of wages and defined the general rights of a labourer. This Ordinance and Act XIII of 1864 lifted the indentured labourers at least theoretically from the slough of slavery. But, as if to counteract the beneficial effects of these enactments, the colonial Government passed a series of restrictive laws with the avowed intention of discouraging free labour and this resulted in grievous oppression. The old immigrants who were aimed at petitioned in 1871 to the Mauritius Government, as a result of which a Royal Commission and a Police Inquiry Commission were appointed to inquire into the matter. The Government of India, endorsing the findings of the latter Commission stated that the old immigrants were

subjected to most vexatious and unnecessary restraints upon their personal liberty¹⁶

and that the

penalties for vagrancy were excessively severe, 28 days imprisonment for a first offence, hard labour being 'added' appa-

16. *Ibid.*, p. 67

rently without warrant of law, by the 'Stipendiary Magistrates'. After two or more convictions within two years imprisonment from 6 to 9 months might be awarded and at the end of such imprisonment, if the employer of the immigrant could not be found, the latter might be employed on Public Works for three months longer, and then sent for allotment to a new master.¹⁷

The Report bears witness to the transformation of the office of Protector from an office where the immigrants might come freely for advice and assistance into a department for the levy of fees from the immigrants, in addition to the ordinary taxation fixed by law. Geoghegan observes

On the whole then, the tendency of Mauritius legislation has been, I think, towards reducing the Indian labourer to a more complete state of dependence upon the planter and towards driving him into indentures, a free labour market being both directly and indirectly discouraged.¹⁸

Under the notorious vagrancy regulations of the colony, the indentured labourer was liable for arrest, imprisonment and heavy fines for failing to produce on demand at any time the police pass, the portrait ticket, certificate of engagement, day labourer's licence or return permission from employer. These restrictions, harsh as they were, were rendered still more harsh by the way in which they were enforced both by the magistracy and the police. The total number of arrests for 1869 was 30,824, of whom 12,538 were condemned to hard labour, and 7,000 were arrested illegally. Adverting to the working of these vagrancy laws, the Police Inquiry Commission stated :

We fear also that immigrants may be deemed to be vagrants upon very insufficient grounds. The Stipendiary Magistrates do not generally enter in their books the grounds upon which men are held to be vagrants. Consequently little information of this description is laid before the Procureur-General in the weekly returns ; nor could we find out what was deemed to be vagrancy in any satisfactory manner. But there seems to be in the minds of many of the officials a distrust of the genuineness of any employment which an Indian may adopt on his own account.¹⁹

The object and effect of this vagrancy law was to compel the immigrant to re-indenture. The fact that in 1870 the number of engagements contracted with new masters was 31,481, while that with the old masters mounted upto 45,460, proves definitely that the planters had succeeded in their attempts.

17. *Ibid.*, p. 68.

18. *Ibid.*, p. 88.

19. *Ibid.*, p. 99.

All the above abuses, which continued unabated, were again investigated by a Commission appointed in 1874. The result of the enquiry was the passing of a new Labour Ordinance No. XII of 1878, which, while maintaining indentured labour, gave better protection to the labourer. Under this ordinance re-indenture for a period upto five years as well as indenture were permitted. The relentless pursuit of the fictitious crime of vagrancy, which drove the immigrant to re-engage was the objectionable feature of pre-1878 labour ordinances. Referring to the Report of this Commission of 1874, the Earl of Carnarvon, the Secretary of State for the Colonies, said that its conclusions

were substantially correct..... the distinction between the offences of illegal absence, desertion and vagrancy has not been observed..... the allegations against the Police have been shown to be in the main true, the Police have evinced a want of discretion in enforcing the labour law.... the Magistrates having no rules to guide them have adopted different and irregular modes of procedure in different districts.²⁰

Emphasizing the necessity for the modification of the provisions of the Ordinance of 1867, Carnarvon said :

I cannot but feel that those provisions are repugnant in principle to that liberty which an emigrant, like every other class of His Majesty's subjects, is entitled, and that nothing but a clear and unquestionable necessity could justify their maintenance.²¹

He also pleaded for prohibition of vagrant hunts, the arrest of men who passed in the pursuit of their daily business from one district to another, and the practice of giving the police a portion of the penalties imposed.

The recruitment of Indian workers and the conditions of their life continued more or less in the same unsatisfactory manner for the next 30 years. The Emigration Committee of 1909 recommended the discontinuance of Indian labour emigration to Mauritius. In 1910 the Secretary of State for the Colonies accepted the recommendation and directed the discontinuance of Indian labour emigration but stated that 'emigration to Mauritius should be free from all restrictions as in the case of Ceylon, and that labourers should be recruited by *Kanganies* and *Sirdars*'.²² Thus planters were enabled to obtain free labour from India if they could do so without government assistance. But the Secretary of State for

20. Correspondence relating to the Royal Commission of Enquiry into the condition of Indian Immigrants in Mauritius (1875). C. 1188, p. 16, para 3.

21. *Ibid.*, p. 21, para 36.

22. Note prepared by the Department of Revenue and Agriculture on Indian Emigration to Mauritius (1923), Delhi, p. 3, para 12.

India and the Government of India rejected the proposal. Thereupon, in February 1912 the Secretary of State for the Colonies requested the Governor of Mauritius to endeavour to secure legislation limiting the application of penal provisions of the law to contracts for periods not exceeding a month. In July 1912 and November 1915, the Governor requested the Government of India to reopen the question of the resumption of emigration, but as indenture was abolished in 1915, the subsequent opening of emigration operated under a free system.²³ Indian labour was recruited in 1923-24 for Mauritius under the scheme of assisted emigration, but Indian immigration into the colony ceased since then. As a result, mainly, of Indian labour, the sugar crop rose from 70,000 tons in 1853 to 1½ lakhs tons in 1900 and 3 lakhs tons in 1946.

Thus the indenture system which was in existence for 78 years proved violently vicissitudinous and harmful to Indians. But several Indians also became peasant proprietors and a few even planters, and nearly a third of the whole area under sugarcane came into Indian hands. On the whole, however, the advantages derived from the indenture system hardly compare with the suffering, moral and material, that Indians had undergone.

WEST INDIAN ISLANDS

On 1 August 1834, all slaves of British Guiana were emancipated and this led to a crisis in the sugar industry for the emancipated Negroes refused to serve as plantation labour. Attempts were made to recruit Portuguese labour from Madeira and Maltese labour from Malta. These efforts proved unsatisfactory, and here, as elsewhere, the planters turned to Indian labour. In 1838, 406 indentured Indians were brought here to work on the estate of John Gladstone, father of the famous British Liberal statesman. Subsequently Indian labourers were taken to serve on several other estates also. Immediately, difficulties arose in regard to recruitment and charges of gross ill-treatment were made in 1839. This news greatly diminished indenture emigration to British Guiana. The abolition of slavery reduced the supply of labour in Trinidad at a time when more skilled labour was required consequent upon the extension of beet sugar cultivation. Moreover, though Negro labour was available from Cuba, importation of Indian labour seemed to help in depressing the wages. In 1842, a Select Committee of the House of Commons proposed that the one and most desirable method of endeavouring to compensate for the diminished supply of labour was to promote the emigration of a fresh labouring population to such an extent as to create competi-

23. *Ibid.*, p. 5, para 16.

tion for employment. The Colonial Office wrote to the Court of Directors in 1843 urging a reconsideration of the necessity for maintaining prohibition of emigration from India to the West Indies. The Directors recommended the question to the careful consideration of the Government of India, who replied explaining the difference between the position of West Indies and that of Mauritius. A memorandum of the necessary preliminaries was also forwarded, which specially provided for the repatriation of the emigrants after five years, should they wish to return to India. The Government of India thereupon passed Act XXI of 1844 authorizing indenture emigration to the West Indies. In reporting this measure to the Court of Directors, the Government of India stated that they relied on the good faith of the colonial Governments to accord proper treatment to Indians and to secure a return passage to India on the expiry of indenture as well as to bestow due care on the return voyage. But there was no express provision in this Act which, in the case of Mauritius, rendered all contracts entered into before the emigrant had been 48 hours on the shore null and void, and barred all suits for debts contracted before arrival in the Island.

Act XXV of 1845 permitted emigration to the West Indies from Madras to begin after 31 August 1845. Between 1845 and 1847 the Jamaica Legislature made a request for 5,000 Indian labourers; 4,500 were actually introduced into the colony. In 1853, the Indian Government also permitted extension of the period qualifying for the return passage from 5 to 10 years in the case of British Guiana and Trinidad. On application from the Colonial Office for the opening of emigration to St. Lucia and Grenada, Act XXXI of 1855 was passed, placing St. Lucia and Grenada in almost the same position as the West Indian colonies of Jamaica, Trinidad and British Guiana. But this Act in addition declared in Sec. 70 that

the Act was only to take effect, when the Government of India should notify that such regulations had been provided and such measures taken in the colony as might be considered necessary for the protection of emigrants during their residence and in respect of their return to India.²⁴

There were several defects in the St. Lucia Ordinance. So the Government of India objected to it particularly on the ground that no provision was made for the inspection of immigrant ships, for safeguarding against the separation of families, and for proper treatment in the colony. After protracted correspondence, Lord Canning suggested that the Indian Government should take power to suspend emigration in certain cases. Accordingly, Act XXIX of

24. Geoghegan, p. 21.

1856 was passed empowering the Governor-General-in-Council to suspend emigration to any British colony when there was reason to believe that proper precautions were not taken for the protection of emigrants immediately upon their arrival in such colony, or during their residence therein, or for their safe return to India, or to provide a return passage at or about the time at which they were entitled to it. Similar power to revoke such suspension was also taken. Ultimately emigration to St. Lucia was legalized on 5 November 1858.

The terrible mortality of 17·27 p.c. which attended emigration from Calcutta to the West Indies during the season 1856-57 led to the appointment of Dr. Mouat, Inspector of Jails in the lower provinces, by the Government of Bengal to investigate into the matter. Dr. Mouat suggested, amongst other things, the diminution in the proportion of women and children to 25 p.c. and added that 'the penalties for neglect of proper sanitary arrangements on board should be more stringent than they are, and that the examination of the conditions of both ships and emigrants should be more minute and searching at the ports of debarkation than they appear to be at present.'²⁵ The Government of India accepted all his recommendations, except as regards the limitation of women.

The Indian labourers introduced into Jamaica between 1845 and 1847 were under no contract to serve but they were indirectly compelled to serve by being required to pay a penalty of 5 sh. per month for unemployment. This experiment failed costing the colony £8,000 and emigration was stopped. In 1860 when the Legislature sanctioned a loan of £150,000 for expenses of emigration, 4,600 Indians were again introduced between 1860 and 1863. But this time the labourers came under a contract to work for two years with further contracts of not less than one year's duration upto the total amount of five years. The conditions on the estates were very unsatisfactory and necessitated the introduction of a new emigration law in 1869, providing for regular work and fixed wages, housing and medical attention. The term of indenture was fixed at five years, the emigrants after that period being free to dispose of their labour as they pleased.

In 1870, the Government of India received proposals for the resumption of emigration to Grenada. Referring to the circumstances in which emigration to Grenada ceased, Geoghegan has quoted the Emigration Board thus:—

It was also stated that in order to defeat the claims of the emigrants to a free return passage, the planters refused to re-indenture them which under the law in force was a necessary con-

25. *Ibid.*, p. 28.

dition. Eventually the Governor removed some of the emigrants whom the planters refused to employ to British Guiana — a step which though somewhat beyond the Law, had a good effect in alarming the planters as to the results of their proceedings.²⁶

The attitude of the employers being thus hostile, Sir Stafford Northcote, Secretary of State for the Colonies, proposed that emigration to Grenada should not be resumed without the consent of the Government of India.

Now the position in British Guiana was deteriorating. Charges were made by Des Voeux, a resident therein, regarding the existence of gross abuses and ill-treatment of Indian emigrants. The Royal Commission, appointed to investigate into the charges, reported in 1871. They stated :

It would seem that immigration, as far as the coolies are concerned, has failed to fulfil its purpose, if after being acclimatized, after learning their work and paying for their passage out, they must still be brought under indenture after indenture, and not encouraged to take their station in the country as free labourers.²⁷

The Commission showed that

the Law in British Guiana was both framed and administered in a spirit of substantial injustice to emigrants. The Commissioners declared that there was an absolute and universal want of confidence in the magistracy on the part of the emigrants. With an average emigrant population of between 30,000 and 40,000, the number of cases against labourers had been 6,500 annually, while those against employers might be counted by tens. In half the cases brought by employers convictions followed. But the other half did not consist of true acquittals It was shown by the Commissioners, and indeed was manifest on the face of their report, that the rates of wages offered by recruiters in India and entered in the register of emigrants as the stipulated or contract rate grossly exaggerated the real wages attainable.²⁸

The Commission of Enquiry on British Guiana Labour had also stated that, though no man was bound to indenture a second time, several methods were adopted to induce re-indenture. The Immigration Agents were encouraged to provide greater facilities for re-indenture in preference to the discharge of their original super-

26. *Ibid.*, p. 56. For subsequent treatment of Indian labour. See Papers relative to the condition of Indian Immigrants in Grenada, C. 2249, February 1879, pp. 1 and 20 and paras 4, 9 and 18.

27. Report of the Committee on Emigration from India to the Crown Colonies and Protectorates (Sanderson Committee Report) June 1910, para 222.

28. Geoghegan, p. 65.

vising duties. Even long before this, while rejecting the planters' request for extension of the term, the Government sanctioned a plan for the deduction of a certain monthly sum from those emigrants who were unwilling to enter on a second term. Further there was no means of enforcing a penalty if wages were wantonly withheld. Nor was there any summary remedy for the recovery of wages, except the civil one under the Petty Debt Ordinance. This Ordinance proved useless as more than one-third of the Justices of the Peace were resident managers of estates, who remained vested with the same summary power as stipendiary magistrates and thereby 'the planters were made judges in their own or their fellow planters' cases'.²⁹

While the prosecutions were thus harassing, the economic position too was not satisfactory. From 1871 to 1886 the sugar plantations were in a struggling condition. But the Indian Emigration Act, 1883, also proved helpful in supplying cheap Indian labour. The planters seized the opportunity by offering lands in lieu of return passage to those indentured workers who preferred to settle as peasant farmers. The trade depression of the 'eighties was thus weathered by the planters. In Trinidad 'at the worst period (about 1866) wages to the free labourers were even at times reduced to 20 cts. a day'.³⁰ The news of the bad conditions on estates affected emigration to Jamaica, and the planters found themselves in great difficulty in 1889-90. A Select Committee was appointed to make an enquiry and it was decided to make an effort to obtain native labour before importing East Indians. But the failure to obtain native labour led to the reopening of Indian immigration in 1891 which continued till 1897 when it was stopped owing to the prevalence of plague in India. Another failure in obtaining local labour led to the importation of Indian labour in 1899-1900.

By 1904, there was improvement in the position with the extension of cocoa cultivation and of other minor industries in Trinidad. The question of higher wages to unindentured labourers began to force itself to the forefront. A Select Committee, appointed in Trinidad in 1905, recommended that the law prohibiting the payment of higher wages to outside labour than to indentured labour should be altered on the ground that, in addition to the money portion of his wage, the indentured labourer had housing and medical attention. Accordingly, an Ordinance was passed in 1908, which allowed 16 cts. per diem to be added to the wage of a free labourer. Thus the unindentured labourer was legally placed

29. *Ibid.*, p. 103.

30. Sanderson Committee Report, para 273.

on an equal footing with the indentured worker in respect of wages. This improved the position of unindentured labourers to some extent.

The Sanderson Committee reviewed the whole position and reported in 1910. They were greatly struck by the prosecutions of the workers and recommended that the power to arrest without warrant should be limited to certain cases of reasonable suspicion of desertion, or its contemplation, and that persons arrested should first be brought before an officer of the Immigration Department or a magistrate.

There has been no assisted emigration to Trinidad since 1931. Consequently more than 85 p.c. of the Indians are colonial-born. Same is the case with British Guiana and Jamaica.

Indian emigration to British Guiana was suspended for a time. In 1853, the indenture system was legalized. The supply of indentured labour to British Guiana continued until its abolition in 1917. Between 1838 and 1917 about 240,000 men, women and children were brought to work on the plantations in British Guiana.

NATAL

The petition of the Natal planters to Governor Grey in 1859 led to the emigration of Indian labour to that country under Act XXXIII of 1860.³¹ Geoghegan stated that the very first shipload of returning emigrants were loud in their complaints. An enquiry instituted in the colony showed that the employers had ill-treated their labourers almost with impunity. Wages were habitually held in arrears, and in many cases were not paid at all. The enquiry also proved the violation of the express stipulation granting allowance to time-expired labourers while waiting for a return passage, and the existence of the most disproportionate stoppages in case of labourers' sickness. Negligence as to inspection of estates and complete non-enforcement of the rules regarding hospital accommodation were also established. This enquiry led to a stoppage of emigration between 1866 and 1874. In 1874 the Lieut.-Governor of Natal requested the Government of India to permit the resumption of emigration on the ground that Natal was threatened with positive ruin.³² The Wragg Commission reported that 'in 1874 crops were rotting on the ground.'³³ This dearth of labour forced the planters to realize the value of Indian labour. This realization resulted in Sec. 51 of Act. II of 1870 which provid-

31. W. T. M. Henderson: Durban: *Fifty years of Municipal History*.

32. Brief of Instructions issued to the Delegates of the Government of India to the Conference (1926), p. 1, Despatch dated 26 August 1873.

33. *Ibid.*, p. 2.

ed for the right of commutation of passage to a parcel of land for settlement. The Act of 1874 also accorded the right to grants of lands in exchange for the passage. The facility so accorded helped many Indians to settle as free labourers on the expiry of their indentures. But this settlement frightened the planters. The Wragg Commission reported that 'the majority of White Colonies were strongly opposed to the presence of the free Indians as rivals and competitors either in agricultural or commercial pursuits'.³⁴ The Governor of Natal, therefore, proposed that the Indian immigrants should be compelled to return to India after completion of their indentured service. Lord Knutsford informed the Colonial Office that he could not sanction this proposal. The Governor subsequently attempted to extend the period of indenture. But the Government of India objected to it on the ground that this proposal would deprive the Indian immigrant of the option of returning to his home on the expiry of five years, besides preventing him from making the best use of the second period of 5 years residence which, under the law as it stood then, he had to complete for securing the privilege of a free return passage to India.

An Act of 1891 repealed the provision for commutation of return passage for grant of land as the first step to prevent the settlement of Indians as free men. The Binns-Mason Deputation of 1893 to the Indian Government repeated the Natal Governor's proposal to stipulate for the return of Indian immigrants on the expiry of their indentures. The Government of India verbally informed the Deputation that they would raise no objection to the insertion of a condition in the contract to the effect that the labourers must return to India at the end of their last term of indenture, 'provided that failure to fulfil this condition shall not constitute a criminal offence'. The Indian Government was perplexed as to how to enforce the return of the labourers. They curiously suggested to the Secretary of State for India a method for such enforcement thus: 'We believe however that refusals to return will probably be rare and that they may be reduced to a minimum by imposing a tax on residence of Indian immigrants in the colony.'³⁵ The Secretary of State for India warned the Indian Government against taking any such initiative or approving imposition of such tax and stated that the point might be left to be raised by the colonial Government.³⁶ He suggested that the object

34. *Ibid.*

35. *Vide Selection of Papers regarding the Indian Problem in the Union of South Africa for the use of the Delegates of the Government of India (1926)*, p. 19, Despatch of the Government of India dated 22 May 1894.

36. *Ibid.*, p. 20, Despatch dated 2 August 1894.

of compelling the return could be more simply and surely achieved by obliging the emigrant to contribute from his earnings a certain proportion of the cost of a return passage, and by providing for the forfeiture of such contribution in the event of not returning thus within some reasonable period. The India Office apprehended the possible imposition of a special tax on emigrants choosing to remain in the colony contrary to the terms of their undertaking, as also the extension of such special tax to free Indians who went to the colony, at their own expense and without conditions, for purposes of trade.³⁷ But the Colonial Office assured them that

such a tax would be in effect a penalty for enforcing contracts voluntarily made by the coolies in India and might be justified on that ground, but that it would not follow that the allowance of such a measure would preclude disallowance of a law imposing a special tax on free Indian emigrants to Natal.³⁸

In view of the immunity from criminal prosecution insisted upon by the Government of India, the Deputation suggested a residence tax. Accordingly, on receipt of the report of the Deputation, the Natal Legislature passed Act XVII of 1895 amending the Indian Emigration Act XXV of 1891 in some important respects. Section 110 of the latter Act provided for a full return passage back to India to an Indian who had resided in Natal for 10 years and completed 5 years service, if he had applied within 12 months after the expiry of his indenture. Section 114 provided for the forfeiture of this privilege in certain circumstances. Section 13 of Act XVII repealed these sections and thus the possibility of obtaining a free passage was retained, but the grace period of 12 months was disallowed.

Under Act XVII of 1895 it was not only the ex-indentured Indian who had taken out the licence that was entitled to remain in the country, but equally those who had not obtained licences had the right to remain. And this was for the simple reason that they could not be deported in view of the stipulation of the Government of India that failure to return to India should not be treated as a criminal offence. There was also no provision penalizing those who failed to take out licences. As a result of this legal position, the object of making Indians return to their country could not be attained. So the Natal Government sent the Shepstone-Gersigney Deputation in 1903, who proposed that the contracts of indenture should in future be made to terminate in India, instead of in Natal. The Government of India replied that they were agreeable to the enforced repatriation of Indian labourers, and that therefore per-

37. *Ibid.*, p. 21, Despatch No. 1020—J. & P. dated 4 July 1894.

38. *Ibid.*, p. 21, Despatch dated 20 July 1894.

sons emigrating under the new arrangements would necessarily be free from any liability to pay the licence tax for leave to reside in Natal, and that the tax should be altogether abolished after ten years. They also stated that an undertaking to the effect that this would be done should be given as a condition precedent to their acceptance of the proposed arrangements for repatriation. But the negotiations failed as the proposal, in the form in which it finally emerged, contemplated general repatriation after the period of indentured service had expired, while, as originally put forward, the proposal was one for the termination of the contracts of indenture in India, instead of in the colony.

The failure of these negotiations led to the passing of an Ordinance in 1903, amending Act XVII of 1895. The amending Ordinance provided that the children of the Indian immigrants who came under the provisions of Sec. 2 of Act XVII with certain exceptions should, on attaining the age of majority which was 16 in the case of boys and 13 in the case of girls, be compelled either :—

- (a) to get back to India or
- (b) to remain in Natal under indenture or
- (c) to take out year by year in terms of Sec. 6 of Act XVII a pass or licence to remain in Natal.

This last restriction was atrocious, for, though it could be argued in the case of the indentured labourer himself that he had expressly agreed to pay the tax before he was allowed to settle in the country, and that he was bound by his agreement, this argument could not hold in regard to his children.

The Act however was acquiesced in by the Government of India which, having accepted the legislation of 1895, apparently considered that it could not very well object to the extension of the principle.³⁹

In spite of the passing of Act after Act, several remained in the country. Also, great difficulty was experienced in the collection of the poll tax. So another Act was passed in 1905 prohibiting all persons, on certain penalties, from employing any Indian immigrant who was liable to take out a licence to remain in Natal, unless such Indian had first produced to the employer such pass or licence. The Act also prohibited the retention of such Indian as an employee in any year thereafter, unless such pass or licence had been taken out before 15 July in each year.

In the meantime, the poll tax had relegated several Indians to lives of sorrow and dishonour. Sir Liege Hulett had stated in the Natal Parliament that the enforced payment of the tax had had

39. Report of the Indian Inquiry Commission (Solomon Commission), 1914, C.D. 7265, p. 27.

the effect of driving many Indian women to lives of shame.⁴⁰ The law on the poll tax came to a close with an Ordinance in 1910 providing that, regarding women, the payment of arrears of licence money should be suspended during the period of re-indenture or contract of service for not less than 2 years, and that, in the event of a return to India at the expiration of such a contract or indenture, the payment of arrears should be waived.

The horrors of the indenture system in Natal shocked India and Gokhale visited South Africa. Public opinion in India unequivocally demanded the abolition of the indenture system. The Government of India, despite the recommendation of the Clayton Commission of 1908 in Natal that indentured labour was necessary, yielded to Indian opinion and prohibited indenture emigration to Natal from 1 July 1911.

MADAGASCAR

Immediately after the French conquest, slavery was abolished by an Order of 12 September 1896, signed by Gen. Gallieni, first Governor-General of Madagascar. This order was followed by orders dated 21 October and 27 December 1896 with a view to alleviating some of the effects of the economic crisis engendered by sudden abolition of slavery. These orders imposed on all able-bodied male natives between the ages of 16 and 60 years :

- (1) fifty days compulsory service a year, out of which they could contract only in exceptional cases ; and
- (2) the obligation to declare their lawful methods of earning a living.

This policy, which set up a form of forced labour, continued without appreciable change until 1900. This policy could not meet adequately manpower shortages. It proved difficult to enforce the system rigorously. Hence to meet the requirements of construction of railways, Indian and Chinese labour was imported who were heavily hit by malaria and died in great numbers. Some Chinese who deserted the railway work settled in small groups here and there and took to small-scale trading. The surviving Indian workers were hurriedly repatriated to India.

Fiji

In the initial stages, the European planters tried to cultivate the sugar, cotton and coffee plantations with Fijian and Polynesian labour, but failed. Encouraged by the example of Natal, the Fiji Government deputed her Agent-General of Immigration to India

40. Selection of Papers, p. 258.

in 1877 with a view to securing a small but regular supply of labourers for employment on sugar, coconut, cotton and coffee plantations. In 1879 Indian indenture emigration was permitted to Fiji. Labourers were engaged directly by the Government of Fiji and allotted to the estates under Government supervision. The Government paid all costs and recouped itself of two-thirds of the charges from the employers, while the balance of one-third was regarded as a grant-in-aid. During the 10 years when this system was in force, 7,135 immigrants were introduced, and in May 1889, the first repatriates left the colony. From 1900 there was a great expansion in sugar industry. Between 1900 and 1911, Indian immigrants were introduced at an annual average of 2,684 and repatriated at 482 per annum. It was estimated that while 2,684 Indian workers per year were brought during this period to Fiji at the expense of the planters, only 250 workers went there on their own initiative. But these fresh supplies of cheap labour, constantly available, enabled the sugar companies and the planters to throw off the services of men whose period of service had expired except in a few special cases. Indians too were equally anxious to leave the plantations and settle on land of their own. Some took up areas suitable for the cultivation of sugarcane, but a majority preferred to settle away from the cane areas in districts where they could grow marketable produce. These attempts to become independent farmers, planters and even traders depleted the labour supply. In the event 'a section of the white population, imbued with the prejudice of the young nations of the empire against the coloured man, while recognizing the utility of the Indian for the purpose of sugar cultivation, does not welcome his competition in trade and is inclined to resent his settling down as a free citizen.'⁴¹

But, bad as this exhibition of hatred to a free Indian was, shocking were the conditions under which the indentured Indians had to work in the colony. The terrible disproportion in sex ratio, and the notorious coolie 'lines' without any privacy to preserve the sanctity and honour of married life, rendered many Indians moral wrecks. The 'lines' became cells of prostitution and Indians were condemned to a life of irredeemable immorality and disease. In Fiji Council paper No. 54, the Chief Medical Officer Dr. Lynch wrote :

When one indentured Indian woman has to 'serve' three indentured men, as well as various outsiders, the result in the cases of Gonorrhoea and Syphilis cannot be in question.⁴²

The conditions of work were also bad. The abolition of indenture

41. Sanderson Committee Report, p. 87, paras 3, 5 and 8.

42. Waiz: *Indians Abroad*, p. 560.

emigration to Natal set the Fiji employers thinking. So, in 1912 some important changes were made, the chief being the abolition of the penal clause for labour offences and the reduction in the daily task. But these proved ineffective palliatives and had the effect of bolstering up a hateful system. Violent crimes and suicides became a feature of Indian life in Fiji.

In 1913 the McNeil-Chimanlal Deputation reported that 'the advantages of indenture system outweigh the disadvantages.'⁴³ The only recommendation which they made was that 50 women should be sent out with every 100 men, instead of 40. How grotesquely inadequate this recommendation was is obvious from their own figures. The following is a comparative table showing the number of Indians in the various colonies in 1913 together with the average suicide rate per million for the 10 years ending 1912.^{43a}

Colony	Indentured	Unindentured	Suicide rate per million	
			Indentured	Unindentured
Trinidad	12,747	13,306	406	134
British Guiana	9,114	57,336	100	52
Jamaica	407	—	396	—
Fiji	15,961	35,644	926	147

(Average suicide rate in the United Provinces from which province in India the vast majority of immigrants were recruited was only 63 per million).

The following table shows that the above extraordinarily high suicide rate bears very close relation to the sex disproportion :⁴⁴

Colony	Adult Males	Adult Females	Percentage of Females
Trinidad	31,989	17,169	35
Br. Guiana	53,083	34,799	39·6
Jamaica	7,137	4,775	41
Fiji	20,062	8,785	30·4

Note : These figures were compiled from 1911 Census Reports of various colonies. Thus suicide rate was generally at its worst in the colonies with the largest population basis of indentured labour. Also in Fiji where the sex disproportion was most abnormal, the suicide rate was the highest.

The McNeil-Chimanlal Report did not satisfy the Indian public who deputed C. F. Andrews and W. W. Pearson in 1915 to make a fresh enquiry. Indian public opinion unanimously demanded the abolition of indenture. The Government of India wrote to the Secretary of State for India thus :

43. *Ibid.*, p. 558.

43a. *Ibid.*, p. 565.

44. *Ibid.*, p. 566.

Whatever may be the extent of the economic advantage arising from the emigration of indentured labour, the political aspect of the question is such that no one who has at heart the interest of British rule in India can afford to neglect it. It is one of the most prominent subjects in Indian political life today ; and its discussion arouses more bitterness, perhaps, than that of any other outstanding question. For Indian politicians, moderate and extreme alike, consider that the existence of this system, which they do not hesitate to call by the name of slavery, brands their whole race in the eyes of the British Colonial Empire with the stigma of helotry. How, they ask, will a European colonial ever admit us into the fellowship of citizens of the Empire, when he knows that men of our country and colour can be purchased for five years for five shillings a week ? It is firmly believed also in this country, and it would appear, not without grave reason, that the women emigrants are too often living a life of immorality in which their persons are, by reason of pecuniary temptation or official pressure, at the free disposal of their fellow recruits, and even of the subordinate managing staff. The feelings which these beliefs engender are strong.....⁴⁵

In 1916 Andrews and Pearson returned to India after making a thorough investigation into the whole position. They sent their report also to Lord Hardinge. On the evidence thus furnished, Lord Hardinge convinced the home government of the imperative necessity of abolishing the indenture system. Thus was passed the Abolition of Indenture Act 1916 abolishing the system in every colony where it was still in force. Subsequently Lord Hardinge announced that a 'slight delay' might be necessary while adjustment of labour was made in Fiji and other places. The Colonial Office seized the opportunity, and entered (with the connivance of the India Office) into a secret agreement in writing by which the 'slight delay' was interpreted as covering five more years recruiting in India for indentured labour, and therefore prolongation of the system for ten more years.⁴⁶ The country reverberated with indignant voices at this betrayal of India. Mahatma Gandhi and other national leaders took up the indenture system as an important national question. The leading Indian women waited in deputation on the Governor-General, who immediately announced in March 1917 that all further recruiting for indenture should be stopped at once. This decision was soon afterwards confirmed, and thus indenture system was abolished. The indenture system was finally abolished in 1920.

Though fresh recruiting under indenture was prohibited there were several thousand Indians under indentures entered into before.

45. *Ibid.*, p. 564, quoting.

46. *Ibid.*, p. 558.

So the system and its evil effects of more than half a century still continued to disfigure Indian life even after its abolition. C. F. Andrews was again deputed to Fiji in 1917. He also visited Australia and roused the sympathy of Australian women with their Indian sisters in Fiji. The several Australian Women's Associations deputed Miss Florence Garnham in 1918 to report on the conditions of the indentured labour. As could be expected she obtained more information from Indian women by personal enquiries and her report confirmed the findings of C. F. Andrews.

At the close of the year 1918, the last period of indenture of those who had been brought in as late as 1916, was finally cancelled. The year 1920 commenced in Fiji with complete freedom for every Indian in the colony.

The Fijian plantations were threatened with shortage of requisite labour on abolition of indenture system by the Indian Government. The Government of Fiji sent a deputation in 1920 to ascertain from the Government of India the conditions for resumption of Indian emigration to the colony. The Indian Government stipulated grant of equal and full citizenship rights to Indians and right to Indians to elect representatives equal to the number of Europeans in case communal franchise was adopted. The Colonial Office, however, agreed to offer only 3 out of the 12 non-official seats in the Fiji Legislative Council.

SECTION II — KANGANY SYSTEM

(This system of recruitment of Indian labour was peculiar to Ceylon and Malaya. The *Kangany* (headman) who was himself an Indian immigrant supervised the work of his gang, which usually would consist of 25 to 30 persons, but if less he would also work as a labourer. All gangs on an estate would be under a Head *Kangany*, who acted as an intermediary between an estate Superintendent and the labour force in regard to the payment of wages. He was also in charge of all other financial affairs of the estate in relation to the coolies, and virtually controlled the domestic affairs of all labourers under him. Besides his fixed monthly pay for supervising the work of the labour force, he was paid by the estate a commission of 2 cts. per diem for every labourer that turned out to work. The commission was called the 'Head Money'. He constituted the medium of all advances made to the labourers, and so, he was often the sole debtor to the estate. In addition to his wages as a labourer, the Head *Kangany* was also paid by the estate a commission of 3 to 4 cts. a day for every labourer in his gang that worked. This was known as the 'Pence Money'.

Whenever additional labour was found necessary, the *Kangany* was entrusted with the work of supplying it. He was provided

with a sum of money towards the payment of advance to intending emigrants, and of travelling and subsistence expenses till they reached the estate. The expenses so incurred in recruiting were entered up in the estate 'Debt Account' as a charge against the *Kangany* and his recruits, while the amount distributed amongst them represented the debt with which every labourer started his life in Ceylon or Malaya. This Debt Account would come to a close at the end of the season or contract with the payment of wages less the amount of advance paid to the labourers in a lump sum.

At times the *Kangany*, instead of going himself to centres of recruitment, would get the necessary labour recruited through his relatives in India. Some estates would reward the recruiter-*Kangany* with a bonus of Rs. 5 or 10 per labourer recruited, but only after these labourers had worked on the estate from six months to a year. Some estates offered inducements by giving an additional advance to the *Kangany* himself, while some others considered that the Head Money granted was a sufficient remuneration.)

Though the *Kangany* system of recruiting labour for Ceylon had remained essentially the same from 1837, there had been definite changes in the control of recruitment. Between 1837 and 1904, the employers secured the necessary labour through individual effort and a fat purse, uncontrolled by the Government of India or of Ceylon. Under this system of control, though Indians were brought even in 1837, a systematic recruitment commenced in 1839 when 2,432 Indian labourers, mostly single men, were brought to Ceylon. The Indian Act XIV of 1839 repealed Act X and XXXII of 1837, and penalized all contracts for labour with a native of India to be performed outside the territories of the East India Company, or abetting emigration for such purposes. But there was nothing on record to show that this prohibition was ever enforced against Ceylon. In 1847 the Ceylon Government proposed an Ordinance for the protection of Indian coolies. The Government of India replied that such immigration to Ceylon was illegal, but that they would apply a legislative remedy provided the Ceylon Government would take the necessary precautions to prevent Ceylon from becoming an entrepot for emigration to other colonies in evasion of the law. On the acceptance of these stipulations, Act XIII of 1847 was passed lifting the ban on the emigration to Ceylon, but providing that the Act should come into force only on the issue of a notification by the Governor-General-in-Council that he was satisfied that the Ceylon Legislature had provided for adequate protection of the immigrants. The Ceylon Government passed Ordinance III of 1847 prohibiting the entry into contract by Indians who came to Ceylon for labour to be performed outside Ceylon, or outside territories of the East India Company, or from emigrating from Ceylon

to any such colony for employment as labourers. Consequently Act XIII became law and the emigration of labour began. 'Advantage was taken by the planter of these concessions given by the Government of India and Madras, and he has tried his best to establish the labourers in villages as a permanent fixture to his estate by inducing them to bring their wives and families with them.'⁴⁷

Between 1847 and 1861 these coffee plantations increased and the Ceylon Government engaged Messrs. Shand & Co. to recruit immigrants from Ganjam district in October 1859. When recruitment activities were thus extended from Tamil districts to Ganjam, the District Collector of Ganjam objected and refused to allow recruitment. The Madras Government, perhaps not being aware of Act XIII, supported the Collector. The Governor-General, Lord Elgin, wrote to the Government of Madras that he

apprehends that no reason for subjecting migration to Ceylon to regulations more stringent than those which apply to migration of labourers from one part of India to another can be urged, except the fact specially adverted to in 1847 that Ceylon was not subject, as India is, to the legislative power of the Governor-General-in-Council. On this ground it will be right in allowing full effect to be given to the provisions of the Act XIII of 1847 that the Government of India should stipulate specially to be apprised of any changes which may be made in the laws of Ceylon affecting Indian labourers.⁴⁸

He added that with this reservation, there was no reason why Indians should be hindered from migration to Burma and the Straits Settlements too. He also proposed to make it a condition that there must be a careful observation of the provisions of Act XXV of 1859 to prevent the overcrowding of the vessels and to ask for a prompt checking and punishment, under the provisions of the Indian Penal Code, of any attempt to compel or induce persons to migrate against their will.

In 1861 the Ceylon Government proposed an Ordinance which related to the contracts for the hire and service of labourers there.

A Sub-Committee appointed to report on it dissented from Clause 5 under which all wages due were made a first charge on the property on which the labourer was employed. However, in 1862, when the question arose, the Government of India expressed satisfaction in regard to the system of protection of Indian labourers in Ceylon. The deliberations of the Parliamentary Committee that sat in 1864 in connexion with the law of master and servant in England, led to the passing of Ordinance XI of 1865 in Ceylon

47. Natesa Iyer : *Indo-Ceylon Crisis*, p. 13, quoting.

48. *Ibid.*, pp. 22-23, Quoting.

regulating contracts for hire and service. Under Section 24 of this Ordinance the court was required, at the option of the prosecuting employer, to order the convicted person at the expiration of the sentence of imprisonment to return to his employer and complete the term of service.

The *Kangany* system evolved fully with the emergence of 'Coast Advances' in the latter half of the last century. (With the appearance of tea and rubber on the scene, there was unprecedented demand for labour, which induced the *Kanganies* to demand increased advances.) The entry of the government into the field for recruitment of labour for public works added to this demand.) The employers feared to advance great amounts to the *Kanganies* without the certainty of obtaining labour, for in some cases the *Kanganies* began to appropriate the amounts advanced, while the labourers were at the same time induced to accept responsibility for the whole or greater part of the advances, though they had actually received only a small part thereof. The planters combined and established the Ceylon Labour Federation in 1898 to check the steady increase in the advances. In 1902 they introduced the 'Tin Ticket System' which is practically an adoption of the system of Value Payable by Post, the coolie being the 'package' to be delivered. His address was contained on a small tin disk punched with a letter, to denote his district and two numbers, one denoting the number of the estate in the official register of the estates, and the other a serial number to denote the particular number assigned to each labourer. This system had kept down the advances and facilitated cheap and expeditious immigration. It also marked the consummation, firstly, of the assumption by the Ceylon Government of greater responsibility in controlling and supervising the flow of immigration and, secondly, of ever increasing co-operation between the Ceylon Government and the planting community.

The creation of the Coast Agency in 1904 to finance and supervise recruitment of labourers for employment by the members of the Agency marks the beginning of a second period of change in the control of recruitment. Now employers combined, controlled and regulated the financial side of the business. Therefore, there were two sets of *Kanganies* operating in India, one uncontrolled and the other controlled by this agency. Still there was the local recruiter in Ceylon. From the funds of the Agency which was partly subsidized by the Ceylon Government, travelling and other expenses of the recruited labourers were met on behalf of the recruiting estate, and all these expenses were subsequently debited to the account of the *Kangany* or labourer. Thus, though the system benefited the employers, the labourers still continued to start life in debt. This indebtedness was further accentuated by the increas-

ing practice of *Tundu* system of advances. Whenever a Superintendent found, either before or at the end of a contract, that more labour than was required was existing on his estate, he issued a *Tundu*, i.e., a written undertaking to discharge so many labourers on being paid the amount of outstanding advances. The *Kangany* armed with this undertaking would seek employment on another estate short of labour, and from the higher advances received from a new estate, he paid off the old Superintendent. Thus the accounts for his labourers having been closed, the *Kangany* would now move with his gang to the new estate, whose account would be settled at the end of the contract period. Thus transference of debt became the essence of a *Tundu* transaction. The *Tundu* system grew up to enable the *Kangany* and labourers to change the employer. The system always tilted the balance in favour of the *Kangany*, for, whenever he was refused advances to his satisfaction, he could demand *Tundu* from the employer for himself and his gang and hawk this round till he got a Superintendent who was ready to give higher advances — even as much as Rs. 10 to Rs. 15 per head. But whether the higher or additional advance was obtained from the old or the new estate the effect invariably was to increase the debt of the labourer to the extent of the higher or additional advance in the estate books.

Thus both the Tin Ticket System and the establishment of the Coast Agency failed in giving relief to labourers from indebtedness. So in 1911, the planters joined and formed the Planters Labour Federation. The Federation ruled that a Superintendent issuing a *Tundu* should specify on it the actual registered debt in his books and no more, and that all the member estates taking on labourers were prohibited from paying more than the amount entered on the *Tundu*. In order to limit the initial debt at the time of recruitment, the rules further prescribed that no more than Rs. 15 per head be issued to labourers newly recruited, and that all the new labourers be landed on estates free of all charges of travelling and food, but that the cash advance should be written off at the end of the year if he remained on the estate till then. But even this attempt proved futile as several estates did not join the Federation while some others disregarded the rule prohibiting the payment of any sum exceeding that shown on the *Tundu*.

The position of the labourers thus remained much the same owing to the continuance of the *Kangany* system. The employers continued frequently to invoke Section 24 of Ordinance XI of 1865, regulating the contracts for hire and service, which required the Court, at the option of the prosecuting employer, to order the convicted worker to return on the expiry of imprisonment to his employer, and complete the term of service. Sir Ponnambalam

Arunachalam wrote to the Secretary of State for the Colonies in 1913 that 'cases have occurred where even women were repeatedly sent to jail for refusing to go back to their employer and estate, and where the labourer's remonstrance as to insufficient pay and to erroneous pay has been punished as insolence with imprisonment.'^{48a} He also added that the Ceylon Government was not able to withstand the powerful influence of the planters and protect the interests of labour. The Marjoriebanks-Marakkayar Commission reported four years later that, though the wage rates were adequate, the labourers were bolting or moving on *Tundu* from estate to estate under increased debt, and that, were it not for the debt system, prosecutions would not have been launched against labourers except in rare cases of misbehaviour. 'The debt which practically every labourer owes his *Kangany* or his estate prevents him from leaving, except for short visits to India with the leave of his employer, or except by bolting.'⁴⁹

Subsequently Ordinance XLIII of 1921 was passed abolishing the *Tundu* system in spite of opposition by some employers.⁵⁰ After the abolition of the *Tundu* system, the Ceylon recruiting organization was adjusted as in Malaya to the assisted emigration policy. A licensing system was introduced, authorizing, normally, recruitment of twenty workers. In actual practice, however, the number exceeded even 70 persons. The Ordinance prohibited the use and issue of *Tundus*, and penalized any transaction savouring of *Tundu* with two years of rigorous imprisonment and a fine of Rs. 20,000. The Ordinance also compelled the employers to issue discharge certificates at the request of the labourers after a month's notice, in spite of their indebtedness to the *Kanganies*. Though there was nothing in the Ordinance which prevented an employer from entertaining a labourer not having the discharge certificate, the Discharge Certificate Agreement amongst the employers not to employ a labourer unless he was able to produce the certificate had enabled the *Kanganies* to exact their money from labourers within the thirty days' time afforded by the provision requiring the labourers to give a month's notice for discharge certificates.

The discharge certificate system was evolved with the best of intentions, and to a certain extent it checked the roving tendencies of labourers; but it was transformed into a convenient instrument of oppression in the hands of the *Kanganies*. As the labourers were compelled to borrow from another estate to pay off the former

48a. Natesa Iyer, p. 114, letter dated 16 July, 1913, quoting.

49. Report on Indian Labour Emigration to Ceylon and Malaya (Marjoriebanks-Marakkayar Report) 1917, p. 22, para 65.

50. Administration Report of the Controller of Indian Immigrant Labour for 1925, (1926), p 5, para 33.

Kangany, the conversion of a discharge certificate into a *Tundu* came to be the practical result. Some estates even refused discharge certificates claiming the repayment of debts, real and imaginary, or by insisting that the recruiting agent alone had the right to give notice. Gradually the Governments of India and Ceylon, as well as the employers, began to realize that all attempts at liquidation of indebtedness were bound to fail unless the labourers were enabled to start life in Ceylon without debt, and also unless they removed the opportunity for the *Kanganies* of piling illegal debts upon them. The passing of Act VII of 1922 by the Government of India led to Ceylon Labour Ordinance 1 of 1923. The Indian Emigration Act of 1922 was passed empowering the Government of India to control emigration and safeguard Indian interests. The Act declared that 'emigration for the purpose of unskilled labour shall not be lawful except to such countries and on such terms and conditions as the Governor-General-in-Council, by notification, may specify in this behalf and that the notification shall have the full consent of both chambers' The Indian Legislative Assembly also set up a Standing Emigration Committee consisting of 12 members to keep a vigil upon the conditions under which Indian labour was allowed to emigrate and to be recruited to work overseas. These two enactments removed some of the objectionable features of Indian emigration to Ceylon. Paragraphs 19 and 20 of this Ordinance provided that the cost of transportation and subsistence on journey should be borne by the Immigration Fund and that the contract between the employer and the labourer should not be permitted for more than a month. The Ordinance cancelled all debts by providing that no advances made by the recruiter or others in India to induce a labourer to emigrate to Ceylon could be recovered in any court of law in Ceylon. As assisted emigrant he was also entitled to be repatriated free of cost within one year of his arrival in Ceylon.

Since the passing of the Indian Emigration Act 1922, the emigration of Indians to Ceylon is governed by this Act and the rules framed under it. According to this Act, Indians coming to Ceylon are 'emigrants'

- (a) if they proceed to Ceylon under an agreement to work for hire, or
- (b) if they are assisted to depart from India (otherwise than by a relative) in order to work for hire or to engage in agriculture.

Emigrants may be either skilled workers such as artisans, clerks, domestic servants and bungalow gardeners or unskilled workers which term includes dock-workers and labourers on tea, rubber and other plantations. *Kanganies* (labour contractors and overseers on estates) are also considered unskilled workers. Non-

estate Indian labourers were not recruited, at least they were not supposed to be. They came, supposedly, of their own initiative and at their own charge. Hence they held no special place under the law of Ceylon and shared only in the general care of the government for labour in the island, irrespective of race. There was no legally established organization to assist either their immigration into Ceylon or their return.

The new favourable arrangements for emigration, the fair outlook for rubber with the advent of Restriction, and the unfavourable agricultural conditions in South India — all stimulated the supply of recruits. So in 1923, 50 p.c. of the recruits were non-emigrants (i.e.) those returning for a second time. In 1924, of the 153,989 immigrants, 62,474 or 41 p.c. labourers and their families were non-immigrants. The corresponding figures for 1925 and 1926 were 57,570 or 45 p.c. and 51,330 or 50 p.c. Thus the position on estates improved during these years. But the slump in rubber of 1930-33 led to excess of departures over arrivals of Indian workers. In 1934, the recovery from world depression and the Rubber Control Ordinance VI led to heavy recruitment. Again, adverse conditions followed in the industries, and Ceylon experienced a very severe drought which necessitated the discontinuance of much of the estate work. Hence in 1935, only 43,018 persons were given assisted passages as against 140,607 in 1934. Several schemes of repatriation were introduced. There was no recruitment of Indian labour for the estates from September 1935, and only labourers of the non-recruited class went over to Ceylon. The result was the total number of workers immigrating into Ceylon in each of the four years 1935-38 was not only considerably less than that in 1934, but also less than the average for the period 1924-38, which was 198,182. The several International Restriction Schemes for tea and rubber and heavy recruitment in 1934 were the causes of this decline. It was found in September 1937 that there was a shortage of 20,000 workers. On the insistent demand from the planters, the Ceylon Government decided to permit the entry of 5,000 Indian workers. But the Government of India refused recruitment by licence and limited the grant of assisted passages to persons of non-immigrant status — those returning to the same estates, their close relatives, and to persons or their relatives who were actually in employment on estates. But the definition of 'close relation' was given a new and convenient interpretation by the Immigration Commissioner in spite of opposition by the Indian Government, and thus several were sent as relative dependents of non-emigrants. In several other cases, people of the same caste were sent as relations of Indian workers living in Ceylon. On the stoppage of recruitment and refusal by the Government of India to instruct their Agent in Ceylon

to countersign the licences, the planters and the Immigration Commissioner took advantage of all the loopholes in the Indian Emigration Act. The dismissal of the Indian daily paid staff in government departments led to the imposition of a ban by the Government of India with effect from 1 August 1939 on emigration from British India to Ceylon for the purpose of unskilled work unless exempted by a special order. The ban was also necessitated by the uncertainty of employment of all such labour in Ceylon. Simultaneously with placing the ban, the Indian Government informed the Ceylon Government that they must withdraw their offer to enter into trade negotiations while at the same time adding that they would reconsider their decision if the latter should agree to make suggestions substantially modifying the proposals to which objection had been taken or postpone action pending discussion between the two Governments. But the prohibition was circumvented with the result that 29,259 assisted estate workers entered Ceylon. The Indian Agent stated :

Thus so far as the tea and rubber estates in Ceylon to which the vast majority of unskilled workers from India emigrate are concerned, the ban on emigration only stopped the flow of labourers of the non-recruited class. The ban has also prevented the entry into Ceylon of unskilled workers who used to come to Ceylon unassisted for work outside estate. At the time the ban was imposed, the estates in Ceylon had an ample supply of labour.⁵¹

The ban caused hardship to the labourers already in Ceylon who were prevented from visiting India on holiday or for domestic, social or religious purposes for fear of being deterred from returning to the island by the operation of the ban. Hence in December 1941, the Government of India issued orders relaxing the ban so as to exempt from the ban unskilled labourers who arrived in India from Ceylon between 1 January 1939 and 31 March 1939 subject to the condition applicable to persons in the same category who arrived in India between 1 April 1939 and 15 August 1939. There were still certain cases of separation of families by the sudden imposition of the ban. So orders were issued by the Government of India early in December 1942 to exempt from the operation of the ban the wives including new brides and minor children of all unskilled labourers who were then in Ceylon or who might be permitted to proceed from India to Ceylon by virtue of any general or special order of exemption. Accordingly, orders were issued by the Government of Madras on 24 December 1942.

In regard to the Indo-Ceylon Draft Agreement of 21 September 1941, the Indian Central Assembly unanimously passed a motion

51. Annual Report of the Indian Agent in Ceylon for 1939, p. 6, para 16.

on 17 November 1941 that 'Indians in Ceylon on the prescribed date of the agreement and those who had been residents within a specified period prior to the date of the agreement should have freedom of entry into Ceylon and no regional or occupational restrictions should be imposed on them; they should be entitled to full rights of citizenship on the completion of the prescribed period, and that for the future provision should be made to protect Indian trade interests'.⁵² On 26 February 1942 the Government of India informed the Ceylon Government that they had carefully considered the proposals in the Draft Agreement as well as the reactions of Indian public opinion in general, and that, consequently, they had intended to suggest certain modifications of those proposals, but the great changes which supervened in the course of the war had rendered further examination of the problem undesirable and inconsistent with the exigencies of the war situation. They, therefore, suggested that further consideration of the proposals be suspended and the question be re-examined in the light of post-war conditions, and that the *status quo ante* introduction of the Immigration Ordinance be maintained meanwhile. It was also stated by the Government of India that if the above suggestion was accepted they would consider relaxation or removal of the existing ban in order to enable the Ceylon Government to secure labour from India to meet the war purposes. The Ceylon Government replied on 18 March 1942 agreeing to the continuation of the *status quo* but stipulating that this *status quo* should include the continuance of the ban on the emigration of unskilled labourers to Ceylon. While agreeing to the continuance of the ban, in respect of unskilled labour not already in Ceylon, the Government of India pointed out that, as the ban was imposed in August 1939 for preventing new labourers from going to Ceylon, it would be improper to maintain it so as to deter Indian labourers now in Ceylon from leaving the island on short visits to India. On 3 June 1942, the Ceylon Government expressed their inability to agree at the same time both to the partial relaxation of the ban and to the postponement of legislation controlling the right of re-entry into Ceylon of unskilled labour now in Ceylon. On 20 August 1942 the Government of India informed the Ceylon Government expressing the opinion that they would not be justified in continuing to inflict upon the Indian labourer in Ceylon the hardship caused to him by the ban which had been in existence for three years and that they had therefore decided to relax the ban so as to permit the return to Ceylon of Indian labourers already in the Island who might go to India on or after 1 September 1942. This

52. Indian Agent's Report for 1941, p. 25, para 51.

decision was enforced with effect from 1 September 1942. On 4 September, the Ceylon Government informed the Government of India that the lifting of the ban, even partially, did change the *status quo*, that it might engender economic and other problems in Ceylon calling for solution in the interests of the war effort alone apart from any other consideration and 'that in the circumstances they would consider themselves free to take any action which they might be compelled to take in the interests of the war effort and which might change the *status quo* still further'.⁵³ They added that 'they would keep the Government of India informed of any such action, but they must reserve the right to deal with such problems if they arose notwithstanding that the solution of any such problem might cause further changes in the *status quo* and might not have the concurrence of the Government of India'.⁵⁴

The loss of Malaya, the increase in the export quotas for tea and rubber and the policy of both the industries of 'all-out production' to meet the war needs created a shortage of labour mainly for rubber tapping. As a result of repeated representations to the Ceylon Government by the planters that additional labour was required from India, the Ceylon Government addressed a telegram on 8 December 1942 to the Government of India inquiring whether, notwithstanding their ban on emigration, they would consider the special recruitment of labour to meet the war requirements on the two-fold condition that (1) pay and conditions of employment were to be identical with those of other Indian labour and (2) labourers were to be repatriated to India at the end of the war or other period stipulated by agreement. The Indian Government expressed their inability to accept the latter condition. They also expressed the opinion that unless the two governments could first agree on some of the fundamental principles, which should constitute the basis of future post-war Indo-Ceylonese negotiations, emigration of fresh labour from India could not be permitted. They, accordingly, sent to the Ceylon Government a draft of these fundamental principles. The rejection of the draft by the Ceylon Government brought the negotiations to a close.

WORKING OF THE BAN

To assist Indians in Ceylon visiting India, the offices of the Representative and the Agent of the Government of India issued to them 'A' credentials (issued at Kandy only to applicants who sent their application by post or by messenger) and 'E' credentials (issued to applicants who appeared in person either in the Kandy

53. Review of Important events etc. 1942-43, p. 8, para 19.

54. Indian Agent's Report for 1942, p. 22, para 55.

or Colombo office) which could be produced before the protectors in India in support of their status *vis-a-vis* the Emigration Act. Only those who did not come under the category of unskilled workers could get these credentials which had to be endorsed by the Protector of Emigrants at Dhanushkodi or Tuticorin before disembarkation. Estate labourers travelled with Identification Certificates issued by the superintendents on estates; unskilled workers employed in places other than plantations were given Unskilled Workers' Certificates by the offices of the Representative and the Agent, which had also to be endorsed by the Protector before disembarkation. The Indian Agent also issued special permits or *Raisser Passers* to unskilled workers proceeding from India to Ceylon for short visits only in cases where the Agent was satisfied that the circumstances of the visit were such that the refusal of a permit would cause substantial hardships and granted them only after obtaining guarantees from the applicants that the passengers concerned would return to India after the stipulated period.

In a small number of cases, estate labourers who were not eligible to return to Ceylon attempted to evade the ban by obtaining Identification Certificates belonging to others and impersonating them before the Protector at Mandapam and the Ceylon Emigration Commissioner at Trichinopoly. In regard to the cases of successful impersonation, exemption from the ban was extended to labourers where circumstances warranted it and they were allowed to remain in Ceylon. In other cases, reference was made to the superintendents of the estates to which these labourers came. Some of these were informed of the serious penalties to which they were liable and persuaded to return to India. It was proposed to make certain changes in the Identification Certificates to include thumb prints of the holder so as to facilitate identification.

It was reported in 1946 that unskilled labourers other than estate labourers, mostly toddy tappers who were attracted by high wages in Ceylon, were also seeking to evade the ban by attempting to reach Ceylon in the guise of skilled workers. To prevent such evasion, the Protector at Mandapam began more severe scrutiny of applications of skilled worker emigrants, referring doubtful cases to the office of the Representative for investigation. Some of the impersonators detected in the course of investigation of some 31 applications in 1946 were prosecuted.

Thus the rules now in force do not interfere with the free movement between India and Ceylon of unskilled labourers who were in Ceylon on or before 1 September 1942, but prevent unskilled workers from emigrating for the first time to Ceylon after that date. The Controller-General of Emigration, however, grants individual exemptions from the ban.

MALAYA

The employment of Indian labour on Malayan plantations began about the year 1833. Tamil and Telugu workers were brought to work on sugar and coffee plantations under indenture for a period of three years. A depot for recruiting indentured labour was set up at Negapatam by the Government of the Straits Settlements. For a long time, emigration to the Straits Settlements (S.S.) was not regulated by law, except in so far as the general Act regulating the native craft plying in the Bay of Bengal affected the vessels engaged in traffic. Act XIII of 1864 prohibited the emigration of Indian labour to the Straits, but restrictions on emigration to Malaya were placed only after 1867 when British Malaya was separated from Bengal. In 1870, Hathaway, the Sub-Collector of Tanjore who was stationed at Negapatam, publicly denounced recruiting as involving 'a regularly organized system of kidnapping'.⁵⁵ He even issued a notice drawing attention to the entire illegality of emigration under the existing law; besides, he pointed out, female emigrants were destined to a life of prostitution.⁵⁶ The Government of the Straits Settlements protested against these assertions, but Hathaway's successor Stokes confirmed the fact that emigration did involve kidnapping of women and children, and that a system of duress or illegal confinement had also prevailed.⁵⁷ In 1871, an Emigration Act was passed in India consolidating the existing Acts and superseding the Act of 1864.

There was now a great need for Indian labour in Malaya and the Governor frequently urged upon the Colonial Office for migration of Indian labour.

At length, on very urgent representation of the injury to the agricultural industries of the colony caused by the check to emigration, Act XIV of 1872 was passed enabling the Governor-General-in-Council to issue a notification exempting emigration to or contracts for labour to be performed in the Straits Settlements from all or any of the provisions of the Emigration Act of 1871.⁵⁸

On 6 June 1872 a notification was accordingly issued exempting such emigration and such contracts from all provisions of the Act of 1871 and making arrangements to safeguard the emigrants' interests. Thus emigration was allowed under certain conditions from 1872.

Till about 1878, the chief planting industry was sugarcane cultivation in the Wellesley Province and Indian labour was recruited under indenture. A Commission was appointed in 1890

55. Geoghegan, p. 63.

56. *Ibid.*

57. *Ibid.*

58. Marjoriebanks-Marakkayar Report, Appendix XIX, p. 99.

to investigate into the position of labour in the undeveloped parts of the peninsula. The Commission reported on the shortage of labour mainly owing to defective recruitment by professional agents, the unsatisfactory quality of labour owing to enlistment of non-agricultural people and the heavy cost of imported labour consequent on the monopoly exercised by professional recruiters. To meet the growing demands of rubber plantations for Indian labour, all restrictions on Indian emigration to Malaya were removed in 1897. With the development of coffee planting, it was found more convenient to recruit free labourers. Henceforward Indian labour was recruited by the *Kanganies* or other licensed recruiters. Though from 1900 indentured labour continued on the sugar plantations, Government Departments and a few estates, the *Kanganey*-recruited labour became the mainstay of the rubber estates. Independent labourers were also recruited in India at the instance of proprietors opening up new estates. Thus Indian labour for Malaya was recruited in three different ways; (a) indentured or contract labour, (b) recruitment under the *Kanganey* system introduced by the rubber planters, and (c) 'free labour' recruitment by the proprietors of new estates through their own agents. These various methods led to confusion. It was decided to have a common recruiting system for all planters to secure requisite labour on favourable terms. The labour supply was becoming deficient with the rapid strides of the rubber industry. The problem was solved by instituting the Indian Immigration Fund in 1907 through compulsory levy on planters requiring a constant supply of imported labour. The Indian labourer was thus enabled to start life in Malaya without debt. With the abolition of recruitment of indentured labour in 1910, labour was artificially recruited under a simple but undesirable system of *Kanganey* recruitment. Though *Kanganey* means a recruiter, here the recruiter is himself a plantation labourer. He was engaged by his employer to bring at least 20 labourers from India for which he received commission. Later this flow turned out to be a mass movement resulting in several difficulties and problems.

In spite of the Immigration Fund, the questionable methods adopted by the *Kanganies* in recruitment rendered the position of the labourer anything but satisfactory. The Marjoriebanks-Marakkayar Commission reported in 1917 that the demand for estate labour had become so great that labourers recruited by employers at considerable cost from India were crimped by their unscrupulous neighbours.⁵⁹ Except for a time during the first World War, the Indian Government exercised no control over Indian emigration

59. *Ibid*, p. 28, para 13.

till now. In 1922 the question arose, whether emigration of Indian labour to Malaya should continue after 5 March 1923 when Malaya came under the operation of the Indian Emigration Act, 1922, and if so, on what terms. The conclusions of the Standing Emigration Committee as to the conditions necessary to be fulfilled before emigration was permitted under the new Act were conveyed to the colonial Governments. In their letters dated 30 November 1922, they expressed their willingness to accept all the conditions and even agreed to embody those conditions in the notification to be issued in accordance with Sec. 10 of the Emigration Act permitting emigration to Malaya. Mr. Gilman, who led the deputation to the Standing Emigration Committee, had also stated that he had no objection to the removal of all penalties, including imprisonment for labour offences, though he advocated some more summary way of dealing with the breaches of contract etc., than the ordinary civil courts.⁶⁰ In the Federated Malay States (F.M.S.), paragraph 66 of Labour Enactment XVIII of 1923 provided that no labourer should be held liable for the amount of any advance made to him or any person on his behalf, or of any money expended on his behalf prior to his arrival in the F.M.S. in consideration of his engagement to work in the States.

Indian emigration to Malaya was banned in 1932 on a drastic reduction of wages there without the knowledge of the Government of India. But strong representations by the Malayan Government led to the lifting of the ban in 1934. Emigration as now resumed differed from the old in certain particulars. While under the old, most of the labour that migrated to Malaya was *Kangany*-recruited, the new arrangement dispensed with the recruited altogether, the element of government assistance for purposes of emigration remaining constant. A glut in the labour market was provided against by the decision to restrict the labour emigration in the first year to 20,000, while in pre-depression years the annual average was 125,000. Provision for repatriation was also made. With the disappearance of the recruiter, the opportunity for misleading intending recruits by painting rosy pictures of labour conditions was removed. In future all information as regards conditions of labour was to be made available through Government sources.

The influx of non-recruited emigration in excess of requirements led the Labour Department to devise the above system of applying quotas to individual employers according to their needs. The depots in India were instructed not to admit any non-recruited

60. Emigration to Malaya (1923), Appendix VIII, p. 27, Minute of the Proceedings of the Standing Emigration Committee which met on 5 September 1922.

emigrant for whom there was no definite offer of employment in Malaya. This proved a welcome change as theoretically also the voluntary system afforded greater independence to the individual labourer. Practically all the licences issued since 1934 were for recruitment to newly opened tea and oil palm estates and for employers whose labour connexions were with remote parts of India, or were not so well established as to secure to them a sufficient supply of non-recruited labour.⁶¹

The general improvement in the economic situation in Malaya and increased production in 1936 and 1937 were reflected in an increase in the immigrant labour force there. But the deterioration in trade conditions in 1938 and a cut in wages resulted in the prohibition of assisted emigration to Malaya from 15 June 1938. But the underhand methods of recruitment made employers remain unconcerned by such suspension. With supreme nonchalance, they even announced a further reduction in wages from 1 August 1938.

In Malaya there thus came to be two systems of recruitment : (1) the *Kangany* system for recruited emigrants and (2) the voluntary emigration system for non-recruited emigrants.

Under the Indian Emigration Rules, 1923, a *Kangany* should be a South Indian belonging to an agricultural class and should have been employed as a labourer for not less than three months under the employer for whose service he would be obtaining emigrant workers from his own or neighbouring villages. In order to check abuses by these recruiting agents, special licences were introduced for them. Yet the abuses continued owing to the illiterate and poverty-stricken plight of the Indian villagers. Consequently, the number of *Kangany*-recruited workers declined steadily until in 1929 about 37 p.c. of the adult Indian workers emigrated to Malaya under a different system of recruitment organized by a majority of rubber plantations. In 1937, only 11 p.c. of Indian workers reached Malaya through the *Kanganies*. In 1938, the Government of India abolished recruitment through *Kanganies*.

Regarding the *Kangany* system the Controller of Labour in Malaya claimed in 1938 that :

If the main object of any system of control of recruitment is the avoidance of deception and misrepresentation, and the elimination of profits which might produce abuses particularly in the case of uneducated and credulous people, it would be difficult indeed to devise a system better calculated to attain these ends than the Malayan *Kangany* system.⁶²

61. For details, see *International Labour Review*, July 1940, Vol. XLII, No. 1, p. 75.

62. Annual Report of the Labour Department of Malaya for the year 1938, p. 13, para 28.

But the late Mr. V. S. Srinivasa Sastri, who was deputed to Malaya by the Government of India in 1937 to report on the conditions of Indian labour there, expressed the opinion that, though the system was valuable to employers and helped in saving some work in the Labour Department Offices, produced quick results and guaranteed, so far as assisted emigration was concerned, a supply almost exactly equated to demand, nevertheless, on more vital and fundamental grounds, it was not desirable either in theory or practice. So he recommended that the system should not be revived even in its modified form and should be completely abandoned. He further suggested to the Government of India that if they were prepared for the abolition, they could request the Malay Governments to co-operate with them in devising suitable machinery to meet illegal and unlicensed recruitment, and that when the ground was prepared, they should take steps to put an end to the *Kangany* system altogether.⁶³

Some defended the *Kangany* system on the basis of differentiation between the 'assisted' and 'unassisted' types of recruited labour. But it was generally held that assisted and unassisted were meaningless expressions as the only difference between an assisted and unassisted emigrant was that while one was openly helped by the Malaya Government to migrate, the other was brought to Malaya by employers by secret and surreptitious methods known also to the Malayan Government. However, the action of the Government of India in not only suspending assisted emigration but in regulating unassisted emigration had considerably improved the position. Generally the Malayan system of recruitment and control of labour and the working of the system was free from certain serious blemishes which we have noticed earlier in respect of recruitment to other countries.

KANGANY SYSTEM — CEYLON

The *Kangany* system in Ceylon differs from that in Malaya in two respects: Firstly, recruiting was mainly based here on the family system. The *Kangany* was originally the elder member of a family group and was being assisted by families in neighbouring villages. The Head *Kangany* had thus under him a number of family groups, each under a chief called *Silara-Kangany*. Secondly the *Tundu* system of advances, till its abolition in 1921, differentiated between the two.

63. Report on the Conditions of Indian Labour in Malaya by the Rt. Hon. V. S. Srinivasa Sastri (1937), p. 20, para 29.

MALAYA

It was felt in 1940-41 by the Government of India that the larger war demand for rubber and the prospect of a share in the prosperity of rubber industry would attract considerable unassisted Indian labour and that this additional and surplus labour might not only depress wages but might have an unsettling effect, particularly after the war, upon the existing labour force. The Government of Malaya appreciated India's anxiety to preserve the living standards of workers in Malaya and agreed to some form of control of emigration to be exercised in India and Malaya.

SECTION III—THE MAISTRY SYSTEM

(The *Maistry* or Contract system of recruitment of Indian labour for Burma was in essentials similar to the *Kangany* system. The system of advances as an inducement for immigration, the initial indebtedness in which the labourer was compelled to start his life in the new country and his consequent enslavement to a middleman were also the chief characteristics of *Maistry* recruitment. But the gradation of middlemen-employers and the innumerable illegal deductions by them all from the wages of workers, besides regularized under-employment, differentiated the *Maistry* system from the *Kangany* system.

The Labour Contractor, the Head *Maistry*, the Charge *Maistry* and the Gang *Maistry* constituted the hierarchy of middlemen-employers. A man in charge of a small gang of between 10 and 20 labourers was a gang *maistry*, and a *maistry* having under his control several such gangs was a charge *maistry*. A *maistry* in charge of the entire labour organization of a particular firm or company was the Head *maistry*, while the Labour Contractor was a superior individual who was under a contract to supply and maintain the necessary labour force as stipulated in the contract. Hence the Labour Contractor was usually a man of financial standing and influence.

When mills and other large concerns required labour, they entered into an agreement with a contractor to supply a certain number of labourers for a stated period. They stipulated a rate of wages for each class of labour, as also the remuneration to the contractor for his services as a recruiter. The contract was to maintain a labour force upto requirements and to see that the labourers did their work. As the contractor had entered into a written agreement with the concern he would, in order to safeguard his position against the labourers, insist on the labourers executing a contract or agreement prior to embarkation, in case of recruitment

in India, and before entering into employment, in case of those locally recruited.) The agreement consisted in putting the thumb impressions of the labourers on the stamped agreement forms or on blank stamped paper. The agreement would constitute an undertaking to serve the *maistry* or contractor for a given period, and an acknowledgment of the debt for a certain sum which was supposed to represent the actual advances received and the cost of food and transportation. (But the usual omission to specify the term of service and the actual amount of indebtedness would give the contractor a convenient handle to show any amount of debt he liked against the labourer. This document thus became a valuable weapon with which the contractor would slowly encompass the labourer's economic ruin. In signing the document the labourer would seal his fate, for from that day would begin his bondage.) The labourer in Burma also thus started his life in debt as his brother did in Ceylon till 1927. (In the *maistry* system, therefore, the labourer in fact was the servant of his contractor and not of the mill or firm. The extent of the *maistry's* control and his opportunities for extortion are evident from the fact that he controlled the disbursement of wages, besides being vested with an arbitrary power of selection and dismissal of labourers.)

Ever since the annexation of Pegu in 1852 it became the policy of the Government of India to actually encourage Indian emigration to and colonization in Burma. The opening of the Suez Canal in 1869 resulted in a great demand from the West for Burmese rice. The failure in tapping the indigenous labour from Upper Burma led to strenuous attempts, especially from 1874 onwards, to attract Indian emigrants, first as agriculturists by making large advances to Indian zamindars, and subsequently as labourers. In 1876 a Labour Act was passed which provided for the appointment of a recruiting Agent for Madras labour in India.

Meanwhile to meet the growing needs consequent on the establishment of steam mills, the Workmen's Breach of Contract Act of 1869 was also rigorously enforced to retain Indian workers who had already gone to Burma. According to the Act, a magistrate might sentence the worker who refused to fulfil his contract to work, to imprisonment for a period upto three months, or if the order be for the payment of a sum of money, for a period which might extend to three months or until repayment was made. The magistrate was also given the power to direct him to perform such work within that period, not exceeding one month. The capitalists in Burma found that it was easier to manage Indian workers recruited through contractors than those recruited through Government agencies under the protective provisions of the Labour Act of 1876. The Government of Burma was however anxious to import

Indians who would settle in Burma as cultivators. Between 1876-1878, over 15,000 Indians came to Burma as free settlers.

In 1880 about 40,000 Indians, and in 1883-84 about 83,000 Indians were assisted to enter Burma. Besides labour thus recruited by the contractor or his agent, subsidies were offered to the shipping companies for the carrying of Indian immigrants into Burma. Moreover, the British India Steam Navigation Company which was interested in the passenger traffic to Burma employed a large number of agents in all the districts to canvass passengers. These Agents got commission for each passenger booked through them, and so they would misrepresent and influence as many passengers as they possibly could to go to Burma. This naturally resulted in terrible overcrowding of the vessels which compelled people to lie like fish all over the floor, leading to much inconvenience and trouble. The Native Passenger Ship Commission of 1890 recommended amongst other things that the medical officer of the ship should be a Hindu and well-acquainted with the language of the people forming the bulk of passengers, and also that he should serve as the spokesman of the passengers in all the representations to the captain of the ship. The All-India Deck Passengers Committee of 1912 recommended in addition the appointment of an inspector on every steamer to serve as an intermediary between the master of the ship and the passengers and as a protector of the latter against ill-treatment at the hands of the subordinate shipping authorities. They also recommended the appointment of small bodies of non-officials with the necessary powers at the chief ports to visit steamers and report irregularities, if any, to the authorities. There was also an Assistant Protector of Immigrants and Emigrants, but he was practically helpless against the British India Steam Navigation Company on the one hand, which was a most powerful concern virtually controlling the whole passenger traffic between India and Burma, and, on the other, the police authorities.

The Workmen's Breach of Contract Act of 1869 was repealed in 1925. But the persistence of the *Maistry* system neutralized, if it did not nullify, the effect of such repeal. Though the Act had disappeared, there was no real freedom to the labourer as the *maistry* was very vigilant to exploit the labourer by making advances and entering into an agreement with him with such detrimental provisions as agreeing to (1) service for a definite period at a wage generally below the rate fixed by the mill authorities and (2) weekly deductions from wages towards repayment of advances received with interest thereon.

Serious as the defects of the *Maistry* system of recruitment were, in respect of recruitment, the evils characterizing the conditions of the labourer under this system proved still more serious.

Non-employment of the full complement of men in a gang, numerous illegal deductions from wages, and compulsory contribution of free services, all became a normal feature. In certain cases, no distinction was made between night and day labourers and the same wages were paid to both. In some other cases, the *maistries* employed more labour for half day to get the work done quickly and economically, and whenever it was so done they counted two halves as one for the purpose of accounts. These abuses of contract labour came to light in several cases before the courts. In *Konala Venkatareddi vs. Traffic Manager and Assistant Traffic Manager* (Criminal Appeal No. 666 of 1928) the Rangoon High Court held: 'On the case as a whole we are most strongly impressed by the internal evidence contained in the accounts which leaves us in no doubt that Exhibits A and B were genuine books and related to a widespread system of bribery which did in fact exist.'⁶⁴ Again Criminal Regular No. 18 of 1928 proved to the hilt how the coolie *maistry* had abused his position to bleed the poor labourer white.⁶⁵

WORKING OF THE MAISTRY SYSTEM IN BURMA

The labour in rice mills, railways, ships, port trust, public works and mines was under the system of *maistry* labour. The system of employment of labour, of calculation and payment of wages, and general management of the labour force in the various industries, under contract labour vividly revealed the evils. According to Mr. Andrew⁶⁶ the emoluments of the Labour Contractor in relation to the baggage coolie amounted to Rs. 780 per mensem, i.e., 50 p.c. of the wages of 78 labourers. This 50 p.c. included the commission of Re. 1 per head to which he was legally entitled and other levies, but excluding the appropriation of the total wages of the temporary gangs at As. 12 a head per day and the premium of Rs. 41 for every badge of permanent service given. The emoluments of the four *maistries* were Rs. 75 a month, besides their monthly pay of Rs. 25. Those of the two *maistries* were Rs. 70 besides their wages of Rs. 20 a month. The two extra *maistries* who were appointed with neither fixed pay nor wages, each made Rs. 48 by under-employing the number of coolies by two. In these emoluments of *maistries* were included the weekly contribution of Re. 1/4 by every labourer from his takings from the passengers. Where the whole wages were appropriated as in the case of baggage

64. A. Narayana Rao: *Contract Labour in Burma* (1930), p. 161, quoting.

65. *Ibid.*, p. 161.

66. E. J. L. Andrew: *Indian Labour in Rangoon* (1933). This part of the section is a summary of Chapters VIII, IX, X and XI of Mr. Andrew's book.

coolies before 1918, or in the case of the temporary labourers always, the labourers were given a free hand to earn what they could by tips from the passengers for services rendered.

In regard to shipping coolies in the case of a European stevedore, the remuneration of the gang *maistry* was provided by the under-employment of the coolies by two i.e. 12 instead of 14, and the appropriation of the wages of these two men as payment for his work of supervision. The head *maistry* made Re. $1\frac{1}{4}$ per day at the rate of an anna per day from the wages of the 4 *kamalis*, 14 coolies and 2 winchmen, this levy being recognized by the stevedore as a legitimate one. In the case of an Indian stevedore, the sub-*maistries* also got their remuneration by under-employing their gangs by 2 men, and thus ensured for themselves Rs. 3 per day. The labourer was also deprived of a day's wages. The sub-*maistry's* return to his country also deprived the labourer of a day's wages, this being latter's contribution or a gratuity to the former. As regards the shipping labour employed by the labour steamship companies, Mr. Andrew testified not only to the maintenance of the gangs, especially the temporary gangs, under regulation strength. but also to the *per capita* deductions compulsorily made from their wages. He says that 'in fact it has become a regular custom in shipping circles for contractors and head *maistries* systematically to under-employ labour'.⁶⁷

In respect also of the carriage of bags of stitched rice, the head *maistry* had his above emoluments of 20 p.c. commission etc. In payment of rates, he allowed only Rs. 2-8-0 for conveyance from sewing floor to boat direct, Rs. 2 for conveyance from godowns to boat, and between Re. 1 to Re. $1\frac{1}{4}$ for storing in godowns, while he was allowed by the mill rates between Rs. $\frac{3}{8}$ to Rs. $\frac{3}{10}$; Rs. $\frac{3}{4}$ to Rs. $\frac{3}{8}$; and Re. $\frac{1}{2}$ to Re. $\frac{1}{8}$ per hundred bags respectively. Occasionally he rewarded each coolie once or twice a year by a bonus rarely exceeding Rs. 4 or Rs. 5 as a sort of appeasement.

The re-bagging work included many operations of removing rice bags from godown to bagging floor, of cutting stitches, transferring rice to new bags, weighing and sewing and loading on boats. In this re-bagging, while the mill allowed the Head *Maistry* a rate of Rs. $\frac{3}{12}$ per 100 bags with an addition of Re. $\frac{1}{8}$ per 100 bags if bags were to be stored in godown, the latter allowed only Rs. 2 and Re. 1 respectively. He was also allowed the usual 20 p.c. commission, besides which he deducted the value of two men's wages, and appropriated two weekly work bills annually, one weekly bill when mills worked day and night, and the other when they worked

67. E. J. L. Andrew, Chapter IX.

only during the day. He appropriated even three weekly bills in case of operations connected with removing and storing bagged rice, one when mills were most busy, and the other two at the interval of four months, coolies being allowed during those weeks a subsistence allowance of Rs. 2 and Rs. 2 to Rs. 2/4 in the two cases. Practically the same system of deductions and commissions were practised and allowed by *maistries* employed by the Indian mills too.

Besides this pernicious array of underpayments, the *maistries* deducted 12 p.c. or more than what they deducted towards the repayment of the advances made to them, but did not adjust the whole of this deduction towards the advance account. And this difference between the amount deducted and amount credited was approved as overhead profit. But all these deductions, even over a period of 2 years, did not get the debt any nearer to its liquidation.

In larger saw mills employing 1,000 to 1,500 men, the *maistries* recruited locally by levying a premium of Rs. 10 from every youth between 16 and 20 years and Rs. 5 from older men. This levy acted as a deterrent on the recruits from seeking a new employer and thus chained him to the same employer. The same sickening story of exploitation of ignorant labourers recurs like a refrain in other fields of employment as well.

The Indo-Burma Draft Agreement of July 1941 provided for the establishment of an Immigration Board consisting of Burmese, Indians and Europeans to collect evidence and advise on fixation of quotas for different classes of permits, action being taken only after consultation with the Government of India. The Government of India was, until the Board had reported, to prohibit emigration to Burma of unskilled workers except such number as the two Governments might agree upon for seasonal employment in Burma. Consequently the Government of India enforced the ban with effect from 21 July 1941 and steps were also taken in other directions to implement the Agreement.

After the war, mainly evacuees were permitted to go to Burma and, even among them, the unskilled labourers were not allowed to return unless they had jobs or relatives to go to.

Under the U Tin Tut-Bannerjee Draft Immigration Agreement, concluded after prolonged negotiations in Delhi on 2 December 1945, labour was to form part of the quota allotted for future immigration and would enjoy exactly the same rights and privileges as other sections coming under the quota system. This Agreement was, however, disapproved by the Burma Executive Council on 12 March 1946. Though a comprehensive immigration agreement was yet to be negotiated, the Government of India had laid down in November 1946 special conditions for the recruitment of skilled

labourers in India for service in Burma. The Protectors of Emigrants at Indian ports were instructed to permit emigration only on the basis of a written contract normally for a two-year period and on a pay not less than Rs. 46 and such cost of living allowance as might be sanctioned by the Burma Government. The Protectors were to insist on a security deposit except in special cases. The terms of the agreement between the employer and the worker provided for the termination of the contract by either party after reasonable notice and for the free repatriation to India of the worker and his dependents. ,

CHAPTER III

CONDITIONS OF LABOUR

THE QUESTION OF WAGES

The fact that a vast majority of Indians overseas constitutes the working class invests the question of wages with exceptional importance. But more important and striking is the fact that a century of devoted labour had not, unfortunately, led them anywhere nearer their rightful wages. In Ceylon, the wages which per day were 28 to 32 cts. in 1833, 33 in 1846, 28 to 36 in 1866, 37 to 39 in 1890, 25 to 33 in 1908, fell back to 28 to 36 cts. (in Ceylon Mid-country estates) in 1939. The wages in British Guiana, which varied from 36 to 49 cts. in 1871, ranged between 33 and 49 cts. in 1922. In Trinidad they were 25 cts. in 1871 and 20 in 1886, and it was established in evidence before the West India Royal Commission of 1938 that between 1845 and 1937 the wages of Indian agricultural labourers were increased only twice, a five cents increase after the inquiry of 1921, and a similar increase after the riots in June 1937, bringing the wages to 35 cts. in 1939. Similarly, in Mauritius the evidence tendered before the Hooper Commission of 1937, had shown that the wages of 40 to 50 cts. remained more or less constant during the past forty years.

This unsatisfactory position led to a change in the attitude of the Government of India, particularly with the passing of the Indian Emigration Act in 1922, and the constitution of the Standing Emigration Committee of the Indian Legislature. From that time a systematic attempt was made to secure minimum wage legislation and ensure the interests of Indian labour.)

CEYLON

In 1923, a deputation of planters visited Delhi to discuss with the Government of India the conditions of labour recruitment under the new Emigration Act. The firm attitude adopted by the Standing Emigration Committee and the Government of India led to the passing in Ceylon of the Minimum Wages Ordinance in 1927, which came into force on 1 January 1929. Under this Ordinance, the minimum wages were fixed on the basis of the budget compiled in 1925-26 by Mr. Ranganathan, the Agent of the Government of India. The wages thus introduced in 1929 were :—

	Men	Women	Children	
Up country	54 cts.	43 cts.	32 cts.) Price of rice Rs. 6·40 per bushel.
Mid country	52 "	42 "	31 "	
Low country	50 "	40 "	30 "	

These rates continued till depression overtook the prices of rubber and tea in 1931. The price of rice also fell below the issue price fixed at Rs. 6·40. Thereupon, the labourers showed a tendency to purchase rice from boutiques at cheaper rates, rather than from estates at Rs. 6·40. But the planters were anxious to appropriate the profits resulting from the fall in the price of rice and to retain in their own hands the control over the issue of rice. So they applied pressure to prevent labourers from buying in the open market. Nevertheless the labourers continued to buy rice wherever it was cheaper ; so the planters appealed to the Government of India and got permission to reduce the price of rice to Rs. 4·80. They proposed correspondingly to reduce wages by 5, 4 and 3 cts. in the wages of men, women and children respectively. The Government of India assented to this reduction on condition that rice would be issued at Rs. 4·80 per bushel, instead of at Rs. 6·40. Thus a readjustment of wages was made in conformity with the fall in the price of rice. The readjustment was adopted in May 1931 and the revised wages were :—

	Men	Women	Children	
Up country	49 cts.	39 cts.	29 cts.) Price of rice Rs. 4·80 per bushel.
Mid country	47 "	37 "	28 "	
Low country	45 "	36 "	27 "	

In the middle of 1932, tea began to fall in price and the general slump in trade also continued. The planters demanded a further reduction in wages. The Estates Wages Board which proposed a 20 p.c. reduction, based their recommendation on the unwarranted assumption that a labourer's cost of living in articles other than rice had also fallen by 20 p.c. The Ceylon Estates Proprietors Association attempted to demonstrate that it was possible for an up country labourer to live on Rs. 7·20 a month, as compared with Rs. 11·20 provided for in the Ranganathan Budget. In doing so, they not only overestimated the fall in the cost of living, but underestimated the bare needs of the labourers. For example the quantity of rice allowed to a labourer was reduced from the original 7/8 bushel to 6/8 bushel. The quantities of various other items were reduced by 25 to 50 p.c., and no provision was made for pots, pans, coats and expenditure on festivals. It was therefore not surprising that the planters should have arrived at the figure of Rs. 7·20. But an estimate based on such an attenuated budget

could hardly be regarded as a fair basis for the revision of wages. Ultimately, however, the original up country wages were retained, while in mid and low country estates wages were reduced with effect from 1 February 1932. The reduced rates were :—

	Men	Women	Children	
Mid country	43 cts.	35 cts.	25 cts.	} Price of rice Rs. 4·80 per bushel.
Low country	41 ..	33 ..	24 ..	

This reduction was made on the ground that the cost of living had fallen by 16 p.c. and 17 p.c. in mid and low country estates respectively. Not satisfied with these reductions, the planters continued to press for a further decrease. They now advanced the pretext that the industry was unable to pay the existing rates. Prolonged discussions in the Board of Indian Immigration Labour and the Executive Committee of Industry, Labour and Commerce led at last to the proposal for a reduction of 8, 6 and 4 cts. in Up country, and 6, 5 and 4 cts. in Mid and Low country estates from 1 May 1933. The Government of India agreed to the proposal on the condition that rice would be issued at Rs. 4 instead of at Rs. 4·80. The suspension of the Minimum Wages Ordinance was also proposed but was not agreed to by the Government of India. The wages after this further reduction were :—

	Men	Women	Children	
Up country	41 cts.	33 cts.	25 cts.	} Price of rice Rs. 4/- per bushel.
Mid country	37 ..	30 ..	21 ..	
Low country	35 ..	28 ..	20 ..	

Later, there was a revival of industry and with it an increased demand for labour. The planters now increased the wages with effect from 1 November 1933. The issue price of rice remained at Rs. 4/-. The following were the increased rates :—

	Men	Women	Children	
Up country	46 cts.	37 cts.	27 cts.	} Price of rice Rs. 4/- per bushel.
Mid country	40 ..	33 ..	33 ..	
Low country	38 ..	31 ..	22 ..	

The continued prosperity and insistent demand for more labour induced the planters to restore the rates to the level that prevailed before the reduction in February 1932, i.e. 49, 39 and 29 cts. in Up country estates ; 43, 35, and 25 cts. in Mid country estates; and 41, 33 and 24 in Low country estates. These rates continued to hold good for 1935, 1936 and 1937. In September 1937, the Ceylon Government requested the Government of India to reopen recruitment. The Indian Government referring to the cut in February 1932 in Mid and Low country estates, pointed out that as the revival of

prosperity in the tea and rubber industries appeared to justify the extension of its benefits to Indian labour, the wages in the Mid and Low country estates should be restored to the levels which obtained prior to this cut.¹ The Ceylon Government replied that the question whether the suggested increase was justifiable or not would be referred to the Regional Wages Boards for determination; and it was not until December 1938 that the contemplated reference was made. The recommendations of the Wages Boards were considered by the Board of Indian Immigrant Labour, which decided on 13 March 1939 that the wages of labourers on Mid and Low country estates should be restored to the levels obtaining before February 1932. The issue price of rice was not to exceed Rs. 4·80. This decision was brought into effect from 12 June 1939.

The increased cost of living as a result of the general rise in commodity prices following the outbreak of the war led to a decision for an increase of the statutory rates of minimum wages towards the end of 1940. The revised rates that came into force with effect from February 1941 were as follows :—

	Men	Women	Children	
Up country	54 cts.	43 cts.	32 cts.	} With issue price of rice not exceeding Rs. 4·80 per bushel.
Mid country	52 "	42 "	31 "	
Low country	50 "	40 "	30 "	

The introduction of these revised rates of wages resulted in a discontinuance of the war bonus which was being paid on a voluntary basis by estates generally. Moreover, the estates which were issuing rice to labourers at a cheaper rate raised it to the permissible maximum limit of Rs. 4·80 per bushel. These rates however continued to be in force till 30 April 1942. In the meanwhile commodity prices continued to rise and the working class cost of living index number for Colombo town rose from 120 in December 1940 to 125 in August 1941 and 132 in December 1941. The high cost of living after the war began brought home to the authorities that the standard of living of estate labourers had risen and that the Ranganathan budget framed in 1926 could not be a proper basis for the fixation of minimum wages. A special officer was appointed to investigate into the family budget of Indian estate labourers. This report which was published on 8 October 1941 was essentially a statement of facts as they were at the time of the enquiry (April-May 1940) as disclosed from an analysis of the figures of income and expenditure relating to 516 families employed in Up, Mid and Low country estates and no attempt was made to evolve an ideal family budget of expenditure for estate labourers. The average standard

1. *International Labour Review*, July 1940, p. 60.

of living disclosed by the figures of expenditure was very low and the actual standard for the bulk of the labourers must be even lower as many sources of income catalogued in the report and included in working out the average were not in fact available to the vast majority of labourers. The percentage of income spent by a family for education, health and other cultural items is an index of the adequacy or otherwise of the income. The report of the special officer shows that the amount which an average estate labourer could afford to spend on miscellaneous including cultural items mentioned above was particularly low. The figures in the report are based on the prices prevailing in April-May 1940 when the general weighted working class cost of living index number was 105 and this figure went up to 132 in December 1941. The report left no room for doubt that an immediate and all-round increase of wages was called for. It showed that there were two distinct aspects to the problem — the first to provide for some increase in the standard of living of the estate labourers and the second to devise a scheme for the adjustment of wages to keep pace with the rapidly rising cost of living index figure.² On the publication of this report a Sub-Committee of the Board of Indian Immigrant Labour was appointed to examine the above two aspects of the problem. After considering a memorandum prepared by the Sub-Committee the Board recommended a revision of the rates of wages so as to give a minimum wage of 57 cts. a day for male labourers in the Up country areas, the issue price of rice being Rs. 4·80 per bushel. It also approved a scheme for granting a dearness allowance varying with the cost of living index figure to be prepared by the Labour Department keeping the price of rice constant. The District Wages Boards were called upon to decide the question in January 1942. After a consideration of the varied recommendations of these boards, the Board of Indian Immigrant Labour approved an all-round increase of the basic wage by 3 cts. They also decided that the dearness allowance for men, women and children should be in the proportion of 5: 5: 3. Thus the following rates of minimum wages came into legal force from 1 May 1942:—

	Men	Women	Children	
Up country	57 cts.	46 cts.	35 cts.	} With issue price of rice not exceeding Rs. 4·80 per bushel.
Mid country	55 "	45 "	34 "	
Low country	53 "	43 "	33 "	

These rates came into force together with a dearness allowance for each labourer (based on the cost of living index number for Indian

2. Annual Report of the Agent of the Government of India in Ceylon for the year 1941, p. 11, para 23.

labourers prepared by the Labour Department) of such amount for each working day as might be fixed by the Controller of Labour by notification published in the Gazette.

The rates of dearness allowance were as follows :—

For the month of	Rates of dearness allowance	
	Men and Women	Children
March	.. 13	8
April	.. 17	11
May	.. 20	12
June	.. 21	13
July	.. 23	14
August	.. 29	18
September	.. 32	20
October	.. 30	18
November	.. 30	18
December	.. 30	18

But this dearness allowance ceased to have any relation to the prices paid by the labourers in the black market for such essentials as clothing, chillies etc. For the cost of living index was prepared on the basis of prices fixed by the Government and no arrangement was made to supply the articles to the labourers at those prices.

While the labour representatives were commenting on the fact that the rates of dearness allowance remained unaltered from October 1942 onwards in spite of increases in prices, the representatives of the planting community alleged that the payment of the allowance had led to slackness and low out-turn. It was also proved that a few Superintendents had insisted on increased output consequent on the increase in the money rates of wages. The basis on which the Labour Department was calculating the rates of dearness allowance was also called into question and towards the end of 1942 a special Committee was appointed to investigate into the whole basis for the calculation of the dearness allowance and representatives of both employers and trade unions were invited to give evidence before the Committee. This Committee submitted its report in February 1943.

The recommendations of the new Committee seemed to involve a radical alteration of the manner of calculation of the cost of living index. They also took as its basis the official prices of the food now supplied. It would have been something at least if the basic pay was fixed on this basis. While the old rates continued, the new basis was used only to calculate increments in the dearness allowance. It was, therefore, apprehended that they were rigging

up a mere arithmetical hanky-panky to decrease the dearness allowance by computing the increase in index prices as a percentage of the present cost and later using this percentage on the basic pay, calculated on pre-war prices to calculate the increments in dearness allowance. Even this dearness allowance was to be paid at different rates for Up country, Mid country and Low country estates. Worse still, women were to be paid dearness allowance at the rate of four-fifths of the men, thus going back upon the principle of equality of dearness allowance to men and women conceded in March 1942. All this meant a loss of 10 to 15 cts. per day per labourer.

This attitude to Indian labour is astounding in the light of the fact that the tea estates had been selling all their tea to the Government at an average price 25 p.c. higher than the pre-war price besides saving all marketing charges by total sale to the Government. The position of rubber was still better, fetching more by 50 p.c. of the pre-war price while the demand for increase in price was growing. The tea estates were providing about 20 p.c. more tea, and rubber still greater increase. Eighty per cent of the export trade of Ceylon consisted of these two products and both were being produced by the eight lakhs of Indian labourers on the estates, the majority of whom were persons born and bred in the Island.

The Board of Indian Immigrant Labour examined the recommendations and approved three important modifications, viz. (1) women and children were to be paid four-fifths of what males were getting ; (2) market prices should be taken as a basis in calculating the cost of living index and (3) the dearness allowance for Up, Mid and Low country male labourers should be in the ratio of the relative minimum wages, viz. 57: 55: 53. This system introduced in April 1943 was again modified in May by the decision that the Labour Department should accept as conclusive the control prices furnished by the price controllers for food, clothing and miscellaneous articles. As due to shortage of all commodities, the actual price at which commodities could be purchased was substantially above the control price, labour was adversely affected by the modifications in the method of computing the cost of living index. The Government of India made representations but the position continued so till 30 March 1945.

RICE RATIONING

The introduction of rice rationing led to considerable deterioration in the supply of foodstuffs to estate labourers. The Government of Ceylon accepted the differential system of rationing in principle which came into force on 20 July 1942 with a basic ration

of 1½ measures of rice per week and in November the general basic ration was raised from 1½ to 2 measures of rice. From 4 January 1943 only a fourth of the government ration was issued in the form of rice. As a result of the representations of the Indian Agent it was decided in the last week of February 1943 to authorize the issue by estates of free mid-morning meals to labourers on a voluntary basis. It is not known how far this voluntary scheme was implemented. In August 1944 the Executive Committee of Labour, Industry and Commerce decided that on estates where free feeding was not undertaken, the free issue of rice and foodstuffs should be as follows :

(1) Where the male labourer was married and had a wife or children, the total issue to the family should be computed and 4 measures (8 lbs.) of rice be issued free, (2) if the male labourer was unmarried or a widower and had no dependents, the free issue should be restricted to the rationed quantity of 2½ measures of rice per month and the balance of 1½ measures should be issued in substitute rations.

On 8 July 1941, the Wages Board Ordinance XXVII was passed to regulate the wages and conditions of employment of persons engaged in various occupations including estate labour and was brought into force with effect from 19 September. Since its provisions superseded some of the vital provisions of the Minimum Wages Ordinance applicable to Indian labourers, the Government of India was given an opportunity to comment on it. The Government of Ceylon accepted and incorporated all the suggestions of the Government of India. The Ordinance *inter alia* invested the Agent of the Government of India and any officer authorized by him in writing with the powers of inspection and enquiry possessed by officers of the Ceylon Labour Department in respect of occupations in which Indian workers were employed. The Ordinance declared deduction from wages on account of the cost of rice supplied to labourers on estates illegal, but allowed the prevailing practice of wage deductions to continue pending the framing of necessary regulations. It also provided for the establishment of Wages Boards and District Wages Committees. It was proposed to apply the provisions relating to particular trades to the rubber and tea growing and manufacturing trades but excluding the work of *Kanganies*.

Ceylon Ordinance XXVII of 1941 was amended by Ordinance LIII of 1943 which provided *inter alia* for the minimum rate of wages including a dearness allowance based on the cost of living index number computed by the Controller and the basic rates and for raising the limit of total deductions from 50 p.c. to 75 p.c. of the wages. The regulations approved by the Government under Sec-

tion 57 of the Ordinance provided for certain deductions from the wages of a worker in conformity with Section 2 of the Ordinance, the chief of which was the imposition of fine on the labourers in respect of an act or omission of a class or description specified by the employer in a written notice exhibited prominently and determined by the Controller. The total amount of deductions due to such fines, however, should not exceed at any one time 5 p.c. of the wages earned by the worker during the period of fine.

A notification dated 17 July 1944 established Wages Boards for tea and rubber growing and manufacturing trades. The Boards considered the existing basis for fixing the minimum wage and dearness allowance inadequate and proposed in December the following enhanced minimum rates inviting objections before 18 January 1945. The minimum time rate for a working day of 9 hours (including one hour for meals) consists of — (1) basic rate and (2) special allowance to be computed and published monthly by the Controller of Labour. The basic rate was as follows :—

Class of workers	Basic rate for a normal working day
Male worker not under 16 years of age	.. 58 cts.
Female worker not under 15 years of age	.. 46 cts.
Child worker	.. 41 cts.

When the cost of living index number was 215, the special allowance for a normal working day was to be 67 cts., 54 cts. and 47 cts. for the three categories of workers. When the cost of living index differed, the allowance would increase or decrease by 3 cts. for a male, 2 cts. for a female and 2 cts. for a child worker for each complete unit of 5 points by which the index number exceeded or fell below 215.

The proposals also provided for payment of overtime. One significant feature of the new rates was the obliteration of the distinction hitherto made between the minimum rates for the Up country, Mid country and Low country estates. These divisions of the Wages Boards evoked much opposition from the planting interests.

With the prosperous position of the rubber and tea industries in Ceylon, conditions of full employment continued till the end of 1946. Increased supplies of rubber from Malaya and the production of synthetic rubber in America affected the rubber industry in Ceylon. With effect from 1 July 1946 when the British Govern-

ment's earlier agreement for the supply of rubber to the U.S. terminated, the price of Malayan rubber was fixed at 14d. per pound f.o.b. Agreement was also reached between the Governments of the U.S., the U.K., Netherlands and France fixing the basic price for rubber from British, Dutch and French Far Eastern sources at 23½ American cts. up to the end of December 1946. Ceylon feared that the price of her rubber would also be lowered to 14d. which would mean a reduction of nearly 25 cts. in the price of Ceylon rubber. Accordingly it was announced that the price of rubber from 1 October 1946 would be 71 cts. corresponding to 14d. f.o.b. and that the free market in rubber would be resumed from 1 January 1947. With the fall in the price of rubber from Re. 1 per lb. fixed till the end of September 1946 to 71 cts. from 1 October, some rubber estates decided to limit the working of the plantations and served notices of discharge on a part of the labour force.

The position of Indian labour deteriorated in the middle of 1949 due to the closing of some rubber estates as a result of the inability of Ceylon to secure a higher price for her rubber from the Governments of the U.K. and the U.S. In May 1949, the price of rubber per pound fell to 50 cts., a price exactly half of what she obtained during the war in her contract with the U.K. Many Indians were thrown out of employment in Kolany Valley estates and elsewhere. In July 1949, the rubber industry was exempted from the operation of the Wages Board Ordinance as a relief measure in its critical position due to increased costs and lower prices. As the devaluation of sterling has brought about an improvement in prices, the Labour Unions have requested the Minister of Labour to remove the exemption. Wage cuts were proposed for rubber workers. Two lakhs of tea and rubber estate workers decided to go on strike as a protest against the proposed cuts.

NON-ESTATE LABOUR

The irregular intervals at which ships arrived in Colombo harbour owing to war conditions considerably reduced the earnings of labourers leading to strikes in the harbour in July and November 1941. A Commission which was appointed to enquire into their grievances recommended payment of higher rates of wages, which was accepted.

MALAYA

The Federated Malay States Labour Code and the Straits Settlements Labour Ordinances provided for standard wage enquiries. These enquiries were conducted by the Indian Immigra-

tion Committee in 1927, and following their recommendations a policy of fixing wages differently for Key areas from those for non-Key areas was adopted in 1928. Key areas were areas which were easily accessible, non-Key areas those which were less accessible. Standard rates were fixed with reference to the then ruling price of rubber, which was 25 cents per lb. in Key areas. The wages being thus fixed on the basis of rubber prices, the vicissitudes in these prices had their repercussions on wages. The wage rates which thus varied from time to time were as follows³ :—

Year	Ordinary (Key) areas		Less accessible areas		Ruling price of rubber
	Men	Women	Men	Women	
1928 to					
October 1930	.. 50 cts.	40 cts.	58 cts.	46 cts.	25 cts. per lb
1930 November	.. 40 ..	32 ..	47 ..	37 ..	16 .. per lb.
January to					
March 1937	.. 45 ..	36 ..			
April 1937 to					
April 1938	. 50 ..	40 ..			
May to					
December 1938	. 45 ..	35 ..			

The standard daily rates of wages of 50 and 40 cts. fixed in 1928 continued upto October 1930, when a cut of 20 p.c. was imposed on the ground that the price of rubber had fallen by about 9 cts. In May 1932, industrial depression, particularly in rubber, led to a further reduction, the adult male being actually paid 25 cts., the female, 20 cts. The standard rates in 1933 were slightly higher, though they were far from being satisfactory. The gradual recovery of trade, specially in rubber, created a demand for more labour in 1933 with the result that several estates began to pay 40 cts. and 32 cts. But in 1935, these rates were not maintained, men being paid only 35 cts. and women, 28 cts. The Government of India made a mistake in permitting assisted emigration in 1934 without securing the restoration of wages at least to the pre-slump level.

3. International Labour Review, July 1940.

However, the new statutory rates of 40 and 32 cts. continued till 1936. Meanwhile, the International Rubber Restriction Scheme, which was brought into force on 1 June 1934, raised the price of rubber, so that the average price of rubber, which was 3¼ d. per lb. in 1933, rose to 6¼ d. in 1934, 7¾ d. in 1936, and 10 d. in 1937. The production quota too was raised to 75 p.c. for the first quarter of 1937, to 80 p.c. for the second quarter and to 85 p.c. later. This prosperity in the rubber industry and the pressure of the Government of India compelled the colonial Governments to raise the minimum wages to 45 and 36 cts.

Towards the end of 1937, the late V. S. Srinivasa Sastri recommended to the Government of India that the latter should press for the restoration of the standard wages of 1928. He based his recommendation on the fact that at the time when the 20 p.c. cut was imposed it was clearly understood that full standard rates would be restored as soon as the industry found itself in a position to pay them. The recommendation of Sastri, however, seemed to indicate that the claims of expediency rather than justice influenced his judgment. He stated that the Government of Malaya had written to the Government of India that 'had the market price of rubber not fallen below 25 cts. per lb., it is safe to say that this enquiry (to see if 20 p.c. cut was possible) would never have been held'.⁴ He had thus an accepted basis, that when rubber was sold at 25 cts. per lb. the industry could pay the standard rates of 1928. The possibility and reasonableness of a cut would, therefore, depend on what would constitute a living wage, while an increase was warranted when rubber was sold at higher prices than 25 cts. a lb. It would, therefore, have been reasonable to recommend that the rates of 1928 should be revived and treated as minimum standard rates of wages as long as rubber was sold at 25 cts. a lb. or less, and under no circumstances could an employer pay less, slump or no slump. It would also have been reasonable to recommend an agreed increasing scale, beginning with the minimum rate and rising proportionately with the rise in rubber prices. And as the enquiry of 1928 itself was evidently intended to fix a minimum wage, it was reasonable to assume that the 1928 standard rates were fixed as the standard minimum rates.

The exigencies of labour and the leniency of the recommendation induced both the Government and the planters to implement the Sastri recommendation for restoration. But in 1938 the trade conditions showed signs of deterioration, partly owing to the disturbed international situation, resulting in a reduction in the

4. Report on the Conditions of Indian Labour in Malaya by the Rt. Hon. V. S. Srinivasa Sastri (1937), p. 5.

export of rubber. So in May 1938, wages were again reduced to 45 and 35 cts. This cut without prior reference to the Government of India and the unsatisfactory position of the labour market compelled the Government of India to put a ban on assisted emigration to Malaya from 15 June 1938, and subsequently, to take powers for prohibiting all kinds of emigration not only to Malaya, but to Ceylon and Burma. This led to a dearth in the labour market, and the official Ahearne delegation visited Simla in 1939, but the ban continued. In their discussions with the delegation the Indian Government took the position that the basis of calculation of standard wages would require complete revision and insisted that the calculations ought to be based on the family and not the individual worker. Though the wages were raised with effect from 1 October 1939 to 50 cts. for men and 40 cts. for women, the question was not completely settled nor wages placed on a satisfactory level. As these rates were not gazetted by the Malayan Government, they also lacked statutory sanction and hence were susceptible to variation at will by the employers. The Government of India felt that circumstances warranted a reconsideration of the principles on which the standard rates of wages of Indian labourers had been fixed. As a final settlement of this issue bristled with difficulties involving long delay, it was felt that in the light of the rising cost of war, some immediate relief should be given to the estate labourers. The cost of living allowance granted in 1940 to all daily paid labourers in Government employment in Malaya and also to estate labourers in Pahang planting district moved the United Planting Association, which decided to grant with effect from 10 January 1941 a temporary allowance of 5 cts. a day to men and 4 cts. a day to women (in addition to the regular wages of 50 and 40 cts.) respectively. From 1 April 1941, the 5 cts. allowance was raised to 10 cts. a day. In Pahang and Klang districts and on the Dunlop group estates, the wage rates were 60 cts. and 50 cts. for men and women respectively. From 1 October 1941 a further increase of 5 cts. a day was granted in Pahang in the temporary allowance.

In July 1941 Major G. St. John Orde Browne, Labour Adviser to the Colonial Office, arrived in Malaya to investigate and report upon local labour conditions. The Indian agent submitted a written memorandum to him on Indian labour problems.

The cost of living allowances granted to labourers and skilled artisans in Government employment were revised in February 1941 on the basis of a family budget. The scale of these allowances varied every month according to the rise in the cost of living and rose, in respect of employees in receipt of less than \$ 1 a day, from \$ 2.95 per mensem in April 1941 to \$ 5.75 in December 1941. The

Japanese occupation of Malaya later plunged the country into a total economic chaos.

When the surviving 42,000 Indian estate workers in the ' Death Railway were brought from Siam, the British Military Administration (B.M.A.) put them in relief camps and then sent them in 1946 to the estates where they had been previously employed. At first, the B.M.A. paid wages at the rate of 60 cts. per man and 50 cts. per woman. When the Indian Representative raised the question, the B.M.A. replied that as they were merely looking after the estates on behalf of the proprietors, they, as an administration, could not afford to pay higher wages. Later in the year, the United Planters' Association of Malaya (U.P.A.M.) fixed the basic rate of wages as 70 cts. for a man, 55 cts. for a woman and 40 cts. for a child to which they added a cost of living allowance of 40 cts. per adult and 20 cts. per child. Yet as the level of prices rose by 400 to 500 p.c. above the pre-war level, this increase gave them little relief. The very low rice ration fixed accentuated their plight, as rice had been their staple food. This dissatisfaction led to strikes in July 1946 on estates in Kedah and Perak.

MAURITIUS

The shortage of labour from 1921 and the Walter Deputation to the Government of India in 1923 gave an opportunity to the Government to demand the payment of higher wages to Indian labour in Mauritius. The Indian Government demanded the acceptance of the principle of basic wage on the basis of the cost of living sufficient to maintain a man, his wife and three children, plus a margin for savings, sickness and old age; and fixed the margin at Rs. 12/-.⁵ On the acceptance of the demand, an ordinance was passed in Mauritius in 1923 repealing the Ordinance of 1878, and providing for the payment of a minimum monthly wage of Rs. 10/- for the supply of rations, medical attendance etc. Power was also retained to vary the minimum wage, when circumstances should require it. The colonial Government had also accepted the stipulation of the Government of India that every immigrant should be repatriated to the place of his recruitment at the cost of the colonial Government if he was unable to obtain a minimum wage, sufficient for the cost of living for a man, his wife and three children, besides a reasonable margin for sickness and old age. Thereupon, Indian labourers went to Mauritius, but only to find that the promised wages were not available there. Consequently 844 out of

5. Note Prepared by the Department of Revenue and Agriculture etc (1923) p. 26, Telegram of the Govt. of India dated 6 February 1923 and of the Colonial Secretary dated 12 February 1923

1,395 that were recruited returned to India within two years. Sir Kunwar Maharaj Singh, who was sent to Mauritius in 1925 by the Government of India to enquire into the condition of Indian labourers there, reported: 'It is true to say that of the several hundred immigrants interviewed by me, scarcely half a dozen expressed themselves as being satisfied with their lot.'⁶

Sir Kunwar estimated that the total monthly cost of living to support a family of 5 and allow a margin of saving, was Rs. 40/-. He stated that the average earnings of a monthly (i.e. a labourer whose wages were reckoned by the month) labourer including allowances for rent and medical attendance, did not exceed Rs. 35/-, and that on Government works, the usual earnings did not exceed Rs. 30/- per month at the most, or with allowances for rent and medical attendance, Rs. 35/- :

It is evident, therefore, that the wages given to the recently recruited immigrant did not enable him to earn a sum sufficient to support himself, wife and three children, and leave a saving as anticipated by the Government of India. No attempt was made by the Protector of Immigrants or anyone else to see that the wages earned came up to the scale laid down.⁷

Regarding day labourers (i.e. labourers whose wages were reckoned by the day) Sir Kunwar's estimate of the wages earned by them were on the average Rs. 39. But when it is remembered that Sir Kunwar's estimate of the total cost of living for a family of 5 with a margin of saving was Rs. 40/-, it is surprising how, when day labourers secured Rs. 39/- per month and monthly labourers Rs. 35, only half a dozen had expressed satisfaction with the wages obtained. Presumably his estimate of wages obtained by labourers was somewhat generous. On the basis of his estimates he calculated that since 1914 there had been a rise in wages of about 50 p.c. for day labourers (the figures of 1914 being Rs. 25), and 66 p.c. for monthly labourers. Taking both rises together, he concluded that there had been a rise of 60 p.c. in wages in 1923 over those of 1914. The evidence tendered before the Hooper Commission appointed in 1938 to enquire into the disturbances and police firing shows that in spite of such a rise the wages of 50 cts. per day were utterly inadequate for a labourer having a wife and children to make both ends meet. The Hooper Commission recommended payment of war bonus of 10 p.c.

The Government of India deputed Mr. S. Ridley, Secretary to the Indian Agent-General in South Africa, to report on the condi-

6. Report by Sir Kunwar Maharaj Singh on his Deputation to Mauritius (1925) p. 26.

7. *Ibid*, p. 30, para 44.

tions of Indians in connexion with these recommendations. Mr. Ridley reported in 1940 that the payment of war bonus of 10 p.c. was in some estates made conditional on the employee working at least five days a week and that it was not at all applied to day labourers. Again while the estate labourer was fairly well paid the day labourer was generally underpaid. As a result of the Minimum Wage Advisory Board created in 1939, a minimum wage based on a seven or eight hour day had been introduced in the Moka district for agricultural labourers based on a standard labourer's budget the cost of which was Rs. 18·61 based on prices ruling in June 1939. In 1941, this recommendation was made to apply to the whole island as regards agricultural labourers.

Moreover there were fairly frequent complaints with regard to non-payment of wages due to the piece-work system. Mr. Ridley made several proposals including the introduction of a minimum wage for workers in the sugar industry for the whole island. Major Orde Brown, investigated into the conditions of labour in 1941 and reported in 1943 that the increase in normal cost of living had been met by a war bonus of 12 p.c. followed by another of 8 p.c. (July 1941) — a total increase of 32 p.c. on the 1939 figure. Referring to the effect of minimum wages he said : 'The actual result proved to be an increase in the wages of certain poorer-paid workers but no sweeping change was introduced'.

Pending the settlement of a demand for higher wages, disturbances occurred in 1943 on 4 estates. In the course of police firing on 27 September 1943, consequent on a reported assault on the police, 3 workers were killed and 16 wounded. The Moody Commission of Inquiry was appointed to enquire into the causes of the disturbances. The Conciliation and Wages Boards also examined the question of adjustment of wages. The Report of the Commission was published on 28 November 1944. According to the Commission, the main underlying causes of the disturbances were low wages and unsatisfactory economic conditions. The Commission reported that the monthly employed labourers, to whom only, so far as labour conditions and wages were concerned, the disturbances were confined in the three estates in the North, were getting wages below the legal minimum rates as prescribed by Government Notice No. 210 of 1941, i.e., on the estates affected the absolute maximum for monthly paid unskilled labourers was the legal minimum wage of Rs. 20·00 a month plus 20 p.c. war bonus being conditional upon a minimum five days' work a week. They also affirmed that minimum wages fixed in 1941 and based on the cost of living and level of prices in 1939 had not been paid in several cases as late as 1943. They also reported that according to the

ad hoc study of the rise in the cost of living made by the Director of Labour early in 1943 at the instance of the government, prices had risen from 1939 to 1943 by 100 p.c. as regards foodstuffs and by 300 p.c. as regards articles of clothing, although of course many of these commodities were not available. After these disturbances and as a result of the recommendation of the Minimum Wage Advisory Board, with effect from 1 October 1943, the Grand Bande (physically strong) labourers received Rs. 25·40 per month plus 30 p.c. war bonus and Petite Bande (physically weak) labourers Rs. 22·86 plus 30 p.c. war bonus, deductions for absence from work being *pro rata*, i.e. the war bonus payment was to be unconditional upon the number of days worked in the week. This recommendation had been applied to the whole island. The Commission observed that the police officers were unfamiliar with the language, religion and customs of the people whom they attempted to persuade and perhaps to coerce and that there was little contact between the people of the island and the authorities. The Commission made far-reaching recommendations designed to improve the conditions of labour, general welfare etc. They recommended the creation of a Wages Board for the settlement of disputes regarding wages. The colonial Government took action in certain directions and set up a Central Statistical Bureau. Nevertheless the discrepancy between the cost of living and the rates of wages paid persisted to the disadvantage of Indian labour.

BRITISH GUIANA

Mr. Keatinge, who was deputed in 1924 to British Guiana by the Government of India to enquire into the conditions of Indians there, reported that though wages were higher in that year than before 1914, the rise in wages was not commensurate with the rise in the cost of living.⁸ This discrepancy between wages and cost of living worsened the position in the days of depression and there were serious labour troubles from 1933 to 1936. The planters maintained that they were paying the same rate of wages to labourers resident on their estates and to non-resident labourers, and that the former had, besides, other privileges, such as free housing and medical aid and sometimes reduced rates for rice lands and grazing fields. A very experienced manager estimated that these extra privileges had amounted to some 36 dollars per head per year. It may appear surprising that, while claiming to be commercial men, the planters should continue to incur such heavy extra expenditure in days of depression on account of resident labourers, when they

8. Reports on the scheme for Indian Emigration to British Guiana 1931, Part II, Report by G. F. Keatinge, p. 171, para 35.

might have saved it by employing non-resident labourers. The explanation for this was to be sought in the admission of a manager before the British Guiana Labour Disturbances Inquiry Commission of 1937 that there was an understanding that resident labourers (men and women) should furnish labour to the estates for a certain number of days a week, whether they liked it or not. If women did not turn up for work, their men folk were fined and the families evicted from their homes.

This Commission in its findings as regards wages stated: 'It is more than probable that the present larger earnings of estate labourers over pre-war earnings barely suffice to meet their increased expenditure... The cost of living in the colony is largely dependent on taxation and taxation in this colony is high in comparison with other colonies of Empire' (Para 6). They further said that the sole source of employment for labourers in agriculture was sugar industry and that no alternative means of earning a livelihood was readily available. The Commission also referred to the insecurity of tenure of houses and plots of lands granted free of rent to labourers in consideration for their labour. While these were the findings of the Commission, the employers contended that wages had not been reduced. The feeling was expressed that the returns supplied by the employers had no statistical value. The fact that in 1934, 11,000 East Indians had emigrated from Essiquibo, as estimated by its Commissioner, was presumptive evidence for the view that wages had greatly declined on the sugar estates.

Even after the recommendations in 1937, there was not much improvement in wages. Sir Walter Citrine, a member of the West India Royal Commission of 1938, elicited from his witnesses that considerable unemployment existed among Indians on the sugar estates and rice fields, that child labour was extensively used to reduce the wages bill of the employer, that the wages were deplorably low on the estates, and that praedial larceny was one of the frequent acts of delinquency on the part of the worker. In July 1938, the standard wage system was introduced, but shortage of work continued to be the most vitiating factor.

Recommendation 10 (e) of the West India Royal Commission, 1939 stated: 'Wages Boards should be created in any colonies in which they do not already exist. The enactment of satisfactory legislation providing for the establishment of such Boards should be a condition of the participation of any colony in the arrangements proposed below for the assistance of the sugar industry, and the allocation of shares in these benefits to individual concerns should depend on the full execution of the decisions of the Wages Boards. Differences arising in industries not covered by Wages Boards should be handled by the staff of the Labour Departments or by

arbitration panels. An Industrial Court should be established for the West Indies as a whole.' In British Guiana no permanent Wages Boards had been established, but machinery exists under the Labour Ordinance 1942 for the appointment of Advisory Committees, with representatives of employers and workers, to investigate conditions of employment and to recommend minimum rates of wages. This procedure was being adopted only when a dispute arose which could not be settled by methods of conciliation. As the settlement of disputes by collective bargaining, involving only the bringing together of the representatives of the employers and workers under the chairmanship of the Commissioner of Labour, had proved very helpful, it had been strongly encouraged. In regard to the sugar industry, a trade union of sugar estate workers had been recognized by agreement between the parties, which contains all that is necessary for the settlement by negotiation of any question that arises. •

TRINIDAD

In 1919-20 a Committee reported on the economic position of the various classes of workers, and recommended suitable rates of wages. But the recommendations were shelved. Again in pursuance of the Minimum Wage Fixing Machinery Convention of 1928, the Trinidad Government adopted in April 1935 an Ordinance empowering the Government to appoint Boards to consider wage rates, and a Board was appointed under the Ordinance. The report of the Board was published in October 1936, but no decision fixing wages was taken.

As a result of labour disturbances in oil fields and subsequently on sugar estates in 1938, a Commission was appointed to investigate into the matter. They came to the unanimous conclusion that the labourers' sense of dissatisfaction had reached its culmination when the earnings of the workers were not adjusted to the increased cost of living with sufficient promptitude. They stated that, notwithstanding depression in the sugar industry, the out-turn of sugar factories had doubled within the previous ten years and that 'concerns, which for many years had earned no dividends, have, during the past three or four years, found themselves in a more favourable position.'⁹ The Governor criticizing the planters on their callousness stated that the profits varied from 5·5 to 7·5 p.c. Speaking for the Governor, the Colonial Secretary observed :

I would remind the sugar industry also that the sugar industry was not subsidized in order to enable them to pay dividends to

9. *Servant of India*, 7 April 1938, quoting.

their share-holders ; it was subsidized because it was the largest employer of labour. These thousands of labourers have to be kept employed, and the only means we can find at present for keeping them employed is the sugar industry and that is why the industry has been subsidized, and not only must we keep them employed, but we must keep them employed in decent conditions and not in conditions of economic slavery.¹⁰

The sugar industry was receiving subsidies from both the Imperial and local governments and the Secretary of State for the Colonies estimated the preference to Trinidad sugar at £530,000 in a year. The Commission had also stated that during depression and consequent rationalization, 'labour contributed its share by continuing to accept a standard of wage and living conditions far below what is desirable.'¹¹

The profits of oil companies were remarkably higher still. Sir Arnold Gridley, a Director of an oil company in Trinidad, had admitted in a House of Commons debate that the dividends paid amounted to 45 p.c. a year. Yet the wages remained at the depression level while the cost of living had risen very high by 1936. Col. Hickling, of the Petroleum Association of Trinidad, estimated the rise in prices in April 1937 at 17 p.c. over the 1935 level. The Commission observed: 'The reduced purchasing power of his wages, however, was something which the workman would clearly appreciate and something which was more or less universal in its effect'.¹² The Commission had also admitted that the Government of Trinidad and the Colonial Office were not unaware of the deplorable conditions of labour. The West India Royal Commission, 1897, and the Olivier Commission of 1930 had also drawn attention to them. Besides, the Hon. Captain A. A. Cipriany had moved resolutions year after year in the local Legislative Council for the fixation of a minimum wage. But all knowledge of the affair and the constitutional reminders had been of no avail. However, in anticipation of the recommendations of the Royal Commission, 1933, the Trinidad and Tobago Trade Disputes (Arbitration and Enquiry) Ordinance was passed repealing the Ordinance of 1920. The first arbitration held under the Ordinance between the Oil Field Workers Trade Union and Oil Field Employers Association of Trinidad awarded an increase in wage rates and one week's annual leave with full pay. As regards the Royal Commission recommendation for establishment of Wages Boards, a joint Sugar Board was already functioning when the Royal Commission of 1938 reported and differences arising in other industries were being handled by the

10. *Ibid.*

11. *Ibid.*

12. *Ibid.*

Industrial Adviser. In 1946, Dearness Allowance was granted to labour.

JAMAICA

The Marquis of Dufferin and Ava, speaking in the House of Lords on the causes for riots on the estates in 1937, stated: 'What that discontent has been caused by is surely the low rates of wages paid'.¹³ Mr. Tyson reported in 1938 that on many estates Indians had not been getting more than two days' work in a week out of crop season, and that many other men and invariably all women were not getting even that much.¹⁴ The position was further depressed by the absence of a minimum wage legislation till 1938. Under the Minimum Wage Law XXXI of 1938 in Jamaica, an Advisory Board for the sugar industry was established and minimum rates fixed for the sugar industry.

FIJI

In 1917, C. F. Andrews represented to the Colonial Sugar Refining Company that it was most iniquitous to keep the wages of indentured labourers down to 1s. a day, when the food prices had increased by over 100 p.c., and the extra war profits on sugar were almost fabulous. He pleaded with the Company to agree at least to a 25 p.c. rise in the daily wage, so that it might reach 1s. 3d., which would be equivalent to about As. 5 in India. But the Company refused to agree till the Government stepped in and compelled it. In 1919, a Commission which was appointed by the colonial Government recommended 3s. 4d. a day as the minimum wage for Indian labourers. S. S. Chowla, a government interpreter, who made a special study of the wages question, placed the minimum living wage as high as 4s. a day. There were other estimates which brought it as low as 2s. 6d. But the Company refused to raise the daily wage. This led to a strike by Indians in 1920. The police provocations led to rioting which was followed by severe military repression. Indians again struck work in a perfectly disciplined and peaceful manner for five months in 1921, but only to return after terrible privations and work at a wage which was far less than they had demanded. In 1922, the Hon. Mr. M. Hedstrom declared in the Fiji Legislative Council: 'During the past two years we have passed through a period of feverish prosperity'.¹⁵ The daily wage was nevertheless reduced in 1933 to 1s. 6d. Next year the

13. House of Lords Debates, 2 June 1938. Volume CIX No. 70, p. 906.

14. Report on the Condition of Indians in Jamaica, British Guiana and Trinidad by J. D. Tyson 1939, Appendix I, p. 32.

15. Indians Abroad Directory, p. 561.

residential tax of £1/- was also imposed and this swallowed 12 days' wages of a labourer at the rate of 20d. a day. In 1939, the wages were ranging between 2s. 3d. and 2s. 6d. a day, the very lowest estimate made by employers in 1919; the government had not seen its way to implement the recommendations of its own Commission which had fixed the minimum living wage at 3s. 4d. a day. The standard rates in 1943 for unskilled labour were 2s. 6d. per day in Suva and 2s. in the country. Workers in the mills received a standard wage of 1s. 8d. with a bonus of 7d. per day in the cane-crushing season. Wages of cane-cutters varied from 2s. 6d. to 3s. There were strikes by Indian labour in 1943 for higher wages.

MIDDLE EAST

In 1949 the Government of India investigated into the conditions of skilled and unskilled Indian labour working in the oil companies in the Persian Gulf countries and took certain steps to revise the standard contract form to ensure for them good living and working conditions.

INDEBTEDNESS

(The *Kangany* and *Maistry* systems of recruitment were based and reared on the indebtedness of the worker. While ordinarily everywhere lower wages led to indebtedness, in Malaya, Ceylon and particularly in Burma, the method of labour recruitment and control constituted the chief cause of indebtedness. The low wages and defective recruitment had a crushing cumulative effect in increasing indebtedness of the Indian workers in these countries. Certain other additional factors, especially the omission to take the necessary precautions against this increase, had resulted in worsening the situation.

In Ceylon, Malaya and Burma the employers had met the workers' complaints of increased cost of living, not by increased wages but by increased advances. Thus the debts mounted up.)

CEYLON

As was pointed out by the Ceylon Labour Commission 1908, while some control was exercised over money expended by recruiting *Kanganyies* on behalf of the estate, similar control was not maintained over the actual sums advanced to the coolies by the recruiting *Kanganyies*. As the labourer did not know the exact debt, he was easily held responsible for a sum larger than that expended on him. The emigration of the labourer under inducement proved

another cause. Thirdly, the payment of wages once in six months during the days when coffee was the main crop and later once in three or four months led to his heavy indebtedness to the estate, the *Kangany* and the boutique-keeper; and when the wages were disbursed they necessarily went into the hands of the *Kangany* and boutique-keeper. False debts were entered in the books in the hope of setting off the wages against the advances made. Thus, in about 1918, the debt of Indian estate labourers averaged about Rs. 120 per head. Twenty years later, in 1939, the Indian Agent reported that, though no statistics were available to show the extent of indebtedness, experience showed that:

indebtedness is still a main feature of their lives,¹⁶ and that the debts owed to the *Kanganies* were still very high. Almost in every case, where labourers asked to be registered separately from the *Kangany's* gang, or where a superintendent wished to give or gave notice to a *Kangany*, the latter promptly made representations stating that the labourers owed him a large amount of money and that if he was to go away at a month's notice he would not be able to collect all his outstandings.¹⁷

Under Section 5 of Ordinance XIII of 1889 and under Ordinance IX of 1909, immunity from arrest for debt was secured with a view to lessen the temptation of extravagant advances and the manufacturing of indebtedness. But the *Tundu* system, which was a practice by which the labourer was obliged to the employer and the *Kangany*, almost nullified the otherwise beneficial nature of these provisions. So the debts mounted up with time. On agitation in India, a Commission was appointed which expressed the opinion that, unless the debt was wiped out before the scheme of aided recruitment was begun, the labourers would return to India, repudiate their debt, and come back to Ceylon with the advantages under the new scheme.¹⁸ So they recommended that labourers should be relieved of their debts — employers writing off debts due from labourers and *Kanganies* from their books, and *Kanganies* in their turn writing off debts due from labourers after getting their 'solvency amounts'. Draft legislation was ready in 1919, but was not passed till 1924 on the pretext of depression. This wide lapse of six years gave sufficient time to the employers to appropriate by all possible methods as much as they possibly could from wages. No doubt *Tundu* was abolished by Ordinance XLIII of 1921, but this abolition did not prevent indebtedness, but only removed

16. Report of the Agent of the Government of India in Ceylon for 1939, p. 13, para 31.

17. *Ibid.*

18. Report of the Committee on Recruitment of Indian Labour for Ceylon (1918).

the instrument that formed the basis of transfer of debts of labourers from one employer to another. For nothing in law prevented the *Kanganies* from filing actions in India in all cases where labourers had properties therein and collecting debts. The employers themselves deducted, according to Mr. Natesa Iyer, a member of the State Council, one-half of the wages at the payment table towards advances, so much so that before the law of 1923 penalizing *Tundu*, more than 75 p.c. of the debts due from labourers was collected. And of the debts due from labourers as represented in the *Kanganies'* books, a good portion represented debts due from labourers who had bolted away and dead labourers, but debited to the other labourers of the group. Mr. Natesa Iyer had stated that many of the employers had paid only a part of the debt claimed by the *Kanganies*, and not even these when the *Kanganey* was sent out of the estate. Labour suffered untold privations which were enhanced by slump in tea and rubber, and shortage of rice for the maintenance of the families. They had to depend upon the pawnbrokers who seized the opportunity to thrust large debts upon them. The claim of employers that they had relieved the labourers of indebtedness to the tune of £4 million is a gross exaggeration.

There was, therefore, not much change in the debt position of the labourer. Ordinance I of 1923 also provided that advances made by the recruiter or others in India to induce a labourer to emigrate were not recoverable in any court in Ceylon. But all these remedies were based on the idea that if the labourer could not be prevented from borrowing, the other method was to prevent the lender from lending by removing all security for debt.

Ordinance XLIII of 1921, which abolished the *Tundu* system, provided for the issue of a discharge certificate by the employer to the worker at the request of the latter after a month's notice. And curiously, the only security which a *Kanganey* possessed in practice, if not in law, for the recovery of his debt was this discharge certificate. According to the Indian Agent, this security which was rendered doubly secure by the operation of the Discharge Ticket Agreement arrived at among the employers, had definitely disabled the labourer from obtaining employment without the production of a discharge certificate, even though an employer was legally allowed to employ a labourer without one. As far back as 1917, the Marjoriebanks-Marakkayar Commission reported about this handicap.¹⁹ The labourer, no doubt, could give notice and walk out even if he was indebted to the *Kanganey*, but he was bound to suffer under the thumb of the *Kanganey* who had 30 days more to recover his money. The *Kanganey* on whom the employer was dependent

19. Marjoriebanks-Marakkayar Report, p. 11, para 34.

for labour supply would naturally prevent the employer from giving a discharge certificate, unless he was paid all that was due to him from the worker concerned. So did the boutique-keepers collect their debts. The labourer, all doors being thus bolted in his face, now proceeded to another estate, borrowed the necessary amount from the *Kangany* thereon, and paid off the old *Kangany*. Thus he started his life on the new estate again in debt. And the vicious Ixionic Wheel turned, grinding the labourer in the process.

Subsequently, certain other steps were taken to reduce the necessity of borrowing. Ordinance XXVII of 1927 provided that the full amount of the wages should be paid directly into the hands of the workers before the tenth of the succeeding month. Provision was made that the contracts of labour should not exceed one month, and that the assisted emigrant was entitled to be freely repatriated within one year of his arrival in Ceylon.

All these proved palliatives to alleviate the pain but not a patent to cure the disease. The result was that as Reid, formerly a Controller of Labour, in his evidence in 1930 before the Royal Commission on Labour, had confessed 'the Indian labourer was born in debt, lived in debt and died in debt.' The Reports of the Agent to the Government of India for 1936, 1937 and 1938 stated that Indians were steeped in chronic debt, and that the discharge certificate lent itself to serious abuse as a valuable security for the creditor to collect the debts.²⁰ The Indian Agent reported in 1942: 'There can be no doubt that the vast majority of labourers are indebted in varying degrees'.²¹

Now the question arises, what are the remedies? Undoubtedly, the first is the abolition of the *Kangany* system and direct recruitment by the official agency of the Ceylon Emigration Commissioner dispensing with the *Kanganies*. Secondly, the discharge certificates should be abolished and with it the Agreement. Higher wages, sufficient to maintain one's wife, children and dependents in reasonable comfort, will remove the root cause of indebtedness, and will prevent the movement of labour in debt, which largely augments it. The movement of labour under 'inducement' by employers anxious for more labour, leading to extravagant advances and consequent debts, should be statutorily prohibited. The fortnightly payment of wages and facilities for more Co-operative Credit Societies and Co-operative Stores on the estates are bound to check the dangerous vagaries of the boutique-keepers also. The quarterly registration of debt either to the employer, the *Kangany* and boutique-keeper

20. *International Labour Review*, July 1940.

21. Report of the Indian Agent for 1942, p. 138, para 35.

and provision for an annual reduction of 20 p.c. of debt, will help to solve the problem.

MALAYA

The debt position of Indian labourers in Malaya, though bad enough, was not so oppressive as in Ceylon. This was mainly due to the institution of a better recruitment system to Malaya and of the Immigration Fund even in 1907 to which were debited all recruitment, transport and food charges. An inquiry conducted by the Malacca Planters' Association in 1934, however, showed that in only one district the indebtedness was as high as \$60,000 through pawnshops alone. This figure was so staggering that the other planters' associations gave up their inquiry.

The planters usually cited the mounting credits in Co-operative Societies on estates as a sure sign of prosperity and sufficiency of the wage rates, while, according to some authorities, they would not cover even 10 p.c. of the total indebtedness of the labourers. Contributions to these societies were more or less compulsory and were deducted from wages. On account of the inadequacy of wages, the labourer, while contributing a dollar to the Society, sold his valuables, borrowed a larger amount elsewhere for existence, and later absconded from his place of employment forsaking his credit balances in the society due to heavy debts outside.^{21a} An analysis made in the year 1939 of the sum of \$768,624 saved by 36,080 labourers through 228 societies in 10 years revealed many ugly facts.

BURMA

In regard to the question of indebtedness in Burma, it is sufficient to say that the plight of the Indian labourer in Burma was even more precarious than that of his brother in Ceylon. Andrew, author of *Indian Labour in Rangoon*, explains it by saying that, while the estate Superintendent or Manager in Ceylon knew the amount of debt of a gang, the employers in Burma knew nothing of it. Secondly, he attributed it to the solicitous nature of Ceylon employers in regard to Indian labour, and to the direct disbursement of wages to the labourers by the estate. He says that an investigation in 1925 of a number of labourers from Burma picked at random had shown that out of 163 labourers examined 61 or 37 p.c. were found to be in debt to the extent of Rs. 15 to Rs. 1,000/- borrowed on interest at rates ranging from 1 to 25 p.c. per month. Illegal deductions, exactions and commissions varying from 35 to 50 p.c. of the wages, high rentals for living accommodation, drinking and extravagant expenditure on extras were found to be the other causes of debt. It was pointed out on behalf of the

21a. See para 18 of Sastri Report.

Government that workers obtained advances, generally ranging from Rs. 100 upwards, before coming over to Burma and sometimes during employment.²² Till the repeal of the Workmen's Breach of Contract Act, the labourer had to incur even criminal liability indirectly for indebtedness. Even later, moving for the repeal of this obnoxious Act in the Indian Assembly, Sir James Crerar stated that there would be no real freedom to the labourer even after the repeal of the Act as long as contract labour existed, for, the *maistry* was ever alert to exploit the ignorance of the labourer by making advances and plunging him into debt. The first step essential, therefore, to remove indebtedness would be to abolish the *maistry* system under which the worker's body was held as a security for an initial loan enabling emigration and subsequent unscrupulous and fabricated additions. Free recruitment and transport, direct payment of wages to labourers as in Malaya and Ceylon and the statutory prohibition of all illegal deductions and exactions alone, it was felt, would save the Indian labourers in Burma from indebtedness.

FJI

The position of the Indian agricultural labour in Fiji was equally bad. This was not due to defects in the recruiting system or illegal deductions as in Burma and Ceylon, but due to other causes common to agriculturists all over the world. During the motion for the appointment of an Economic Enquiry Commission in the Fiji Legislative Council in 1939, Government evidence²³ was quoted to show that in the three districts of Rewa, Nadi and Ba, the extent of Indian land under mortgage rose from 5,446 acres in 1925 to 8,597 acres in 1930 and 10,508 acres in 1936. During the same period the extent of Indian debt had swollen from £19,969 in 1925 to £48,236 in 1935 and £96,228 in 1936. Estimates were also quoted to show that the total indebtedness of Indians in all the districts of the colony would be in the neighbourhood of £500,000, whereas the agricultural income of the entire Indian community in 1937 was estimated to be £600,000. These figures were apparently accepted by the Government as they were not disputed by heads of departments who took part in the debate. In his book *Fiji: Little India of the Pacific*, 1941, John Wesley Coulter writes: 'One cause of *indebtedness* is the very low wages paid by the Company to its employees. It is estimated that 90 p.c. of the Company's employees are insolvent'. This indebtedness was more acute among the Indians growing cane on holdings leased from the Government and

22. A. Narayana Rao, p. 15, quoting.

23. *Statesman* dated 15 May 1939

the Fijians than among the tenants of the Company, for, while the former mortgaged their crops to moneylenders, the tenants could not do so. Another contributory factor to indebtedness was the exorbitant and illegal interest which was being charged by Indian professional moneylenders. The Indian storekeepers charged 20 p.c. more for goods on credit than for cash purchase. The Ordinance for the control of moneylending has proved utterly inadequate. A government Agricultural Bank with branches spread all over the cane-farming districts is an immediate need.

HOUSING

The housing of Indian labour had been adversely criticized by several Commissions of Inquiry in the colonies. Andrews and Pearson stated that the coolie lines of Fiji were mostly responsible for prostitution and immorality among Indian immigrants.²⁴ They recommended the abolition of coolie lines, and their replacement by separate cottages. Later Miss Garnham reported that the sordidness of the coolie lines made married life utterly impossible.²⁵ In the sugarcane areas, the Colonial Sugar Refining Company had undertaken a programme of replacing the old type of labour lines by up-to-date, relatively commodious buildings provided with adequate septic tanks, bath-rooms and kitchens and interspersed with small lawns and gardens. The Pillai-Tiwari Report stated that what Andrews and Pearson had written regarding Fiji applied with equal force and justice to the coolie ranges of British Guiana.²⁶ They also recommended the introduction of separate cottages for married immigrants.²⁷ Under the British Guiana Ordinance XV of 1934, the control of housing was vested in the Central Board of Health. The Labour Disturbances Inquiry Committee of 1937 stated that on small estates, which formed quite a large proportion of the total number, 'little or nothing has been done in the way of improved housing'.²⁸ Yet the Commission stated that considerable improvement had been achieved in housing. In 1938 the individual cottages, provided with artesian wells and lavatories with septic tanks, were only some 40 in number when 400 were necessary. On some estates new houses were given to fresh immigrants while the resident population continued in the old ranges. Qualitative statements without quantitative estimates of the improvements effected, the estimated percentage of labourers benefited, and the rate of pro-

24. Waiz: *Indians Abroad*, p. 560.

25. *Ibid.*, pp. 566-68.

26. Pillai-Tiwari Report, p. 42, para 94.

27. *Ibid.*

28. *Servant of India*, 12 August 1937.

gress, are misleading. In some larger and better equipped estates, schemes for the replacement of ranges with mud floors by modern ranges raised from the ground and even cottages were under execution. Tyson reported that in Jamaica, except in larger sugar estates in Frome, Westmoreland, Clarendon Parish and Mounsmusk, the housing on the banana and coconut estates could only be described as deplorable, and that the old barracks bore 'the appearance of not having been touched by the proprietors for years'.²⁹

The Royal Commission of 1897 and the Olivier Commission of 1930 made a scathing criticism of the housing of Indian labour in Trinidad. One of the underlying causes of disturbances on estates in 1937 was bad housing. The Forster Commission described the barrack dwellings in the capital, Port of Spain, as 'indescribable in their lack of elementary needs of decency, and for which we learned monthly rents varying from twelve to fifteen shillings a room are paid'.³⁰ Summing up the housing situation of agricultural workers, who are mostly Indians, the Commission stated :—

With such an authoritative consensus of opinion on this question, it is a matter for grave comment that so many dwellings of this class exist today, particularly when regard is paid to the comparatively modest housing requirements of the Trinidad agricultural workmen.³¹

In their memorandum to the Royal Commission on West Indies 1938, the British Medical Association stated that it was not only in Trinidad, as the Commission on the disturbances there found, that employers failed to realize their responsibility for supplying workers on their estates with the common decencies of home life and permit the existence of housing conditions which provided grounds for justifiable content. The Royal Commission recommended :—

For Rural housing, that in the case of estate housing, estates should provide the land, including vegetable plots, and give reasonable security of tenure, and the houses should be built under approved schemes financed by Government at low rates of interest, rent being charged against a corresponding increase in wages in those cases where, as is usual, rent is now only normal. As between ranges and separate cottages, while on general grounds we prefer cottages, ranges are suitable for unmarried men and small ranges limited to four dwellings might be permitted for families where there are strong health and other reasons for this course. A survey of estate housing

29. *Op. cit.*, para 11 (a) ii.

30. *Servant of India*, 7 April 1938, quoting.

31. *Ibid.*

should be included in it; and demolition of peasants' houses not ordered unless either the peasant can afford to replace or Government is prepared to help with rebuilding.³²

In regard to housing on sugar estates, one Sugar Producers Association submitted proposals in 1945 for the establishment of building areas for rehousing a part of the estate population. House plots in these areas would be leased to estate workers who would build their own houses. The position in Mauritius was no more gratifying. Referring to housing of monthly labourers in Mauritius, Sir Kunwar Maharaj Singh reported in 1925: 'The huts struck me as being dark and insanitary and that there is an absence of space and light in the Mauritius Indian's house which compare unfavourably with housing in rural India'.³³ In 1943, Major Orde Browne reported: 'Housing on estates is, for the most part, sound and weather-proof, and not usually overcrowded. It is, however, in a great majority of cases, of the old fashioned, "range pattern"'.³⁴ He adds: 'It cannot be regarded as providing anything like a home or as furnishing satisfactory conditions for family life. Not unnaturally therefore a general disinclination to live in such "lines" is reported on the part of workers'.³⁵ The position has now slightly improved.

In Ceylon under Ordinances IX and X of 1912 the Government had the power to compel planters who employed Indian labour to house their employees properly. Yet, the housing accommodation had always been meagre. In 1942, however, the Indian Agent reported that, of the 785 estates inspected during the year, there were no overcrowded lines on 567 and 84 were 'slightly overcrowded'. Successive Indian Agents had to plead for legislation to guarantee that married couples living in estate lines were not compelled or allowed to share a room with other adults.

The late V. S. Srinivasa Sastri, in his report on Malaya, said that the old type of barrack lines had been condemned by the Labour Department and might not in future be erected and that recent lines were mostly of the cottage type. The United Planting Association of Malaya had recommended that labourers' quarters should be the village type of huts. The Rules before 1939 required that each married couple should be provided with a room, and that for others there should be separate rooms for batches of not more than three adults. But in practice large families with many dependents and children or more than three adults were often

32. Recommendation 9 (c).

33. Report of Sir Kunwar Maharaj Singh (1925), p. 16, para 25.

34. C.M.D. 6423, February 1943, p. 55, para 19.

35. *Ibid.*, para 20.

huddled together in a single standard room of 10' × 10' in contravention of the rules. In 1940 the housing of the type of back-to-back barrack lines was slowly giving place to detached and semi-detached single-room and double-room cottages for married labourers living with their families.

Shortage of materials and their prohibitive cost during the immediate post-war period led to the postponement of the housing programmes. Ordinance No. XV 1941 introduced an amendment regarding the provision of a separate room for each married couple with children not above the age of twelve. Major Orde Browne recommended in 1943 the incorporation of a clause requiring two rooms to be provided for families containing children above the age of infancy. In October 1946, the Director of Medical and Sanitary Services drew the attention of the planters to the need to provide accommodation of the cottage type with two rooms and a kitchen in place of the present system of lines with a row of 10 or 12 rooms, with free and public access to their dwellings from public highways.

Industrial labourers in Burma, and particularly Rangoon, were housed in zinc or iron sheets-covered barracks, some with partitions and some without, provided by employers. The others were provided in rented tenement houses, each room or hall accommodating 30 to 50 men according to exigencies, naturally resulting in a choking atmosphere and harmful odours. As per 1930 figures, 42,000 workers had to live in such tenement houses which were dark, dirty and stuffy. The Report of the Public Health Committee, Rangoon, wrote thus: 'Dark, ill-ventilated houses on sites perennially flooded with rain or tide waters or with stagnant pools of household sullage waste, with scarcely a ray of direct sunshine in the inner room, are inhabited by hundreds and thousands of the poor class of the community; and with their poor wages, in addition to drink and drug, squalor and filth surrounding their social life, form a tragic total climax of their slum life. There are thousands of houses, huts and hovels in our town, which are unfit for human habitation'.³⁶ The 'gunny-cloth' families constituted the tragic climax. They were beds hung with old sack cloth or other rough curtains in which a man and his wife slept, such rows of beds being arranged in juxtaposition with rows of unmarried males lying helter-skelter down below. 'Under such circumstances it is impossible for any woman to remain a woman for any length of time. Of necessity she must sooner or later become degraded'.³⁷ The Governor of Burma observed: 'No one can read what the Rangoon Health Committee wrote in its report about lodging houses

36. A. Narayana Rao, quoting, p. 88.

37. *Ibid*, p. 89

of Rangoon without a feeling of shame but also of apprehension ; for these lodging houses must be hot-beds of tuberculosis and other diseases'.³⁸ All these criticisms had their effect. The Government and the employers had begun to take into account the growing family character of the labour forces, and to provide dwellings suited to the probable needs of the future, rather than to erect more houses of the old type which were perhaps suitable for the old days but are quite inadequate for the present needs.

The Housing of the Working Classes Acts of 1885 and 1890 and the Housing and Town Planning Acts of 1909 and 1919 in England, and similar legislation in other Western countries indicate the realization of the great importance of the housing of labour. The government and semi-governmental bodies and other private employers of labour should realize the importance of the housing question at least in the interests of an adequate supply of a healthy and contented labour force. Immediate steps should be taken for houses of the cottage type with small plots of land, approximating to the housing conditions Indians are accustomed to in Indian villages. Such houses should be provided with proper water, latrine, lighting and other essential requirements. The housing of the married and unmarried in the same blocks should be prohibited. Further construction of any new lines on the barrack type with or without improvements should also be stopped, with a view to seeing that all new constructions would be of the cottage type. A period should be fixed for the existence of each barrack line, with a view to treating such lines at the end of that period as condemned so that new lines of the modern cottage type might take their place at least within a definite period. The Forster Commission recommended that the practice of accommodating families in barracks and range dwellings should cease within a period of three years in Trinidad. All improvements and repairs to existing barrack lines should, as a rule, be carried out only after obtaining the prior sanction of government. In giving or withholding such sanction the government should have in mind the need for a complete abolition of such barrack lines as soon as possible.

On thus abolishing the barracks a new housing programme should be launched. The government should assist estate owners financially by way of loans at a low rate of interest in their rehousing programme. The recommendation of Major Orde Browne in regard to estate labour in West Indies made in 1943 might be adopted. He recommended the institution of a welfare fund maintained by the payment of a proportion of profits in any favourable year ; this might be employed partly in the estate for the provision

38. *Ibid*, p. 106.

of new housing or amenities, and partly as a contribution to a Central Fund.³⁹ To this may be added the recommendation of Tyson that an adequate share of any surplus over the fair costs of production might be similarly utilized.⁴⁰ It must be realized that good housing is the first requisite for the preservation of both physical and moral health.

MEDICAL ATTENTION

The fact that good medical attention and facilities would ultimately pay had induced the estate employers of Indian labour to evince some interest in the matter. Nevertheless, the progress so far made in the various countries was far from what was absolutely necessary or satisfactory.

Insanitation and inadequate medical attention in British Guiana were so bad that the Colonial Secretary, Mr. Clementi, referring to the proposal to import Indian labour in 1919, stated: 'It would however be sheer folly, indeed it would be immoral, to take steps to introduce immigrants in large numbers into British Guiana without at the same time taking the steps necessary to keep them alive and in good health'.⁴¹ The Pillai-Tiwari Deputation recommended that emigration to British Guiana should not be permitted until health conditions there had materially improved.⁴² The Labour Disturbances Enquiry Commission of 1936 stated that the position was worse than under indenture, and that they had learnt that employers were no longer compelled to provide hospitals for their labourers as under the indenture system.⁴³ Only in the case of water supply the position was better, as the Commission stated that 'practically all estates had artesian wells in the place of old open canals'. But even this water supply was not all that was desirable, for, as the British Medical Association wrote, the standard of purity as well as the method of distribution varied.

In Mauritius the Ordinance of 1923 provided for medical attendance. Sir Kunwar Maharaj Singh reported in 1925 that few medical men were in immediate charge of the hospitals and dispensaries on estates, and that there were only 8 Indian dispensers out of a total of 68 dispensers. The position had not very much improved since then. Mr. Ridley, who was deputed in 1940 by the Government of India, recommended the appointment of more Indian medical officers. Referring to the system of private hospitals on

39. *International Labour Review*, Vol. XLI No. 5, May 1940, p. 522.

40. *Ibid.*

41. Waiz: *Indians Abroad* (1927), p. 602.

42. Part 1, para 200.

43. Report of the Commission, para 52.

estates and the existing motor transport, Major Browne observed in 1943: 'In existing circumstances, its retention appears doubtfully desirable; Government hospitals at the principal centres might be substituted for the existing small scattered units and should be able to render better service'.⁴⁴

In Fiji infantile mortality had been a cause of great anxiety for a long time. In 1933 the mortality rate of children under one year was 76.75 per thousand. The training of more Indian medical students, Indian nurses and Indian midwives, establishment of hospitals in districts in which there were no proper medical facilities at present, Indian child welfare centres, and tuberculosis sanatoria and the provision of pure water, have for long been some of the urgent Indian medical necessities in Fiji.

In Ceylon there were approximately 2,300 estates scheduled under the Medical Wants Ordinance, with a cultivated area of 1,226,500 acres, exclusive of cocoanut plantations, and employing, besides Ceylonese, about 678,000 Indian immigrant labourers. The work was split up amongst 20 Medical Officers of Health, 35 Field Medical Officers, 3 District Medical Officers and 1 Assistant Inspecting Medical Officer. There were 64 government district hospitals and 111 government dispensaries, scheduled to estates in the planting areas in 1938 and 1939. In addition to these there were 96 estate hospitals and 670 estate dispensaries in 1939, as against 99 estate hospitals and 666 estate dispensaries in 1938. Matters pertaining to health, sanitation and medical relief on estates were the special concern of the Department of Director of Medical and Sanitary Services, who was responsible for administering ordinances Nos. IX and X of 1912 relating to the medical wants of labour on estates.

There were certain serious defects in the Ceylon Public Health system. The Medical Wants Ordinance was administered with funds collected out of a cess levied on tea and rubber exports. The cess had become the cause of political friction. Secondly, the special public health system set up for Indian labour savoured of racial discrimination, and as such, proved an eyesore to the Ceylonese and excited their hatred. Lastly, the administration of public health was lopsided. The financial reasons advanced in favour of the system were wrong, for not all labourers were Indians in the estates. The number of visits by Ceylonese to the 105 outdoor government dispensaries in the planting districts was about ten times the number of visits made by Indian estate labourers to these dispensaries.

44, C.M.D. 6423, p. 56, para 25.

Unqualified dispensers, poorly equipped dispensaries, lack of a protected water supply, inadequate staffing and poor latrine accommodation were the main defects in the medical attention to Indian labour. In 1940 there was only 1 midwife for 500 women workers and 1 hospital or dispensary for 750 labourers. The Director wrote: 'The staffing of estate hospitals continues to be unsatisfactory, there being no marked improvement in the number of qualified medical officers or apothecaries employed'.⁴⁵ The Special Officer entrusted in 1935 with enquiry into the nature and cause of malaria epidemic recommended that two Sections should be added to the Medical Wants Ordinance, making it obligatory on Superintendents of estates to carry out all reasonable and proper anti-malaria measures on their estates and also making it obligatory on estates, if and when required by the governments, to employ registered medical practitioners in all estate hospitals and apothecaries in dispensaries.⁴⁶ The Indian Agent reported in 1942 that the qualifications of the officers in charge of these estate hospitals and dispensaries 'continue to be generally very mediocre'.⁴⁷

During the year 1946, the government maintained 66 hospitals and 116 dispensaries in charge of qualified medical officers and apothecaries in estate medical districts. In addition there were 95 estate hospitals and 723 estate dispensaries (including 95 dispensaries attached to the estate hospitals). Two estate hospitals were closed down during the year. There was not much improvement between 1939 and 1946.

In Malaya, most of the hospitals on the estates were in 1939 in charge of dressers, who had generally passed the local test of first, second and third grade dresser, and in several cases did not possess even this qualification. Where they were qualified, they were not full-time men. Again, maternity wards for female labourers were far away from the estates, and so women were generally reluctant to go there for confinement. The Sastri Report refers to several complaints received regarding insufficiency of medical aid and attention. Provision by estates of qualified dressers was not enough; nor was the system of visiting medical officers adequate. Several group hospitals should be started with qualified full-time doctors to meet the needs of the many neighbouring estates, instead of mere dressers. A limited number of such hospitals had to serve several estates, with the result that efficient service to the labour force on each estate had become impossible.

45. Report of the Indian Agent for 1939, p. 16, quoting.

46. *International Labour Review*, Vol. XXXV, January-June 1937.

47. Report of the Agent of the Government of India in Ceylon for the year 1942, p. 15, para 41.

Registered Indian doctors who are L.M.Ps. or D.M.Ss. should be in charge of these group hospitals. The absence of such doctors had necessitated the transit of patients in acute and advanced stages of illness to government hospitals over long distances of 50 miles or more in certain cases. Several cases were known wherein the very journey aggravated the conditions leading to death on the way from estates to hospitals. If group hospitals could provide complete treatment, the labourer-patient could continue in familiar surroundings and could also be visited by his relations. In that case only surgical cases need be sent to government hospitals.

These should also be qualified Indian nurse-midwives to attend in maternity cases, whether in group hospitals or in patient's residence. Expectant women should be persuaded to go to hospitals. Where they were allowed to deliver in houses, a qualified midwife must attend, and sterilized dressings should also be supplied in such cases. The keeping of a record of infantile mortality and puerperal sepsis should also be insisted upon. Concentrated cod liver oil should be supplied to all children at least below seven years. Ante-natal work should be done by nurses.

The recommendations of the Marjoriebank-Marakkayar Commission 1917 were yet to be implemented. Every employer of labour should be compelled to maintain a proper hospital on the estate, or to become a paying member of a group hospital in the vicinity. Health Boards that were appointed were not always functioning and this matter should be investigated into. In para 12 of the Report on medical attention, 28 days full-pay leave while sick in hospitals was recommended ; but the recommendation was couched in such vague language that circumvention of the recommendation had become common. This should be made definite to secure justice to the labourer in accordance with the intentions of the framers of the report. In regard to the labourers employed by government and semi-governmental bodies, free treatment was given to them only in the third class wards. Formerly, artisans whose daily wages were 1 dollar and above were allowed free treatment in the second class wards. This privilege was however withdrawn some years back for reasons which demand enquiry.

SEX DISPROPORTION

As one of the features of indenture recruitment, the disproportion of female to male population in the immigrant countries raised a crop of problems which vitally affected the social and moral life of Indian labour. The indifference displayed by the Government of India to the strict enforcement of the legislative provisions relating to the proportion of female to male emigrants, proved one of the serious defects of early Indian emigration policy.

Within two years of the starting of indenture emigration, Mauritius provided a disquieting picture of Indian social life as a result of sex disproportion. In 1840, a proposal was made to enforce the introduction of a proportionate number of females to remedy the inconveniences of the introduction of thousands of men into the colony without women accompanying them. Hugon reported that the above proposal could only lead to shocking abuses in India, specially in Bengal, where it was so easy to carry off women from the banks of rivers. The only practical way to effect that object, he suggested, was to encourage to the emigration of men with their families.⁴⁸ However, the Act of 1842 gave the Governor-General-in-Council power to fix a certain proportion of women as the minimum which should sail on any ship carrying the emigrants. Yet, no action was taken in this direction by the Government of India, whose proposal for the fixation of a minimum limit was disallowed by the home authorities.⁴⁹ Referring to Act XV of 1842 permitting emigration to Mauritius from Calcutta, Madras and Bombay under certain conditions, Geoghegan wrote :

It is strange that Lord Ellenborough, who in the House of Lords was loud in his denunciation of the "abominations" resulting from an insufficient proportion of women, should not have thought it necessary to prescribe a minimum. As far as I can discover, the first steps towards securing a more adequate proportion of women were taken by the Colonial Office'.⁵⁰

Section 63 of the consolidating Act XIII of 1864 again authorized the Governor-General-in-Council to make rules to regulate the proportion of women. On the advice of the Emigration Board, the proportion of women was fixed at 50, but the Government of India allowed the Lieut.-Governor of Bengal to relax the rules so as to allow $33\frac{1}{3}$ women to every 100 men to be the minimum proportion, and reported the matter to the Secretary of State. But the Colonial Office decided in 1868 that 40 women to 100 men should be the standard. In 1860 the Chevers-Payne-Howe Commission of Bengal, appointed to inquire into the whole system of emigration, recommended the proportion of 20 women to every 100 men. But this recommendation was not accepted.

In 1844 the Court of Directors authorized the Government of India to permit emigration to Jamaica, Trinidad and British Guiana, and urged that a percentage of women (say 12) should accompany the emigrants. But the reports received from Mauri-

48. Parliamentary Paper 331, printed 28 May 1940 in continuation of Parliamentary Paper No. 58, 7 February 1840, p. 191, para 39.

49. Geoghegan, p. 37.

50. *Ibid.* p. 13.

tius proved a warning and the Government of India insisted upon a larger and even equal proportion of women. They rejected in 1856 the recommendation of Dr. Mouat that the proportion of women and children should be diminished to 25 p.c.

But as regards emigration to the French colonies, Article XVI of Section 29 of Act XLVI of 1860 fixed the proportion of women at 25 to 100. This proportion was after three years to be raised to 33 $\frac{1}{3}$, and after two more years to 50, and after a further two years to the same as that fixed for the British colonies. In regard to a Danish proposal in 1861 for the emigration of Indian labour to St. Croix, Sir C. Wood insisted upon shipment of the same proportion of women and the draft ordinance was modified to that effect. The Government of India had thus insisted upon a larger sex proportion in the case of foreign colonies. This differentiation was due to the difference in political relations which made it more or less difficult for the Government of India to interfere on behalf of Indians.

Fiji

Fiji gave a horrible account of Indian social life as a direct result of sex disparity. C. F. Andrews brought harrowing and humiliating tales of Indian social and moral degradation consequent on sex disproportion. The Governor of Fiji, in his statement on the second part of the Andrews Report, admitted that the disproportion of the sexes was an urgent problem to be tackled.

Sex proportion of total population

<i>Year</i>	<i>Females</i>	<i>Males</i>
1891	494	1,000
1901	506	"
1911	545	"
1921	652	"
1936	722	"

Sex Disproportion among Indians

<i>Year</i>	<i>Males</i>	<i>Females</i>
1921	36,748	23,886
1925	49,420	35,582
1937	50,394	38,939
1938	51,862	40,447

These figures show a gradual improvement in the sex proportion. In 1938 there were almost four females to five males. In 1940, the ratio among the Indian female population fell short of the male by some 10,000. Among the Fiji-born Indians it was greater. It was 953 in 1911 and 952 in 1936. In the case of Indians born elsewhere, it was 407 in 1911 and 413 in 1936. The latter figures show the necessity for emigration on a family basis.

MALAYA AND CEYLON

So far as Malaya was concerned, Rule 23 of the Indian Emigration Rules framed under the Emigration Act of 1922, laid down that 'with regard to the emigration of unskilled labour, men who are unmarried or unaccompanied by their wives shall not be assisted to emigrate to any one country in any one year to a number exceeding one in five of the total number of persons assisted.' Yet the Government of India exempted Indian emigration to Malaya from the rule. It was strange that Malaya and Ceylon, the only countries to which assisted emigration was permitted, should have been exempted from the beginning from the application of this rule. One could understand the exemption in respect of Ceylon as the ratio there was generally higher than that fixed by the rule. But conditions in Malaya were different, for, according to the Census of 1925, there were only 468 females to 1,000 males, while the figure required by the rule was 666.

Year	Percentage of females to males in F.M.S.
1922	19.39
1925	23.29
1926	23.31
1921 Census —	335,485 males and 136,181 females i.e. 2.5 males to a female.
1931 Census —	421,028 males and 202,921 females i.e. 2.1 males to a female.

In 1945 the ratio of females to males was 666 to 1,000 for estate Indian workers and 227 to 1,000 for non-estate Indians.

CEYLON

Total Indians from	1843 to 1850 —	2.7 women to every 100 men
"	1851 to 1860 —	12.9
"	1861 to 1870 —	27.6
"	1871 to 1880 —	25.3

ESTATE INDIANS

<i>Year</i>	<i>Males</i>	<i>Females</i>	<i>Ratio</i>
1871	658	342	52 females to 100 males
1881	604	396	66
1891	593	407	69
1901	559	441	79
1911	542	458	84

NON-ESTATE INDIANS

<i>Year</i>	<i>Males</i>	<i>Females</i>
1921	116,733	36,492
1931 (Colombo)	66,124	14,574
1931 (Malayalee)	16,499	628

BURMA

Burma has always presented the most horrifying picture of Indian life due to terrible disparity in sex ratio which varies, according to Andrew, from 8·2 men to 1 woman, to as high as 250 men to 1 woman according to the caste or class. The disproportion was highest in the case of Chittagonians and Oriyas and lowest in the case of Tamils. The majority of Chittagonians were employed in the Sampan and small craft traffic, and as engine room and deck crew on ocean-going and riverine steamers. While the latter obviously had to leave their families behind, the former class usually returned to their homes every year, and so the need of bringing their families across the seas did not arise in their case. This enforced celibacy resulted in a system of keeping mistresses and large prevalence of prostitution and venereal diseases amongst Telugus and Oriyas, and also to a considerable trade in procurement of women and girls. Women were taken from India on false promises of marriage, work and other inducements. The mistresses were constantly moved in Rangoon from place to place to evade the Brothels Act and the landlords and lessees of buildings did a thriving business in renting and sub-letting their houses. This grave disproportion of sexes and the resulting prostitution were largely responsible for the comparatively low birth-rate and high infantile mortality amongst Indians in Burma.

CRIMINAL PROSECUTIONS

The prosecution and conviction of Indian workers for even technical offences, the wide discretionary powers conferred on magistrates and the police, and the abuse of powers by both were some of the regrettable features of colonial administrative policy in relation to Indians. The tragedy was heightened by the criminal liability attached to a civil wrong of breach of labour contracts. As regards West Indies, McNeil and Chimanlal went to the length of recommending compulsory reduction of prosecutions by requiring managers to obtain previous sanction and by authorizing inspectors to dispose of complaints concurrently with the magistrates. They pleaded for the repeal of Section 127 of the British Guiana Ordinance, which authorized a police constable to arrest an immigrant who was suspected of being a deserter or unlawful absentee. They also recommended that appeals should be filed against severe sentences passed by inexperienced magistrates. Subsequently, the Pillai-Tiwari Committee reported that labourers were still prosecuted and fined under the Masters and Servants Ordinance of 1853, and that, in case of failure to pay fines, were sent to jail. They also added that the representatives of the British Guiana Sugar Planters Association had told them that they were in favour of the Ordinance being revised so as to bring it into harmony with modern requirements.

The same antiquated system of punishment prevailed also in Ceylon and Malaya. The Ceylon Ordinance XI of 1865 dealt with the contracts of service and contained penal punishment for breach of contracts. The Destitutes Ordinance was unnecessarily and frequently invoked by the Ceylon Government to punish 'bolt-ing labourers'. The practice was common in Ceylon of using criminal law to secure the eviction from lines of labourers who were discharged from service. There were 110 and 30 prosecutions respectively in 1941 and 1942. In 1941 a case was taken to the Ceylon Supreme Court which held that the position of estate labourers was akin to that of domestic servants in a dwelling house. The Indian members of the Board of Indian Immigrant Labour contended that the relation between the labourer and employer was similar to that between a tenant and a landlord and that only civil proceedings should be taken to evict them. A conference of the representatives of labour and employers agreed to take civil action in such cases. As regards Malaya, Gilman of the Malayan Deputation told the Standing Emigration Committee in 1922 that he would not object to the removal of all penalties including imprisonment for labour offences, though he advocated a somewhat

more summary way of dealing with the breaches of contract than the ordinary civil courts. Till 1933, the Indian Agent was supplied with copies of reports of criminal complaints preferred by or in respect of Indian labourers, but this practice was stopped in 1933. The practice, which was undoubtedly recognized as necessary before, should be renewed. The Indian Agent was also provided with a small fund out of which he was empowered to give legal assistance in deserving cases of criminal prosecution against Indian labourers. The amount was found to be extremely inadequate, and it should therefore be raised to a greater extent.

In Burma, under the Workmen's Breach of Contract Act of 1859, several Indians were prosecuted. According to the Administrative Report of Burma for 1919-20, the prosecutions under the Act stood at 1,458 and in 1920-21 at 1,214. The Report stated that the number of applications summarily dismissed had risen from 350 to 399.

These prosecutions of poor workers on slight and technical pretexts worked particular havoc, as these labourers had to depend only on their wages with no home or employment. Moreover, criminal liability for a civil wrong is indefensible in principle. The discipline for the violation of which the labourer was criminally prosecuted could be obtained by suspension or dismissal, and no imprisonment was necessary. The penal clauses were abolished in Assam and yet discipline was maintained. It is therefore not clear why discipline could not be maintained in Ceylon and other countries. If indebtedness and other root causes were removed, there would be no scope for indiscipline, and therefore no necessity for penal clauses. The Burma Act entailing criminal liability for the civil wrong was repealed in 1925. The London Committee of Ceylon Planters suggested some time back that suitable fines should be the substantive punishment, and that imprisonment should only be enforced when the fines were in default, and that civil redress should be made possible by making damages for breach of monthly contracts enforceable at law. It was essential that the various countries should follow suit in this regard. The right method perhaps was to amend the law so as to provide that estate labourers should be looked upon as monthly tenants and that there should be summary procedure for simple eviction through courts of justice.

Though the laws authorizing criminal prosecution of workers remained unrepealed in many of the countries, the Governments and the employers had begun to realize the serious injustice and loss involved to the workers. This is manifest from the reluctance on their part to hasten for the criminal prosecution of workers

on all manner of pretexts. This welcome feature, it was hoped, would gather momentum with time to the advantage of both the employers and the workers.

WORKING HOURS ✓

In Malaya the standard rates fixed by the Indian Immigration Committee were for a normal day's work of nine hours, but the labourer should not be made to work continuously for more than six hours at a stretch. Overtime work was optional, and had to be paid for at one and a half times the usual rates of wages. On rubber estates, the worker commenced his duty at 5-30 or 6 a.m. and concluded it between 1-30 and 2-30 p.m., according to the nature of the work in which he was engaged. But a large number of estates exacted work by the clock. Labourers were forced to work during afternoons to complete a full nine-hour day. The work of a tapper was more difficult than that of a weeder or any other field worker. And so, for tappers only six hours a day should be fixed as a tapper had to go on foot from tree to tree over a large area, often climbing up hills and getting down valleys, while others worked at a given spot. Eight hours work for the former, and six hours for tappers would lead to efficiency.

As regards Burma, the Factory Act provided that no person should work for more than 60 hours in any one week, and that no person should work for more than 5 hours continuously. But in rice mills, shipping companies and saw mills etc., the standard hours of the Factory Act were not rigidly followed.

Under the British Guiana Emigration Ordinance the hours of work were seven in the field and ten in the factories. But the practice had been anything from 12 to 18 hours in the field and 18 hours in the factory in 1938. The Labour Disturbances Inquiry Commission significantly observed that the hours of work in sugar factories were before the disturbances 18 hours per day but that since the disturbances 9-hour shifts had been introduced on most estates and recommended the application of the system to all sugar factories. It was doubtful how far this sudden and drastic reduction in hours of work in factories from 18 to 9 had been followed in practice.

Nine hours field work in the tropics amounts to merciless infliction. The strain is greater due to monotony of work, absence of social amenities, recreation on estates and want of domestic conveniences for food, etc., in the case of a large number of workmen. The hours of work should therefore be guided by the International Labour Convention which has fixed the working hours at 48 per week of 6 days.

CHAPTER IV

LABOUR LEGISLATION AND WELFARE

DEFECTS IN MINIMUM WAGE LEGISLATION

The defects in the wage system may be discussed under two categories :

(1) Anomalies in the fixation of reasonable rates of wages, and (2) Anomalies in the payment of approved rates.

The dangerous stagnancy in wage rates in a dynamic society over a long period of great economic changes was rendered still more harmful by the inadequate nature of the basis on which the wages were fixed. In this respect, the minimum wage legislation in Ceylon, Malaya, Mauritius, Trinidad and Fiji was seriously defective. Wage rates have not been based on any well-defined principle of modern economics or modern conditions of living.)

CEYLON

Minimum wages were fixed in Ceylon on the basis of Ranganathan's budget of a labourer's cost of living, which failed to take into account some very essential factors, especially the provision for dependants, sickness and old age. There were, besides, other defects :

i. The linking up of a cash minimum wage with the price of rice had rendered labour cheap by reason of the low cost of rice, though labour could get higher wages elsewhere. Thus, though the labourer had a right to demand higher money wages when the price of rice increased over the fixed rate of Rs. 6·40 per bushel, this linking prevented him from making such a demand so long as the employer supplied him with rice at the fixed rate. As the Government of India rightly put it, one cannot understand why the planters should benefit by a low price of rice.

ii. It was not explained how the figure of 1/8 bushel of rice allowance for dependants was arrived at and why commutation into kind instead of fixing the increase in cash was adopted, as also on what data the commutation was based.

iii. The future prosperity of the industry was not taken into consideration when minimum wages were fixed. Consequently the labourers were denied the advantages of prosperity in the industry, while they were compelled to accept reduced wages in adverse circumstances.

iv. The constitution of the Wages Board, with two head *Kanganies* to represent labour interests, was defective in principle. The *Kanganies* who were entirely dependent upon the employer could not reasonably be expected to safeguard labour against the adverse demand of highly organized planters. In many cases it was even found, according to competent authorities, that the planters would inform these *Kanganies* representatives before going to the Board meeting that they should accept certain rates which would be proposed in the Board meeting, and that, accordingly, the *Kanganies* would readily raise their hands in support of the planters' proposals.

v. The elaborate procedure for fixation of wages, decision by Wages Boards, scrutiny by the Board of Indian Immigrant Labour, Executive Committee of Labour, approval by Governor and publication in the Gazette when only the wages fixed would come into operation had proved a serious handicap to labour. Having no powerful organization of their own, the workers could not easily set the machinery in motion. This was obvious from the fact that, while the employers were able to effect a reduction of 13, 10, and 7 cts. in Up country; 15, 11, and 10 cts. in Mid country and 15, 12 and 10 cts. in Low country estates for male and female and child workers respectively within only two and a half years, it took nearly five years even for the Government of India to induce employers to accept the restoration of wages to former rates.

vi. The minimum rates of wages were defined as the 'Rates proper' in cash or kind, or both for an able-bodied unskilled male labourer above the age of 16 years, for an able-bodied female labourer above the age of 15 years, and for an able-bodied child of either sex. But the term 'Rates proper' was not clearly explained. It is reasonable to infer, however, that it could only mean wages necessary to enable the labourer to maintain a fair standard of living, in which case provision should have been made for occasional investigations into changes in the cost of living.

MALAYA

The distinction of key and non-key areas was based on the wrong assumption that labourers in non-key areas being at liberty to seek employment in key areas economic forces would always come into play and impel the payment of standard wages throughout the country. But the fact was that economic forces operated to effect general standardization only so long as there was a strong demand for labour. But this demand was vitiated by over-recruitment by the planters with a view to depress wages. Also, the common unwillingness of the labourer to sever the ties and

uproot himself from particular areas or estates dissuaded the labourer in a non-key area from seeking employment elsewhere. Moreover there was no justification for the enforcement of standard wages only in certain areas with statutory pains and penalties, while the neighbouring areas across the border went scot-free. The selection of areas also was not made on any well-defined principle. The argument that a more expert labourer suffered by the enforcement of standard wages in all areas cannot be supported, as it constituted an aspersion on the employer that he did not continue to encourage the good work by offering the worker some form of bonus, for it was in his own interest to do so.

It was also not known on what consideration the wage level in Malaya was regulated—whether on the cost of living or the bare needs of a labourer, or of his family and dependants, the cost of production, the selling price of rubber, or the percentage quota of rubber production. The International Rubber Restriction Scheme introduced new factors in the determination of wages, and these factors were brought into play when there was no acute shortage of labour. Wage rates were made to fluctuate with the rubber price level and the authorized percentage of release. But this fluctuation was unfortunately though very precisely attempted only when wages were to be cut down. The Indian labourer was made a creature of circumstance, and subjected to the vagaries of a speculative industry.

The fortunes of the rubber industry should not be allowed to affect the minimum wage. The labourers were never allowed to share in the prosperity of the industry, even when the price of rubber went up as high as 300 p.c. The following table makes this clear :

year	Average daily price of rubber	Rates of wages paid to labourers
1924	40 cts.	35 cts.
1925	2·20 cts.	35 cts.
1926	80 cts.	40 cts.
1927	64 cts.	40 cts.
1928	37 cts.	40 cts.
1929	34 cts.	50 cts.
1930	19 cts.	40 cts.
1931	10 cts.	30 cts.
1932	7 cts.	25 cts.
1933	10 cts.	28 cts.
1934	21 cts.	28 cts.
1935	20 cts.	35 cts.

Whatever the basis, the basic wage of 50 cts. and 40 cts. could not be considered fair, as it ran counter to the original recommendation of the planters themselves. The General Labour Committee of 1920, which fixed the standard wage, estimated that the average wage bill to the estate would be 77 cts. per labourer per day, taking into account other items of expenditure to be incurred by the estate in addition to wages, *viz.*, loss on rice, loss on preferential exchange rates for remittances to India, and allowance for payment of bonus. But the fact that the bonus was never paid and that, except for three or four years, no estate suffered any loss on rice or expense on exchange remittance concession, showed that even the Committee of 1920 had probably favoured a standard rate of 77 cts. per day. This discrepancy becomes still more obvious when the fact is remembered that the workers' wages were even less than the basic wages of 50 and 40 cts. due to the indirect taxation the workers were subjected to. The toddy revenue of the Malayan Government amounted normally to 2·4 million dollars per year, almost the whole of which was obtained from the wages received by the Indian labour. The Government also took a considerable portion of the workers' wages in the form of other indirect taxes, such as those on foodstuffs, textiles, tobacco, etc. All this taxation affected the workers' cost of living.

Though it was always the practice in estates to treat tappers and factory workers as skilled labourers, and pay them higher wages than other field workers, this classification was conveniently ignored when minimum rates were introduced. Such workers should have been classified, and minimum rates should have been fixed separately for each such class.

The year 1946 witnessed the rapid rehabilitation of the rubber estates in Malaya. The Secretary of State for the Colonies declared in the House of Commons on 16 October that the recovery of the rubber industry in Malaya had been more rapid than was expected. Yet the wages of Indian labour remained very low, the B.M.A. paying the Indian male workers 70 cts., female workers 50 cts. and child workers 40 cts. The prices rose eight to ten times over the pre-war level while the wages rose only by about one to three.

The Malayan Planting Industries Employers' Association (M.P.I.E.A.) decided early in August 49, consequent on the fall in the price of rubber, to enforce cuts with effect from 1 September 1949 in the daily bonus earned by tappers on a sliding scale. The bonus would diminish for every two cents the price of rubber falls below 35 cents, per lb. In August 1949, the price was 33½ cents. The proposal affected 17,000 rubber tappers, most of

whom are Indians. The Rubber Workers' Union opposed the cuts on the ground that the cost of living in Malaya was still 500 p.c. above that of 1941. The Government appointed an Arbitration Board to decide on the issue of rubber tappers' earnings. The Secretary of the M.P.I.E.A. stated that if the Tribunal reported before 1 September and its award went against the employers, the proposed cuts would not be made. If the Board reported after 1 September, adjustments would be made in the bonus in accordance with the award.

There is great discrimination in the employment of Indian tappers in high yielding areas. The Rubber Workers' Union submitted a memorandum to the Board to investigate the causes of this discrimination. The minimum earnings of a government worker \$(S) 1.65 a day while his counterpart on the estate earns only \$(S) 1.45. In the discussion before the Board the workers' representatives asked that Indian contract tappers should be given an equal chance on the high-yielding fields with the Chinese workers but the employers' representatives said that this would be uneconomic. The yield of the tree made no difference to the earnings since the assessment was adjusted in accordance with the records of yields.

Regarding non-estate labour the wages paid by Government, municipalities, railways, port authorities and other semi-public bodies were necessarily influenced by wages paid in the rubber industry, so as to provide against an inrush of labour from estate into urban areas.

In respect of unskilled labour up to 1941 the F.M.S. railways paid different rates of wages to the Chinese, North Indians and South Indians, though all were engaged in the same unskilled work. The Chinese were paid 72 cts. to one dollar, North Indians 52 cts. to 76 cts. and South Indians 40 to 60 cts. A similar discrepancy was maintained in payment of wages to skilled labourers also. The claim that this distinction was based on the relative out-turn of work cannot be easily sustained but surely requires investigation.

BURMA

In Burma, the various illegal exactions and deductions, on which the calculation of wages was made, were the most vitiating features.

BRITISH GUIANA

In British Guiana the employers had up to 1938 systematically refused to let the labourer know, before he began a task, the rates of wages he would be paid. This proved extremely harmful

as the great bulk of work on sugar estates, other than work in factories, was done on task system or piece-work system, and not on the daily wage system. The Labour Disturbances Inquiry Commission of 1937 reported that this was one of the chief causes of labour disturbances. In cases where the wage rate for task work had not been reduced, the tasks themselves had been made harder, and thus wages had been indirectly curtailed.

Besides the above objections to the fundamental principles of wage fixation, several other defects, in certain cases more serious and detrimental to labour, had emerged in the actual working of the Minimum Wage Ordinances and the payment of approved rates. Circumvention of the protective provisions by part-time employment, fewer working days, and enforced rest seemed almost a common feature.

CEYLON

Ordinance III of 1889 ensured to the labourer 6 days' work in a week 'whether the employer was or was not able to provide him with work.' The Ordinance also made the wages a first charge on the estate. The Minimum Wage Ordinance of 1927 went a step further and fixed minimum rates of wages for time work. Thus the purport of the two Ordinances read together was to assist estate employers of labour to obtain an adequate and regular supply of labour on settled terms and also to guarantee to labourers, able and willing to work, a definite amount of work per month for which they were to be paid regular wages at a daily rate not less than a certain sum (which of course might vary from time to time) for a day's work of a definite number of hours. But to escape the statutory obligation to give 26 days work and prosecution for its breach, several employers, in conjunction with the *Kanganies*, gave work in rotation to the labourers. It was thus made to appear on seeing the check-roll that work was given and done during 26 and 27 days of the month. But, in fact, a certain percentage of labour was absent every day. Thus, the average turnover to muster in 1938 was between 65 and 70 p.c., while a few years ago it was over 85 to 90 p.c. Even in 1931, the Indian Agent drew the attention of the authorities to it. The Agent stated that the shortage of work had automatically resulted in an appreciable reduction in a labourer's monthly earnings. Five days work instead of six days work in a week involved a reduction of some 16 p.c. in his income. To argue in such cases that the labourers themselves had agreed to work on less than six days a week ignores the fact that, illiterate and unorganized as they were, they could not be expected to stand up for their rights.

On rubber estates the legal position of a tapper raised some doubts. Tapping is essentially a morning's work ; but it was contended that it was open to an employer to insist on the tapper turning out for a couple of hours work in the afternoon to earn the full minimum wage. The practice was enforced on most estates. The depression of 1929 led to drastic economies, and there was not enough work to keep the tappers employed in afternoons. On such estates the practice grew up whereby tappers were employed for six hours and were paid only 6/8 of the minimum wage. This practice also received official benediction. As was observed in the Perth estate case, this was a serious breach of the idea underlying the Minimum Wage Ordinance, for it involved no less than 25 p.c. reduction in a labourer's income.

On certain estates, pluckers were paid according to the out-turn, and no attempt was made to make up the wages of indifferent workers to the minimum. In such cases, it was occasionally pleaded in extenuation that, if some labourers got less, others obtained more than the minimum rates. But this is no defence, as the whole object of the Minimum Wage Ordinance is to ensure that labourers who have put in a day's work should obtain the minimum wage, irrespective of their out-turn. The argument that this will have a tendency to increase the number of wilful slackers is untenable, firstly, because the experience of all good estates has belied this fear, and secondly, the Minimum Wage Ordinance imposed a disciplinary as well as an economic obligation on the employer whose duty it was to keep the labourers up to the mark. It was not open to him arbitrarily to reduce the rates of wages fixed by law in the case of indifferent labourers.

In certain cases the employers resorted to the practice of giving a half credit for a full day's work, or, more ingeniously, one day's credit for two days work. In some cases the labourers were also marked sick. Once this was tolerated by the employers, the subordinates (*Kanganies*, head and recruiting) took advantage and tried to save money by marking half credits indiscriminately.

The practice of giving no credit and half credit had shown a tendency to decline in previous years, but this showed signs of revival in a new form owing mainly to the increase in the money rates of minimum wages. Many complaints were received that in certain estates labourers were being asked to perform heavier tasks than they were accustomed to, failing which they were being given short credits. Similar complaints appear to have been made to the Controller of Labour also ; and on 30 September 1942 he addressed the Planters Association of Ceylon pointing out the illegality

of giving half credit and no credit, and advising strict compliance with the law. The communication also contained a warning that he would be compelled to take steps to enforce the law against those who infringed it.¹

Some estates made deductions from wages on illegal items, as also towards the customary contributions to the *Kanganies*. Some other estates had even used false weights in giving rice etc. The Indian Agent, detected many such cases of circumvention of the Minimum Wage Law. The Indian Agent also referred in 1939 to the abuses of long hours of work without payment of overtime wages, favouritism and invidious treatment in the allocation of tasks and contracts. The Indian Representative reported in 1946 :

There were a few complaints regarding 'half-names' and 'no names' to deprive labourers of the day's wages. Other complaints related to unauthorized deductions from wages, non-payment of wages, excessive charging for foodstuffs issued, refusal to issue discharge certificates, harassment etc.²

MALAYA

Curtailment of wages by shortage of work was also resorted to in Malaya. The Labour Code provided that the workers should be given 24 days of 9 hours work per day in a month.

But, in practice, if a worker was asked to stop work after three hours a day, due to rain, for instance, he was paid for that period only one-third of the daily rates, although the employer treated that day as a full day for purposes of provision of work under the Labour Code. Thus, though the Code suggested that the worker's minimum earnings a month would be 24 multiplied by the standard wages of 50 cts., i.e., 12 dollars, his actual earnings were considerably less, depending on the number of effective days of work he got. As a matter of fact, permission was given by an executive order of the Malaya Labour Department to the employers to reduce the number of working days guaranteed by the Labour Statutes from 24 to 20, provided the employer gives notice of his intention so to reduce. Mr. Ahearne, a former Controller of Labour, naively defended this by laying down an astonishing dictum that :

In critical times the guidance of the Law is never wholly adequate. Extra legal action is often called for, and in such circumstances no Controller of Labour is able to impose his

1. Indian Agent's Report for 1942, p. 12, para 30.

2. Vide Annual Report of the Agent of the Government of India in Ceylon for the year 1946, p. 43, para 62.

will unless he has the support of the Council of the Planters' Association of Malaya.³

The Indian Agent states that, wherever the above concession was used, the monthly income dropped by 22 to 25 p.c. As it costs about 50 dollars to repatriate an Indian labourer and take him back to Malaya, attempts were made to retain him by thus spreading employment. On a representation being made that the concession was contrary to law, the F.M.S. Government agreed to withdraw the permission.

Women weeders were also given half-time work at proportionate rates, while children were stopped from working. As the standard 'rates of wages' were standard 'rates' of wages and not standard wages, and as these rates only suggested ratios and numerical proportions, the Indian labourer was not statutorily guaranteed a full minimum wage equivalent to 24 days work. Again a tapper could usually work only five to six hours. But some estates set a task for each labourer, fixing the number of trees to be tapped by every labourer. If he finished his work, he should be paid full wages for the day, regardless of hours worked. But there were estates where no such task was set, and where tappers were paid only proportionate wages for the hours worked. Another practice which cut into the statutory wages was the offering of less than a full task for a day of nine hours and paying proportionately and not for the full day.

The serious objections to the principles underlying the wage system, and the grave injustice done in actual operation of the laws relating to wages demanded an urgent recalculation of wages on sound principles. The low purchasing power of money in the immigrant country, and the distinction between the nominal wages and real wages, should be borne in mind. The real wages are defined as wages measured in units of purchasing power or the actual goods or services which the money wages buy. For instance, the exchange value of a Straits dollar in rupee currency was likely to mislead. It is not the 'exchange value' but the 'purchasing value' that must be taken into account. The *Malayan Tribune*, which is not an organ of Indian opinion, wrote that 'the purchasing value of a Straits dollar was equal to 50 Rupee-cts. (Annas eight), and that the spending capacity of a labourer in Malaya getting 50 cts. could be only on a par with that of a labourer in India getting annas 4. So the comparison of wage rates between South India and other countries was not quite fair. It must also be remembered in this connexion that such comparison was not

3. Quoted by K. A. Neelakandha Iyer : *Indian Problems in Malaya* (1938), p. 134.

made in the case of other services, such as Europeans and Asians employed in Government, commercial and industrial services. Evidently it was because the unjust wages could not be defended on any other ground. Lastly, the increased cost of living as a result of the war called for a payment of higher wages to labourers.

The Secretary of State for India claimed in 1941 in the House of Commons that the prevailing scale of wages of 60 cts. and 50 cts. in Malaya was higher than ever before. But this did not mean that the scale was adequate, and the Secretary of State himself had not asserted it either. He stated that the 60 cts. and 50 cts. wages included a cost of living allowance of 10 cts., which obviously was what remained over the basic wages of 50 and 40 cts. While the basic wage was unfair, the way in which the cost of living allowance was calculated was worse. The fair cost of living allowance should be the difference between the cost of living in 1920 when the standard rates were fixed and that obtaining now, and not the difference between the cost of living at the time when war broke out and that prevailing in 1941. Even applying this test, the allowance of 10 cts. a day was inadequate, for, even in September 1940, it was found that the cost of living, according to some estimates, had, after the war was declared, risen by 30 to 40 p.c. Since then there had been a further steep rise, and a 20 p.c. increase in wages could not be deemed a fair one. Even according to the standard rate of 77 cts. favoured by the planters in 1920, the prevailing scale of 60 cts. was 17 cts. lower, and to say that there was also a cost of living allowance of 10 cts. in wages paid was misleading. The existing wages were very inadequate let alone their inclusion of a cost of living allowance. According to a very modest estimate, a labourer's budget on the basis of peace-time prices came to 19 dollars. For a married labourer, the minimum wage, without allowing for certain desirable expenditure, should be at least 90 cts., or 22 dollars a month of 24 days of 8 working hours. The principles underlying the above arguments apply with equal force to wages paid in other countries also.

Wages based on a cost of living which takes into consideration only the prices of foodstuffs such as rice and cereals are wrong as there is always a progressive change in the standard of living. The standard of living of a worker rises higher with his increasing contact with new conditions of life consequent on opening up of the country, the formation of new towns and increased facilities for communication. The determination of the cost of living should be based on the knowledge of money wages previously earned, the particulars of prices, the extent to which both income and expenditure varied in a given period and the habits, customs and

modes of living of the several classes and the peculiar conditions of the immigrant countries. The measures for the control of wages should be accompanied by a system of family allowances in order to maintain the standard of living of the worker. What is required is not only an increase in the general level of wages or in the average earnings but some stepping up of the marginal earnings received.

In regard to Indian workers, particularly those as in Burma engaged in work of a more or less repetitive character, it may be advisable to take into account the class of work to be done and also provide a piece-rate payment over the standard output. In Ceylon, the linking up of the cash minimum wage with the price of rice should be given up. This was but a modified form of the grain equivalent system which the Madras Government had agreed to abolish in regard to wages in the famine areas on the ground that the system might result in the payment of lower wages and allowances. In Malaya, the distinction between key and non-key areas should be abolished so that there would be a flat minimum rate throughout the rural areas and a higher rate in the urban. In the case of West Indies, the colonial Government should, as recommended by Tyson, take power into their hands and fix minimum rates of wages for all classes of labour in all industries. Steps should be taken to discourage the drift of labour to the sugar estates by providing alternative employment outside and to render the resident plantation labour less dependent on wages than it is now.

In all the countries the labourer should be provided 24 full days work every month including the right to avail himself of 3 days leave on full wages. This provision is necessary to avoid the evils of part-time employment and assure the worker a stable monthly earning. The system of flat rate supplement should be introduced to enable the lowest paid workers to receive the largest relative increase. In the case of countries like Malaya and Ceylon wherein Indian labour was employed also by the Government for public works, railways etc., the Government of India should stipulate in the first instance for increased wages in Government works. If pressure could be exerted on the colonial Governments to raise wages, private employers could then be compelled to follow suit.

In South Africa, where racial considerations complicate the wages question, the advocates of all-White wage standard should also advocate the admission of Indian workers to Whites' trade unions and assist the Indians in securing favourable consideration to their demand for the same White wage. If they are not pre-

pared to admit thus and secure for them employment on the same wage basis, there should be at least co-operation with parallel or separate non-European trade unions in the pursuit of a common wage ideal.

Lastly, it must be remembered that the minimum wage is essentially a minimum wage and not a standard wage. Therefore, in no circumstances, however adverse, should the basic wage be cut down. The employers can make provision for the payment of the basic wage in times of slump, firstly, by limiting dividends to the prevailing rates of interest, and planters' salaries according to output over and above a certain minimum; or by setting apart a certain percentage of profit in times of prosperity to meet the rainy day. Thus, provision for the maintenance of Wages Equalization Funds from fabulous dividends and bonuses should be made a statutory obligation by the colonial Governments on all employers. In certain circumstances it is also fair to ask that there should be no dividends at all or only token dividends. The Governor of Trinidad stated in 1937 addressing the sugar interests thus:

I do appeal to that industry to examine their position and see whether they cannot spare something more for labour than they now pay. I suggest that perhaps they might either declare no dividend until labour conditions are better or declare a minimum dividend and apply the balance to the improvement of those conditions.⁴

As the Colonial Secretary stated:

An industry has no right to pay dividends at all until it pays a fair wage to labour and gives the labourer decent conditions. A decent wage for labour and decent conditions should be a first charge on industry, and there should be no question of paying dividends until those requirements are satisfied.⁵

The West India Royal Commission, 1939, recommended that 'the Government of each colony should be invited to take early steps, in consultation with the sugar producers, with a view to the imposition of welfare levies at the rate of \$2 per ton of sugar produced to finance welfare schemes similar in their main principles to those organized in Great Britain by the Miners' Welfare Committee.' (Recommendation 10 (J)). In Jamaica the recommendation was referred to the Commission appointed to inquire into the sugar industry.

ORGANIZATION OF LABOUR

The necessity for the right of Indian labour in the immigrant countries to organize itself cannot be over-emphasized for

4. Quoted in *International Labour Review*, April 1938, p. 497.

5. *Ibid.*

several reasons. (Indian labourers were disabled from agitating along the constitutional channels as most of them were practically denied franchise rights, while the planters, who were highly organized and economically powerful, wielded immense influence in the counsels of the Governments. Moreover, the long distance ranging over thousands of miles compelled them to drift for themselves without active guidance and support of the mother country. Lastly, it is a fundamental dictum of economic organization that capital will give a fair deal to labour only when the latter is sufficiently organized and capable of collective bargaining.) Hence, in Malaya, the European planters feared Chinese labour and their *Kapalas*. Mr Duncan, Chairman of the Planters Association, stated that there were grounds for fearing that in any dealing with the Chinese they would encounter organized opposition of a kind not so easy to break through.⁶ In the disorganization of Indian labour lay the clue to the cheapness of Indian labour and its frequent wage reductions in spite of the indispensability of over six lakhs of Indian labourers to the Malayan estates. So was the case in all the other colonies. The easiest way to control labour is to scotch all possibilities of collective bargaining on the part of labour. And this was perfected in all the countries. Hence, though social legislation in regard to housing, medical attention, sanitation, workmen's compensation, maternity benefits and even education had been gradually put on the statute book with the acquiescence of the planters, very little progress had been made as regards recognition of the right of labour to organize itself into trade unions.

In Ceylon, it was only in 1935 that the Trade Union Ordinance was passed, providing for the supervision, control and compulsory registration of trade unions. In Malaya, it was almost in anticipation of the final terms of the Indo-Malayan Agreement on the basis of the demands presented by the Government of India to the Malayan official delegation in January 1939 that the Government of Malaya had published the provincial draft of the Bills for the registration and control of trade unions in the Straits Settlements and the Federated Malay States.

ORGANIZATIONAL MOVEMENT

The widespread labour unrest in 1940 led to a gentlemen's agreement known as the 'Seven-Point Agreement' with a view to preventing lightning strikes and the settlement of disputes by negotiation. The right of the labourers to combine was recog-

6. Quoted by K. A. Neelakandha Iyer, p. 19.

nized. The agreement provided for a conference between the employer and the trade union representatives whenever such dispute arose and for the enforcement of any agreement reached at such a conference and registered with the Department of Labour, such agreement being operative until repudiated by either side after giving one month's notice.

In 1946, the plantation employers found that neither the Seven-Point Agreement nor the Essential Services (Avoidance of Strikes and Lock-Outs) Order was successful in preventing the strikes connected with the Knavesmere estate incident. They notified their decision to withdraw from the Agreement. Consequently, the representatives of labour urged that, if the Agreement was terminated, the Essential Services (Avoidance of Strikes and Lock-Outs) Order should, so far as the plantations were concerned, be rescinded. Thus the subsequent termination of the Agreement was followed by a notification dated 16 August 1946 deleting the tea, rubber and plumbago industries from the category of essential services for the purposes of the Order. As no progress was made to put on the Statute Book a new Ordinance to replace the existing Industrial Disputes (Conciliation) Ordinance designed to appoint Conciliation Officers to settle industrial disputes and set up industrial courts to deal with disputes which could not be so settled, no systematic machinery existed for a time to settle labour disputes on estates which had since then to be dealt with by *ad hoc* negotiations between the employer and the trade unions.

In 1946, Mr. Trevor D. Hulson, an active British trade unionist, was appointed Trade Union Adviser with the Government of Ceylon.

The Malayan Trade Unions Enactment and the Industrial Courts Enactment were passed in March 1940 and 1941 respectively. The former gave power to the Registrar to refuse registration to a union even if he thought that it was likely to be used for unlawful purposes or purposes inconsistent with its rules; nor was a right of appeal to the judiciary provided in cases of refusal to allow registration. The Government of India's request to provide a right of appeal was rejected.

The Malayan Governments, however, informed the Government of India that they would consider any amendments which might be felt necessary on the results of the administration of the legislation. The Trade Union Enactment (F.M.S.) and Ordinance (S.S.) of 1940 were brought into force from 1 April 1941.

In Trinidad, under instructions from Lord Passfield, Secretary of State for the Colonies, the Trade Union Ordinance was passed

in 1930, but, unlike the Trade Disputes Act of England, the Trinidad Ordinance had omitted provisions safeguarding peaceful picketing or giving immunity against action *in toto*. The Ordinance was opposed by the Trinidad labour, and had since been practically inoperative. In Jamaica, states Tyson, though Indians as such were not refused admission to trade unions, prejudice did exist against them in the rank and file and the prescribed subscription of 6 cts. per week had operated as a bar to Indians, who found it extremely difficult to pay it. Actually, unions had been working in spheres into which Indians had not entered, or were not welcomed—work on the waterfront and other classes of heavy non-agricultural labour.

Fiji

In Fiji the Industrial Association Ordinance XVIII of 1941 provided for the formation, registration and regulation of industrial associations. Registration had been made compulsory and the constitution and rules of the associations were required to conform to the requirements set out in the Ordinance. The right to form associations had been also extended to peasant farmers who were not employers. The trade union movement had slowly gained ground in 1946 as is obvious from the establishment of the Kisan Sangh (Farmers' Society), and Mazdur Sangh (Labourers' Society). One of their demands is the right to choose their own foremen or group leaders.

As regards Mauritius, the Hooper Committee recommended the establishment of a Labour Department with facilities for collective bargaining and machinery for the regulation of wages through trade unions and conciliation boards. But in the strike of dock workers in 1938 and subsequent strikes on sugar estates at Port Louis, the Government broke the strikes by deporting and quarantining the labour leaders. The Procureur-General pressed into service even the magisterial courts. In the Trianon Estate Strike case, the committing Magistrate used every summary method in his power to break the strike, and even prevented the legal advisers from having access to the strikers. But the Supreme Court quashed the summary conviction of 19 strikers, set them free and exhorted the magistracy to respect the rule of law. Again in 1939, in flagrant violation of the Hooper recommendations, the Government banned the Labourers' Association of Dr Cure, which had on its rolls more than thirty thousand Indian and Creole workers. The Government also revised the penal code, denying the workers the right to picket and peacefully persuade others to lay down tools, for example, during the course of a strike.

In accordance with the recommendation of the Hooper Commission, the Industrial Associations Ordinance 1938 was passed giving employers and employees alike the right to combine and making provision for collective bargaining and the settlement of disputes. In 1940 there were 48 registered associations of workers and employers. This Ordinance also empowered the Governor to appoint an Arbitration Court under certain circumstances when a dispute had not been otherwise settled. It also provides for the right to strike and similarly the right to lock-out after a period of unsuccessful conciliation. This period was reduced from 30 to 10 days in an amending Ordinance in 1941 which also permits peaceful picketing. Under Section 32 an employer is prohibited from stipulating for a restriction of the membership of an association among his employees and Section 33 protects to a certain extent the association and its officers from actions for tort. In Ceylon, Malaya, and Trinidad, where trade union law exists, labour had been largely prevented from benefiting by it. In Ceylon, Indian labour had found it difficult to find a place for its meetings. The Hatton Urban District Council areas, the Fruithill Town, the Hatton Town, the Fernando Town, the Dickoya Town and Darawella Ward belonged either to the planters or their dependants, while the local bodies and the owners of schools and theatres refused accommodation for holding meetings for fear of reprisals from planters. As all the estate property was considered private property, entry therein was considered a trespass and defaulters were prosecuted. Social workers and labour leaders were prevented under Sec. 3 of Ordinance XXXVIII of 1917 from entering the estates to do welfare work and organize labour. Though the Ceylon Ordinance empowered persons authorized by the Indian Agent to enter estates and conduct inquiries, the planters' journal contained a secret circular advising estates not to allow even the Assistant Agent to conduct inquiries. Persons trying to visit an estate were deemed intruders, and there had been cases of guards opening fire on such intruders. For trying to organize estate labour, Bracegirdle, an Australian, was arrested and ordered to be deported, but the Chief Justice pronounced the order to be illegal. The Secretary of State for the Colonies thereupon passed an Order-in-Council empowering the Governor to enact any legislation he liked by a mere message to the State Council.

Though the Seven-Point Agreement reduced the number and magnitude of lightning strikes, its working proved satisfactory neither to the employers nor to the representatives of trade unions. In December 1940 the All-Ceylon Indian Workers Federation demanded that the Agreement be so amended as to make the

appointment of a Board of Conciliation automatic on demand by an aggrieved party and to recognize the right of entry into estates of union officials. But the planters' attitude was that there was no such right but that permission would on application be granted at the discretion of the Superintendents, provided certain conditions were satisfied.

An order issued on 29 August 1942 under the Defence Regulations prohibited the holding of public meetings with certain areas without the prior permission of the Minister for Home Affairs.

These specified areas included the Central, Sabaragamuwa and Uva provinces containing the majority of Indian population. An order published on 11 September said that no permission of the Home Minister was necessary in respect of meetings relating to food production, religious services etc., but meetings relating to the welfare of labourers held at the instance of the trade unions or others were not covered by the general exemptions.

In Malaya, any official of even a harmless labour organization could be banished under the banishment enactment, and in May 1941 a prominent social worker was deported under this law.

In May 1941 grave labour disturbances occurred in Klang district owing to the arrest under the Emergency Regulation of the President of the Indian Klang District Union. The Malayan Government took strong measures to suppress the strikes and firing by the military took place. This resulted in five deaths and injuries to several persons. The Agent of the Government of India and the President of the Central Indian Association of Malaya intervened in an attempt to pacify the labourers and appealed to them to return to work. Their efforts were successful and the labourers gradually resumed work on all estates. The trouble did not, however, disappear altogether as the Malayan Government adopted a stern attitude and the number of arrests under the Emergency Regulation increased considerably. In all 198 persons were prosecuted on specific charges such as rioting, criminal intimidation, criminal trespass and 393 were detained. But on the advice of the Advisory Committee constituted under the Emergency Regulation, some of the detenus were released unconditionally and others subject to conditions. Several persons were also ordered to be deported. Necessary legal assistance was provided by the Government of India to the labourers arrested in connexion with the disturbances.⁷ The Government of India

7. Vide Review of Important Events for 1941-42, p. 17, para 22.

requested the colonial authorities to hold judicial inquiry into the circumstances and causes of the strike. But the latter had not seen their way to accept the suggestion. The Indian Government also drew the attention of the colonial authorities to the extreme resentment felt both in India and Malaya at the use of Indian troops to crush the strikes of Indian labourers.

Again during February-April 1947, there were labour disturbances and shootings on estates in the state of Kedah. They were popularly known as the Bedong incident, the Bukit Sembilan Estate incident and the Dublin Estate incident. The request of the Indian Agent-General for official inquiry into the incidents was ignored. Consequently the Malay Nationalist Party, the Pan-Malayan Federation of Trade Unions, the Malayan Indian Congress and other bodies together set up a Board of Inquiry under the chairmanship of Mr. J. A. Thivy. After a very careful and comprehensive investigation, the Board came to the unanimous conclusion that, though the three incidents occurred in three different localities, separated by great distances, yet there was a degree of co-operation that amounted to collusion between the vested interests on the one hand and the police and the executive of the Government on the other for suppressing the fundamental rights of labour in Malaya.

Indian labour generally kept aloof from the terrorist movement which began in May-June 1948. It has been officially admitted that the number of Indians participating in the terrorist activities in Malaya is less than one per cent.

Documents captured from terrorists testify to Indian dissociation from the terrorist movement. One such document released for publication by the Malayan Government recently and purporting to contain resolutions adopted at a meeting of the 'State Communist Secretariat' says of Indian labour in Malaya: 'Indian labourers in general do not understand what the object of our present armed struggle is. Some of them are afraid that if their factories are destroyed, they will be unable to get work and will become homeless.' Two hundred to 300 were Indians out of a total of about 7,000 who were in detention under the Emergency Regulations. Some were arrested even on suspicion that, if free, they might join the terrorists.

On 5 September, Mr. Malcolm Macdonald, the British Commissioner-General in South-East Asia, said in Tokyo that the Malayan Indian Congress had declared 'uncompromising war' against Communist terrorists. He added that 95 p.c. of the 12,000 Communists in 1947 were Chinese, of whom a great majority immigrated to Malaya in the last 20 to 25 years.

Under the circumstances the execution of Ganapathi, Indian President of the Pan-Malayan Federation of Trade Unions, shocked Indian public opinion. Ganapathi was arrested on 1 March on a charge of being in possession of arms and ammunition and sentenced to death. Ganapathi told the Government of India Representative, that he committed no act of violence, that he was ill during his five months of hiding and he came out to surrender at the nearest police station the revolver given to him in the jungles for self-protection. He was arrested while resting and he made no attempt to resist the arrest. Veeranesan, who succeeded Ganapathi as President, was also shot dead. Another Indian, Sambasivam, is under sentence of death. He has appealed to the Privy Council, as the Federation constitution provides for such appeals. The Privy Council has admitted the appeal.

There were indiscriminate arrests of Indians under the Emergency Regulation which provided for the arrest of anyone 'suspected of having acted or likely to act in a manner prejudicial to public safety or good order'. The living conditions in the detention camps were horrible. There were about 800 Indians in detention camps in September 1949.

In July 1948, the Government of India represented to the British Government that measures to check unlawful activities alone would not achieve the purpose and pleaded that some concrete steps should be taken simultaneously to improve the living conditions of Indian labour so as to restrain them from any possible tendency to participate in subversive activities.

Though most of the terrorists are Chinese, many of whom were closely identified with the trade union movement until the commencement of the Emergency, the average Chinese worker is anxious to avoid being classed with such elements, while Malays, a big racial group, had not yet provided an appreciable proportion of the wage-earning section of the community. Thus 293 trade unions in Malaya with 178,834 members before the Emergency dwindled to 160 trade unions with a membership of just over 40,000 in July 49. Hence Indians, who form the smallest of the racial groups in Malaya, came to represent 62.5 p.c. of the total membership of all trade unions in Malaya.

With the banning, under the Emergency Regulations, of the Pan-Malayan Federation of Trade Unions, to which a bulk of Indian labour unions were affiliated, and the Communist leadership going underground, the trade union activity came to a stop. With the help of Mr. John Brasier, a British trade unionist and Trade Union Adviser to the Government of Malaya, the union movement is being built up as a counterblast to the Communist movement. Up to

July 1949, Brasier had helped to organize 160 proper trade unions. While the Ordinance so far in force recognized the right of workers to organize themselves into trade unions, it is up to the planters to accept and recognize these unions as a means of settling the disputes with workers. Not all the planters had recognized them as a medium of negotiation and settlement of the workers' demands. Brasier said on 1 June 1949 that the planters were hardly in a mood to talk and negotiate with the workers and that this old method of colonialism must change. He trained up Malayan nationals in trade union activity and some had been sent to Britain for training.

With the declaration of the state of emergency in Malaya in June 1948, the Communist-dominated Pan-Malayan Federation of Trade Unions disintegrated. Consequently there had been no central body to speak on behalf of all the workers and no direct link with the Labour Members of the Legislative Council. Hence a general conference representing about 80 p.c. of the unions in the country was held in the middle of 1949 to find ways and means of bringing the workers more closely in contact with Labour members on the Federal Legislative Council. The Conference set up a Committee of five to act as liaison between the trade unions, the Labour members of the Federal Legislative Council and the Labour Advisory Board. This decision was taken as a first step to form a central organization for all Malaya in the place of the P.M.F.T.U.

A less violent, more subtle and dangerous method adopted to emasculate labour organization was to persuade the reactionaries having conflicting interests to take charge of trade unions. This was intended to serve as a put-up show to the outside world. Thus in Ceylon, the two registered trade unions in 1939 consisted of the *Kanganies* only—The All Ceylon Head Kanganies Association, Hatton, and the Indian Kanganies and Labourers Association of Ceylon, Ratnapura.

In 1949 the Ceylon Indian Congress Labour Union, the Ceylon Federation of Labour and the Industrial and Estate Workers Union were the three big trade unions. The Ceylon Indian Congress Labour Union had in June 1949 a membership of 109,622 out of a total trade union membership in Ceylon of 158,178. The Union, though originally formed to protect Indian workers, is now open to all irrespective of race and includes nearly 10,000 of other races. But as the Union is not a consistent supporter of the Government, it is not getting representation on Ceylon's delegations to the I.L.O. etc.

Non-recognition of real labour unions and labour leaders had become a normal feature everywhere. The Manpower Citizens' Association in British Guiana was not recognized by the sugar planters till 1938. The Forster Commission of Trinidad proposed to vest in the Labour Department discretion to withhold registration if and when the credentials of persons organizing trade unions were unsatisfactory. The Secretary of State for the Colonies stated in the House of Commons that he proposed to encourage craft unions. Mr. Bevan protesting against the proposal, criticized the labour policy as follows :

The trade unions are to be organized on a craft basis ; in other words the workers in Trinidad are to be organized in a type of union that minimizes and not maximizes their strength In the next place, these trade unions are to be registered Those unions that are led by good boys will be registered and will negotiate with the employers, and those unions which are led by bad boys, like Uriah Butler, will not be registered at all, in other words you will have trade unions that employers want.⁸

The leadership in the organization of labour was yet another factor about which the planters were very particular for their own reasons. They asserted that there should be no outside leadership. This argument is not understandable, as the planters had systematically suppressed all qualities of enterprise and leadership, and had deliberately denied to workers the necessary educational and other equipment that produces natural leaders from amongst the workers themselves. In such circumstances, justice and fair play require that till they were enabled to develop and show qualities of leadership, they should be guided by others sincerely working in their interests. Moreover, the labourers themselves, apart from lack of educational equipment, feared to take initiative in organization, as they were wholly dependent on wages for their living, and the planters were too prone to suspect and dismiss them immediately on finding any such initiative on their part. Says the Indian Agent in Ceylon in his Report for 1939 :

In some cases, employers tried to meet the situation created by the spread of the organizational movement among labourers by trying to get rid of the 'leaders' who were canvassing membership for Associations.⁹

Eviction worked hardship and, as there was no other home or employer, the worker stuck to the estate, and the employer charged him criminally with intent to cause annoyance to him.

8. *Servant of India*, 14 April 1938, p. 187.

9. Report of the Indian Agent for 1939, p. 28, para 54.

It is significant that the number of criminal trespass cases increased with the increase in the unrest on estates and the increasing anxiety of the employers to meet the situation.¹⁰

Both Mr. Ridley in 1940 and Major Orde-Brown in 1943 referred to this aspect in Mauritius. The latter observed that, owing to their outworn methods and obsolete prejudices, the subordinate staff penalized employees who openly identified themselves with an association by accepting office in it. The Moody Commission recommended in 1944 that in future it should be no part of the Director of Labour's duties to institute criminal prosecutions against the workers or employers and that the functions of the Director in relation to labour disturbances should be conciliatory and advisory. It is well known that the Government had systematically discouraged the idea of one industrial association of agricultural workers for the whole island, for they feared that it would become too powerful to be grappled by the Government. The Moody Commission recommended more direct representation to workers in the machinery of collective bargaining which would guarantee better that any agreement reached would be fulfilled.

But owing to the uneducated nature of labour and very low bargaining power, besides other causes, the workers' associations had proved disappointing. There were also no sufficiently experienced public workers to organize and guide them. The total lack of faith in the Labour Department, referred to by the Moody Commission, and the feeling of distrust of the impartiality of the magistracy deciding labour disputes among Indian labour, referred to by Ridley, were mainly responsible for the failure of the associations.

While thus suppressing all possibilities of leadership from labour itself, the planters expect that their more fortunate and gifted Indian brothers should not guide the workers, and dub them as political agitators and outsiders who manufacture strikes and disturbances. This theory had been exposed time and again. The Chairman of the Planters Association stated: 'Unless there is room for dissatisfaction and unrest among labour, the outsider cannot get a hold on a contented labour force and I appeal to the planters Up-Country to put their house in order, and remove the causes of disaffection and unrest.'¹¹

Referring to the allegation that labour troubles have been instigated mainly if not entirely for the purpose of exploiting the sugar industry, Tyson stated in 1938 :

The allegations to which reference has been made above are not recent improvisations, but were being made long before

10. *Ibid.*, p. 29.

11. *Ibid.*, p. 27.

there were any trade unions in the colony, and it is difficult to believe that any outside element, even if it had greater access to 'labour' than the present trade union officials seem to have, would have been able to revive them as grievances if there was not considerable substance in them still.¹²

In fact, the Forster Commission of Trinidad, who stated that the immediate cause of the outbreak of labour troubles in Trinidad was the labour leader Uriah Butler, had themselves concluded that in the light of all the circumstances it was a matter for surprise that Butler did not secure more support than was actually the case. Yet on the same ground of outside leadership Dr Cure's Labour Association in Mauritius was banned and others like the Manpower Citizens' Association in British Guiana were still suspected and discountenanced.

The provision for the registration of trade unions was also operating adversely in the organization of labour. The workers feared that registration would make their membership public, and the planters would victimize them. In Ceylon, many of the Indian *Kanganies* who depended upon the goodwill of the planters had allowed themselves to become the instruments in the victimization of labour. The Indian Agent refers to cases, wherein 'attempts at association by resort to such means as securing the dismissal of "leaders" had provoked insipient strikes.'¹³

Under the Societies Registration Ordinance passed in August 1949 all societies in the Malayan Federation were called upon to register themselves before 1 October, failing which, without express exemption for which they should apply before the same date, they would automatically become unlawful and their office-bearers would become liable to imprisonment and fine. The Malayan Indian Congress has applied for exemption as it felt that political organizations should not be called upon to register themselves. In view of the refusal for exemption to the Malayan Nationalist Party, it is doubtful if it will be exempted.

A judicial decision of far-reaching significance was delivered in 1947 by the Chief Justice of the Malayan Union in an important appeal from labour. In July 1947, tappers in several estates struck work for three days to register their protest against a 20 p.c. cut in the contract rates effected on the ground of low prices of rubber then prevailing. One estate owner refused to re-employ four tappers who then appealed for redress to the Deputy Commissioner of Labour. The latter held that the estate owner had dismissed the tappers and should pay one month's wages in lieu of notice. On

12. *Op. Cit.*, para 31.

13. *Vide Indian Agent's Report for 1939*, p. 27.

appeal from the estate owner, the Chief Justice reversed the decision of the Deputy Commissioner and held that the workers were not, as found by the Deputy Commissioner, dismissed. Since they had absented themselves from work without reasonable excuse, they had broken their agreements with the employer and the latter need not re-employ the workers who had struck work for three days after full notice. After this decision, it was feared that any employer could refuse to re-engage a worker after a strike, even though the strike might be legal, and consequently the decision might nullify even the limited recognition of the rights of labour secured after a strenuous struggle.

The communal turn given to the labour movement in Ceylon and elsewhere had necessitated separate labour organizations for Indians as the Ceylon Indian Workers Federation. In Ceylon the Sinhalese labour leaders joined hands with the planters against Indian labour to secure concessions to Sinhalese labour. They also joined hands with the government and exerted pressure on private employers to keep out Indian workers from factories, workshops and other places of business. This breach in the labour front, thrust on Indian labour by interested politicians, was another deplorable spectacle, which Indians were forced to witness. The Indian labour contractors in Ceylon, Malaya and Burma had themselves become the instrument for this discrimination against and exclusion of Indian workers.

In 1946, however, composite trade unions consisting of the Indian, Chinese and Malayan labour emerged in Malaya to the general benefit of trade union organization.

The planters should realize that they could not shut their labour out from the world outside for all time, and that the progressive ideals were bound to prevail in proportion to the violent attempts at their suppression. The employers must concede to labour what they reasonably claim and have acquired for themselves. Moreover, it is in their own interest to allow labour to organize itself, for they could negotiate in case of differences with a definite party. The Forster Commission wrote that the true origin of the disturbances must be traced to the more or less general sense of dissatisfaction for which there was no adequate means of articulation through recognized machinery of collective bargaining. The Controller of Labour in Ceylon had pointed out :

As far as Labour is concerned, the right to combine for mutual benefit is internationally recognized as one of Labour's fundamental rights. If an attempt is made to oppose such development, it is abundantly clear that the opposition is bound

to fail and harmonious relations between employers and employees are likely to be seriously jeopardized.¹⁴

So the wise attitude is, as suggested by Tyson, the patient extension to the movement of a helping hand by the colonial governments, preferably through an expert Labour Department. Labour is no longer prepared to take what the employer chooses to give, and it wishes to be assured that it is having a fair share of the proceeds of the industry, whatever it may be. The wages question itself can be finally solved only by a healthy development of trade unionism. The Labour Adviser to the Secretary of State for the Colonies testifies to this fact when he states, referring to the limitations of minimum wage legislation in the West Indies, that such legislation

is serving a very useful purpose, particularly in the unorganized industries, where depressed conditions exist; there is, in some parts, however, a tendency to rely upon it too widely. The evolution of effective trade unions and the introduction of collective bargaining should eventually eliminate what must be at best a cumbrous and inconvenient device.¹⁵

In 1949, the Commission which was appointed with Lord Soulbury as chairman to inquire into the working of the sugar industry in Trinidad, including wages structure and working conditions, published its report. The Commission found that the cane farmers were taking no steps to increase the productivity of their fields, that half the population of Trinidad is unable to read or write and that many of the farmers are unable to calculate the amount of money they should receive for the cane. They came to the conclusion that a strong and representative body capable of representing the interests of cane farmers and of undertaking negotiations on their behalf was an urgent necessity.

The West Indies Royal Commission of 1938 made recommendations to strengthen labour organization, notably the appointment of a Labour Adviser on the staff of the West Indian Welfare Fund and the establishment of a Labour Department in the Colonial Office.

In his Report entitled Trade Union Organization and Industrial Relations (Col. No. 215, 1947) F. W. Dalley, who was deputed by the Secretary of State for the Colonies to inquire into the strikes and disturbances in Trinidad, has suggested in 1947 the establishment of trade boards and urged greater contact between the British and West Indian trade unions and especially the training of the latter's officers in Great Britain.

14. *Ibid.*, p. 27.

15. Vide *International Labour Review*, Vol. XLI, No. 5, May 1940, p. 524.

The Governments should implement these recommendations relating to the right of association of workers, not only in the interests of labour, but also of capital and of the economic development of the countries concerned.

LAND SETTLEMENT

Land settlement had always been the natural basis of colonization all over the world, though many auxiliary facilities and activities are also essential. But in the several schemes of Indian immigration put forward by the Indian immigrant countries, the Indian was required as a daily paid worker and not as a settler.

The General Labour Committee of 1920 of Malaya recommended a colonization scheme under which the government was to set aside suitable areas and subsidize the production of certain land products to be specified by the government. But the employers turned away from land settlement, and suggested settlement on estate lands, their main object being to get independent of labour supply from India as soon as possible. This settlement on estate land is only a grandiloquent term for the provision of small vegetable plots which were really subsistence plots meant to turn away labour in times of distress or slump. The Indian Agent had stated that this attempt was but a precaution against possible restriction or stoppage of assisted emigration from India, and that the chief objection to this was that it would fetter the freedom of labour.¹⁶

In British Guiana too, the Governor's scheme of 1920 discriminated in the matter of rewards and grants of land against the old settlers as well as the new immigrants who would on arrival, instead of working under planters, straightaway purchase or lease lands and commence farming on their own account. The Governor stated :

From the correspondence and discussions which have taken place since the original scheme was put forward in England and in India, it would appear that there has been a tendency to lose sight of the colonization aspect and to deal with it almost entirely, if not entirely, as a plan for obtaining labour, the prospect of land grants being held out as an inducement to the labour.¹⁷

The sugar planters and others now fully realized the difficulties in the way of a purely labour scheme, and it is the policy of this Government that in any effort to supply in the general labour market from India, the colony must begin by frankly

16. Vide Report of the Indian Agent for 1936, p. 25, para 44.

17. Vide *Emigration to British Guiana: Collection of Papers Placed Before the Standing Emigration Committee 1924*, p. 13, para 13.

accepting and advocating a scheme which is primarily one of colonization. The original proposals of the colony should be clearly reaffirmed as soon as possible.¹⁸

But in 1938, Tyson expressed the Indian apprehension in the West Indies that the sugar interests were generally disposed to resist or even to wreck land settlement schemes though he did not underrate the obstacles in the way of the inauguration of a large number of land settlement schemes.¹⁹ The McNeil-Chimanlal Deputation report pleaded that efforts should be made to provide Crown lands, the occupants being selected by the officers of the Immigration Department, and that the Government should not merely survey and sell land but manage land settlements, and that for this purpose the Government should have ready for yearly assignment from 1,000 to 1,500 acres. The Pillai-Tiwari Deputation also pleaded for suitable small holdings in localities and under conditions in which an average small holder could make good. Yet the aim of the planters was 'too often to acquire complete control over the labour market by means of regulations and administrative measures which aimed at compelling the coolie to re-engage himself on the expiry of his indenture rather than encouraging free settlers.'²⁰ This reactionary attitude was adopted despite the reports of Dr. Duff in 1906-08, and the Sanderson Committee who expressed the opinion that Indians would form the very *beau ideal* of settlers for tropical countries. On the pressure of planters, the British Guiana Government gave up its plans for Indian colonization, and the government even declined to commute the repatriation rights for land settlement, and utilized for other purposes the Immigration Fund of 455,000 dollars instead of on Indian land settlement. The financial and other difficulties vanished in respect of Jewish refugees, and the Government promised to lease more than 10,000 sq. miles for Jewish settlement. The Government's reason for denying the right of commutation to Indians was the fear that commutation would to some extent deplete the labour available to sugar planters at the then existing wage level.

The same consideration, besides the political policy of placating the Malay population as against the increasing influence of the Chinese and the Indians, had led to the system of Malay Reservation Areas in the Federated Malay States, Johore, Kedah etc. where more than three-fourths of the Malayan Indian population lived. The aggravating factor in this policy was that the most recent im-

18. *Ibid.*, p. 14.

19. *Op. Cit.*, p. 22, C. I.

20. *Ibid.*, p. 41.

migrant Malays from the Dutch Indies were accorded equal recognition with the native Malays, and were made eligible to hold land in reservations, while Indians, though settled for generations, were rigorously excluded. The Javanese settlements were all gazetted as Malay Reservations, the term 'Malay' having been defined as 'any person belonging to any Malayan race, who habitually spoke the Malay language and professed the Muslim religion.' As most of the cultivable lands were reserved for the Malays under the Malay Reservation Enactments, any real scheme of land settlement in Malaya for the immigrant Indians was bound to be shattered on the rock of this policy for the reservation of land for the Malays only.²¹

The policy and administration of the Land Development Ordinance in Ceylon passed by the Pan-Sinhalese Ministry show the same tendency on the part of the Sinhalese professional class. This policy being beneficial to them, the planters here, as in Malaya and elsewhere, did not interfere in favour of Indian labour. The Ordinance provided for the mapping out of Crown lands and their alienation for settlement by the peasants and middle class Ceylonese. In the Ceylon National Congress circles it was felt that the Indian estate labourers enjoying the State Council franchise should be compelled to pay the village committee tax. But later the proposal was dropped on the ground that if the Indian labourer paid the village committee tax, he would claim the right for lands in the village. Thus all attempts were made to prevent the permanent land settlement of Indians.

The Knavesmere estate incident confirms this impression. In pursuance of the Land Development Scheme, notice was served on about 400 Indian workers on the Knavesmere estate (Kegalle District) to leave the estate by 30 April 1946. They had been living on it for a number of years, in some cases 30, with no contact with India and knowing no home other than the estate. The attitude to treat them as mere chattels and creatures of convenience and exclude them from selection as allottees, in spite of their abiding interest in Ceylon by virtue of their long connexion with it roused widespread resentment. The move was interpreted as a part of the plan to liquidate Indians as and when convenient.

The Ceylon Indian Congress represented that if the Government agreed to extend allotments to Indians on the basis of five years' residence on the estate, the rest of the Indian labourers would be advised to vacate the estate lines. They proved statistically that, on this basis, allotments had to be made only to 80 out

21. Vide Neelakandha Iyer, p. 43.

of 125 families, leaving 195 more allotments, i.e., two-thirds of land on the estate to Sinhalese peasants. The portentous fact that not even one Indian labourer had been considered to be entitled to continue on the land filled them with apprehension of possible wholesale evictions from the other estates as well. The notice for *en masse* eviction struck them with fear that, in the absence of villages for Indian workers to settle in, large sections of them might be forced to become vagrants in the streets of Ceylon to be repatriated to India. They remonstrated that, instead of uprooting them from their homes and transplanting them elsewhere, the government should settle the Sinhalese on the lands reserved for Indians. In this connexion they referred to Prime Minister Senanayake's admission that three-fifths of the land in Ceylon had been lying uncultivated and uninhabited.

It was stated on behalf of the government that under the Land Development Scheme only those with a Ceylon domicile of origin and permanent residence in one of the prescribed villages were eligible for selection and that resident estate workers, whether Indian or Ceylonese, had no such permanent residence and were not eligible for allotments under the scheme. On 1 June 1946, the workers on the estate were offered their wages and discharge certificates. Indian workers declined to receive their discharge certificates or leave the estate. They decided to remain peacefully on it even though without work. The Ceylon Government instituted legal proceedings for criminal trespass against all workers served with notice. Indians declared *Hartal* on 4 June and strikes took place in which 125,000 workers on estates joined. The Government of India, through their Representative, protested against Ceylon's attitude.

The Government of India conveyed to the Government of Ceylon their earnest desire to have an amicable settlement with Ceylon on all outstanding issues and urged that no ejection of Indian workers from Knavesmere estate should take place until negotiations were resumed.

After five months, the dispute was settled. The Government of Ceylon agreed to give the Indian labourers active assistance to effect their transfer to neighbouring estates and to grant free pardon to those convicted of criminal trespass, after the completion of such transfer. The Prime Minister of Ceylon also stated that according to the existing programme of acquisition and the procedure being adopted in future acquisitions, there would be no need for the Ceylon Government to evict estate labourers during the period which was likely to elapse before the negotiations between the two governments were resumed. He thus attempted

to meet the apprehension of Indian estate workers that rapid execution would lead to large numbers of them being deprived of home and employment. This new procedure mentioned had reference to his decision to take over in future only those estates whose owners gave vacant possession. The Prime Minister also agreed that the quitting of the estate would be without prejudice to the claims of Indians in Ceylon (including resident estate workers) to participate in the benefits of the policy of the schemes of village expansion, though he did not at the same time agree that these claims could be allowed or even that they were justified. The estate workers agreed to these assurances and left the estate.

One sequel to this incident was the preparation of an Ordinance by the Government of Ceylon to evict estate labourers who, after the expiry of their contract of service, continued to remain in possession of the estate line rooms. The object was to provide a simple and expeditious machinery to deal with incidents like the Knavesmere estate incident.

The Fiji planters and the Fiji Government did not lag behind in the matter. In December 1919 the Fiji Government sent a deputation to India with a scheme for Indian colonization. But the subsequent fall in sugar price dispensed with the labour exigencies and so they subsequently gave up all ideas of land settlement schemes.

The planters had, even in the few cases in Malaya, Ceylon and British Guiana, where they granted small plots of land to Indians, made the insecurity of tenure an invariable feature in order to maintain their grip on labour. It was not, therefore, surprising that as a rule the labourers were not very keen on developing their allotments.^{21a} Tyson says of British Guiana that the hardship arising out of insecurity of tenure, both of tenements and of allotments, is unquestionable, and it is intensified in times when a glut of labour renders the management all-powerful.²²

In regard to Jamaica he states that he was told that in the past when Indians were given land in lieu of repatriation rights, the land granted to them was often located in the mountains and was unsuitable for settlement both in itself and for marketing facilities.

In Trinidad until 1876 grants of land were made in lieu of return passages, but the policy changed since then. The McNeil-Chimanlal Deputation recommended in 1915 that except for special

21a. Report of the Indian Agent in Malaya for 1934, p. 14, para 30.

22. *Op. Cit.*, Section II, Conclusions, para 20 (vi).

reasons no immigrants should be allotted to estates that did not provide small plots.^{22a}

The recommendation was not implemented. Trinidad Indians had been agitating for a long time for land settlement, and they urged on the West India Royal Commission the necessity for the establishment of a land settlement scheme for time-expired immigrants who were able-bodied and who were not desirous of returning to India. Indians who emigrated to Trinidad were also mostly agricultural labourers and peasant farmers. So land settlements would be really beneficial to them. According to Tyson, there were also areas in the island eminently suited to the crops which the Indians excelled in growing. The Forster Commission found (Paras 153-159) that the extension of land settlement was of paramount importance to the colony and unequivocally affirmed that such a plan would offer the best prospects for the welfare of the West Indies in future. The Wortley Committee appointed by the Trinidad Government to investigate into the schemes of land settlement recommended land settlement on a 25-year lease basis. Between 1927 and 1931 as many as 6,203 Indians received 10,934 acres of Crown land. The collapse of the cocoa industry and the partial modification of the International Sugar Agreement of 1937 on the position of the sugar industry of the colony had convinced the Trinidad Land Settlement Committee of the necessity for the evolution of a land settlement policy suited to local needs. The Committee said that there was still a strong urge to own land, whether it be for speculation, for the growth of food crops, for cultivation of export crops or for a family homestead.

The abolition of the indenture system proved a 'blow to the Colony' of British Guiana. A deputation was sent to Britain to lay before His Majesty's Government the urgent labour requirements of the colony. On advice from the Colonial Office, the Deputation came to India to ascertain whether a scheme for the colonization of British Guiana through assisted emigration from India would receive the approval of the Indian Legislative Assembly. A scheme was also laid before a Committee of the Assembly appointed under Surendranath Banerjee's chairmanship, conceding to Indian immigrants equal rights with other British subjects but making three years' service in the colony obligatory. Later the scheme was modified by the Governor deleting this obligation but making it clear that though they favoured land settlement, they would not be able to encourage large-scale

22a. Report of the Government of India on the Conditions of the Indian Immigrants in British Colonies and Surinam by McNeil and Chimanlal, Part I, 1915, C.D. 7744, p. 21.

colonization in the colony. In the meantime the Government of India sent the Keatinge-Pillai-Tiwari Deputation to inquire into the conditions of life and labour in British Guiana and examine the suitability of the proposed scheme. The Deputation recommended that provision of suitable land for resident Indians and prospective Indian immigrants and improved domestic water supply and sanitation in the areas of settlement should be made a condition precedent to the acceptance of any colonization scheme.

The colonial government could not come to a speedy and definite agreement in regard to a scheme for colonization by means of assisted emigration from India. In 1925 the Government of India deputed Maharaj Singh to report on the scheme proposed by the colonial government. Agreeing fully with the conclusions of the Keatinge-Pillai-Tiwari Deputation, he suggested that in the first instance only about 500 families should emigrate as an experiment which should be financed both from the Colonization and Immigration Funds. In order to enable the development of small holdings, it was suggested that the Colonization Board and the Land Settlement Commission should allot 5 acres of land per family and that the cultivator could be employed in public works or on sugar estates as the cultivation of this small parcel of land would neither require whole-time preoccupation of the settler nor would suffice to support his family. Emphasizing the need for careful selection of the Indian immigrants, Maharaj Singh recommended that recruitment be chiefly made from the cultivating class in rice and sugarcane areas of India and that an officer of the provincial government in India in whose jurisdiction the port of embarkation lay should be deputed to help the Recruiting Officer in their selection.

A detailed estimate of the scheme showed that the initial cost of settling the 500 families would be £127,000. The colonial government felt that this cost was beyond their financial resources and also that the conditions for recruitment were too drastic from the employers' standpoint. In the meantime the Report of the British Guiana Commission 1927 was published. While agreeing with the view of all the parties in the colony that it was eminently suitable for Indian colonization, the Commission advised the government not to embark on the proposed Indian colonization scheme without first attempting to recruit labour from the neighbouring territories, particularly Jamaica and Barbados. Consequently, the colonial government abandoned the idea of promoting Indian emigration and asked the Commissioner of Lands and Mines and the Deputy Director of Agriculture to make an agricultural survey to explore the possibility of colonization by immigrants

from the other territories of the West Indies. In 1933, these officers made several proposals for judicious introduction of skilled farmers for cultivation of sugarcane and general crops. Thus the idea of settlement and colonization by Indians came to an end.

In spite of the attempts to prevent the permanent land settlement of Indians in the colonies, the immediate indispensability of Indian estate and other agricultural labour, as also the force of their just and rightful claims, had led to certain land settlement schemes. But the insecurity of tenure, coupled with the very small nature of the plots, besides the high rents charged in certain cases, damped the enthusiasm of the Indian labourer to cultivate and improve the land. Thus, many of the plots granted remained largely unproductive. The tenant farming system at prohibitive rents as under the Colonial Sugar Refining Company in Fiji, and on the plantations in British Guiana, detracted considerably from the usefulness of independent farming.

Schemes for land settlement of Indians will succeed only when they are controlled and managed by government and are introduced as a counter-attraction to repatriation. The land on which Indians are to be settled must be Crown land. The land settlement scheme should go hand in hand with government protection of crops by the securing of a market at home or abroad for the purchase of the locally grown products. Also, any scheme of land settlement of peasant families should give them facilities to become independent farmers.

The Rt. Hon. Sastri stated in reference to Indian labour in Malaya that, while full use of garden allotments on estates should be encouraged by all possible means, any settlement of Indian labourers should be by means of a permanent title held only from the government and not from any private owner. Thus the land must be originally allotted by government and should provide for complete independence for its owner from control by the estate in which he was employed; besides he must have liberty of movement and there must be no scope for the suggestion that he was tied to a particular estate. Such schemes must be sponsored by governments alone. The Bagan-Serai and Chua land settlements in Malaya worked successfully for some years and the Indian Agent wrote :

The irresistible conclusion from the working of these two experiments is that if a labour settlement is to succeed, the land should be Government land in between rubber estates, so that the settlers can hold the land directly under Government and can have a reasonable security of tenure, and they can always earn their living by working on the neighbouring

estates, devoting only their spare time to developing their holdings.²³

Tyson recommended in regard to British Guiana similar government-controlled land settlement schemes. He also added that participation in such a scheme should not be confined to those who have a right of repatriation and must provide for mixed farming, the settler being given land for a house and a vegetable crop, another plot for growing rice, and facilities in a third area for grazing cattle; and that settlements should be established as near as possible to working sugar estates so that the settler might supplement his income by occasional 'task' work. Medical facilities, sanitary supervision, drainage, and irrigation should be the concern of the government which should undertake these departmentally, recovering the cost from the settlers rather than merely exercising the power of control.

The Rt. Hon. Sastri referring to the Sungei Ujong settlement on a private estate in Malaya stated that a venture of that kind on privately owned land was probably a mistake. Turning to the government Chua settlement, he suggested that the government should consider the possibility of taking over the area covered by the Sungei Ujong settlement and issuing permanent titles there, as in the case of Chua settlement. The Trinidad Land Settlement Committee also stated that the government settlements were the cheapest and simplest method of obtaining land and there had been an increasing demand for an extension of the land settlement scheme recommended by the Committee appointed by government in 1932, which was of the opinion that the extension of land settlement was a matter of paramount importance in a colony which is essentially agricultural.

The question may also be considered whether the outright sale of land would not be better than the tenant-farming system. Peasant proprietorship alone will achieve the purpose of land settlement, as the landlord system is wrong in principle, for loyalty to the landlord does not foster loyalty to the land. But the Royal Commission on Trinidad Riots recommended (Paras 153-159) that long leases should be preferred to outright sales of land to prospective settlers. The Wortley Committee endorsed this recommendation, thus postulating the necessity for landlords and tenants while peasant proprietorship has been the primary incentive of agricultural activity.

It may be argued that acquisition of land under land settlement schemes by Indians would deprive the natives of their lands.

23. Vide Report of the Indian Agent for 1936, p. 25, para 44.

But as Sir Samuel Wilson had testified in respect of Malaya, Indians did not claim land settlement to the detriment of the indigenous communities; 'what they object to is the discrimination in principle and the extension of the preferential treatment to emigrant Malays from the Dutch Archipelago who are Dutch subjects.'²⁴

Subject to the policy of reservation of sufficient lands for natives' needs, Indians should be given opportunities for land settlement. Moreover, there are vast tracts of land still awaiting development and the agricultural ability of Indians will prove an asset in the economic development of the colonies. According to the British Guiana Commission of 1927, even in the fertile coastal land there was an area of over 1 million acres capable of effective settlement, and in the hinterland, an area of 66,000 sq. miles of undeveloped forest, and 27,000 sq. miles of savannah. In 1933 the Hon. Mr. J. Mullin and Captain F. Burnett, appointed by the government of British Guiana to carry out an agricultural survey of the areas suitable for land settlement and colonization, reported that there was much to be said for a system of infiltration leading to settlement. Referring to land settlement according to the Original Colonization Report (Imperial Colonization), the colonial Governor stated: 'While contemplating other probabilities, such as the importation of Indian hillmen accustomed to timber cutting and similar heavy work, the object of the scheme is primarily a coast settlement exclusively by agricultural families.'²⁵

Maharaj Singh estimated in 1925 that in Mauritius about 12,000 acres were available for cane cultivation. Tyson had suggested that the uncultivated marshy land at the Westmoreland end of Jamaica was best suited for the Indian traditional occupation of rice growing. The Governor of Kenya stated in 1907 that the coastline and tracts north of Makinder and in Kavirando and west of Fort Ternan, which were unfit for White settlement, should be settled by Indians. But these being native areas Indians could not take away lands from them, when there was plenty of land outside. But the fact remains that the Governor had recognized the usefulness of settling Indians on land.

After 1925, Germans were permitted to return to their unsold estates in Tanganyika and within four years they were able to possess about 350 holdings. Yet Lord Milner's proposal for agricultural settlement by demobilized Indian soldiers was rejected.

24. Report by Brigadier-General Sir Samuel Wilson on his visit to Malaya (1932), p. 27.

25. Immigration to British Guiana: *Collection of Papers*, p. 12, para 8.

This attitude led to a decrease in Indian acreage of agricultural and pastoral land from 327,000 in 1931 to 283,000 in 1936.

The West India Royal Commission 1938 formulated in its recommendations the establishment of 'an orderly plan for settling a considerable number of people on the land as small holders and providing them with certain forms of assistance.'²⁶ Extensive settlement was first suggested as a solution for the problem of the surplus population on estates. The Labour Adviser to the Secretary of State for the Colonies held that it was necessary to broaden the economic basis of support for the estate worker by the settlement as independent peasant farmers of those at present intermittently employed. He holds that the change would to a large measure restore the elasticity of supply, the lack of which is so largely responsible for the present position. Any return of prosperity would entail an increase in wages to attract the peasant to additional work; alternatively the misfortunes of the industry would no longer involve the majority of the employees in disaster, since they would at least have a partial alternative in their own produce.²⁷

Land settlement will also relieve under-employment in towns, the population of which is now swollen by workers unable to maintain themselves on land. It will also facilitate housing and other welfare programmes on estates, as labour force is reduced to reasonable limits. The colonial governments and the employers will be doing but bare justice in facilitating the land settlement of Indian workers, who have spent the best part of their lives in transforming the marshes and jungles into smiling estates and fields.

CONCILIATION AND ARBITRATION MACHINERY

Till a few years ago there was no arbitration machinery for the settlement of disputes between the employers and workers. Recently, however, some of the colonial governments had passed laws providing for such machinery. But in several of these cases, the beneficial provisions were being evaded or rendered ineffective. In Malaya the Industrial Conciliation Ordinance made provision for the settlement of disputes in three ways, viz., through (i) Industrial Courts, (ii) Arbitration Boards appointed by the Governor or High Commissioner, and (iii) Arbitration Boards remotely resembling the Whitley Councils. In Ceylon, the Industrial Disputes Conciliation Ordinance III of 1931 was passed to provide for investigation and settlement of industrial disputes.

26. *International Labour Review*, Vol. XLI, No. 5, May 1940, p. 521.

27. *Ibid.*

This Ordinance enabled the Controller of Labour to intervene in labour disputes and provide for the settlement of disputes by the appointment of Conciliation Boards. A significant clause in this Ordinance was an agreement formerly made between the parties to a dispute which might under the Ordinance be enforced by prosecution in the police court, until either of the parties had formally repudiated the settlement arrived at.

The Essential Services (Avoidance of Strikes and Lock-Outs) Order 1942 says that no person could commence or continue or participate in or do any act in furtherance of any strike or lock-out in the tea and rubber industries and in other essential services; and it is obligatory on employers and employees alike to notify all trade disputes to the Controller of Labour. Under the Order, on being notified of a trade dispute, the Controller of Labour would transmit the petition to a tribunal whose findings would constitute an award binding on the parties. It prohibits the employers from employing any workmen in any essential services on terms of employment less favourable than the recognized terms and conditions of employment which include terms arrived at by an agreement in settlement of a trade dispute. Under the above Order, three cases of trade disputes were referred by the Controller of Labour to a district judge for adjudication during the year 1942. Two Conciliation Boards which were appointed in 1941 to inquire into trade disputes arising from the discharge of certain labourers submitted their reports in January 1942. In both cases the managements concerned repeated their recommendations for the reinstatement of the labourers. In 1943, awards were made in 14 cases. The Seven-Point Agreement continued to govern the procedure for the settlement of disputes by conciliation in 1943 and 1944. The Ceylon Estates Employers' Federation, inaugurated in July 1944, became the body responsible for negotiations on behalf of the planting employers.

The Industrial Disputes (Conciliation and Arbitration) Ordinance XIX of 1941 provided for the investigation and settlement of industrial disputes. If no machinery for settlement existed in any particular industry in which a dispute might occur, the Governor had the power to bring the parties together or refer the matter to a Conciliation Board for settlement. But in case the conciliation methods failed or if the parties so requested, the Governor-in-Council might require the parties to submit their dispute to a Court of Arbitration, whose decision would be binding on both the parties.

In West Indies, in anticipation of Royal Commission recommendations, the Trade Disputes (Arbitration and Inquiry) Ordi-

nances were passed in Trinidad and Jamaica. The Trinidad Ordinance repealed the 1920 Ordinance. This new Ordinance empowered the Governor, in case of a labour dispute, to refer the matter, with the consent of the parties to the dispute, to an Arbitration Tribunal, which might be one arbitrator sitting alone or with assessors nominated in equal number by the employers and workers, with an independent Chairman. Though the Ordinance of 1920 provided for the constitution of an Industrial Court, the Ordinance was never brought into operation. Referring to this Ordinance the Forster Commission observed :

We understand that shortly after the passing of this Ordinance, a president was in fact appointed ; no court was established however ; the appointed president never functioned and the ordinance has remained inoperative to the present day. It is clear to us that at no time has the Industrial Court Ordinance been regarded as a serious factor in the colony's industrial system (para 61).

The Commission recommended the immediate establishment of Industrial Courts. They stated that for the successful functioning of these Courts, two conditions must be fulfilled. Firstly, the panels of Industrial Courts should not develop themselves into permanent bodies of assessors who had no contact with the problem of industry or labour, but the endeavour must be to create institutions like the Whitley Councils of Great Britain. Secondly, the Chairman of the Court must be one who was absolutely disinterested and he should be appointed from outside the colony. They asserted that, if the final decision was left to a tribunal constituted entirely of local persons, it was likely to be suspected both by the employers and employees, and it was therefore essential that a person of required experience and standing should be appointed from outside the colony to act as President. Besides these two recommendations, it appeared desirable that the president should be drawn from the Judges of a High Court. In British Guiana only immigration authorities and managers of neighbouring estates acted as arbitrators. The Pillai-Tiwari Report recommended the constitution of a Board of Arbitration composed of members who on account of their impartiality and independence would be acceptable to both parties.

Labour Ordinance II of 1942 provides for the appointment of a Commissioner of Labour for the regulation of the relations between the employers and employees and for the settlement of differences between them. This Ordinance replaces the Apprenticeship Ordinance 1854, the Employers and Servants Ordinance 1853, and

the Accidents Investigation Ordinance 1900, all of which contained many obsolete provisions. It endeavours to bring the three colonial labour regulations in line with modern conceptions and standards of labour legislation. Some suggestions made by the Government of India were incorporated in it.

In regard to Mauritius, the Moody Commission recommended in 1944 formation of Regional Industrial Committees of workmen's representatives, along with the establishment of Conciliation Boards and an Arbitration Tribunal to which, in the event of conciliation failing, the parties could, by agreement, refer their dispute. They also recommended powers to the Governor to order the parties to submit their dispute to the Arbitration Tribunal for a decision which would be final and binding upon both the parties. Appointment of responsible officers on the spot who would promptly attend to workers' complaints was also recommended.

The various colonial governments should give effect to these recommendations. The importance of conciliation machinery in countries bidding for industrial life needs no emphasis. The more important factor is that it is also beneficial to the employers in securing industrial peace and facilitating production to their continuous profit. The employers should, therefore, welcome any such legislation, and co-operate in making it a success.

WORKMEN'S COMPENSATION

After the passing of the Indian Workmen's Compensation Act 1933, certain classes of employers in Burma were obliged to provide for the payment to their workmen of compensation for injury by accident, provided it was not due to culpable negligence on the part of the workman. In Ceylon, Ordinance XIX of 1934 provided for payment of compensation to workmen injured in the course of their employment. The Controller of Labour was the Commissioner for Workmen's Compensation. The total number of accidents during 1939 among Indian labourers which resulted in temporary disablements, was 546. Seven Indian labourers suffered fatal accidents and the amount awarded in each case ranged between Rs. 500 and 600. During 1939 there were 32 cases of fatal accidents and a sum of Rs. 19,184 was awarded and paid as compensation. The number of cases of permanent partial disablement was 69 and the amount awarded and paid as compensation was Rs. 19,123. In 1941 there were 26 cases of fatal accidents and a sum of Rs. 16,500 was awarded. The number of cases of permanent partial disablement was 156 and the amount awarded Rs. 59,837.72. In

1942 the number of fatal accidents was 31 and the amount awarded Rs. 17,730 and the number of permanent partial disablement 88 and the amount awarded Rs. 29,299.32. In 1946 there were 33 cases of fatal accidents and a sum of Rs. 47,700 was awarded. The number of cases of permanent partial disablement was 91 and the amount awarded Rs. 33,475.92.

A Workmen's Compensation Act was also passed in Malaya in the states of Kedah, Johore and Trengganu and was also under consideration in Kelantan. The scope of workmen's compensation laws was enlarged in certain respects during 1936-38 in the Straits Settlements, Federated Malay States and in Kedah and Johore.

In Mauritius under the Workmen's Compensation Ordinance XXXII of 1937 no compensation was payable for any period less than seven days. The Ordinance was not applicable to persons earning more than Rs. 3,500 a year and casual workers or persons employed on work to be done in their houses. The employer was liable for compensation to employees of contractors working under him. The schedule following the Ordinance fixed compensation for temporary incapacity at a figure up to 50 p.c. of weekly wage and payments might continue for 12 months; those permanently incapacitated might receive compensation up to three years' wages. In case of death, compensation might amount to two years' wages. The Factories (Safety of Workers) Ordinance IX of 1939 provided protection against accidents of workers in factories; the Governor-in-Council might make regulations prescribing appropriate safety regulations and appliances in all factories.

In Fiji, Indians and Fijians had been excluded from the protection of the Workmen's Compensation Ordinance.

Indians had been deprived of the benefit in Jamaica and Trinidad by an indirect method of excluding the agricultural labourer from the provisions of the Ordinances. In Trinidad two Ordinances existed concerning workmen's compensation. The first, the Compensation for Injuries Ordinance, provided for payment of compensation to workers in the case of injuries arising from defects in machinery, or negligence on the part of the employer or his agent. The second was the Workmen's Compensation Ordinance of 1936 which is wider. The Forster Commission criticized the second ordinance on two grounds. Under the provisions of this Ordinance an employer was not liable to pay compensation in respect of any injury which did not result in disablement for a period exceeding 10 days. The other ground of criticism was that the provisions of the Ordinance did not apply to agricultural work-

ers except those employed in connexion with any engine or machine worked by mechanical power. The Forster Commission recommended a reduction from 10 to 3 days of the period which entitled an injured worker for compensation. They also recommended that the benefits of the Ordinances should be extended to the agricultural workers. The present denial of the benefits to agricultural workers was unjustifiable, especially in the light of the Workmen's Compensation (Agriculture) Convention of 1921, which obliged the British Government to apply provisions of the Convention in the colonies, unless these provisions were inapplicable or subject to such modifications as might be required to make them applicable to local conditions. The Trinidad Government cannot take shelter even behind this reservation. For the Forster Commission definitely stated: 'In the past the inclusion of agricultural workers generally in the Workmen's Compensation Ordinance may not have been practicable, but we feel that the time has now arrived when Government should consider whether steps might not be taken to apply the provisions of the convention concerning the workmen's compensation in agriculture, either without modification or with less modification than at present obtains.'²⁸ Lastly, the fact that the draft of the Ordinance had included the agricultural labourers, but that it was deleted on the demand of the planters in violation of international obligations of the British Government under the Treaty of Versailles, should make it necessary to extend the Ordinance to agricultural labourers in the interests of just public administration.

MATERNITY AND SICK BENEFITS, POOR RELIEF, ETC.

In Ceylon, maternity benefits were left to the employers' pleasure, as the law was vague and no system was followed. The agreement between the Indian and Ceylon Governments which provided that every woman worker should be given during the period of confinement half a bushel of rice and eight rupees per month was not implemented. An attempt to incorporate this agreement into the 'Minimum Wages Ordinance in the pre-Donoughmore Legislative Council was defeated. Later, another motion was introduced that every woman worker should be given one-fourth bushel of rice and two rupees per week for two weeks before and four weeks after childbirth, a benefit which the Governments of Ceylon and India had agreed to before. Yet, the Health Minister of Ceylon negotiated and entered into another agreement with the Planters' Association. The terms of the agree-

28. Vide *International Labour Review*, April 1938.

ment and rates proposed came far below rates already agreed to by the two governments. The Health Minister also took objection to the introduction by the Minister of Labour of the Maternity Benefits Ordinance in the State Council. Under this Ordinance a woman worker was to be given 50 cts. a day for a month. The planters and the Health Minister objected to the provisions of this Ordinance being made applicable to estates. Though the agreement with the Government of India provided for a much smaller benefit, yet the Government of Ceylon refused to enforce the agreed terms. The Whitley Commission had also recommended more than what the Government of India agreed to. The Commission recommended a cash benefit to the mother of half the daily wage for four weeks before and four weeks after childbirth, and, in addition, a bonus of five rupees to be given except when the employer had provided the skilled services of a woman doctor and trained midwife.

A Maternity Benefits Ordinance was passed in 1939 and brought into force from 28 July 1941. The Ordinance covered women workers on estates employing ten or more non-casual workers in shops, mines and factories. Section 5 of this Ordinance provided that maternity benefits were payable to a woman worker at the rate of 50 cts. a day for two weeks before and 4 weeks after confinement: but there was a proviso by which the Controller of Labour could grant exemptions from liability to pay these maternity benefits if he was satisfied that the employer had provided for female labourers resident on estates the following alternative benefits as prescribed by the regulations in September 1941: continuous employment under the employer from whom such benefits were claimed for not less than 9 months immediately preceding the date of agreement. The severely restrictive conditions for qualifying to the benefits and their low rates affected the estate workers adversely when they moved frequently from one estate to another. Regarding the administration of this Ordinance the Indian Agent Reported:

Complaints of non-payment of the cash benefits due under the Maternity Benefits Ordinance were not inappreciable in number and though in a few cases the complaint was well-founded and the cash benefits were obtained for the labourers, it was found that in the majority of cases the labourers were not entitled to the benefits under the law. No woman is entitled to maternity benefit unless she has been employed under the employer from whom she claims such benefit for a period of not less than nine months immediately preceding the date on which she gives notice of her expected confinement. It often happened that women labourers left estates and took their discharge certificates in the sixth,

seventh or even the eighth month of their pregnancy, but without giving notice of their expected confinement, and in such cases the payment of the cash benefits under the ordinance could not be enforced either against the estates on which these labourers had been employed or those which took them on subsequently. The latter are only bound to give the benefits under the Medical Wants Ordinance in such cases. It would be helpful if the employers make it clear to woman labourers giving notice to quit when they are in an advanced state of pregnancy that by their action they stand to lose their right to maternity benefits. At the same time it must be recorded that there were some employers who were good enough to permit women workers to go to their parents' homes on other estates for delivery and to give the maternity benefits on their return.²⁹

Criticism in this regard led to the passing of the Maternity Benefits (Amendment Ordinance) No. XXXV of 1946 on 26 August 1946. This Ordinance increased the cash benefit from 50 cts. to Re. 1 per day and fixed the maximum amount payable where amenities like a lying-in ward etc. were provided at 4/7 of the total amount payable if no such amenities were provided. The qualifying period for the benefit was fixed at not less than 150 days within the period of one year immediately preceding the confinement.

- (a) the use, for confinement, of a maternity ward or lying-in room approved by the Controller ;
- (b) the services of a midwife at the confinement ;
- (c) food during the period a labourer remains in the maternity ward or the lying-in room ; and
- (d) the payment in cash of two rupees a week for two weeks immediately preceding the confinement and for four weeks immediately following it, i.e. Rs. 12.

Till 1939, Section 12(1) of the Medical Wants Ordinance of 1912 was the only statutory provision securing maternity benefit to a woman worker. This provision, which applied only to resident estate labourers, required the Superintendent of every estate to provide every female worker resident and giving birth to a child on an estate with sufficient food and lodging for one month after the birth of the child. The term 'sufficient food' gave rise to a variety of interpretations. Hence the Medical Wants Committee ruled in 1944 that 'sufficient food' should be taken to mean half a measure of rice per day for one month and 75 cts. per week for four weeks. As the food rationing system in force permitted issue of only a portion of this amount of rice, the balance was to be made up in the

29. Vide Report of the Indian Agent in Ceylon for 1942, p. 12, para 30.

form of other foodstuffs or in cash. Further with the coming into operation of the Maternity Benefits Ordinance of 1939, estate employers became subject to a dual liability. Hence the Medical Wants Ordinance was amended by the Medical Wants (Amendment) Ordinance No. XXXVI of 1946 which became law on 26 August 1946. This enabled the prescription by rules of the type of food and lodging to be provided and relieved the Superintendent of an estate from the duty of supplying such food and lodging if the woman worker was actually receiving benefits under the Maternity Benefits Ordinance.

In Malaya a labourer in permanent government employment was entitled to 28 days full pay while in hospital and to a certain period half pay thereafter. The Rt. Hon. Sastri recommended the extension of this system in force in Government departments to estate labour, but no steps were taken to implement his recommendation. It is necessary that sick benefits should be provided for Indian labour in other countries as well.

Provision for poor relief was available in Jamaica, British Guiana and Fiji. But racial prejudice was depriving it of its benefits to Indians. As regards Jamaica, Tyson had vouchsafed that the present administration by parochial boards had also borne heavily on Indians in this way that the diet (including meat and pork) provided in the alms-houses was not congenial, and was in fact strictly speaking forbidden to the orthodox Hindu or Muslim.

The system of outdoor relief provided by the Fiji Government to destitute Indians through the maintenance of a Poor House in Suva was also vitiated by racial prejudice. Hence the number of Indians who received relief was very small—only 70 in 1936, 94 in 1937 and 149 in 1938—though destitute Indians numbered several hundred.

The Poor Law relief in Mauritius has proved unhelpful to Indians due to the same racial discrimination in the matter of granting outdoor relief and to Indians' disinclination to avail themselves of indoor relief extended by the institutions which are all denominational. If the government is serious about affording this relief to Indians, they should convert a few at least of the denominational institutions into government institutions. In all these countries until Indians were also entitled to outdoor relief under the Poor Law administration, Indians would not be able to derive any benefit from it.

Tyson states that centralization of poor relief as recommended by a Commission in 1936 was essential in Jamaica as the Local Boards manned by 'Jamaicans' administering the relief were

actuated by racial prejudice. The plea applies with equal force to British Guiana also.

The New Zealand Indians, who were formerly excluded from the benefits of the Old Age Pensions Act, were in 1936 admitted to these benefits by the Labour Government.

SOUTH AFRICA

In regard to the system of social security in the Union, the draft code provided in 1942 for separate codes for the separate communities of the Union population, implying that the European, Coloured, Native and Indian peoples should contribute on different scales and receive different benefits. Though Indians and the Coloureds had a very similar economic status, Indian contributions and benefits were fixed on a much smaller scale than that of the Coloureds. Non-Europeans were given direct representation both on the General Committee and on the Executive Committee.

The Union Minister of Social Welfare announced in the Union Parliament on 16 September 1949 that family allowances to Indians would discontinue, though not immediately. Family allowances to Indians have been paid on a scale considerably less than those paid to Europeans who have a population eight times greater than the Indians. In the case of Indians, they are paid from the third child. An Indian family whose earnings are £51 (sterling) or more a year is entitled to an allowance of £9 (sterling) a year for the third and subsequent children, provided the total earnings *plus* allowances do not exceed £108 (sterling) a year.

Thus, on abolition of allowances, 1603 Indian families would lose £17,812 (sterling) for 7,171 children on the basis of payments made during the first year of the scheme. Over the same period, £18,622 (sterling) was paid to 940 European families for 4,932 children.

INTERNATIONAL CONVENTIONS

CEYLON

The clauses of the Washington Convention of 1919 and of the General Conference of the International Labour Organization of the League of Nations held at Geneva in 1920 relating to the employment of women and children in industrial works, ships and at nightwork were legalized in Ceylon by Ordinance VI of 1923. The Ordinance made it illegal for any child under 14 years to be employed in any industrial undertaking, who was not so employed prior to the date on which the Ordinance came into force (i.e. May 1934). The Ordinance aimed at the protection

of female and child labour, but the prohibition of child labour was somewhat unpopular with the labourers because the low wages paid were not enough for a family with many dependants and the family was deprived of the child's wages. The Ordinance could be rendered popular and beneficial if wages were raised.

Ordinance No. XV of 1941 provides against separation of families on estates in Ceylon and requires a separate room to be provided. Ordinance XLV of 1942 provides for the safety and welfare of workers in Ceylon's factories. In 1946 a Commission was appointed to examine the adequacy of social assistance and allied services not provided by law in Ceylon in the light of post-war conditions. The Indian Agent submitted a memorandum to the Commission (in his personal capacity) emphasizing the principle that there should be no differentiation between the immigrant and indigenous labour in legal provisions made for social security.

Ordinance VI of 1932 enabled the Controller of Labour to sue on behalf of the Indian labourers on estates, and this Ordinance raised the amount of wages earned, for which the labour had the first charge over the estate, from Rs. 20 to Rs. 40.

MAURITIUS

The Employment of Women, Young Persons and Children (Amending) Ordinance XVI of 1933 regulated the employment of women, young persons and children in industry to accord with the International Draft Convention on this subject and also with the Convention fixing the minimum age of employment at sea.

FJI

The Labour Welfare Ordinance XX of 1941 authorized the appointment of a Commissioner of Labour to safeguard and promote the general welfare of workmen in the colony. The Commissioner had been given certain powers of entry and inspection necessary to enable him to carry out the duties prescribed in the Ordinance. Early in 1948 comprehensive labour legislation was enacted in Fiji. The Governor-in-Council was empowered to make regulations, subject to the approval of the Legislative Council, concerning the worker's housing, food and clothing where these were a part of the worker's remuneration, hours of work, rest periods, payment for overtime and holidays with pay.

TODDY DRINK

The indispensability of toddy to retain Indian estate labour in Malaya was an exploded proposition. H. H. The Sultan ordered that no toddy shops should exist in Klang district and yet they had

been securing enough efficient labour. The *Samsu* bogey which was often held out was wrong. Ninety per cent of poor labourers could not be sacrificed because some 10 p.c. would take to *Samsu*. Moreover *Samsu* was conspicuous by its absence in Klang and elsewhere. The real causes for opposition to prohibition of toddy shops on estates were, therefore, not the probable diminution and inefficiency of labour supply or consumption of *Samsu*. The government collected a duty of four cents on every bottle of toddy sold at ten cents, and thus received huge revenue, as is evident from the following figures :

	Amount in Rupees	
In 1931	..	1,817,513
1932	..	1,419,912
1933	..	1,261,276
1934	..	1,809,825
1935	..	2,081,718

The Government did not seem to have spent anything of this mounting revenue for the benefit of labour. The estates also were opposed to the abolition of the shops, for they made profit on toddy sales. It was estimated that on a monthly sale of 1,000 bottles, the estate made a profit of \$25. This profit varied with the expense incurred by the estate. From the accumulation of these profits, temples were built and presents were made to labourers for *Deepavali* festival. If toddy shops were closed, the estate revenue should bear the expenditure for the temples and presents, and planters were averse to facing such a situation.

The wage rate in 1940 was 50 cts. One bottle of toddy, which was the minimum a worker consumed, cost 10 cts. i.e. 20 p.c. of daily wages. While he got work for 24 days, he consumed all the thirty days, which meant another 60 cts. or 2 cts. per day i.e. another 4 p.c. Thus 24 p.c. of the daily wages was swallowed by toddy. What was worse, toddy had become the cause of many a crime.

The Rt. Hon'ble Sastri observes :

It occurred to me that in a country like Malaya, where surplus budgets appear to be the rule rather than the exception, excise is not a major head of revenue. Conditions were particularly favourable for a policy directed towards ultimate prohibition.^{29a}

If total prohibition was not a practical proposition, the estates at least should first be prohibited from establishing and conducting toddy shops on their premises. The necessity for such a procedure

29a. *Op. Cit.*, p. 11, para 16.

had been stressed by successive Indian Agents. The Agent wrote in 1931 :

This needless temptation provided in estates at their very doors is the real reason for this . . . Where the toddy shops were a little far away from the labourers' lines, there were many total abstainers and occasional drinkers, whereas the location of toddy shops close to their lines has converted almost the whole labour force into habitual drinkers, including, in some cases, women and children. The absence of toddy shops has in no way affected the standard of work turned out by the labourers, but has also distinctly improved their morale and economic condition.³⁰

In the Interim Report of the Special Labour Committee of the Planters' Association of Malaya, August 1928, the majority of Planters' Associations had also expressed their views in favour of the abolition of toddy shops. If the shops were found absolutely necessary, they might be carried on by the Government away from the estates for a time. Subsequently the Government should by taking the number of shops of any year, say 1940, compel the employers to reduce at least 10 p. c. of the shops every year. Thus, at the end of 10 years, Malaya could achieve total prohibition.

In 1946, the Malayan Indian Congress launched a campaign for the abolition of toddy drink and gave evidence before the Government's Toddy Investigation Committee urging the abolition of toddy shops on the estates, and of provision for *Samsu* and vigorous action against distillers of illicit *Samsu*. They had also organized picketing of the liquor shops.

30. Report of the Indian Agent in Malaya for 1931, p. 14, para 16.

CHAPTER V

EDUCATIONAL FACILITIES

STATE EXPENDITURE ON EDUCATION

The expenditure that a State incurs on education largely indicates the measure of its interest in the educational progress of the different communities. But here, as elsewhere, racial discrimination has been a dominating factor. The Paddison¹ Deputation reported in 1925 that in Natal Indians had to pay fees for elementary education, while European children did not, though both paid the wheel tax. In 1926, while the average expenditure on Indian education was £2-3-11 per child, that on a European child was £17-17-9. Between 1910 and 1927, the provincial administration spent £903,779 on the buildings of European, Coloured and Native schools, of which only £1,195 was spent on buildings of Government Indian schools.² The average expenditure on education in 1934-35 worked out at £13-7-0, £11-3-9 and £5-5-0 per head on Europeans, the Coloured people, and Indians respectively. The figures of provincial expenditure on Indian education revealed that although in 1934-35 the administration promised the Indian Agent-General that a sum of £10,000 would be voted to Indian education in addition to the Union Government subsidy, a sum of £200 only was actually spent. Similarly in 1936 the provincial Government spent £5,000 less than the subsidy received from the Union Government, while in 1937, £6,000 less was spent. In 1941 though the Government provided £1,224 annually to allow a slight increase in the salaries of teachers, about £1,250 which was sanctioned for additions to the Port Shepstone School in the previous year was not spent. The estimated capital expenditure on Indian school buildings fell as compared with that in 1940 from £2,553 to £2,150.

In Fiji, under the Education Ordinance of 1929, provision was made for District School Committees, and all schools must be either registered or recognized, the former alone being eligible for grants-in-aid. In 1927, the Fiji Government spent £8 per head not on European children actually at school but on children of school-age, whereas they spent £2 per head on Indian children at

1. Paddison Deputation Report, p. 9, para 10.

2. *Memorandum on Indian Education in Natal* by Kailas P. Kichlu presented to the Indian Education. Inquiry Commission in April 1928, p. 25.

school, and 6s. on Indian children of school-age. According to the Fiji Educational Report for 1935, while the educational expenditure on an Indian child from the colonial revenues was only 8s. 6d., that on a Fijian child was 14s. 6d.; that on an Indian boy 34s., while on a Fijian boy 74s. This disparity was greater in the case of girls. The total educational expenditure was 29.8 p.c. on 2.41 p.c. Europeans, as against 15.5 p.c. on 42.18 p.c. Indians. European education was made a first charge on the educational budget of Fiji, the Fiji Government also finding 50 p.c. of current expenditure on European education from the general revenues to which the non-Europeans also contributed. The net expenditure from Government coffers on European education during 1934 was £4,926, on Fijian education £17,339, and on Indian education £9,439, while for 1935, the corresponding figures were £4,149, £16,800 and £10,880 on 8,700 Europeans, 105,000 Fijians, and 85,000 Indians. The tuition costs in government schools maintained for the benefit of the respective communities were £6,600 in the case of Europeans, while in the case of Fijians and Indians, who numbered nearly 12 and 8 times as much, the figures were £5,643 and £2,962. The Kenya Education Report for 1935 shows that the total expenditure on European education was £44,000 on 18,000 Europeans i.e. £2½ per European; and, while for 41,000 Indians the total expenditure should be £100,000, at the rate of £2½ per head, only one-third of this amount was spent on them. Similarly, £74,000 was spent on over three million natives while ten times that should have been spent in proportion to what was spent on European education. Mr. Peter Koinange, an African leader, stated in September 1949 that the East African Governments were spending as much as Rs. 320 on the education of a European child, Rs. 53 on an Indian child and a paltry six annas on an African child. The figures given by the Malayan Director of Education in his report for 1937 showed that, while 20.2 p.c. of the funds set apart for education was expended on Malayan education, only a mere pittance of 5 p.c. of the total funds was spent on Tamil education in Malaya. The position seems somewhat improved in 1946 when of the total government expenditure on English and vernacular schools, about one-half went on Malay pupils, one-third on Chinese and one-sixth on Indian pupils.

It may be contended that educational expenditure by a government must be roughly proportionate to the contribution of each community to the public revenues, and that, therefore, the former must be conditioned by the latter. But even this argument does not cut much ice. In Natal, Indians contributed substantially

to provincial revenues in the form of transfer duties, licences, entertainment taxes, personal and income-tax, wheel tax and racing tax—these amounting to from 1/6 to 1/5 of the total revenues. In 1928, £17,000 out of about £22,755, which constituted the total cost of the Government-aided schools, was met by the local Indian community. The administration gave only £3,500 as building grant for all these schools. And in all such cases the buildings were registered in the name of the Christian Missions. In the same year, the Indians raised £20,000 for the construction of the Sastri Training College. They also established 50 private schools for Indian education. In July 1949 an Indian merchant of Durban created a £100,000 trust fund to promote Indian education in Natal. This is expected to accelerate the Indian primary and secondary education.

In Fiji, though Indians formed only 43 p.c. of the population, they contributed in 1935 £17,000 out of £20,000 of indirect taxes of the colony. The Mayhew Report of 1936 admits that the Indian contribution was substantial and that as against 7 government schools, Indians were conducting 42 schools. And yet there was not a single instance of a building grant up to 1937 to the Indian Managing Committees, despite favourable references by the Director of Education to the Indian Managing Committees and though grants-in-aid of buildings were made in the past to other bodies.

There was also no truth in the statement that Europeans were paying for Indian education in Natal. There was, on the contrary, even a deliberate diversion of the subsidies received from the Union Government for Indian education to the provincial revenues. During 1925-26 and 1926-27 not only was the whole amount received as subsidies for European and Coloured education spent, but the provincial administration had in addition spent a sum of £168,914 on European education and £22,966 on Coloured education from the provincial revenues. But in regard to Indian education, not only nothing was spent from the provincial revenues but a sum of £18,817 was actually saved from the subsidies and added to the provincial revenues for their relief.³ The view that in 1928 also the whole of the subsidy was not spent on Indian education was supported by the Superintendent of Education when he said before the Indian Education Inquiry Committee that the vote for Indian education did not represent the full amount of the subsidy accruing to the administration on the basis of the number of Indian pupils. The Rt. Hon'ble Sastri also proved in his evidence before the Commission that far from the European taxpayer

3. Kailas P. Kichlu, p. 24.

contributing to the cost of Indian education, the Indian taxpayer had been paying for European education.⁴ It was estimated in 1928 that the Natal Provincial Administration would have to refund to Indian education a sum of at least £40,000 to receive an acquittal in respect of the appropriation of Indian education funds to the provincial revenues in the past. Even in 1934 it was shown that £4,000 had been so diverted.

Indians had not only contributed their legitimate share to taxation but also had expressed their readiness to pay the educational cess in the interests of their children's future. Mayhew himself had stated that in Fiji the Indian community had never shown any reluctance to pay an education rate. The Indian Education Rating Ordinance was actually passed. Notwithstanding repeated Indian requests, the Ordinance was not put into operation. In spite of the conclusive proof of income-tax returns that Indians were the poorest group of the economic hierarchy, they were asked to pay 50 p. c. of the cost of their education which was contrary to the enlightened social policy of a modern State. Though the demand was iniquitous, Indians expressed their readiness to pay. Yet, the Rating Ordinance was not brought into force on the ground that the Europeans were unwilling to share the burden of the other 50 p. c. from the general taxation. To the Europeans it appeared fair that the general revenues, to which all the communities had contributed, should pay 50 p. c. of the cost of education of their children, but it seemed unfair that the general revenues to which they contributed should pay 50 p. c. of the cost of Indian education. And yet, Mayhew blessed the distinction between Europeans and Indians, while generously disapproving it between Indians and Fijians!

CHURCH CONTROL OF EDUCATION

In the case of British Guiana, Trinidad and Jamaica, the main difficulty eclipsing all the rest was the Christian Church control and management of education. The policy of combining education with evangelization had roused the suspicions of Indians, who were mostly Hindus and Muslims. The result was that 'a number of parents would let their children grow up in ignorance rather than run the risk of their being converted as a result of attending Mission Schools'.⁵ In British Guiana till 1926 there was not a single government school, while in 1938 out of 236 primary schools only 4 or 5 were government schools. All

4. *Servant of India*, 3 May 1928.

5. Pillai-Tiwari Report, p. 62, para 139

the rest were managed by Christian denominations. Nearly the whole expense of primary education, which for 178 schools in 1937 amounted to £75,018, was borne by general revenues. In 1936 Trinidad had 45 government and non-denominational schools as against 247 Church and Missionary schools, while Surinam had 43 government denominational schools as against 79 Christian denominational schools. In every one of these colonies all the recurrent expenditure of the primary schools and part of the non-recurring expenditure was contributed by the government from public funds, the Missions contributing buildings and management.

ESTATE INDIAN EDUCATION IN CEYLON AND MALAYA

While thus the racial and religious factors operated to the detriment of Indian education in South Africa, West Indies and Fiji, the economic factor was the leading note in the case of Indian education in Ceylon and Malaya. The planters who had shown some discrimination in favour of Indians in affording medical facilities had not paid even the least attention to Indian education. And this was for the reason that, while a healthy labourer is beneficial to an estate, an educated labourer is a nuisance! The estate Indian education deserved particular attention in view of the undertaking given to Indians by, and the statutory obligation cast on, the planters.

The Elementary Education Commission of 1905 in Ceylon first dealt with the question of education of estate children, and compelled the Superintendents of the estates to provide education for children between six and ten years. Ordinance VIII of 1907 made it compulsory for an estate to provide free education for children, but these provisions were not universally enforced. An Education Ordinance was passed in 1920 providing for compulsory elementary education to children. This Ordinance was promulgated only in January 1924, and the Section of the Ordinance relating to estate schools was not brought into force till 1925.⁶ This Ordinance was repealed by Ordinance No. XXXI of 1939 which came into force from 18 July 1941. Part VI of the new Ordinance dealt with education on estates, and mainly followed the provisions of the old Ordinance. Under Section 36, it was incumbent on the Superintendent of every estate with more than 25 children of the resident labourers to make provision for the education of the children between the ages of six and ten, and also to appoint competent teachers, and set apart and keep in repair a suitable school room. In 1946 the Government of Ceylon decided to give effect

6. Report of the Agent of the Government of India in Ceylon for 1925.

to the recommendation of the State Council that estate schools should be converted into primary state schools and should form part of the national system of free education. While the integration of the education of estate children into the general system of free education was welcome, the incidental expenses of boarding, travel, clothes, books, etc., were generally beyond the means of ordinary estate workers, even if there was no tuition fee. It was therefore decided in 1946 to establish the 'Ceylon Estate Workers Education Fund' with a view to promote the education and welfare of estate children. It was decided that, to begin with, a few scholarships should be awarded each year to enable them to pursue their studies at least up to the Senior School Certificate. Practical and technical education was also included in the scheme. The scheme, as formulated, was to be financed out of the interest on a general fund to be built up out of annual collections of subscriptions and donations from the general public. A Committee was formed, with the Indian Representative as the Chairman, to give effect to the scheme and donations amounting to Rs. 50,000 were collected in 1946. While the children of Indian estate workers would largely benefit by the scheme, no distinction would be made on grounds of nationality, race or creed in the award of scholarships. It was felt that the scheme would touch only a very small number of estate children but it might give impetus to education in general among the estate workers. The Education (Amendment) Ordinance XXVI of 1947 amending the Ordinance XXXI of 1939 provides for the establishment and maintenance of government schools on premises set apart on estates. It requires the Superintendent only to provide on rent suitable buildings for the school and a married head teacher as well as a playground and a garden for the school. The parents of children between 5 and 16 are required to send their children to school and the Superintendent is relieved of any obligation in the matter. No fee is charged for the education of the children in a government school or assisted school, and free meals, clothes and books are supplied to poor children attending the schools. In Malaya too, according to the Labour Code, the Controller of Labour had power to require any employer to establish a school in any place of employment where there were ten or more children between the ages of 7 and 14, and maintain it at his own expense with trained teachers.

In spite of these undertakings and statutory obligations, insufficiency of accommodation and facilities, and incompetence of the teaching staff continue to be the chief vitiating features. There are now no doubt more schools, but the quality of teachers appointed and consequently the instruction imparted by them are very un-

satisfactory. On the estates in Ceylon, the number of registered estate schools rose from 608 in September 1935 to 784 in September 1938 and to 820 in September 1939.⁷ But it appeared that the increase in some cases was due to the reopening of the schools closed during the days of depression as in 1935. The total number of registered estate schools at the end of September 1942 was 879 as compared with 859 at the end of September 1941. The number rose to 951 at the end of 1945 but fell to 926 at the end of 1946. In Malaya the number of vernacular schools on estates fell from 546 in 1927 to 395 in 1933, but rose to 565 in 1935 and 754 in 1938.

The position was rendered unsatisfactory mainly by the very poor quality of the teachers who were mostly 'untrained and unqualified men', so 'the quality of instruction cannot but be poor'. As most of the teachers were conductors or *ex-Kanganies*, writers of accounts and ledger-keepers on estates, they were necessarily part-time teachers. The fact that ledger-keepers were also day-school teachers sufficiently explained the inefficiency of such estate schools. The Rt. Hon'ble V. S. Srinivasa Sastri reported in 1937 that the teachers employed in Malaya were of an inferior quality.⁸ Next year the Malayan Controller of Labour also admitted that the principal problem was the training of suitable estate teachers.

The problem of trained teachers for estates was common to both Malaya and Ceylon. The Indian Agent in Malaya wrote in 1933 that if the estate schools were to be of real benefit to the labourers' children the best course would be to import trained teachers from South India, so long as there were no facilities for the training of vernacular teachers in Malaya.⁹ The Malayan Controller of Labour reported in 1938 that training classes had been instituted which showed good results. In April 1938 an officer of the Malayan Education Department assumed duty as Inspector of Indian Schools. He considered the possibilities of improvement and submitted certain proposals. But only a thorough overhauling of the existing schools under the personal supervision and management of Indian educational officers, who alone, for some time to come at least, would be in a position to understand the needs and difficulties of Indian children and their parents, is absolutely essential to render the system really beneficial. In Mauritius, there were 167 Indian teachers out of 406 in the government primary schools and 184 out of 862 in aided primary schools in

7. Report of the Agent of the Government of India in Ceylon for 1939, p. 19, para 46.

8. *Op. Cit.*, p. 10, para 13.

9. Report of the Indian Agent for the year 1933.

1940. The proportion was the same as in 1924. There was only one Indian inspector in that year in spite of the fact that over half of the children attending the primary schools and a very large proportion of the teachers were Indian. In 1942 a Training College for Teachers was established as one of the first steps towards reform in the education of the colony. The new Education Ordinance of 1944 provided that no teacher might in future be employed in any government or aided primary school until he had completed a course at the new Training College, unless he held such other professional qualifications as would satisfy the Director. In regard to East Africa, Mr. Ali Akbar Kazimi¹⁰ was deputed in 1948 to examine and report on the existing educational facilities as provided in government aided and unaided Indian schools in Kenya, to make recommendations for improvement and development and advise as to whether, without additional recurrent expenditure, the general administration and supervision of Indian education could be improved and whether any change in policy regarding the recruitment and training of teaching staff was desirable. He visited Uganda, Tanganyika and Zanzibar in addition to Kenya and found that the educational problems in all the territories were mostly similar and so what he says about Kenya applied equally to the other territories. He found that what was urgently needed was a more thorough inspection and helpful supervision of all branches of Indian education. A few more secondary schools were needed and the time had come for the government to take over more of the Indian public schools. The government schools needed extension and the courses of study broadening. Lastly, the teachers should be more fully qualified.

NON-ESTATE INDIAN EDUCATION IN MALAYA

The Malayan educational policy in regard to non-estate Indians was not satisfactory. Malaysians alone were provided with free primary education, and vernacular education was compulsory for them. The attitude of the government was clear from the fact that till 1938 at least there was not a single government Tamil school in the Straits Settlements, though the number of Indian labourers employed by government departments ran into several thousands. The semi-governmental departments had faithfully followed the footsteps of the government in this respect. While the Malayan Government conducted no vernacular schools for Indians, several such schools were

10. Ali Akbar Kazimi, *An Inquiry into Indian Education in East Africa*, 1948.

started for the Malays wherein teaching was done in Malay up to the fourth standard. In secondary schools all teaching was done in English, and the lack of facilities for English education barred the gates of secondary education to most of the Indian children. The admission of Indians even to government and aided English schools was very restricted, and was in practice limited to the children born in the country with a further limitation that Malay children should have preference. The position was the same in technical schools for the public works, posts and telegraphs, agricultural and railway departments in the Federated Malay States. From 1934, a further obstacle confronted the Indians in the almost prohibitive school fees. From that year the children who attended schools had to pay three dollars for primary education and subsequently six dollars in the junior and nine dollars in the senior. The lack of a sufficient number of primary and secondary schools for the whole population handicapped the Indians. Moreover, the nature of secondary education imparted therein was unsuited for Indian boys and girls in that it did not come to the standards required for the prosecution of higher studies in India. Further, facilities for higher education in Malaya were much restricted: there were but two colleges in Singapore. The absence of instruction in Indian vernaculars in Malayan schools constituted another handicap for the prosecution of higher education in India. In 1939 the Commission on Higher Education in Malaya, of which Sir William McLean was Chairman, recommended the amalgamation of the King Edward VII College of Medicine and Raffles College to form a University College. The Commission also recommended that Departments of Malay Studies, Chinese Studies and Tamil Studies should be set up. Accordingly the University of Malaya has been started in October 1949 incorporating the two colleges. Two and a half lakhs out of 6 lakhs of Indians are domiciled in Malaya and so the rich Indians should contribute substantially for its expenses. The Chettiars Chamber of Commerce contributed about Rs. 32,000 to the Malayan University Endowment Fund as a first instalment. Indians are realizing the necessity for self-reliance in educational facilities. The Indian Education Committee, Penang, awarded 20 Mahatma Gandhi Scholarships for 1949 to which all children of Indian descent studying in the higher standards of schools in Penang and Wellesley provinces are eligible.

FACTUAL POSITION OF INDIAN EDUCATION

In spite of increase in the number of schools, the number of children of school-going age attending schools was not gratifying.

The number of children attending estate schools in Ceylon had, no doubt, increased from 26,079 in 1930 to 43,963 in 1938 and 45,422 in 1939. Despite the general increase, out of the total number of children of school-going age on estates which was 77,215 and 79,214 in 1938 and 1939 respectively, the number of children who actually attended schools was only 43,963 and 45,422 respectively in the two years. Thus, the percentage of children of school-going age rose from 52.19 in 1935 to 56.99 in 1938 and only to 57.37 in 1939.¹¹ The total number of children of school-going age on estates during 1942 was 79,415 (of whom 45,190 were boys and 34,225 girls) against 82,861 (47,487 boys and 35,374 girls) in 1941. The total number of children who actually attended school during 1942 was 46,898 (31,792 boys and 15,106 girls) as against 49,542 (33,714 boys and 15,828 girls) in 1941. Thus the percentage of the number of children attending schools to the total number of children of school-going age had thus decreased from 59.79 in 1941 to 59.05 in 1942. The number in 1946 rose to 61,571 of whom only 46,640 actually attended school as against 46,253 in 1945. The percentage of school-going children who actually attended schools rose from 55.8 in 1945 to 57 in 1946. Thus there is no improvement at all in 1946 over 1939. In 1928 the Rt. Hon'ble Ormsby-Gore estimated that 42 p.c. of Indian children of school-going age in Malaya got vernacular education and only 15 p.c. of Indian boys got education in English schools.¹² According to the Report of the Protector of Immigrants, 1939, in Jamaica only 2,500 Indian children attended Government schools in 1937 as against 2,155 in 1936. Maharaj Singh reported¹³ in 1925 that in Mauritius the number of Indian boys and girls in the primary schools in 1923 was 16,398 out of 40,000 Indian children of school-going age or 51.8 p.c. of the total enrolment. As regards secondary education, the number of Indians in the Royal College was 160 out of a total of 397 though Indians numbered nearly 270,000, constituting 70 p.c. of the total population. This number fell to only 147 at both this College and Royal College School at Port Louis in 1940. Many of the aided secondary schools had been putting obstacles in the way of admission of Indian applicants. The denominational character of the schools and the compulsory religious instruction acted as deterrent factors. In 1908 the Indian children on the rolls in British Guiana were 4,362. In May 1925,

11. Report of the Indian Agent in Ceylon for 1939, para 47. (For details see p. 49, Appendix XIV.)

12. Report by the Rt. Hon. W. G. A. Ormsby-Gore, M.P., on his visit to Malaya, Ceylon and Java, p. 44.

13. *Op. Cit.*, Ch. III, para 13.

while 83 p. c. of Chinese children attended schools, only 39 p.c. of Indian children were at school for any length of time. The report of the Immigration Agent-General for British Guiana, 1932, shows that only 14,374 Indian children attended schools in that year. The number had since increased, but yet nearly 50 p. c. of the children of school-going age were still without education. In Trinidad though the Indian children on primary school rolls were in 1938 in the approximate proportion of their population ratio, the daily average attendance of Indians was only 60.5 p. c. of the roll strength against the comparable figure of 74.3 p.c. for other races. Tyson reported that, on the basis of the above figures, only about 50 p. c. of Indian children of school-going age was an average daily attendance in schools.¹⁴ The compulsory attendance area of Port-of-Spain was extended in 1942 eastwards to include six more localities. As recommended by the West India Royal Commission free text books were distributed in all schools. Free meals was being given to undernourished children in Port-of-Spain and San Fernando. Facilities had been provided for teaching the Hindi language in schools where there was an adequate number of East Indian scholars. On 10 January 1949, the University College of West Indies was formally launched. Students' travelling expenses between College and home are being paid for, and a system of extramural studies, with resident teachers in each colony, is being organized as an essential adjunct of the residential College. For the time being, the students, who may ultimately number 2,000 will work for the University of London examinations. The Fiji Education Report for 1935 stated that the number of Indian children at school showed an increase of about 500, from 5,000 to 5,500, which was shared by boys and girls in the proportion of three to two. In the 12 unassisted schools described in the Report as 'most inefficient' as a rule, 230 additional children (196 boys and 34 girls) were reading. Thus the total number of Indian children in receipt of instruction was only 5,800 out of a total school-going population of 12,500. According to Mayhew's figures of September 1936, the Indian children of the school-going age of 5 to 15 were more than the Fijian — 23,608 Indians as against 23,236 Fijians; and Indian boys of that age group were 12,277 as against 11,897 Fijians. But the pupils actually at schools in all kinds of schools numbered 15,209 among Fijians and only 5,501 among Indians, Indian pupils thus forming only a third of the Fijian. The disparity is greater if the number of Indian and Fijian girls at school is taken note of. As against 6,386 Fijian girls only

14. *Op. Cit.*, p. 67, para 71.

1,371 Indian girls out of a total of 11,431 were at school. The number of Indian children on the rolls of the schools throughout the colony for 1938 rose to 7,968 (5,643 boys and 2,325 girls). During the year ended 31 March 1942, the goal fixed by the Director of Education in 1928 to establish 100 Indian schools had almost been reached since the number of registered Indian schools totalled 88 as against a total of 230 European and Fijian schools. Education in the colony was under the control of a Board of Education consisting of eight members, two of whom were Indians. In South Africa out of the total Indian children of school-going age in 1936 about 20,000 were attending schools and for every Indian girl receiving education, two were going without it. The Protector of Immigrants in Natal reported in 1938 that only 23,251 of more than 105,000 Indian children attended government and government-aided schools, thus bringing the percentage to 21. The number of aided Indian schools rose from 102 in 1937 to 105 in 1938 and the number of female pupils from 26.7 p. c. in 1936 to 27.8 p. c. in 1937. The provincial government appointed an Education Commission in 1936. On the publication of its report in 1938, the provincial government appointed a Board of Survey in 1939 in order to suggest which of the Commission's recommendations could be adopted. The Indian Agent-General urged that, in order to accelerate the pace of Indian education, the provincial government should advance loans to school societies in addition to the usual grants-in-aid so as to reduce the delay in the construction of school buildings. He also suggested that facilities for secondary education, which were then available only in Durban and Pietermaritzburg, should be provided in North Natal; that text-books and school materials for Indian schools should be supplied from the government store instead of by private purchase as at present; that the practice of granting free mid-day meals to indigent children should be extended and that medical and dental inspection should be introduced in Indian schools. These suggestions received additional force as a result of the survey of government-aided Indian schools in Durban and the surrounding area by the acting Assistant Secretary which revealed that there was a serious lack of accommodation, most of the schools having long waiting lists; that the buildings themselves were frequently unsuitable; that the school equipment was grossly inadequate; that the children were generally undernourished; and that the system of charging fees bore heavily on the poorer parents.

The Natal Education Ordinance of 1942, however, provided for the first time free education for Indian children in government and government-aided schools up to standard VI. As regards univer-

sity education, during the same year a departmental committee, which was asked to inquire into the whole question of university and technical education for Indians in Natal, recommended

(i) that an Indian Technical College be established at Durban and adjoining it a science building for teaching the four pre-medical science subjects ; there was to be no University College at present as there was no prospect of adequate full-time students ;

(ii) these two buildings were to be erected on the ground offered by the Durban Municipality and that the costs be met by accepting the munificent gift of £17,500 by an Indian philanthropist on condition that this sum was added to by a £ for £ grant from the Union Government ; and

(iii) that the proposed Technical College be administered by a Council of its own but that the Natal University College be asked not only to continue and expand the University classes for non-European students at present held by it in certain arts, science and law subjects, but that it should accept the responsibility for the teaching of the four pre-medical sciences.

The establishment of the Technical College was, however, held up by the recommendation of the Durban City Council's Finance Committee that the grant of the site on which it was proposed to build the College be withdrawn to comply with the opposition to the proposal on the part of European residents in the Botanic Gardens area. The Indian High Commissioner had proposed another site nearby which it was hoped would be generally acceptable.

Since the war, the number of Indian children in secondary schools had doubled, with the result that in the Union only 1 in every 560 Indians was receiving higher education in 1947. On 1 August 1947, the Natal Indian Congress submitted a memorandum to the Administrator of Natal urging a five-year programme of education for about 25,000 Indian children in Natal not attending schools and for free education for Indian children up to the sixth standard. It also urged the recognition of the principle of equal treatment and pay as between Indian and European teachers. About 80 p. c. of the Indian children who entered a school never reached the level of fourth standard and so the memorandum urged that education to Indian children up to 16 years should be made compulsory. As only 26 of the 157 Indian schools in Natal were government schools, the government was requested to recognize its responsibility for providing further accommodation.

The Government building grants for Indian schools should be increased from one-third to three-fourths or four-fifths of the total cost. Nothing however came out of this approach.

The Transvaal Education Commission in its report in 1939 recommended compulsory education for Indian and Coloured children and the provision of a large and well-equipped secondary school in Johannesburg together with extended facilities for the training of Coloured teachers and for vocational and technical training and that promising pupils should be assisted by way of bursaries to take up the teaching profession. In 1940 the Agent-General urged that the Provincial Administrator should accept the principle of compulsory education and subsequently consider the means of giving it practical effect.

Regarding the actual progress made, in 1940 standards VII and VIII had been established in temporary buildings at the Johannesburg Indian school until such time as the building for the secondary school was ready. The provincial Education Department also agreed to the establishment of a secondary school for Indians in Johannesburg. In 1942 the authorities sanctioned the opening of standard IX classes at the above school. Rapid progress was made in this school as was evident from the fact that while standard VII was opened in 1940 with an enrolment of seven pupils, the numbers in June 1940 were 46 in standard VII, 38 in standard VIII and 7 in standard IX. Arrangements were also made to accommodate standard X, thus facilitating Indian children to matriculate for the first time from an exclusively Indian school. In respect of medical education till 1940, in both the Capetown and Witwatersrand Universities Indians were admitted as internal students. But, owing to the denial of clinical facilities by the hospital authorities they could study for only two years and had to get to Europe or India for hospital training. In 1941, a limited number of Indians and other non-Europeans were afforded clinical facilities. Next year, however, the Witwatersrand University had to limit the number of students entering its pre-medical course. While they turned away about 70 Europeans on account of inferior academic qualifications, they rejected all the 12 Indian applicants and advised them to go to Fort Hare, the Native College, for the first year of pre-medical study. But these Indians were informed by the Native College that they could not be admitted there either owing to lack of adequate accommodation. Subsequently, the Witwatersrand University reconsidered the whole matter and decided to admit one Indian student who particularly

distinguished himself in the matriculation examination and that Fort Hare was to take six others whose records were such that had they been Europeans, they would have qualified for admission to the pre-medical year at the Witwatersrand University. Fort Hare agreed to the proposal. It was also understood that any limitation of members that might become necessary in the second medical year would be carried out solely on academic grounds even as the entrants to the first year would be selected solely on grounds of merit. In regard to girls' education, the Johannesburg Municipality had promised a site for an Indian Girls' School, but the conditions attached to the transfer of the site to the Provincial Administration gave rise to certain difficulties. In regard to the Cape Province, the demand for a separate Indian school for the Indian community in Port Elizabeth and recognition by the Education Department by way of grant-in-aid was granted in 1940.

The above figures show that in all the countries on an average 50 p.c. of Indian children were growing up without schooling. Indian students in Fiji are confronted with a minor handicap in respect of language. The Senate of the University of New Zealand reaffirmed in August 1949 its long-standing general policy that Indian students in Fiji who take Hindi might not credit it as a foreign language unit towards the New Zealand University entrance examination. The Senate never accepted Hindi from Indian students of Fiji although it accepted it from Indian students of India. For the Senate considered Fiji well placed as a British possession for all students there to take the entrance examination which excludes Hindi from the choice of foreign languages. As there have been very few requests from Indian students of Fiji, many of whom were extramural students attached to the Auckland University College, to take Hindi, it is felt that the Senate's decision might be considered as merely a formal one. Besides the Senate is ready to accord recognition for University purposes of a certificate including Hindi and no other foreign language unit as equivalent of the New Zealand School Certificate. This allows students to sit for the New Zealand University Entrance Examination in only three subjects. Indian students in New Zealand mainly study agriculture and law.

In Ceylon the system of State education, free education from the primary class to the University, is now open to all able to profit by it. In Madagascar Indian children were not being admitted in French schools, thus forcing them to terminate their education at the primary stages as there were no Indian schools for higher education.

NECESSITY FOR STATE CONTROL AND MANAGEMENT

The necessity for the State control and management of educational institutions in the West Indies had been emphasized by almost every Commission that investigated into the educational question. According to them, there was no justification for the continuance of the present policy of Government-financed Christian Missionary education either on grounds of historical circumstances, efficiency, economy or other principles of public administration. In fact, it would seem that efficiency had suffered due to denominational rivalry and pirating for students by the various Christian churches—the Roman Catholic, Anglican, Wesleyan, Presbyterian, Baptist and Moravian.

The Education Commission of 1924-25 in British Guiana severely condemned the inevitable inefficiency of denominational schools and advocated their replacement by government and secular schools. The Mayhew-Marriot Commission deplored the inefficiency of the denominational system in Trinidad. In the two reports submitted about the schools in George Town to the Pillai-Tiwari-Keatinge Deputation, Dr. Rose stated that the instruction was poor. The Deputation itself reported: 'We should like to state our opinion that what Dr. Rose says of the school of George Town is equally true for all intents and purposes of the schools in different parts of the colony.'¹⁵ The position was worse on the estate schools. The Royal Commission of 1871 stated: 'Wherever we had the opportunity of inspecting the schools upon estates, we did so with the result of finding the education of the coolie children, and even their attendance, to be rather a thing desired than effected.'¹⁶ The Pillai-Tiwari Deputation stated that this opinion about 1871 was equally true of 1923.

The management obliged the teachers to undertake evangelistic work and that too without additional remuneration. In promotions the evangelistic work and success had been taken into account by Christian minister-managers who were not generally educationists. Consequently, the teachers had themselves plumped for State control of education. E. F. L. Wood (now Lord Halifax) reported in 1922 that in Jamaica the teachers had submitted that the denominational system was proving unsatisfactory in several particulars, chiefly by comparison with government schools and that denominational schools were generally ill-built, insanitary and ill-equipped.¹⁷ Similarly, the teachers of British Guiana complained to Wood

15. Pillai-Tiwari Report, p. 64, para 142.

16. *Ibid.*, para 142, quoting.

17. *Cmd.* 1679 of 1922, p. 65.

about the employment as sub-inspectors of part-time denominational officers (clergy) who had no educational experience. The Mayhew-Marriot Commission had also recorded that the teaching profession in Trinidad consisting almost entirely of Christians, had unanimously preferred and pleaded for government schools as against church-controlled schools.

Further, missionary control did not also seem to commend itself from the financial point of view. In 1926, £336,300 out of £353,937 was swallowed by grants to church-controlled primary schools. The Mayhew-Marriot Commission had admitted that the financial contributions made by churches towards education had amounted to very little, hardly worth speaking about, on the whole. And these small contributions were nothing compared to the large ecclesiastical grants made to churches from public funds. In Trinidad the ecclesiastical grants amounted to \$50,880 per annum in 1935. In British Guiana part of the annual grants was commuted in 1920 for a lump sum which amounted to \$639,410 and this amount was apportioned among seven Christian denominations. The balance of the annual grant amounted to \$32,602 in 1926 and \$17,832 in 1934. The Bishop of British Guiana was receiving (at any rate up to 1936) a special grant earmarked for missionary work among Indians. These ecclesiastical grants to Christian churches from public funds to which non-Christians had also contributed were in principle wrong. The wrong is reprehensible because such grants were made for the proselytizing purposes of the former to the detriment of the latter.

The question arises why, when the government was necessarily to spend the money, they should make a present of it to Christian churches instead of spending it themselves. Moreover, the absence of even benevolent neutrality on the part of the State in respect of the religious affairs of its subjects violates the progressive ideals of a modern secular State. And such an attitude in the realm of education was all the more regrettable. The argument might be advanced that non-Christians were free to take full advantage of the Conscience Clause in the educational law. But the argument is untenable, for the provision was available also to the members of Christian denominations with respect to schools conducted by other non-Christian denominations. And competent authorities were agreed that in practice the Conscience Clause was hardly availed of even by Christians, much less by non-Christians. Christian parents who shrank from availing themselves of the Conscience Clause would however send their children to their own denominational schools even at a sacrifice if such be available. Non-Christian parents solicitous of their children's education would

hesitate greatly before invoking the Conscience Clause. It was also argued that non-Christians should start their own schools and receive government assistance on a par with Christian schools. This argument is dangerous, for the recognition of further denominations will only aggravate the evil. To multiply the evil is certainly not to cure it.

The Mayhew-Marriot Commission proposed that for the purpose of recognition and assistance by government, a single Board of Management for all Indian schools should be constituted. This, says Tyson, was in fact done by Section 18 of Ordinance XXVIII of 1933. He rightly stated: 'It is not obvious why East Indians who number in their ranks adherents of religions as diverse as Hinduism, Islam, Buddhism, and Zoroastrianism, should be lumped together for this purpose, when each individual Christian denomination is recognized as a separate unit for the same purpose'.¹⁸

The above Commission has also recommended that if in an area there were several competing denominational schools, they should be replaced by consolidated schools which should be handed over to that denomination which had the majority of pupils. But in Trinidad even though a great majority of pupils were non-Christians, an attempt to start a Hindu-Muslim school in that area was resisted by the Christian Mission on the ground that it was the first in the field.

The Royal Commission of 1871 advised the Missionaries to give up their attempts at evangelization through schools and leave the educational field to the schoolmasters. As was pointed out by a Commission in 1905, there is something anomalous in a system under which funds raised by taxation were used to support the movement to change the religion of the taxed. Tyson had also condemned the system. The Indian feeling on the question was very strong, and the apprehensions expressed to the Mayhew-Marriot Commission by the Board of Management of one of the leading denominations that non-Christian schools were taking pupils from the schools of the Mission would afford an illustration and recognition of the strength of the Indian feeling on the subject. It is better for the State to recognize that the population is not homogeneous from a religious point of view, that it has equal obligations to all religions, and that the best policy is to keep itself strictly neutral in matters of religion, and take upon itself the responsibility of providing compulsory primary secular education to all pupils under its jurisdiction, leaving it to the different religions to provide, at their own expense, religious education to the pupils of their respective denominations.

18. *Op. Cit.*, para 75.
I. 21

A policy of developing a State-controlled secular system of education in the place of the present Christian denominational monopoly was essential. But if it is argued that the Christian minister was *ipso facto* a competent educationist, the Department of Education should be made over to the church altogether, and the posts of Bishop and Director of Education amalgamated and thus economy secured. In the absence of any such claim, the government should in accordance with the modern tendency increase its control through its secular education department over the church management of the schools. This might be begun with the government renting the buildings now owned by the churches and the estates as that would also cost little, and with extending the educational grants to include the non-Christian religions and denominations even as ecclesiastical demands had been extended in 1902 from the Roman Catholic, Anglican and Wesleyan Churches to the Presbyterian, Baptist and Moravian. Here again, there was a difficulty. In Trinidad, the Government which recognized Islam in regard to Muslim marriages did not feel obliged to recognize the same religion for purposes of ecclesiastical grants. The Government should give up this hostile attitude to Indian education. The Royal Commission recommended (Recommendation 7 (1)) : 'In schools at present managed by the denominations, if salaries are paid by the Government, complete control in staff matters should be assumed by Government; and new schools provided wholly from public funds should be in all respects administered by Government. The existing facilities for religious instruction in Government schools should be maintained'. In accordance with the recommendations of the West India Royal Commission 1939, an Educational Development Committee of representatives of all sections of the community was appointed.¹⁹ It has been co-ordinating the recommendations of the Educational Adviser on education in British Guiana. The Secretary of State for the Colonies stated in 1946 that the question was under the consideration of a sub-committee of the Educational Development Committee and it was hoped that an agreed policy in regard to control of teachers and to ownership of new schools and of planned school extension would soon be reached.

REMEDIES

Estate Indian education, particularly in Malaya, should no longer be left to planters or other private individuals but should be undertaken by the Government itself. The present estate schools

19. West India Royal Commission 1938-39; Statement of Action taken on the Recommendations (1946) Cmd. 6656, p. 25.

should be taken over by the government instead of government making grants to them. As labour was imported for their benefit, the employers of Indian labour might be required to provide buildings, playgrounds and furniture, or a cess may be levied on the employers to recover the cost of education either partially or wholly according to the exigencies of government finance. All the schools must be under the direct charge of the Educational Departments of the colonial governments and the teachers must be government employees. The Indian educational system should be put in the charge of a qualified Indian officer whose services might be lent by the Government of Madras. In Malaya, government schools must be established with provision for instruction in Indian languages on a population basis in both urban and rural parts in the same way as the government was doing for Malayans up to the fourth standard. Indian children from these feeder schools should be admitted in the English schools beginning with fifth standard. By way of special preparatory courses, all the children should be coached up to the standard of English required for the fifth standard. Such government schools may be supplemented by generous assistance to aided schools. Education should be made compulsory in case of all Indian children between 6 and 16 years and accordingly the present age limit of 6 and 10 in Ceylon and 7 and 14 in Malaya should be raised. Also, the children of school-going age should be prevented from being engaged to do any manual work on the estates. All school fees, books, and other school requisites for boys and girls should be provided out of estate funds. The joint funds of the estates and Indian Immigration Fund should be partly utilized to institute some scholarships to facilitate promising boys and girls to continue their studies in secondary schools and colleges. A portion of the Estate Toddy Fund might be appropriated for this purpose. And this could not be objected to when the Controller could sanction a large sum of money from the Toddy Shop Funds for such purposes as erecting a wire fence round a replanted area in Negri Sembilan. In the meanwhile, the system which was in vogue in Malay schools should be adopted. The government should also institute a substantial number of scholarships of sufficient value to be available to deserving Indian students to prosecute higher education. There should also be no discrimination in the admission of Indian children to existing educational opportunities. Greater facilities should be provided for the prosecution of higher and technical education. In Ceylon, the proposal for imparting vocational education in estate schools was suggested even in 1929 and it still remained to be implemented. The government should take up the question as soon as possible.

As regards the teaching staff, it was desirable to place the estate schools in charge of women instructors duly qualified, for they would be in a better position to understand and sympathize with the poor Indian children and bring to bear on their duties their inherent qualities of motherly affection. A time-limit must be fixed, after which only trained teachers might be employed in the schools. Such teachers must be made available by creating a machinery for entertaining teachers trained in India or for training teachers locally. Surprise visits by the Indian Agent and the Controller of Labour would be helpful in obtaining a correct census of the children of school-going age in estate schools. These schools, if run on lines suggested above, would serve not only as day-schools for children but as night-classes for adult labourers to impart knowledge connected with their daily work. Many of the above suggestions would apply equally to schools that might be established in towns for the children of urban labourers employed in government departments, municipalities and railways.

As regards South Africa, the recommendations of the Commission appointed in 1938 by the Natal Administration should be implemented. This Commission recommended the expansion of education through the establishment of separate girls' schools and employment of Indian women teachers therein, improvements in salary scales and other conditions of service to make the teaching profession attractive to women candidates and the renovation and reconstruction of school buildings. They also recommended the fixation of the same salaries to teachers in both government-aided schools and in government schools, the abolition of the posting system, the appointment of Indian teachers according to qualifications and the introduction of compulsory and free education in suitable districts. They held that in rural and suburban schools, the curriculum should be given an agricultural bias and that a hostel should be provided for the Sastri College, that health and social services should be extended to Indian schools and that the Union Government should be requested to increase subsidies to Indian education. It was essential that the fees should be abolished in the primary stage and a more liberal grant-in-aid policy should be adopted.

In Fiji, the Government should implement the Mayhew recommendations on the introduction of compulsory education, provision for technical and vocational training and establishment of intermediate and secondary schools and removal of the restriction of scholarships for higher education to European children and their extension to Indian children. A prescribed percentage of Indian children should, as in India, be admitted to the European

Grammar Schools and efforts should be made to get trained women teachers from India. The training of more Indian medical students is very essential and adequate provision should be made to give Indian boys and girls higher education outside Fiji.

In all these countries, besides compulsory primary and elementary education, technical, secondary and university education should be made available for Indian students. It is only when Indians attain educational equality that they could hope to achieve social and political equality. Hence constant and concerted efforts should be made to secure the necessary educational facilities for Indian children. The colonial governments will be discharging their bare duty in assisting Indians in their educational advancement.

CHAPTER VI

WAR-TIME PROBLEMS

Any account of Indians overseas cannot be complete without reference to their plight in South-East Asian countries as a result of Japanese invasion and occupation for three and a half years, necessitating a certain amount of evacuation to India. It is proposed to give a brief outline in this chapter of their hazardous evacuation to India, the relief measures of the Government of India, assistance rendered to the Indians stranded in Japanese-occupied countries, both during occupation and after British re-occupation, and their heroic bid for Indian Independence.

In order to afford any possible protection and assistance to Indians in Burma, the Indian Agency was maintained even when large parts of the country were occupied by the Japanese. As a result of the heavy air raids on Rangoon from 23 to 25 December 1941, a large exodus of Indians began. By 1 September 1942, about 5 lakhs of Indians were evacuated by all routes, particular attention being paid to the evacuation of women, children and sick and elderly persons by sea.

Before the fall of Rangoon, 75 to 80 thousand Indians were evacuated to India by sea, through the utilization of even military transport.

While evacuation by air was organized entirely by the Government of Burma, the Indian Government extended help by chartering some aircraft and by urging that Indians should be afforded equal facilities with Europeans. By March, 1942, about 11,000 were evacuated by air, of whom the Indians were 4,025.

Indians also used the land routes from Arakan into Bengal and from Upper Burma into Siam. The paucity of water, food, shelter and medical facilities along the routes, besides the hills and jungles with which the route was infested, made the journey strenuous and perilous. Evacuees using the first route had to reach Chittagong on foot, involving a trek of nearly 100 miles through mountains and jungles, where food and water were rare, or by sea. The area proved inaccessible to motor transport; there was no time for making the necessary and adequate arrangements. A medical party was, however, despatched from Madras to Taungup. Sea transport was provided to clear the arrivals at Akyab, Kyaukpyn and Taungup. It was estimated at the end of

March 1942 that about two lakh evacuees, including those from the Arakan, had reached Chittagong by this route.

The Burma Refugee Organization established in March 1942 with Major-General Wood as Administrator-General facilitated the development of the second series of routes on the Assam border and the creation of camps with necessary transport arrangements. At the Burma end, the Government of Burma undertook the arrangements. From Taum, which was the focal point for the routes along the Chindwin valley, to Palel, the refugees did the hill journey of 36 miles on foot. To meet the large inflow of refugees, a slightly longer route through Mintha, Heirok, and Wangking was also opened. Lorries and buses were used to cover the journey of 133 miles from Palel and Wangjang to Imphal and from Imphal to Dimapur, while the journey beyond Dimapur was done by railway. Motor transport and portorage and railway tickets for those without means were provided free, in addition to feeding and camping and medical facilities. Up to 1 September 1942, 220,000 refugees reached Assam by these routes. The official estimate of the casualties on these routes was about two p. c.

BURMA REFUGEE ORGANIZATION (ASSAM)

Major-General Wood was also entrusted with the task of establishing a Refugee Organization in Assam to cope with the influx of refugees seeking to reach India by land routes leading to the borders of Assam. A large number of evacuees sought to cut a trail to the north-eastern reaches of Assam from a little village, Shingbwiayang, in the Hukaung valley. Thousands of refugees reached Magwe, Shwebo and Myitkyina in the hope of securing evacuation by air but were stranded due to its sudden stoppage between 9 April and 5 May 1942. The bombing of Myitkyina on 6 May necessitated the trooping of large numbers to reach the Hukaung valley in the hope of finding a way to Ledo in Assam. From Myitkyina it was some 200 miles by one route and some 150 miles by another to Mainghkwan, the first landmark on this route. It was again some 48 miles with ferry crossings from Mainghkwan to Shingbwiayang and some 130 miles from Shingbwiayang to Tipang, the railroad near Ledo. The route was littered with numerous climbs and descents of 3,000 to 4,000 ft. interspersed by hill torrents to be crossed. Nineteen thousand one hundred and fifty Indians between 18 May and 26 September and some 1,500 during the post-monsoon period were brought safely to India across this route through the heroic endeavours of the rescue authorities and the Royal Air Force which dropped the foodstuffs

and other supplies under inordinately hazardous flying conditions. Nevertheless, Shingbuiyang became notorious by the heavy toll of life it had taken. During the six months ending June 1943, the organization dealt with only 1,100 evacuees including those who were evacuated from China by air. During the post-monsoon period very few refugees came in. Hence in February 1944, it was decided to continue the organization on a 'care and maintenance basis'. But the military developments on the Assam-Burma border in March-April 1944 created fresh problems for the organization.

Till 14 July 1942 Major-General Wood directed the operations of the Refugee Organization. The Hon. Mr. Justice Braund succeeded him when the Government of Assam took over the control of the Organization thereafter. From 7 September, the Government of India assumed direct administration of the Organization and made arrangements for the reception, care and dispersal of such Indians who still attempted to reach India by the land route.

A Civilian Refugee Organization (Bengal) under the control of the Department of Indians Overseas was established in November 1942 for the reception and care of Arakanese Muslims and other refugees from Arakan. By June 1943, some 23,000 refugees reached Bengal.

With the spread of Japanese invasion in 1941-42, 4,500 Indians evacuated from Malaya to India in March 1942. It was alleged on the eve of the fall of Penang that all the Europeans resident there with the exception of one or two had evacuated while no Indian or other Asian was allowed to leave the town. To afford relief to Indians stranded there, bulk supplies of foodstuffs, medical drugs and clothing were sent through the agency of the Red Cross to Singapore and Hongkong in the diplomatic exchange ships.

The Indian Acting Agent in Kuala Lumpur, Malaya, was cut off from communication with the Indian Government who then appointed Mr. S. C. Goho, the Acting President of the Central Indian Association of Malaya, who was then on the Indian Committee formed to issue passages to Indian evacuees, as their Agent.

ASSISTANCE TO EVACUEES AND DEPENDANTS OF INDIANS STRANDED IN JAPANESE-OCCUPIED TERRITORIES

Before the influx of Indian evacuees from Malaya and Burma, the problem of such assistance was confined to a few Indians evacuated from Aden, Somaliland and Eritrea. The Home Ministry issued a letter dated 26 July 1941 setting forth the terms of assistance which included payment of repayable advances at rates

usually not exceeding Rs. 15, 25 and 6 per month for a single adult, a couple and a child respectively belonging to the artisan class and at rates not exceeding Rs. 20, 35 and 6 for those belonging to a better class. When the influx of refugees increased, the Indians Overseas Department assumed charge of their welfare and extended the above allowances to all evacuees of Indian origin from any war zone. Later, the Department sanctioned the grant of similar allowances to dependants in India of Indians stranded in Japanese-occupied areas. In regard to the necessary funds advanced for railway tickets to reach their homes, the Provincial Governments were given the discretion to dispense with the stipulation for the undertaking to repay in case the number of evacuees to be dealt with proved considerable. The Provincial Governments were also empowered to grant essential out-of-pocket expenses for journeys involving travel over six hours. Subsequently the scales of allowances granted to evacuees and dependants were revised to relate them to the varying needs of the different classes of evacuees as judged from their pre-evacuation incomes. With effect from 1 July 1942, a new scheme was sanctioned applicable to all evacuees without distinction of race and entirely based on their pre-evacuation status. The principle of repayment was retained, thus granting allowances only on undertakings to repay. District authorities to whom applications for relief should be made were, under delegation from the Provincial Governments, empowered to determine the rate of allowance suitable in individual cases. The Government of India assumed the financial responsibility for the scheme for the Indians and Anglo-Indians. The following maximum scales were prescribed for the guidance of the provincial authorities :—

Estimated Normal income or remit- tance	Single adult earner or remittance receiver	With wife or adult dependant	Child
Rs.	Rs.	Rs.	Rs.
0- 50	15	25	5
51-150	30	50	8
151-400	60	100	12
401-750	100	170	16
Over-750	150	250	20

These scales were subject to the condition that the allowance in the case of any group dependent upon one earner or remit-

tance receiver should not exceed either 75 p.c. of the normal income or remittance or Rs. 350 per mensem, whichever was less. Allowances to children were subject to proof that they were attending school. In order to avoid the development of a dole mentality, each case was subject to monthly review to ascertain if any attempt had been made by the recipient to find employment. During the year 1942-43 nearly 50,000 evacuees and dependants received relief amounting to nearly Rs. 70 lakhs.

In 1943, hardships and anomalies in certain cases were discovered in the above five scales of financial assistance. Hence the scales were increased to twelve. In addition to maintenance allowances, the Government granted allowances for the education of children not exceeding Rs. 10|- per mensem in the cases of children attending vernacular schools and not exceeding Rs. 20|- per mensem in the cases of children attending English schools. Special allowances were also sanctioned to meet expenditure on real and special needs as provision of medical treatment, purchase of clothing, etc. To assist the evacuees to start some business or trade, a scheme of capital advances was also instituted in substitution for monthly maintenance allowances. It was estimated that during the year ending 31 March 1944, nearly 50,000 evacuees and dependants received relief to the extent of about Rs. 90 lakhs. In 1944, the rates of maintenance allowances were increased in the cases of persons whose pre-evacuation income was Rs. 200 per mensem or less. Special allowances were also sanctioned for funerals and journeys in connexion with interviews for Government employment. It was estimated that during the year 1944 about 100,000 evacuees had received assistance to the tune of about Rs. 195 lakhs.

In 1942, a special fund called the Indians Overseas Evacuation Relief Fund was instituted under the control of the Indians Overseas Department to extend help to non-official organizations engaged in relief work to evacuees.

EMPLOYMENT FACILITIES FOR EVACUEES

Unskilled workers were provided in new camps, aerodrome and road constructions. Some Provincial Governments also opened in certain areas building and relief works. There was large demand for skilled workers who were invited to register with National Service Labour Tribunals to find employment for them in industry. In regard to other workers, the Provincial Governments were asked to register applications from them and put them into touch with possible employers. Evacuees were also declared

eligible for government employment. Government servants from Burma, Malaya and the Far East were permitted by the respective Governments to take up temporary employment under Governments in India.

In June 1942, the Government of India suggested to the provincial governments that in making appointments, Indian evacuees should be given preference over non-Indians. In 1943, a Central Employment Bureau was also established at the Centre and it did some useful work in securing employment for a number of evacuees.

In order to impress on the evacuees the need for every effort to fend for themselves, the Government of India appointed Refugee Officers to the four zones comprising Northern, Southern, Eastern and Western India. Their chief function was to maintain constant contact with the evacuees and their dependants in their respective zones and maintain liaison with the provincial authorities. They were required to collaborate in all official and non-official ameliorative work and bring to the notice of the evacuees all avenues of employment and put them into touch with prospective employers, employment registry agencies, National Service Labour Tribunals, army recruiting authorities etc. They also helped the evacuees in addressing the proper authorities for their outstanding claims. As a bulk of the refugees in India were from Burma, the Government of Burma also appointed their own Evacuee Welfare Officers to the four zones. The Government also appointed two Assistant Refugee Officers in each of the Eastern and Southern zones and one Assistant Refugee Officer in the Northern zone, mainly in connexion with the work relating to the employment of evacuees. In 1944 Additional Assistant Refugee Officers were appointed and located in the areas where evacuees resided in large numbers. The object of their appointment was to intensify the efforts to absorb the evacuees into the economic life of the country.

SETTLEMENT OF ARREARS OF PAY, PENSION ETC.

MALAYA

In order to secure the prompt settlement of claims of pay, leave salaries, provident funds etc. of government servants evacuated to India and the grant of family allowances to dependants in India of government employees stranded in Malaya, the Government of India suggested to His Majesty's Government that a Malayan Representative be appointed in India to deal promptly with such claims. Accordingly, the Colonial Office appointed

W. J. K. Stark, Malayan Emigration Commissioner, for the purpose with headquarters at Bangalore and a branch office in Bombay.

BURMA

Similarly when due to dislocation of communications a large number of claims began to be addressed to the Indian Government in respect of arrears of pay, leave salaries, pensions etc., the Indian Government addressed the Burma Government who authorized Lieut.-Col. R. R. Ewing of the Burma Civil Service to deal with the claims and sanction such urgent financial assistance as might be necessary to the evacuee government servants from Burma. When the Government of Burma was later established at Simla, they dealt with such claims.

The Burma Government began to function at Simla in May 1942. Yet it was felt that it would take time before the arrears of salary due to Government employees arriving in India or family allowances to dependants of employees detained in Burma could be settled. Hence, with the concurrence of the Government of Burma, the provincial governments were authorized to afford necessary immediate financial assistance on behalf of the Burma Government. Burma Government employees, except those whose services continued to be utilized in their offices in India, had been placed on 'surplus leave' conditions, under which they had been granted leave on full average pay followed by eight months leave on half average pay. The scheme was revised again in 1943.

In regard to the payment of monies standing to the credit of evacuees from Malaya and Burma in the post offices therein, the Government of India arranged for the closure of these accounts at post offices in India. Postal Cash Certificates issued in Burma after its separation from India had also been made payable in India. Evacuees from these countries were also exempted from customs duty on personal baggage and moratorium of income tax on assets left behind in those countries.

HONGKONG

The cases of a number of dependants in India of Indian employees of the Hongkong police were also taken to the notice of the Indian Government who took up the matter with the Colonial Office. The Colonial Office agreed to necessary payments being made by the Indian Government at rates equivalent to 50 p. c. of the pay of the concerned Indian employees. The Indian Government also settled the claims of the other employees of the Hongkong Government in India in consultation with the Colonial Office.

In regard to the employees on leave in India, three months notices of retirement were given to employees on the pensionable establishment and arrangements were made with the provincial governments and Residents of states concerned to pay the arrears of salary and salary for the period of notice. The Hongkong employees were also permitted to take up both temporary and permanent employment in India. Such of those employees as had joined the Armed Forces were not retired from Hongkong Government service and were entitled not only to count the period of service in the Armed Forces as 'duty' on the post held in Hongkong but also to receive the difference between the pay in Hongkong and that in India, if the latter was below that of the former.

Indian evacuees who were in Shanghai Municipal Service and others who were dependants in India, brought to the notice of the Indian Government their claims for arrears of pay and continuance of pension and family allowances. The claims had to be held over for settlement till after the war, as His Majesty's Government held no funds of the Shanghai authorities. The persons concerned were asked to contact the provincial governments for necessary financial assistance under the scheme of relief sanctioned by the Indian Government.

Many Indians in the Constabulary of British North Borneo requested the Indian Government to continue their pensions which were in arrears since the outbreak of the war in the Far East. The Government of India obtained a list of pensioners in India from His Majesty's Government and instructed the provincial authorities to continue the pensions and settlement of the arrears. In regard to a few employees on leave in India, their claims too had been settled in consultation with His Majesty's Government. Similarly the claims for salary, etc., of Indian employees of the Sarawak Government were settled by payment of arrears of salary and payment of three months' salary in lieu of notice and gratuity based on the length of service in Sarawak. The payment of family allowances to the dependants in India of British North Borneo and Sarawak employees stranded in enemy-occupied territories was also settled on the basis of the procedure adopted in the case of Hongkong.

EDUCATIONAL FACILITIES FOR EVACUEE STUDENTS

The Government of India requested all the universities and provincial governments to afford evacuee students special facilities, and to recognize the period spent by the evacuee students in schools and colleges in Malaya and Burma for the purpose of continuing

their studies in India. The universities also waived their language condition, as a special case. There was difficulty in securing admission to the medical, engineering and other professional colleges. The Government of India took up individual cases with the provincial governments and the universities concerned through the Educational Commissioner and the Director-General of Indian Medical Services. As a result, some of the students secured admission.

The scheme of maintenance allowances made no provision for the higher expenses involved in university education. The Indian Government, therefore, in consultation with the Burma Government, framed a scheme to assist evacuee university students. The scheme was to be in force for five years beginning from the academic year 1942-43. It was meant to be a measure of evacuee relief and not a system of scholarships granted for distinction in studies. The scheme covered only those students who were (a) either themselves evacuees from Burma, Malaya or other enemy-occupied territories or were dependants of parents or guardians who were such evacuees or who were now stranded in enemy-occupied territories; and (b) those already in university classes or in technical institutions or those who having passed their school final stage had become eligible to join university not later than January 1943. There was no stipulation for repayment of the allowances. The grants sanctioned under the scheme to 273 and 430 evacuee students for the academic years 1942-43 and 1943-44 amounted to Rs. 73,247-7-0 and Rs. 1,62,991-9-4 respectively. Between 1 June 1944 and 31 March 1945, the financial assistance sanctioned to help the students amounted to Rs. 1,19,957-13-0.

To help the students who, because they had to evacuate to India, were unable to sit and pass their matriculation or university examinations in March or April 1942, the Government of Burma and the University of Rangoon, in consultation with the Government of India, held the Burma High School Final and the Intermediate, B.A. and B.Sc. examinations in August 1942. Five hundred and twenty students took advantage of the examinations. A supplementary examination was also held in January 1943 to mitigate the hardship caused to those students who by reason of their late arrival in India or from fatigue following the hazardous evacuation journey were unable to sit for the examinations in August 1942.

In 1944, with the concurrence of the provincial governments, the central government formulated a scheme for long-term maintenance of refugee orphans in India of British Indian parentage. The scheme provided for the maintenance, care and education of refugee orphans till they attained majority and for safeguarding their interests.

ASSISTANCE TO INDIANS STRANDED IN
ENEMY-OCCUPIED COUNTRIES

On the refusal of the Japanese Government to recognize the appointment of a protecting power in the territories of the United Nations under Japanese occupation, the Swiss authorities began to look after the Indian and British interests therein. The Japanese Government agreed to neutral secretaries of the Y.M.C.A. world organizations rendering help to the civilian internees and prisoners of war in occupied territories. Postal communications with these people were also later made possible. In the middle of 1943, the Indian Government contributed £1,500 sterling to the International Red Cross Committee for services to Indians stranded in Japanese-occupied territories, whether prisoners of war, internees or free.

In Shanghai arrangements had been made to extend through Switzerland, the Protecting Power, monetary assistance up to £10 per head per month to all British subjects in indigent condition, against undertaking, wherever felt necessary, to repay.

Indians in Indo-China were not disturbed and no restrictions were placed on their movement.

During 1943, large numbers of estate Indian workers in Malaya were compulsorily recruited by the Japanese and sent to Siam to work on the notorious Siam-Burma 'Death Railway'. Out of a total of 73,502 labourers of all races taken from Malaya for work on the railway, it was estimated that 62,475 or 85 p.c. were South Indians. Of these, it was estimated that 20,825 died in Siam.

ARRANGEMENTS MADE TO OBTAIN INFORMATION ABOUT INDIANS
IN JAPANESE-OCCUPIED TERRITORIES

The Red Cross had its delegates in Tokyo, Shanghai and Hongkong and so information about stranded Indians was got through the Red Cross. As Switzerland was Protecting Power for Indian interests in Japan, Japanese-occupied China, French Indo-China and Siam, information about Indians in those territories was secured through Switzerland. The absence of a Red Cross delegate and a Protecting Power in Singapore, Malaya, the East Indies and Burma resulted in lack of information about Indians in these territories. In regard to Indians in Burma Government employment some information was secured by addressing the concerned Departments of the Burma Government established in Simla. But no information could be obtained in regard to non-Government employees. Arrangements were made for the All-India Radio to broadcast messages from the relatives of persons stranded in Malaya and Burma.

REPATRIATION OF INDIANS FROM ENEMY-OCCUPIED
TERRITORIES

An agreement was reached in the middle of 1942 between His Majesty's Government and Japan for the mutual advantage of their nationals on the basis of reciprocity. Under the terms of this agreement 125 Indians reached India in October 1942. The Government of India arranged for their reception and journey to their destinations at Government's expense.

About 100 Indians managed to escape from the enemy-occupied Hongkong and reached Kweilin in free China. The Indian Ambassador at Chungking was authorized to grant financial assistance to needy evacuees pending arrangements for their repatriation to India. Thirty-four of them were repatriated to India in January 1943. Most of them sold the bulk of their properties and deposited the sale proceeds with the British Consulate at Kuming, in lieu of which rupee drafts were given to them. Another 64 Indians in China were repatriated a little later.

MALAYA

The unlimited issue of Japanese military scrip without numbers and signatures resulted in steep depreciation in its value until at the end of the period of occupation inflation was so high that the purchasing power of a dollar was hardly equal to a pre-war cent. Acute scarcity of clothing and other necessities rendered life utterly miserable and agonizing. The proclamation of the B.M.A. declaring all the military scrip valueless reduced all Indians to penury. The B.M.A., however, alleviated the hardship by payment of rehabilitation grants in cash to government servants, rehabilitation loans to business men and cash relief to Indian workers and by employment in various reconstruction works.

After the reoccupation, many Indians were desperately eager to return to India for rest and recuperation. The extreme scarcity of normal shipping due to world-wide post-war conditions rendered the return very difficult. However, by the end of December 1946 as many as 20,000 Indians in Malaya were enabled to return to India. This was facilitated also by grant totalling Rs. 2,50,000 by the Government of India to provide passages to the destitute persons on their undertaking to repay the amounts in India and to widows and dependants of deceased labourers who perished on the Siam-Burma 'Death' Railway, etc. The Government of India and the Indian National Congress also despatched Medical Missions to provide medical help. After the unconditional Allied surrender of Singapore to the Japanese on 15 February 1942 Malaya remained

under Japanese occupation for 3½ years. Between 15 August 1945 when Japan surrendered and September 1945 when the British and Indian forces reoccupied Malaya, chaos reigned supreme. There was much uneasiness in the Indian community in Malaya on account of the indiscriminate arrests on charges of collaboration with the Japanese and detentions for weeks without charges being framed. The Government of India sent a panel of five eminent Indian lawyers to defend the detainees.

NORTH BORNEO

The repatriation problem and the state of poverty among Indians in North Borneo caused much anxiety. The Government of India, therefore, placed at the disposal of the Indian Representative in Malaya \$ 10,000 for relief of distress and another \$ 10,000 for a free repatriation scheme from British North Borneo and Labuan. Similarly 3,000 Indians belonging to Medan in North Sumatra, who were being persecuted by the local bandits, wanted to return to India. Two ships were diverted in November 1946 from Singapore and all these Indians were repatriated to India.

AZAD HIND MOVEMENT

Japan, which promised all Asian countries their proper places in the new order of the Greater East Asia Co-Prosperity Sphere, declared war on Britain and the U.S.A. on 8 December 1941. On the same day, Indians in Tokyo formed a Committee with Rash Behari Bose as President and decided to launch a movement for Indian freedom. Later, on 26 December, fifty representatives of Indians in several Japanese cities met in conference and passed resolutions appealing to Indians to wrest power from the British. Some Indian leaders from Siam accompanied the advancing Japanese forces from the Siamese border and held public meetings of Indians and formed Indian Independence Leagues at every important town occupied. With the fall of Singapore on 15 January 1942, a Central Committee was set up to direct League work in Malaya with N. Raghavan as President. The territorial conference of Indians in Malaya held on 9 March 1942 decided to send a Goodwill Mission to the Tokyo Conference on 30 March to be held under the chairmanship of Rash Behari Bose. The Conference decided the lines of action of the civil and military sides of the movement with 'Unity, Faith, Sacrifice' as its motto. It also decided upon a Council of Action with a President and two civil and two military members and a consultative body consisting of a specified number of representatives from each part of East Asia

and the raising of an Indian National Army out of the surrendered personnel of the Indian Army and volunteers and recruits from the civilians. From 15 to 23 June 1942 a further elaborate conference of Indian delegates from all parts of East Asia including Malaya was held to implement the Tokyo resolutions. The arrival in Singapore of Subhas Chandra Bose on 2 July 1943 and his assumption of leadership galvanized the movement. He undertook a lecturing tour of Malaya and other parts of East Asia and inaugurated the Provisional Government of Free India on 21 October 1943. Netaji Subhas Chandra Bose became the Head of the State and a declaration of war was made on Britain and America. Japan, Germany, Italy and six other countries under their occupation recognized the Provisional Government. In January 1944, Netaji reached Rangoon and making it the Advance Headquarters sent the Indian National Army in successive batches from Singapore to Burma, which went into action against the British forces in the Arakan regions on 4 February 1944. After advancing in several sectors with the Japanese army, the Indian National Army entered the Manipur State on 22 March 1944. Reverses began at Imphal with the result that both the Japanese forces and Indian National Army had to withdraw even from Burma. Netaji had to leave Burma in April 1945 and reached Bangkok in May. With the surrender of Japan on 15 August 1945, the Provisional Government and the Indian National Army were dissolved.

The Indian National Army and its achievements fired the imagination of Indians in East Asia and wrought a tremendous psychological revolution in their minds. In addition to strengthening the freedom movement in India, the courageous stand of the Indian National Army helped in securing respectable treatment to Indians at the hands of the Japanese.

CHAPTER VII

DISABILITIES

RESTRICTIONS ON ENTRY AND RESIDENCE

The transformation in the social economy and the emergence of native classes as a result of the new economic and political conditions in the different countries led to the abandonment of 'open door' as an immigration policy. This change was, so far as the Empire countries were concerned, recognized and embodied in the Imperial Conference Resolution No. 22 of 1918, and re-affirmed by the Imperial Conference, 1921. While the restrictions on the free entry of Indians into the Dominions and the colonies indicate the inevitable transition in immigration policy, they also show the baneful effects of racialism on social policy.

The London and Pretoria Conventions of 1881 and 1884 declared the right of free entry into South Africa ; but later, racial and economic factors led to the violation of that declaration. The Secretary of State for India, anticipating this departure and agreeing to restrictions on the entry of Indians into South Africa, laid down the policy in 1897 at the time of the first Immigration Restriction Ordinance thus: 'Provided that the law is applied equally to immigrants from all countries and is not based on differences of race or colour,' he did not propose to make any special protest against their action.¹

The second stipulation made before acquiescing in the restriction on entry was for equal treatment for the resident Indians and future immigrants.

We regret the necessity for restrictions which excluded the British Indian subjects from South Africa, but accept the prohibition of further immigration in order to secure the fair treatment of those who were lawfully settled there. We, therefore, are entitled to demand fair and equitable treatment involving complete equality before the law for those Indians who had already been allowed to settle in Natal, or who might hereafter under the new Immigration Law be permitted to do so.²

1. Selection of papers (1926) p. 36, para 9, Despatch dated 21 July 1897.

2. *Ibid.*

The Colonial Office,³ the Secretary of State for India⁴ and the Government of India⁵ have time and again reiterated this policy. Though in practical adherence the Colonial and India Offices and the colonial governments had moved far away from this policy, still even they offered their theoretical homage to it.

REGISTRATION

In pursuance of the policy of restrictions of future immigration, the colonial governments devised certain methods such as compulsory registration of resident Indians, the fulfilment of difficult language and property tests, and the payment of high immigration and repatriation deposits through the institution of vexatious permit and passport systems.

SOUTH AFRICA

From the beginning there has been a suspicion as regards the motive behind the move for registration. In 1902 and 1904 Governor Milner proposed Ordinances for the registration of Asians in the Transvaal. But Joseph Chamberlain, Secretary of State for the Colonies in 1902, and Lyttleton, Secretary of State for the Colonies in 1904, refused to sanction such measures. Rejecting the Ordinance of 1902, Joseph Chamberlain wrote that if the object of registration was to keep out undesirable persons, that could be better done at the colonial ports and the Portuguese frontier by legislation on the lines of the Natal Immigration Restriction Act of 1898. Milner did not contemplate a total prohibition of Asians, as there was labour shortage. He assumed, therefore, a conciliatory tone and told the Transvaal Indians thus :

Registration gives you a right to be here and a right to come and go. Therefore, to me registration seems a protection to you as well as a help to the Government, and in any Law passed I should like to see registration included Once on the register your position is established, and no further registration is necessary, nor is a fresh permit required.⁶

On this assurance Indians agreed to registration. Yet within three years reregistration was demanded. Lord Selbourne, Governor of the Transvaal, referring to Indian objections to the draft amendment of the law providing for a second registration,

3. Quoted by P. Subrahmanya Iyer in *Indian Problem in South Africa* (1925), p. 68, letter dated 5 January 1906.

4. *Ibid.* p. 68, Letter dated 31 January 1906.

5. Selection of papers (1926), p. 92, Telegram of Viceroy dated 19 December 1903.

6. L. E. Neame: *The Asiatic Danger in the Colonies*, (1907), p. x.

stated: 'The object of the new Ordinance is to require all Asians now in the colony to apply for registration, and to provide for issue to those who are lawfully resident here of a certificate of registration, which will be clear evidence of their right to be and remain here.'⁷ Lord Elgin, Secretary of State for India, also drew the attention of the Transvaal Government to the departure from the original proposals in which registration was optional to the new Bill wherein registration was made compulsory.⁸

He also objected to the provision which empowered a Resident Magistrate to issue an order requiring an Asian, who had failed to satisfy him that he was lawfully resident in the Transvaal, to leave the colony within a time to be specified in the order. He pleaded that provision should be made for a right of appeal to the Supreme Court from such an order, and that a Resident Magistrate ought not to be entrusted with the power of final determination of a matter of such importance.⁹

This Ordinance of 1906 was disallowed by His Majesty's Government. The subsequent Asiatic Law Amendment Act II of 1907 was in all essentials identical with this Ordinance. Act II of 1907 provided for the compulsory registration of Indians, for the identification of the holders of certificates of registration by the finger impression system, for a fine of £100 or in default imprisonment up to three years in case of refusal to register oneself, and for the production of certificates on demand by any member of the police or others authorized so to demand. All Asian newcomers ineligible for registration under Act II were brought under the definition of 'Prohibited Immigrant' in Act XV of 1907, and for this purpose, the very first section of Act XV made Act II permanent though originally it was meant to be only temporary. Act XV provided for the removal of certain undesirables from the colony at the discretion of the Colonial Secretary. One class of such undesirables was stated to be the Asian who refused or neglected to obtain or was unable to legally obtain a certificate of registration under Act II. Act XV amended Act II to the serious detriment of Indians, in that, while Act II provided only for a notice of removal from the colony, and in default to imprisonment, Act XV provided in Sec. 6 (B) for physical and forceful deportation involving confiscation of property of those failing to register themselves under Act II. Referring to Sec. 6 (B) Lord Elgin wrote that His Majesty's

7. Correspondence Relating to Legislation Affecting Asiatics in the Transvaal, C. D. 3308, p. 16, para 5.

8. *Ibid.*, p. 59, para 6.

9. *Ibid.*

Government were convinced that no precedent for such power exists in the legislation of any responsibly governed colony. The stipulation for compulsory registration also took away the benefit of educational clause in Act XV. Lastly, British subjects, who had before 1902 acquired domicile in the Transvaal, but having temporarily left could not get themselves registered, might under its provisions be debarred from re-entry. Lord Selbourne himself admitted that these provisions were stringent.¹⁰ Lord Elgin wrote to Lord Grey, the Secretary of State for the Colonies, that even under the Transvaal and Orange River Colony Peace Preservation Ordinances, no power was given to the executive to summarily expel anyone, but only to issue an order to leave the country, and that, in case of non-compliance with the order, to bring him before a Magistrate and on conviction to fine or imprison him.¹¹ Lord Elgin had also referred to the protest made by His Majesty's Government against the Aliens' Expulsion Law passed by the late South African Republic in 1896, in consequence of which the Volksraad resolved that no one should be banished without having been found guilty by a court of law. Indians objected to the humiliating provisions of these Acts, particularly to the element of compulsion in registration and the insulting finger impression system to all alike.¹²

As Act II was based on the presumption of illicit Indian influx, Indians asked for the appointment of a Commission to investigate into it. But the request was rejected. Then Indians offered to undertake voluntary registration, provided Act II was repealed. Mahatma Gandhi pleaded that, as in all other colonies, the right of any people to enter and reside in the country should be decided judicially and not be left to the discretion of an administrative officer.¹³

But the Government insisted on treating as prohibited immigrants all holding Dutch registration certificates and the pre-Boer war Indian refugees who had not yet returned to the Transvaal. They held that the voluntary applications to be received should be finally decided by the Registrar without any provision for appeal to the Supreme Court. Thus the declarations of responsible officials that domiciliary rights of pre-Boer war Asian residents

10. Correspondence Relating to the Position of British Indians in the Transvaal (1907), C. D. 3887, p. 11.

11. *Ibid.*, p. 54, Letter dated 10 October 1907.

12. Further Correspondence Relating to the Position of British Indians, February 1908, C.D. 3892, p. 4.

13. Further Correspondence Relating to the Position of British Indians, October 1908, C.D., 4327, p. 21.

would be respected were set at nought. On the refusal of the government to amend Act XV and repeal Act II, Indians withdrew in June 1908 their applications for voluntary registration. Subsequently, the Asiatic Registration Amendment Act XXXVI was passed in 1908. This Act provided that if Asians were resident in the country three years before the war, i.e. 11 October 1899, and also could prove it, then they were competent to apply within one year from the date of the Act for certificates of registration; and that in case the Registrar refused the certificate they could appeal to the Magistrate specially appointed, his decision being subject to review by the Supreme Court under the ordinary law. Act XXXVI of 1908 was admittedly an advance upon Act II of 1907, but it was defective in that it required proof of pre-war residence for three years from those Asians who were in the Transvaal but had not yet received registration certificates. Most of them entered in a *bona fide* manner and acquired vested interests. There were several instances of Asians having already received registration certificates although their residence in Transvaal before the war did not go beyond even one year. So Indians felt unable to accept the benefits of this Ordinance until Act II was repealed, and the status of educated entrants was properly and equitably defined.

Consequently, several Indians were arrested and deported. In 1909 Lord Morley, Secretary of State for India, referred to Lord Crewe, Secretary of State for the Colonies, the question of deportations to India of Indians who were old residents of the Transvaal for non-registration, without allowing them the right of appeal against the decisions of inferior courts. Lord Crewe replied that the deportation of an Indian resident in the Transvaal, unlike the refusal of permission for entry into the colony from without, could only be made under Sec. 7 of Act XXXVI of 1908 by the order of a magistrate upon the failure of the Indian to produce his certificate of registration, and that the Supreme Court had ruled in Randeria's case that no right of appeal existed against such an order.¹⁴ He stated that the Magistrate, in making the order, had merely to decide whether the Indian was the lawful holder of a certificate of registration and that the question whether the Indian had a right to a certificate, on which only most probably complicated legal issues could arise, was a matter for previous consideration by the Registrar against whose decision full

14. Further Correspondence, C.M.D. 5363. September 1910, p. 19, para 2, Letter dated 20 May 1909.

provision for appeal was made under Sec. 6 (2) and Sec. 8 of Act XXXVI of 1908.¹⁵

The deportations were continued on a large scale in 1910 on the ground that the persons concerned did not produce satisfactory proof that they were domiciled in Natal. These deportations could not have been due to the difficulty of identification, for every one of the deportees had suffered imprisonment as a passive resister at least once and his identification had been effected under the jail regulations by the prison authorities. Moreover, most of them had been personally known to the authorities and at least some had voluntarily registered themselves under the compromise of January 1907; these registrations were validated by Act XXXVI of 1908. The deportations in such cases and circumstances were held illegal by the Supreme Court decision in Naidoo and others *vs. Rex*. Lord Crewe wrote to the Union Governor-General drawing the latter's attention to the serious political results likely to follow from further deportations and urging that deportations should be suspended or at least that further deportations to which reasonable exception might be taken should be prevented.¹⁶

All these deportees being very old residents in South Africa, their deportation in reality was much more of the nature of expatriation or exile than of repatriation. The Transvaal Ministers replied that, with regard to future deportations, instructions had been given to the police to exercise every care that Asians who had been registered were not dealt with under the clause of the Registration Act which entailed deportation. Replying to Mahatma Gandhi, Smuts gave an assurance early in 1912 that in the proposed legislation power would be taken to register all passive resisters who, but for their present resistance, would have been entitled to registration had they done so at the proper time notwithstanding any provisions of Act XXXVI of 1908.¹⁷ In March 1912, the Secretary of State for the Colonies reiterated the view that His Majesty's Government had 'always regarded it as a matter of great importance that decisions of immigration officers on questions affecting rights of Indians already established in South Africa should be open to judicial review.'¹⁸

The new Immigration Restriction Bill of 1912 gave the right of appeal. This clause giving the right of appeal was interpreted by the Secretary of State for the Colonies, the Union Governor-General and the Ministers as securing appeal to a court on

15. *Ibid.*, p. 19, para 3.

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

17. C.M.D. 6283, September 1912, p. 4.

18. *Ibid.*, p. 23.

questions of domicile to any Indian claiming to enter South Africa as a domiciled Indian.¹⁹

After the withdrawal of this Bill and the introduction of the Immigration Restriction Bill of 1913, the Union Ministers stated: 'It is not intended in the Bill to interfere in any way with the jurisdiction of the courts on questions of domicile.'²⁰

In spite of the statements that registration certificates and domicile certificates were conclusive proof of the Indian's right to reside in the Transvaal and Natal, further independent inquiries were made into facts of domicile. The Solomon Commission of 1913 recommended that, regarding the conditions under which identification certificates were issued, Sec. 25 (2) of the Immigration Restriction Act 1913 should be so amended as to provide that such certificates should remain in force for three years and that the fee of £1 for the issue of an identification certificate or a temporary permit be substantially reduced, and that no charge be made for extensions.²¹ As regards Natal they recommended that the Natal domicile certificates issued to Indians by the Immigration Officers and bearing the thumb impression of the holder of the permit should be recognized as conclusive evidence of the right of the holder to enter the Union soon after his identity had been established.²² The recommendations were accepted by the Union Government and the position had generally improved since the Smuts-Gandhi Agreement.

On 6 September 1949, Prime Minister Malan announced that to protect the European race, 'every citizen must have to carry an identity card classifying him as European, native, coloured.' This is 'to state clearly who is white and who is not white.' The Union Government would set up machinery to make it possible to enforce 'apartheid' in the living areas. The *London News Chronicle* of 7 September 1949 wrote: 'He (Dr. Malan) is going to force every citizen to carry a document certifying his race. He is going to deprive coloured people of their votes in Cape Province. He is going to stop them mingling with white students in the Universities. If ever there was a useless scrap of paper, it will be Dr. Malan's identity card.'

Identity cards would have to be issued to a total of 11,391,949 persons — 2,372,690 Europeans, 285,260 Asians (mostly Indians), 928,484 Coloureds and 7,805,515 Africans. A Bill empowering

19. *Ibid.*, p. 24, Telegram dated 19 June 1912, Despatch dated 24 June 1912 and Minute No. 547 dated 22 June 1912.

20. C.D. 6940 of July 1913, p. 23, Minute No. 430 dated 2 May 1913.

21. 7265 of April 1914, pp. 34 and 37.

22. *Ibid.*, p. 37.

the government to compile the Register and to issue identity cards is ready and is expected to be introduced early in 1950. The Register may possibly be utilized in deciding domicile and preventing mixed marriages.

CEYLON

The Indo-Ceylon Exploratory Conference which met in New Delhi in November of 1940 failed to reach an agreement as the Ceylonese delegation could not modify their attitude in regard to the principles governing the status of the resident Indian community, with the result that other questions were not discussed and the talks terminated without any settlement.

When the papers connected with the conference were tabled before the Ceylon State Council, the Governor had simultaneously sent a message to the Council explaining the undertakings given in the past to the Government of India by the Government of Ceylon in regard to Indians immigrating to Ceylon and adding that, as Governor, he was bound to withhold approval, ratification or assent in respect of any Act, Regulation or measure likely to have the effect of depriving Indians of the benefit of any of the undertakings mentioned, to which the Government of India had not agreed. As a protest against the message, the State Council adjourned to enable the Ministers to prepare and introduce two Bills, one to restrict immigration into Ceylon and the other to register non-Ceylonese residents in Ceylon. Earlier, in August 1940, in conformity with their promise to the Government of India to refer to them any proposal to restrict immigration to Ceylon, the Ceylon Government forwarded to the Government of India a memorandum containing a summary of their proposals to restrict immigration and to register the non-Ceylonese. These proposals were not discussed during the Indo-Ceylon Exploratory Conference owing to disagreement on the status of resident Indians. After the failure of the conference and the Governor's message, the Ministers prepared their Bills which, though not based strictly on the proposals in this memorandum, contained the same chief features. On being pressed for their comments, the Government of India objected to the first Bill on grounds of principle, viz, that it would interfere with freedom of movement of Indians between India and Ceylon in violation of the previous understanding between the two governments. The restrictions were also not justified by statistics of travel. In regard to the draft Registration Ordinance, it was felt that the definition of 'Non-Ceylonese' prejudged the whole issue between the two governments as to what classes of Indians now in Ceylon should

be treated as Ceylonese. The question of restriction of immigration, the Government of India explained, should form part of a general settlement of all outstanding issues and should not, in view of past assurances, be decided by Ceylon unilaterally and in isolation from other questions. On 4 March 1941, the two Bills to regulate and control the entry of non-Ceylonese and to provide for the registration of persons who did not possess a Ceylon domicile of origin were introduced in the State Council and, after the second reading, referred to Standing Committee 'A', which expressed its willingness to hear all parties who wished to be heard before the Bills were finally passed. As Indians were wholly opposed to the principles underlying the Bills, no representations were made on their behalf.

The anti-Indian agitation in Ceylon slowed down a little. In August 1941, the Government of Ceylon suggested to the Government of India that the talks which ended inconclusively in November 1940 be resumed. The Government of India agreed and the conference held in Colombo from 5 to 21 September reached agreed conclusions which were published in a Joint Report on 16 October. The proposals were strongly criticized by Indians in Ceylon.

In March 1945 the Ceylon Indian Congress represented to the Soulbury Commission that the Ceylon Legislature should have no power to enact unilateral legislation restricting immigration from India or adversely affecting the rights of Indian immigrants lawfully admitted. But in their Report, the Commission endorsed the demand of the Ceylonese Ministers (embodied in their constitutional scheme submitted to His Majesty's Government in September 1944) that the Government of Ceylon should have the power to prohibit or restrict immigration into the island and that a Bill dealing only with that subject should not come within the category of Bills to be reserved for His Majesty's assent.

With a view to settle the outstanding questions between India and Ceylon, particularly relating to Indian citizenship rights and Indian immigration besides matters relative to trade and defence, Senanayake, the Prime Minister of Ceylon, held talks with Prime Minister Nehru at New Delhi from 28 to 31 December 1947. It was earnestly hoped that as a result of these talks, under conditions of political freedom and popular support in both the countries without the intervention of a third party, a satisfactory understanding would be reached between them on the status of Indian nationals in Ceylon. Following agreement between the two Prime Ministers on broad principles of citizenship rights of Indians, the

Government forwarded to the Government of India draft proposals for the approval of the latter.

The Indian Government suggested changes in regard to both immigration and citizenship rights. Ceylon accepted some minor changes suggested and passed the Ceylon Immigrants and Emigrants Act 1948 which came into effect on 1 November 1949. It controls the entry and departure of non-Ceylonese citizens and provides for removing undesirable persons who are not Ceylonese citizens. On the admission of the Ministers themselves, its provisions might be utilized to repatriate Indians on economic grounds, namely, that their continuous presence in Ceylon might affect the employment problem. The Act provides for an elaborate system of passports without which no Ceylonese resident could even leave the country. The restrictions apply even to movement of Indians between India and Ceylon, regarding which hitherto no restrictions existed.

Since 1 November 1949 all those who travel between India and Ceylon have to carry passports. As the bulk of Ceylon Indians have not obtained citizenship, it is easier to refuse them permission to return to Ceylon after a trip to India. Section 14 (3) (b) of the Act lays down that temporary residence certificates shall not be refused in the case of persons who, being British subjects, were ordinarily resident in Ceylon for a period of at least five years immediately preceding the appointed date (1 October 1944). Under this section, the Controller of Emigration and Immigration is given discretionary power to refuse a residence certificate, or, for that matter, an endorsement authorizing re-entry to those who do not possess or are not in a position to prove five years residence. Since the burden of providing documentary proof is upon the persons concerned, the Controller has refused to give endorsement on the passports of many Indians who could not prove their residence in that way.

Where passports are not immediately available emergency or special identity certificates are issued to those desiring to leave or return to Ceylon. Indian estate labourers may, until further notice, leave Ceylon with identity certificates being issued to them on estates, but during the transitional period until proper travel documents become necessary, these certificates should be endorsed by the Immigration Officer. Similarly, estate labourers may return to Ceylon until further notice if they carry estate identification cards. Arrangements are being made for granting visas by Ceylon representatives in Delhi, etc. Ultimately all the 600,000 Indian estate workers have to obtain passports of the Indian Government unless they become Ceylonese citizens, but reasonable time would be given to acquire their own national passports.

For the convenience of persons who travel between India and Ceylon and cannot afford to have regular Indian passports, the Government of India has introduced a simpler and cheaper travel document known as 'India-Ceylon pass'. The possession of this pass however does not exempt the holder from compliance with any of the other requirements of the immigration regulations of Ceylon or of the Indian Emigration Act. Till this Act came into force people domiciled in India and Ceylon and travelling between these two countries were exempt from the Indian Passport Rules, 1921.

MALAYA

After the reoccupation of Malaya, the British Military Administration (B.M.A.) restricted the entry of all persons into Malaya. Only persons who were given permits issued by the B.M.A. were allowed to enter Malaya. The Colonial Office Representative in India, however, arranged for the necessary shipping and most of the evacuees were repatriated to Malaya in early 1946. Free passages were given in a number of deserving cases.

Indians in Malaya appealed to the Indian Government to persuade the Malayan Government to lift the ban of 31 March on the entry of newcomers from India as demand arose among the Indian mercantile community for skilled Indian labour like shop-assistants, clerks and artisans. A draft agreement was prepared to be signed by employers and employees. The agreement contained terms and conditions, such as 48-hour week, gratuity of a month's salary for every year of service, free ordinary medical attendance, on which the Indian Government might permit employees from Malaya to engage in the above categories of skilled labour.

After reoccupation, the Malayan authorities introduced the permit system to facilitate the entry into Malaya of labourers from India, Pakistan and Ceylon. As there was no further need for more workers, the Malayan authorities decided in May 1949 to discontinue the issue of entry permits to newcomers from India, Pakistan and Ceylon. Accordingly from 10 August 1949 the system of entry permits was discontinued. So, in future all persons desiring to enter Malaya would be treated in all respects as other British subjects and should apply to their local authorities for travel facilities and possess valid passports. This order did not affect the issue of permits to persons leaving the country with the intention of returning to Malaya and these permits would be issued on personal application as before.

The discontinuance of the permit system was not expected to have adverse effects on the emigration of Indians to Malaya. Even under

the permit system, the entry of Indians was controlled ; emigration now was further restricted. In 1948, out of 7,274 Indian requests for entry into Malaya, 3,555 were rejected on the ground that the applicants would not prove beneficial to the economic life of the colony. Actually the Indian Government was not in favour of free emigration, not only to Malaya, but also to Ceylon and Burma.

The Indian Government's ban of June 1938 applied to all unskilled labourers irrespective of the length of time they might have resided in Malaya. The ban did not apply to the following persons, who were not regarded as 'emigrating' within the meaning of the Indian Emigration Act, 1922 : 1. Wives and minor children who emigrate to join their husbands and fathers in Malaya ; 2. Labourers proceeding to Malaya at their own expense provided it was proved to the satisfaction of the Indian authorities that they were not doing so under an agreement to work for hire in Malaya whether it be a first engagement or resumption of a prior engagement after leave in India. Labourers who were on a short visit to India and desired to return to their employment in Malaya would be prevented by the ban from doing so, because they would be deemed to be departing under their original agreement to work for hire. So in July 1949, the Indian Government decided that in special cases of genuine hardship, like loss of permanent service in Malaya, separation from the family and forfeiture of pensionary benefits and gratuities, etc., they should be permitted to proceed to Malaya. Each case was to be considered on its merits. It was made clear that there was no change in the policy of the Government of India in respect of the ban in operation on the emigration of unskilled Indian labour to Malaya.

In addition to a passport, possession of means of livelihood is now needed to secure entry into Malaya. Between May and September 1949, 25 persons who reached Malaya with valid travel documents were sent back to India by the Malayan authorities under the Passengers Restrictions Ordinance on the ground that they were not persons with means of livelihood.

Everyone in the Federation of Malaya and the Colony of Singapore must possess an identity card under the Emergency Regulations now in force. Failure to produce the card when challenged would make a person liable to arrest and sentence which might include fine and imprisonment.

LANGUAGE TEST

SOUTH AFRICA

The language test was transformed into a handmaid to compulsory registration to achieve the desired object of the exclusion

of Indians. Cl. 2(4) of the Transvaal Immigration Restriction Act of 1907 defined a prohibited immigrant to include any person unable to write out or sign in a European language an application for permission to enter the colony. In giving this definition the Act disregarded the right of residence of those who paid £3 before 1899 to the old Dutch Government for settlement in virtue of Law III of 1885, but who, owing to obstacles placed in the way of their securing permits under the Peace Preservation Ordinance, were not able to return to the Transvaal. Thus the language test indirectly cancelled the right of domicile. Referring to the effect of the educational clause 2(4), Lord Elgin wrote that the practical effect of Sub-section 2(4) would be to exclude all Asians irrespective of personal qualifications.²³ Anticipating the abuse of this qualification, the Government of India pleaded as long back as 1903 for the inclusion of Indian languages in the language test.²⁴ They reiterated the same request in 1908.²⁵ Mahatma Gandhi requested that those possessing educational qualifications, whatever the test, should at least be free like the European immigrants. Indians rejected the new Registration Act of 1908 as it did not ensure the admission of educated Indians to the Transvaal, subject only to the provisions of the ordinary immigration law of the colony whether they had or had not pre-Boer War residence. Smuts had admitted in 1909 that Sec. 2(4) of Act XV of 1907, which prevented the entry of Asians not provided with certificates into the Transvaal, did not mention Asians but was deliberately framed for them and had been interpreted in the courts in that sense.²⁶ Lord Crewe pleaded that there should be a uniform educational test and there should be no differential provision in the immigration law for European and Asian immigrants and that the statutory provisions for immigration must be the same but that the law should leave an opening for such administrative differentiation as would close the doors to all except at the most half a dozen immigrants in any one year.²⁷ Smuts replied that they could not recognize in their legislation the equal rights of all alike to emigrate to South Africa on the ground that, if equality was conceded in principle, the practice would ultimately have to conform to the principle and thus in the end the Asian immigrants would be on the same footing as the European.²⁸

23. C.D. 3887 of January 1908, p. 52, Telegram dated 27 November 1907.

24. C.D. 2239 of August 1904, p. 26, Despatch dated 14 May 1903.

25. C.D. 4327 of October 1908, p. 3, Despatch dated 30 January 1908.

26. C.D. 5363 of September 1910, Smuts' letter dated 26 August 1909.

27. *Ibid.*, p. 33.

28. *Ibid.*

This led to a failure of the negotiations between Mahatma Gandhi and Smuts in 1909. Appreciating the Indian stand for theoretical equality in respect of educational test, Lord Crewe said that this attitude on the part of the Indians was noteworthy and was strictly consistent with their attitude in the matter of the differential railway regulations.²⁹ He quoted the precedent of Australia in support of the Indian contention for administrative as against legislative action. Referring to the Union Immigration Restriction Act of 1911, the Secretary of State for India had also pointed out that under the existing Cape and Natal laws Asians could enter if they had passed the education test in a European language, but that by the new Act the Transvaal policy of practically complete exclusion was being extended all over the Union, and it would be difficult to prevent the position of Indians in Cape Colony and Natal from being prejudiced. This Union Act of 1911 subjected all immigrants to an equal statutory test. The Orange Free State Provincial Council and all members of the Union Parliament representing Orange State constituencies opposed the Bill in regard to the right of any educated Asian being allowed to enter Orange State after landing in the Union. The Solomon Commission recommended that Sec. 7 of the Immigration Restriction Act 1913 be amended to the effect that no declaration before a Resident Magistrate in accordance with Sec. 8 or Chapter XXXIII of the Orange Free State Law Book was necessary for educated Indians entering the Free State. The recommendation was accordingly accepted.

AUSTRALIA

Emigration of Indian indentured labour to Australia began in 1837-38. The influx remained small as only a part of the fringe round the coast of the continent was settled, with consequently limited scope for Indian employment. First the sugar planters of Queensland imported the Kanakas from the South Sea Islands as indentured labourers. The importation of Indian labour by Mauritius and other colonies induced these planters to follow suit and suggest importation of Indian labour. An official committee considered the position in 1841 and rejected the proposal on the ground that the indenture system would amount to perpetuation of slavery in another form. Later many Indians from the Punjab, North-West Frontier Province and Baluchistan migrated to Western Australia as free men. Most of them were engaged as primary producers and some participated in the development of transport.

29. C.D. 5579 of March 1911, p. 2, para 7.

The working of gold mines later gave rise to anti-Asian measures. In 1878 Queensland passed an Act banning the employment of Asians in mines. Subsequently the ban was extended to Asian employment in the sugar and banana industries.

In order to restrict the entry of Asians and with a view to make the continent a white man's preserve, the Government decided, in spite of its tropical nature, to dispense with all outside labour and so repatriated the Kanakas and officially abolished the system of indentured labour. Later, they stipulated a dictation test in any language prescribed to all, except in the case of persons of European race, who wished to enter Australia. In 1897, the Imperial Government at first made the suggestion to Australia for adopting a non-discriminatory literacy test in the English language. After the formation of the Commonwealth the Australian Government, however, gave a different interpretation and passed the Immigration Act of 1901 which defined a prohibited immigrant to include any person who failed to pass the dictation test in any European language.

Significantly, the test is applied only when it is considered necessary to exclude an immigrant. Instead of being a criterion of admission it has become an instrument for exclusion. As regards the procedure in connexion with this test, the Minister of the Interior selects a passage of some fifty words in the English language. It is printed in slips and supplied to the customs officers empowered to test. In the presence of the immigrant, the Immigration Officer announces the language of the selected passage and reads it out at a speed suitable for dictation. In case he fails to write out and sign the paper in the officer's presence, he is declared a prohibited immigrant and is not permitted to enter. On filing a bond to the extent of £100, an immigrant, who is not ready to take the test at the time of his arrival, can take the test within three months thereafter. The test is applied when it is considered necessary to exclude an immigrant and so generally it is not applied to Europeans. In 1934 about 53,000 were admitted without the test. In Canada, which enforced a reading test with a view to exclude illiterate persons, the language for the test is selected by the immigrant, not the Immigration Officer. Like the test of continuous journey in the case of Canada, this dictation test is another impossible stipulation. Both are statutorily non-discriminatory but administratively discriminatory.

The Japanese Government took objection to the insistence on knowledge of a European language as in effect it operated discriminatorily against Japanese nationals. The Immigration Act was therefore amended in 1905 to substitute 'any prescribed language'

for 'any European language'. Earlier the Australian Government agreed to an informal arrangement which provided for the entry of *bona fide* Japanese students, merchants and tourists into Australia for a stay of 12 months, which was extended after the first world war, without being subject to the dictation test. The benefit of this arrangement was subsequently extended to India. The success of White Australia policy is obvious from the fall of Indian population from about 2,500 in 1927 to 1,200 in 1947.

The qualification for permanent residence in Australia is 51 p.c. European blood. A. A. Calwell, Australian Minister for Immigration, said in August 1949 that any Asian might come to Australia and live there under permit as a trader provided he could show that he had a turnover, as distinct from profit, of £10 per week. This turnover must be from overseas trade and not from such occupations as market gardening. An Asian, once established in Australia, might later bring his wife and, when his turnover reached £50 a week, he could bring in an Asian assistant. Any children born in Australia to these traders and their wives become Australian citizens, whether they are Indian, Chinese or any other Asian race. There was no law under which these Asian Australians could be deported.

The Australian War-time Refugees Removal Act contains drastic deportation provisions affecting war-time refugees, who entered Australia during the war. The Chinese, Indonesians and the Filipinos were affected by this Bill. Consequently, the Philippines Government passed an Act prohibiting residence of nationals of countries where Filipinos are banned. It is untenable to say that a handful of war-time refugees would affect the homogeneous character of Australia's population. On 27 August 1949 the Australian High Court ordered the government to hold its hand in a move to deport 38 Chinese held as prohibited immigrants.

A Philippine-born American army sergeant, who had an Australian wife and two children in Melbourne, was banned from entering Australia. Gen. MacArthur requested the Australian Government to reconsider the ban. The *Sydney Daily Telegraph* wrote: 'If Australia's immigration policy has to break up families to survive, let's overhaul it'. The *Melbourne Herald* wrote: 'The immigration law is being unimaginatively administered'. R. G. Casey, Federal President of the Australian Liberal Party and former Governor of Bengal, issued a warning on 25 March 1949 that 'harsh handling of Australia's immigration policy could force India to take a firm stand on behalf of the Asian peoples'.

In March 1949, the Australian High Court ruled that an Indonesian-born wife of an Australian could remain in Australia, thus

invalidating certain sections of the law relating to the Commonwealth powers to deport prohibited immigrants. A. A. Calwell has affirmed his determination not to lower the flag of White Australia policy pursued since 1901 and to modify the law, for the effect of the High Court decision was that every non-European admitted to Australia on a certificate of exemption and who had resided for five years or longer could not now be compulsorily repatriated. He added on 23 March that there would be no quota system for the admission of Asians, no appeasement or any other administrative action which might imperil the hard-won living standards of the whites. On 21 April 1949, Prof. W. Macmahon Ball, former Far East diplomat, suggested admission of Asians on a quota plan thus: 'We can keep the principle of the White Australia policy intact but it would be prudent to amend our immigration laws. Quotas of Asiatics should be allowed in as a gesture to our neighbours. If 500 were admitted yearly, it would take a long time for Australia to be flooded. Australia could persist in her immigration policy only if supported by Britain and the U.S. The U.S. might not stay in the Pacific to help maintain White Australia.'

FEEs TEST

The levying of a prohibitive immigration and repatriation fee was yet another method devised to restrict Indian immigration. The Kenya Immigration Restriction Ordinance (Amending) Act of 1938 raised the deposit security from £50, which in effect already excluded the entry of Indian labourers and artisans, to £500 which would also exclude the educated and moneyed classes of Indians. Further, it sought to vest a minor police official with arbitrary powers. It empowered the Immigration Officer of Mombasa to declare at any stage after one year that an immigrant was no longer an undesirable settler. Till this benediction was pronounced he was presumed an undesirable, and as such within the clutches of the arbitrary discretion vested in the Officer. All this was only in keeping with 'the Kenya tradition'.

TANGANYIKA

In 1932 the Tanganyika Government raised the deposit payable by immigrants from £40 in the case of Europeans and £10 in the case of Asians and Africans to £100 for all non-native adults, and £50 for each child or dependant of the immigrant. The government had also been vested with wide powers to exclude undesirables. Since May 1925, ex-enemy nationals required no

special licence to enter. The result of these restrictions had been to bar the door to all Indians except a wealthy few. But the policy of Tanganyika on the whole was less rigorous than that of Kenya.

UGANDA

Immigration into Uganda, though subject to severe control, had no racial basis. The Immigration Restriction and Removal of Undesirables Ordinance of 1913 and the Immigration Rules of 1934 were designed to prohibit the entry of those who could in any civilized community be regarded either as undesirable or were likely to become a charge on public revenues.

DEFENCE IMMIGRATION REGULATIONS IN EAST AFRICA

In 1941 the East African territories placed certain restrictions on the grant of passport facilities for entry therein in order to relieve their governments of problems arising from the presence of persons who were not essential or who could not be absorbed or whose presence might prove an avoidable embarrassment during the emergency created by the war. It was stated clearly that this departure from the pre-war practice was purely temporary for the duration of the war. The Government of India was also assured by these governments that there was no difference in treatment between Indians and other British subjects in respect of the application of these restrictions.

The Post-war Employment Committee appointed by the Kenya Government recommended in 1943 as a means of ensuring post-war employment that steps should be taken to limit immigration to the absorptive capacity of the colony. A minute of dissent was written by the Indian member, the Hon. Mr. A. B. Patel. In February 1944, the East African Governments promulgated the Defence Immigration Regulations to restrict the entry of non-natives into the territories. Under the Regulations, all persons of non-native descent entering the colony had to obtain an entry permit from the government concerned, which would be granted normally only to such new entrants as were required in the colonies to further war effort. Persons normally resident therein had been exempted from their operation provided they had not been absent therefrom for more than two years. Wives, daughters and sons under 18 years of such residents could enter the colony without an entry permit. Kenya and Uganda, unlike Tanganyika, had not exempted temporary visitors from the necessity of obtaining entry permits.

In April 1942, the Government of Zanzibar promulgated immigration regulations under the emergency powers on account of

food shortage. Under the regulations, persons normally resident or employed in the Protectorate and the wives, husbands and children of such persons could continue to enter the Protectorate without obtaining an entry permit from the Zanzibar Government.

On 13 April 1944, the Zanzibar Government promulgated the Defence (Immigration Restriction) Amendment Regulations 1944, under which even those normally resident or employed in the Protectorate were required to obtain an entry permit if they were absent from the Protectorate for more than two years. Thus these Regulations were brought into line with those of Tanganyika, Kenya and Uganda.

The Regulations based the control on the local employment situation by providing that the immigration permit might be refused if it sought for any post which a suitably qualified resident could occupy. They stipulated exorbitant amounts as capital to entitle them to admission — requiring £800, £1,000, £2,500 and £10,000 of persons desiring to take to farming, mining, business and manufacturing respectively. This was besides the unfettered discretion given to the Commissioner of Lands and Mines and other officials to certify whether they were qualified to so engage or not. When the Indian Government made representations against these rigorous restrictions in flagrant violation of earlier assurances given to the Indian Government, the Colonial Office assured them that full opportunity would be given to them to examine those proposals and to place before His Majesty's Government any suggestion they might make to safeguard the Indian interests. The Government of India deputed in 1946 Maharaj Singh, K. Sarwar Husan and C. S. Jha to visit East Africa to examine whether there was any necessity for legislation on the proposed lines and the extent to which such legislation would affect Indian interests. The Report of the Delegation was published on 23 December 1946.

The Government of India Delegation felt convinced, as a result of their inquiries, that all the four Bills had been drafted after joint consultation and with the same object of relating the flow of immigration to the absorptive capacity of these territories. Under the circumstances, it was regrettable that the Bills should have been passed without a survey of employment and undertakings and a census of population. The position as regards employment at this time did not seem to be such as to justify such drastic restrictions on immigration as the Bills proposed. In fact, there was considerable demand for manpower to execute the various post-war development plans. In Kenya alone there were schemes of development to the value of fifteen million pounds. Further, these territories had been opened to modern civilization only during the last

50 years and are partially developed and sparsely populated. Other factors like the possibility of the development of their resources and the production of food for and of relief to other and more congested areas to which immigration had to be related should be given due consideration. South Africa and Australia are encouraging immigration and even Kenya was subsidizing the immigration of 500 British farmers.

The Delegation found no evidence of excessive or unregulated immigration in the past nor that immigration had been responsible in the past for unemployment. On the contrary the recent subsidization of immigration of 500 British farmers into Kenya and the retention of over 2,000 European refugees, they argued, were a proof positive of government's recognition of the value of and need for further immigration.

The Bills, they stated, would, although non-racial and non-discriminatory in form, actually affect Indian immigration adversely to a far greater extent than European immigration and would almost close the door against any further Indian admission. Hence the deputation pleaded that the restrictions on immigration already existing might, if required, be tightened up 'to regulate the flow of immigration to the absorptive capacity of these territories' subject to the condition that they would affect all the immigrant races equally both in law and practice. This should not be difficult because in years of depression, people left East Africa to go back to India or the United Kingdom and they acted as a safety valve against unemployment in the past. They added that in any case the question of domicile should not be mixed up with that of immigration.

During the period 1931-45, there was an inward excess of 5,625 in the case of Europeans and of 4,978 in the case of Indians in regard to both Kenya and Uganda. The average works out to 475 for Europeans and 332 for Indians a year. But in the depression years of 1931, 1932, 1933, 1939 and 1940 more Indians left the colony than entered it. Similarly, in 1931 and 1945 more Europeans left than entered it.

The density of population in Kenya, Tanganyika and Uganda in 1946 was respectively 40, 15 and 15 only. It could not therefore be stated that the absorptive capacities of these territories had been reached, leaving no room for any further appreciable immigration. It must also be remembered that with the development of a country, its saturation point also rises higher and higher.

These new restrictions affected nearly 10,000 Indians who had left those countries when the war broke out because they were told that they could help the war by either going into the interior

or back to India. The Government of India feared that owing to the acute shipping position, many East African Indians might not be able to return within the two years prescribed and this enforced detention away from their homes, property and business might prove ruinous to many of them. Two reasons were advanced for these regulations, namely, shortage of food supplies and shortage of housing accommodation. The governments of these colonies assured the Indian Government that the regulations were purely temporary and would be terminated with other war-time regulations and that they would be applied to all non-native immigrants without any discrimination whatsoever. The Governor of Uganda said in the Legislative Council on 25 May 1944: 'During the same period it has been deemed necessary to take measures to restrict non-native immigration into East Africa. Speaking for this Government I can say it has been done with much reluctance but it stands to reason that unrestricted immigration at this time, in which housing and supplies of all sorts must be short and ought not to be furnished beyond bare necessities, is contrary to both territorial and national interests nor indeed to the advantage of our overseas compatriots. Assurance has been given in most positive terms that this is an emergency measure implying no change of policy respecting immigration under normal conditions. It should be obvious to all that the very fact that action is taken under emergency powers is in itself evidence that it is not intended to be permanent and it is deplorable that attempts have been made in certain quarters to mislead public opinion hereon'.

The Indian contention was that the new restrictions had been imposed to achieve the time-worn object of the Europeans to stop completely Indian immigration under the cloak of food shortage and housing difficulties. They pointed to the fact that in 1942 the colonies had a surplus exportable balance of 7,000,000 cwts. of foodgrains. Neither was there any housing shortage. These restrictions were a continuation of the policy of restrictions on trade and commerce. From 1942 to 1945, no new traders licences, shop licences, or even hawkers licences were permitted to be issued.

The Bills were revised and have proved better in three respects: (i) under clause 5 of the revised Bill 'permanent residents' have been excluded from the definition of 'prohibited immigrants' and so they are not liable to deportation as envisaged in the original Bill; (ii) under clause 7 (i) of the revised Bill, the inter-territorial movement in East Africa which was vigorously restricted in the original Bill has been liberalized in favour of permanent residents; and (iii) the capital sums to be possessed by persons intending to immigrate for trade etc. have been reduced

from £ 1,000 to £ 800 in the case of mining, from £ 2,500 to £ 800 for trade and from £ 10,000 to £ 2,500 for manufacture. But certain new objectionable features have been introduced as though to negate the above advantages in practice. While under the original Bills, a person intending to engage on his own account in trade, agriculture, mining, manufacture etc. and possessing the stipulated capital was entitled to an entry permit, under the revised Bills, mere intention to engage in trade etc. and possession of the prescribed capital are not adequate; the prescribed authority should also be satisfied that such engagement in trade etc. of the person would not prejudice generally the inhabitants of the territory. This provision is so vague and elastic that all the improvements effected in the revised Bills could be neutralized to the permanent detriment of Indians by the whims of the authorities. For there is a clause empowering the proposed Employment Board to refuse an entry permit to an applicant for employment if suitably qualified residents of the territory are available or likely to become available in the near future for employment of a similar nature. Besides, if any licence is required by such person for engaging in the trade etc., he must possess such licence or must satisfy that he would be able to secure one before he could enter the territory. In the case of persons seeking entry to practise the 'prescribed professions', the new stipulations would work particularly hard. Indians demand that adequate provision should be made to facilitate the entry of Indians who had resided any time in East Africa for more than five years, which is the period for obtaining a domicile certificate, and that they should be accorded representation on all bodies to be set up for the administration of the new laws.

In 1949, the legislatures of East African territories passed the revised Immigration Restriction Bills. While ostensibly non-discriminatory in scope, they apply rigorously against Indians. The Government of India made representations to His Majesty's Government objecting to the principle underlying the Bills. Disagreeing with this view, the latter assured the Indian Government that the legislation was not directed against Indians and added that they could not properly interfere with the consideration of the details by the Legislative Councils. The administration of the Acts should be carefully watched.

SUDAN

There are about 1,000 Indians in Sudan mostly in Port Sudan but also in Khartoum and Omdurman which is seven miles across the Nile from Khartoum. Their main occupation has been trade, some owning big shops. Their main grievance relates to their

difficulty to secure replacements of personnel from India as a result of recent introduction of the system of immigration permits. The officiating Governor-General of Sudan assured the Government of India Delegation to East Africa in 1946 that there was no racial discrimination against Indians in regard to the grant of entry permits and that they would be granted such permits to facilitate replacements provided a cause was shown proving the need for them.

BAHREIN

Indians have been living in Bahrein for nearly 600 years. There are about 4,000 Indians now. It was reported in December 1949 that the British authorities were refusing permission for newcomers and had written to the passport authorities at Bombay not to issue passports to anybody who did not possess a 'no objection certificate' from the British Consul. They had stopped issuing the certificates to any newcomer and ceased granting them to even those who had been established there. Even the most influential business men, it was added, were not able to go to India on business or urgent family matters and return there. Even the few established people who succeeded in securing the certificates got them with the endorsement that they could remain in Bahrein only for three or six months. Bahrein residents suffer from no such disabilities in India. A Government of India Delegation consisting of C. S. Jha and Prof. Habib visited the country in 1948 and inquired into the position of Indians.

ADEN

In 1941, certain restrictions, which were of general application to all British subjects and intended purely as a temporary measure during the emergency created by the war, were placed by the Government of Aden on the entry of Indians into Aden. The Governor of Aden declared that it became necessary for the time being to restrict the population in the colony so as to avoid aggravating war-time problems of food supply, air raid precautions and so forth and that Indians would be welcomed again to Aden after the dangerous period had passed.

In 1942, the restrictions were relaxed to the extent of allowing 'newcomers' to bring their wives and children with them. On inquiry from the Indian Government, the Aden Government stated that the restrictions applied equally to all foreigners in civilian occupation, but that the entry of wives and children of British service personnel was governed by service considerations and war-time requirements.

In January 1945, the Defence (Entry Permission) Regulations 1945 were promulgated by the Governor. The Regulations provided that, besides members of the Armed Forces of the Crown, persons in transit through Aden, those entering the colony by land or by sea if disembarking from dhow who were not required to produce a passport or other travel documents, and British subjects born in Aden and their wives and children below 18 years could enter Aden without obtaining entry permits from the Government of Aden. This meant that even persons who had lived in Aden for a long time and had all their professional and economic and other interests there had to obtain an entry permit, if they were not born there. Indians having business and other connexions with the colony apprehended that the Regulations might harm them.

DJIBOUTI

In May 1940, a certain number of Indians were evacuated to India from Aden and Djibouti. The destitute among them were maintained in Bombay at government expense as they had neither relatives in India nor were able to fend for themselves. With the improvement in the war situation towards the end of 1941, nearly all of them returned to Aden. In regard to some 175 Djibouti evacuees, who continued to be maintained in Bombay since 1940, the Government of Aden agreed in 1943 to the return of 19 of them who had friends or relatives to maintain them in Aden. The French Somaliland Government showed aversion to the return of the other evacuees at such an early stage of the country's economic revival. In 1944, five evacuees were permitted to go to their pre-war homes, and 62 of the remaining evacuees were permitted by the Government of Aden to go there. At the end of May 1945, 118 evacuees still remained in Bombay. The Government of India pursued the question of their return.

MADAGASCAR

The total number of Indians in Madagascar is variously estimated to be between 8,000 and 15,000. In May 1949 information reached India that the French Governor had, under a new law, assumed arbitrary powers to deport, at short notice, Indian settlers from the island, that about 20 of them had already been deported and that persons deported had not been told the reasons for their deportation. The deportees, it was stated, were also deprived of their valuables and property and were not allowed to take more than Rs. 1,200 to 1,300. Even those who had come to India on short visits were not being

permitted to return to the island. The Government of India deputed R. T. Chari to visit the island and investigate. They referred individual cases of deportation to the local authorities through the British Consul-General in the island as well as through the French Embassy in India.

INDO-CHINA

In 1948, the French authorities in Indo-China levied on Indians a discriminatory tax known as *Impost Personal*, a kind of immigration fee which was accompanied by the demand for fingerprints even in the case of educated Indians. But as a result of Indian representations, the tax was withdrawn.

SIAM

In regard to Siam, Indians are required, on entering Siam, to name a guarantor for security and other reasons. The Government of India took up the matter with the Government of Siam.

TRINIDAD

Under Sec. 5 (1) of the Immigration Restriction Ordinance IV of 1936, every Indian entering Trinidad from India and unable to satisfy the Immigration Officer that he was not likely to become a public charge was required to deposit \$500, whilst an immigrant from one of the West Indian colonies or British Guiana was to deposit only \$100, and if from the continents of America, Europe and Africa, \$250. Says Tyson :

It introduces an unfortunate discrimination against British subjects from India (as compared, for example, with foreigners from Africa or South America). If there is to be discrimination, the East Indian, who belongs to a race which already supplies one third of the island population and was brought to the colony by methods savouring of the 'Press Gang', should not be placed in a position less advantageous than a foreigner.³⁰

FII

In Fiji the Immigration Ordinance of 1909 was amended by Ordinance XXXIII of 1933, and under this latter ordinance every incoming Indian should deposit a sum up to £50 with the Colonial Treasurer or furnish adequate security to the Inspector-General of Constabulary in lieu of a cash deposit. The Colonial Treasurer would keep the security money for a term of three years. If the immigrant behaved himself to the satisfaction of the authorities,

30. *Op. cit.*, para 91.

the cash deposit would be returned after deduction of any charges incurred by the Administration, or his security bond might be cancelled whichever might be the case. The Indian Immigration Committee recommended in 1937, firstly, to fix the number of new arrivals in advance with respect to each year, and secondly to so divide the quota for each year as to ensure that not less than 75 p. c. should be agriculturists and that not more than 15 p. c. should be traders. The Government of India was not properly consulted on the matter. Ordinance I of 1938 purporting to give force to the above recommendations was rushed through the Legislative Council, while the Committee's Report was kept a secret from the purview of the general public and the Legislative Council. The Fiji immigration policy in relation to Indians was stated to be one related to the conditions of colonial agricultural economy. Though according to the Fiji Government the immigration of agriculturists to the extent of 75 p. c. was a great concession, the security deposits and conditions attached to the issue of lending permits and sojourn of Indians during the first three years of residence would, it was feared, operate as direct prohibition of Indian immigration.

One of the ostensible objects of the immigration policy of the colonial government was the exclusion of unattached males in the interest of Fiji-born Indians. The immigration of males alone was being restricted as closely as possible to such skilled workers as were needed to maintain the essential Indian trades in an efficient condition. The Fiji-born Indians who constituted the vanguard in the struggle for social, economic and political justice had advocated closer restriction, if not the actual prohibition, of Indian immigration. They were the Indians who wanted white collar jobs in the towns.

On 28 October 1947, the Fiji Government published the revised text of the Immigration Ordinance 1947 whose object, it was stated, was to make better provision for the control of immigration. This was sought to be achieved by replacing the existing law by more satisfactory legislation. Section 7 of the Ordinance enumerates a list of prohibited immigrants which includes any person who is not the holder of a valid permit issued under the provisions of Section 8 unless such person is exempted under the provisions of sub-section (4) of this Section. Section 8 (1) states: 'Unless exempted under the provisions of sub-section (4) of this Section, no person shall enter the colony except in pursuance of a permit issued to him in that behalf by the Principal Immigration Officer or by some person acting under his authority.' The Principal Immigration Officer has been given com-

plete discretion, subject to the direction of the Governor, as to whether or not to issue a permit under the Section. Section 3 sets out the classes of persons exempted from the provisions of the Ordinance. Thus the restrictions on immigration do not apply to : (i) British subjects born or domiciled in Fiji ; (ii) British subjects who had lived in Fiji for five years and who were returning after an absence of less than 12 consecutive months ; (iii) serving members of British Allied forces ; (iv) persons employed in government service in the territories of the British Commonwealth. Tourists possessing valid passports would be allowed to stay in the colony for four months, while the Principal Immigration Officer is empowered to grant at his discretion short-term permits for residence in the colony for a period not exceeding four years.

Indians were also hard hit by the imposition of a residential tax of £2 per head per annum on persons who do not pay income-tax. As several thousands are labourers and small tenant farmers, a tax of £2 per head per annum would work harshly on poor Indians. In March 1948 the Indian Government made representations to His Majesty's Government urging the introduction of a more equitable taxation system and grant of relief by reducing the tax. Till March 1949, the Government of India had received no reply.

BURMA

The Indo-Burma Draft Agreement accepted by both the governments and published on 22 July 1941 was based on two main principles, firstly, that Burma was, subject to the provisions of the Government of India Act, entitled to determine the composition of her own population and, secondly, that Indians who had wholly identified themselves with the interests of Burma should enjoy equality of rights with other members of the permanent population. It was, however, recognized that in the peculiar circumstances of the two countries, their geographical proximity, their cultural and economic ties and their long political and administrative association, the problems arising from regulation of immigration were of special complexity and delicacy.

The Japanese military campaign interrupted India's negotiations on the Indo-Burma Draft Agreement. Early in 1943, the Indian Government learnt that the Burma Government was engaged in drawing up plans for the post-war reconstruction of Burma. The Indian Government began to consult with the interests concerned in regard to the plans concerning the question of Indian immigration into Burma and status of Indians in post-war Burma.

In March 1944, the Indian Government received certain proposals from the Government of Burma as a basis for fresh discussions in regard to the post-war immigration of Indians into Burma. Also as the Indo-Burma Agreement of 1941 was concluded for a period of three years, a suitable opportunity arose in the middle of 1944 for fresh negotiations. The Burma Conference held at Simla in June 1944 discussed the proposals of the Burma Government. At this conference, the representatives of the Governments of India and Burma and of Indians hitherto resident in Burma conferred mainly on the future of Burma Indians and the return of Indian evacuees. The Government of Burma claimed that they had the right to determine the composition of her population and proposed that Indians who preferred to return to Burma after reoccupation should 'get' their domicile in Burma. Early in September 1944, the Indian Standing Emigration Committee made their final recommendations to the Department regarding a fresh Indo-Burma Agreement. After the liberation of Burma from the Japanese yoke, U Tin Tut, Reconstruction Adviser to the Burma Government, announced on 2 December 1945 that a new Draft Immigration Agreement (U Tin Tut—Banerjee Draft Immigration Agreement) had been drawn up following prolonged discussions at New Delhi since 1943. The draft retained the principal provision of the 1941 Agreement laying down that no fresh Indian immigration into Burma could take place except under a system of quotas which would be fixed by the Burma Government on the advice of the Immigration Board. The quota system would apply only to future emigrants. The high immigration fee of Rs. 500 for 'A' permits of the 1941 Agreement was dropped but the Burma Government was free to charge such fees as would cover the cost of the Board. It also omitted the marriage clause. On 12 March 1946, it was announced that the Burma Executive Council had disapproved this Draft Agreement and the question of negotiating a new agreement would be considered later.

The Governments of India and Burma came to an agreement that Indians who had to leave Burma as a result of the war and Japanese occupation should be enabled to return to that country before others who had no previous connexion with that country. To implement the agreement, the Government of India decided to register such evacuees and issue Identity Certificates. Magistrates in India were authorized to issue the certificates after necessary scrutiny of the applications.

So on reoccupation of Burma by the Allies, the question of the return of 400,000 Indian refugees assumed importance. The Government of Burma proposed that all

Indian refugees who were inhabitants of Burma on or before Japanese occupation in December 1941 would be allowed to return to Burma without any restrictions as to the length of their domicile or anything else. Those who would not get back within a certain time would lose all claims as refugees to be sent back to Burma. The return was to be regulated according to priorities agreed upon with the Indian Government. Workers in ports and railways and sanitary staff were to come first and petty traders and business men last in the list. Indians desired that the term 'evacuees' should also apply to those who came to India prior to 1941 with the intention of returning to Burma but were prevented from doing so by the outbreak of war with Japan.

CANADA

Indian immigration into Canada began in 1905 with the admission of 45 Indians, mostly Sikhs. These Indians were not labourers bound by any contract but free persons who proved very enterprising. Later some more Indians followed which made the Government of Canada to think in terms of restricting their entry. The anti-Indian feeling received a fillip with the decision of the Saskatchewan Supreme Court upholding the right of the provinces to legislate against the employment of white girls by orientals and the recommendation of the Commission on Labour in British Columbia for complete exclusion of all Asians from the province. Local fruit-sellers were prohibited from selling fruits grown by orientals. In 1910, the Government of Canada passed the Immigration Act 1910 embodying the main points of the Order-in-Council passed in 1908. The Act stipulated that Indians should, at the time of landing in Canada, possess a sum of \$200, while in the case of other Asians, except those who came under the regulations of a special treaty or statute, the sum required was only \$25. In 1913 an Order-in-Council was passed banning the landing at any port in British Columbia of any Indian immigrants who were artisans, skilled or unskilled workers.

After thus restricting the immigration from India for a time, Canada excluded further Indian immigration in 1914 by an Order-in-Council (P.C. 23 of 7 January 1914) passed under Section 38 of the Immigration Act 1910 which prohibited the landing of an immigrant in Canada otherwise than by a continuous journey from the country of emigration and on a single boat with through-ticket therefrom. The exclusion of Indians was rendered complete

owing to the absence of a direct steamship service between India and Canada. A. W. Neil asked in the Canadian House of Commons:

Can you, Mr. Speaker, conceive of any conditions which would make a man a more desirable immigrant to Canada if he came in a boat which started at Bombay and docked at Vancouver than if he went from Bombay to Hongkong and then took the regular line of steamers from there to this country³¹ We said that not only must the native of India come in a boat directly from the country of origin but he must also obtain a ticket direct from the country of origin to Vancouver. I do not know how we managed it, but I assume it was by arrangement with the consular agents. At any rate, we saw to it he could not get a ticket right through. If that is not an indirect way of doing something which we cannot do directly, I do not know what it is.³²

This restriction drove the Sikh community in India to make a test case of the stipulation for an unbroken journey and 352 Sikhs and 21 other Punjabis chartered the Japanese steamer *Komagata Maru* and sailed from Hongkong on 4 April 1914 for Vancouver. Making a continuous voyage, the steamer reached Vancouver on 24 May but none except a few with return permits were allowed to land. Earlier when the approach of the steamer to Canadian shores was signalled to the Canadian Navy, a battleship pursued the steamer on its course. Those not permitted to land rebelled and attempted a forced landing which led to military intervention. The Indian party protested against the Canadian attitude and one of the party applied for a writ of *habeas corpus* which the Chief Justice disallowed. Indians returned back to Calcutta on 27 September 1914. This incident made the racial implications explicit.

Between 1915 and 1919, 20 to 30 Indians were deported each year on the ground of illegal entry. Again since 1930 several Indians had been deported from the Dominion on the ground of their alleged illegal entry. Owing to these restrictions the number of Indian immigrants fell from 2,623 in 1908 to 80 in 1931. Between 1921 and 1930 only 418 Indians were admitted merely to visit the Dominion. Subsequently the government was satisfied that those Indians who remained behind were settled with adequate property. But suddenly in August 1939, some 300 Sikhs were threatened with deportation on the basis of illegal entry. Indians took the matter to the Supreme Court to fight deportation action, but the Supreme Court ruled in favour of the government. Subsequently the Cabinet passed an Order-in-Council in September

31. House of Commons Debates, Official Report, Ottawa, 24 May, 1938, p. 3465.

32. *Ibid.*

1939 overruling the judgement of the Supreme Court and permitting them to remain. To the appellants was also returned \$30,000, the cash bond furnished by the appellants in the case under the Canadian law. P. C. 23 of 7 January 1914, prescribing 'continuous voyage' was revoked under P. C. 4852 of 27 November 1947. Most of the grievances of resident Indians have been removed. Now the restriction relates to future Indian immigration which is to be tackled on inter-Dominion governmental level.

In 1947, Indians were granted the rights of domicile and citizenship. During the same year the legal stipulation for fingerprints of Indians in legal transactions was also removed.

Canada admits a maximum of 150 Japanese a year for permanent settlement while Indians are denied a similar privilege. Indians plead that a similar quota be fixed for Indian immigration. Also the amount of money to be possessed by an immigrant, Indians argue, is more in the case of an Indian than in the case of a Japanese and that this therefore be reduced.

THE UNITED STATES OF AMERICA

Indians, settled mostly in California, are those who entered the United States across the Canadian boundaries or their descendants who have been in America from about 1907. On 5 February 1917, the U.S. Congress passed the Naturalization Act and the Immigration Act. The Immigration Act expressly excluded the people from the Asian barred zone, defined arbitrarily by certain latitudes and longitudes, which included India, Siam, Indo-China, parts of Siberia, Afghanistan, Arabia, Java, Sumatra, Borneo, Ceylon etc.

Thereafter only a small number of business men and students were occasionally admitted under special visas. Unlike the Chinese and the Japanese, the immigrants from India enjoyed the full rights to U.S. citizenship and many of them had availed themselves of the privilege. But even Indians who had been legally admitted to the United States for permanent residence before 1 May 1917—the date on which the Immigration Act was passed—and who had retained a permanent domicile in the U.S. had to obtain a re-entry permit even though they were allowed to depart temporarily for a short period. Moreover, visas were in practice granted only for a period of six months to Indians entering the United States. Although it was stated that renewals were granted without difficulty, Indians engaged in business were not allowed to remain indefinitely in the U.S. Several Indians were deported between 1918 and 1940.

On 19 February 1923, Justice Sutherland of the Supreme Court of the United States held in *United States v.*

Thind 261 U.S. 204 (1922) that a Hindu was not a 'white person' within the meaning of the revised Statute 2169, relating to the naturalization of aliens. The learned Judge based his momentous judgement on the grounds that 'free white person' were words of common speech to be interpreted in conformity with the understanding of the common man. The law at this time stated that Caucasians were citizens. The learned Judge decided that Indians were not in the opinion of the common man Caucasians, whatever might be their race from a purely biological viewpoint. Thus the decision was sustained merely on the racial prejudice of the 'man in the street.' In some cases the law was applied retroactively and Indians were required to surrender citizenship papers—a wrong that was later rectified.

Originally an immigration quota of 100 per annum was fixed for the entry of Indians into the U.S., but this judgement of the Supreme Court that Indians were not eligible to American citizenship disentitled Indians to any quota under the Immigration Act of 1924. Only tourists, *bona fide* students, visitors, etc. from India might enter the U.S. and only as non-quota immigrants and they were declared ineligible to U.S. citizenship. The Nationality Act of 1940 also declared the Indians ineligible to U.S. citizenship. The result was that only a few Indians naturalized before 1923 were American citizens while all other Indian residents were in the anomalous situation of being ineligible for citizenship. The important point was that Indians were deprived of the rights they once enjoyed and this cost the U.S. much loss of Indian goodwill. When Indians pleaded for U.S. citizenship, what they wanted was not unrestricted immigration but only the removal of the stain of racial inferiority as was done in the withdrawal of the Chinese Exclusion Act, and mere restoration of a right they enjoyed before.

The Langer Bill of 1946 provided that about seventy-five nationals of India might enter the U.S. annually as immigrants, a number so small that it obviously would create no economic or social problem. As at first proposed, this Bill permitted all Indians residing in the United States for more than 20 years to acquire citizenship immediately upon petition. But the U.S. Attorney-General objected to this Bill as this was discriminatory against other immigrants who were forced to wait for five years after the original declaration. The modified Bill provided for citizenship to all Indians who entered the United States before July 1924. The Indian witnesses who appeared before the Senate Immigration and Naturalization Sub-Committee attempted to persuade Senator Langer to accept an amendment to this Bill placing Indians on a footing of equality with the immigration quota allowed to the Chin-

ese. The Bill affected approximately 3,000 Indian nationals, with 700 who entered the U.S. after 1924 not included. Of this number 250 had already acquired citizenship as a reward for army service.

NEW ZEALAND

In New Zealand, no Indian was permitted to land if he intended to settle. New Zealand was thus barred to Indians 'though not legally but as a matter of fact by the rigours imposed by the customs officials.'

In its immigration policy, New Zealand followed the Australian lead. All non-Europeans including Indians were designated 'race aliens'. The total number of Indians which was about 700 before 1914 increased to 1,144 by 1932 as a result of the immigration of ex-indentured Indian labourers from Fiji. As most of these Indians acquired knowledge of English and were able to satisfy the language test, an Act was passed requiring persons other than natural-born British subjects to make New Zealand the land of their adoption. As in Australia, the Government of New Zealand have been pursuing a 'White' New Zealand policy. Since 1918 they have enacted drastic legislation restricting Indian immigration. Consequently, the number of Indians fell from 1,200 in 1922 to 824 in 1936.

ILLICIT ENTRY

SOUTH AFRICA

One of the grounds on which further restrictions were placed on Indian immigration in South Africa was the alleged illicit influx. It might be that there was a little of such influx. But it was inevitable because the restrictions applied even to those who were once resident in South Africa and were eager to return there. In fact, so far as South Africa was concerned, where alone the charge was often made, there was little justification for restriction on that ground. Captain Hamilton Fowle, Protector of Asiatics, reported in 1903 to Lord Milner, Governor of the Transvaal, that there was no reason to believe that Asians were unauthorizedly entering the colony and that such of those as did enter were soon arrested and sent over the border, and that it was practically impossible for any unauthorized Asian to remain in the colony for any length of time without being detected. The Report of the Protector for the year 1906 stated that 876 male Asians were found without permits. But it was not denied that those unlawful immigrants might have entered at any time during the four years since 1902. So only 876 were found to have entered illegally during a period of four years of harassing legislation. The Asiatic Commission

reported fifteen years later referring to the European assertion of Indian influx: 'Some of their assertions were of a most extravagant character and were generally based on hearsay; they are probably due to reports spread around the country districts by interested or irresponsible propagandists'.³³ They concluded that 'there are no substantial grounds for those apprehensions, and that if there is any leakage at all at the present time into the Transvaal, it is entirely negligible'.³⁴

The Supreme Court decided in *Immigrants Appeal Board v. Daya Purushotham* that Sec. 5 of Act XXXVII of 1927 was retrospective and laid down a procedure for setting aside all registration certificates obtained by fraud whether before or after the passing of the amending Act, and whether by the fraud of the holder himself or of others on his behalf. The Union Ministers offered not to give retrospective effect to Sec. 5 provided the South African Indian Congress assured the Union Government not to tolerate any illicit entry into the Union and honour the Capetown Agreement, and the Congress reiterated the assurance accordingly. The government then declared their willingness to abstain from the full enforcement of Sec. 10 of the Immigrants Regulation Act XXII of 1913 as amended by Sec. 5 of Act XXXVII of 1927, in the case of an Indian who proved to the satisfaction of the Minister of the Interior that he had entered a province of the Union, other than the Orange Free State, prior to 5 July 1924, subject to certain conditions. The Rt. Hon. V. S. Srinivasa Sastri, Agent of the Government of India in South Africa, pleaded that '1914 line' should be drawn in the operation of the condonation scheme with regard to the Transvaal Indians, but Dr. Malan, Minister of the Interior, could not agree to the proposal. Indians were however compelled by the above Supreme Court decision to bow to the inevitable condonation scheme, though it was inadequate.

The population figures, the statements above quoted and the policy adopted by the government show that the charge of illicit influx was true only to a very limited extent. And to the extent to which it was true it was inevitable under the difficult plight into which Indians were thrown. Mahatma Gandhi wrote:

I have no desire to see fraud in any shape or form protected. But the case of these settlers is not one of ordinary fraud. In many cases at least up to 1914, the Asiatics Office was a corrupt

33. Report of the Asiatic Inquiry Commission (Lange Commission Report) 1921, p. 67, para 197.

34. *Ibid.*

department and it made it practically impossible for *bona fide* entrants to enter unless they resorted to some crooked means so as to satisfy the greed of the Asiatic officers. Where Government officials were privy to fraud, it ill becomes that Government to punish the helpless victims.³⁵

INDIANS AND ECONOMIC PENETRATION

In the case of Burma and Ceylon, Indian immigration is restricted on the ground of Indian economic penetration. This assertion could neither be completely ignored, nor entirely accepted. It must be admitted that there was some economic penetration by Indians, but it was largely forced on Indians by the peculiar economic conditions prevailing in the countries. Also the penetration was certainly not in proportion to the most rigorous restrictions placed on the entry of Indians. The Simon Commission states :

The frequent cry that the Indian is displacing the Burman is largely due to the numbers of Indians who can be seen landing at Rangoon and to the concentration of the Indian element in certain urban areas. As the emigration and immigration statistics of the principal ports show, the Indian comes and goes, and the steady excess of the Indian immigrants over the Indian emigrants may be a measure rather of economic development than of any Indian penetration of Burma. If the Indian immigrant does stay he tends to be absorbed into the Burmese population. Whether he stays or returns, he often plays a part in the economic life of Burma which the Burman is not very willing to undertake for himself.³⁶

Sir Edward Jackson reported in precisely the same strain about Ceylon and Colombo. Turning to the alleged increasing Indian influx Sir Edward Jackson says : ' In all fields of employment in which Indians customarily occupy themselves, when work is available the immigrant comes to share in it and when it is not, he returns to his home.'³⁷

ENTRY OF WOMEN AND CHILDREN

SOUTH AFRICA

In South Africa, the practice was to admit a woman married by a domiciled Asian according to the rites of his religion as his wife, so long as she was his only wife in South Africa. But the Searle judgement of 1910 stated that for the purposes of the Immi-

35. *Young India*, 7 June 1928, p. 765.

36. Quoted in the editorial of *The Hindu*, Friday, 13 June 1941.

37. Sir Edward St. J. Jackson : Report of the Commission on Immigration into Ceylon (1938), p. 32.

gration Act, no marriage could be regarded as monogamous which was celebrated according to the rites of any religion recognizing polygamy. The judgement thus interfered with the existing practice. The Union Ministers promised in 1911 that it was not their intention 'to affect in the proposed immigration legislation for the Union, the right of entry into Natal of the wives and minor children of Indians domiciled in that province.'³⁸ The Ministers stated that they did not propose to perpetuate the system of domicile certificates hitherto in force in Natal, but would introduce the Cape system of granting permits. They also declared in 1913 that it was not intended in the Bill to interfere in any way with the jurisdiction of the courts on questions of domicile.³⁹ But so far as the entry of female immigrants was concerned, they made the Immigration Officer a quasi-judicial officer by continuing to vest him with the power to deal with the questions which might arise concerning the validity of the marriage of a female immigrant, on proof of which alone her claim to entry was based. It was stated that, unless it was shown that the Officer had not given proper consideration to the evidence tendered, the South African Government could not interfere and that the Immigration Officer's decision was final in regard to the validity of the marriage, and indirectly to their claim to entry as wives of domiciled Indians.

In 1913, explaining the meaning and effect of Sec. 5(g) of the new Immigration Restriction Bill of 1913, Smuts promised that the existing practice of admitting one wife of an Indian then entitled to reside in any province or who might in future be permitted to enter the Union, would be continued so long as she was his only wife in South Africa, irrespective of the fact that his marriage to such a wife might have been solemnized according to tenets which recognized polygamy, or that she was one of the several wives married abroad. The Immigration Bill of 1913 left the status of the Indian women married according to their religious rites in a state of uncertainty by leaving the Searle judgement alone. This was one of the reasons which led to the historic march of Indians into the Transvaal, on 6 November 1913 and the appointment of the Solomon Commission. As regards Sec. 5(g) and the Searle judgement, this Commission upheld the Indian contention that the intention of the clause was to admit freely into the Union the wife and children by her of any domiciled Indian if she were in fact his only wife even though she had been married to him according to the rites of a

38. Cd. 6283, p. 12, Minute No. 715 of 16 June 1911.

39. Cd. 6940, (July 1913), p. 23.

religion which recognized polygamy. On the recommendation of the Commission to amend Sec. 5, the Union Government validated in Sec. 2 of the Indian Relief Act 1914 the existing *de facto* monogamous marriages. Sec. 3 dealt with the interpretation of the Natal Courts in the Kulsum Bibi judgement and thus restored the position existing previous to the Searle judgement. The Solomon Commission had also recommended that the Immigration Officers should be instructed to open registers in each province for the registration of the plural wives of Indians of three or four years residence in South Africa. They stated that such wives should be free to travel to and from India with their minor children so long as the husbands continued to reside in the Union. Accordingly, the Union Government undertook, if the number of such plural wives was very limited, to allow them and their children to join their husbands and fathers in South Africa. It was also complained that where permits were not held, it was doubtful until arrival in Capetown whether the wives or children of Indians coming to join their husbands and fathers would be allowed to land, and in many cases permission was refused after great expense had been incurred by the parties concerned. In regard to this matter the Solomon Commission recommended official inquiries in India as to the genuineness of their relationship, and issue of certificates which should be accepted by the Immigration Officers as conclusive evidence of the facts stated by them. The Union Government accepted the recommendation.

Sec. 5(g) of Act XXII of 1913 permitted the entry of the wife, and children under sixteen years, of any Indian domiciled in any province of the Union on condition that such Indian when living in the country should have only one wife living in the country and should not have children by any other living woman in the country. Restriction on the entry of children was made more stringent by reducing the age from 21 to 16 years. The Indian Relief Act also made no provision for protecting the children of the deceased wives where such wives, if alive, could have been recognized under this Act.

Under Act XXII of 1913 some 600 persons used to enter South Africa every year. This stream of Indians, mostly boys, on the strength of the above law, frightened the government. So in proviso to Clause 17 of the Areas Reservation and Immigration and Registration (Further Provision) Bill of 1925 which was subsequently withdrawn as a result of the Capetown Agreement of 1927, the Union Government imposed a time limit in respect of entry into the Union of wives and children of lawfully resident Indians by entirely prohibiting their entry after 1 August 1930. The Cape-

town Round Table Conference 1927 decided to repeal this provision and to bring into operation instead the Reciprocity Resolution of the Imperial Conference of 1918 which, while imposing a restriction on immigration not contemplated in the Indian Relief Act, 1914, would not prohibit it altogether after some three years as contemplated in the Bill withdrawn. The Imperial Conference resolution was embodied in the Indian Relief (Amendment) Act 1927. This Act provided that the minor children of an Indian domiciled in a particular Dominion should be allowed to enter that Dominion if they were accompanied by their mother, or if their mother was already domiciled in such a Dominion. The Union Government hoped that if this resolution was carried out, the number of minor children who would be introduced into South Africa 'would be very much reduced, so that practically in that way the further immigration of Indians from abroad would be stopped'.⁴⁰

CANADA

In Canada also, those Indians who were already admitted up to 1913 were not allowed to bring in their wives but as a result of the representations made by the Rt. Hon. Sastri in 1922, their wives and sons were subsequently permitted to enter.

The general practice of the Dominions of Canada, Australia, and New Zealand also was regulated by para 3 of the Reciprocity Resolution of the Imperial Conference 1918, which provided that Indians already permanently domiciled in the other British Dominions should be allowed to bring in their wives and minor children on condition :

- (a) that not more than one wife and her children would be admitted for each such Indian, and
- (b) that each individual so admitted should be certified by the Government of India as being the lawful wife and child of such Indian.⁴¹

As a result of several representations in 1930, the wives and unmarried children under 18 of the Canadian Indians were permitted to join them. In 1948, a further step in this direction was taken by permitting the entry of young men seeking to enter Canada for the immediate purpose of marrying girls of Indian racial origin and to relatives of persons of such origin legally resident in Canada, when the said Canadian residents had reached an age requiring assistance not otherwise available to manage properties in Canada.

40. *Servant of India*, 30 June 1937.

41. Proceedings of the Conference between Representatives of the Government of India and Representatives of the Union,

Married Indians who were accompanied by their wives and dependent children and assured of permanent employment as agriculturists were permitted to bring their wives and minor children from India to join them.

EDUCATED INDIANS

Sec. 5 (a) of the Natal Immigration Restriction Act XXX of 1903 provided that any person who could not write or sign in some European language an application to the satisfaction of the Minister was a 'prohibited immigrant'. Similarly Act XXX of 1906 of the Cape Province prescribed an education test, adopting the Natal provision with a proviso in favour also of the Yiddish language. Still, Indians passing this test were only known as 'immigrants' and not as 'educated entrants'.

The question of the right of entry of educated Indians was one of the main planks of the Indian *satyagraha* movement in the Transvaal. In 1904, Sir Arthur Lawley, Lieut.-Governor of the Transvaal, proposed an Immigration Restriction Ordinance, on the lines of the Cape and Natal Acts, providing *inter alia* an education test for future immigrants. Accordingly, the Immigration Restriction Act XV of 1907 defined 'prohibited immigrant' to include any person unable to write out or sign in a European language an application for permission to enter the colony. But the Act indirectly took away the benefit of its education clause by subjecting under Sec. 2 (4) of Act XV of 1907 even those who passed the prescribed educational test to the Asiatic Law Amendment Act II of 1907 the object of which was stated to be only identification. Act II provided for the compulsory registration of all Indians lawfully resident in the Transvaal and for the identification of the holders of certificates of registration by means of the finger impression system for all, including those who passed the education test of Act XV of 1907. Referring to this anomalous position Lord Morley stated :

Sec. 2(4) of the Transvaal Act introduces a principle to which no parallel can be found in previous legislation. This clause perpetuates an arrangement introduced in very special circumstances and will debar from entry into the Transvaal British subjects who would be free to enter any other colony by proving themselves capable of passing the educational tests laid down for immigrants. It will, for instance, permanently exclude from the Transvaal members of learned professions and graduates of European universities of Asiatic origin who may in future wish to enter the colony.⁴²

42. Selection of Papers (1926), p. 231, India Office Despatch dated 31 October 1907.

The result of this sub-section coupled with provisions of Act II of 1907 which Mahatma Gandhi described as a 'Murderous Act' and inaugurated the epic *satyagraha* struggle, was to exclude Indians altogether from further immigration, the educational test being rendered a dead letter by the joint operation of the two Acts. As a result of the passing of Act XV, foreigners and natives could, on passing the educational test, enter the Transvaal, but not Indians. Mahatma Gandhi repeatedly requested the Government to rectify this injustice in the Voluntary Registration Act XXXVI of 1908 but no provision was made for the immigration of Asians, who, although not claiming previous domicile in the Transvaal, could pass an educational test in a European language. So Indians rejected this Act though they admitted that it was an advance on Act II of 1907. Mahatma Gandhi advised resumption of *satyagraha*. On the very day Act XXXVI was passed, Indians met the challenge by burning more than 2,000 registration certificates. Indians of Natal disobeyed the Act by crossing the border into the Transvaal and the Transvaal Indians courted arrest by hawking without a licence. The government tried to suppress the movement ruthlessly.

In October 1908, Lord Crewe pleaded for the temporary admission of a limited number of educated Indians. The Indian plea had always been that the admission of educated Indians, whether they had or had not pre-Boer War residence, should be provided for under the provisions of the ordinary immigration law of the colony and that there should be nothing in the immigration law itself discriminating against Asians as such, but that they were prepared to accept administrative differentiation under the general immigration law whereby the annual admission of educated Indians might be limited to six. In respect of the question of the admission of educated Indians on a level with Europeans, there was thus difference of opinion between Indians and the Transvaal Government, the former viewing it as a matter of principle and right and the latter one of method and grace. Smuts accepted Lord Crewe's suggestion of admitting into the Transvaal a limited number of educated Asians, not exceeding six per annum, under permanent certificates of registration instead of temporary permits. He also added that this procedure was independent of the temporary permits to be provided for visitors. Indians pleaded that as six was conceded for the Transvaal with only 15,000 Indian population, the contemplated number of twelve for the whole Union was unjust; that though in proportion to the total population there should be at least seventy-two educated Indian immigrants, provision be made for the immigration of at least fifty

educated Indians. The Secretary of State for the Colonies also argued that the contemplated number of twelve for the whole Union was insufficient. In 1914, in his letter which constitutes a part of the Smuts-Gandhi Agreement, Smuts promised that in the case of specially exempted educated entrants into the Union for the general welfare of Indians, general declaration at the port of entry in terms of Sec. 19 of the 1913 Act was sufficient, and nothing more would be required at the provincial borders.⁴³ In regard to Indians who were admitted within the last three years either to Natal or the Cape Province after passing the educational tests imposed by the immigration laws which were in force therein before Act XXII of 1913 came into operation, but who in terms of Sec. 30 thereof were not yet regarded as being domiciled, Smuts promised that they should, in the event of their absenting themselves temporarily from the province in which they were lawfully resident, be treated on their return as if the term 'domicile' as so defined did apply to them. Then came the Immigration Act XXII of 1913. The Union Governor-General wrote to the Secretary of State for the Colonies that Sec. 4 (1) (a) of the Bill was designed to avoid the appearance of a racial bar. But under this restriction clause, the Minister will communicate his decision as to the persons who on economic grounds or on account of their standard or habits of life would be deemed to be unsuited to the requirements of the Union and allowed entry into the Union each year. Power to make such exemption is taken in Sec. 25 of the Act.⁴⁴

The 'Deeming Order' was subsequently issued and the admission of a few educated Indians was provided for by the issue of exemption certificates. But in several such certificates, some conditions used to be incorporated. The Supreme Court held in Medh's Case that the Minister had no power to impose conditions on exempted Indians and such conditions were *ultra vires* and unenforceable. Thus the exempted Indian was put on a par with the legally domiciled Indian and any conditions attached to the letter of exemption were declared *pro-non-script*. This favourable decision led to a setback in their position and educated Indians were hereafter admitted only on temporary permits. Consequently they could not acquire any domicile rights or a right of changing their profession

43. Waiz : Indians Abroad, (1927), p. 307, para 4 of Letter dated 30 June 1914.

44. Memorandum by the Agent of the Government of India in South Africa on Educated Entrants, G.I.P.D. — L. 303, D. of E.H.L. 10-11, 31-30, p. 5.

if they so desired after a certain period. The Indian Agent commented in 1931 thus :

This was of course contrary to Smuts' promise to Lord Crewe in his letter dated 26 August 1909, and to what the Ministers agreed in their Minute dated 20 December 1910. But no objection seems to have been taken by anybody and to this day only temporary permits are issued to educated entrants.⁴⁵

The position remained thus.

CAPE ENTRY AND INTER-PROVINCIAL MIGRATION

Mahatma Gandhi did not ask for the right of free immigration from India, but only the right of the Natal and Transvaal-born Indians to migrate to the Cape Province. This demand was based upon the principle of the maintenance of existing rights as contained in the Cape Act XXX of 1906 under which the South African-born Indians had the free right to enter the Cape Province. But the proviso to Sec. 5 of the Immigration Act XXII of 1913 deprived the South Africa-born Indians of this right which they had enjoyed till then under the Cape Act by virtue only of their South African birth; they were now required to pass an educational test as aliens. Indians opposed this new restriction. The Solomon Commission concluded that the restriction of entry of South Africa-born Indians into the Cape Province to those who could satisfy the educational requirements of Act XXX of 1906 was a departure from the provisional settlement of 1911. But they refused to recommend the amendment of the Act of 1913 so as to restore the right of the South African-born Indians to enter the Cape Province without undergoing the educational test provided therein. They based their refusal on two grounds, firstly, that the grievance was shadowy, and, secondly, that the assurance of the Minister to Mahatma Gandhi to maintain existing rights could scarcely bind a legislature for all time and that sentiment or prejudice on the part of Europeans as well as on the part of Indians should be taken into consideration. But the Indian sentiment was thrown overboard and humiliation was heaped on Indians to perpetuate the European prejudice.

Clause 16 (b) of the Immigration Registration (Further Provision) Bill of 1925 attempted to restrict the further entry of Asians resident in other parts of the Union into Natal and Cape. The sub-committee appointed by the Capetown Round Table Conference of 1927 recommended that as regards Natal and Cape entry the

45. *Ibid.*

status quo should not be disturbed. In view of the doubt as regards the meaning of para 3 of the letter of E. M. Gorges (Department of Interior, Union Government) to Mahatma Gandhi dated 30 June 1914, it recommended :

All Union-born Indians even if born after the commencement of Act No. XXII of 1913 should, upon satisfying the educational test, be permitted to enter the Cape and Natal provided that when the number of such entrants sensibly increases, Sec. 4 (1) (a) of Act XXII of 1913 can, at the discretion of the Union Government, be put into operation.⁴⁶

This recommendation was accepted by both the Indian and Union Governments but no amendment was made to give effect to it with the result that Sec. 4 (2) (a) in Act XXXVII of 1927 remained as in Act XXII of 1913. Nor was any change made on this point in the amending Act of 1931. Presenting the legal position in 1931, the Indian Agent said :

So it seems that Indians born in South Africa after 1 August 1913 cannot legally migrate to the Cape from Natal or the Transvaal. Similarly such persons cannot legally migrate to Natal from the Cape Province. It may be that administratively there will be no difficulty, but if anybody takes into his head to question such migration, the law courts are bound to hold that it is illegal. As for Natal and Cape Indians, they have, of course, no right to migrate to the Transvaal under any circumstances more than an outsider, say, one from India.⁴⁷

The restrictions on migration in South Africa were not confined to provinces only, but were in operation in respect of districts also. In the northern districts of Natal, the Boer Law III of 1885 as it obtained in 1899 was still in force and Indians were liable to pay the licence tax and might live only in certain localities. Though the Natal Indians could enter these districts still they were subject to most of the laws of the South African Republic. Under Sec. 2 of the Northern Districts of Natal Act XXXIII of 1927, the Asians introduced for employment, contracts of labour or for domestic services were not eligible for registration under the Act and they should leave the districts on the expiry of such service. Under Sec. 55 certificates of registration were the conclusive proof of the right of entry and residence, but the holder must surrender certificates previously held such as the Natal domi-

46. Memorandum by the Agent of the Government of India in South Africa on Indian Immigration and Inter-Provincial Movement GIPD — 311(C) D of EHL. 19-11-31-30, p. 11, para 16.

47. *Ibid.*, p. 13, para 19.

cile certificates. As the bulk of Indians had gone there on contracts of service in coal mines or cotton estates very few could get themselves registered. Even if they chose Natal domicile, they could not exercise such rights as Natal Indians were entitled to. If they chose Transvaal domicile they could go to any part of the Transvaal.

These restrictions on provincial and district migration had seriously affected the vested rights of Indians. The Government of India instructed the Indian delegation to the Capetown Conference in 1932 to raise the following points :

(1) that legislative sanction should be given to all South African domiciled Asians for full inter-provincial migration with a view to settle and that this should be granted so far as migration to Cape and Natal were concerned ;

(2) that in any case this freedom should be conceded legislatively to South Africa-born Indians to do so ; and

(3) that in any case, there should be no restriction of any kind for purposes of temporary visits from one province to another.

It was surprising that in South Africa under a 'Union' form of government not only provincial boundaries but also district boundaries should be maintained. Inter-provincial movements in the same country is a natural right and still more so where, as in South Africa, there were no sovereign rights enjoyed by provinces. Further, this peculiar system does not seem to exist even in countries under a federal system of government and actually the states have not even power to expel a citizen or to prevent a federal citizen from settling down in any province. Under Article XLIV of the federal Constitution (1874) of Switzerland 'No Canton shall expel from its territory one of its own citizens nor deprive him of his rights whether acquired by birth or settlement' and under Article XLV :

Every Swiss citizen has the right to settle anywhere in Swiss territory, on condition of submitting a certificate of origin or similar document. By exception, settlement may be refused to, or withdrawn from, those who, in consequence of a penal conviction, are not entitled to civil rights. In addition, settlement may be withdrawn from those who have been repeatedly punished for serious offences and also from those who permanently come upon the charge of public charity or to whom their Commune or Canton of origin, as the case may be, refuses to secure after they have been officially asked to grant it.⁴⁸

Dr. Malan justified the restrictions on inter-provincial migration on the ground that the present provinces were, before union,

48. *Ibid.*, p. 13, para 20.

the original states, each following its own independent Asian policy and enacting its own separate laws by which they protected themselves against immigration both from overseas and from the other South African States. At the time of the union these separate laws were allowed to remain in force and the Union Immigration Act 1913 legally endorsed and adopted the principle of the maintenance of the *status quo* as the Asian policy of the country by the Union Parliament.

RIGHT OF RE-ENTRY

The ultimate object in restricting the right of re-entry is to reduce the Indian population. Strict interpretation of words like 'domicile', stipulation for a reimbursement of repatriation charges and bonus as a condition precedent to the right of re-entry, creation of various classes of Indians for the purposes of re-entry and denial of the right to some of those classes, were some of the common methods adopted to render the right of re-entry extremely difficult, if not absolutely impossible.

The Colonial Office foresaw the possible attitude on the part of colonial governments to refuse the right of re-entry by resorting to highly legalistic interpretations. As far back as 1897, Joseph Chamberlain, Secretary of State for the Colonies, referring to the provisions affecting the right of re-entry in the very first Immigration Restriction Act of Natal, wrote to the Union Governor-General thus :

The word 'domiciled' being liable to be construed in its strict legal sense, an Indian who had resided in Natal and even acquired property or established a business there, and who has occasion to revisit his native country for a temporary purpose, might be held to come under the provisions of the Act, and be refused readmittance to the Colony, unless he could show that he had been legally domiciled there. All doubts on the subject would be removed by substituting the word 'resident' for 'domiciled' in Sec. 6, and I should be glad if your Ministers would procure an amendment of the law in this respect.⁴⁹

Later, an assurance was given limiting the restrictions on the right of re-entry only to certain classes of persons falling within the definition of 'prohibited immigrant'. But the wide chasm between assurance and practice made the Government of India plead in 1900 for the widening of the interpretation of 'domiciled' so as to include all those who were born and bred in the colony and

49. Selection of Papers (1926), p. 42, para 5, Despatch No. 101, dated 12 November 1897.

were actually resident therein at the time when the Act was passed or whose families were or had been domiciled there.⁵⁰

In pleading thus, the Government of India also laid down their policy in regard to the re-entry question. Besides the Colonial Office and the Government of India, the India Office also declared its attitude. In 1907, Lord Morley protested against the Transvaal Immigration Restriction Act on the ground that the 'Act may work grave injustice, since British Indian subjects who had before 1902 acquired domicile in the Transvaal, but having temporarily left the colony had not yet registered themselves, may under its provisions be debarred from re-entry.'⁵¹

SOUTH AFRICA

Practice has travelled far away from these pronouncements under the stress of the inexorable logic of colonial governments. South Africa was able under the Smuts-Gandhi Agreement to deny the right of re-entry to all those who should avail themselves of the free repatriation provided therein. The Immigration Restriction Act XV of 1907 seriously affected the right of re-entry, since Indians who had before 1902 acquired domicile in the Transvaal, but having temporarily left the colony had not yet registered themselves, could be debarred from re-entry. But the strenuous attempts of the Indian delegation to the Capetown Conference of 1927 resurrected the right of re-entry on a conditional basis. The assisted emigrant was allowed the right, provided he reimbursed the bonus and the cost of passage and also exercised the right within three years. How far this right of re-entry was crippled by stipulation for reimbursement might be gauged from the fact that, out of the 12,451 Indians repatriated during a period of six years—between July 1927 and February 1933—only 252 Indians re-entered the Union. Similarly, during another six years between March 1933 and February 1939, out of 3,758 Indians repatriated, only 258 returned to the Union. The stipulation for a refund of the bonus and cost of passage hit hard on poor Indians and proved impossible of fulfilment by them and thus the doors of re-entry were 'barred with gold and opened but to golden keys'. Attempts were subsequently made to take away even this conditional right of re-entry. Secs. 2 and 11 of the Transvaal Asiatic Registration Amendment Act of 1908 provided that Indians who were in lawful possession of certificates of registration were

50. *Ibid.*, p. 70, para 4, Government of India Despatch dated 12 July 1900.

51. *Ibid.*, p. 231, India Office Despatch J. and P. dated 31 October 1907.

entitled to enter and reside in the Transvaal. This right was reaffirmed in Sec. 4 (2) (b) of the Immigrants Registration Act XXII of 1913. This was not disturbed by anything contained in the Immigration and Indian Relief (Further Provision) Act XXXVII of 1927. But in 1931, the Union Government contended that the provision in Act XXXVII which involved loss of domicile by continuous absence for more than three years from the Union, and in respect of certain nationalities consequent loss of the right to re-enter South Africa, was intended to apply to Transvaal Indians holding registration certificates who did not return to the Union before 5 July 1930. So they proposed to withdraw the protection extended by deleting Sec. 4 (2) (b) of Act XXII of 1913 in the South African Immigration Amendment Bill of 1931. No doubt, an obvious conflict existed between the implications of the definition of domicile contained in Sec. 10 of Act XXXVII of 1927 and the provision made by Sec. 4 (2) (b) of Act XXII of 1913. But whatever the intention of the Legislature, this gave rise to the reasonable belief that Indians holding registration certificates were immune from the effect of the loss of domicile, which is the loss of the right of re-entry. So the Government of India pleaded that before the protection afforded by Sec. 11 of Act XXXVI of 1908 was withdrawn a reasonable period of notice should be given.

The crippling of the right of re-entry collected to itself sinister significance by the haunting shadow of racial discrimination. Though the provision as to the loss of domicile applied to all races indifferently, the provision was only nominally of general application, as it had quite a different effect on Indians from that on Europeans. If the Europeans lost their domicile by continuous absence for over three years they could acquire it afresh whenever they desired to return. Thus, loss of domicile entailed no hardship on Europeans, while in the case of Indians it meant a permanent separation from South Africa. Referring to the loss of domicile, Dr. Malan admitted in the House of Assembly thus: 'That will not in reality affect Europeans, but it will affect Indians who as a class are deemed under the law of 1913 to be prohibited immigrants'.⁵² He added: 'After an absence of three years Indians will not be able to return to the Union unless they come to the Union as minor children of Indians who are domiciled in the country',⁵³ while Europeans could come in whenever they liked by satisfying the ordinary requirements of the Union immi-

52. Quoted in *Servant of India*, 30 June 1927, p. 244.

53. *Ibid.*

gration law. To the extent to which the right of re-entry had been re-established in the Capetown Agreement of 1927, it was a moral advantage to India. But the attached snag detracted largely from its material helpfulness. Again, referring to the deletion of the stipulation for the surrender of domicile in the 1927 Agreement and grant of conditional right of re-entry, Dr. Malan stated in the same House :

This is not a concession that we have made to the Government of India, but it is a provision which is introduced with a view to making the emigration scheme more effective. . . . Experience has taught us that the great objection on their (Indians) part against going over to India is that on the day of their departure they must renounce the right of re-entering for ever into the Union. They know what they leave behind, and they do not know what they will get on the other side, and in the uncertainty of their prospects, they prefer to remain in South Africa. If this alteration is made, it is expected that a very much larger number of Indians will avail themselves of the facilities for repatriation.⁵⁴

Owing to the shortage of shipping a large number of Indians who left South Africa on a visit to India found it difficult to return to South Africa within the period of validity of their certificates. On representation by the Indian Government, the Minister of the Interior agreed in 1940 to the extension of the validity of certificates of Indians visiting beyond the three-year period, provided such Indians could produce satisfactory evidence that their failure to return to the Union was due to the difficulty of obtaining passages. Again in August 1942, the change in the war situation and the increasing dangers attending a voyage between South Africa and India persuaded the Union Government to accept any reason arising out of conditions produced by the war for condoning an extension beyond the three-year period provided an application was made in time. This concession proved helpful to the Indian community though the help would have been far more real had the Union Government simply waived the three-year rule for the duration of the war without any insistence on the submission of individual applications. On 23 September 1944, the Commonwealth Relations Department stated in a press note that as the Union Government were not prepared to grant an extension beyond three years in case of persons leaving the Union after 1 May 1942, such persons should try their utmost to return to South Africa before 1 May 1945.

54. *Ibid.*, p. 243.

The Indian Government made arrangements for securing priority passages and succeeded in enabling a large number of them to leave South Africa in time. In March 1945, the Union Government agreed, as a result of representations by the Government of India, to grant extensions to those Indians also who left South Africa *after* 1 May 1942, subject to the condition that the Government of India certified in each case that efforts had been made to secure passages but that no shipping accommodation was available.

EAST AFRICA

The East African Defence (Immigration) Regulations prohibited the re-entry of people who had been away for more than two years. The Government of India had the assurance that this part of the regulations would not be enforced rigidly but due allowance would be made to the circumstances of each particular case.

Obviously only those Indians having *bona fide* business interests and otherwise established there were likely to return to these territories, but in preventing their entry by these restrictions, *bona fide* Indian settlers were also hit hard in East Africa. The restrictions had been introduced without any reference to any Indian representative body and even without the knowledge of the Indian Members of the Legislative Councils of Kenya, Uganda, Tanganyika and Zanzibar. Apart from the suspicion created by these secretive and unjust methods adopted to meet ostensibly the problems of food and housing shortage, it was not apparent why a limit of two years absence was placed on Indian settlers. In Nyasaland, Asians who wanted to leave with the intention of returning took out certificates of identity which would be valid for three years and might be extended for a further period at the discretion of the immigration authorities. At the request of the Government of India the Nyasaland Administration extended the validity of some such certificates for six months in June 1943. This was a correct procedure equivalent to giving six months warning to absentees desiring to return that, if their certificates had expired, they should return to Nyasaland within six months. The East African countries could have followed the Nyasaland example.

On their representation to the governments of the three territories, the Government of India was assured that entry permits would be granted to *bona fide* residents even though they might have been away for more than two years.

The Immigration Bills placed both entry and re-entry on the same footing, subjecting them practically to the same conditions, though re-entry for normal residents should be made comparatively easy and a mere formal and routine matter. Even a person resident for 30 years in the territories might become a prohibited immigrant if he was not born therein or became a destitute or an idiot or a lunatic or contracted an infectious disease or was convicted and sentenced to imprisonment even for a technical offence not involving moral turpitude or even regarded by the Principal Immigration Officer as an undesirable person. Once he became a prohibited immigrant, he could be arrested by the Immigration Officer and deported from the territories. Immigration law should be limited to restrict or regulate entry of persons from outside and not be concerned with deporting from the country to a place outside. Besides, when a resident became a prohibited immigrant, his entire family would become, along with him, liable to arrest and deportation.

A person already resident could obtain a right of re-entry either by obtaining a residential certificate or re-entry permit. The onus of proving aggregate residence is very difficult to discharge in view of the fact that most Indians, being engaged in trade, had to travel between India and East Africa for purposes of trade and also for marriages, education, etc. The revised Bills rectified this position to a considerable extent.

It is not appropriate to try to decide indirectly and incidentally through immigration legislation such a complicated issue as domicile which is baffling even international law. The question of domicile should not be mixed up with that of immigration.

BURMA

The Indo-Burma Draft Agreement of 1941 divided Indians into three categories for the purpose of re-entry. Those possessing a Burma domicile of origin would have a free right of re-entry. Restrictions were placed on the other two categories of Indians— (a) those who had resided for seven out of nine years immediately preceding 15 July 1941 (privileged immigrants) and (b) those who were residing in Burma on 15 July 1941. Even one who fulfilled the difficult test of showing such a high total residence as seven years in such a short period as nine years, and thus acquired the status of a privileged immigrant, would lose the domiciliary rights and status if he should be absent from Burma for a period of twelve months. So he could re-enter Burma only as a new immigrant under the permit system. This provision reduced

Burma Indians to the position of the South African Indians under the Smuts-Gandhi Agreement.

The Indian opposition to the Indo-Burma Draft Agreement of 1941 both in India and Burma led to protracted negotiations between the two governments. The Government of India sought the co-operation of the Burma Government with a view to secure the amendment of Clause 14 (the marriage clause) and the provision in Clause 21 which entailed the automatic loss by a privileged immigrant of that status on his absence for a period of twelve months. The developments of the military campaign following the Japanese invasion of Burma rendered the conclusion of the negotiations impossible.

CEYLON

The Indo-Ceylon Draft Agreement of 1941 followed the Indo-Burma Draft Agreement in creating several classes of Indians for the purpose of re-entry. This stratification can have justification only if the main objective is the extension of the rights to maximum classes of Indians and not exclusion therefrom.

Indians who were as a result of the 'open door' policy allowed to enter Ceylon, acquire property, seek employment, and establish themselves in business or acquire other interests consistently with the economic and other laws prevailing in Ceylon should, irrespective of the extent of their interest, have an unqualified right of re-entry to protect the interests acquired. Any dereliction of this proposition is a violation of the natural law of justice. It was this consideration that actuated Joseph Chamberlain's Despatch referred to before. The argument that adherence to the above would undeservedly benefit even people who had been there for a short time does not warrant the violation of the natural law of justice. The violation sounds revolting in the case of assisted unskilled labourers who emigrated (apart from the documents and statements) on a tacit understanding that they could periodically visit and return to Ceylon without let or hindrance. Moreover, the assisted unskilled labourer, who practically went to Ceylon induced by the Ceylon Government, with the connivance and active assistance of the Government of India, was placed at a disadvantage even in comparison with the unassisted unskilled labourer. Any Indian who came under the category of assisted labourer, irrespective of the period of residence, should be entitled to all the privileges assured to him till now, including occasional absences from Ceylon and prolonged absence during the periods of depression, and should secure re-entry without any hindrance.

REPATRIATION

The repatriation policy of the immigrant countries in relation to Indians had come to be shaped by the long distance of the colonies involving heavy immigration expenses, the exigencies of labour requirements and the responsibility that gradually devolved on the colonial governments to find work for the newly emerging native classes. The helplessness of the colonial governments in providing the vast indigenous communities with plantation work persuaded them to make it up by providing employment to the natives in highly paid urban and industrial labour, by excluding Indians employed or likely to engage themselves in that and other profitable occupations of trading, professions and public services. In the early stages, the Government of India itself stipulated for a right of repatriation to the Indian labourer as a precautionary measure against his ill-treatment in the colony. But repatriation so stipulated was essentially voluntary. With the emergence of the native classes and their competition, the position was almost reversed. The colonial governments had now begun to bargain for the compulsory repatriation of Indians.

SOUTH AFRICA

The South African policy of compulsory repatriation between 1895 and 1913 was adversely criticized by several Commissions. The Asiatic Commission of 1921 recommended that there should be no compulsory repatriation both on the ground of injustice involved and the impracticability of the scheme.⁵⁵ Sir Edward St. J. Jackson too similarly discountenanced it in regard to Indians in Ceylon.⁵⁶

The Governor-General of the Union of South Africa laid down as a fundamental postulate that colonial-born Indians could not be compulsorily repatriated. Referring to his Ministers' proposals, he stated: 'Moreover two-thirds of the Indians in Natal were born in this country and could not be compulsorily repatriated.'⁵⁷ But the Union Ministers stated in 1925 that the extent to which repatriation was possible was not necessarily limited to numbers of Indians born overseas, as more than one-third of Indians hitherto voluntarily repatriated were South Africa-born. It may be noted

55. Lange Commission Report, p. 39, para 118 and para 225 (2).

56. Jackson Report, p. 33.

57. Selection of Papers regarding S. Africa for the use of the Members of the Government of India to that Dominion, Delhi (1925), p. 11, para 4, Despatch dated 12 May 1922.

that the right of compulsorily repatriating South Africa-born Indians was not asserted even by the Union Ministers.

While that was the view of independent Commissions and the policy followed by the Union Government, the Government of India also definitely expressed their attitude to this question. When the Union Government expressed its readiness to enter into a conference to explore the possibility of a more effective repatriation scheme which would result in a considerable reduction of the Indian population in South Africa, the Government of India wrote explaining the misunderstanding of their position thus :

While repatriation would never by itself afford solution of the problem, the existing scheme of repatriation on a purely voluntary basis might be re-examined with a view to ascertaining what difficulties had arisen in its working, and how these difficulties could best be smoothed away. A conference of which the main object was to expedite the Indian repatriation was not contemplated by us. ⁵⁸

At the time of the Gersigney-Shepstone Deputation in 1903, the Government of India at first agreed to the enforced repatriation of Indians on condition that the humiliating licence tax would be abolished ; but they immediately changed their position when they found that the proposal for the termination of indenture contracts in India instead of in the colony, in the form which it had finally assumed, contemplated general repatriation on the expiry of the period of indentured service.

Compulsory repatriation amounts to throwing out Indians as sucked oranges and burdening India with her nationals in a humiliating position. Hence compulsory repatriation was never contemplated or countenanced by the Government of India. There was only a voluntary repatriation scheme in South Africa as a part of the Smuts-Gandhi Agreement. But even this voluntary scheme failed as the necessity for the irrevocable surrender of Union domicile on the part of any Indian wishing to avail himself of the scheme formed the chief feature. But in the Assisted Emigration Scheme, initiated as a result of the Capetown Agreement of 1927, the absence of such a necessity for surrender constituted its merit. Under it there was automatic lapsing of Union domicile only on three years' continuous absence and so there was a right of re-entry within three years. The Rt. Hon'ble V. S. Srinivasa Sastri stated that the difference between

58. Correspondence between the Government of India and the Government of the Union of South Africa regarding the Position of Indians in South Africa (1926), para 3, Telegram No. 7, dated 9 October 1925.

the 'repatriate' of the old scheme and 'Assisted Emigrant' of the new agreement was not of mere terminology, for the Indian born in South Africa had his domicile in the country of his birth and when he chose to come to India he was an emigrant from South Africa and not a repatriated Indian. Moreover, the right of re-entry within three years gave a *locus penitentiae* to the assisted emigrant. This assisted emigration was not the first expedient from the standpoint of even South Africa. Dr. Malan himself admitted that repatriation was a secondary contingency and would be applied only to those who could not and did not wish to adopt Western standards of life or wished to leave South Africa anyhow. He stated that the Capetown Agreement differentiated between those Indians who did not assimilate themselves with the conditions in South Africa, who could not and would not accept the Western ways of life, or who wished to leave South Africa for India because they would feel more at home in Indian surroundings — between those Indians and other Indians, especially those who were born in South Africa and have never known India. Thus, the first alternative afforded was assimilation to Western standards and this was an *obligation* on the South African Government and a *choice* to South African Indians. Even those Indians, who, in spite of the government's efforts, could not and would not accept Western standards, could stay on, while the Assisted Emigration Scheme was available even to those Indians who could and would adopt Western standards but nevertheless preferred for some reason to leave South Africa. The maintenance of Western standards of life was the kernel of the Capetown Agreement. Neither was repatriation the primary object of the Agreement nor was the Uplift Clause in the Agreement contingent on the reduction of Indian population to a given residue. Even if it is assumed that repatriation was the primary object of the Agreement nowhere was it stated to what extent the Indian population should be reduced before the Uplift Clause could be invoked. The fact is that the Agreement means only this — *assimilation first, emigration last but repatriation never*.

The Assisted Emigration Scheme provided for a bonus of £20 in addition to a free passage to every Indian adult willing to be repatriated to India. Indians wishing to avail themselves of the assisted passage have to sign an undertaking in which they agree to the provisions of the Act of 1927 which stipulates that, having accepted the bonus and their passage to India, they must remain in India for one year. If they wish to return to the Union they must do so after one year and within three years from the date of their embarkation from the Union. They are then required to

refund all bonus money and expenses paid to them by the Union Government.

In spite of this attraction, the scheme proved a failure even by 1932 as the 'possibilities of the Union Scheme of Assisted Emigration to India were practically exhausted owing to economic and climatic conditions of India and as well as to the fact that 80 p.c. of the Indian population of the Union was now South Africa-born'.⁵⁹ As was rightly pointed out by the Indian Government, 'every reduction in the number of Indians born outside the Union reduces the prospects of the success of any scheme of assisted emigration to India and thus on reaching the saturation point, the assisted emigration is bound to exhaust itself'.⁶⁰

Of the three schemes of repatriation — compulsory from 1895 to 1913, voluntary from 1914 to 1926 and assisted emigration from 1927 onwards — the last was rendered a big hoax by the subtle methods adopted by the authorities such as throwing Indians out of employment, restricting more and more their trading and other rights, and making their position so humiliating as to drive them to taking advantage of the scheme. The following are the figures of repatriation under the various schemes :

Compulsory Repatriation Between 1895-1913

Year	No.	Year	No.
1895	415	1902	1,482
1896	296	1903	2,029
1897	418	1904	1,672
1898	188	1905	2,078
1899	503	1906	3,939
1900	448	1907	3,484
1901	639	1908	3,489
		1909	4,895

Those repatriated between 1895 and 1901 were 2,907. Those repatriated between 1902 and 1913 were 32,506. Thus the total repatriated under the compulsory scheme between 1895 and 1913 were 35,413. The Indians repatriated under the voluntary repatriation scheme between 1914 and 1926 were 20,334. Thus the

59. Waiz : Indians Abroad Directory (1934).

60. Brief of Instructions issued to the Delegates of the Government of India to the Conference. 1. Scheme of Assisted Emigration (1931), p. 11, para 12.

total number of repatriates for the years from 1895 to 1926 under both the voluntary and compulsory schemes was 55,747.

Repatriates under the Assisted Emigration Scheme from July 1927 when the scheme came into operation up to the end of 1929 were 6,571. The number rose to 7,972 in September 1931 and to 12,451 on 28 February 1933. Between March 1933 and February 1939, 3,758 were repatriated. Thus the total of repatriates till February 1939 was 12,451 plus 3,758 i.e., 16,209. The number of male adults so repatriated in 1937 fell to 161.⁶¹ In 1938, only 135 male adults returned to India under the Assisted Emigration Scheme. The total including wives and children who thus returned was about 200. Only 87 male adults returned to India during the year 1939, the total including wives and children being 124. In his evidence before the Select Committee on Public Accounts, the Commissioner for Immigration and Asiatic Affairs stated that there was a tremendous falling off in the number of Indians availing themselves of this scheme. In 1940 such male adults who returned to India under the scheme were 36 and the total including women and children was 48. This progressive decrease was due to the fact that Indians born in South Africa did not want to go to India. The number of Indians born in South Africa increased from 63,776 in 1911 to 102,323 in 1941. Now over 80 p.c. are South Africa-born.

CEYLON

In regard to Ceylon and Malaya the repatriation question related entirely to the estate labour. The Indian Agent in Malaya reported in 1938 :

The difficulty of suspending production during a period of low prices is intensified by the fact that labour had to be recruited from a distance from South India. On account of the expense of recruiting, transportation from overseas, medical treatment and training, the securing of an efficient labour force represents a considerable investment which would be lost if the workers were released even temporarily. This last consideration influences repatriation policy. Where the cost of introduction of a foreign worker is considerable, the tendency would be to retain him as long as possible. And if possible on reduced wages.⁶²

61. Waiz : *Indians Abroad* (1927), p. 297. Vide Benarsidas Chaturvedi and Bhavani Dayal Sanyasi : *Public Opinion on the Assisted Emigration Scheme under Indo-South African Agreement*.

62. Report of the Indian Agent in Malaya for 1938, p. 6, para 18.

Such a policy of repatriation was accelerated by the flow of unassisted labour which created a glut in the labour market and inclined the balance of bargaining power in favour of the employers. The need of these countries being essentially labour, their whole policy of repatriation was shaped only to retain the requisite labour force. Dependants, labourers unfit for work due to old age or disease and all others unfit for labour purposes had, therefore, no place in their scheme of the retention of the immigrant population. The result was their policy of repatriation of all such classes of Indians and of working labourers if necessary in times of depression.

The following were the several schemes of repatriation in Ceylon :

- (1) Repatriation by the Controller of Labour on employer's application.
- (2) Repatriation that might be arranged by the Agent of the Government of India within a year of the worker's arrival and at the expense of the Immigration Fund under Sec. 22 (1) of Ordinance No. I of 1923.
- (3) Repatriation by Magistrates under Ordinance No. V of 1907 dealing with vagrants.
- (4) Repatriation after more than one year's stay in Ceylon on application by the Government of India through the Government Agent.

The number of Indians repatriated in 1936, 1937 and 1938 under one or another of these four categories were 4,494, 5,604 and 3,004 respectively.

In addition to the above four schemes, two special schemes of repatriation were adopted — that of 1935 which remained in operation till the end of 1937 and which applied to labourers employed on tea estates placed on 'care and maintenance' basis for whom no further employment could be found; the other was in force from February to September 1937 and applied to labourers reported to be surplus by a superintendent of a tea estate of hundred acres or more and who were willing to be repatriated. The total number of persons repatriated under these two schemes was 6,166. These two schemes were devised by the Government of Ceylon to deal with the surplus Indian labour which could not secure work on estates owing to the continued operation of the restriction schemes.

Till 1923 the only scheme of repatriation was the one under the Destitute Immigrants Ordinance V of 1907. This law required that an immigrant must either show that he had a promise of perma-

ment employment in Ceylon or produce, in the case of an Asian, an immigration fee of Rs. 150. If neither condition was fulfilled, entry might be made conditional on the execution by a resident of Ceylon of a bond making the person signing it responsible for the repatriation of the immigrant in case of need. Sir Edward Jackson expressed the opinion that though the Act had failed, its purpose was however achieved by the fact that the Indian immigrant worker went there only when his presence was required and never swelled the number of the unemployed.⁶³ This automatic regulation without any great necessity for repatriation was particularly true of Indian non-estate labour. Sir Edward Jackson says that during 1927-36 the average annual number of Indian immigrants was approximately 90,400 excluding estate labourers and others who were not immigrants in the true sense, while the number of persons repatriated through the House of Detention was only 15,451, this figure including the estate labourers also.

In regard to the Indian estate labourers too, the figures of repatriation were an invariable indication of the labour position on estates. Besides a natural ebb in times of adversity, the several schemes of repatriation freed the planters from the obligation of maintaining surplus labour. Thus by their willingness to be repatriated the Indian labourers assisted the Ceylon Government to solve the problem.

Towards the end of 1932 a special scheme of repatriation was introduced. Where, owing to the closure of an estate or substantial reduction of labour force, a larger number of labourers was thrown out of employment than could be absorbed in the neighbouring districts, any labourer or his dependants who desired to go back to India could be repatriated at the expense of the Immigration Fund. This scheme was later replaced by a more liberal one under which any labourer discharged from the estate on account of the depression and dissatisfied with the reduced scale of wages caused by the lowering of the legal minimum wage was entitled to be repatriated to India. These schemes were availed of when Indian workers' were thrown out of employment and served with notices to quit the estates. If they attempted to stay in the estates after being discharged they were liable under the existing law to prosecution for criminal trespass. To wander about in the island in search of employment would render them liable to deportation under the Destitute Immigrants Regulation Ordinance. Thus Indian workers were forced to seek repatriation.

... 63. Jackson Report, p. 7.

The 1932 scheme was adopted at the suggestion of the Labour Federation of the Planters, and as a result of this scheme 40,000 to 50,000 labourers left the estates within a short time. But the employers were alarmed at this depletion of labour and compelled the government to cry a halt to repatriation. This led to much discontent and trouble in Hatton and the labourers were put to privations. Indian labour was confronted with the same trouble in 1939. When many of the estate labourers could not obtain free repatriation from the estates, they drifted into towns and courted arrest by the Ceylon police as vagrants in order that they might be taken to the House of Detention and be ultimately despatched to India. The Indian Agent observes: 'This indicates that estate labourers have difficulty in obtaining free repatriation as they used to get before the ban',⁶⁴

The numbers of Indians repatriated under Ordinance I of 1923 and the Ceylon Government Scheme of 1924 for Sick and Indigent Labourers were as follows:

Year	No. of repatriates	Year	No. of repatriates
1924	571	1932	7,307
1925	1,851	1933	11,583
1926	2,442	1934	2,304
1927	2,302	1935	6,252
1928	3,491	1936	4,494
1929	3,183	1937	5,064
1930	3,279	1938	3,004
1931	5,062	1939	2,975

The numbers of Indian repatriates under the 1930 Rubber Scheme and 1931 Tea Scheme were as follows:

Year	Rubber Estates	Tea Estates
1930	4,183	..
1931	10,645	..
1932	6,744	257
1933	3,877	26,883

64. Vide Annual Report on the working of the Indian Emigration Act, 1922, for the year 1939, p. 11.

Under the 1935 Scheme later known as the 1937 Scheme for Tea Estates, the figures were :

1936	902
1937	4,485

In 1946, 316 labourers were repatriated to India, 232 of them on application by employers and 28 on application through the Indian Agent under the 1924 Scheme (Repatriation of Sick and Indigent Persons), 22 under the 1937 Casual Scheme, 33 as vagrants through the House of Detention and 1 as a leper.

MALAYA

The Indian Agent in Malaya reported in 1938 :

It costs about \$50 to send a labourer back to India and bring him again to Malaya. It was therefore considered uneconomical to undertake repatriation on any considerable scale to ease the situation on the estates, due to the presence of surplus labour. The alternative of spreading over employment, more correctly under-employment, was resorted to. A proportion of the repatriates generally were persons who were last employed in smaller estates or holdings or in small tin mines—all of which have stopped working owing to the severe restriction in output.⁶⁵

This unemployment or under-employment and the unwillingness of the labourers to work on reduced wages led to repatriation. Thus during the last five months of 1930 over 70,000 labourers were repatriated. This, coupled with the misguided action of some labourers who left their employment merely to seek repatriation, alarmed the planters. This led to the issue of a circular in 1931 by the Acting Controller of Labour to the effect that able-bodied labourers should henceforth not be given free passages, and this put a brake on repatriation.⁶⁶ The Indian Agent made representations to the Federated Malay States Government and the circular was withdrawn in May 1931 on the ground that it savoured of an attempt to retain surplus labour force in Malaya against the wishes of the labourers. In 1932, 56,476 were repatriated. Repatriation of able-bodied labourers practically stopped from the middle of 1933. From 1934, under the new system of emigration, an emigrant could ask to be repatriated on any reasonable ground at any time within two years of his arrival in Malaya, repatriation even at a later date not being altogether tabooed. Ill-health, unsuitability of work, ill-

65. Report of the Indian Agent for 1938, p. 6, para 18.

66. Report of the Indian Agent for 1931, p. 2, para 5.

treatment, and inability to find work at standard rates of wages were specifically mentioned as being among the grounds on which an Indian emigrant could, under the new scheme, insist upon being repatriated to India at public expense. The slump in rubber exports in 1938 led to unemployment and under-employment and lastly to repatriation of some of the labourers, especially those employed on smaller estates or holdings or tin mines which had stopped working on account of restriction of output. The repatriation figures for 1938 and 1939 were 28,496 and 11,169 respectively.

The Kunzru-Kodanda Rao Deputation sent by the Government of India in January 1946 to inquire into the conditions of Indians suggested to the B.M.A. that the Indian workers on the rubber estates should be repatriated to India at the expense of the Immigration Fund. After heading the Government of India, Prime Minister Nehru relieved much of the economic distress by sanctioning Rs. 10 lakhs for relief work and by chartering a ship for the sole purpose of repatriating Indians so inclined. From February to December 1946, over 18,000 Indians were repatriated.

A number of Indians detained in Malaya under the emergency regulations were given the option of repatriation to India by the Malayan authorities. Up to 15 February 1949, 56 of them returned to India but no Indian was compulsorily repatriated from Malaya.

About 30 Indian bankers who were arrested in 1949 for alleged payment of 'protection money' to Communist terrorists were also allowed voluntary repatriation to India on condition that they would not return to Malaya during the present emergency.

BURMA

As a result of the civil war in Burma, peaceful Indian cultivators in the agricultural areas were adversely affected and the avenues of employment in the towns were drastically reduced. Hundreds of Indian families lost their all in these disturbances and many have been returning to India. The Government of India, while anxious not to encourage an Indian exodus from Burma, sanctioned Rs. 4 lakhs to facilitate the free repatriation of those rendered destitute by the troubles in that country. Since the outbreak of the Karen revolt in January 1949, about 12,000 Indians returned to India from Burma by the end of September under the Indian Government's Assisted Passage Scheme. Under this scheme the destitute Indian evacuees get free steamer passages, free food, free rail and bus travel to their villages and a sum of Rs. 5 for pocket money. A labour officer attached to the Indian Embassy gives advice and issues identity cards to those wishing to seek employment in India.

Many Indians were held up in the rebel-held Toungoo area. Some of them were evacuated by air to Rangoon. The Government of India sent Rs. 50,000 to the Indian Ambassador for the purpose. Four thousand Indians were also evacuated from Insein to Rangoon in May, 1949, leaving 3,000 Indians behind. It was estimated that about 200,000 Indians were still in areas under the occupation of the insurgents.

On 27 June 1949, the Indian Embassy broadcast a warning to the insurgents that Indian nationals were foreigners and were being discharged as such by the Burma Government and were subjects of a friendly country who were entitled to protection, and as they were neutrals it was against international law and usage to compel them to do service against their wishes and so they should be released and permitted to proceed to places of safety.

To help the Indian refugees, the Government of Burma had decided in October 1949 to allow family allotments to the families in India of Indian employees in Burma Government who were at present in areas under the control of insurgents in Burma.

INDONESIA

In July 1946, the Government of India deputed S. K. Chettur, Indian Government Representative in Malaya, to report on the conditions of Indians in the Netherlands East Indies. His report was submitted in August 1946. His recommendations, which required immediate attention, related to repatriation of Indians consequent on the Dutch-Republican hostilities. Nearly 3,500 destitute Indians, who desired immediate repatriation to India, had been repatriated under the post-war repatriation arrangements of the Indian Government.

WEST INDIES

In regard to emigration to all the distant colonies of the West Indies, Fiji and Mauritius, the stipulation for free repatriation to India or provision for commutation of repatriation rights into land settlement had been a constant feature of the policy of the Government of India. The planters feared that repatriation would lead to depletion in labour supply and attempts similar to those made in Ceylon and Malaya were more pronounced in the case of these distant colonies. Though the terms on which Indians had emigrated were slightly different, all Indians were promised repatriation or the alternative provision for commutation. But, as gradually Indians showed a tendency to return to India, changes

were incorporated in the terms of indenture calculated to dissuade Indians from claiming repatriation. Thus in the case of British Guiana the labourers introduced prior to 1 September 1895 were entitled to absolutely free repatriation to India. Those who emigrated between September 1895 and September 1898 were charged one-fourth and one-sixth of the passage money for men and women respectively. The proportion became one-half and one-third in the case of men and women taken to British Guiana any time after September 1898. Thus from 1838 to 1920, out of 239,000 Indians introduced, only about 69,000 were repatriated by the end of 1920.

In Jamaica Sec. 6 of Law XIII of 1903 limited the right of an immigrant to claim repatriation to a period of two years, immediately following the expiry of the immigrant's ten years indenture service. Thus in the case of the last set of immigrants who arrived in Jamaica in 1916, their claim to free repatriation expired in 1928. According to Tyson, between 1921 and 1929, 2,806 Indians were repatriated to India.

In recent years, the repatriation policy had assumed a new complexion. The increasing willingness and supply of native labour led to the increasing willingness of the colonial governments to spend money on repatriation facilities for Indians and to leave them to drift for themselves. The British Guiana Government refused commutation facilities also and utilized the Immigration Fund for other purposes.

On attainment of Independence by India some Indians in British Guiana and Trinidad insisted upon facilities for repatriation to India. In May 1947 the Indian Government represented to the governments of the two colonies not to take irrevocable steps for chartering a ship before she had been afforded an opportunity to examine the applications for repatriation. In this connexion she pointed out that a considerable number of returned immigrants had for several years been clamouring for return to the West Indies and that she considered the present time most inopportune for immigrants to return to India as conditions in many areas were unsettled and the food position was causing concern. Three hundred and six Indians had, however, arrived in India in the first half of 1949. The Government of India does not, however, intend to encourage assisted repatriation of these Indians to India at present.

Fiji

In Fiji the natives are being equipped to replace Indians in every occupation and so the colony was not anxious to retain Indians. Thus while between 1901 and 1911 out of 2,840 Indians

introduced only 480 were repatriated, between 1916 and 1921 out of 16,615 Indians introduced as many as 10,017 were repatriated. This heavy repatriation was also partly due to the bad conditions of work and the crusade carried on in India for the abolition of indenture during this period. Up to the end of 1923, while the total number of Indians introduced was 62,837, the total number repatriated was 24,665. In 1927 nearly 50,000 Indians were entitled to repatriation at the cost of the Fiji Government. Till 1928 about 1,000 Indians returned to India every year. But the number fell to 546 in 1929 and to 502 in 1930. Under an Ordinance then in force a very large number of claims would have lapsed by the end of 1934. So Ordinance XXIV of 1930 was passed temporarily extending the expiring claims, the government reserving the right to cancel this extension at any time after giving sufficient notice to enable a claimant to avail himself of a return passage.

The racial riots in South Africa in 1949 caused apprehension among Indians in Fiji though relations between Indians and the Fijians have been good. So about 550 Indians, including 150 indentured labourers, returned to India on 1 August 1949.

REPATRIATION AND COMMUTATION FACILITIES

In the West Indies, the colonial governments had disregarded their duty to provide facilities for the repatriation of Indians willing to return to India or to provide for their settlement there. The old immigrants and others unfit for estate labour were neglected by employers, while the government thought it a waste of public funds to give them free repatriation. Tyson reported that the old immigrants in British Guiana were demanding repatriation, finding it hard to obtain or to perform a full day's work. Jamaica Indians had also demanded the reopening of repatriation to destitute Indians, because repatriation was abruptly closed in 1929. In Fiji, however, between 1936 and 1938 aged persons were afforded repatriation while the young people availed themselves of the concession of a free passage one way to take a holiday.

In regard to the repatriation question, the colonies would be well advised to enable Indians to settle there instead of spending huge amounts on passage. Indians should be granted the alternative benefits of grants of money or land in lieu of repatriation. They are bound to prove greatly beneficial in the West Indies particularly where there are large tracts of land to be cultivated and improved and where peasant proprietorship was making great strides. The colonies need not fear that, if they agree to these alternative benefits, a large number of Indians will prefer them to repatriation. A study of the enlightened policy of Surinam refutes such appre-

hensions. In Surinam, though commutation had been in operation for several years, the number of commutations in 1934 was only 59 and the total number of commutations up to the end of 1934 was only 12,915. Further, the fact that in accepting commutation they would have to surrender their right to repatriation to India was bound to prevent some from seeking commutation. Even if there was to be a rush, the situation could be met from the accumulation of the Immigration and even of Colonization Funds with the British Guiana Government. In Surinam itself, while 5,914 Indians only had drawn on the Immigration Fund, 7,001 Indians commuted their rights from the Colonization Fund. The Government of British Guiana had an Immigration Fund in 1939 of \$455,000 and a Colonization Fund amounting to \$873,681. If further funds are necessary, they can be met by subventions from the Imperial Government, and the Imperial grants for agricultural settlement are not unknown. Even in 1928, over 20,000 Indians in British Guiana were entitled to repatriation. So the government will do well to follow Surinam in this respect. To deny to Indian labourers who laboured hard for the prosperity of the European sugar planters the chance of independent agricultural occupation under the fear that it might lead to depletion of labour supply to sugar planters, and to compel them to work under unconscionable conditions for the planters, is undeserved punishment.

In India the present trend of both official and non-official opinion is to oppose repatriation to India. This opposition is born firstly of the supreme consciousness of the inherent right of Indians to settle in colonies for whose development they had spent their whole lives and, secondly, to the more deplorable conditions under which the repatriates were destined to lead a listless existence in Indian villages. It was particularly this latter factor that persuaded Tyson, C. F. Andrews and others to feel that the demand for repatriation was not in the best interests of those for whom it was claimed. Mahatma Gandhi wrote of South African repatriates living in squalid conditions in Calcutta thus :

They all looked famished. Their lot is the lowest ebb of human misery. The fact that the majority of these men are colonial-born aggravates their misery . . . These men are neither Indian nor colonial. They have no Indian culture in the foreign land they go to, save what they pick up from their uncultured, half-dis-Indianized parents. They are not colonial in that they are debarred access to the colonial (i.e.) Western culture. They are therefore out of the frying pan into the fire. There at least they had some money and a kind of home.

Here they are social lepers not even knowing the language of the people.⁶⁷

The South African Indians, when repatriated, were given a printed form in Hindi on behalf of the Union Government which contained an assurance to the effect that arrangements would be made to find work for them in India. The Government of India is under an obligation to look after such emigrants on their arrival in India as per clause 4 of the Capetown Agreement of 1927. The Government of India accordingly appointed in 1930 the Natesan-Grey Committee to investigate into the working of the special organization in Madras for dealing with emigrants returning and they excluded any investigation about repatriates of Calcutta and suburbs, Bihar and Bombay on the ground that 'investigations outside will neither be practicable nor fruitful of results commensurate with the labour and expense involved.'⁶⁸ All that the above Committee could suggest was that the special officer in charge of the organization be assisted by a Committee in placing returned emigrants in suitable employment. 'Apart from this we have no recommendations to make regarding the arrangements now in force for assisting returned emigrants to find occupations suited to their abilities and resources.'⁶⁹ Whereas, at the time of the appointment of this Committee, the repatriates numbered more than 7,000, only 200 sought the assistance of the Madras special officer for at least 32 p.c. of whom this official was unable to find employment. Thus the Government of India completely failed to afford any relief to these repatriates and could not even conduct a thorough investigation into their conditions. Public apathy proved even more distressing. It is, therefore, the duty of the Government of India to plead for the recognition of the community as a part of the permanent population of the colonies and for the extension of the elementary rights of citizenship on the ground that Indians went there only in response to urgent invitations baked by honeyed promises.

In the event of failure in this direction, the Government of India should see that the conditions to be laid down for future repatriation would be completely 'voluntary' in their nature. They should not be capable of being transformed by the colonial authorities into even necessary, let alone compulsory, conditions. The 1927 scheme of South Africa and the repatriation of the daily paid staff in Ceylon Government departments promoted in 1938

67. Quoted by Benarsidas Chaturvedi and Bhavani Dayal Sanyasi,

68. *Ibid.*

69. *Ibid.*

were not all voluntary though not absolutely compulsory. The South African Government did not press for compulsory repatriation in 1927 as they had their own perfected indigenious methods to achieve their object to reduce Indian population. The Ceylon Government did not press for it because they were aware that any such proposal would have to be reserved for the signification of His Majesty's pleasure. The Government of India should exercise the most vigilant care in agreeing to conditions governing future repatriation. If compulsory repatriation enters the field then the only alternative to India is 'no further emigration, no further repatriation.'

INDIAN ATTITUDE TO RESTRICTIONS ON IMMIGRATION

The Indian objection to the restriction of their immigration into other countries is not against restriction as such, but against the discriminatory methods based on questionable grounds. As suggested by Lord Lugard, restrictions should be based on the following considerations :

- (a) whether they are justifiable in the interests of the original inhabitants ;
- (b) whether the intending immigrants have any special claim ;
and
- (c) whether the restrictions are imposed purely on racial or political grounds.⁷⁰

Lord Milner also pleaded for unassailable social and economic reasons rather than reasons based purely on colour.⁷¹ Restriction can be resorted to, to ensure certain health standards and to exclude the indigent, criminals and other undesirables. Conditions may be laid down under which unoccupied or underpopulated areas would be opened only to certain classes of immigrants, as also the conditions of selection of certain immigrants and rules of assimilation and naturalization designed to secure even development of population. The climatic factor also can have its share in the formulation of the regulations. So too the standard of living to a limited extent. A large-scale immigration of people of low standard of living leads to two results—the effect of the competition of immigrants firstly, on the employment and standard of living of the local population and, secondly, upon the economic and social conditions of the immi-

70. The Royal Institute of International Affairs (1937), *The Colonial Problem*, p. 59.

71. Neame, p. 10.

grant labourers themselves. Cheapness and efficiency are not the only considerations of which account should be taken in seeking a solution of the immigration problem. India should also realize that large migrational movements to small countries like Ceylon are detrimental to both resident Indians and Indian immigrants in future.

The *restriction of future immigration* should be distinguished from a policy of the *reduction of resident Indian population* which is being adopted in the various countries by (a) placing fresh restrictions for that purpose on the right of re-entry and (b) more effective repatriation policy. It is the latter policy and the racial and other grounds on which this policy is based to which the government and people of India object.

It is conceded that every self-governing colony has the right to determine the composition of her population and as such to restrict immigration. But, as the Secretary of State for India had laid down, this is subject to the provision for equal application of the law to immigrants from all countries, not based on differences of colour or race. Secondly, though it was agreed at the Imperial Conference of 1921 that the Dominions would have the right to determine the composition of their population, the question arises whether this resolution was not subject to any agreements which one country might have entered into with another. Thirdly, reasonable exception from restrictions should be made in the case of total omission or deliberate misrepresentation to the average emigrant of the status in the immigrant country, and in all such cases restrictions should not affect his domiciliary rights and vested interests that had already sprung up. The last reservation is the moral consideration. In the *Komagata Maru* Case in Canada, Chief Justice MacDonald asserted in his judgement that Canada had the sovereign right in the matter of restricting the entry of other nationals and denied the claim of the Imperial authorities to intervene. Thus he posed the question in the form of a constitutional issue whether a Dominion was within its right when it denied admission to Asians. Though this happened before the Imperial Conference Resolution of 1921, giving the right to determine the composition to all self-governing colonies, yet the real question remains the same. Asks K. M. Panikkar: 'The question of the issue is not whether Canada has a legal right to exclude anybody but whether British citizenship carries with it the right of free entrance to any part of the Empire. There is another question more fundamental to wit; has any race a moral right to consider any part of the world's surface as its own special reserve?' It is true that India had been conceded the right

of reciprocity to similarly deny admission to nationals of the Dominions and the colonies. But reciprocal action is not desirable in the larger interests of all concerned in view of the bitterness and animosity that it is bound to engender. So the power of placing restrictions should be tempered by ordinary canons of justice and fair play, particularly to the resident Indian population. If this part is fulfilled the necessary restriction on future immigration can proceed from the side of the Government of India itself in the interests both of the sons of the soil and of the Indian population.

SECTION II — RESTRICTIONS ON OCCUPATION AND OWNERSHIP OF LAND

TRANSVAAL

Law III of 1885 prohibited Indians from acquiring land outside the locations set apart for Indians, and formed the basis of all subsequent legislation affecting Indians in regard to their rights to occupation and ownership of land. Later, the development of gold mining along Witwatersrand led to Law XV of 1898 (Gold Law), which imposed restrictions on the occupation and leasing of land to Asians for mining purposes. Section 130 prohibited a white man, who alone might acquire a leasehold right in a stand, from transferring or subletting the right to a coloured person, or permitting such person to reside on or occupy ground held under such right. Section 131 provided that in the mining district of Witwatersrand no coloured person should be permitted to reside on proclaimed land except in bazaars, locations, mining compounds and such other places as the Mining Commissioner might set apart. The effect of these two provisions was to make illegal the leasing for occupation by Asians in future of stands in the mining district of the Rand even for purposes of trade except in specified locations or bazaars.

In 1908, the Precious and Base Metals Act XXXV (Gold Law) and the Townships Amendment Act XXXIV were passed. Sections 130 and 131 of Act XXXV provided, *inter alia*, that no coloured person except a *bona fide* servant should be permitted to reside on or occupy proclaimed land. Section 130 applied to the mining districts of Johannesburg, Klerksdorp, Pietersburg, Barberton, Pilgrimsrest and Ottoshoop. Under this Section, no rights could be held by or sublet to Asians or coloured persons. The Supreme Court ruled that Asians who had leases could not be disturbed during the period of their leases, if these leases were entered

into prior to the passing of the law, but this ruling did not protect the existing rights, for very few had long leases. The Under-Secretary of State for the Colonies inquired whether the Bill XXXV would deprive coloured persons including British Indians of the right which they then possessed to trade or reside in the mining districts and compel them to remove into locations or bazaars for both trade and residence. The Attorney-General assured him that 'no right or privilege which a coloured person has at the present time is taken away by the new Act'¹ and that Section 131 was amended 'to safeguard any rights which a coloured person may at the present time have of occupying land in mining areas'.² The Under-Secretary of State also inquired whether the new law would deprive those coloured persons who had not actually acquired vested rights on goldfields of power to acquire rights which were open to them before, i.e., under the Gold Law of 1898. He was assured that Section 130 of the new law would carry out the spirit of Section 133 of the Gold Law. This Section enacted that no coloured person might be a licence-holder or in any way be connected with the working of the digging. According to the Asiatic Inquiry Commission the Under-Secretary of State in conveying the intention that His Majesty's Government would not be advised to disallow the Act had expressly noted three points: (i) that Section 131(3) safeguarded any rights which coloured persons might at that time have of occupying land in mining areas; (ii) the assurance of the Attorney-General that no right or privilege which a coloured person had at that time was taken away; (iii) that by the use of the words 'other places' in Section 131(4), the powers vested in the Mining Commissioner enabled him in the future to exempt coloured persons, including Asians of superior class, from being compelled to live in bazaars, locations or compounds.

About six months after the above assurances, the Supreme Court held in Khota's case in 1909 that :

- (1) the prohibition in Section 92 of Act XV of 1898 against non-white persons being holders of stands did not prevent them from acquiring and exercising leasehold rights to such stands; and that
- (2) the prohibition in Section 133 referred only to such licences as diggers and claim licences, and did not prohibit coloured persons from holding general dealers' licences to trade on diggings.

1. Report of the Asiatic Inquiry Commission, p. 18, para 66.

2. *Ibid.* p. 19, para 66.

The Government of India, therefore, contended that the Gold Law of 1908 was assented to on the explicit assurance that it did not deprive coloured persons, including Asians, of the rights they enjoyed under the Gold Law of 1898—rights including, according to Khota's case, (a) the right to acquire and exercise leasehold rights in stands granted under Section 92 of Act XV and (b) the right to hold general dealers licences to trade on diggings. The Asiatic Commission, agreeing with this contention, stated: 'It is clear that the vested rights which coloured persons had actually acquired on proclaimed land before the Gold Law of 1908 was passed are protected by the last para of Section 131 of that Act.'³ As regards the second question, whether the same protection was afforded by that Section to those who had not actually such rights but had the power to acquire them, the Government of India contended that the Act of 1908 should not, in the light of the assurances, be interpreted otherwise than in accordance with Khota's case. But the Asiatic Commission held that this contention was untenable as the assurance was given six months before the ruling in Khota's case and as such the assurance could not be interpreted in accordance with that ruling. Thus under Sections 130 and 131 of Act XXXV of 1908, the letting of his stand by a white person to a coloured man and its occupation were specifically made illegal as to rights to be acquired in the future.

Section 60 of Act XXXIV of 1908 provided for the conversion of a leasehold in a government township on land proclaimed as a public digging into freehold, while Section 62 authorized the Governor to make regulations fixing the terms and conditions to which such a freehold stand or lot should be subject. One of the conditions was that 'the land having been formerly held as a right acquired under Act XV of 1898 or a prior law, the owner shall not transfer or permit to be transferred or sublet any portion of the land to any coloured person, nor permit any coloured person other than his *bona fide* servant to reside thereon or occupy the same'.⁴ This practically excluded Asian traders from stands inside townships held under a title converted into a freehold under the Township Act, for, except hawkers, every trader required premises to carry on trade. To this extent, the decision of the Supreme Court in Khota's case, which held that Section 92 of Act XV of 1898 did not prevent coloured persons from acquiring or exercising leasehold rights anywhere, was restricted in its scope.

3. *Ibid.*, p. 20, para 69.

4. Vide Brief of Instructions issued to the delegates, etc. (1926) p. 20, para 24.

In 1911 an appeal was preferred by one, Tamblin, to set aside his sentence under Section 130 of Act XXXV of 1908 for renewing the lease of a stand to certain Asians which expired in January 1909. The Transvaal Division of the Supreme Court held that Section 77 of Act XXXV of 1908 which provided that all the rights and obligations attaching at the commencement of the Act to a stand outside a township and acquired under Law XV of 1898 or a prior law should remain in force created an exception to Section 130 of the Act and safeguarded all rights attaching to stands under any previous Gold Law. As it had been held in Khota's case that coloured persons could acquire and exercise leasehold rights to stands granted under Section 92 of the Law XV of 1898, it followed that no restriction was imposed by Act XXXV of 1908 on the letting to Asians of any stand (granted under the Mining Laws prior to 1908) which was situated on proclaimed land outside a township. The Union Ministers, after referring to their previous assurance endorsing the Supreme Court decision, stated :

that the Court has now amplified that assurance by construing Section 130 of that law in a narrower sense than Ministers thought possible and that, in accordance with this recent decision, there is now no restriction imposed by the Act mentioned on the letting to Asians of any stands which have been laid out under the Mining Laws prior to 1908.⁵

The Gold Laws XXXIV and XXXV of 1908 led to great dissatisfaction and hence no steps were taken by the government to enforce them between 1908 and 1914. Consequently, Indians were able to obtain new licences to trade and form private companies with limited liabilities for acquiring land and fixed property which individual Asians were debarred from by Law III of 1885. The provision of the Transvaal Companies Act of 1908 required only two shareholders to form a private limited liability company. Under this a European would hold all the shares except a number placed in the name of an Indian friend. This facilitated the purchase by an Indian of the stand (or premises) from the European owner and get it registered in the Deeds Office in the name of a company. Thus ultimately the Indian became a virtual owner. This was declared legal by the Witwatersrand Local Division of the Supreme Court in *Reynolds v. Oosthuizen* in September 1916. In June 1920 such a transaction was also held legal by the Appellate Division of the Supreme Court, which reversed the decision of the Provincial Division of the Supreme Court at Pretoria in *Dadoo Ltd. and others v. Krugersdorp Municipal Council*.

5. C. D. 6087 of March 1912, p. 13.

But this position could not continue for long. A European firm, Messrs. T. W. Beckett and Company, leased a stand to some Indians who occupied it. An interdict was obtained by Krugersdorp Municipality from the Pretoria Supreme Court restraining the company from permitting residence of Indians on the stand. Indians petitioned to the Parliament. The application being based on Section 130 of Act XXXV of 1908, Parliament appointed a Select Committee of the House of Assembly to go into the matter. Referring to Mason's judgement in the Beckett case, the Select Committee observed :

The effect of this decision was to close the Indian businesses carried on the stands in question. Your Committee has it in evidence that several similar applications are pending or contemplated.⁶

The Committee recommended immediate introduction of legislation. Accordingly the Asiatics Land and Trading (Amending) Act XXXVII of 1919 was passed amending Law III of 1885 so as to apply the prohibition contained in that Law against the owning of fixed property by coloured persons through the formation and registration of limited liability companies. This Act thus prohibited Asians from owning fixed property anywhere in the Transvaal Province either individually or collectively, either directly or indirectly, *i.e.*, through nominal trustees of limited liability companies, except in such localities as the government might, for sanitary reasons, assign to them for purposes of residence. But Section 1 of the Act protected the rights acquired by British Indians before 1908, and between 1908 and 1 May 1919, which the Act of 1908 did not permit or protect, by excluding them from the operation of Sections 130 and 131 of Act XXXV of 1908 in accordance with the undertaking in the Smuts-Gandhi Agreement to respect the vested interests.

The validity of the charge of circumvention and evasion of existing legislation by the Indians through the formation of companies is considerably vitiated by the fact that the government itself had indirectly encouraged such circumvention. The Asiatic Commission observed :

This practice arose from the case of an Indian firm (Mohammad Ismail and Company) who, in March 1888, purchased certain stands at Klerksdorp at a government sale. When difficulties occurred regarding transfer to an Asian, the land was registered in the name of Mining Commissioner, a Government

6. Report of the Select Committee on Disabilities of British Indians in the Transvaal, April 1919, p. ix, para 14.

Officer, as trustee for the purchasers. This was done with the consent and at the instigation of the Government; and in subsequent cases of a similar nature, other Government officers were instructed to adopt the same course. Thereafter this system of indirect ownership of land by Asiatics became common.⁷

'By this means the provisions of the Law were evaded to a very great extent with the recognition of the Government'.⁸ Thus inside public diggings proclaimed under the Gold Laws (Acts XXXIV and XXXV of 1908 and Act XXXVII of 1919) Asians could not own fixed property including stands inside and outside townships, directly or indirectly, except in such localities as government might assign to them for residential purposes. They could not also acquire leases with respect to stands outside townships, granted after the Gold Laws of 1908 came into force. They were further prohibited from leasing land within townships whether they were held under the Gold Law title or under a title converted into a freehold under Act XXXIV of 1908. Thus Indians, except those who on 1 May 1919 were carrying on a duly licensed business on proclaimed land and townships, had practically no scope for extending their commercial operations in these localities, which are the busiest and most prosperous parts of the province. In areas outside public diggings, Indians could acquire leasehold, but not proprietary rights with respect to immovable property. Act XXXVII of 1919 gave protection to no more than a mere fraction of the Indian traders, for many of them changed their places of business from the townships in which they were protected by the Act while others had in the meantime gone bankrupt and started fresh business.

In the *Springs Case* in January 1929, Justice Krause held that although neither Asians nor coloured persons could possess immovable property in freehold, they were not legally debarred from enjoying and possessing the rights of user of land and that, therefore, it was inconceivable that such use was intended to be confined to the Europeans only. Dismissing the appeal preferred, the Chief Justice held that the Act read as a whole clearly showed that 'there was no intention on the part of the legislature that persons in lawful possession of the surface of the land should be disturbed except in so far as might be necessary for the exploitation of minerals.'⁹ The decision thus seemed to protect the

7. Report of the Asiatic Inquiry Commission (1921), p. 7, para 26.

8. *Ibid.*

9. Collection of papers Relating to Trading Rights of Indians in the Transvaal, (1929) p. 17.

rights of Indians on land which had already been 'improved' at the time of its proclamation even if, as in this case, those rights were acquired after the date of proclamation.

In February 1929, the Legal Advisers to the Johannesburg City Council stated that the latter would be justified and entitled to consider an applicant's right to occupy premises in which the business was to be carried on, and to refuse certificates in cases where, as it appeared to them, the applicant was not allowed by law (or in the case of private townships, by terms of the title deeds) to occupy the premises. The Agent of the Government of India protested and asked whether this sort of inquiry was ever envisaged or intended by the Transvaal legislature when it passed Act XII of 1926. He maintained that the observations of Justice Krause would show that the municipality had no such powers of inquiry and that, if the municipality should act on the Legal Advisers' opinion and refuse licences merely on those grounds, the municipality 'will be enforcing through the medium of Provincial Licensing Ordinance laws with regard to land tenure and trading rights which the Government or its successor which passed them alone can enforce, and which, as a matter of fact, it was never enforced hitherto.'¹⁰ Almost all Indian traders of Johannesburg municipal area occupied premises on land proclaimed as public diggings (and therefore subject to the Gold Law), or in private townships where title deeds contained an anti-Asian clause. Very few were protected by Act XXXVII of 1919 and only some by the *Springs* decision. The Indian Agent concluded that if the above advice was acted upon, the licensees would lose their business and must sell off for a song their stocks and their premises (where they had themselves erected them) and also that the traders, suppliers, bankers, landlords, retail and wholesale merchants would suffer.

In 1930 the Transvaal Land Tenure (Amendment) Bill was introduced. Tyson in his evidence before the Select Committee pointed out that as regards (i) *ownership*, it was a well established principle, particularly in regard to laws restricting ordinary citizenship rights, that the law permitted what it did not prohibit and that if Indians had after Act XXXVII of 1919 formed companies to own land in such a manner as not to constitute an infringement of that statute, it was but fair and just that such companies, having been formed on a basis not at the time illegal, should be protected in any further restrictive legislation. Regarding land held through trustees, Tyson argued that this had never been illegal, and that

10. *Ibid.*

should this be made illegal for the future, the existing interests should be protected; (ii) As regards *occupation*, Tyson pleaded that it was impossible to show how far existing businesses were protected by Act XXXVII of 1919 and that personal inquiry showed that out of 201 shops, 72 were protected, 121 unprotected and 8 doubtful in and outside Johannesburg. He said :

This has been the result, not necessarily or perhaps even largely, of deliberate evasion of the law but because of the force of circumstances, *e.g.*, the termination of a former lease by the raising of the rent or the location of premises in which an Indian was protected by the Act of 1919 to take up premises on the opposite side of the street which, in some cases, happened to be in another township, or the lapse of trading owing to bankruptcy or absence.¹¹

He stated that the government did nothing to prevent their growth and, indeed, it benefited by pocketing the licence fees. Even the Select Committee admitted in their report that the failure to enforce the law was largely due to defects in the machinery of administration and that no department of State had so far fulfilled its duty to guard the public interest against contraventions of public law. So Tyson pleaded that all existing interests should be protected in the same manner as by the 1919 Act, *i.e.*, present occupants and their successors in title should be safeguarded in the exercise of the privileges that they now enjoyed.

The Transvaal Asiatic Tenure Bill of 1931 sought to introduce segregation in respect of both occupation and ownership of land by Indians. As a result of the Capetown Round Table Conference of 1932, the Bill was amended. Clause 5 of this Bill embodying the principle of segregation was deleted, but the stigma of segregation was not removed for segregated areas were euphemistically called 'block exemptions' in the Act. A loophole was left to permit a liberal-minded Minister to permit ownership of property to a few in areas outside the Indian locations. The Act also amended the Gold Law to empower the Minister of the Interior, after consultation with the Minister of Mines, to withdraw any land from the operation of Sections 130 and 131, in so far as they prohibited residence upon or occupation of any land by coloured persons. This power was to be exercised after inquiry into individual cases by an impartial Commission presided over by a judge to validate present illegal occupations and to permit exceptions to be made in future

11. Brief of Instructions issued to the Delegates of the Government of India on the Transvaal Asiatic Tenure (Amendment) Bill 1931, New Delhi, p. 8, para 8.

from occupational restrictions of the Gold Law. The Bill was also amended to protect fixed property acquired by Asian companies up to 1 March 1919 which were not protected by Section 2 of Act XXXVII of 1919. Clause 10 of the Act required local bodies to refuse certificates of fitness to an Asian to trade on the ground that the applicant might not lawfully carry on business on the premises for which licence was sought. But it was made obligatory on these local bodies to treat a certificate issued by a competent government officer to the effect that any land had been withdrawn from restrictive provisions of Sections 130 and 131 as sufficient proof that a coloured person might lawfully trade on such land. The Act also gave power to the Union Government to permit certain areas to be recommended by a Commission to be owned and occupied by Indians.

Thus a Commission, presided over by Justice Feetham, was appointed in 1932 to inquire into the facts of coloured occupation in the Johannesburg gold mining area and to lay down the principles which should guide the grant of exemptions under the Act. The Feetham Commission was also to make proposals as to the exercise of power conferred upon the Minister of the Interior to withdraw land from the Gold Law restrictions against coloured occupation. The Commission prepared a list of block areas in respect of which exemptions might be granted. Regarding individual exemptions, they suggested that the Minister could grant them at his discretion. They made liberal recommendations, but mostly touched the right of occupation and not ownership.

On the basis of this Report a Bill was introduced in the Union Parliament. A Select Committee considered the Feetham Commission recommendations and agreed to grant to coloured persons the right of ownership in three types of areas: (a) locations specially recommended by the Feetham Commission, (b) Asian bazaars and (c) areas predominantly or exclusively occupied by coloured peoples. The Select Committee had not only unanimously endorsed practically all the Feetham Commission recommendations, but even went a step further in providing for exemption in respect of ownership, which the Commission had left untouched. But as against this liberal provision, a safeguard was introduced necessitating the approval of the Parliament for all such recommendations of the Minister of the Interior for block exemptions to particular areas, and individual exemptions outside these areas, from the operation of the restrictive laws. The Bill thus recommended was passed as the Transvaal Land Tenure (Amendment) Act of 1936 offering a certain amount of relief to non-European holders of property.

This Act for the first time recognized the right of Indians not only to occupy but also to own land in the gold mining areas of the Transvaal, from which they were excluded from the time of the Land Tenure Act, 1908, by the Union Parliament, and subsequent Acts which prohibited Asians from owning or occupying land in these areas. This Act obtained for Indians (a) ownership of property not only in exempted areas but also in Asian bazaars and locations set apart for Asians under Law III of 1885 and the Municipal Amending Ordinance of 1905; (b) cancellation of restrictions against coloured occupation contained in the title deeds of property situated in exempted areas; and (c) delegation of power to the Minister of the Interior to take measures to ensure municipal administration of the areas reserved for Asian occupation.

The significance of the Act lies in the right conceded for the first time to Indians to own land, though it was confined to specified areas. The Act no doubt conferred the right not only of occupation, but the ownership of property in segregated areas, though such allocation of areas could take place only in consultation with the local authorities and approval of both Houses of Parliament. In the case of individual pieces of land scattered about townships, the Act conferred a qualified and terminable right of occupation, taking away the right of permanent exemption enjoyed under the Gold Law.

The Asiatic Land Tenure (Further Amendment) Act of 1937 was passed to provide for the appointment of a permanent committee in place of the Commission and to empower the Johannesburg municipality to transfer certain lands to the Asians. The rapid industrialization of the exempted areas led, however, to their exclusion therefrom. Simultaneously with the passing of this Act, the Resolution No. 104 of 1871 of the Transvaal Volksraad, banning the occupation by coloured persons of land in towns and villages, was brought into operation. With the expiry of the period of protection offered by the Act of 1936 on 30 April 1939 and the publication of the Report of the Asiatic Land Laws Commission, the question of Indian ownership of property in the Transvaal was reopened.

In November 1939, Indians gave an assurance to the Minister of the Interior agreeing to do what they could to dissuade Indians from purchasing property in predominantly European localities.

In spite of several representations by the Indian community and the Government of India, the Union Government expressed in 1939 their reluctance to give up their decision to proceed with some kind of legislation involving racial segregation of Indians in the

Union. Pending the formulation of their final proposals in this regard, they passed the Asiatics (Transvaal Land and Trading) Act 1939, mainly to peg the position of Asian occupation and trading for a period of two years by the expiry of which they hoped to finalize their proposal. As a result of the change of Ministry in September 1939 and further representations, the Union Government declared that no fresh statutory measures involving racial segregation would be introduced during the war.

NATAL

In spite of the categorical affirmation of the Indian contention by the Asiatic Commission in respect of land acquisitions by Indians, the Durban Borough Lands Alienation Ordinance XIV of 1922 and Natal Borough and Township Lands Ordinance V of 1923 were passed. These two Acts limited the hitherto unlimited right of Indians to acquire landed property anywhere in Natal. Ordinance V gave wide powers to the local authorities of Natal to insert anti-Asian clauses in sales of unalienated lands. These powers were fully used in such sales of lands belonging to the boroughs and townships of Natal and thus acquisition of properties by Indians was limited to old established and alienated areas. The Paddison Deputation stated :

At Pietermaritzburg, we found that the powers vested in local bodies by the Natal Urban Land Alienation Ordinance had only recently been utilized to displace a number of Indian traders from some premises which the Town Council had acquired. The land on which these premises were constructed had been occupied by Indians concerned for a number of years. It was sold with an anti-Asiatic clause to a certain European Corporation which ejected them. This step was taken merely because the shops were too near the European trading quarter.¹²

Indians were thus ejected from lands despite the fact that :

in 1862 when Indian immigration was first sanctioned by the Home Government, it was solemnly promised in a despatch to the Indian Government, still extant that the Indians going to Natal should have every facility to procure land and settle in that colony at the end of their period of indenture.¹³

Under the terms of the Capetown Agreement the availability of more municipal land of a suitable nature for Indians for housing

12. Report of the Deputation of the Government of India to South Africa (Paddison Deputation Report) Simla 1926, p. 12, para 16.

13. Waiz : Indians Abroad (1927) p. 265.

purposes was recognized. Yet during the last 22 years the Durban City Council had built 175 houses for a population of 90,000 Indians at a cost of £73,547 as contrasted with 656 houses for 96,000 Europeans at a cost of £787,085. And this in spite of the fact that the European community in Durban was far more prosperous and wealthy than the Indians and Africans. It was also proposed to expropriate over a thousand acres of Indian owned land in the city limits and allocate it for the use of Europeans. On the pretext of slum clearance, nearly 10,000 Indians were to be deprived of their homes, many of which were houses of good structure. Besides, the existing expropriation system of paying valuation plus 30 p.c. had proved inequitable as the municipality had deliberately kept valuations of Indian property at the lowest. This was due to the fact that the municipality had failed to provide Indian property with sufficient amenities and also because, realizing the possibility of eventual expropriation, the municipality had deliberately kept valuations down.

In 1928 though the Committee presided over by Sir Edward Thornton proposed a scheme of £50,000 for a similar purpose and the Union Government set apart this sum for helping Indians to have decent housing, yet only 22 houses were built costing some £7,409 and that too only after 1938. The Durban City Council had consistently prevented Indians for fifteen years from availing themselves of this bequest of the Union Government. Hence when the Mayor of Durban announced a one-year scheme involving some £2 million for housing Indians, Indians felt sceptical about it. The expropriation of the Indian localities under the Slums Act confirmed their scepticism.

RIVERSIDE SCHEME

In January 1941, the Durban City Council proposed to acquire compulsorily certain Indian owned property by utilizing the provisions of the Housing Act of 1920 as amended by Act XXXI of 1936. The Council stated that the proposed acquisition formed part of an eight-year housing scheme costing £5½ million and involving the erection of 3,350 sub-economic and 5,124 economic houses. Indians were to be ousted from Riverside, a ridge overlooking the Urugeni River, Prospect Hall, a long established Indian suburb between the European suburb of Durban North and the sea, and from the bulk of the Sydenham area. They were to be removed to the low-lying Merebank-Wentworth area where some £2 million would be spent on their housing.

Indians opposed this attempt to oust them from the better residential areas. Later the Central Housing Board modified the proposal to the extent of offering 600 plots to be set aside in Riverside for Indian housing. But no indication was given as to which side their plots would lie. The European opposition even to this small modification of the original scheme made it impossible for the City Council to proceed with the scheme which was thus shelved in October 1942.

After the Pegging Act was put on the Statute Book a relentless anti-Indian campaign was started. The Durban City Council succeeded in obtaining the sanction of the Minister to the Merbank Land Expropriation Scheme. This land was in Indian occupation for generations. Before the Council could put the scheme into operation, the military authorities evicted all the Indians from their homes on the pretext that the land was needed for hospitals. The Council had also revived its Riverside Expropriation Scheme. This land was the only land occupied and owned by Indians for over half a century which commands both marine and inland views. On this land were churches, mosques, temples, schools, orphanages and cemeteries.

THE TRANSVAAL AND NATAL

The beneficial nature of the Feetham Commission proposals roused the Europeans to indignation and the resolutions introduced in 1938 and 1939 to implement its recommendations were held up by unexpected opposition even from supporters of the government. The cry of alleged Indian penetration into the European areas cropped up again and again like King Charles' head. The Asiatic Land Laws Commission (Murray Commission) was appointed in 1938 to investigate into the charges of evasion of laws restricting or prohibiting use or occupation by Asians of land in the Transvaal, the northern districts of Natal and Orange Free State. The Report of the Commission was published in March 1939.

The Commission stated that the *occupation* of areas by Indians was not only no evasion of the letter of any existing law but of the spirit as well. The only exception made was that it was illegal for an Indian to occupy land owned by a foreign company or a company issuing bearer share warrants. The Commission admitted that no instance of alleged evasion or contravention under the former category was brought to its notice. The only instance it discovered of what appeared to be a contravention of the law was a technical one, which, it was assured, would soon be regularized.

Under the second category also, the Commission discovered a solitary instance of evasion which was, however, legal. And if the spirit of the law was taken into consideration, according to which occupation was not barred, even this single instance would only be a technical evasion. Thus in respect of occupation, Indians received complete acquittal.

As regards *ownership*, direct ownership, except in areas set apart for the purpose, was always prohibited, but indirect ownership through companies or European nominees was not illegal till 1919 and 1932 respectively. So from 1889 to 1932, it was legal for a European nominee to hold land on behalf of an Asian and this expedient was suggested by the Republican Government itself. The Commission itself had reaffirmed this. Again, though Law III of 1885 did not specifically prohibit companies, or companies in which Asians had a controlling interest, the law of 1919 made such ownership illegal and the Act of 1939 made the law more stringent.

Regarding the spirit of the law, one has to go back to Law III of 1885 and the related circumstances. The facts that the Law of 1885 was, so far as ownership of property was concerned, primarily a sanitary measure, that subsequent events had shown that such a restriction was not necessary, and that the Republican Government itself had instigated and was a party to the evasion of the law, show that every subsequent law that made restrictive provisions of the Law III of 1885 more stringent in the letter necessarily departed to that extent from its spirit. Therefore the prohibition of indirect ownership was an infringement of the spirit of the law. To the extent to which circumvention and contravention of the letter of the law in the past had been condoned by subsequent legislation, to that extent the spirit of the law was definitely upheld as against the letter.

The exhaustive inquiry of the Commission showed no more than eight cases of infringement of the law prohibiting European nominees. Three of these cases became illegal because of the retrospective effect of the law, and the circumstances of these infringements were such that the Commission itself was constrained to suggest that they should be permitted. It was, therefore, clear that at least in these three cases, there was no violation of the spirit of the law.

Four of the other five cases referred to the acquisition of land for the purpose of building mosques. The law permitted acquisition of land by Asians for religious, educational and recreational purposes or purposes incidental thereto. But Indians refused to avail themselves of this exemption, because the government rejected the request of Indians to be permitted to rent out part of

the premises to ensure a stable income for the religious institutions. The Commission realized the reasonableness of this request, and suggested to the government a method by which the objects of the government as well as of Indians would be served. But the government rejected the suggestion and the Commission was thus forced to drop it. It is, therefore, obvious that in these cases also the spirit of the law was not violated.

Even in regard to land owning through companies, the law was extremely stringent. It threw the onus on the Asian to prove that he was 'not guilty', which is an indefensible expedient. It was only with regard to land-owning through companies that the Commission found, 'comparatively speaking, extensive evasions, but from an absolute point of view, they amount to but little'. Even so the bulk of infringements of the Act of 1932 occurred *after* 1 May 1930, the date prescribed in the Act, and *before* the promulgation of the Act. It is certainly true that such ownership was illegal after 1919, but such illegalities were proposed to be condoned by the Act of 1932 and Indians hoped that condonation would extend right up to the date of passing of the Act, and that as a result of the Round Table Conference of 1932, some amelioration might be secured in case the Act of 1932 was, in this respect, made operative from 1930. It was also made retrospective. The Commission, however, felt unable to recommend that retrospective effect should be given to the Act of 1932.

Some at least of the alleged violations of law were not real violations. The Commission observed that it

could not disregard the possibility of genuine European shareholding even where the company was formed to acquire property for the occupation of the Asian shareholder, and the latter, sometimes in addition to minority shareholding of substantial size, had advanced the company the necessary funds.

As the Commission admitted, the other evasions had 'praiseworthy purposes, educational and charitable.'

The Commission found that registration of land in the name of European wives was not evasion of the law at all, and, even if it were so, was insignificant. Very few Indo-Malay marriages were brought to the notice of the Murray Commission in which acquisition of property was subsequent to 1932 and in which Malay wives held property for Indian husbands. From 1932, out of 122,215 deeds of transfer of property, only 188 were in the name of Malay persons, and while the transfer value of property concerned was £104,223, the value of property acquired by Malays was only £98,143 — these figures including purchases by Malay

males and wives of Malays. As was pointed out by the Indian Agent-General in his memorandum submitted to the Commission, if Indians married Malay wives to acquire property, there must be an increase in such marriages while the facts pointed even to a decrease. Further, no Malay witness before the Commission said that Indians had increasingly married Malay women, while even the previous Indo-Malay marriages in the Transvaal were attributable to the great disproportion between Indian males and females due to the government policy itself. The Commission said that the holding of fixed property by European wives of Asians had not been shown to their satisfaction to constitute an evasion of the law, and that, if it did, the scale on which it occurred was negligible.

As regards the Indo-Malay marriages, the Commission observed that they were not satisfied that, even generally speaking, the object of such union was the evasion of the law and that there was no evidence that the number of such unions had increased disproportionately since 1932. Even so, the actual scale upon which this acquisition of fixed property was proceeding, they added, was, in their view, insufficient to justify a recommendation at this stage in favour of so drastic a step as to deprive the Cape Malay women of the right to own fixed property.

Thus, there was very little evasion even of the letter of the law. Even the reservations of Mr. Bloemsmā, subject to which he signed the report, proceeded on the *a priori* ground that every infringement of the letter of the law was also an infringement of its spirit and that the latter should be brought into line with the former. The Commission admitted that Indian occupation of unproclaimed land in the Transvaal was not opposed either to the letter or the spirit of the law. It also admitted that indirect ownership either through European nominees or companies was not opposed even to the letter of the law till 1932 and 1919 respectively, and that contraventions and evasions of the letter of the law were very few, hardly worth legislating against. The Commission stated that after all Indians desired ownership of land only for trading purposes and not as a means of land speculation or investment. To permit occupation and deny ownership is to drive the Indian trader to infringe the letter of the law, besides being a denial of the elementary right to own fixed property. The spirit of the law was further underlined by the fact that there were no complaints against or prosecution of Indians for contraventions of the letter of the law. The Act of 1932 itself admitted the hollowness in the procedure of prohibiting the ownership of land by Asians after permitting them to occupy it and so the Act

provided for certain areas to be thrown open to direct ownership by Asians, as a result of which the Feetham Commission was appointed. The very spirit of the Law of 1885, which suggested voluntary residential segregation, on sanitary grounds, calls for a reversal of policy. For the Asiatic Commission found in 1921 that in places where Indians were segregated for residential purposes, their sanitary requirements were neglected by the municipal authorities. And the Health Officer of Johannesburg said to the Feetham Commission that Asians were as amenable to sanitary requirements as the average European of the poor class, and at times were an example to such Europeans.

Though the Murray Commission exploded the fallacy of Indian penetration, Justice F. N. Broome was appointed in May 1940 to inquire into :

whether and, if so, to what extent, Indians have, since 1 January 1927, commenced occupation of or acquired sites for trading or for residential purposes in predominantly European areas in the Province of Natal and the Transvaal (excluding land proclaimed under the Precious and Base Metals Act 1908, as amended, of the Transvaal) and the reasons for such occupation and acquisition.¹⁴

The Broome Commission covered the period from 1 January 1927 to 30 September 1940. It is firstly surprising why the Union Government, which was pledged to treat Indians as an element of the permanent population and to work for the upliftment of the community under the Capetown Agreement, should have instituted an inquiry into a period subsequent to the agreement, for this suggested that the Government was alarmed at the progress of the same community. However, the Commission had laid the bogey once again. The fact that 60 out of 80 local authorities did not care to submit written evidence proved to the hilt that they had no case.

Referring to the position in the Transvaal the Commission states :

We have estimated the present Indian population in the Transvaal as 28,200 of which possibly one half or less reside on proclaimed land. They are a class almost entirely dependent on trade for livelihood. A trading class cannot subsist by trading only with its members. In these circumstances the occupation of 246 trading sites and 93 residential sites in the predominantly European portions of the Transvaal since 1 January 1927 does not disclose a situation which can by any stretch of imagination be described as critical.¹⁵

14. *The Hindu*, 14 October 1941.

15. *The Hindu*, 13 October 1941.

Recalling that the Murray Commission found no increase in the years 1932 to 1939 in the number of Asian trading licences disproportionate to the growth of total population, the Commission has stated that if the comparison were to be extended to cover the years 1927 to 1940, their own conclusions on the evidence would be the same.

Dealing with Natal, where statutory restrictions on the acquisition of land by Indians existed only in the northern districts, the Commission says :

If Indian advance into European areas before January 1927 is described as a flood, the subsequent advance is little more than a trickle—twenty-three cases a year, or, if agricultural land is added, 29. In Durban the sites acquired and occupied totalled 150 and sites acquired but not occupied, 362. The number of trading sites occupied by the Indians is negligible.¹⁶

Acquitting Indians of the charge that their entry had caused a European exodus, the Commission stated that the European exodus preceded Indian entry and so obviously was not caused by Indian entry. Centralization of trade in larger centres as the result of improved means of communication reduced the opportunities of the white traders in certain smaller towns. Therefore Europeans left them as they found better conditions in larger towns and Indians subsequently occupied the areas deserted by Europeans to the advantage of the township.

As regards the reasons for Indian penetration, the report says that the absence of other directions for investment has led Indians to invest their money in immovable property. The Commission asserted that such penetration as there had been was a direct consequence of the Capetown Agreement. This Agreement encouraged Indians in the Transvaal to accept the Western way of life leading to the break-up of the Indian family system, the sons leaving home to set up for themselves. Refuting the statement of a Member of Parliament that the reason for penetration was government's failure to enforce the past and existing statutory restrictions against the Asians, the Commission observes :

The truth, however, is that occupation of trading and residential sites on unproclaimed land has taken place without any breach of the law and so could not have been prevented by the enforcement of any statutory restrictions. We unhesitatingly reject the view that there is among the Transvaal Indians any general desire to live among the Europeans. Where they have done so, the inducement has been the exist-

ence in European areas of either better trading opportunities or better living conditions. The main reason for penetration is nothing more than a normal desire among Indians to acquire wealth. All people irrespective of race or colour desire to improve their material position. The realization of this fact will not cause the problem of Indian penetration to disappear, but it may, by dispelling some of its present sinister atmosphere, contribute towards its solution.¹⁷

Thus the absence of decent housing or facilities for good investment and of other civic amenities was held as the real reason for even the small penetration that had taken place and discriminatory legislation left them no option but this penetration. To condemn Indians for it is to offend justice as well as truth.

The Indian problem is a social responsibility of the City Councils. The only solution is, as the first Broome Commission seems to realize, that in so far as under the Capetown Agreement of 1927 Indians had been accepted as part of the permanent population of the country, the Indian problem should be effectively tackled only on the lines envisaged under that Agreement, by enabling them to accept the Western standards of life, so that having got accustomed to those standards, they would no more compete with the whites in a manner calculated to lower their standards of living.

LAWRENCE COMMITTEE

Towards the end of 1939, H. G. Lawrence, the Minister of the Interior, suggested that the Durban City Council and the Natal Indian Association should constitute a Joint Committee for preventing Asian penetration into European areas. While affirming their opposition to any form of compulsory segregation, the Natal Indian Association agreed to the appointment of this Committee. The Lawrence Committee consisting of six representatives of each of the two bodies was formally inaugurated in March 1940. Indians agreed to the proposal as they could promote harmonious relations and also draw the attention of the Durban City Council to the housing needs of the Indian community and the necessity for providing proper civic amenities, leading to a satisfactory solution of the residential problem on a non-statutory basis. This latter fact raised high hopes that this Committee might prove the very necessary means of giving Indians a direct say in the Council's housing policy in spite of the fact that the Committee was originally intended to function only until the publication of the Broome Commission Report. Wherever the alleged cases of penetration were

17. *Ibid.*

within the terms of reference to them, the Committee prevented the Indians from acquiring property in European areas, though most of them were cases of acquisition before the inauguration of the Committee and therefore outside the terms of reference. In December 1941, the European members of the Committee sat separately and decided a case without reference to the Indian members and urged the Minister to confer on it statutory powers by means of legislation to veto inter-racial transfers of property. The grant of such powers would be tantamount almost to statutory segregation of Indians. The Indian members of the Committee also represented that in almost every one of their investigations into purchase of property they found that the motive was purely an anxiety to live in a decent locality with civic amenities and that the Durban City Council had failed to provide good residential sites for Indians. The continued non-co-operative attitude of the European members of the Committee led to its dissolution in September 1942. 'The Durban City Council was responsible for the failure of this Committee to find a solution of the Indian problem in Natal.'¹⁸

FEETHAM RESOLUTIONS

In March 1941, Premier Smuts succeeded in persuading his party caucus to adopt the Feetham Resolutions. H. G. Lawrence, the Minister of the Interior, laid a schedule on the table of the House, showing areas in Johannesburg, Klerksdorp and Roodepoort which it was proposed to exempt from the provisions of the Gold Law. The House adopted the Resolutions which later passed through the Senate without debate.

In 1941 the Asiatics (Transvaal Land and Trading) Act 1939 was extended for a further period of two years, i.e., until 1 May 1943. The Act sought again to peg the position of Asian occupation and trading in the Transvaal. In some cases the Act was used to remove Indians from sites which Indians had occupied or traded upon for several years. Indians in some cases challenged the decisions taken and succeeded in a few cases.

After the cessation of the Lawrence Committee in September 1942, the Asiatic Affairs Advisory Board consisting of both Indians and Europeans was set up in February 1943 to provide Indians an opportunity to recommend measures for improving their housing, health and educational facilities. Europeans in Natal pressed on the Minister to confer statutory powers on it, but they

18. Review of Important Events Relating to or Affecting Indians in Different Parts of the British Empire During the year 1942-43, p. 1, para 4.

were not conferred as Indians could co-operate only on the basis of voluntary segregation.

In the meantime, the Durban City Council had represented to the Minister of the Interior that Indian penetration into areas in Durban found predominantly European by the Broome Commission (which covered the period between 1 January 1927 and 30 September 1940) had increased since 1 October 1940. Justice F. N. Broome was appointed again to investigate into the extent of acquisition of immovable property in the said areas between 1 October 1940 and 28 February 1943 by Indians, including companies with predominantly Indian directorates. As the terms of reference provided for no inquiry into the reasons for penetration, the Natal Indian Congress and the Natal Indian Association protested against this restriction and the latter body also withdrew from the inquiry.

The main findings of the Commission were :

- (1) that the number of sites acquired during 1942 was 195 as against 78 for 1939 (the highest for any year covered by the previous Commission);
- (2) that Indians had, during the first two months of 1943, paid more for sites in European areas than during any complete year covered by the first Broome Commission and that the amount so paid by Indians during the 29 months covered by the present Commission was not much less than the amount they had paid during the 13 years traversed by the first Broome Commission.

In his informal observations on the possible reasons for accelerated penetration, Justice Broome referred to the fact that war conditions had left no other avenue of investment of non-interest-bearing nature. Indians contended that they had purchased property in European areas for two other vital reasons, firstly, as the Durban City Council had grossly neglected housing and civic amenities in Indian areas and, secondly, as they were within their rights to purchase so. Indian penetration towards the end of the period covered by the Commission was accelerated by rumours that a Pegging Bill was again in the offing.

Between 1 October 1940 and 28 February 1943, not more than 326 sites in the European area were acquired by Indians. Only a sixth of them were occupied by Indians while five-sixths remained in European occupation. Though Indians constituted nearly a quarter of the population of Durban, Indians owned hardly 4 per cent of the total acreage of the Old Borough.

Yet the anti-Asian agitation which led to the appointment of the second Broome Commission continued with the cry for exten-

sion of the 'Pegging' legislation to Natal. On 22 March 1943 the Minister of the Interior announced in the Senate that, if legislation was found to be necessary, it would have retrospective effect from that very day. Accordingly, and as apprehended by Indians, the Trading and Occupation of Land (Transvaal and Natal) Restriction Act 1943, was passed on 27 April 1943, renewing Sections 2 and 3 of the Asiatics (Transvaal Land and Trading) Act until 31 March 1946 and containing pegging provisions for Natal which were in the first instance to apply to the municipal area of Durban from 22 March and to be extended, if found necessary, to other parts of Natal by proclamation after a Commission specially appointed for the purpose had reported. The Government of India protested to the Union Government for not giving them an opportunity to comment on it and passing the measure in violation of their promise not to proceed with legislation involving controversial racial issues during the duration of the war, particularly in view of their readiness to lend support to any scheme to assist voluntary restriction of purchases of property likely to lead to racial feeling. They represented twice again urging that the situation could have been met without restrictive legislation and by administrative steps calculated to give full publicity to any transaction regarded as undesirable and subject both the seller and purchaser to the pressure of public opinion. The danger presented by the Act persuaded the Natal Indian Congress and the Natal Indian Association to sink their differences and revive the old Congress founded by Mahatma Gandhi. As foreshadowed by the Minister of the Interior in his speech in the Union Assembly on 22 March 1943, the Union Government appointed the third Broome Commission with three European and two Indian members. The Commission was 'to inquire 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 Capetown Agreement of 1927 and as to all matters affecting the well-being and advancement of the permanent Indian population of Natal'.¹⁹

The passing of the Restriction Act 1943 compelled the Government of India to take retaliatory action. The Indian Legislature

19. Review of Important Events Relating to or Affecting Indians in Different Parts of the British Empire During the year 1943-44, p. 1, para 3.

passed the Reciprocity Act 1943, providing for imposition of reciprocal restrictions on nationals of other countries within the Commonwealth which placed restrictions on Indians.

Negotiations, in the meantime, between the Union Government and Natal Indians resulted in the conclusion of what was popularly known as the Pretoria Agreement on 19 April 1944. The Agreement provided for the replacement of the Pegging Act 1943 by an Ordinance to be passed by the Natal Provincial Council providing for the establishment of a Licensing Board consisting of two European and two Indian members with a third European with legal training as Chairman to control occupation by licensing of dwellings. Indians assented to the Agreement as it purported to establish the inherent right of the Indians to acquisition and occupation of property anywhere in Natal of which the Pegging Act had deprived them, save and except in the case of occupation of dwellings for residential purposes in urban areas which was likely to engender racial bickering due to juxtapositional living. The spirit behind the Agreement was that Indians would agree to voluntary segregation in Durban in case they were accorded civic amenities on a scale provided in European quarters and without any prejudice to their inherent right to ownership and occupation of property throughout the rest of Natal. Further, the Agreement was the result of consultation, and the control contemplated was only in respect of residential occupation.

The Natal Provincial Administration published the Draft Occupation Control Ordinance as embodying the Agreement; it proved generally acceptable to the Natal Indian Congress. But a section of Natal Europeans launched opposition against the Agreement and the Ordinance on the grounds, firstly, that the Durban City Council was not consulted during the preliminary discussions and, secondly, that the grant of unrestricted right of investment to Indians, as envisaged in the Ordinance, would seriously affect European interests in Durban. Consequently the Natal Administrator was forced, after its first reading in June 1944, to refer it to a Select Committee, thereby departing from the ordinary procedure which permits the reference of any Ordinance to a Select Committee only after the second reading.

The Committee altered it radically and submitted it on 17 October as the Residential Property Regulation Ordinance together with its report on it. While the Agreement was concerned only with the occupation of individual dwellings, the new Ordinance provided for control not only of occupation but also of acquisition as well of residential property. While the Agreement provided

for the control of occupation in the first instance in Durban only and in other boroughs and townships only after an inquiry by the Board, the new Ordinance provided for control and occupation in all boroughs and townships in the province straightaway. Lastly, while the Agreement proposed to set up machinery of a temporary nature, the new Ordinance provided for the establishment of machinery of a permanent character.

In the meantime the Natal Post-war Reconstruction Commission, on which Indians were not represented, recommended racial zoning. So, along with the Residential Property Regulation Ordinance, the Natal Provincial Council passed on 3 November 1944 two other Ordinances—the Natal Housing Board Ordinance providing for the establishment of a Housing Board with powers to acquire and sell property and the Provincial and Local Authorities Expropriation Ordinance empowering the local authorities to expropriate land. Indians felt that these Ordinances departed from the Agreement in several respects and were calculated to impose racial segregation. They protested against them and requested Prime Minister Smuts to veto the Residential Property Regulation Ordinance on the ground that its provisions did not conform to the Pretoria Agreement. The Government of India reacted promptly by imposing reciprocal restrictions with effect from 3 November 1944 on South African nationals in India in terms of Section 2 of the Reciprocity Act 1943. The Indian Legislature also demanded the imposition of economic sanctions and the recall of the Indian High Commissioner in South Africa.

In his reply dated 5 December 1944 to Indian representations, Prime Minister Smuts agreed that the Residential Property Regulation Ordinance did not conform to the Pretoria Agreement, but expressed the strange view that as the Agreement specifically provided for proceeding by way of an Ordinance and made no further provision for its implementation, the Agreement was dropped and could now be considered to be of no further effect. Indians felt that the Prime Minister had transformed the lapse of the Natal Council into a legal technicality to wriggle himself out of the Agreement. He also confirmed that the Pegging Act remained unrepealed and in force and said that he would advise that the Residential Property Regulation Ordinance be reserved for His Majesty's assent while the Housing and Expropriation Ordinances would become law. Indians were, however, assured that, in regard to Indian apprehensions that the Housing and Expropriation Ordinances might, as before, be utilized by the provincial authorities to eject Indians on the pretext of slum clearance, final authority would remain with the Union Government as, although

housing matters were dealt with by provincial and local authorities, the expropriation of land both for housing and slum clearance had, in order to be valid under the South Africa Act, to receive the consent of the Union Government.

The passing of the Residential Property Regulation Ordinance, even when the Broome Commission inquiry was going on, amounted to prejudging the matters referred to it. The two Indian members, therefore, resigned on 7 December from the Commission.

The three Ordinances were eventually declared *ultra vires* of the powers of the Provincial Council. In order to meet the situation created by this ruling, the South African Housing (Emergency Powers) Act 1945 was passed by the Union Parliament on 11 June 1945. The Act empowered the Governor-General to promulgate regulations in respect of the powers of the Natal Housing Board to be set up by the Provincial Council and authorized the local authorities to construct dwellings, expropriate property and carry out other incidental purposes. Though these regulations were, in the first instance, limited to a period of three years, they were renewable by a resolution of both Houses of Parliament. The Minister of the Interior retained the powers of expropriation. Section 4 of the Act empowered the Provincial Council to set up a Housing Board by an Ordinance. The Government of India and the Natal Indian Congress were assured that they would be fully consulted at the time of the framing of the regulations. The Congress expressed its fears at the grant of expropriatory powers to the local authorities and the establishment of the Natal Housing Board. In reply the Acting Prime Minister declared that the Union Government had no cognizance of Natal's policy of racial zoning and was not committed to any such policy. He added that Natal could not implement such a policy without the consent of the Union Government and that the Congress would be consulted in case such a policy appeared before them in terms. As the Act was formally non-discriminatory and in view of these assurances, the Congress acquiesced in it.

On 11 June 1945, the Interim Report of the third Broome Commission was published, expressing 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 recommending 'that the Union Government invite the Government of India to send to the Union a delegation composed substantially of Indians for the purpose of discussing with the Union Government, and with such representatives as the Union Government may appoint and with such other

persons as the delegation may invite, all matters affecting Indians in South Africa.²⁰

Taking advantage of the Act, the Natal Provincial Council passed the Natal Housing Ordinance in September 1945. The Ordinance empowered the proposed Natal Housing Board to appropriate land and to prescribe, in selling or letting land, conditions restricting ownership or occupation of land to persons of a designated class and prohibiting ownership or occupation of land by persons of any other class. Indians protested against the inordinate expropriatory powers conferred on the government which could be used for purposes of racial discrimination. Explaining government policy, Smuts pointed to the safeguards provided in the form of stipulation for prior ministerial consent and for the same ministerial approval, in accordance with the regulation promulgated under the Housing (Emergency) Powers Act 1945, for prescription by the Board of any conditions referred to above. He also gave an assurance that these safeguards would be used to ensure a reasonable and equitable exercise of the powers and protection to every section of the community.

Indians apprehended that the provisions would enable the Natal Housing Board to sell land acquired by it subject to servitudes prohibiting future ownership and occupation by Asians. Thus, an Indian whose land had been appropriated and replanned might not necessarily be permitted to repurchase it and any property upon it. If it happened that the land was situated in a zone demarcated for European occupation, it would be offered to Europeans and not to Indians. It was, no doubt, stated that the provisions applied to all races, and, while the wording of the provisions seemed to be of general application, the conditions in which they would operate were by no means equal, in view of (i) the limited nature of Indian property rights restricted as they were by the Pegging Act which forbade them from buying property in Durban and by the Borough Ordinances which forbade them from acquiring municipally-owned land; (ii) the denial to Indians of provincial or municipal vote which alone could ensure equal treatment by provincial and local authorities; (iii) the past anti-Indian record of Natal authorities; (iv) the fact that the Ordinance was a permanent measure embodied in the law of the province while the assurance of Prime Minister Smuts had no legal force; and (v) the superfluous nature of this Ordinance for Natal when other provinces found the existing law adequate.

20. Review of Important Events Relating to or Affecting Indians in Different Parts of the British Empire During the year 1944-45, p. 3, para 4.

On 21 January 1946, Prime Minister Smuts announced that his government would introduce a Bill for the purpose of prohibiting the acquisition and occupation of fixed property by Indians in Natal except in certain exempted areas. Indians in South Africa and the Government of India were surprised as they had been given to understand that a solution had been found in the Natal Housing Ordinance and that the Pegging Act would be allowed to lapse after the expiry of its present term, *viz.*, 31 March 1946. The Government of India, therefore, instructed their High Commissioner to request the Union Government to postpone the proposed Bill and arrange, in conformity with the only recommendation of the third Broome Commission, in its Interim Report, to meet at a Round Table Conference a representative delegation of Indians to explore an alternative solution. Prime Minister Smuts rejected the request on the ground that it was a matter of essentially domestic policy for the Union.

On 3 June 1946 the Union House of Assembly thereupon passed the Asiatic Land Tenure and Indian Representation Act 1946, to replace the Pegging Act. The Act divided Natal into two categories, controlled and exempted areas. While the controlled areas were reserved exclusively for Europeans, anybody, whether European, Indian or Malay, could purchase and occupy land in exempted areas. Though in the old Borough of Durban there were 25,000 Indians against 65,000 Europeans, only 350 acres were allotted to Indians and other non-Europeans though Europeans already possessed 2,940 acres. The Act not only extends the temporary provisions of the Pegging Act 1943 to the whole of Natal Province on a permanent basis but introduces a totally new principle of racial segregation by providing separate areas. In regard to Natal as a result of its land tenure provisions, there would be no restrictions on transfer of fixed property between Asians and non-Asians in areas specified in the Schedule to the Act (areas to be known as 'exempted areas') while in other areas transfers of fixed property between non-Asians and Asians both for occupation and acquisition are subject to a permit to be granted by the Minister of the Interior. In the case of Transvaal, the Interim Act (1939) position has been retained, except that trade licences which did not, till the passing of the Act, require the Minister's permit have been subjected to the licensing laws. A Joint Land Tenure Advisory Board consisting of two European and two Indian members with a European Chairman has been authorized to grant permits in certain 'controlled areas'. The provisions in the Act relating to Indian representation provided for communal franchise to Indians who were (a) Union nationals over 21 years, (b) had passed the

sixth standard or equivalent and (c) either had an annual income of £84 or owned immovable property of the minimum value of £250. Indians were to be represented by two European members in the Senate and three European members in the House of Assembly. They could return two Indian members to the Natal Provincial Council but none to the Transvaal Provincial Council. The whole Act seemed an astute political move on the part of Prime Minister Smuts to placate both the Nationalist anti-Liberals and the Labour and Liberal forces in the Union Parliament.

Indians were struck with horror at the menacing provisions, for, firstly, while the Pegging Act applied only to Durban, the new Ghetto Act (as it came to be called) extended its scope to the whole of Natal and even the Transvaal; secondly, while the former Act applied only to residential land in urban areas, the latter applied to all kinds of land including agricultural land both in urban and rural areas, thus extending permanently the provisions of the Pegging Act to all kinds of land, urban and rural, throughout Natal and the Transvaal; thirdly, while so far the legislation was aimed at occupation, it was now extended to acquisition as well. By thus laying the axe on the elementary right of Indians to inherit, acquire and occupy property anywhere they like, the Act annihilated the basic rights enjoyed by Indians for over 80 years and condemned them to economic servitude. As regards the franchise provisions, the Act offered communal franchise after inflicting on them a statutory racial stigma (Indians to be represented by Europeans in both Houses of the Union Parliament) which no franchise could alter.

If the European objection, as stated by Prime Minister Smuts, was only to Indian residential proximity, it would have been met by gentlemen's agreements similar to those in Port Shepstone and Glencoe under which Indians voluntarily agreed not to acquire and occupy property in certain areas, without any necessity for this Draconian Act. The Act seemed the culmination of the South African European racial aggression against Indians and Asians. It dictated an Indian settlement on European terms. It tore the two Capetown Agreements to tatters.

Indian public opinion on both sides of the Arabian Sea was stung into indignation by this calculated insult to India after all what she had done to defend the British Commonwealth in the war. On 11 June 1946, the Government of India announced the termination of the Indo-South African Trade Agreement and the recall of their High Commissioner in accordance with Indian public opinion, official and non-official. On 13 June, Indians in the Union launched a Passive Resistance movement against the Act

and a party of Indian women from the Transvaal entered Natal without a permit. On 24 June, the Government of India filed a formal complaint with the United Nations stating that the Ghetto Act constituted the culmination of racial discrimination against Indians in South Africa and declaring that a situation had arisen which was likely to impair the friendly relations between two members—India and South Africa—of the United Nations. She requested the Secretary-General of the United Nations to place the complaint before the General Assembly, which was expected to meet, on 23 October 1946.

In the meantime, the Passive Resistance campaign continued in full blast in the form of peaceful occupation of land in non-exempted areas in civil disobedience of the provisions of the Act. The Passive Resisters were arrested under the Riotous Assembly Act. The moral conscience of the world was stirred by the movement and some natives and a European bishop too joined it and courted imprisonment in spite of the treatment of the Passive Resisters in a way far from humane. By 24 October, 1,229 Indian *Satyagrahis* had been sentenced. Meanwhile a rift arose in the Natal Indian Congress, as a small section advocated again the method of Round Table Conference to square up matters with the Smuts Government. A bulk of the Indian community resented the move, and felt that Indians could participate in any such conference only after the Ghetto Act had been repealed. On 1 November Prime Minister Nehru declared in the Central Assembly that the whole activity of the Government of India ever since the campaign began had been one of giving moral support to that movement.

The Indian Delegation to the United Nations was led by (Mrs.) Vijayalakshmi Pandit. It was confronted with several obstacles inherent in the composition of the General Assembly, the ideologies of the leading powers therein and the currents and cross-currents of power politics which swayed its deliberations. Nevertheless, India scored a signal triumph on the Indo-South African dispute. On 8 December, the General Assembly passed by 32 votes to 15 the French-Mexican resolution which reads thus: 'The General Assembly having taken note of the application made by the Government of India regarding the treatment of Indians in the Union of South Africa and having considered the matter: (1) states that because of that treatment friendly relations between two member States have been impaired and unless a satisfactory settlement is reached, these relations are likely to be further impaired; (2) is of the opinion that the treatment of Indians in

the Union should be in conformity with international obligations under the agreements concluded between the two governments and the relevant provisions of the Charter ; (3) therefore requests the two Governments to report at the next session of the General Assembly measures adopted to this effect'.²¹ The South African amendment to refer the dispute to the International Court was defeated. It was generally felt that the resolution was as much a complete vindication of the stand taken by India as of the basic principles of the United Nations.

Meanwhile, the local authorities took full advantage of the Indian opposition to the Act by getting large areas excised from the scheduled areas for Indians and transferred to those reserved for the Europeans. In August 1947, the Durban City Council Estate Manager even proposed to convert Indian agricultural land in the Springfield area into a golf course and a race track !

After waiting for nearly six months, Prime Minister Nehru wrote to Prime Minister Smuts drawing the latter's attention to the U.N. resolution and requesting him to accept the terms of this resolution as a basis of discussion with Indian delegates with a view to iron out the Indo-South African dispute. In a letter dated 28 July 1947, Smuts replied stating that South Africa could not accept the U.N. resolution as a basis of discussion as that would amount to an admission that she had broken her agreements with India and violated the principles of the Charter. Referring to the alleged vagueness and generality of the Indian charges, he affirmed that South Africa was not guilty of any such breach of agreements implied in the resolution. Stating that Indo-South African relations had deteriorated since the recall of the Indian High Commissioner from the Union, he suggested that the latter might be sent back to South Africa. Prime Minister Nehru replied that the Indian Government would prefer a Round Table Conference of representatives of both the governments and assured him that the absence of the High Commissioner 'will in no way hinder or prejudice their effective participation in the joint deliberations of our two Governments.' He also added that India was willing to send back her High Commissioner for discussions provided the Union Government had accepted the United Nations resolution as a basis of such discussion. Smuts replied expressing his inability to accept the suggestion. In conformity with the resolution asking both the governments to report to the second General Assembly session in 1947 measures adopted in terms of that resolution, the Indian

21. *India Quarterly*, January—March 1947, p. 76.

Government submitted to the U.N. Secretary-General a memorandum detailing the breakdown of the negotiations initiated by her. (Mrs.) Vijayalakshmi Pandit who led the Indian delegation to the General Assembly introduced a resolution in the Political Committee on 7 November stating that the General Assembly reaffirmed its resolution dated 8 December 1946 and requesting the two governments to enter into discussions, with Pakistan participating therein, at a Round Table Conference on the basis of that resolution without any further delay and asking them to report the results of such discussions to the U.N. Secretary-General. Speaking on the resolution (Mrs.) Pandit declared: 'The position this year is in many ways worse than last year. . . . By denying the jurisdiction of the United Nations to deal with the matter, South Africa had made their report to the United Nations not in an attitude of willing acceptance of the verdict of this body but in a spirit of defiance of its authority'. The Committee approved the Indian resolution by 29 votes to 16 with 5 abstentions. On 26 November 1947 the resolution came before a plenary session of the General Assembly which failed to pass it by the requisite two-thirds majority, the voting being 31 for, 19 against, with 6 abstentions and 1 absentee. The Indian defeat in not securing a two-thirds majority is only technical in the face of her moral triumph vindicated by a high majority voting of 31 for and 19 against.

Before the matter could come up at the 1948 session of the General Assembly, the United Party led by Smuts suffered a defeat in the general elections and the Nationalist Government headed by Dr. Malan came into power. During the third session of the General Assembly in 1948-49 the Indian delegation pressed for a U.N. Commission of Inquiry to go out to South Africa to investigate the matter at first hand. At a later stage in the proceedings, the Indian delegation withdrew its own resolution. The French-Mexican resolution was passed calling upon the Governments of India, Pakistan and South Africa to meet at a Round Table Conference. The following is the text of the resolution:

Taking note of the application made by the Government of India regarding the treatment of people of Indian origin in the Union of South Africa as well as of considerations put forward by the Government of the Union and having examined the matter, the U.N. Assembly invites the Governments of India, Pakistan and the Union of South Africa to enter into discussion at a Round Table Conference taking into consideration the purpose and principles of the Charter of the United Nations and the Declaration of Human Rights.

The Union Government appointed early in 1949 two Departmental Committees to consider suggestions for tightening up the

provisions of the Asiatic Land Tenure Act in Natal and Transvaal. The Minister of the Interior announced in October 1949 that a Commission would be appointed to consider the desirability of introducing legislation regarding property ownership and occupation by Asians in the Cape Province and whether the land tenure provisions of the Land Tenure Act should be extended to the Cape. In this connexion he recalled his warning in the Union Parliament in 1948 that property transactions with Indians in the Cape might be invalidated with retrospective effect if the land tenure provisions of the Asiatic Act were extended to the Cape Province. A departmental survey, he added, had shown a marked increase in Indian purchases of property in those towns in the Cape that already had a substantial Indian population. In Kimberley, Indians owned 400 properties in 1949 as compared with 100 in 1940, he added.

The Asiatic Land Tenure Amendment Act was passed by the Union Parliament on 30 June 1949. The Government of India lodged a protest with the Union Government against the new restrictions. Prior to the passing of this Act, persons of Asian origin could occupy property in prohibited areas for purposes of trade and business so long as they had the necessary trading licences. The new Act amends some earlier Acts in order to prevent Asians from occupying any new property in the prohibited areas after 1 June 1949 even for purposes of trade, thus imposing in effect territorial segregation on Asians in the pursuit of their trade or profession. Secondly, the Act provides that a person or company will be presumed to be Asian unless the contrary is proved by the person or company concerned, thus throwing the onus of proof on Asians. Thirdly, it empowers local officers to visit Asian premises at any hour of the day or night to satisfy themselves that the premises are not being occupied in contravention of law. Thus the new restrictions of this Act worsened the Indian position since 1946 when first the Indian issue was taken up to the United Nations. Since the passing of the Gold Law in 1908 in the Transvaal, the Government of India has been consistently opposing segregation of Indians.

The Asiatic Land Tenure Act has completely arrested Indian ownership and occupation of land with no provision for expansion in Indian population. Yet in September 1949, the Durban Council attempted to acquire Indian-owned land in Cato Manor Fort of the city, which was recently the centre of racial riots, for housing Africans, though there were other areas which were already recommended for African housing sites, but were not yet used.

In spite of these new restrictions, India took the initiative and suggested to the Union Government to arrange such a Round Table Conference. South Africa had not only not accepted the United Nations resolution as a basis for tripartite talks but has also deliberately delayed her reply to the notes sent by India and Pakistan until the eve of the 1949 September session of the General Assembly, in order to bypass this session. She seems inclined to agree to such a conference provided the wholesale repatriation of Indians should form the basis of round table discussions. She has, however, suggested preliminary talks between the three to discuss an agenda for the conference.

Prime Minister Nehru accepted the suggestion of preliminary talks and invited Dr. Malan to advise him on the venue and date for such talks. South Africa made the move only two weeks before the United Nations Assembly was to open. Dr. Malan suggested that the talks might be held at Capetown on 6 February 1950.

KENYA

The Kenya highlands, by their healthy climate and agricultural potentialities, besides suitability for the growth of coffee, maize, wheat, tea and wattle and abounding in game, attracted the attention of the Europeans in the beginning of this century. Their settled occupation by the South African element after the Boer War led to a change in the angle of British vision and policy.

In 1907, the Land Board of the British East African Protectorate recommended that the government land in certain specified areas should not be allotted to Indians. Next year the Governor, Sir Hayes Sadler, recommended that the highlands in Kenya should be reserved exclusively for Europeans. Approving the recommendation, Lord Elgin, Secretary of State for the Colonies, wrote: 'With regard to the granting of land to Indians, it is not consonant with the views of His Majesty's Government to impose legal restriction on any particular section of the community, but as a matter of administrative convenience, grants in the upland area should not be made to Indians.'²² Thus legal rights of Indians to purchase land anywhere in the Protectorate were not up to this point in any way finally invalidated. Only direct grants of Crown lands within the upland areas were allocated to Europeans. Also, nothing was said in Elgin's despatch concerning the transfer or

22. Correspondence relating to the Tenure of Land in the East Africa Protectorate, June 1908. Col. 4117, p. 33, para 20. Despatch dated 19 March, 1908.

purchase of these Crown lands after the first alienation to Europeans had been concluded. The despatch also reassured Indians that no legislation would be passed discriminating against them in the matter of land tenure. Indians accepted the terms of the despatch on the definite understanding that the offer of Crown land to Europeans was only for the first alienation, but that second sales or transfers would be in the open market. This attitude on the part of Indians is understandable in view of the fact that till then the purchase of landed property had been one of their legal rights and that they had been told distinctly in the despatch itself that those legal rights would remain intact.

In 1915, the Crown Lands Ordinance was passed, rendering unnecessary the consent of the Governor to transfer any whole property held under the usual conditions of the Ordinances of 1902, 1908 or 1915. But a check was placed on the alienation of land to Indians by empowering the Governor to veto transactions between parties of different races. The Government of India protested against this Ordinance, which for the first time clearly and unmistakably invaded the legal rights of Indians, as the veto would, it was apprehended, be exercised against Indian purchases and was, therefore, an indirect infringement of their legal status. The Governor's veto, as apprehended, had settled the matter against Indian purchases at sales every time.

The Nairobi Convention of all the European Associations held in January 1919 requested the Secretary of State for the Colonies not to allow Indians to acquire land except in townships or on short leases. In August 1920, Lord Milner declared that one of the main points of policy was the recognition of the right of occupation of the reserved portion of the highlands by the Europeans to the exclusion of Asians.²³ The Government of India replied discountenancing Milner's suggestion of the reservation of lowlands in consideration of abstention on the part of Indians from any claims to the highlands. They asserted that there was no justification for the extension of Lord Elgin's decision so as to prohibit the transfer of land to Indians for it militated against his own pronouncement.²⁴ They drew his attention to the opinion of Sir Benjamin Robertson that climatic disabilities in the colony on the whole would tend to operate against Indian rather than against European settlement, for the European who worked on the plantation system with native labour could and did cultivate the

23. Waiz: *Indians Abroad* (1927) p. 22.

24. Correspondence regarding the position of Indians in East Africa (1927), Cmd. 1311, p. 9, para 24, Despatch dated 21 October 1920.

lowlands. They pointed out that the European planter was no more excluded by climatic considerations from the lowlands than he was excluded from the other tropical countries. The experience in Natal made one doubt whether the Indian farmer would prosper in the cold climate of the uplands. Though the acquisition of agricultural land by the Indians in Natal was not restricted and there were many wealthy Indians among more than a lakh of Indian agriculturists with a keen demand for land in the coast belt, which had not been satisfied, very few farms had been acquired by Indians in the uplands. The Government of India concluded the despatch by saying that 'the evidence before the recent Commission was where Indians have attempted to farm in the uplands, they have generally failed. If then, as Lord Milner suggests, the issue in Kenya Colony is merely a question of climate, we would urge that it be left for the climate to decide.'²⁵

This stand of the Indian Government led to discussions between the Colonial Office and the Delegation led by the Rt. Hon. Srinivasa Sastri deputed by the Government of India. During these discussions, a proposal emanated apparently from the India Office in closest conjunction with the Colonial Office to constitute, under certain limitations, an Indian reserve in the lowlands. The Sastri Delegation considered that it was a trap to bribe Indians into an acceptance of their proposals on the Indian franchise, segregation, and immigration questions. They immediately rejected it on the ground that if the confiscation of 10,000 sq. miles of the territory from the natives was one wrong to them, it was obvious that the confiscation of another 10,000 sq. miles from the natives to give it to Indians would be a greater blunder. They stated that this would be the beginning of an imperialism which would be unlike any form of Indian emigration in the past. So they stuck to their claim for free and open transfer and purchase of land in the highlands. They refused to ask even for a single acre of free land, and pointed out that the grant of Crown lands given so lavishly to the white settlers was an initial injustice which should be undone in the native interests. They asserted that their fundamental objection was to the exclusion whether it was of the Indian from the highlands or of the white man from the lowlands, and what they demanded was equality of privilege and not equality in disability.

The Kenya White Paper of 1923 recommended that existing restrictions on the alienation of lands to Indians in the highlands

25. *Ibid.*

should be maintained and it gave statutory recognition to the policy of reservation of the highlands to Europeans to the deep disappointment of Indians.²⁶ This White Paper thus invested the discrimination regarding highlands with the sanction of His Majesty's Government and the Imperial Parliament, while hitherto it rested under the approval of the Secretary of State for the Colonies. In the Commons debate on the White Paper proposals, Sir Robert Hamilton said: 'But I would rather see it modified to this extent that though the initial grant should be given only to Europeans, there should be no bar on the European afterwards selling it to whomsoever he likes'.²⁷

The Indian Delegations from India and Kenya rejected these proposals announced by the British Cabinet and approved by Parliament. The Government of India wrote that, although they were obliged to accept the decision of His Majesty's Government, they reserved to themselves the liberty of making such representations as might be necessary and whenever in future a legitimate opportunity should present itself.²⁸

In 1930, another White Paper was issued but nothing emerged out of it.²⁹ The Government of India not only sent a despatch but deputed the Rt. Hon. Sastri to give evidence before the Joint Select Committee. Subsequently the Morris-Carter Commission proposals supported the 'administrative practice' of preventing Indians from acquiring land in the Kenya highlands. In 1934, His Majesty's Government announced that they had accepted the recommendations of this Commission according to which the boundaries of the European highlands were to be safeguarded by an Order-in-Council. Accordingly, the Kenya Highlands Reservation Ordinance was issued on 1 March 1939, perpetuating the white highlands policy of His Majesty's Government in an administrative though not in a statutory manner. The most reactionary feature of the Order was that it was possible for non-British European immigrants of Kenya *i.e.* Austrian and German Jews to acquire preferential rights to the permanent detriment of Indian settlers, who for over half a century had contributed to the prosperity of the colony. Dr. H. N. Kunzru's motion in the Council of State protest-

26. Indians in Kenya, Cmd. 1922.

27. Parliamentary Debates, House of Commons Vol. 167 No. 104 5 July 1923, p. 530.

28. Papers Relating to the Question of Closer Union of Kenya and Tanganyika Territories (1923), p. 130.

29. Statement of the Conclusions of H.M.'s Govt. in the United Kingdom as Regards Closer Union in East Africa.

ing against the Order-in-Council was accepted by the Government of India. The Central Legislative Assembly also, in March 1939, allowed an adjournment motion on the subject to be carried without a division, though this was against parliamentary convention, to demonstrate the unity between the people and the government on this question.

The point of view of the European settlers on the highlands question was that it was not a question of racial or national preference but merely a natural climatic differentiation which led to the promulgation of the Order-in-Council. But one is tempted to ask, if that is a fact, why the Germans have abstained from objecting to Indians holding land anywhere in their former colony of Tanganyika where climatic conditions are similar. The real reason is different. As far back as 1907, the Governor wrote to the Secretary of State for the Colonies :

There is a growing tendency amongst the white settlers in the uplands to keep the Indian, not only out of the uplands, but out of the country altogether. The spirit is akin to that prevailing in Natal and elsewhere and is due to the fact that the White cannot compete in the least with the Indian shopkeeper for supplies of provisions and articles in the daily use or as a petty trader.³⁰

Thus the reason for reservation of highlands appears to be more economic and political than climatic.

In April 1944 the Kenya Government announced their intention to introduce two Bills: (1) The Land Control Bill 1944 with a view (a) to put the land to the most beneficial use (b) to empower the Crown to acquire land for settlement purposes and (c) to prevent speculation in land to the prejudice of post-war settlement; (2) the Crown Lands (Amendment) Bill 1944 in order to establish a Board with, subject to any special or general directions from the Governor, absolute control over all transactions in land. The Board was to consist of three official members (Europeans) and four others to be appointed by a majority of the European elected members of the Kenya Legislative Council. The Land Control Bill was referred to a Select Committee consisting only of Europeans. The Select Committee's Report on the Bill which was debated in the Kenya Legislative Council in June 1944 failed to remove the racial discrimination from the Bill. On the contrary the discrimination was enhanced by the reinforcement in the membership of the Land Control Board. The Committee recommended six non-official members to be appointed by a majority of the

30. Cd. 4117, p. 25, para 2.

European elected members of the Kenya Legislative Council instead of four and no representation was allowed to Indians and Africans in the management of the Land Control Board. It was stated by the mover of the Bill that one of its objects was to control speculation in land. But this object was defeated by Clause No. 28 (1) (a) which stated that when acquiring the land, the government would pay the market value. As the market value would certainly be inflated, the landlord had simply to sit on his land and speculate that the land would be acquired from him at the inflated price. In fact the Attorney-General had stated that this market value might even be six times the cost price. Thus there was no question of preventing speculation in land. As regards the second object of the Bill, *i.e.*, to acquire land for settlement purposes after the war, the settlement has only meant 'white settlement', for Indians and Africans who would be discharged from military service were not specifically mentioned in connexion with this settlement idea. The speeches made in the Council show that the real objects were to further secure the sanctity of the white highlands and to establish a white man's independent colony within the colony.

Under the Ordinance as finally enacted, no transaction in land in the highlands could be effected without the written consent of both the Governor and the Land Control Board. The Board could, however, withhold its consent to a transfer only upon the ground that the applicant had already sufficient land or because of their objection to the proposed selling price of the land or to the rent to be charged. Thus while formerly the Highlands Board could only advise the Governor, now the Land Control Board was in a position effectively to prevent the acquisition of land by an Indian in the highlands, even if the Governor should agree to allow such acquisition. No inter-racial transfers of shares etc. of companies holding land situated in the highlands could be effected without the prior written sanction of the Governor. This Ordinance was also intended to make the provisions of the Crown Lands Ordinance 1915 more effective by empowering the Governor with a veto to disallow inter-racial transfers of shares in a land-owning company, as was being done in the case of inter-racial transfers of land. Indians strongly opposed both the Ordinances. The Government of India urged His Majesty's Government to withhold Royal assent to them. Both the Bills, however, received Royal assent on 14 December 1944.

On 29 November 1945, the Kenya Government published comprehensive proposals for land utilization and land settlement in Kenya. The proposed Settlement Bill provided for a Statutory

Central Settlement Board to advise the government on plans for settlement of all races on land in Kenya and for subsidiary boards to deal with Indian, Arab and European settlement. The existing Indian Land Settlement Board set up in August 1941 under the chairmanship of the Commissioner of Lands was to be abolished. The duties of the new Board include: (a) reporting on the activities and economic position of Indian farmers in those areas now occupied by Indian agriculturists; (b) ascertaining the extent of demand existing among local Indians and Arabs for opportunities to take up an agricultural career and particularly the demand among locally born Indian and Arab youths; (c) suggesting to government what land, in the areas which were open to occupation by persons of all races, it deemed suitable for Indian and Arab settlement in order that the government might appoint technical officers to examine and report on the land; (d) devising schemes for beneficial occupation of land by Indians and Arabs after receiving reports from the technical officers and making available suitable areas for Indian and Arab settlement; and (e) administering under the direction of the proposed Central Settlement Board such financial provisions as might be approved and arrange the training of prospective settlers.

In April 1948, the Kenya Government sponsored legislation empowering the Board to acquire land that was inadequately worked and developed.

The highlands question was opposed to the Charter of Queen Victoria proclaimed in 1888. The question should be examined in the light of the obligations involved in the Congo Basin Convention signed at St. Germain-in-Laye on 10 September 1919 revising the General Act and Declaration of Brussels of 2 July 1890. The Convention under Section 3 of Article I thereof extended to Kenya in its general applicability and Article III guaranteed to Indians enjoyment without discrimination of the same treatment with regard to the protection of their persons and effects, the acquisition and transmission of their movable and real property, and the exercise of their professions.³¹ In a letter to the *Manchester Guardian* some time ago, Sir John Harris, referring to the violation of these treaty obligations, stated that it was difficult to deny that not only the spirit but the letter of these international instruments had been overlooked.³²

31. *Statesman* (Delhi) 2 May 1939.

32. *Searchlight*, 1 July 1939.

ZANZIBAR

The Alienation of Land (Restriction and Evidence) Decree, 1934, was intended to prohibit transfers of agricultural land from Arabs and Africans to non-Arabs and non-Africans, and also to provide for a moratorium in respect of mortgage debts which the former owed to the latter. The words 'non-Arabs and non-Africans' referred in practice only to Indians. Clause 3 of the Decree stipulated that every transaction (other than a lease of land for a year or less) affecting Arab and African land, should be by a registered instrument. Clause 4 ruled that the alienation of land by an Arab or African to a non-Arab or non-African would be ineffectual, unless it was sanctioned by the British Resident. Under Clause 6, an Arab or African could mortgage his land only in three forms. Clause 4 (2) authorized the British Resident to sanction alienation. The Decree was made retrospective and this affected the vested interests of Indians who had invested Rs. 8 million in land. By proclaiming a moratorium, the Decree prevented Indians from recovering their debts from Arabs and Africans as no decrees could be executed against their land. It also introduced a new rule of evidence which enabled the Arabs and Africans to prove, by oral evidence, that transactions in land which had been registered as sales were really intended to be mortgages. It prevented the Indian mortgagee from foreclosing, bidding for and buying the land mortgaged to him by Arabs and Africans. The Attorney-General himself characterized the Decree as 'drastic' and 'almost revolutionary'.³³

Though Section 20 exempted past transactions (except in two respects) from the scope of the Decree, Section 4 generally affected them to an appreciable extent. The practical effect of the Decree on past transactions was that the mortgage decree-holder having been prohibited from bidding at the auction under Section 4, the mortgage property might not realize a price sufficient to pay off the decretal amount, even though in fact it might be worth more. This was particularly so, because, as was maintained by the Attorney-General, 'there are now virtually no Arabs or Africans who can produce ready money or obtain credit sufficient to buy new lands'.³⁴ Thus deprived of the right to bid or buy at an auction, the Indian decree-holder stood to lose a very substantial amount of his just claims decreed by the court. The Decree being retrospective, its provisions in several cases amounted to confiscation of capital.

33. K. P. S. Menon's Report on Zanzibar Clove Decrees, p. 3, para 4.

34. *Ibid*, p. 6, para 12.

K. P. S. Menon, who was deputed by the Government of India, recommended that Section 4 (2) be so amended as to oblige the Resident to accord his sanction to the alienation of land to those Indians who were prepared and capable of developing it 'in a husbandly manner'. He also pleaded that Section 20 be so amended as to protect vested interests. He justified the provision in Section 19 for a partial moratorium for a period of one year in view of the prevailing depression. He also agreed with Section 18 which provided for a special rule of evidence on the ground that 'fictitious sales' were not improbable. He concluded that the Decree would be unobjectionable provided the racial distinction, now drawn between Arabs and Africans on the one hand and those who were not on the other was replaced by the more rational distinction between agriculturists and non-agriculturists, and provided also that the Decree was not allowed to affect the rights arising from past transactions relating to land. The moratorium proclaimed on 7 July 1934 was originally meant to be in force for one year but was extended from time to time till 1937.

The Decree was based on certain comparatively unwarranted assumptions: (A) that the Indian middlemen were solely responsible for the agricultural indebtedness of the Arabs and Africans; (B) that they were very anxious to appropriate their lands; (C) that indebtedness was a recent phenomenon due to land speculation indulged in by Indians; and (D) that the extent and seriousness of indebtedness was so great that the only method left to the government to relieve the distress was the one adopted by them.

(A) In 1923 a Commission on Agriculture stated that indebtedness must have been intensified by the abolition of slavery and consequent abrupt deprivation of plentiful supply of slave labour which enabled them to live in comparatively luxurious style. They added that the other circumstances were the innate improvidence, lack of thrift and love of ostentatious hospitality and absence of credit facilities. An official statement of 1884 explained the debt difficulties of the Arab landowners of Pemba thus:

Cloves, which are the most important production of Pemba, commanded in the years 1875-79 higher prices than had yet been known. Believing that such would continue, the Arabs not only spent extravagantly the money they had in hand, but imprudently anticipated their expected income for years to continue and borrowed recklessly from our Indian subjects, who are here the only lenders of money. . . . The flush of prosperity is now gone and leaves nothing but heavy debts where before its coming were but small ones.³⁵

35. Report of the Commission on Agriculture (1923) Zanzibar, Minority Report p. 49.

(B) As far back as 1860, Col. Rigby in his report for the year recorded that a good deal of landed property was then mortgaged to Indians. Similar official statements were available for 1875, 1884, 1896, 1903 etc.³⁶

(C) The Commission of 1923 counted amongst the several causes for increased indebtedness the strong disinclination of Indians to foreclose and dispossess their debtors. Secondly, the fact that the Land Alienation Decree was passed only in 1934, while even from 1860 Arabs and Africans were heavily indebted, testified to the truth of the statement that there was no necessity till 1934 for such restrictive legislation, as Indians indulged in no land speculation. As for the necessity for such a law in 1934, the reasons were different and more subtle.

(D) The extent and seriousness of the debt position did not justify the promulgation of the Decree. The Confidential Report of Bartlett and Last, 1933, on the basis of which the Decree was passed, alleged that it was probable that not less 50 p.c. of the agricultural property of Zanzibar and Pemba had passed into the hands of the money-lending classes (which of course referred to Indians) and that at least 25 p.c. was encumbered to them. But the Law Committee of 1935, which was appointed by the Zanzibar Government to inquire into the debt question, came to the conclusion, after close and careful examination, that the agricultural property owned by and mortgaged to Indians was about 6½ p.c. and 13½ p.c. respectively and not 50 p.c. and 20 p.c. They stated that the number of clove trees owned by or under lien to Indians was in the neighbourhood of only 18 p.c. of the total number of clove trees in the Island and that till then there was not a single instance of an Indian mortgagee foreclosing his mortgages.

The following are the official figures for 1922:³⁷

	Indians	Arabs	Africans	Miscellaneous	Total
Owners	323	4,191	13,557	249	18,320
Plantations	1,300	8,688	22,187	304	32,479
Clove trees	152,490	1,623,803	1,133,197	91,463	3,000,953

Thus the percentage of Indian owners worked out at 1.72, of plantations at 4 and of trees owned by Indians at 5.08.

36. *Ibid.*

37. K. P. S. Menon's Report on Zanzibar Clove Decrees, p. 5, para 11.

The Law Committee held that the figure of 7 p.c. of clove trees under Indian ownership furnished to them was approximately correct. They accepted the figure of 18 p.c. as those owned by or under lien to Indians. But B. H. Binder in his Report proceeded on the assumption that out of a total of three million trees as estimated in 1922, Indians held 500,000 in 1933 and a further 300,000 were estimated to have been mortgaged to them. Even if it was assumed, without being admitted, that Indians held a maximum of 800,000 out of 3 million and also presumed that there was no increase beyond the three million figure between 1922 and 1933, the situation could not be surprising when it was remembered that behind this figure of 800,000 was a century of Indian connexion with clove trees. Certainly it does not justify the legislation that was enacted.

As regards the seriousness of the debt position, the Bartlett-Last Report stated that the burden of agricultural indebtedness was too heavy to be realized in full. But according to the Law Committee's valuation of Rs. 8 and Rs. 4 per clove and coconut tree respectively, based on the then margin of profit derived from these two industries, the value of agricultural assets owned by the Arabs and Africans in the Protectorate came to over Rs. 470 lakhs as against their estimated debt of Rs. 50 lakhs. This made the proportion of debt to assets one to nine. Further, in view of the fact that the range of profits in these two industries had been doubled since the date of the Commission's report, the ratio of debt to assets became reduced by 50 p.c. and thus the indebtedness came to less than 6 p.c. of the assets. Surely one may ask if there was any other community with less indebtedness.

The question arose whether the government had no alternative method to relieve the position of the debtors. Indians requested the Zanzibar Government to utilize the handsome surplus State funds of about £5 lakhs in paying off the debts of Arabs and Africans and thus freeing them once for all from indebtedness. But the government retorted that Indians were not making any sacrifice in suggesting so. This argument is wrong, for the money in the coffers of the government was contributed by all taxpayers—including the Indians. Besides, the Indian mortgagees and creditors had not from 1935 received any part of interest or principal. Hundreds of suits had to be filed by *bona fide* Indian owners of plantations to evict Arab and African trespassers who took forceful possession of their plantations with a view to prove that, under the new rule of evidence, the transactions affecting them were mortgages and not sales.

If the Zanzibar Government had any real sympathy for the poor Arab and African agriculturists, they could surely have helped them by reducing the extremely excessive export duty on cloves fluctuating between 25 and 35 p.c. No agricultural industry could be expected to prosper with such a heavy export duty. They could have effected this reduction by reducing the cost of administration which had risen from £213,000 in 1913 to £450,000 in 1934.

Mr. Strickland in his Report on the Reorganization of the Clove Growers' Association suggested another method. He anticipated that the indebted plantation owners might object to the operations of the Clove Growers Association (C.G.A.), because, in addition to their mortgages, they were encumbered with open debts to dealers and shopkeepers and could not sell their produce through the Association until these were cleared. So he recommended that a sum of money should be lent by the government to the Association to free a few of the growers from their debts each year in return for a chattel mortgage on their crops. But the Zanzibar Government ignored this fair recommendation and hastened by a short cut in declaring a moratorium. Strickland's method would have secured the sale and marketing monopoly to the Association by paying off the debts of Indians. But the desire of the government to help the debtors without a corresponding benefit to Indians prevented them from adopting the suggestion of Strickland.

In 1937, another Land Alienation Ordinance was passed suspending the Standing Orders and providing for the institution of stricter control of the alienation and mortgage of agricultural lands belonging to the Arabs. Under this Ordinance the consent for the alienation of land, which hitherto vested in the British Resident, was given to Boards, established in various parts of the Protectorate. The government intended to associate Indians also with these Boards. Conditions governing the refusal of consent were defined. These conditions were said to have been designed to protect the alienor and his dependants from the consequences of imprudence and to prevent the land from passing into the hands of speculators. They were also said to protect the interests of the creditors who might, by the disposal of the debtor's land, be precluded from the remedies otherwise available to them. But could it be that after 50 years of British administration with enlightening and civilizing influences, the Arabs of Zanzibar were so backward that they could not even be trusted with the exercise of ordinary rights of ownership over their own plantations? The Ordinance came into operation with effect from 16 June 1939.

TANGANYIKA

In September 1943, the Tanganyika Legislative Council passed the Land (Restriction on Transfer) Ordinance 1943 prohibiting disposition of land or of any interest therein in favour of a non-native without the consent of the Governor. The Ordinance was to cease to be operative within one year after the termination of the war. The objects of the Ordinance were stated to be : (a) to prevent persons of alien descent and hostile sympathies from acquiring land in strategic areas and (b) to prevent inflation of prices. Indians feared that it was only their interests that would be adversely affected by it. The government assured them that it would not be used against any particular community.

FIJI

After the cession of the Fiji group to the British Government in 1874, Crown grants for land were issued on substantial claims proved before the Lands Commissioner. Under the provisions of the Native Lands Ordinance 1905 settlers were able to acquire leases from the natives for a period up to 90 years, subject to the approval of the Governor-in-Council. From 1905 to 1909, 20,184 acres were purchased by the settlers. Subsequent to 1909, further sales of native lands were prohibited and the Native Lands (Amendment) Ordinance 1912 permitted sales only to the government. To provide greater security of tenure, the Native Lands (Leases) Ordinance 1916 was enacted.

In Fiji 80 p.c. of the land belonged to the Fijian owners and Indians had been working as tenants for a term for Fijian landlords, but actual leasing and assessment of rent had been controlled by the government. Ordinance VII of 1937 gave legal effect to the Native Lands (Occupation) Amendment Bill and Ordinance XIV gave similar effect to the Native Lands Amendment Ordinance of 1912. These Ordinances were passed in the teeth of bitter opposition by Indian members, both elected and nominated, as also by one European elected member. This legislation proved an inducement to the Fijian landlords to obtain foreclosures upon Indian settlers on the most vexatious terms and without paying any consideration to the improvements effected to the land and its environments by the Indian tenants. The first Ordinance specifically stated that 'in no case shall such estate or interest be transferred to any person other than a Fijian.' It permitted foreclosures of Indian interests in this regard even with retrospective effect, while preventing the Fijians from obtaining credit from non-Fijians including Indians.

The operative effect of the second Ordinance was to persuade the Fijians to refuse renewals of leases to Indians. Both the Native Lands (Occupation) Ordinance and Native Lands Ordinance of 1938 gave preferential treatment to the Colonial Sugar Refining Company (C.S.R.C). The power vested in the Governor-in-Council to adjudicate the claims between Indians and Fijians was futile and frivolous as it is bound to turn out only a mere nominal confirmation of the original orders of the District Magistrates.

Indians in Fiji were thus denied the right of ownership of land, though a large majority of them were agriculturists and thus were compelled to work as agricultural labourers to the Company. Under the rules, Fijians were forbidden to alienate their land without government's sanction which was withheld as a rule. Leases beyond 21 years had not been allowed. Many Indians had been working as lessees from native owners for the cultivation of rice, sugarcane, etc. Many insurmountable obstacles were being placed in the way of securing leases and their renewals both by native owners and the Company.

The problem of land tenure in Fiji in relation to Indians is one of securing to Indian lessees of native land greater security of their holdings. The Fiji Government had indicated the lines on which they proposed to approach the problem in the enactment of the Native Land Trust Ordinance in February 1940. Under the Ordinance the government assumed power to administer all native land in the colony through the establishment of a Native Land Trust Board. The Ordinance invested the Governor with power to appoint a local committee in any district to advise the Board on any matters affecting native land within the district. In May certain regulations were also promulgated by the Governor under the Ordinance.

Under the Ordinance a certain amount of land was to be allocated exclusively for the use of Fijians and the remainder would be made available on lease to non-Fijians including Indians. No provision was made for Indian representation on the Trust Board. The colonial government had however undertaken to depute an Indian Assistant to the District Commissioner to accompany the Commission to recommend to the Board the areas to be reserved for the Fijians and to lay before the Commission any representations made by the Indian lessees. Secondly, the Ordinance did not prescribe the composition of the local committees. The Indian Government had been, however, assured that Indians would be represented on these committees. In 1940 out of the fifteen local committees set up Indians had been appointed on twelve. The Indian suggestion was accepted that provision should be made for

the expansion of the area available for lease to meet any future requirements due to increase in Indian population. The colonial government had also agreed to the principle to disturb the existing occupancies as little as possible in the demarcation of native reserves. No provision had been made for the payment of compensation to an outgoing lessee in certain cases, though the colonial government had proposed to grant reasonable extension of the period of the lease to enable him to remove buildings and fences and to reap standing crops. It was also agreed to settle on other suitable land any lessee whose disturbance from a holding had become inevitable.

One of the regulations framed under this Ordinance provides for the appointment of a Commissioner to make recommendations to the Board as regards lands to be reserved for the natives. This also provides for the lessees to make any representations they may wish before the Commissioner. Another regulation deals *inter alia* with the terms and conditions of leases of native land to be granted by the Trust Board. Under these terms agricultural leases will be granted up to a maximum of 99 years in well-developed areas. In regard to other land, though the maximum period is shorter, provision exists for the grant of 99-year leases in these cases as well, as soon as the land becomes part of a settled and planned area.

There are very few freeholders among Indians who are mostly engaged in farming. A majority are tenants at will of the C.S.R.C. The High Commissioner for India in Australia visited the island in 1946 and inquired into the urgent problems of getting an adequate price for the sugarcane grown by them and supplied to the Company and the question of greater security of tenure and an economic holding capable of sustaining a normal family on it. Indians want greater security of tenure, economic holdings and right of transfer. The colonial government was willing to meet these demands to a considerable extent on the basis of 30-year leases renewable after 15 years.

BRITISH GUIANA

The Rice Farmers Security Ordinance of 1946 regulates the relations among the rice farmers, who are mostly Indians, landlords, millers and the Rice Marketing Board.

There are the Sugar Estates Joint Committees elected for a two-year term in British Guiana. The Committees consist of the representatives of the workers and the management represented by the British Guiana Sugar Producers Association. The decisions

of these Committees are binding on both the workers and the management and in case of differences, they are referred to the headquarters of both the parties.

MADAGASCAR

Most of the 15,000 Indians here were born and have been living here for 50 years. Yet in 1947, the government issued an Ordinance providing that no Indian should buy or be in possession of any property in the island nor transfer his properties to his relatives.

CHINA

There are colonies of Indian settlers in the oases of Southern Sinkiang. Some time back, the local Chinese authorities confiscated the lands of Indian merchants. The Government of India demanded that either the lands be restored or in the alternative compensation be paid. During the recent hostilities between the Communists and the Nationalists, Indians in the different cities of China suffered heavily.

BURMA

The enormous transfer of land into the hands of the Chettiar bankers and money-lenders resulted in the passing of the Land Purchasing Bill 1941. The Bill provided for the State purchase of land and its distribution to the landless cultivators on certain conditions. The Indian objection was not against the principle of the Bill but the methods devised to achieve its objects. There were several defects in the Bill which seriously affected the Chettiar bankers.

The Bill made no provision for additional compensation in respect of the compulsory nature of the acquisition, and the Government of Burma had shown itself unwilling to provide any such compensation. There was also no guarantee that the tenants in occupation of the land at the time when the land was purchased would receive preferential consideration, or, indeed, any consideration at all, when the time came to distribute the land to small cultivating owners. Though a definite proposal calculated to ensure the position of the tenant in occupation had been debated on the floor of the House, the Government of Burma declined to include any specific safeguard in the body of the Bill. It was, however, indicated that it was their intention to give preference to the tenant in occupation if eligible and to provide for this in the rules framed under the Act. The refusal to insert such a provision or

guarantee is incompatible with the principle underlying their own Tenancy Act. The Government of Burma in their tenancy legislation laid great stress on the necessity for enhancing the security of tenure of the tenant. But the Land Purchasing Bill would render a tenant liable to have his land purchased over his head any moment. There was nothing in the Act to keep intact the position of the tenant on such purchase, or to proclaim his right to an allotment when the land came to be distributed. This was incompatible with para 152 of the Land and Agricultural Committee Report, which states: 'Our object is the single one of changing for the better the status of the small agriculturists' and that 'although some readjustment of holdings may be found necessary to give effect to the principle of economic holdings, we assume that there will, in fact, be little disturbance of the cultivators already on the land.' Also, the government's proposal to provide an appeal against valuation by the Land Commissioner to a regular Bench of the High Court, though it constituted an improvement, did not meet the principal objection. If landed property was to be compulsorily acquired, the provisions of the Land Acquisition Act of 1894 could be availed of, instead of resorting to special procedure for arriving at the valuation of the land. According to the Bill, the compensation was to be based on the net annual income, which had been reduced by 50 to 80 p.c. by the Tenancy Act. Consequently, the scale of compensation was bound to be far below the depression prices. It was therefore essential that the compensation should be allowed at values obtaining before the Tenancy Act was enacted.

The government introduced Sub-clause 2(a) of Clause 9 to save itself from having to pay a higher price for the land due to a reduction in the rates of land revenue over and above the revenue it has to lose on account of such reductions, but they compelled the landlords to accept compensation based on considerably reduced net annual income as a result of tenancy legislation. The Premier stated that the object of the Bill was for the State to purchase, at a *fair price*, land from absentee landlords in suitable areas and to distribute it to landless cultivators without racial discrimination under a system of gradual repayment spread over a long period. The aim is good, and all are agreed on checking absentee landlordism but the method is defective, in that it taints with a new sin of racial discrimination the very sin that is sought to be effaced. It appears as though the intention of the government was simply to take advantage of the depressed prices to deprive Indians of their lands. Again, the rights of Indian tenants to tenancies were secured by the Tenancy Act, but their security

of tenure was not so guarded under the Land Purchase Act. Indians were apprehensive because they felt that the tendency would be to purchase land owned and cultivated by Indians so as to redistribute it to the Burmese. They are also afraid that in the co-operative societies proposed, Indians might not be welcomed and that the mixed societies of Indians and Burmese might not prove successful. No appeal from the decision of the High Court to the Privy Council was provided for in regard to valuation of land. This is necessary as, in the case of Land Alienation Act of 1894, it was later found essential to have a right of appeal to the Privy Council, and accordingly the Act was amended in 1921. It also appears that compulsory acquisition is superfluous as there are 5 crores and 90 lakhs of acres of cultivable land unoccupied which can be made available for distribution to landless peasants. Compulsory acquisition could have been resorted to subsequently had this method been found inadequate. The additional 'solatium' as compensation provided in Land Acquisition Act was 15 p.c., while the present Bill provided only 5 p.c. and no adequate reason was given why less addition should now be payable merely because the land was said to be for an agrarian purpose. The Bill became law on 1 May 1941. In March 1940, the Government of Burma appointed a Special Committee to inquire into the working of the Tenancy Act and to recommend amendments, rules or directions necessary to achieve the original aims and objects. In an Interim Report, the Committee recommended an Ordinance to get rid of the great mass of vitiated orders passed by Rent Settlement Officers early in 1940. On 9 April 1940, the Burma Government promulgated an Ordinance setting aside all the orders previously passed under the Act. It also provided that the agreements entered into between landlords and tenants for the tenancy years 1939-40 and 1940-41 would be valid and declared that the rents as fixed in such agreements were fair. The tenants were authorized to reoccupy the tenancy if they undertook in writing to pay for the year 1940-41 such fair rents as might subsequently be decided and to pay the difference, if the rent for 1939-40 was less. After thus meeting the immediate difficulties by this Ordinance, the Special Committee investigated into the whole matter and recommended a draft Bill which was referred to a Select Committee of the House. The Special Committee endorsed the principle of separate inquiry in each case and fixation of fair rents on the basis of a number of carefully prescribed criteria. It also thought it necessary to include a special and more summary procedure to deal with the mass of cases which might result from the widespread application of the Act or through special circumstances. Accordingly, pend-

ing the report of the Select Committee, and in order to deal with outstanding rent settlement cases or fresh cases arising during the intervening period, the Governor promulgated another Ordinance which provided for the settlement of fair rents on the basis of arbitrarily fixed percentages of the normal gross outturn.

The Select Committee reported during the Budget session. Indians objected to the measure on two grounds, namely: that in a permanent legislation of this kind, it was unnecessary to include the emergency procedure referred to above and that the new legislation aimed at excluding the jurisdiction of the civil courts. While nothing was done in regard to the first point, in regard to the second, the Bill as passed by the House of Representatives contained a provision enabling the Financial Commissioner to make a reference to the High Court. Indians attempted to get the Bill amended so as to require the Financial Commissioner to refer the matter to the High Court, if the parties concerned insisted on such a reference. It was also their wish to secure the right of the landlord to refuse renewal of the lease if he wanted to keep the land fallow so as to enable it to recover from exhaustion.

The Constitution of Burma provides: 'The State shall have the right to regulate, alter or abolish land tenures or take possession of any lands and distribute them for collective or co-operative farming or to agricultural tenants.' The Land Nationalization Act 1948, the Land Alienation Act 1948, the Tenancy Standard Rent Act of 1947 and the Disposal of Tenancies Act 1948 purport to give effect to the principles underlying this constitutional provision.

In Burma 3 million out of 12 million acres of paddy land are in the hands of about 5,000 Indians, mostly Chettiars. The value of the three million acres is estimated at Rs. 60 to 80 crores. The Burma Land Nationalization Act passed on 11 October 1948 prohibits non-cultivating landowners from possessing land at all and permits cultivating owners to possess a maximum of 50 acres. Thus Indians owning land could in effect possess only 2½ lakhs (50 × 5,000) acres. Since a large portion of the land is held by non-cultivating owners, in practice Indian land ownership will be far less. It was decided to enforce the Act in five districts in the first instance. The Act provides for a maximum compensation of twelve times the land tax now being paid which ranges from one to five rupees an acre. On this basis in no case would compensation exceed Rs. 60 per acre which is roughly half the annual income at present prices. Thus for property valued at even Rs. 40 crores, the compensation will amount to Rs. 4 to 5 crores. Even the Furnival Committee, which was charged with the task of ascer-

taining a fair basis of compensation at the time of the enactment of the Act, had recommended that compensation should be paid on the basis of market price. On 1 February 1949 the Government of Burma requested the proposed Indian delegation under the leadership of the Congress President, Dr. Pattabhi Sitaramayya, to discuss the compensation question to postpone the visit. The entire question had been however in abeyance since February 1949 after the outbreak of the Karen revolt in Burma.

Section 7 (b) of the Burma Land Nationalization Act envisages the appointment of a ten-man Commission including members of Parliament, expert advisers, landlords and farmers to determine the basis of compensation payable to landholders and the mode of payment. In September 1949 the Commission was appointed. It was to inquire as to how the land came to be owned: whether purchased or taken over by foreclosure of mortgages. It would also give due attention to the amount of the original loan. It seemed likely that the amount of interest on loans collected by the landlords before they came into possession of the lands would be deducted from the compensation. While the maximum compensation provided in Schedule 2 to the Act is itself of a confiscatory nature, the ten-man Commission appointed to inquire into the compensation question would, it was feared, further whittle down compensation. It is the view of the Indian interests that this Commission should not be vested with any power to whittle down compensation fixed by the Act and that the vital issues of the rates of compensation and mode of payment should be settled by negotiation between the Governments of Burma and India. They quote the Foreign Minister of Burma offering a square deal to new investments from the U.S.A. and the U.K. and plead that the previous Indian investments which enabled millions of acres of land to be reclaimed should receive at least equal consideration. They have, therefore, requested the Indian Government to depute the Pattabhi delegation to settle the issues.

Since the Act facilitates flagrant expropriation of Indian interests, the Government of India demanded a guarantee on a parallel with the special treaty provisions for equitable compensation, in accordance with the decision reached on 17 October 1947 between Prime Ministers Thakin Nu and Attlee in respect of the expropriation, in whole or in part, of the existing U.K. interests. India wants no more concessions than those which Burma vouchsafed to the British in respect of the management of British business there. In Thakin Nu's undertaking to Attlee there is a clause under which the Provisional Government of Burma have agreed, subject to a reservation which is not relevant in this con-

text, 'that they will not take action which will prejudicially affect existing U.K. interests in Burma in the legitimate conduct of business or professions in which they are now engaged'. India is entitled to this equality with the British in view of her patience in not demanding for repayment of the pre-Separation debt of more than Rs. 50 crores which Burma owes to India. Also India has been paying to Burma, which is selling rice not directly but through the International Food Council, at a price more than three times what normally should prevail.

The Land Alienation Act 1948 is designed to prevent sale of land to persons other than nationals of Burma. As very few Indians in Burma have acquired Burmese citizenship, most Indians are regarded as aliens who are therefore affected by the legislation.

The Tenancy Standard Rent Act of 1947 fixes the rent that a landlord can receive at twice the amount of land revenue. The Disposal of Tenancies Act of 1948 enables the Burma Government to lease agricultural lands in the possession of any person in favour of a tenant to whom the land might be allotted by the government subject to the payment of prescribed rent by the tenant. The Act, however, does not apply to agricultural lands not exceeding 50 acres in the possession of a person who cultivates it himself. In effect, therefore, a person who is himself engaged in cultivation can hold up to 50 acres of land without interference by government. Fifty acres is considered as the maximum area which one tenant could cultivate with reasonable efficiency.

On 18 February 1948, Prime Minister Nehru stated in the Dominion Parliament that the Tenancy Standard Rent Act and the Disposal of Tenancies Act had the cumulative effect of giving the Government of Burma power to regulate or control lease of agricultural land and to require the owner to lease out agricultural land in excess of 50 acres to whomsoever the government might wish, the owner being entitled to receive from the persons to whom such land was leased only twice the land revenue which he had to pay to the government. As land in excess of 50 acres was not proposed to be acquired by the government, the question of compensation did not arise, although the legislative measures referred to, affecting as they did the income from land, might adversely affect the compensation payable to landowners when the Burma Government gave effect to their policy of nationalization of land.

It was argued that the three Acts applied to both Indian and Burmese landlords alike and so there was no discrimination against Indians. But the position of the Burmese, who are Burmese citi-

zens entitled to several other privileges, is different from that of Indians who are mostly aliens. Whereas a Burmese landlord can distribute his land among a number of his friends and relatives and thus escape the clutches of the Acts, a bulk of Indians who are not agriculturists are in a disadvantageous position. While the government could direct the Chettiers to settle land on tenants to be nominated by them they do not guarantee payment of even the meagre rent fixed by themselves. The Chettiar landlords must maintain an establishment in Burma to collect the rent, pay half of it to the government and with the remaining half meet the cost of establishment and earn interest on their investments. There are two other difficulties : firstly, payment of rent is rarely regular in Burma and, secondly, the restrictions on remittances prevent the landlords from sending to India even the small amounts which they may manage to save. Lastly the Acts have reduced the value of Indian land, houses, mills and factories valued at Rs. 100 crores most arbitrarily and deprived Indians of their legitimate income therefrom. The lack of Burmese capital to purchase the property has worsened the situation. The Government of India had requested the Burma Government to keep the enforcement of the Acts in abeyance pending an agreement with India.

The Transfer of Immovable Property (Restriction) Act promulgated on 3 January 1948. prohibited the transfer of immovable property for a term exceeding one year in favour of a foreigner or any person on his behalf by way of gift, sale, mortgage or otherwise. In the beginning the term 'foreigner' did not mean British subjects domiciled in Burma, the U.K., India or Pakistan. Later, the Act was amended to include in the definition every person who was not a citizen of the Union of Burma. In February, representations were made by the Indian Embassy proposing that the Act be amended to remove the hardship on Indians. The Burma Government regretted their inability to accept the suggestion but stated that the government would exempt under Section 4 any particular transaction in case they were satisfied that exemption should be granted. Each application for exemption would be considered on its merits.

Two lakhs and a half Indians in Rangoon own 70 p.c. of the buildings and 50 p.c. of the cinemas and a large slice of the trade of the biggest port and capital of Burma. About 2,500 rickshaw pullers are Indian and similarly the city's taxi drivers, coachmen, *dhobies*, milkmen, sweepers, dock-workers and casual labourers.

Though it is two years since the War Damages Commission finished the inquiry into the claims, the Commission has not submitted its Report. Yet the British Government announced

an *ex-gratia* payment of £10 crores to British business interests whose property sustained war damages in Burma. The Chettiars feel that as the British were ultimately responsible for the settlement of these claims, it would not be fair on the part of the British Government if they did not settle the claims but gave an *ex-gratia* payment to their nationals alone.

CEYLON

The Land Development Ordinance of 1935 was said to provide for systematic development of alienation of Crown land but it discriminated in a subtle manner against Indians by prescribing the test of domicile of origin as a necessary condition for the transfer of Crown lands to Indians under the Ordinance. The term 'Ceylonese' was for the first time defined as 'a person of either sex domiciled in the Island and possessing a domicile of origin'. This phrase, like a double-barrelled gun, excluded Indians who, in spite of being permanently settled in Ceylon, did not possess the domicile of origin; secondly, it excluded even those Indians who possessed the domicile of origin but could not prove it. This Ordinance was apparently aimed at depriving even permanently settled Indians from buying Crown land. The Government of India should plead for a modification of the dangerous definition of 'Ceylonese' which has sealed the fate of a vast number of Indians for ever so far as land settlement is concerned.

In November 1942, the Land Redemption Ordinance was passed to facilitate the acquisition by the government of lands sold in execution of the mortgage decrees or transferred by the owners in satisfaction of mortgage debts after 1 January 1929 and alienation of such lands as 'protected' holdings or on permits under the Land Development Ordinance to the original owners or their descendants or others. The Ordinance affected the Nattukottai Chettiars and other members of the mercantile community who however had no objection to the proposed acquisition provided they were paid adequate compensation.

MALAYA

Chettiars in Malaya own about 175,000 acres of rubber plantations of an estimated value of Rs. 10 crores. The total value of Chettiar interests in Malaya is estimated at Rs. 20 crores.

In 1947, the Malayan Government published two Draft Ordinances, the Titles to Land (Occupation Period) Ordinance 1947 and the Debtor and Creditor (Occupation Period) Ordinance 1947. The object of the first Ordinance was, it was stated in the preamble, to enact a comprehensive measure which would lay down the princi-

ples upon which all land transactions during the Japanese occupation period could be settled and would enable the Registrar to rectify the Register in all cases where dealings had taken place which were not in accordance with pre-occupation law or accepted principles. The second Ordinance lays down principles for deciding which payments made during the occupation period are to be considered final and which would be revalued in accordance with the scheme of this Ordinance. Section 3 of the first Ordinance says: 'Save as otherwise provided in this Ordinance, no registered dealing effected during the occupation period shall be invalid merely by reason of its having been effected during that period, if the instrument by which such dealing was effected was executed by the person entitled by pre-occupation law to execute it or by his agent and if its registration was in accordance with the pre-occupation law governing the registration of such instruments as modified by the provisions of this Ordinance'.

The Indian Chettiers had advanced loans to some Malays in British currency in the course of their banking and other monetary transactions before the Japanese occupation. The Malay debtors repaid the debts to their agents, who had been cut off from any intercourse with their Chettiar employers during the occupation period, in badly inflated Japanese currency and got back their titles to land and other property. Consequently, the Chettiers had suffered to an extent of Rs 10 crores and they contended that the dealings effected during the occupation period should, as envisaged in the two Ordinances, not be validated.

The Debtor and Creditor Ordinance provides for the validation of all monetary transactions with certain exceptions. These exceptions heavily favoured persons who were away from the country during the Japanese occupation. While banks, mostly Indian, which were operating in Malaya during the occupation could not reopen the transactions of that period, interests which had operated through liquidators or managers could have a revaluation. The result was that interests like those of the Chettiers, the Malays and Chinese who remained in the country during the occupation had suffered while European interests benefited. The Titles to Land Ordinance too is open to similar objection. The Government of India had, therefore, protested against this discrimination and pressed for fair treatment of Chettiers either by revaluing all war-time transactions or giving the option to the seller to re-buy interests sold during the occupation according to prices fixed under a schedule. Neither of these courses had however been adopted, thus placing Indian interests under a severe handicap.

The ordinary law is that contracts of agency are terminated by separation of the principal and the agent by war. Hence the Chettiars had asked that payments made during the Japanese occupation should be revalued in terms of pre-war British currency and that all sales of land and shares should not be validated but option should be given to the original owners of such lands and shares to recover title or in the case of a mortgage to get back possession by crediting to the debtor or mortgagee the amount paid by the latter in Japanese currency after revaluation.

According to international law the acts of agents in occupied territory during enemy occupation would not bind their principals in India. The Government of India did not press for total repudiation of all payments to former agents, for it would prejudice the interests of the poor debtors in the colony. Hence they pleaded for amendments to give option to the creditors.

In the case of complete sales or redemption of mortgages, the Government of India proposed that the new owner or occupant might be paid, in conformity with revaluation of the currency, the amount he had paid in good faith to the original owner or occupant. The Court should be empowered to fix the value of improvements effected in good faith. The claimant should be given the option of getting back the property only on payment for improvements or providing credit for the same to the owner or occupant. In the case of alteration to a property, the claimant might be allowed to acquire it as it was, with its advantages or disadvantages as the case might be. The Government of India also pleaded for a sliding scale of revaluation of occupation currency in terms of pre-war British currency as was provided for in connexion with the Debtor and Creditor Ordinance.

As a result of representations by the Indian Government, the Ordinances were held in abeyance for some time but adopted by the Federal Legislative Council in 1949. Both the Ordinances came into force on 1 October 1949 along with the lifting of the moratorium on war-time debts, which came into operation in August 1945. Indians appear to have been satisfied with the terms of the lifting of the moratorium. There is a section of Indian opinion holding the view that the Indians in Malaya as a whole would benefit by the two Ordinances, as many Indians had acquired lands, buildings and rubber shares.

In February 1948, the Government of Singapore also published a Bill providing for full validation of payments made during the period of Japanese occupation in respect of debts incurred during the period. The Bill also provides that all debts incurred during the occupation period and still partly or wholly outstanding, shall,

unless expressly payable otherwise than in Japanese currency, be revalued according to the Bill. A Schedule to the Bill shows the value of the occupation dollar on 12 August 1945 as working out to 105,000 occupation dollars for 100 Malayan dollars. The terrific inflation simplifies repayment eminently to the detriment of Indians. The Bill proposes to recognize all payments made during the occupation period 'at their face value' except those which could be proved to have been received under duress. It is obviously impossible to prove this when none of the Japanese officials are available to testify one way or the other. The safe rule, having regard to the rigours of enemy occupation, would be to assume that everyone acted under coercion unless there were obvious grounds for assuming to the contrary. This Bill also discriminates against Indians in so far as it makes a distinction between banks, which in Malaya and Singapore are mostly European-owned, and private creditors, who are predominantly Indians. Enemy occupation is a calamity the incidence of which was the same for both banks and private moneylenders. There is a clear case for re-examination of the Ordinances to render them equitable not only as between creditors and debtors but also as between the different categories of creditors.

A number of Chettiers were arrested in 1948 and 1949 on charges of paying protection money to Communist terrorists. Some of the arrested persons were allowed to be repatriated to India and others were to be released. Many of the Chettiers were anxious to liquidate their interests in Malaya and get back to India. Proposals have been made to the Malayan Government that the management of the estates and other interests of such Chettiers as opted for India should be entrusted to British firms commanding the confidence of all parties so as to avoid suspicion that the Chettiers were paying protection money. The Chettiers have suggested the creation of a trust or agency to administer small estates.

FACTUAL POSITION OF OWNERSHIP AND OCCUPATION OF LAND

The following account of ownership and occupation of land by Indians in the various countries reflects the effects of anti-Indian legislation so far traversed.

SOUTH AFRICA

Nearly 80 p.c. of Indians in South Africa are in Natal, and the bulk of them are agriculturists. Yet during a period of 60 years commencing from 1860, the sum total of real estates apart from leasehold properties held on monthly or yearly tenancies acquired by all Indians in rural areas, according to the Agricultural Census Returns 1920-21, was 57,914 acres, out of a total

area of 11,299,360 acres in Natal. At the end of 1926, it was estimated that 14,136 Indians owned 89,869 acres which really meant that 1 acre in every 200 acres was owned by Indians. Similarly in respect of cultivable lands in the districts situated in the coastal belt, out of an acreage of 3,568,640 only 73,873 acres were owned by Indians.

As regards the urban areas in such important cities as Durban, the net increase in the value of property held by Indians between 1921 and 1935 was only £245,760, while the Europeans had during the same period acquired property valued at £3,712,870. When it is remembered that the population in 1921 was 47,811 Indians as against 57,095 Europeans, the wide disproportion in the acquisition of properties becomes obvious. Moreover the ostensible increase in the value of properties acquired by the Indian community to the tune of about £245,760 should not be imputed to the acquisition of a greater control over real estates. The sum total represented more the enhanced value and greater improvements effected such as new buildings or renovations than fresh acquisition of landed property in the urban areas. Similarly the records of the Durban City Estates Department showed that between 1 May 1935 and 20 February 1939 only 107 properties valued at £165,510 had changed from European to Indian hands, an annual average of £41,400. As the Indian population of Durban as per 1936 Census was 88,226, the *per capita* acquisition of European property in Durban by Indians was less than 10 p.c. per annum. The most important point about these transfers was that of these 107 properties as many as 82, valued at £116,560, were located in Wards Nos. 2 and 7 of the Durban City which constituted the predominantly Indian area of the city. Thus the total ratable property owned by 88,226 Indians after 75 years of residence in Durban was about £400,000 out of a total valuation of £48,998,500. The percentage of Indian to European ownership was thus 8.5 to 91.5 or £45 for every Indian as against £454 for every European resident in Durban. Under the Native Land Act of 1913, for 5 million natives only 12 p.c. of the land was reserved while the Europeans who numbered a fourth of them appropriated 88 p.c. of the land.

KENYA

Kenya comprises an area of 245,060 sq. miles. Of these 195,000 sq. miles are below 4,000 ft. and the rest is highlands varying from 5,000 ft. upwards. Approximately, 7,525,120 acres were allotted for occupation by Europeans. The area actually under their occupation was 5,138,324 acres in 1936, of which only 556,182 acres or 10.82 p.c. was cultivated. Even if 2,302,293 acres

were added as estimated area utilized by Europeans for their livestock, the total area developed in the highlands would only amount to 2,858,457 acres. Thus less than 38 p.c. of the land allotted long before had not been used either for cultivation or for raising stock, and yet in delimiting the highlands, their extent was enlarged by the Morris-Carter recommendations from less than 12,000 sq. miles to 16,700 sq. miles, but only 41,149 sq. miles, most of which was desert land, was reserved to 3,024,975 natives. Thus, while for 63 natives one sq. mile of inferior land was provided, the same amount of fertile land was provided for one European. Although in 1936 the Europeans numbered 16,812, no more than 2,027 were occupiers and 2,364 employees or 4,391 made their living from land. There were approximately 2,000 European farms in Kenya and 2,000 European officials.

TANGANYIKA

The area is 365,000 sq. miles. The Land Ordinance of 1923 declared all the lands of the territory to be public lands. The only method of acquisition was by lease or as was called in the Ordinance 'a right of occupancy'. The policy of the government was to declare open areas for non-native settlement. The total area of agricultural and pastoral land held by Indians was 161,322 leasehold acres and 165,867 freehold acres, *i.e.*, a total of 327,189 acres, while the British held a total acreage of 755,273 and the Germans of 389,609. The total Indian population in 1931 represented 67 p.c. of the total non-native population, including Europeans, Goans, Arabs and others, but Indian interests constituted only 17 p.c. of the agricultural land alienated to non-natives.

UGANDA

As per 1931 Census, the total area owned by 2,001 Europeans was 104,313 acres while that by 13,026 Asians was 46,996 acres. Regulations governing the sale and lease of Crown lands were contained in the Crown Lands Ordinance. There was no reservation of highlands or township areas exclusively to Europeans as in Kenya. So there was no question of segregation in township areas since the White Paper of 1923, but the retrospective clauses in leases granted prior to 1923 when segregation was in force were not amended on the specious pretext of past obligations and commitments. In practice, however, no objection was taken to Indians residing in such areas.

BURMA

Burma comprises 261,610 sq. miles and the net total under cultivation is more than 16 million acres. The acreage in reserve forests in 1937-38 was 19,895,664 and the acreage sown 17,677,587. The transfer of lands from owner-agriculturists to non-agriculturist Indian Chettiar money-lenders had greatly alarmed the Burmese. While the occupied area in the ownership of agriculturists increased by only 5 p.c. from 14,636,046 acres in 1914-15 to 14,700,611 acres in 1924-25, that in the possession of non-agriculturists increased from 2,512,677 acres to 3,392,945 acres or 35 p.c. in the same period. In 1930-31, the area occupied by owner-agriculturists was 14,456 acres and that by non-agriculturists 4,356,636 acres.³³

Year	Area in acres occupied by			Total occupied area
	Agriculturists	Non-agriculturists		
		Resident	Non-resident	
1928 Lower				
Burma	7,652,081	767,131	2,188,302	10,607,514
Upper				
Burma	7,192,425	327,936	392,561	7,912,922
Total	14,844,506	1,095,067	2,580,863	18,520,436
1936 Lower				
Burma	5,802,936	968,161	4,284,921	11,056,018
Upper				
Burma	6,987,561	462,623	642,898	8,093,082
Total	12,790,497	1,430,784	4,927,819	19,149,100

The above figures³⁴ show that whereas agriculturists in Lower Burma held 72·1 p.c. of the total occupied area in 1928, they held only 52·4 p.c. in 1936. During the same years the percentage of land occupied by agriculturists in Upper Burma fell from 90 p.c. to 86·3 p.c. The extent to which land had passed into the hands

33. E. J. L. Andrew, pp. 31-32.

34. Speech of the Hon. Minister for Agriculture in the House of Representatives moving that the Land Purchase Bill of 1939 be referred to Select Committee, p. 4.

of the professional money-lenders was indicated by the increase in area held by Chettiar firms as shown below :³⁵

Year	Total occupied area	Area occupied by non-agriculturists	Area occupied by Chettians	In thousands of acres	
				p.c. occupied by Chettians to area occupied by non-agriculturists	p.c. of area occupied by Chettians to total occupied area
1930	9,349	2,943	570	19	6
1937	9,650	4,929	2,446	50	25

The above figures show that the area occupied by the Chettians in 1937 was more than four times that in 1930. Between 1931 and 1937, the area in non-agriculturists' hands increased by 2,413,000 acres, i.e., by 60 p.c. Meanwhile, the area occupied by all agriculturists had increased from 18,747,926 acres to 19,304,907 acres, i.e., by 556,981 acres, an increase of just under 3 p.c. This is clear from the following table :³⁶

Year	Resident	Non-resident	Total	
1930	Lower Burma	803,617	2,427,944	3,231,561
	Upper Burma	350,671	446,434	797,105
	Total	1,154,288	2,874,378	4,028,666
1937	Lower Burma	989,419	4,316,598	5,306,017
	Upper Burma	475,745	660,271	1,136,016
	Total	1,465,164	4,976,869	6,442,033

In the 13 principal rice-growing districts of Lower Burma, the Chettians occupied 6 p.c. of the total occupied area in 1930 while in 1937 they were in occupation of 25 p.c., this not including the fur-

35. *Ibid.*

36. James Baxter, Report on Indian Immigration (1941), p. 27, para 36.

ther area of which the Chettiers were mortgagees but without occupation. It was also recently found that in Insein district, the big Chettiers alone occupied 31 p.c. of the total occupied area while the Burmese occupied only 56 p.c. and other Indians and Chinese occupied 13 p.c. The Pegu Settlement of 1932-34 also revealed that the Chettiers alone held over 36 p.c. of the total area.

This rapid increase of land in Chettiers' hands was not confined to land occupied and owned by them but extended also to land let out. The Burmese possessing agricultural lands, encouraged by the rise in the price of unhusked rice, indulged more extensively in hired labour. They found it more profitable to let out their lands to Indians at fixed rentals than to cultivate lands themselves with attendant risks of cattle diseases and crop failures. Thus the area let at full rent continued to rise. In 1924-25 it amounted to 3,976,202 acres as against 3,133,874 acres in 1914-15 or an increase of 27 p.c. in the decennium. The area so let out in 1930-31 was 5,421,319 acres or 36 p.c. more than in 1924-25.

MALAYA

As per 1936 statistics, the total area of Malay Reservations in the state of Selangor was 319,640 acres and in the state of Perak 1,820,332 acres. Out of the total area of the state of Kedah, which was 3,660 sq. miles, the area of the Malay Reservations was 1,956 sq. miles. Of the 5 million acres under cultivation in Malaya 3,280,000 acres were planted with rubber and nearly two-thirds of this area was under estates of a hundred acres or over. Even in 1928, it was estimated that 70 p.c. of the area under rubber which was then 2,450,000 acres was owned by European companies. In 1935, the land owned by Indians was 36,535 acres in the Straits Settlements, 165,245 acres in the Federated Malay States and 107,282 acres in the Unfederated Malay States. Most of this land was owned by upper and middle class Indians, while 70 p.c. of the Indian labouring class working on 3,000 estates was practically landless. The extent of land owned by Indians in 1936 was roughly estimated to be 301,120 acres. In 1937 Indians owned 372 rubber estates of 100 acres and over, as against 1,004 by Europeans and 1,061 by the Chinese.

Most of the cultivable lands having been reserved for the Malays under the Malay Reservation Enactments, it was very difficult for Indians to acquire them. In 1932, two land settlement schemes were initiated for Indian labour in the district of Negri Sembilan — the first on 243 acres of thickly wooded jungles and the second on a block of 500 acres of dry land unsuitable for rubber plantation. Thus, 6½ lakhs of Indian labourers were provided with 743 acres

for land settlement. In 1938, the acreage of rubber estates of over 100 acres owned by one company or privately owned by the same owner or owners and supervised by the same manager was in the case of Europeans 1,526,692 or 76 p.c. of the total acreage, while in the case of Indians it was 87,962 or 4 p.c. In Malaya also the highlands of the peninsula which in area were about 5,000 sq. miles were reserved for the Europeans, Malays and the Chinese to the exclusion of Indians.

CEYLON

The area of Ceylon is 16,212,400 acres of which the total cultivated acreage at the end of 1939 was 3,536,437. The Banking Commission Report stated that as regards the coconut industry — the only industry in Ceylonese hands — out of about 1,200,000 acres 50,000 acres were in the hands of the Indian Chettiers and that of the remaining area a large part was mortgaged.

BRITISH GUIANA

The area of British Guiana is 58 million acres, but the cultivated land in 1931 was only 170,723 acres of which 70,233 acres were under sugar cultivation and 60,007 acres under rice. Of about 144,000 Indians constituting 42 p.c. of the total population of the colony, 57,000 Indians were living and working on 27 estates. Seventy-four per cent of Indians were agricultural labourers. In spite of the necessity therefore for land to Indians, only 12,911 out of a resident population of 67,756 in 1937 were in occupation of about one acre a head of rice and provision land.

TRINIDAD

This colony comprises an area of 1,267,236 acres of which about 650,393 acres were alienated. In 1937 about 344,850 acres were under cultivation. The Indian proprietors had in 1925 in their hands 100,000 acres while in 1939, according to the Protector of Immigrants, 158,000 Indians owned nearly 121,000 acres of land. The area of Crown land granted to Indians from 1869 to 1876 and from 1876 to 1912 was 89,222 acres. In 1876, grants were made in lieu of return passages. Thus only 31,778 acres were acquired by Indians in about 27 years. If the increase of Indian population was taken into account, the land owned by Indians per head shows a definite decrease.

JAMAICA

Jamaica has an area of 4,450 sq. miles with an estimated population in 1936 of 1,138,558, of whom Indians numbered 18,669. The

acreage under cultivation and care in 1933-34 was 204,795. The Sanderson Committee stated that in 1909, 1,547 Indians owned 8,415 acres valued at £47,160 while in 1932, after 23 years, Indians owned only 9,620 acres of an estimated value of £89,924.

Fiji

Fiji comprises 7,083 sq. miles. In 1936-37 the total acreage under cultivation by Europeans, Fijians and Indians was 193,121. Eighty per cent of the land was held by native owners as tribal land and the other 20 p.c. was held as Crown grants or freehold property by the Colonial Sugar Refining Company. During the first decade of the present century, land worth £7,530 was sold to the Indians for agricultural colonization. In 1914, McNeil and Chimanlal reported that Indians owned land worth a million dollars.

Non-Fijians desiring to acquire land in Fiji must, since the creation of the Native Land Trust Board, either (a) buy or lease from the owners, mostly Europeans, the alienated or freehold land ; or (b) lease any available native land from the Trust Board.

Indians, besides providing most of the labour for sugar mills, grow the sugarcane on a contract system. As Indians are not allowed to acquire farms, they are mostly tenants either of the C.S.R.C. or of Fijian landowners, who own a considerable portion of the land. Yet the government controls the actual system of leasing and assessment of rent. Domiciled Indians are agitated by the position of existing leases, payment of compensation to an outgoing lessee and the non-availability of suitable land to meet the growing Indian needs owing to their increase in population. The area of agricultural land operated by Indians was in 1940 some 6,400 acres held under native leases and some 2,500 acres held under Crown leases. In addition to this from 2,000 to 3,000 acres were owned by Indians as freehold. They also occupied some 33,000 acres as cane-growing tenants of the Company and about 5,000 acres as tenants of freeholders. Thus they held a total area of more than 107,000 acres a great bulk of it being under cultivation.

MAURITIUS

The area of the colony is 720 sq. miles. The total estimated population at the end of 1937 was 413,459, of whom the Indians numbered 269,329—30,514 Indians residing on estates and 238,815 off the estates. Eighty per cent of the labour population of the island is composed of descendants of Indian indentured immigrants. Of the total area under cultivation in 1937 which was 180,082 acres, Indians were cultivating

64,525 acres, i.e., 35·8 p.c. The total area under sugarcane cultivation was 145,096 acres of which Indians cultivated 56,025 acres, i.e., 38·6 p.c. The corresponding figures for 1923 show a deterioration in the Indian position in 1937. The total cultivation in 1923 was 206,000 acres, total Indian cultivation being 87,000 acres. The total sugarcane cultivation was 171,000 acres and the total Indian sugarcane cultivation was 77,000 acres. While in 1923, the proportion of Indian to total cultivation was 42 p.c. and the proportion of Indian sugarcane cultivation to total sugarcane cultivation 45 p.c., the corresponding figures for 1937 were 35·8 p.c. and 38·6 p.c. In 1923 20,000 out of 77,000 acres of sugarcane were held by Indians under the *morsellement* (fragmentation of land) system; and 40 p.c. of sugarcane cultivation was in the hands of Indians while the actual lessees cultivated 6,000 acres. The decline was due to the fact that the majority of the Indian small landed proprietors fell into the hands of *bailleurs des fondes*—financial agents who advanced money to needy husbandmen. These financial agents collected not only principal and one p.c. more than the bank rate of interest but also a brokerage of 1½ p.c. and a commission of anything up to 2½ p.c. on the proceeds of the gross produce raised. The fall in revenues and the economic depression led to *morsellement*. All these causes led to the passing of land from the hands of agriculturist Indians into those of non-agriculturist speculators and nearly half the land possessed by the Indian small-holders passed out of their hands during this century.

In 1946 the European landlords or lessees of Crown lands charged rents as much as Rs. 300 per acre annually or half the produce. Also the Indian tenant farmers depended completely on the European middlemen both for capital and the final disposal of sugar. For every ton of sugarcane supplied, the miller obtained 120 to 130 kilos of sugar and the middleman received 80 kilos while the farmer received only 60 to 70 kilos. And finally when he sold it to the European sugar syndicate, he had to pay the usual brokerage to the European broker. The failure to implement the Ridley recommendations facilitated the perpetuation of these deplorable conditions of insecurity of their sub-leases of land and the exorbitant rents charged for them.

SECTION III — RESTRICTIONS ON TRADING RIGHTS

NATAL

Trade licensing legislation in Natal began with Act XVIII of 1897. This Act governed the issue of licences in municipal areas and provided for the appointment of Licensing Officers by the Town Council or Town Board to issue annual licences in boroughs and townships, as the case might be, to wholesale and retail dealers. The Licensing Officer had absolute discretion to issue or refuse licences and his decision was final and not liable to review, reversal or alteration by any court of law. But Section 6 provided for a right of appeal from the decision of the Licensing Officer to the Town Council or Town Board, if licence was sought for in a borough or township, and to a special board of three persons appointed by the Administrator if sought for elsewhere. The Secretary of State for India, regretting the absence of any provision for a right of appeal to any court of justice, stated that the law would work hardship on petty traders and added :

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

Such law would obviously be open under any circumstances to grave abuse and the danger of its abuse is inevitably increased when it is liable to be used only against one section of the population, and when the final decision on any question arising under it is entrusted to a Municipality or other local body.¹

He pleaded that the grounds on which licences might be refused to them should at least be specified in a separate enactment if on sanitary or other grounds the law was required at all.

As apprehended by him, the law was grossly abused. In several cases, on appeal for refusal of licences, the Judges were compelled to condemn the licensing authorities strongly. In Somnath Maharaj's appeal, Sir Walter Wragg, Chief Justice, remarked that he could quite see that the Licensing Officer should be some person who was not in the Town Council service and who was not in the confidence of the Council.² Quashing the proceedings of the Town Council and entertaining the appeal preferred, he remarked :

1. Confidential Memorandum submitted by the Government of India Deputation to South Africa, 14 May 1926, p. 41, para 5.

2. *Ibid.*, p. 49.

What struck one as being wrong in this case was that the copy of the record should be withheld. The application was made to the Council by the appellant for a copy of the record and reasons why the licence had been refused. There was nothing wrong in the application. It was one which, in the interests of justice, should have been granted. But it was refused. And when the appellant's counsel (Mahatma Gandhi) came before the Court, he was in the dark as to the record and he did not know what was operating in the mind of the Licensing Officer.³

He added that it seemed to him that the action of the Town Council in this case had been oppressive and it seemed to him that the refusal of both requests was unjudicial and an improper proceeding. In 1898 when many renewals of licences on Durban and Newcastle were refused, the Chief Justice of Natal held that the Supreme Court had appellate jurisdiction over the decisions of Town Councils as the licensing authority but the Privy Council reversed the decision of the Chief Justice. The Secretary of State for the Colonies regretted the deprivation of a right of appeal on the ground of legal interpretation of a statute as unfortunate. On his suggestion, the Natal Government issued a circular to the local authorities to the effect that unless they exercised the powers given to them with reasonable liberality, the law might have to be reconsidered. This frank statement had some beneficial effect though only for a time.

The Secretary of State for the Colonies wrote in May 1899 that great injustice was being done in the administration of the licensing law and so provision for appeal to the Natal Supreme Court should be granted and that otherwise emigration from India would probably be stopped.⁴ In July 1900, the Government of India made a similar request. Yet the licensing authorities continued their methods. In one case Justice Mason remarked that the proceedings under appeal were a disgrace to the Town Council and he did not hesitate to use this strong language. He considered under the circumstances that it was an abuse of words to say that there had been an appeal to the Town Council. In 1904 the Attorney-General said that he would not be a party to the 'dirty work' and added that when sitting as a Court of Appeal the Council should, unless there were good grounds to the contrary, grant the licences. He gave an assurance in his letter dated 29 July 1897 that the conditions of Section 7 of Act XVIII would be satisfied if the trader should employ a clerk or agent capable of keeping his accounts in English. But the

3. *Ibid.*, p. 50.

4. *Ibid.*, p. 84, para 11, Letter No. 12091, dated 20 May 1899.

licensing authority set the assurance at nought by refusing licences on the ground that the owners did not maintain books in English. Referring to the administration of this Act, L. E. Neame states :

In Durban the Act has been admittedly utilized in order to prevent Indian merchants opening up shops in the principal street. The Licensing Officer is the servant of a body of white storekeepers. He knows their views and, whatever his personal opinion may be, he can hardly be expected to sacrifice his appointment by opposing those who employ him.⁵

The truth of Neame's statement was borne out by the figures relating to the issue of licences to Indians. The Natal Governor wrote that the total number of licences issued to Indians from 1895 to 1908 was 11,765 while those issued to non-Indians during the same period was 20,472.⁶ He also wrote that the number of trading licences held by Indians in Natal fell from 1,334 in 1904 to 1,008 in 1903 while those of non-Indians increased during the same period from 1,930 to 2,034.⁷

In August 1908, two Bills were passed to the effect that no new trading licences should be issued to Asians after 31 December 1908, and that, after 31 December 1918, no licence should be issued or transferred to or be capable of being held by or on behalf of an Asian; and that if any Asian held a licence on 31 December 1918, he was to be compensated. Referring to the second Bill the Natal Governor wrote: 'It would nearly appear as if the intention was to force holders of licences to dispose of their businesses to Europeans for whatever they can get for them during the period of grace' and that the words 'licences of any description for the purpose of trading'⁸ show the intention was to close all commercial pursuits in the colony to Indians. The Secretary of State again pleaded for the introduction of a Bill providing for a right of appeal to the Supreme Court against the refusal of issue of licences.⁹ He also contended that traders who carried on their business for several years without let or hindrance should not be refused licences on the ground only of insufficient book-keeping. On the refusal of the Natal Government to act on these suggestions the two Bills were disallowed by the Crown.

5. L. E. Neame, *The Asiatic Danger in the Colonies* (1907), p. 35.

6. Selection of Papers Regarding the Indian Problem (1926), p. 114, Despatch dated 25 July 1908.

7. *Ibid.*, p. 113, Despatch dated 10 July 1908.

8. *Ibid.*, p. 100, para 6, Despatch dated 8 May 1908.

9. *Ibid.*, p. 108, para 3, Despatch dated 18 July 1908.

In 1909, when the Government of India seriously contemplated prohibiting emigration of indentured labour, the Natal Government got frightened and offered to introduce a Bill giving a right of appeal to the existing licence-holders and to future grantees of licences, but not appeal on the question of grant or otherwise of a fresh licence. The Government of India replied that their position had always been that appeal to the Supreme Court should lie against all decisions of Licensing Boards and that they could not accept as adequate any proposal to allow appeal against withdrawal of licences only.¹⁰ They reiterated their position thus to the Secretary of State for the Colonies :

We agree with your Lordship that the right of appeal is of most importance in case of existing licences. But we do not think that this consideration would justify us in desisting from trying to get the best terms we can for Indians.¹¹

Act XXII of 1909 was at last passed providing under Section 2 for an appeal to the Supreme Court or Circuit Court in cases of applications for only renewals of licences from the decision of the Town Council or Town Board or Licensing Board.

But even this Act giving the right of appeal in case of renewals was rendered a dead letter. In *Sophia Bhayla vs. the Licensing Officer of Estcourt*, the Supreme Court expounded a new principle in the interpretation of Act XXII of 1909 — that it had no power to interfere with the exercise of discretion by the Licensing Officer. On appeal against that decision, the appellate court laid down that it had no jurisdiction to interfere with the decision of the Natal Supreme Court. This decision staggered Indians, who felt that all protection given by Act XXII in the case of renewal of licences had been nullified by it and that there was a grave risk of their existing trading rights being jeopardized, should Licensing Officers refuse to renew the licences on some pretext or other.

The Solomon Commission reported in 1913 about the Natal boroughs :

It is becoming more and more difficult for Indians to obtain new licences except in those quarters of the towns which are inhabited almost exclusively by them and which may be regarded as Asian reserves. In some other parts of the towns it is almost impossible now for Indians to obtain new licences.¹²

10. *Ibid.*, p. 120, Telegram dated 27 October 1909.

11. *Ibid.*, p. 120, Telegram dated 11 November 1909.

12. C.D. 7265 of April 1914, p. 39.

Regarding the rest of Natal outside the boroughs the Licensing Officer's policy towards Indians was far more liberal. The Commission stated that no directions could be given by the government to a municipal council and that the only way to give relief was to amend the law and take the control of the issue of licences out of the hands of the municipalities. But they added that they could not recommend this procedure as they felt that any recommendation to deprive the municipality of the control of licences would be opposed to public opinion and would, therefore, be wholly ineffective. 'We do not, therefore', they said, 'see our way to make any recommendation to remedy this grievance'.¹³

In 1916, Ordinance VI of the year was passed. Section 6 of this Ordinance granted a right of appeal in respect of transfer of a licence similar to that granted by Section 6 of Act XVIII of 1897 in respect of issue of a licence against the decision of the licensing authority. Section 7 of Ordinance VI empowered the Administration, upon a resolution to that effect being adopted by the Executive Committee, to proclaim that appeals from decisions of the Licensing Officer should be heard and decided by a Board appointed by him instead of by the Licensing Board appointed under Section 6 of Act XVIII of 1897.

The two conditions for a refusal of these licences were the failure to keep the account books or causing them to be kept in the English language and, secondly, the unsuitability of the premises for the intended trade or insanitary arrangements therein. But the Lange Commission reported in 1921 :

These are the only two grounds of refusal imperative in terms which are specially provided for by Act XVIII of 1897 ; but the Licensing Officer of the Province (outside boroughs and townships) informed the Commission that, in the exercise of the discretion allowed him, he refuses new licences also on the ground that there are already sufficient licences of the kind in the area applied for.¹⁴

Turning to Section 15 of Act XLIII of 1898 which provided for the transfer of licences, the Commission remarked :

From this it would appear that a Licensing Officer would not be entitled to refuse transfer of a licence from the holder to another person or from the licensed premises to other premises, unless, in the latter case, the applicant fails to satisfy him that the new premises are suitable for the purposes of the proposed business, both as regards situation and character as required by Section 8 of Act XVIII of 1897 and Section 27

13. *Ibid.*, p. 38.

14. Report of the Asiatic Inquiry Commission (1921), p. 45, para 139.

of Ordinance XI of 1911. But in practice the Licensing Officers seem to treat applications in respect of both classes of transfer as applications for new licences.¹⁵

The unfair policy of the licensing authorities in respect of the issue of licences to Asians is clear from the fact that while the Licensing Officer of Natal granted 1,392 new licences to Europeans and refused 117 during 1909 to 1919, he granted 874 to Asians and refused 1,152 during the same period.¹⁶ In regard to Durban City, the new licences and renewals in 1915 were 1,357 in the case of Europeans and 515 in the case of Asians, while the corresponding figures for 1919 were 1,684 and 628.¹⁷ The Asiatic Commission reported that the Licensing Officer had explained the position thus :

We do what we can to restrict further Indian licences A European licence is granted almost always as a matter of course, whereas the Indian licence is refused as a matter of course, if it is a new one.¹⁸

The same Commission had reported that even applications for transfers were treated as applications for new licences.

The Licensing Officer stated before the Lange Commission that there was an increase in the Asian licences in the municipalities and local boards of Natal. Explaining the increase, he stated that Ordinance V of 1913 made certain amendments which allowed unlicensed trading in colonial produce, and that led to a rush of applications for new licences. Later the first world war compelled several Europeans carrying on stores in the country districts to sell their business to go to the war front. Finding that the men ready to pay the highest price for stores were the Asian traders, they disposed of their businesses to them which naturally resulted in increased Asian licences during the war. Thus, according to him, the increase was attributable to the government and the Europeans themselves.

The Lange Commission, after a thorough examination of the whole position, recommended that the various grounds upon which an application for a new licence to trade could be refused should be specified in the Act, that the reasons for the refusal of a licence of certificate of fitness should be recorded together with any evidence that might have been adduced, for,

15. *Ibid.*, p. 46, para 140.

16. *Ibid.*, p. 58, para 172.

17. *Ibid.*, p. 56, para 170.

18. *Ibid.*

that appears to be absolutely necessary in order to obviate the course adopted by some municipal councils of refusing licences to Asiatics on the sole ground of their nationality.¹⁹

They pleaded that, except in certain cases, renewals of existing licences and transfer of a licence from one person to another or from one premises to another should be granted as a matter of course. In the event of the death of the holder, the Commission held that his widow or legal representative (and in case of insolvency or assigning of the estate, the trustee or assignee) be allowed to carry on business under the same licence and renew it on its expiration for one year without obtaining any certificate.

These recommendations supporting the stand taken by Indians had little effect on the Union Government. In 1921 and 1922 the Natal Rural Dealers Licensing Ordinances were passed. But they were vetoed by the Union Governor-General. In 1923, another modified Ordinance was passed as the Rural Dealers Licensing Law (Amendment) Ordinance IV of 1923. This Ordinance related to the issue of licences to wholesale and retail dealers outside municipalities and townships. The Rural Licensing Boards consisting of a Chairman and four other members appointed by the Administration of the province were set up. And as no one could be appointed to the Board who was not an enrolled voter for the Union Parliament and as the Natal Disfranchisement Act of 1896 had disfranchised Indians to the Union Parliament, the membership of the Board was exclusively European. Every Board so set up had complete discretion to refuse wholesale or retail licences, but was obliged to record in regard to all applications whether for the grant, transfer or renewal of a licence any evidence given for or against the refusal of the application. Where an application was refused, it was bound to record reasons for such refusal. The orders of the Board on any application for a new licence or for the transfer of an existing licence were final and not liable to any judicial review, except where an order of refusal was on the ground that the applicant was not a fit and proper person. In such cases there was a right of appeal to the Rural Licensing Board of Appeal appointed by the Administration. The Ordinance provided that one member of this Appeal Board should be a person who had held office as a Judge or Magistrate or who was an Advocate of the Supreme Court. An applicant for the renewal of a licence whose application had been refused by the Licensing Board was entitled to apply first to the

19. *Ibid.*, para 206.

Rural Licensing Board of Appeal and finally to the Provincial Division of the Supreme Court.

This Ordinance made a change in the then existing system of control and issue of licences in areas outside municipalities and townships and created Licensing Boards in defined areas with the same discretionary powers as were contained in Act XVIII of 1897. The Ordinance, instead of safeguarding the existing right of appeal in all cases from the decision of a Licensing Board to an Appeal Board, limited the right of appeal to cases preferred on the basis of the fitness of the person. This was a gross and unjust deprivation of the rights hitherto enjoyed by Indians. This was surprising especially in the light of the fact that the Union Governor-General vetoed the Ordinance of 1921 on the ground that though

the right of appeal to the Supreme Court or to a Circuit Court granted by Section 2 of Act XXII of 1909 was proposed by the framers of the Ordinance to be retained, the drafting of the Ordinance is so faulty as probably to result in a construction which might deprive an applicant for a wholesale or retail licence in a rural area of such right of appeal.²⁰

Therefore mere suspicion as to the proper maintenance of an existing right persuaded the Governor-General to veto it. Similarly he vetoed the Ordinance of 1922 as the abolition of provisional Appeal Boards then existing was contrary to the general policy of the Union Ministers towards Asian traders and also against the recommendations of the Lange Commission.²¹ What now made the Union Governor-General reconcile himself to a provision expropriating the most valuable existing right was inexplicable.

All these licensing Ordinances have been fully utilized to harass Indian traders. The Paddison Deputation reported that

the municipal authorities had informed them that their own stringent policy had in no way been liberalized.²²

Several Indian traders had been evicted from their premises through the instrumentality of the Natal Urban Land Alienation Ordinance, and

this step was taken merely because the shops were too near the European trading quarters.²³

In the circumstances the inference was inevitable that the administration of the provincial licensing laws rendered it

20. Selection of Papers Regarding South Africa (1925), p. 97.

21. *Ibid.*, p. 116, Telegram dated 4 August 1922.

22. Paddison Deputation Report (1926)), p. 12, para 16.

23. *Ibid.*

impossible for the Indian to make any further progress in Natal in the sphere of trade.²⁴

This conclusion is evident from the following figures :

Between 1921 and 1924 the European trading licences increased by 445 or 15 p.c. while the Indian licences increased only by 146 or 5 p.c.²⁵ The comparative list of statistics of licences held by Indians and Europeans in the important boroughs and townships of Pietermaritzburg, Ladysmith, Newcastle, Estcourt, Weenen, Howick, Glencoe, Charlestown, Verulam and Dundee showed that the total retail and wholesale licences in 1921 were 276 for Indians and 455 for Europeans. While in 1925 the Indian figure fell to 223, the European figure rose to 602. The decrease in the number of licences to Indians in 1921 was six and the European decrease one. The Indian increase in 1925 was one while the European increase was 68. The total trading licences issued through the Inland Revenue Department 1925-26 were 9,030 in Natal²⁶ while those issued to Asians 3,433. The total Natal municipal licences issued to Asians in the same year were 6,587.²⁷ In Vryheid Indians were not allowed to trade at all. So in 1925 out of 101 general dealers licences given, 54 were granted to Gentiles and 47 to Jews. The Paddison Deputation observed :

If these figures are at all characteristic of the province there would appear to be considerable force in the contention that the exclusion of the Indian from trade will primarily benefit the foreigner.²⁸

At the Capetown Conference in 1927, the Union Government undertook to consider, at the time of revising the existing trade licensing laws, suggestions of the Government of India to limit discretionary powers of the local authorities in the various provinces (1) by statutorily laying down the grounds on which licences might be refused ; (2) by making it obligatory to record reasons for refusing a licence ; and (3) to provide a right of appeal in case of first applications and transfers as well as in the case of renewals to courts or to some other impartial tribunals.

Indians in South Africa thought highly of the Capetown Agreement of 1927 as it promised to restrict the discretionary

24. *Ibid.*

25. *Ibid.*

26. *Indian Opinion*, Vol. XV, No. 1, 7 January 1927.

27. Report of the Indian Colonization Committee (1934), p. 46, Appendix No. 5, Annexe No. 4.

28. Report of the Deputation of the Government of India to South Africa (1926), p. 13, para 17.

powers of the local licensing authorities in revising trade licensing laws and to apply without discrimination the principle underlying the Industrial Conciliation Act as regards equal pay for equal work.

In 1941 the Administrator of Natal appointed a Committee of three members 'to inquire into and report upon all aspects and conditions of rural trade, storekeeping and the licensing thereof in Natal and Zululand provided for in the terms of the Rural Dealers Licensing Board Amendment Ordinance 1923 and subsequent amendments thereof, and to make recommendations regarding any improvements that may be deemed desirable in any direction, particularly with the object of improving the general conditions of the conduct of stores and shops.'²⁹ In March 1942 the Natal Indian Association presented a final memorandum to the Committee demanding that the Capetown Agreement should now be fully implemented by granting the right of appeal to the Supreme Court in cases of first applications and of applications for transfers of dealers licences. But the Committee, which reported in April 1942, recommended the abolition of the Licences Appeal Board created in 1923 and that the right of appeal on the question of renewal should in future be made direct to the Supreme Court. They made no recommendation for a similar appeal against a refusal to grant a new licence.

In 1941, the Natal Provincial Council passed the Durban Extended Powers Ordinance. The Ordinance included a clause similar to the one which was rejected by the Select Committee in 1940 empowering the City Council to establish a Licensing Appeal Board to hear appeals from the Licensing Officer. The Board was to consist of five members of whom not more than three were to be members of the City Council. Indians objected to the composition of the Board which could not be described as an impartial tribunal in terms of the undertaking given by the Union Government to the Government of India at the end of the first Capetown Conference to give due consideration to the suggestion of the latter that there should be an impartial tribunal to deal with licensing appeals. It was, however, hoped that the Ordinance might make a definite improvement on the present position under which licensing matters were entirely in the hands of the Durban City Council and its officers. But a judgement of the Supreme Court delivered in 1943 confirmed the feeling that the licensing authorities were continuing their discriminatory policy. Setting aside the decisions of the Durban

29. Annual Report of the Commissioner for India in the Union of South Africa for the year ending 31 December 1941, p. 11, para 14 (3).

Licensing Officer and the Durban Licensing Appeal Board who refused to grant a licence to an Indian proprietor of a laundry in Durban, the Judge President Hathorn, with Justice Broome concurring, said that the Indian's application was refused 'on the sole ground of racial discrimination'. The facts of the case were that the Indian's application for licences for two depots for storing was refused by the Licensing Officer on the ground that he was not satisfied with the locality of the premises for carrying on his business and this refusal was upheld by the Appeal Board. In his judgement, Judge Hathorn said that there was no valid reason for the refusal, especially as other laundry owners were granted depot licences in the same area. He wrote :

Although the Licensing Officer's reasons were discreetly silent on the subject, it is obvious that the application must have been refused solely because the applicant is an Indian. It is patent that the Licensing Officer refused on the sole ground of racial discrimination so much so that his counsel said so from the bar. It is a pity the Licensing Officer did not say so to himself instead of hiding this fact in a formula of words which convey little to the applicant or to the Appeal Board. There is nothing to be said for the decision of the Licensing Officer.³⁰

Dealing with the Appeal Board's decision, he added :

It turns out that the Board has no knowledge at all of the locality or that there were other receiving depots in the same area which were recently licensed. This lack of knowledge makes their judgement of amenities as insincere as their statement about local knowledge. I regard the reasons of the Appeal Board as mere window-dressing introduced in the case for the purpose of holding up what the members of the Appeal Board must have known was a hopelessly bad decision of the Licensing Officer. . . . The Appeal Board's decision is set aside as being capricious and the Licensing Officer is directed to issue the licence in question. The respondents are ordered to pay costs.³¹

The position was accentuated by the boycott of Indian traders organized by the Europeans in 1947 and 1948 when the Government of India took the Indo-South African dispute to the United Nations.

TRANSVAAL

The Transvaal Republican Government attempted to interpret Law III of 1885 as empowering it to compel the Indians into locations for purposes not only of residence but also of trade. This led to a prolonged controversy. The arbitration award in 1895 by Chief

30. *Hindustan Times*, 30 March 1943.

31. *Ibid.*

Justice de Villiers left the question at issue for judicial decision.³² The decision in Tayob Hadji's case was overruled in 1904 by the Supreme Court judgement in *Nabob Motan vs. Transvaal Government* in which it was held that the Law compelled the Asians to reside in locations but not to trade, and that therefore the government had no power to refuse to grant to Asians licences to trade in places outside the boundaries of the location allotted to them for occupation. In Khota's case in 1909, Sec. 133 of the Gold Law (Act XV of 1898) was interpreted as referring only to such licences as diggers and claim licences and that Asians were not prohibited from holding general dealers licences to trade on diggings. The Government of India contended that the Gold Law of 1908 was assented to on the definite guarantee that the Asians were not deprived by it of the rights they had enjoyed under the Gold Law of 1898, the rights including, according to the decision in Khota's case, the right to hold general dealers licences to trade on diggings. The Asiatic Commission agreed with this contention (paras 66-70). They also added that it was only as a result of misunderstanding that the British Government had consented to the Act of 1908, as Section 130 of the Act, if enforced, would debar Asians from obtaining trading licences on stands leased after the promulgation of that law.

Indians were considerably disappointed with the Gold Laws. As no steps were, however, taken to enforce their provisions between 1908 and 1914, they were able to obtain new licences to trade. In June 1911, the Union Ministers gave a categorical assurance thus :

No doubt the language of Section 130 is wide enough to cover all rights conferred under the Act of 1908 as well as under previous Gold Laws ; but there is no intention of interfering with the business or rights of carrying on business which Indians have acquired and exercised previous to the enactment of Act XXXV of 1908.³³

The Transvaal Local Government Act IX of 1912 regulated the issue of licences by the municipalities. Under its provisions any person desiring to carry on a trade or business in articles of human consumption must, in addition to his general dealer's licence, obtain a special licence from the municipality in whose jurisdiction the premises were situated. Section 90 set out the following grounds for the refusal of licences by the municipalities :

32. C.M.D. 2239 of August 1904, p. 39.

33. Selection of Papers (1926), p. 269.

- (a) that granting of a licence was calculated to cause a nuisance or annoyance to the neighbours ;
- (b) that the applicant was by reasons of uncleanness of habit or person or methods unfit to hold it ; and
- (c) that in the opinion of the Council the applicant was not a desirable person to hold it.

But appeal was provided for in cases under Section 90 or 91 against the refusal by the municipal council to a Magistrate. Under the Administrator's Notice No. 412 of 17 October 1930, the granting of grocers licences was placed within the jurisdiction of the municipality and their grant or refusal came within Section 90. In spite of the Smuts-Gandhi Agreement, the licences were refused as was evident from the most noticeable contravention in the case of Mahommed Ismail & Co. In this case, on refusal by the Krugersdorp municipal council to issue a licence to this firm established for a long time, the decision was appealed against and the Magistrate ordered the municipal council to grant it. The 1919 Select Committee refers to these refusals thus: 'the evidence shows that in a considerable number of cases appeals from decisions of councils refusing licences to Indians were successfully made to Magistrates',³⁴

Between 1 July 1914 and 30 April 1919, only 71 new general dealers licences were issued to Indians on proclaimed goldfields in Gernistown, Bocksburg, Heidelberg, Krugersdorp and Johannesburg. The total number of new trading licences issued by the Municipal Council of Krugersdorp to Asians from 1 July 1914 to 31 March 1929 was 18, while similar figures for Barberton and Johannesburg were 15 and 684 respectively.³⁵

The Select Committee which considered the Asiatic (Land and Trading) Act XXXVII of 1919 had recommended that while existing rights should be recognized and protected, and where necessary validated and legalized, no further obtaining of licences (except as renewals of existing licences or for opening new businesses) by Indians or Asians should be allowed.

Vested rights acquired before 1908 and between 1908 and 1919 were legally recognized and protected by Act XXXVII of 1919. However inside public diggings, Indians, except those who on 1 May 1919 were carrying on a duly licensed business on proclaimed land and townships, had practically no scope to extend their commercial operations in these localities which were perhaps the busiest and most prosperous parts of the province. In the areas

34. Report of the Select Committee on Disabilities of British Indians in the Transvaal (1919) p. viii, para 11.

35. *Ibid.*, p. xvii, Schedule (B).

outside public diggings, Indians could obtain general dealers licences to trade anywhere. Even here a retrograde policy was adopted in the issue of licences.

Referring to the charge of an increase in the number of Indian shops the Lange Commission explained that this was only due to (i) the opening up of the branches by the successful Asian traders in big centres like Johannesburg ; (ii) Indian shop assistants from large centres migrating to small towns and opening independent businesses ; and (iii) there being in some cases two or three partners in a business, each holding a trading licence as in Pietersburg. Thus ' the number of Indian traders in those towns would gradually be increased without effecting a corresponding increase in the total Asian population of the province.' There was thus no influx of Asian traders. The Commission rejected the figures supplied by the Krugersdorp Chamber of Commerce to prove the alleged increase in Indian trading licences as ' inflated and unreliable ' and those of the Chairman of the South Africans League in regard to Johannesburg as an ' exaggeration '. The Commission explained that in some cases European businesses had closed down on account of retirement or death of the owners as in Zeerust and not on account of Asian competition. They illustrated the point by referring to Middleburg where a cafe, a sporting and stationery shop and a photographic concern closed down though no Asian had entered any of those classes of business. In Krugersdorp, Potchefstroom, Volksrust and Zeerust, the number of general dealers licences held by Asians had been reduced from 317 in 1920 to 259 in 1923.³⁶ Again in the municipalities of Krugersdorp, Johannesburg, Zeerust, Middleburg, Pietersburg, Volksrust and Potchefstroom the number of the above licences was reduced from 1,902 in 1921 to 1,671 in 1923. In the whole province the decrease in such licences between 1922 and 1923 was 296.

Till 1925, there was not much difficulty in obtaining trading licences. But from 1926 the Transvaal General Dealers (Control) Ordinance XII of that year proved a hindrance. It made the acquisition of licences dependent upon the approval of the local authorities. Every local authority or Rural Licensing Board to which an application had to be made in case of business within a municipality or in other areas respectively had, under Section 6 of the Ordinance, the discretion to refuse a certificate of fitness on any one of the following three grounds :

36. Report of the Asiatic Inquiry Commission, p. 30, para 95.

- (a) that the premises intended for the business were not suitable as regards sanitation, situation or character of the buildings ;
- (b) that the locality was not one in which it was desirable that the business should be carried on ; and
- (c) that the applicant or person who would be in actual control of the business was not a fit and proper person to hold such a licence.

Their decision was final and was not liable to review, reversal or alteration in regard to the issue of a new general dealers licence. As regards the renewal of existing licences, provision was made for appeal against refusal to the Provincial Division of the Supreme Court. The municipalities and the Rural Licensing Board exercised the power to the detriment of Indian interests. Out of the 24,235 licences issued by the Inland Revenue Department in 1925-26, the Asian licences were only 4,866. The Municipality of Balfour was the first actually to exercise power under this Ordinance to refuse certificates of eligibility to Indians but the decisions were reversed in a majority of cases on appeal to the Supreme Court.

To dislodge licences lawfully obtained under the above Ordinance, which had been declared *ultra vires*, a provision embodying retrospective effect was inserted in a new Ordinance in 1926 declaring that all applications for the renewal of licences issued between 12 May 1926 and the date on which the new Ordinance came into force were to be regarded as for new licences. This exposed the Indians who had obtained licences to the refusal of their licences and ruination of their businesses. The right of appeal to the Supreme Court was taken away. The effect of this was felt by Indians in most of the towns and districts where, regardless of the suitability of persons and premises, applications for licences were invariably refused. This Ordinance in actual working created a situation which nullified the decision in the Habib Motan case and the rights acquired under Act XXXVI of 1908, which entitled Indians to trading licences upon the production of their registration certificates.

Now the question arose whether a recommending authority as the Johannesburg City Council might, in dealing with the applications for certificates of fitness, take into consideration the applicant's disabilities with regard to owning and leasing lands, and merely on the ground of such disability refuse the applicant a certificate. When the question came before the Johannesburg City Council in January 1928, the Council passed a resolution that the interpretation and application of these restrictive provisions was a function of the government and as such should be dealt with by the government. But within 12 months it changed its opinion because

of the two favourable (to Indians) decisions in the Bloemfontein and Norwood cases. The Transvaal Licences (Control) Ordinance IV of 1931 was passed revising the licensing laws of the province and this Ordinance gave unfettered rights to the municipalities and local boards to refuse a trade licence without assigning any reasons and gave no right of appeal from the decision of the licensing authorities. Asians were required to obtain a new certificate if there was a change in the personnel of the management of the business, if the premises in which the business was carried on were changed, or if the name of the business was changed. The position remained very much the same.

ZANZIBAR

In all the four territories of East Africa, Indians are overwhelmingly engaged in commercial undertakings, government service and as artisans. They are also to be found in isolated groups in even the remotest areas plying their trade as petty shopkeepers (*Dukawallas*).

Indians in Zanzibar financed the production, harvesting, transporting and marketing of cloves both locally and by way of export, while the Africans and Arabs were the producers, and the Europeans large-scale exporters. Eighty per cent of the world's supply of cloves came from Zanzibar and the export trade constituted the main feature of Zanzibar life. The anxiety and determination of the European exporters to monopolize the export trade and appropriate the profits which Indians as middlemen were intercepting led to the Clove Decrees in 1934 :

- i. The Clove Growers Association (C.G.A.) Decree :
- ii. The Clove Exporters Decree ;
- iii. The Agricultural Produce Export Decree ;
- iv. The Alienation of Land (Restriction and Evidence) Decree ;
- v. The Adulteration of Produce Decree ;
- vi. The Money-lenders (Amendment) Decree.

The C.G.A. Decree reconstituted the old Association and provided for the management of its affairs by a Board appointed by the British Resident and Secretary-Manager who would be the Chief Administrative Officer. The object was stated to be 'to deal generally in and export agricultural produce'. The operations of the Association were to be financed chiefly by a levy on all cloves exported from the Protectorate. However the Association was exempted from any fee required by law in respect of any of its undertakings ; nor was it liable to pay stamp duty and registration fees in respect of documents passing between itself and its clients.

Lastly the government undertook the liability in the last instance for the losses that might be incurred by the Association.

Under the Clove Exporters Decree, no person might export cloves from the Protectorate unless he had obtained a licence to do so from the licensing authority which was the C.G.A. The fee to be paid for obtaining such a licence might amount to Rs. 5,000 per annum. No exporter's licence might be assigned or transferred without the written consent of the Board of the C.G.A. Provision was also made for the restriction, if necessary, of the number of exporting licences by the British Resident. The Board of C.G.A. was empowered to enter Indian godowns, call for registers and take copies and extracts therefrom.

The Agricultural Produce Export Decree prohibited the export of produce until it had been passed either by inspection, or by inspection, grading and branding. The Inspectors were vested with arbitrary powers to enter the premises of godowns and even to order the removal, if necessary, of the produce from the place of inspection. There were also penal clauses specifying the offences and providing for their punishment. There were similar provisions in the other Ordinances carefully devised to cripple Indian interests.

K. P. S. Menon, who was deputed by the Government of India, reported early in 1935 that the first two Decrees were aimed at the monopoly in clove trade and would irretrievably damage Indian interests.

The first point that strikes an observer is that the Clove Growers Association is not an Association of growers. It is hardly even an Association in the ordinary sense of the word, for apart from the Board of Management it has no members. At present the Board is composed of 3 officials, the Manager of the National Bank of India and the Secretary-Manager, Mr. C. A. Bartlett, formerly a partner of Messrs. Grazebrook-Bartlett & Co., which used to compete, not too successfully, with Indian exporters in the clove trade. There is not a single clove grower in the C.G.A. nor is the body of clove growers directly or indirectly represented on the Board of Management. It is, however, claimed that its name is justified, because it genuinely represents the interests of the clove growers. The Zanzibar Government might as well call themselves the Zanzibar People's Association.³⁷

He stated that with the high export levies and licence fees besides immunities from payment of stamp duties etc. and the liability to future losses in its armoury, it would enjoy unique advantage as

37. K. P. S. Menon: Report on the effect on Indian Interests of Certain Decrees passed by the Government of Zanzibar, Department of E., H. and L. Resolution, New Delhi, (28 January 1935) (i), p. 9, para 23.

competitor. Any further leeway left for Indian traders was closed effectively by the power vested with the British Resident to restrict export licences. K. P. S. Menon added :

Legislative ingenuity can go no further than the measures which have been devised for the elimination of Indian traders from the clove industry. Armed with such powers, privileges and immunities as those noted above, the C.G.A. strikes Indian traders as a Leviathan, brushing them aside, casting them adrift and trampling upon that freedom of trade which they have enjoyed for generations.³⁸

The European exporters and the Zanzibar Government charged Indians that their speculative methods in the clove trade had led to low and fluctuating prices of cloves. And to avert this danger effectively and save the growers, they had placed the clove trade on a monopoly basis. The government had stated that, in regard to the clove crop with large seasonal fluctuations, it was an unsound policy to offer for sale during a heavy crop cloves greatly in excess of demand, and so the alternative adopted was to spread sales to meet demands and thus to secure a properly regulated export. They stated that the seasonal surpluses and deficiencies could be smoothed out only under a system of centralized control and that the release of supplies in accordance with demand must be organized if stability was to be secured. They held that the whole produce must be controlled through some organization which would be in a position to carry stocks and distribute produce evenly in accordance with the demands of consumption. So they concluded that unless the C.G.A. was placed in a monopolistic position it was not possible to safeguard the industry and that otherwise dealers would command the market and pay the producers the prices which suited themselves while there would not and could not be any rationalization of the industry.

In expounding this attitude, the government made certain assumptions that (i) rationalization was the most desirable method to improve the trade ; (ii) the C.G.A. was best fitted to achieve the object ; (iii) rationalization was absolutely necessary for the stabilization of prices ; (iv) the reduction of middlemen was essential as the clove industry could not support so many middlemen ; (v) Indians were responsible for the low and fluctuating nature of clove prices ; and (vi) monopoly had steadied the prices in 1934. Negatively, they did not take other factors into consideration. This long array of assumptions was, surprisingly enough, refuted by the various Commissions appointed by the Zanzibar Government itself and the Colonial Office.

38. *Ibid.*, p. 10, para 26.

The 1929 Committee, on which the Indians also were represented, agreed that steps should be taken for rationalizing the export of cloves, but they definitely differed as to the method of regulation which would be most suitable for adoption in Zanzibar. C. F. Strickland reported in May 1931 that the C.G.A. should be reconstructed on a co-operative basis, that the Association was exercising 'a function of government without the authority of government' and that the proper task of the government was 'to create but not to conduct the Association'.³⁹ Sir Alan Pim reported in May 1932 that the continuance and strengthening of the Association was essential to effect economy in the costs of production and even more for checking the evils inherent in the marketing system. To achieve this object, he recommended that the C.G.A. should be organized as a businesslike institution with competent commercial management and sufficient funds to facilitate advances to growers and concern itself with the marketing of cloves. But, he added, that while not commencing as a co-operative society as recommended by Strickland, that should be its ultimate aim. K. P. S. Menon says: 'There is not a word in the Report of Strickland or Sir Alan Pim that either of them desired or expected the C.G.A. to secure a monopoly in the clove trade'.⁴⁰ Far from making any such recommendations in favour of a monopoly, Strickland had even warned against any steps towards rationalization. He wrote: 'Rationalization in the sense of an attempt to raise prices by holding up cloves on the market is a dangerous policy, and will bring loss to every person and institution in Zanzibar who touches it'.⁴¹ He also warned that rationalization would only benefit Zanzibar's competitors and that the policy had disastrously failed in Malaya (rubber), Egypt (cotton), Brazil (coffee), and North America (wheat). He stated that rationalization in the sense of marketing the crop evenly throughout the year would be a more reasonable policy. But it was not certain that harvest time prices were unduly low and experience had shown him that producers lost more in the form of interest on their debts by holding their produce than they would have lost by selling at harvest prices.

Rationalization was attempted on the ground that prices were very unsteady due to the speculative tendencies of Indian traders. There had undoubtedly been speculation, but it was wrong to suggest that the clove industry suffered seriously in the past as a result of such speculative tendencies of the exporters. The average prices secured by cloves during the first 30 years showed unmis-

39. *Ibid.*, p. 9, para 24.

40. *Ibid.*, p. 10, para 27.

41. *Ibid.*

takably that, on the whole, the industry had prospered and that decline in prices was only a temporary feature, this being due to world factors over which even the speculating exporters could have no control. This is clear from the following figures :⁴²

Year	Total Crop	Prices in Zanzibar
1909-10	410,000 frasilas	Rs. 9 & 25 cts. per frasila
1910-11	191,000	14 & 64 cts.
1911-12	799,000	10 & 39 cts.
1912-13	139,000	17 & 12 cts.
1918-19	825,000	15 & 98 cts.
1919-20	263,000	30 & 17 cts.
1932-33	487,366	—
1933-34	927,188	—

The Chief Secretary to the Government of Zanzibar, in his annual review on cloves for 1932-33 had clinched the issue when he stated that 'the total value £ 487,000 reflects the world economic depression'. Indeed the wonder was that the decrease in the price of cloves should have been so small compared with the abnormal fall in the prices of other products. And even when the price was at its lowest, cloves fetched far more than the cost of production. Further, in 1933-34 over-production to the extent of double the production to that of the previous year contributed to the fall in prices.

Another significant factor is that the above figures clearly demonstrate that the clove production was characterized by a sort of cycle in which a bumper crop was followed by a small crop and this by one or more average crops. Prices generally moved in sympathy with the periodical vagaries of production. Even in the midst of war, inflation and depression and other abnormal factors during the war period, the relation between production and prices was traceable in the years 1918-19, 1919-20 and 1920-21. In 1920-21 the crop was double and the prices half and the same tendency made its appearance in 1933-34. The market had unduly wavered in 1933-34 on account of world depression and this continued to affect the prices. It is, therefore, unfair to say that the speculation by Indians had led to depression in the industry or the prices. 'On the contrary, the government have lent themselves to the reproach that they have taken advantage of an abnormal year of depression and over-production in order to establish a permanent monopoly in cloves.'⁴³ Anticipating the possible contention that the very

42. *Ibid.*, p. 11, para 30.

43. *Ibid.*, p. 11, para 30.

fluctuations noticed above would constitute an argument for the stabilization of prices, K. P. S. Menon says that to the extent to which these fluctuations had resulted from the vagaries of production stabilization could not be effectively achieved without restricting or regulating production. But this was not obviously contemplated. Also, the scheme for stabilization left the competition of Madagascar out of account, and in 1926, Madagascar could produce about 6½ lakhs of frasilas. Thus even the instability that appeared in 1933-34 was a feature of world depression and complete stabilization was impossible in such circumstances. Hence Sir Alan Pim had stated that absolute stabilization of prices being in the nature of things impracticable, such stabilization as was possible could be secured without resorting to the drastic expedient of establishing a monopoly in cloves.

Another aspect which was deliberately ignored was that the clove industry had been, by its very nature, speculative in character, for the violent variation in crop made it necessarily speculative. The annual variation had been as high as 768,000 frasilas — considerably more than the whole average crop as could be seen from the following figures :⁴⁴

Year	Annual Variation in production (1,000 frasilas)	Year	Annual Variation in production (1,000 frasilas)
1896-97	- 264	1915-16	+ 271
1897-98	- 105	1916-17	- 285
1898-99	+ 405	1917-18	- 214
1899-1900	- 326	1918-19	+ 527
1900-1901	- 47	1919-20	- 562
1901-1902	+ 129	1920-21	+ 284
1902-03	+ 57	1921-22	- 280
1903-04	- 298	1922-23	+ 712
1904-05	+ 610	1923-24	- 667
1905-06	- 427	1924-25	+ 449
1906-07	- 42	1925-26	- 149
1907-08	+ 489	1926-27	+ 134
1908-09	- 141	1927-28	- 55
1909-10	- 205	1928-29	- 469
1910-11	- 219	1929-30	+ 768
1911-12	+ 608	1930-31	- 697
1912-13	- 664	1931-32	+ 643
1913-14	+ 650	1932-33	- 449
1914-15	- 259	1933-34	+ 440

44. Memorandum submitted by the Indian National Association of Zanzibar to Mr. B. H. Binder, pp. 3-4.

The government justified the establishment of monopoly also on the ground that it steadied prices. This is wrong. Just when the C.G.A. was in a most favourable position owing to two successive short crops and want of Indian resources and organization, the Zanzibar Government chose, to fit in with their plan, the right time for the inquiry into the working of the C.G.A., and the charge of Indians that the C.G.A. was indulging in dangerous speculation with public funds was answered by making the monopoly absolute on the pretext of minimizing the loss. It was true that the operations of the C.G.A. had steadied the market and improved the prices at a critical time and eliminated a certain amount of speculation and a number of unnecessary middlemen. But it could not be ignored that this became possible by favourable circumstances that attended the operations of the C.G.A. Not expecting two consecutive short crops, the local stockholders unloaded on to the Association with the result that it obtained practical control by holding the bulk of the local stock, while the information of the C.G.A. indicated that there was no substantial accumulation of surplus stocks overseas. If, on the other hand, the last crop had been a heavy one, the Association would have required larger funds to protect the market. The position of the Association would unquestionably have been assailable if more of the local stock was kept by outside dealers. And had the Association in such circumstances restricted the funds of the Association in amount, it would have meant a terrible risk to the funds already sunk. These dangerous implications of unfavourable circumstances were conveniently ignored, and the favourable circumstances that attended the Association's efforts were capitalized to show off the beneficial effect of their policy of placing the Association on a monopoly basis.

Besides the above defective arguments in favour of rationalization and monopoly, the inability of the clove industry to support many Indian middlemen was often adduced in support of their policy. In fact these so-called 'middlemen' were but petty shopkeepers to whom the neighbouring Arab or Swahili producers found it more convenient to take their produce in the first instance. They passed it on to some leading merchant who sent it to Zanzibar. The commission levied by them was extremely moderate and in the majority of cases they were able to eke out little more than a bare living. As K. P. S. Menon observed: 'If the inevitable functions of these "middlemen" were to be discharged by some other agencies in the future, the charges would be heavier'.⁴⁵

45. *Op. cit.*, p. 12, para 34.

Adverting to the possible argument that if Indian middlemen made but paltry profits, not much harm would be caused by their elimination from the clove trade, Menon concludes : 'The answer is that the proposed legislation will reduce them not from opulence to poverty but from poverty to starvation. Further, it will drive them from their homes into exile.'⁴⁶

K. P. S. Menon's Report led to the Binder Inquiry in 1936. The Binder Report made some concessions in providing for (a) the appointment of a Trade Agent from amongst the most reliable and experienced existing local leaders ; (b) sales for export by the C.G.A. to licensed exporters, unless and until overseas buyers desired to buy direct ; (c) the issue of export licences by the government and reduction in export licence fee ; and (d) the consideration of the advisability of establishing an Advisory Committee and the appointment thereon of two representatives of the exporters. But these concessions would pale into insignificance before the permanent detriment that would follow his principal recommendations. Instead of suggesting any modifications in the existing control of the clove industry calculated to meet the just and legitimate demands of Indians, he went out of his way and recommended that over and above the practical monopoly in the export trade in cloves, the C.G.A. should be further armed with the exclusive power of the internal buying of cloves.⁴⁷ Even though the issue of licences for export had been transferred from the C.G.A. to the government and the licence fee considerably reduced, this transfer was of little benefit, for, apart from the fact that the C.G.A. was one of the departments of the Zanzibar Government, the treasurer, who would be in charge of the department issuing licences, was an important member of the Board of the C.G.A. There would be hardly any applications for export licences, as the business of the Indian exporter would fail as soon as the foreign buyers and consumers came to know that C.G.A. was the only supplier of cloves in the Protectorate.

The Clove Growers' Association Bill, which was passed in July 1937, made but a few minor changes, which did not affect its central racial principle and were utterly inadequate to protect Indian interests. So long as the monopoly for buying and selling cloves remained with the C.G.A. intact and inviolate, the appointment by nomination of a couple of Indians each on the C.G.A. Management Board and the Advisory Committee and of one Indian

46. *Ibid.*, p. 13, para 35.

47. B. H. Binder, Report on the Zanzibar Clove Industry (1936), New Delhi, p. 38.

on another Committee connected with the control of the clove trade would be unavailing against the ultimate elimination of Indians from the clove trade. The concession relating to the appointment of Indians as agents of the C.G.A. for internal buying, it was felt, would prove illusory, for the C.G.A. continued to maintain three depots in Pemba from which most of the Zanzibar cloves came for the purchase of cloves directly from the growers. Certainly there was no reason why the grower should sell to the Indian agent if, by selling directly to the C.G.A., the grower got not only the price which he would get from an Indian agent but also the cost of transport. And if, in conformity with its declarations, the C.G.A. should pay back to the grower all profits made by it, the grower would save himself the agent's commission by selling directly to the C.G.A. All these would serve as good incentives to persuade the growers to avoid the Indian agents. Even if the Indian surmounted all these obstacles and managed to buy cloves for export, there was no guarantee that the occupation would be free from risk, for any day he might be driven to grief by the C.G.A. placing the cloves, for which he had paid the price fixed for grade I, in grade II. Thus he had to bear the loss, as the various grades into which cloves had been divided were not by any means easy to distinguish. As regards the concession relating to the right of exporting cloves on taking out an exporter's licence on payment of a fee to be fixed by the government, the exporters had, according to the existing practice of the C.G.A. which would be continued, to buy cloves from the C.G.A. on F.O.B. terms at a fixed price. All that would be left for them was to add their commission to the invoice presented to them by the C.G.A. which would have the right to export cloves. So it was possible that any one of the exporters, by supplying cloves for a short time to the outside world at the same price at which he bought them from the C.G.A. with only a nominal commission or without commission, could knock all other exporters out of existence. Thus the position of a buying agent or an exporter would be very precarious and he would be entirely at the mercy of the C.G.A. The erstwhile independent traders could exist only as mere clerks of the C.G.A. Convinced of the utter futility of these concessions, Indians actually ceased taking any part in the clove trade of Zanzibar from 1 August 1937, when the Bill came into operation. The Indian importers of Bombay, Calcutta and Madras retaliated by passive resistance and at a great self-sacrifice voluntarily abstained from importing any cloves into India. The Government of India deputed G. S. Bozman to Zanzibar, whose negotiations

led to a Clove Agreement between the Governments of India and Zanzibar.

The Agreement did not satisfy the Indians in Zanzibar. However, Indians loyally co-operated in making it a success. Yet in 1939 the Zanzibar Government authorized the C.G.A. to enter into an agreement with two firms in Java offering them preference in prices of cloves for export by way of rebate. Indians opposed it as a repudiation of the Agreement but the rebate continued. During the negotiations, Indians demanded the institution of an intermediate grade of cloves for export purposes, but the local government refused to concede it even at the risk of bringing about the breakdown of negotiations. But the working of the Agreement for six months demonstrated the correctness of the Indian position and the Zanzibar Legislative Council passed a Bill providing for the grade demanded by Indians for export purposes. The other Indian contention that the Agreement would retard the clove trade also proved prophetic, for it was admitted that clove exports had dwindled from the customary six and a half lakhs to four lakhs frasilas. The decrease in clove trade led to diminution in revenues from the clove export trade and high additional taxation had to be resorted to. Indian co-operation also enabled the government to reduce the difference between the buying and selling prices of the C.G.A., in order that the Protectorate might recapture the market on the basis of reduced prices.

The crisis in Zanzibar is of vital and fundamental importance not from the standpoint of material loss caused to Indians but as portentous of the tendencies of European monopolist methods. The attempts at 'local distillation' amply demonstrated the fact that the elimination of Indians was really intended not so much to help the growers but to exploit them in the interests of overseas manufacturers. Sir Alan Pim had referred to this apprehension of the native growers (para 290 of his Report). If the Zanzibar Government was serious about protecting the growers' interests it should have laid down a minimum price for the purchase of cloves from time to time. In the alternative, it should have accepted the most reasonable suggestion of Indians that the export duty which, according to B. H. Binder, amounted to 24 p.c. of the sale price should, as was formerly the case, be required to be paid in kind. This would have enabled the government to steady prices by carrying over surplus stock from one year to another and accumulating sufficient stocks to meet the requirements of the market in an unfavourable year. The government rejected it on the ground that a partial control of the market might not be

sufficient to prevent the loss of public money—as if their own plan was free from financial risk. The result was that Indians were left to the mercy of the C.G.A. and they ‘bitterly feel the humiliation of having to live on the crumbs from Mr. Barlett’s table’.⁴⁸ The decrees constitute a flagrant violation of the Treaty of Friendship, Commerce and Navigation between Great Britain and Zanzibar signed on 30 April 1886 wherein H.H. the Sultan of Zanzibar promised ‘not to allow or recognize the establishment of any kind of monopoly or exclusive privilege of trade within his Dominion to any Government, Association or individual’.⁴⁹ The terms of this Treaty were also embodied in a later Treaty signed in 1898.

During 1939-40 the Clove Agreement worked smoothly. The figures of total exports from the Protectorate and of the business handled by Indians showed that Indians had recovered the full share in the trade which they were enjoying in 1934 and that this position was a direct result of the Agreement. It was estimated that the annual volume of trade handled by Indian traders in Zanzibar exceeded in value by 1½ million sterling.

TANGANYIKA

The scheme proposed by the government for the control and organization of motor transport in the southern highlands province threatened to eliminate a large number of Indians from their established motor transport trade. The government introduced the scheme from 1 January 1942 on the ground that the scheme was considered necessary in the public interest. The Government of India requested that the claims of Indians already employed in that trade should be sympathetically considered in regard to the issue of licences under the new scheme and the employment of Indian personnel who might be thrown out of employment. The Tanganyika Government agreed to give sympathetic consideration to genuine cases of hardship.

UGANDA AND KENYA.

A vast majority of Indians in Uganda are engaged in trade and commerce, marketing the bulk of the valuable cotton crop of the country. Some are also engaged in the production and manufacture of sugar. About 90 p.c. of the total trade of Uganda passed through Indian hands. Three-quarters of the business houses and

48. *Op. cit.*, p. 13, para 26.

49. Indians in Zanzibar: A Plea for Laying an Embargo on the Imports of Cloves into India (1937), p. 14.

stores in Nairobi belong to Indians who are also employing Europeans. In October 1942, the Governments of Uganda and Kenya accepted the recommendations of the East Africa Civil Supplies Board that import of certain classes of piecegoods should in future be conducted through an Importing Corporation, the members of which should be selected from previous importers and others approved by the governments concerned. It was feared that Indian importers in East Africa would be seriously affected. As a result of the Indian Government's representations to the Governors' Conference and the East African Government's delegation to India it was agreed (1) that one or more panels of *bona fide* merchants dealing in piecegoods be formed to advise the Governments of East Africa regarding the needs of the different territories enabling the authorities in course of time to fix the minimum number of types of piecegoods to be imported; (2) that licences for imports be issued as at present but that the importers should, within a specified time, not later than three weeks from the issue of licences, register with the licensing authority the prices at which the deals were closed in Bombay relative to the import licence. The validity of the licences so issued was to be as usual for six months.

Most of the petty trade into which the Africans are trying to enter is in Indian hands and so conflict is arising between Indians and Africans. Realizing the danger of conflict, Indians are doing their best to accommodate the Africans by abandoning small businesses in the reserved and township areas and moving into the larger cities.

TANGANYIKA, KENYA AND UGANDA : MARKETING LEGISLATION

TANGANYIKA

Ordinances IV, V, VI and VII of 1932 were passed with a view to control and regulate the purchase and marketing of native produce. The Itinerant Traders (Amendment) Ordinance VI of 1932 was passed to take power to restrict the issue of itinerant traders licences in certain declared areas. Under the Markets (Amendment) Ordinance V of 1932, the government was empowered to prohibit the sale of specified goods within a specified area except in a market established under the Ordinance. The Co-operative Societies Ordinance VII of 1932 provided that if a society showed that 75 p.c. of the producers of any particular commodity were its members and that they actually produced 75 p.c. of the commodity, the government might declare that every producer, irrespective of his membership of the society,

should sell his commodity to or through the society and to no one else. The Ordinance also made the offender liable to a heavy fine of 500 sh. for each offence besides paying to the co-operative society the market price of the produce concerned. K. P. S. Menon, who was deputed by the Government of India, to inquire into the effects of this marketing legislation in Tanganyika, Kenya and Uganda, remarks about this proviso thus: 'By a little manipulation these provisos can easily be used to the detriment, if not to the elimination, of established traders, and tentative attempts in this direction appear to have been made in the Bukoba District.'⁵⁰

The Traders Licensing (Amendment) Ordinance IV of 1932 as amended in 1933 constituted the most dangerous of all the Ordinances. The Governor was empowered to declare certain areas in which the purchase of native produce should be so controlled and regulated as to restrict generally the number of trading licences, and also to issue special licences for not more than one year which would give the licensee the sole right to purchase the produce specified in the licence (Section 15). Sections 17 and 18 empowered the Governor-in-Council to grant exclusive licences under certain conditions. The licensing authority was also empowered to refuse licences or revoke them without assigning a reason under Section 26 (1). Appeal was, however, provided for in Section 27. K. P. S. Menon says that this marketing system 'has eliminated a substantial number from the produce trade and increased the distress of the small trader' and adds:

Under this system traders from outside the township or district or even outside the territory can take out a trading licence, rent one or more stalls in the market at 10 sh. a month, buy the produce and go away kicking the dust of the local township off their feet. The local traders justly complain that they, who have taken plots from government at comparatively and sometimes fancifully high rentals, are in danger of being ruined on account of this seasonal incursion of temporary traders from outside their area.⁵¹

While admitting this position the government justified it on the ground that the local merchants had paid the taxes only for other services and privileges not available to the visiting merchants and that the complaint of Indians amounted to a demand for a local monopoly.

50. Report of K. P. S. Menon on Marketing Legislation in Tanganyika, Uganda and Kenya (1935), New Delhi, p. 201, para 11.

51. *Ibid.*, p. 200, para 9.

KENYA

The Kenya Marketing of Native Produce Bill of 1932 was based on the Tanganyika Ordinances. This Bill also empowered the licensing authority to refuse the grant or renewal of licences without assigning reasons, such refusal being subject to the approval of the Provincial Commissioner and an appeal to the Governor. The Bill provided for the issue of exclusive licences also. The purchase and sale of native produce in certain declared areas might be controlled and regulated by the licensing of purchasers. The establishment of markets was provided for. The sale of specified kinds of produce elsewhere than in established markets could be prohibited.

The Government of India stated that they had no objection if the object of the above legislation was to ensure a fair cash price to the native producer and improvement in the quality of produce, but their objection was directed against the methods devised for its attainment which might restrict the freedom of trade in greater measure than was necessary for the said purpose. They also pointed out that the Mwanza Council of Commerce in Tanganyika had condemned the restriction of sales of native produce to fixed markets as being unpopular with the native because of the long treks and trading at inconvenient hours such restriction involved, and also as constituting a hardship to the trader whose overhead expenses had increased owing to the necessity of employing extra staff and equipment involving higher payment for transport. Moreover, the diversion of trade from the townships and settlements also entailed depreciation in the value of shops therein. The limitation of the number of licences would reduce competition for the produce, which in its turn would tend to reduce the price which the native would otherwise get. Lastly, exclusive licences, when applied to produce already grown, would have all the evils of monopoly. The Kenya Government argued that the exclusive licences could not reasonably be objected to, as the period for which they had been granted had been fixed. But, as K. P. S. Menon had pointed out, the 12 years period fixed was more than enough or necessary for the licensee to gain control over the market and influence over the native producers. So it was impossible to oust him out later or compete with him on equal terms even after the expiry of his exclusive licence.

UGANDA

Ordinance XX of 1932 to control and regulate the marketing of native produce followed generally the lines of the Kenya and Tanganyika Ordinances. But, unlike in Tanganyika, the Governor

alone and not the licensing authority was empowered to restrict the number of licences (Section 11). The Governor might with the previous sanction of the Secretary of State for the Colonies even restrict the number of licences to one individual, 'for the purpose of promoting the introduction or encouraging the early stages of development of any specified native produce'.⁵² The Director of Agriculture stated in the Legislative Council that the groundnut industry had existed primarily long before the Europeans came into the country. Yet exclusive licence for the purchase of groundnuts in the eastern province was granted to Messrs. Banmann & Co. The prices fixed by the government for purchases from the grower were so low and the buying monopoly to one firm proved so detrimental that the Eastern Chamber of Commerce, which included Europeans, stated that

the working of the Ordinance last year was unsuccessful not only because of the failure of the crop but also for other reasons. The price fixed by the government for purchases (by the sole licensee) from the growers was so low that no encouragement was given to the native to increase production; a buying monopoly was given to one firm which did not have the necessary organization to deal with the business satisfactorily at the various buying centres; the sole licensee did not do as much as he could have done to buy all the groundnuts which were for sale; and the requirements of Uganda consumers were not sufficiently safeguarded.⁵³

Tobacco too was later brought under the Ordinance, and in Bungoro District, the chief area where it was grown, only one licence was issued to Indians in 1934 while seven were granted to Europeans. Here again, while the price at which tobacco might be purchased from the producers had been fixed, the maximum price at which it might be sold by the licensees was conveniently left open to facilitate their profiteering. Another method of saving the producers from the clutches of Indian petty traders!

Another important article of Indian trade, coffee, was also diverted under cover of the Coffee Grading Ordinance of 1930 into the hands of firms holding licences for curing works. These licences were usually refused to Indian firms, and in 1934 out of seven licence-holders one licensee was an Indian. Exemption under the amending Ordinance of 1932 from the application of the principal Ordinance was granted to planters and the coffee exported by them had not necessarily to pass through the curing works. This naturally squeezed out of the trade Indian traders

52. *Ibid.*, p. 202.

53. *Ibid.*, Quoted by K. P. S. Menon, p. 203, para 15.

who could not secure licences for the curing works. Moreover, the very system of compelling a trader to send coffee to a competitor for treatment was indefensible. K. P. S. Menon observes that

the effect of the grant of a sole licence to the native administration has been to exclude traders entirely from the coffee trade There are vital objections to the native administration descending, armed with an exclusive licence, into the field of trade, like the Clove Growers Association in Zanzibar, and causing the supersession, and indeed the suppression of ordinary traders.⁵⁴

In regard to the marketing legislation in East and South Africa, the Government and people of India were not opposed to the elimination of unnecessary middlemen and restriction of the trading rights, to the extent to which it was essential, to protect the native producers. The Indian traders themselves were in no need of being reminded that their own prosperity was inextricably interwoven with the high prices for the native producers and the prosperity of the producers themselves. What they and the Government of India objected to was the indefensible legislation which was beneficial neither to the native nor to the colony but only to the big speculators. If the legislative restrictions could fetch higher prices to the native producers, Indians would willingly bear with them. But Indians cannot allow the denial of their rights in the name of the natives. If the State itself took control of the native produce and regulated its marketing to secure higher prices to the natives, Indians would cheerfully reconcile themselves to it. But they could not agree to the State stepping in to help the big European financiers in trampling under their feet the small Indian traders who were satisfied with small profits, thus enabling native purchasers to obtain a variety of goods at a small outlay. The colonial governments will, if inevitable, do well to take control of the native produce, such control being for defined purposes in which case all traders alike will submit to the necessary regulations. In the absence of that, ordinary business methods are more likely to distribute profits and advantages fairly amongst all sections of the population. If ensurement of adequate price for the native produce were the only object, there was no necessity for all the grinding legislation, as the existence of a number of Indian traders vigorously competing with each other was the best guarantee for a fair and adequate price, the possibilities for cheating, if any, having been adequately guarded against by Ordinances like the Weights and Measures Ordinance. In the

54. *Ibid.*, p. 207, para 22.

absence of such a procedure one cannot but agree with K. P. S. Menon that public interests which led to the abolition of monopolies in Britain will continue to actuate the Indian traders in their opposition to restrictions on their trading rights. By these Ordinances 'one is reminded of the struggle over monopolies in the reigns of the Tudor and Stuart monarchs until the abuse received its death warrant in the Statute of Monopolies in 1623'.⁵⁵

CEYLON, MALAYA AND BURMA

The problems of the Indian trading class in these countries were of a different character. In these countries there were two classes of Indians belonging to the commercial class—the small trading class as in South and East Africa, and the big Chettiar financiers and bankers. The competition of the Indian small traders in these countries was mostly with the newly emerging native communities. The problem of the Chettiars related largely to land ownership and there were no legislative restrictions on their businesses except some irritating regulations in regard to the entry of themselves and their staff which threatened to work as a severe handicap in their business transactions. Also there were no attempts at monopoly methods.

In Ceylon pawn-broking was done both by the Ceylonese and the Chettiars. There are about one hundred Nattukottai Chettiar firms doing pawn-broking. The amount invested was said to be Rs. 4 million out of a total credit granted by all pawn-brokers of about Rs. 10 mm. Several other Indians as Gujaratis were doing business as piecegoods merchants, estate suppliers, retail shopkeepers, grocers and mill-owners. Practically 90 p.c. of the total import business of rice was controlled by the Indians and the rest by Europeans. The total rolling capital invested by the Indian importers of rice in Ceylon might be a crore of rupees. Not only the import trade from India but also the petty distributing trade in Colombo was in Indian hands. It was estimated that there were 750 Chettiar firms in 1945 with an aggregate capital of 7½ million sterling in banking and commerce.

The legislative enactments affecting the Indian traders in Ceylon were the Agricultural Quota Ordinance, the Agricultural Produce Dealers Ordinance and the Shop Regulation Ordinance of 1928. Under the first Ordinance, every importer of agricultural products which were grown in Ceylon was required to take a licence on giving an undertaking to purchase a certain proportion

of local produce at a certain fixed price. Thus the Indian importers of rice, textiles, tamarind etc., came under this Ordinance. The second Ordinance affected the Indian small traders in villages. They were required to take licences for the purchase of local produce and to show a bank balance to their credit to pay for the agricultural produce purchased by them. This provision was similar to Sections 20 and 23 of the Traders Licensing (Amendment) Ordinance IV of 1932 in Tanganyika and Section 15 of Uganda Ordinance XX which required that in certain events all purchases of local produce should be paid for in cash. The Ceylon provision was also intended to prevent the facilities the Indian small traders enjoyed of purchasing and trading in the local produce in return for their supplying the villagers with the foodstuffs throughout the year. The Ordinance was thus intended to restrict the number of Indian *boutique*-keepers in the Up-country planting areas. The Up-country Traders Association proposed that

- (a) there should be no *boutiques* in estates ;
- (b) there should be no more additions to the *boutiques* already in existence at the time of the formation of that Association ; and
- (c) that even the formation of co-operative stores for the estate labourers should not be allowed.

On the basis of these representations, the Director of Commerce proposed that the new *boutique*-keepers should furnish certain particulars that a *boutique* was necessary in particular areas, that *Kangany boutiques* in estates should go and that they should not be allowed to start anew outside the estates in village areas or small towns. The planting areas being the only places where Indians could do business with the Indian immigrants as their customers, there would be no chances in future for the *Kangany* or any enterprising labourer to start a small business of his own except when he was allowed in the planting areas.

The European banker and merchant did not deal with the Ceylonese directly unless the latter were in a position to offer substantial security for the credits allowed. The Indian merchants were trusted by the Europeans and the imports were distributed through them and they also purchased a considerable quantity of the Ceylonese produce. Indian business was thus mostly retailing. The special taxes for non-Ceylonese employment and quota restriction to secure employment of Ceylonese by the Indian merchants affected such small businesses as might not, in a large number of cases, be able to maintain even a clerk to keep accounts. The Industrial Efficiency Bill which aimed at introducing a quota in the employment of Ceylonese labour in the working

of the various industries was a case in point. Similar was the case with the Shops Regulation Ordinance of 1938. Certain Sections of this Ordinance had been framed in such a way as to impose hardships on the Indian shop-owners. Some Sections of the Ceylon Income-tax Ordinance of 1932 also operated harshly on Indian traders. The definitions of the words 'Bankers' and 'Residence' openly discriminated against the Indians. The disallowance of interest paid on capital borrowed outside Ceylon and the high rate of taxation were some of the glaring instances of veiled discrimination against the Indians.

The Essential Commodity Reserves Ordinance V of 1939 had put the entire responsibility for the precautions necessary for the conservation of food supplies on the private importers. The creation and the maintenance of a reserve stock for war or any major crisis were of national interest and as such all should equally have borne the cost involved in them. The Ceylon Government should themselves have maintained the necessary reserve stock, or compensated the private importers against the loss which their scheme would inevitably lead to, as a result of deterioration in quality and price fluctuation of the stock held by them. It was therefore unfair to make the importers of rice, who were all Indians, liable to the extra cost and loss that might result from the creation of the war-time reserves.

The rice, textile and other control measures fell heavily on Indian traders who constituted about 90 p.c. of wholesalers, about 60 p.c. of medium dealers and about 40 p.c. of retailers in the Island.

The numerous restrictions and irksome regulations by way of price control and the maintenance of reserve stocks rendered trade progressively less profitable. Consequently, several Indian merchants wound up their businesses and left for India in 1941-42. In regard to the control of textile trade in Ceylon, it was decided in 1943 to license all traders who were in *bona fide* business in the first week of January 1943 and accordingly the regulations were gazetted on 19 March 1943. In 1943 repeated complaints were made by the Indian merchants in Ceylon about the wholesale requisitioning by the Ceylon Government of almost all important consumer goods imported from India and the inadequacy of the compensation paid. Indian retail dealers too complained that they had been kept out of the internal distribution of these requisitioned goods, the government nominating private dealers for the purpose.

Under the 'Newcomer' scheme of 1949 in regard to import trade, import licences were granted only to citizens of Ceylon.

Even in respect of the Open General Licence, which had hitherto been granted to established Indian business men in the Island, a reduction of 50 p.c. had been effected. Another proposal under active consideration of the government requires that 75 p.c. of the staff of all industrial concerns and business establishments in Ceylon should be citizens of Ceylon.

Ceylon should not follow the African example in its attitude to the Indian trader. The Indian traders and financiers had contributed in no small measure to the economic development of Ceylon. Further, Ceylon arecanuts and copra enjoyed in India preference over similar Empire produce. After the advent of the world depression, Ceylon lost her overseas market for her copra and dumped in 1937 nearly one million cwts. of copra on the Indian market as compared with 13,270 cwts. in 1928 and this threw a million Indians in South India into the doldrums. The Indian coconut grower wanted protection against this dumping of Ceylon copra to the extent of Rs. 100 per ton, and the Imperial Council of Agricultural Research actually recommended a heavy duty of Rs. 75 per ton. But on several occasions in the past the claims of the Indian coconut industry for protection had been withheld on the score that Ceylon's position warranted some indulgence from India. Not only is India Ceylon's nearest and cheapest market for the purchase of textiles, rice and other foodstuffs but India had a favourable balance of trade with Ceylon in 1938 to the extent of Rs. 4 crores and 20 lakhs. Yet India did not think of economic retaliation.

BURMA

After reoccupation of Burma, the Burma Government constituted a Civil Supplies Board in 1946 to control imports. Indian merchants suffered most by this control, as mostly Europeans were designated as import quota holders. The Burma Agricultural Projects Board discriminated against the Indian rice merchants in the first instance by allotting only 36 p.c. of the Burma rice purchase and export trade to Indians while their pre-war share had been more than 65 p.c. The Indian viewpoint was that the Burmese share should have been proportionately deducted from both the Indian and the British allotments. In 1947, the Government of Burma adopted the policy of giving 50 p.c. of the import licences to Burmese firms, whereas before the war they had handled less than 10 p.c. This dissuaded Indian business men from returning to Burma.

PHILIPPINES AND INDO-CHINA

There were 1,300 Indians in the Philippines in 1949, most of them in small business. There were about 1,000 Indians in Indo-China in 1949, mostly engaged in business or domestic service. Investments of South Indian Chettiars in Indo-China are estimated to be of the value of Rs. 2·14 crores.

UNITED STATES OF INDONESIA

There is no discrimination against Indians in the United States of Indonesia. But several complaints of Indian loss of life and property from attacks by Pakistanis who were attached to the Indonesian Republican Army as volunteers had been received. As the Pakistanis were good and helpful soldiers, and as Muslims enjoyed the sympathy of the local population, the Republican authorities were finding it a little difficult in dealing with them.

IRAN

Recently the Iranian Government proposed to pass a law with a view to curtailing the trading activities of all foreigners in Iran, including Indians. The Indian Government had represented to the Iranian Government to exempt Indians who are small traders from the drastic provisions of the Bill.

CANADA

Racial discrimination dominates in trade and commerce. Licences for hand-logging were issued only to persons on the voters' lists or North American Indians. Hence Indians were not eligible for the licences till recently when they were accorded franchise.

ETHIOPIA

Early in 1949, a Goodwill Mission visited Ethiopia to inquire into the conditions of the 500 Indians there, mostly traders, as a prelude to the establishment of diplomatic relations with that country.

SECTION IV. — RESTRICTIONS ON EMPLOYMENT AND SERVICE

The issues relating to the employment of Indians in the various countries bear close resemblance to each other, particularly in so far as they would reflect the artificial tendencies in colonial employment and service as a result of invidious preference of the European and native communities to the serious detriment of even domiciled Indians. It was the continuous unwillingness of the natives and the white settlers to take up certain forms of employment that entrenched Indians therein and gave rise, in some cases, even to racial delimitation. Sir Edward Jackson says that in Ceylon this delimitation was due to individual preference and aptitude for work itself and conditions of work and not due to the obstacles placed by the employers or workers.¹ According to the Baxter Report on Burma 'The whole history of the development of Burma during the last two generations suggests that there has been a general division of work between the two races, and therefore Indian labour in the past has been supplementary rather than alternative to Burmese labour'.²

The Sanderson Committee Report speaks in exactly the same terms about South Africa, West Indies, Mauritius and Fiji. While in the case of the Sinhalese, Burmese, African Natives and Creoles the simplicity of life and needs, and the peculiar communal life and psychological make-up shaped their occupational preference, in the case of Europeans the climatic and the racial superiority complex influenced such preference. With the impact of new economic forces, education and civilization, both the white settlers and the native communities had been compelled to offer themselves for types of work and at remunerations that would have offered no attraction to them in earlier decades. They however wished to minimize the abhorrence of forced choice by managing to secure as easy and as remunerative occupations as they possibly could. With the emergence of new educated native classes competition commenced in the professions too.

The entry of other communities into the labour market and the anxiety of the educated descendants of Indian labourers to take up semi-skilled, skilled and professional work had led to the limitation of alternative employment for the native communities, and this limitation necessarily helped in pro-

1. Sir Edward St. J. Jackson: Report of a Commission on Immigration in Ceylon, April 1938, p. 9.

2. James Baxter: Report on Indian Immigration (1941), p. 107, para 116.

longing the cleavages in employment. The virtues of honesty, efficiency and steadiness, as well as certain enforced traits of extreme docility and thrift, which commended Indians as estate labourers, domestic servants, petty traders and office clerks, also contributed to the accentuation of competitive bitterness against the Indians. Sheer struggle for survival in a distant country led to a certain amount of undercutting by Indian labour. It could not also be wholly ignored that the existence of differences in standards of living was also a vital factor in the matter. But the fact that the Indian standard of living had been deliberately depressed by the employers and colonial governments in order to provide cheap labour for industries and government works and to prevent the possible entry of Indians into better paid occupations and professions should be constantly kept in view before charging Indians with undercutting. The fact that of the three competing parties — the European, the native and the Indian — Indians alone did not constitute the ruling class made it easy for the other two classes to make regulations, statutory and otherwise, to promote their own employment to the gradual exclusion of Indians.

South Africa took the lead here as elsewhere. Section 133 of the Gold Law XV of 1898 provided that, 'no coloured person may be a licence-holder or in any way be connected with the working of the diggings but shall be allowed only as a workman in the service of whites.'³ Sections 130 and 131 of the Gold Law of 1908 similarly restricted the right to acquire mining titles and privileges to the whites. The Mining and Works Act of 1911 provided for an uglier statutory economic colour bar. The Apprenticeship Act and the Minimum Wages Act were utilized to cripple the artisan and working class Indians. As a result of the latter Act, several Indian operatives employed in European-owned factories and doing semi-skilled and skilled labour had been replaced by poor whites. In Kenya, the highly protective duties and railway freights upon Indian imported trading goods handicapped the Indian trader. So did the Motor Services Ordinances of 1931 imposing heavy licences varying from £45 to £360 a year. The Kenya Ordinance of 1912 provided for prospecting licences only for Europeans. In Uganda, the Cotton Zone Ordinance of 1933 had reduced the Indian traders to the position of agents and wage-earners of European firms. In British Guiana, the Indian rice farmers had been throttled as a result of the 'narrow prejudices of the conservative planters and shortsighted attitude of the govern-

3. Report of the Asiatic Inquiry Commission, p. 10.

ment.¹⁴ In Jamaica, the helpless and poverty-stricken Indians were displaced from the banana estates, who therefore took to the growing of green vegetables in and around Kingston. But the enforcement by the Water Commission of a system of metering forced them out of even that business. By the Kingston and St. Andrew Corporation Law of 1931, the sale in the urban and suburban districts of Kingston of certain articles of food was restricted to public markets or shops. And just those vegetables were omitted from the list of articles exempted which were grown and marketed by the Indians.

In Ceylon and Burma the method of private agreement was adopted to oust Indian labour from employment and secure its reservation to the indigenous community. In Ceylon, a strike of workers for wages in 1928 led to an agreement for the reservation of 25 p.c. of the work of handling the cargo on board ship to Sinhalese labour. Similarly, after the Indo-Burma riots of May 1930 over the employment of Burmese workers consequent on a dock strike by Indian labourers, a gentlemen's agreement was concluded in virtue of which 50 p.c. of wharfside labour had been reserved to the Burmese. The repatriation scheme of daily paid workers in Ceylon Government employment initiated in 1941 was an indication on the part of Ceylon to tread the South African path.

Under the Ceylon Government's scheme for the discontinuance of Indian daily paid staff in government departments, thousands of Indians were discharged. The following statement gives the final figures of Indian workers of different classes so discharged up to 31 March 1941 :

1.	Number of non-Ceylonese daily paid workers in government employment on 5 June 1939	6,553
2.	(i) Number of workers who had been compulsorily discharged	1,251
	(ii) Number in this category for whom railway warrants and gratuity vouchers payable abroad had been issued	750
3.	(i) Number of workers (with service between 5 and 10 years) who expressed their willingness to retire voluntarily	282
	(ii) Number in this category for whom railway warrants and gratuity vouchers payable abroad had been issued	270
4.	(i) Number of workers (with service of ten or more years) who expressed their willingness to retire voluntarily	1,039

- | | |
|-------------------------------------------------------------------------------------------------------------|----------|
| (ii) Number in this category for whom railway warrants and gratuity vouchers payable abroad had been issued | .. 1,021 |
| 5. Total number of non-Ceylonese daily paid workers who had retired from government service | .. 2,517 |

The Ceylon Fisheries Ordinance No. XXIV of 1940 received royal assent in 1940. In reply to the representations of the Government of India, the Government of Ceylon expressed the feeling that while it was obvious that the stipulation of a licence for a non-Ceylonese was to some extent discriminatory, there was no intention, in view of the undertaking given by the Ceylonese Ministers, to debar Indians who had been living in Ceylon for several years and had been carrying on *bona fide* fishing as an industry and also of the fact that the grounds on which licences might be refused were to be prescribed by regulations requiring the approval of the Ceylon State Council and ratification of the Governor. The Secretary of State for India advised that the suggestion for exemption of Indians from the operation of the Ordinance could best be raised at the proposed Indo-Ceylon Conference. The Government of India, however, did not raise it and reiterated their protest against the principle of discrimination embodied in the Ordinance. Under the Fisheries Ordinance no person other than a Ceylonese could fish in Ceylon's waters without a licence and 'Ceylonese' had been defined as a person domiciled in Ceylon and possessing a Ceylon domicile of origin. This stipulation for a licence for a non-Ceylonese affected a large number of Indians who had been living in Ceylon for several years and carrying on *bona fide* fishing as an industry.

The Omnibus Services Licensing Ordinance of 1942 was passed to reorganize bus services through issue of licences. In the order of preference set out in a schedule for issue of licences, where two or more applications were made in respect of the same route, the Ordinance adopted a discriminatory definition of 'Ceylonese' as 'a person domiciled in Ceylon and possessing a domicile of origin.' The Government of India represented to the Government of Ceylon that the definition and the new discriminatory offence against Indian business men would give rise to suspicion of the Ceylon Government's intentions. The latter replied that nationalization of bus transport was necessary and urgent and as the ownership of bus companies was without exception in Ceylonese hands, no Indian interests were involved.

The official figures for various years showed that in all the countries there was on the whole a gradual replacement of Indians by natives and Europeans in various occupations, and that this

elimination was most visible in government works, urban skilled and semi-skilled labour and all other less laborious and more paying spheres, besides the trading professions.

FACTUAL SURVEY

SOUTH AFRICA

In 1921, Indians engaged in agriculture were 21,034, and on 31 August 1930, such Indians on European farms were 14,864 constituting two per cent of the total workers on European farms. During 1935-36, there were 10,956 Indians in industries, the proportion being four to five per cent of the total number of workers in Union industries. But in 1937, the official figures showed that between 1917 and 1937, the number of Indians fell from 12,308 to 10,215. The number of Indians employed in mines dropped from 3,139 in 1920 to 2,224 in 1924 and 1,885 in 1937, almost all of whom were employed in coal mines. In 1937, Indians in the sugar industry numbered about 6,000, in domestic service 5,660 and in corporate bodies and miscellaneous industries 2,100. Indians engaged in commerce were 12,374 in 1921 while in 1930 all non-immigrant Indians in Natal, mostly engaged in commerce and trade, were 15,884. In 1921, there were 527 Indians in the professions and 283 in public administration and defence. While in all government departments other than railways there were 955 Indians in 1925, there were only 200 in 1933. In railways there were 5,000 to 6,000 Indians in about 1909. The number fell to 2,949 in 1916, to 1,795 in December 1924, to 609 in December 1932 and 385 in 1940. In 1937, it was estimated that the coloured and the natives in railways increased by 5 p.c. and 16 p.c. while Indians suffered by nearly 75 p.c. since 1926.

Indian labourers employed in railways had been receiving lower wages than native labourers. In November 1939 the Minister for Railways and Harbours announced that he had given instructions for a change of policy in respect of the employment of Indians and that it was hoped eventually to employ as many as were employed by the railways and harbours in 1924. Indians, along with other classes, were expected to benefit by the Workmen's Compensation Act 1941, which provided for the transfer of workmen's compensation from the insurance companies to a State Fund, and by the Railways and Harbours Pension (Amendment) Act 1941, which provided for annuities and gratuities for casual labourers and temporary employees of the railway administration who did not contribute to a pension scheme. In 1941, unemploy-

ment among Indians in Natal registered a sharp rise. For, while 34,000 Indians out of a total of 40,151 Indian men were employed in 1940, the figure of Indians employed in 1941 fell to 26,000 out of an increased total of 40,928. The Board of Trade appointed in June 1941 to inquire into the position of the non-European cane-growers recommended the setting up of an Advisory Committee consisting of five Europeans to deal with representations made by recognized organizations of non-European growers. In response to the protest of the Indian Government against the proposed representation of Indian interests by European nominees it was agreed that a member of the Natal Cane-Growers' Association should have a seat on the Committee. Roughly 1,750 Indians were employed in tea, coal and railways in 1937. All natives employed in industry, mines, railways, commerce, domestic service and public administration numbered 1,145,000 on 31 August 1937.

The Motor Carrier Transportation (Amendment) Act, 1941, affected the Indian business monopoly established by their long-distance taxis prepared to go anywhere in Natal and even further afield at short notice and their private bus services in Durban catering for the city's non-European population. The Act prevented Indian and native taxis in Natal from running to a schedule and competing with buses. Ever since the passing of the Act and the rules framed thereunder, the Durban City Council had been endeavouring to its utmost to bring all public transport in the city under its control. The Council has been the owner of a large volume of public transport, and Indian bus-owners, catering exclusively for the non-European public, are its only private competitors.

The passing of the resolution by the United Nations on 8 December 1946 vindicating the Indian stand resulted in the organization of a boycott of Indians. Marketing and distribution of vegetables and fruits were overhauled to eliminate the Indian hawkers; registration of consumers as envisaged under rationing was reintroduced to facilitate the campaign against Indians. European firms refused to employ Indians and the European financial houses stopped lending money to Indians, and this increased Indian unemployment. Municipalities joined the fray by dismissing Indians and engaging Europeans. The boycott movement spread from the Transvaal to Natal and other parts and, though the movement was unofficial in character, it received the active support of the members of both the parties in the Union Parliament. Thus what began as a counter-boycott of Indians assumed the character and proportions of a full-fledged political movement to compel Indians to return to India.

EAST AFRICA

According to the Census dated 29 February 1926, 42 p.c. of Indian males in Kenya were employed in commerce, 32 p.c. in industries and 19 p.c. in government service.

With regard to Government servants, the Europeans showed an increase of 11 p.c., the Indians are stationary, and the other races have dropped by 6 p.c. These figures indicate that Europeans of both sexes are superseding Asians in clerical posts. The staff of the Kenya and Uganda Railway, in spite of its increased activities on the new lines, is 2 p.c. below the number enumerated in 1921. The Europeans have more than doubled, the Indians have dropped by 8 p.c. and other races by 24 p.c.⁵

Both in Kenya and Uganda, Indians were merely retail dealers, artisans, mechanics, clerks in government, railways and commercial firms. In Kenya, the scales of salaries and other emoluments applicable to the Asian staff were in 1946 roughly 55 p.c. of those for Europeans in similar posts. The allowances and other privileges available to Asians were, similarly, much lower than those granted to Europeans. Their position in Kenya had definitely deteriorated in all the occupations. But in Tanganyika and Uganda, the Indian position was better than in Kenya. The Indian interests involved in Tanganyika amounted in 1939 roughly to £3 million, this including 17 p.c. of the agricultural land alienated to non-natives, 90 p.c. of township property, 70 p.c. of ginning interests, 80 p.c. in the cotton industry, 80 p.c. of the sisal production, 50 and 60 p.c. respectively of the import and export trades and 80 p.c. of the transport services. In 1938, practically the whole cotton crop of about 40,000 to 50,000 bales was handled and ginned by Indians and the whole of the distributing trade was in Indian hands. The persons employed in the various departments of the government in 1936, excluding unskilled and casual labourers, numbered 950 Europeans, 959 Asians and 5,728 Africans. On 1 January 1942, a new scheme for reorganizing motor transport in the Southern Highlands province of Tanganyika came into effect, under which the carriage of goods and passengers by motor transport, till then operated by individual owners without any direct control of the State, was prohibited. The General Manager, Tanganyika Railways, was empowered to grant the monopoly to operate the services in specified areas to a contractor. The Indian Association of Tanganyika represented to the government that

5. Report on the Non-Native Census Enumeration made in the Colony and Protectorate of Kenya on the night of 21 February 1926, p. 65.

such control would oust a large number of Indians from their established motor transport trade. In Uganda, the whole cotton trade was in Indian hands, and ginning constituted nearly 90 p.c. of the industrial output of Uganda. In 1920, out of 119 ginneries, Indians owned 32, while in 1927 no less than 125 out of 189 ginneries belonged to Indians. The whole of the sugar trade was in Indian hands and Indians owned sugar factories also.

MAURITIUS ✓

In Mauritius Indians were gradually leaving estate labour, in spite of the planters' efforts to prevent this. The following table shows the drift of Indian estate labour to other occupations :⁶

	1911	1921	Increase or Decrease in 1921
Agricultural ..	70,212	63,526	- 6,686
Professional and govt. service ..	1,579	2,789	+ 1,210
Industrial, commercial, domestic services, etc. ..	23,191	32,929	+ 9,738
Non-productive ..	162,715	166,280	+ 3,565

In 1924, there were 2,597 shops owned by Indians. Even Indian planters were dependent on factories owned by non-Indians.

	1936	1937
Indians residing on estates ..	30,683	30,514
Indians residing off estates ..	237,528	238,815

In 1939, there were hardly 10 p.c. of the Indian labouring class living on estates, either Indian or European-owned.

In 1940 only one out of the 10 District Magistrates, 2 out of 14 Medical Officers, and 1 out of 8 Assistant Superintendents of Police were Indians.)

FIJI

In 1920, Indian property in the north of the main island of Fiji was worth at least £300,000. Half the Indian population was

6. Report by Kunwar Maharaj Singh on his deputation to Mauritius (1925), Appendix III.

directly or indirectly employed in the production of sugar. A total crop of 928,288 tons of sugarcane was produced by Indian farmers in 1938 as compared with 942,470 tons in 1937 and 997,008 tons in 1936. It was estimated that over 90 p.c. of the colonial sugar output, which reached the peak of 140,000 tons valued at £1,330,000 in 1936, was produced by Indians.

In June 1943, in view of the rising cost of living due to war, the sugarcane farmers demanded a higher price for their cane. But the all-white C. S. R. Company, which has been enjoying a monopoly of sugar production in Fiji, refused the demand by invoking certain agreements entered into between it and the cane-growers in 1940 (before the Pacific War) according to which the price of sugarcane could be increased only if the price of sugar was raised by the British Ministry of Food, to whom the Company was bound to sell all its produce. The negotiations between the Kisan Sangh and the Company failed. The farmers went on strike and the crops remained unharvested, reducing the produce from 140,430 tons in 1942 to 55,410 in 1943. The Secretary of State for the Colonies appointed Dr. C. Y. Shephard of Trinidad in March 1944 to inquire into the grievances of farmers, who were mostly Indians. His Report, submitted in August 1945, disclosed that the Company's net profits during 1939, 1940 and 1942 were far above the average and totalled £694,261, which should have facilitated the payment of dividends at the rate of 4 p.c. per annum. Dr. Shephard expressed the opinion that the amounts allowed by the Company for depreciation were excessive and that its capital was overvalued. He made several recommendations. While advising the retention of the existing method of assessing the price of sugarcane, he recommended the addition of the value of molasses to the proceeds of cane. The Company should try to complete payments for cane for each crop by the succeeding 31 March, adjusting in the following year over-payments or under-payments for cane. He also recommended a tripartite Sugar Board, consisting of the representatives of the government, cane farmers and the Company, to advise the Governor on all matters affecting the sugar industry; and a similar Scientific Investigation Committee to advise the Sugar Board on a programme of investigations into peasant farming, to be conducted by the Department of Agriculture and financed by contributions from the three parties. Leases from the Native Land Trust Board should be renewable for 12 years at intervals of 11 years. The Company also should similarly extend the period of leases to tenants. Indians were also engaged in production of local food crops of rice, maize and *dhal* in addition to tobacco and bananas for the New Zealand and Canadian markets. But the tendency on the part of the Fijian landowners to refuse extension of land leases

to Indians and the reactionary policy of the Colonial Sugar Refining Company were affecting seriously the large number of Indian agriculturist workers. Hawking, taxi-driving, tailoring and laundering were chiefly in Indian hands. Indians operated nearly all the small stores throughout the more thickly populated districts of the colony competing successfully with the Chinese.

BRITISH GUIANA

As per 1911 Census, over 112,000 Indians were living in villages and 42,000 on farms and settlements. Roughly, 67,000 Indians were living on sugar estates. The 1921 Census showed that over 78,000 were working as agricultural labourers, including those working on sugar estates, and 2,500 were classed under industries. While 430 were employed as domestic servants, only 350 belonged to the various professions.⁷ The following table shows the extent of Indian employment in government service:⁸

Year	Number employed with salary of £150 and over		Number employed with salary under £150	
	Non-Indians	Indians	Non-Indians	Indians
1913	.. 288	1	94	8
1921	.. 323	8	112	27
1924	.. 358	23	97	14

According to the Indian Colonization Committee 1933-34, 74 p.c. of Indians were agricultural labourers and only 5 p.c. were in the industrial groups.

TRINIDAD

In Trinidad there were 72,500 agricultural workers in 1938 most of whom were Indians. The Indian tenants engaged in sugarcane cultivation were handicapped by the Sugarcane Small Holdings Ordinance XXXV. of 1938, which did not provide for compensation to outgoing Indian tenants in respect of sugarcane planted by them. In the industrial field, there were only 3,015 Indians out of a total of 40,891, though Indians constituted nearly half of the total population. J. D. Tyson reported that these figures 'lend colour to the

7. Waiz, *Indians Abroad* (1927), p. 600.

8. *Indians Abroad*, Bulletin No. 20, published by the Imperial Indian Citizenship Association, (Bombay), p. 46.

complaint frequently made that there is discrimination against the Indians in the matter of entrance into and training in the mechanical trades'.⁹

JAMAICA

J. D. Tyson reported that the number of trading licences held by Indians had fallen from 330 in 1910 to 208 in 1932 and spirit licences from 82 to 63. Indians own a large number of dairies and there are also many Indian artisans filling an important place in the economic life of the colony. For the first time, Indian Justices of the Peace and an Indian Interpreter to help Indians involved in litigation were appointed in 1946.

MIDDLE EAST

Indian business men in the Middle East are engaged in importing goods from India and exporting merchandise from the Middle East. Many of them deal in curios and Indian art objects and in precious stones. In the Persian Gulf States of Bahrein, Kuwait and Muscat, there are about 4,000 Indians. Indian merchants here are carrying on the bulk of the foreign trade of these States. There are also Indian skilled workers comprising artisans and clerical personnel, persons holding lower executive posts and doctors and compounders. Nearly 2,000 Indians are working in the Kuwait Oil Company in Kuwait, 600 in the British Petroleum Co. in Bahrein; and several hundreds in the newly discovered oilfields in Qatar, under the Petroleum Concessions Ltd. There are 1,000 Indians working in the Anglo-Iranian Oil Company at Abadan in Iran, and a substantial number of the staff of the Arabian-American Oil Co., which operated at Daharan in Saudi Arabia, is also Indian. A few Indians are also employed by the Government of Iraq and under the British Residency in the Persian Gulf and by several British firms, such as shipping companies and banks.

Indians, in common with other foreigners, suffer certain disabilities in regard to foreign trade in Iran, but the question of removing these hardships is under discussion between the Governments of Iran and India. Indian workers in the Middle East have serious grievances in the matter of housing and in respect of their general treatment by European employers. The Indian Goodwill Mission which visited this region in 1949 made it clear to the oil companies that the Government of India would not countenance the treatment of Indian workers in any way inferior to those of other races. The companies appreciated the force of the suggestion and

9. Tyson Report (1939), p. 76, para 90.

it is hoped that their legitimate grievances would soon be removed. The Indian Goodwill Mission had also suggested to the Government of India certain amendments to the terms of the contract between the oil companies and the Indian employees.

UNITED KINGDOM

There are about 5,000 Indians who have been for a fairly lengthy period in the U.K. They have entered a number of leading professions. A large number is in the medical profession — no less than 1,000 are practising throughout Britain. About 200 of them are in London.

CANADA

Most of the Indians in Canada are settled in British Columbia. They are mostly sturdy Sikhs from the Punjab who have proved successful in the timber industry, though a few are engaged in agriculture. Though there was no statutory ban, Indians in British Columbia were excluded *de facto* from the public services and the professions of law and pharmacy in British Columbia. Asians had no place in sales of Crown timber.

According to the conscription laws of the Dominion of Canada, male British subjects, including Indians who had resided in Canada for at least one year, were liable to be called up for military service. Any particular individual who considered that he should be exempted from such service for any peculiar circumstances should convince the authorities to that effect. When the condition for military service began to be enforced in 1942, Indians permanently resident in Canada pleaded for exemption on the ground that Indians were not granted full citizenship rights by the Dominion Government. The Indian Government also represented to the Canadian Government supporting the Indian viewpoints and demanding enfranchisement of the Indians in British Columbia.

AUSTRALIA

Indians were debarred from participating in the mining, sugar and dairy industries. In 1904, the Factories Act, the Mining Act and the Early Closing Act passed in Western Australia provided for statutory racial discrimination against the Asians. The Australian Government penalizes British ships employing Indian crew in their waters while they have no objection to the employment of the Chinese.

A majority of Indians in Queensland were illiterate. As the law required of the labourer to pass a dictation test which the Indians could not, they were barred from employment on sugar

plantations and in the dairy industry. The restriction on employment in the banana industry was, however, removed. Indians were also promised the benefits of old-age pensions. Before 1945, there were 714 Indians employed as merchants and dealers, 554 of them being hawkers. Three hundred and sixty-six were engaged in agriculture, mostly as workers on sugar plantations, and 201 in pastoral pursuits.

NEW ZEALAND

Most of the Indians in New Zealand could not engage themselves in farming and trade though there are some Punjabis settled in rural areas and engaged in farming and a few engaged in trade in the cities. Most of them are fruit-vendors, pedlars, small artisans and casual labourers.

CEYLON

According to the Census of 1881, the total Indian population, which was 276,787, comprised 157,455 agricultural labourers, 24,617 general labourers, 5,233 domestic servants, 1,571 housekeepers, 3,852 railway workers, 2,551 road labourers, 2,510 *boutique*-keepers, vending small wares, and 2,897 general petty traders. By the 1891 Census, the commercial class increased to 15,421, of whom 11,131 were engaged in trade as shopkeepers or otherwise. The industrial class rose to 19,498 males, while the road and railway labourers fell to about 5,000. There were 2,806 engaged in several professions. For every 1,000 Indians, there were 726 in the agricultural class, 104 in the industrial class, 68 in the commercial class, 36 in the domestic class and 15 in the professional class. In 1901, they rose to 795 in the agricultural class but fell in other occupations — 48 Indians in commerce, transport, and storage together, 44 in preparation and supply of material substances, 36 in personal services, 30 in government services, and 5 in the professional class. The number of Indian workers employed in 1906 was 9,227 in the public works department, 1,468 in irrigation and 3,858 in railways, making a total of 14,553. During the next ten years, 420 Indians were imported for the public works department. Sir Edward Jackson says that the number of Indians in the public works department decreased from 4,781 in 1930 to 4,135 in 1936 while, during the same period, Ceylonese increased from 5,855 to 7,540. The Indian estate population at the end of 1938 was 682,570, while non-estate Indians were estimated to number between 190,000 and 230,000. Sir Edward Jackson has estimated that out of 82,000 workers engaged in the naval and military headquarters, government, municipalities, harbours, district councils and trade and business, the Ceylonese were 58,000 and Indians 24,000. As per 1931 Census, there were

8,700 Indians as domestic servants in Colombo. In 1936, 4,400 out of 6,700 regular workers for scavenging and conservancy in Colombo municipality were Indians. Between 1930 and 1933, the total number of government employees was reduced by nearly 9,000 and the policy of preference to the Ceylonese in re-engagements of the retrenched reduced the number of Indians in government service. While in 1921 Indians in government employment numbered 17,000, they were only 11,000 in 1938, of whom 7,300 were in the public works and railway departments.

MALAYA

In Malaya, Indians were better situated in respect of employment and service than in Ceylon. The following table gives the employment of Indian labour in principal organized places of employment compared with the other nationalities during 1938.¹⁰

	Indians	Chinese	Javanese, Malays & others
Estates ..	214,610	59,263	25,987
Mines ..	7,061	33,797	6,359
Factories ..	8,199	40,552	2,719
Govt. Public Departments ..	47,632	10,859	13,720
Total ..	277,502	144,471	48,785

It is significant that while on European-owned estates 224,628 or 80 p.c. were Indians, Indian estate owners employed Chinese, Malay, and Javanese labourers in considerable number, i.e., 6,281 out of a total of 13,360. The following table shows the total number of workers classified by race in the tin and rubber industries, factories, public works department, municipalities and local boards, railways and defence services at Singapore.¹¹

Year	Indians	Chinese	Malays, Javanese & others
1935 ..	231,475	127,869	44,070
1936 ..	247,327	151,144	48,173
1937 ..	306,759	178,504	58,110
1938 ..	277,502	144,431	48,785

10. Report of the Indian Agent for 1938, p. 4, para 11.

11. *International Labour Review*, July 1940, p. 65.

These figures, when viewed in the light of the fact that the Malays, Chinese and Indians constituted 41·9 p.c., 42·1 p.c. and 14·1 p.c. respectively of the total population on 31 December 1938, show that Indians were strongly established in the above occupations. The overwhelming predominance of Indian workers on European-owned estates explains the high Indian number. Moreover, it was only recently that the Malays had begun to take up work hitherto done by Indians. It was estimated that in 1938 about 20,000 Malays were employed on estates, in mines and factories, in addition to 7,452 labourers in the public works departments. In 1946 there were 150,093 Indian adult workers employed on 2,409 estates in Malaya, exceeding the number of Chinese adult workers by 80,000 and constituting three times the Malay and Javanese workers together. The total number of Indians employed in mines was 4,613 as against 13,478 Chinese and in factories 3,497 as against 16,258 Chinese. Even domiciled Indians have been excluded from the Malayan Civil Service.

BURMA

The demand from Burma was not for agricultural but for urban labour, not for producing crops but for their disposal and for the needs of urban industrial labour. Grantham's Census Report for 1921 shows that in agriculture, which had been the main occupation, out of a total of 1,027,590 workers actually employed as agricultural labourers, the home races accounted for no less than 985,070 workers or 96 p.c. of the whole, as compared with 40,303 workers or less than 4 p.c. contributed by the Indian immigrants. The corresponding figures for cultivating tenants were 97 p.c. for home races and 2 p.c. for Indians. But the position was different in the industrial sphere. According to Grantham's Special Industrial Census of establishments employing ten or more persons, the number of field workers contributed by the home races was 8,048 or 36 p.c. and by Indians 12,533 or 55 p.c., while in the case of unskilled workers the corresponding contribution was 19,985 or 23 p.c. and 61,983 or 73 p.c. Thus, in respect of both skilled and unskilled industrial labourers, while the home races accounted for only 26 p.c., Indians contributed 69 p.c. In the city of Rangoon, the disproportion was even more marked, the home races constituting slightly over 27 p.c. of the total number of skilled workers and 4 p.c. of the unskilled workers of Rangoon industrial establishments, while the respective figures for Indians were 60 p.c. skilled and 95 p.c. unskilled workers. While only 9·4 p.c. of all the earners and working dependants were Indians, as many as 88 p.c. were of the indigenous community. The following table compiled from the

figures of the Baxter Report gives a comprehensive view of the Indian position in the various occupations comparatively with that of the indigenous races :

Occupation	Percentage and number of Indians.	Percentage and number of indigenous races.
Ordinary cultivation ..	3.9	88.2
Cultivation of special crops ..	9.1	70.9 (100,416)
Food industries ..	26.0	59.7 (12,886)
Metal working ..	28.7 (6,202)	68.3 (52,103)
Industries of dress & toilet ..	26.1 (19,957)	73.3 (408,445)
Trade ..	17.3 (96,211)	58.4
Road transport ..	35	49.9 (15,688)
Labourers on roads and bridges ..	37.5 (11,764)	50.9 (6,699)
Building industries ..	40.9 (5,381)	55.0
Exploitation of minerals ..	41.6	92.9 (12,505)
Ceramics industry ..	6.5 (812)	
Those occupied in hotels, cafes, restaurants, including hawkers of drinks & foodstuffs ..	26.4 (19,735)	61.6 (46,145)
Banking, insurance & exchange ..	57.6 (6,290)	29.6 (3,226)
Post offices, telegraphs & telephones ..	57.5 (20,311)	21.9 (6,072)
Labourers (excluding sweepers) on railways ..	69.3 (9,468)	29.4 (4,024)
Transport by water ..	51.3	45.1
Rice pounders ..	53.1 (33,630)	44.0 (27,982)
Occupations dealing with chemical products ..	53.7 (9,802)	43.4 (7,916)

The Baxter Report shows that out of 3,778,336 male earners in Burma on 24 February 1931, 3,117,344 or 82.5 p.c. were Burmese and 530,874 or 14 p.c. Indians and that Indians preponderated in high finance, big business, government employment and unskilled labour.

E. J. L. Andrew has calculated in 1932 that on an average 75 p.c. of Indian immigrants would return annually to their homes and that it was the balance of 25 p.c. representing only some 30,000 or 40,000 persons, that actually came into conflict with indigenous races in competing for agricultural work and that, therefore, so far as agriculture was concerned, Burmese were not much affected by Indian competition. The Searly Inquiry of 1934 into the extent to which Indians were employed as seasonal agricultural labourers showed that such Indians enumerated in the ten delta districts covered by the inquiry were 60,400. They were employed to a very

great extent in the districts where the holdings were largest — Pyapon, Hanthawaddy and Myaungmya. And the number of holdings in the ten districts on which they were all found constituted but 3·25 p.c. of the total holdings. James Baxter says that nearly 20,000 to 25,000 unskilled and about 2,000 skilled Indian labourers employed in rice milling alone were affected by seasonal unemployment, leaving aside similar unemployment connected with the cotton mills, metalliferous mines and other industries. Such Indians took up 97 subsidiary occupations, as rickshaw and hand-cart men, railway coolies, rice bag carriers, bazaar coolies, coolies on steamers, wharves and jetties, field labourers in paddyfields, sweepers and scavengers in municipalities, firemen, drivers, tenants under landlords etc. In 1939 an inquiry was conducted in the cross-section of industrial employment of Indians and Burmese, particularly in the composition of industrial labour technically trained as well as unskilled but non-clerical. The inquiry showed¹² that between 1934 and 1939, the proportion of skilled Burmese employed varied only between 36·7 p.c. and 38·2 p.c. of the total skilled workers, and that of the skilled Indians between 56·3 p.c. and 58·4 p.c. Even in regard to unskilled Indians, the percentage varied only between 68·3 and 69·5. The predominant position of Indians in the categories of sweepers and scavengers, amounting, on an average, to fully 94 p.c. bears witness to the fact that the Burmese labour was persistently averse to such menial occupations. Though there were large variations in the total number of workers engaged, the racial composition continued to be exceedingly uniform both in the categories of skilled and unskilled labourers in the five years period. Though there was a 17·4 p.c. increase in the number of all workers of all grades and races in 1939 over 1934, the percentage of increase in Indians employed was only 10·2, whereas it was as high as 32 for the Burmese. In the case of skilled workers, the Burmese had strikingly increased by 5,089 workers representing 42·5 p.c. while the number of Indian skilled workers progressed only by 4,784 or 21·4 p.c. over 1934.¹³ In the skilled categories of rice milling, the percentage of Indians decreased by 12·4. The unskilled labourers in public administration decreased by 10 p.c. and those in the timber industry by 5 p.c. In major industries, like saw-milling, the oil industry, metalliferous mines, and public administration including transport, the Burmese held their own and even increased in smaller establishments of rice-milling and metalliferous mines. Though Indians employed in

12. James Baxter, p. 63, para 87.

13. *Ibid.*, p. 64.

industrial establishments decreased from 70·1 p.c. to 67·5 p.c. between 1934 and 1939, yet there was an increase of 14,557 in the absolute numbers employed. However, the fact remains that, in spite of the increasing participation of the Burmese in industries, 67·5 p.c. of total workers were Indians compared with 30·7 p.c. Burmese.¹⁴ In the season in which employment was at its maximum, there were 58·4 p.c. Indian skilled workers as against 36·7 p.c. Burmese and 69·5 p.c. Indian unskilled workers as compared with 29·7 p.c. Burmese.¹⁵

In 1947, the Government of Burma expressed its intention of reducing the number of governmental positions in the hands of non-nationals. Nearly 4,000 Indians held over half these positions and they had been informed that unless they became Burmese citizens and learnt Burmese, their jobs might be forfeited. Accordingly, when Burma attained Independence in 1948, the Burma Government began retrenchment of Indians and, by February 1949, about 1,000 Indians returned to India.

On 7 February 1949, a national strike of the government workers was declared. On the advice of the Indian Embassy, the 1,000 Indian employees in Rangoon remained neutral by staying away from work but declaring that they were not deliberately on strike and reaffirming their loyalty to Burma. The Government of Burma declared on 7 February that all who failed to return to duty by 10 February would be dismissed, forfeiting leave, pay and pension privileges. There were about 1,500 Indians in government service outside Rangoon.

On 11 February, the Burma Government dismissed 600 Indian and Pakistani employees (on the eve of their release from service) in spite of their neutrality towards the strike and the fact that dismissal was the extreme penalty given to government civil servants found guilty of criminality, moral turpitude or gross misbehaviour. So they requested the government to cancel the dismissal orders and release them from service in accordance with the government's declared policy. By May 1949 nearly 1,500 Indians employed in government service were retrenched. In certain cases, pensions were arbitrarily reduced. By May 1949, the country-wide civil strife also disrupted the economy and threw 5,000 Indians out of employment. Some saw mills were closed rendering hundreds of Indians unemployed. The Indian employment position worsened also in the petroleum, mining and river transport industries.

14. *Ibid.*, p. 65.

15. *Ibid.*

RESTRICTION ON CASH REMITTANCES

Restrictions on cash remittances by Indians in Ceylon, Indo-China, Indonesia, etc., to their dependants in India are depriving Indians of the benefit of their employment and service in these countries to their families, besides disabling them from claiming equal citizenship rights. According to the Finance Minister of Ceylon, 150,000 non-estate urban Indians remit about Rs. 54 million a year. This comes to about Rs. 340 a year or Rs. 28 a month, which can hardly meet the needs of even a single dependant in India in normal times, let alone now with high prices. The position is incredibly worse in regard to the six lakhs of Indian estate labourers whose remittances to their dependants in India amount to about Rs. 17 lakhs a year. This works out to a remittance of Rs. 1½ a month. Exchange control, instituted in 1948 primarily to conserve currency, has become a political weapon. Ostensibly the exchange control regulations of 1949 are intended to prevent any form of capital transfer which would adversely affect Ceylonese economy; actually however they are making it impossible for Indians to remain in Ceylon and simultaneously support their dependants in India, for those who wish to send monthly remittances must declare themselves temporary residents, which *ipso facto* disqualifies them from acquiring even second-class citizenship rights. Of Ceylon's net deficit balance of payments in 1948 which amounted to Rs. 183 million, while payments to India accounted for only Rs. 73 million (*i.e.*, 40 p.c.), the major part of payments, nearly Rs. 80 million, went to Britain in respect of interest, profits and dividends. According to the Finance Minister of Ceylon, this amount of Rs. 80 million represented the British-owned share of production which, but for that share, would not have materialized. To him the claims of foreign capital are so ineluctable, while those of Indian labour, which has facilitated the transition of the Island's economy to prosperity, are not worthy of even equal consideration. The Controller of Exchange in Ceylon announced in September 1949 that, consequent on the Indian complaint of discrimination against them, the Government of Ceylon had withdrawn the facilities from British nationals to remit overseas up to £50 a month without a permit. The object of this decision, it was added, was to prevent any further allegations of discrimination against Indians. The gravamen of the Indian complaint is that while a British national was permitted to remit £50 or Rs 665 a month besides travelling allowances without being asked any question, an Indian was allowed to remit only Rs. 25 a month after fulfilling vexatious stipulations like production of certificates from district magistrates in India in proof of

the remittees being solely dependent on the remitter, production of income-tax assessment notice in the case of persons who pay income-tax, and in the case of those not paying income-tax, a certificate from the income-tax officer to that effect, etc. The Indian grievance relates primarily to the inordinate disparity in the amount allowed as between an Indian national and a British national. Discrimination as between hard currency and soft currency areas is understandable, but not within the sterling area itself. If Ceylon is opposed to imposition of import controls for conservation of her exchange resources, she should at least extend equal treatment to all within the sterling area. At the highest, Indian remittances are not more than Rs. 7 or 8 crores a year. Surely it should not be beyond Indian and Ceylonese statesmanship to arrive at a suitable financial arrangement which provides for this without impinging on Ceylon's foreign exchange and meets Indian needs without dislocating Ceylon's balance of payments.

In the case of Indians in Indo-China, Indian remittances to their 8,000 dependants in India stopped from June 1940 for want of facilities. More than Rs. 10 crores belonging to Indians has accumulated in the banks in Indo-China. In 1946, the French authorities rejected the Indian suggestion for release of Rs. 2 lakhs out of the frozen assets of the Bank of Indo-China in India to balance remittances up to Rs. 25,000 per month from Indians in Indo-China. On 18 November 1947, Prime Minister Nehru announced in the Dominion Parliament that the French Government had agreed to allow remittances by Indians subject to a maximum of Rs. 200 per head and an overall limit of Rs. 50,000 per mensem. It had however been stipulated that these arrangements would take effect only after the debt settlement agreement was signed which was expected to be done in the near future. The Government of India undertook in certain cases of proved hardship to consider the grant of an advance in rupees against a corresponding deposit in piastres (a piastre was equal to a rupee in value before the war) in Indo-China, each case being considered on its merits. It was expected that simultaneously with the signing of the agreement, the French authorities would remove the ban on remittances though the amounts might be limited to Rs. 200 per family per month and the total remitted in a month to Rs. 50,000.

The Government of India decided in November 1949 to discontinue its scheme of sanctioning remittance facilities against deposits of piastres with the Indian Consulate-General at Saigon in certain cases of proved hardship. Remittance facilities through the normal banking channels continue to be available. Since

devaluation of the franc, to which the piastre is linked, the value of Indian assets was considerably reduced.

In the case of Indians in Indonesia, as a result of strong representations by the Indian Government, cash remittances are allowed as a special case in the case of those Indians who are refugees from Pakistan and have their bread-winners in Indonesia. Remittance facilities for some other deserving cases who do not fall under the above category are also available to a certain extent. On 27 September 1949 the Government of Burma issued orders suspending all money order remittances to India with immediate effect. The announcement gave no reason for the suspension.

SECTION V. SOCIAL AND RELIGIOUS DISABILITIES

These disabilities had, by touching the most sensitive part of Indian life, confronted Indians with a really humiliating situation. Non-recognition, in particular, of marriages contracted according to the Hindu and Muslim personal law in the West Indies, South Africa, Mauritius, etc., had been a cause of much agony and anxiety to Indians.

MARRIAGE

BRITISH GUIANA

In British Guiana, in addition to the general marriage law of the colony, Immigration Ordinance XVIII of 1891 also governed Indian marriages. This Ordinance provided that the immigrants should be married by (i) a Magistrate or (ii) a Christian Minister or (iii) a priest of the immigrant's religion according to the personal law of the parties to the marriage. In all the three cases, prior to the solemnization of the marriage, a certificate should be obtained from the Immigration Department showing that there existed no impediment to the union, either by way of prior or subsisting marriage or consanguinity between the parties. Failure to notify the performance of marriage involved penalty in all the three cases. But in the case of solemnization by a priest in accordance with the personal law of the parties, there was an additional penalty of invalidating the marriage, although a prior 'no impediment certificate' had been obtained as a condition precedent to the marriage ceremony. Thus, while failure of subsequent registration did affect the marriage if solemnized by a Magistrate or a Christian Minister, non-registration by the parties in the case of marriages solemnized by Hindu and Muslim priests invalidated the marriage.

The McNeil-Chimanlal Deputation recommended that the stipulation for a 'no impediment certificate' should be dispensed with, and the stipulation for mere notification of marriage to the Immigration Department should suffice to warn the people concerned that a proposed marriage would be invalid or would expose either party to a criminal charge. They held that registration was superfluous, as religious marriages were reputable whether registered or unregistered. Secondly, no material loss was likely to accrue for want of registration, as owners of valuable property usually provided for its devolution through testamentary arrangements made by the immigration authorities. Even in the case of intestate succession to valuable property, danger was likely to arise only from the claimants in India. But in this case, the risk involved would be too small to justify imposition of registration to the detriment of the personal law. Further, the government had not claimed reversionary interest in such cases on the ground that there were no legitimate heirs. The Hon. E. F. L. Wood, M.P., who was deputed to British Guiana by H.M.'s Government in 1922 suggested that the Ordinance should be amended to meet the Indian wishes. Later the Pillai-Tiwari Deputation recommended that registration should be dispensed with, and that, should it however be continued, it must be clearly laid down that failure to register would not affect the validity of marriages. Agreeing with the McNeil-Chimanlal Report, J. D. Tyson recommended that the no impediment certificate should be abolished and that Hindu priests and Muslim *Kazis* should be recognized and licensed as marriage officers, and be compelled by law to report solemnization of any marriage for registration, but that failure to comply should not invalidate a marriage duly performed. He also recommended that the contracting parties should, if marriage was performed according to the personal law and religion, be obliged to sign a declaration that there was no legal impediment to the union, and that they should, if guilty of a false declaration, be liable to the ordinary processes of law. The same system of marriage law prevailed in Trinidad and Jamaica, and the problems of Indians there had been, therefore, similar to those of Indians in British Guiana.

As pointed out by the Pillai-Tiwari Deputation, civil registration, though desirable from the point of view of legal recognition to religious marriages, proved dangerous in the case of Indians who belonged mostly to the illiterate labouring class. 'The result of imposing needless obstacles in the way of contracting valid marriages is that people contract invalid marriages. If the object is to give women and children the minimum of protection by driving

the former into marriages which have no legal validity, the present system requires no modification.¹

Secondly, the practical harm done by invalidating marriages on non-registration was evident from the difficulties attendant upon succession to intestate estates. Large amounts of money realized from intestate estates were escheated to the State. For four years during 1917-20, while the amount realized from the intestate estates was 29,943 dollars, the amount that was paid to heirs both in British Guiana and in India was 6,696 dollars, of which the portion paid to heirs in India was only 1,339 dollars. 'That the hard-earned money of poor immigrants should be taken over by the State, while their children, legitimate or illegitimate, should go abegging, is a glaring injustice which calls for immediate redress.'² Thirdly, besides the difficulty and expense in securing succession, the operation of the Trinidad law resuming to the government oil rights of property escheating to the government, had compelled Trinidad Indians to receive back their lands without oil rights. Fourthly, the illegitimacy of children with consequent disinheritance clutched at the heart strings of Indians, as it cast a slur on Indian womanhood whose honour constitutes the most valuable part of Indian social and religious life. Lastly, there was no compulsory registration of marriages in India. So the argument sometimes advanced by the colonial governments that Indians could not claim any privileges in colonies, which they did not enjoy in their mother country, could not be trotted out in this case. This argument should not be availed of only to deny due rights and privileges to Indians, but also should be countenanced to do bare justice as well.

It is, therefore, essential that, as recommended by J. D. Tyson and his predecessors, civil registration should be made only a duty of the marriage officer but not a necessary element of the validity of a marriage solemnized according to Hindu and Muslim personal law.

The West India Royal Commission, 1939, expressed full sympathy with Indian complaints regarding the arrangements for legitimization and validation of East Indian marriages and recommended that these marriages should, so far as the law was concerned, be put on a similar footing as other marriages. They also recommended that in respect of recognition of divorces in British Guiana according to Muslim usage, legislation should be enacted on the Trinidad model to meet this grievance.

1. Pillai-Tiwari Report, p. 54. para 122.

2. *Ibid.*

At the end of 1946, an Indian Marriage and Divorce Bill was enacted by the Legislative Council. It provided for the registration of *Maulvis* and *Pandits*, as Muslim and Hindu marriage officers and for the legal recognition of such Muslim and Hindu marriages.

TRINIDAD

On 20 May 1945 the Legislative Council of Trinidad passed an Act amending the marriage laws for East Indians. The Act accorded legal recognition to Hindu and Muslim marriages and permitted their registration. While the Act did not stipulate registration of marriages, it permitted such action. This was because certain Hindu sects objected to registration. The Act did not bar continued observance of their religious customs. It emphasized the advantages of legal recognition hitherto withheld to unregistered marriages. One of the grave handicaps of Indians in the colony was removed by the Act.

Another minor matter requiring the attention of these governments was that the marriage officers should, as was recommended by Tyson in connexion with the Trinidad draft Ordinance obliging marriage officers to keep registers in English, be allowed the choice to keep them either in English or in Hindi. The absence of this option would amount to an infliction on the Hindu priests and the Muslim *Kazis*.

MAURITIUS

In Mauritius, according to the law of the colony, religious marriage itself, whether Christian, Hindu or Muslim, was not legal and only civil marriages were legally recognized. Though most Indians had reconciled themselves to this position, it was not a sufficient justification for the denial of their right to marry according to their personal law. Maharaj Singh reported in 1926 that in a number of cases, persons married according to religious rites were discarding their wives after a few years of married life, and it was, therefore, imperative to devise some method to spare Indian women this agony. He expressed the opinion that the Christian practice of not allowing the religious rites till the civil marriage had taken place should be followed by Hindu *Pandits* and Muslim *Maulvis*.

Indians had no objection to compulsory registration of marriages provided it was not made an instrument to deprive them of their other rights as shown above. Mass illiteracy and lack of comprehension of the implications of the registration law should be kept in mind and a simple and harmless method of registration

devised. Anyway such registration must, as a condition precedent to introduction, be approved by a majority of the Indian community.

SOUTH AFRICA

In South Africa, marriage difficulties had centred round the question of Hindu and Muslim polygamous marriages in contradistinction from the South African and English custom of monogamous marriages. Indians were compelled to adopt the South African law, and, therefore, a section of the Hindu population and the whole Muslim community viewed this as a violation of their right to polygamous marriages sanctioned by their religion.

Section 68 of the Natal Immigration Restriction Act XXV of 1891 recognized polygamous marriages, while Section 70 of the same Act provided for the marriage of all Indian immigrants except those professing the Christian religion before a Magistrate or before the Protector of Indian Immigrants. Many indentured Indians availed themselves of the provision in Sec. 70. But the other Indians demanded the appointment of special officers from amongst the Indian priests on the lines of the Cape Act XVI of 1860 for the benefit of those who might have scruples about contracting marriages before such officials. In the case of indentured Indians, marriages became monogamous both in law and in fact by registration. This registration required no renunciation of rights nor would those Indians be debarred by law from marrying other women, according to their own religious rites, though these women would not be recognized as having any legal status as married women.

A marriage contracted in South Africa before any official would necessarily be monogamous and the Muslims, therefore, preferred not to enter into such unions by renouncing their religious doctrines, but to accept the position that in law their marriages were not valid. They, therefore, refused to avail themselves of the marriage officers appointed. The Searle judgement in 1910 came like a bolt from the blue and declared Hindu and Muslim religious marriages illegitimate for the purposes of the Immigration Act. Mahatma Gandhi pleaded for the legalization of Indian marriages celebrated or to be celebrated within the Union by amending the marriage laws so as to empower the government to appoint special marriage officers from amongst the Indian priests for the different denominations whose certificate as to the celebration of marriage according to their religious rites would be recognized as proper proof of marriage, on the lines of the Cape Colony Act XVI of 1860,

The Immigration Restriction Bill of 1913 left the Searle judgement alone, and this was one of the reasons for Mahatma Gandhi's march into the Transvaal to contravene the provisions of the Act, which betrayed the honour of Indian women. The Solomon Commission recommended the amendment of the Bill to bring it into line with the Cape Act, so that those who were desirous of availing themselves of the privilege of contracting valid marriages before their own priests might do so. Turning to the Searle judgement they stated that it 'caused intense feeling in India as casting a slur upon Indian women.'³ They recommended legislation for legalizing the *de facto* monogamous marriages, i.e., the marriage of one man with one woman under a system which recognized polygamy, subject to certain conditions. The first condition was the compulsory registration of such marriages before a marriage officer, whether he was a priest, or a Resident Magistrate or an official specially appointed for the purpose. In order to accommodate those who had no desire that their marriages should be legalized except on their own terms, they recommended that all persons should have an option to elect to come under the provisions of the proposed law or not and an application for registration should be conclusive proof of such election. The second condition was that they should by registration become monogamous in law as well as in fact, so that all the legal consequences which flowed from marriage under common law in South Africa might flow upon such legislation, except in so far as it might be deemed necessary to make special provision by legislation. As regards Muslims, they recommended registration on lines similar to the case of indentured Indians, thus providing for the irregular marriages of Muslim law. Section 1 of the Indian Relief Act of 1914 accordingly provided for the appointment of marriage officers from amongst the Indian priests. Section 2 validated the existing *de facto* monogamous marriages while Section 3 dealt with the interpretation of the Natal courts in the Kulsum Bibi judgement. On the inadequacy of the Indian Relief Act, Mahatma Gandhi wrote: 'Some are dissatisfied that on the marriage question the Relief Bill goes no further than it does.'⁴

The Indian Relief Act, no doubt, restored, as demanded by Mahatma Gandhi, the status of Indian wives as it existed before the Searle judgement. But it would have been proper if the machinery provided in the Act for validating the existing unions

3. C. D. 7265, p. 21.

4. Waiz, *Indians Abroad* (1927), p. 309, Gandhi's letter dated 30 June 1914, to the Secretary of the Interior.

could also have been used for validating future unions. In 1919, referring to the Indian grievances as to the non-recognition of the unions (contracted subsequent to 1914) according to the tenets of the Hindu and Muslim religions, the Minister of the Interior complained that the Hindu and Muslim communities had not taken advantage of Section 1 of the Indian Relief Act and that the matter was therefore one entirely in the hands of those communities themselves.⁵

The South African Government seemed to feel that, by not according recognition to the Hindu and Muslim marriages, they could prevent the entry of brides from India. But there was little justification for any apprehension as regards the influx of brides. The 1921 Census returned 56,000 Asian males as unmarried, of whom 43,617 were below 21 years, *i.e.*, of the normal matrimonial age limit. The tendency of these Indians was to marry only women of their own age in South Africa. The Paddison Deputation reported: 'This is confirmed by the fact that, amongst the Natal-born Asiatics, 5,384 males married females born in the same province, while 368 took wives from India. The fear of a large future immigration of brides from India may therefore be dismissed as chimerical.'⁶

The vexatious consequences as a result of the complexity of the legal formalities which the Indians were obliged to go through in respect of marriage were, in 1938, the subject of bitter criticism by Justice Feetham. The occasion arose in connexion with the hearing of an application in the Supreme Court asking for an order declaring the children of an Indian legitimate for the purpose of winding up the estate of the father of the children. The hearing revealed that for several years it was not possible for a free Indian, who had not come to Natal under indenture, to be married legally at all. It was stated by the applicant in court that in law the woman concerned was a 'passenger Indian', *i.e.*, the descendant of two Indians who entered South Africa as free Indians without indenture. In 1900, she married according to Hindu rites an 'immigrant Indian', *i.e.*, the son of two indentured Indians. Six years later, the couple obtained a certificate of marriage from the Magistrate in Maritzburg and it was registered with the Protector of Indian Immigrants in Natal. In 1909, the Supreme Court

5. Letter from the Minister of the Interior dated 30 April 1919 in reply to the Deputation from Conference of Indians in S. Africa who waited on the Minister on 1 February 1919.

6. Report of the Deputation of the Government of India to South Africa (1926), Supplementary Statement. Appendix viii, p. 43, para 1.

ruled that a similar marriage certificate was invalid on the ground that one of the parties to the marriage was not an Indian immigrant and that the Act which gave the Magistrates the power to issue marriage certificates was one which dealt solely with Indian immigrants and not with passenger Indians. In 1904, an Act was passed to regularize such marriages by the appearance of both the parties before the prescribed authority.

But the woman in the present test case, unaware of the necessity for registration of her marriage under the 1904 law, failed to do so, and it became too late after the death of her husband. The necessity for the petition referred to arose out of the legislative provision that illegitimate children should pay succession duties five times those paid by legitimate children.. Referring to the dangerous consequences of complex legal formalities, Justice Feetham observed thus :

I cannot see why an official should find holes in a certificate that had held good for thirty years. It seems to me that this is something that should never have been raised, except under the greatest compulsion. I think that it is most unfortunate that any official should have raised this point. It is a terrible thing that an investigation should be forced on a woman after all these years. . . . It is by no means clear to me that the decisions referred to me in previous cases are right. If the marriage is not valid, how am I to make it valid ? If there are a number of similar marriages that have not been validated, it seems desirable that statutes should be introduced to validate them. It should not be necessary to have them declared invalid first.⁷

The Indian Marriages Validation Act was passed in March 1944 to validate certain marriages that took place between 1891 and 1914. It was found that under the Natal Act of 1891 which authorized the Protector of Indian Immigrants to marry certain Indians, the Protector had erroneously married some Indians other than immigrant Indians. The Act of 1914 also omitted to rectify the position. The present Act seeks to validate marriages where one of the contracting parties died before 1914. Where both the parties were alive after that date, the Protector was authorized to remarry them. Children of the marriages concerned were regarded in law as 'strangers in blood' and the parent estates had become involved. Children had, for instance, to pay ten p.c. in death duties instead of two p.c., and widows were unable to obtain exemption from transfer duty or succession duty. Now such marriages between 'immigrant Indians' and 'passenger Indians' were legalized.

7. *The Statesman*, 12 September 1938.

MALAYA

In Malaya the chief difficulty in the case of Hindu immigrants was the proof of marriage. As the Indian immigrants married in India had no certificates of marriage, they were unable to produce any documents in court as evidence of marriage. Though in India valid marriages contracted with the usual ceremonies had rarely or never been questioned, in Malaya difficulties arose due to the disproportionate sex ratio. As the persons present at the marriage ceremonies in India would not be available for courts in Malaya, the proof of marriage in India as the only evidence became impossible. Hence it would have been desirable to advise the immigrants to obtain before embarkation from a responsible officer in India a certificate of marriage to be countersigned by an Immigration Officer to guarantee the identity of the persons. Such certificates should be accepted in all courts as evidence of a valid marriage, and legislative provision should be made in Malaya and India, if necessary, for the purpose.

The Christian Marriage Enactment (Chapter 109), the Foreign Marriage Notice Enactment (Chapter 110), the Marriage Registration Enactment (Chapter 111), the Hindu Marriage Registration (Chapter 111) and the Muhammadan Marriage and Divorce Enactment (Chapter 197) . . . all these enactments, while providing for registration of marriage, left the validity of the marriage itself a matter of doubt. The Government of India should request the Malayan Government to legislate ensuring the validity of the marriage duly registered under these documents.

FIJI

Indian customary marriages had not been recognized as valid under the Fijian law and a civil declaration was necessary. The colonial government had ignored the religious significance of marriage though to the Indian it was everything, and civil significance attached to an Indian marriage was very little. The result of the non-recognition was that a majority of these marriages had not been performed according to the government regulations and thus marriages became invalid. Miss Florence Garnham of Australia reported that this had led to a loosening of the marital tie with attendant evils: 'One of the greatest evils at present is the trafficking in young girls.'⁸

As no civil declaration was made such traffic was facilitated, the girl being sold to the highest bidder every time. A new Mar-

8. Waiz, *Indians Abroad*, (1927), p. 572.

riage Ordinance was promulgated in 1946 in which provision was made for the registration of the Indian marriage officers and priests. But as no penalty had been imposed upon unregistered men who performed marriage ceremonies, the old evils continued as before.

MIXED MARRIAGES

Another question connected with Indian marriages relates to the prohibition of mixed marriages. Indians were never anxious for mixed marriages either with the Europeans in South Africa or with the indigenous women in Burma and Ceylon. Nor were they any the less particular and anxious about the preservation of racial purity or appreciation of heredity. Indian objection to the legislative prohibition was based on the racial discrimination made against them in South Africa in legislating for the exclusive preservation of the purity of the white race, completely ignoring it in the case of all non-Europeans. In Burma and Ceylon the Indian objection was based on the ground that such legislation made baseless assumptions and cast a slur on Indian character.

SOUTH AFRICA

In South Africa, the opposition to mixed marriages with Indians sprang, firstly, from the fear that Indians were making such marriages a convenient means to acquire property, and, secondly, from the fear that such alliances would lead to miscegenation. Twice in January and February 1937, three private Bills were introduced in vain seeking to prohibit marriages between Europeans and Asians or natives. Gen. Pienaar's Provincial Legislative Powers Bill sought to empower the Provincial Councils to prohibit the employment of Europeans by non-Europeans in the Union and thus diminish the possibilities of contact which might ultimately lead to marriages. The Select Committee to which the Bill was referred submitted an amended Bill entitled the White Women's Employment Restriction Bill. The Government of India strongly protested against the principle of the Bill and in particular to the differentiation sought to be made between Indians and others of the Asian race. In the course of oral evidence before the Select Committee a representative of the South African Indian Congress stated that he believed that Indians would be willing to terminate the employment of European women voluntarily, where circumstances showed that particular exception might be or had been justifiably taken to such employment. The Union Government accepted the statement as an assurance of co-operation by the Indian community in objectionable cases, and announced that no further opportunity would be given for discussion on or for legis-

lation in connexion with the Select Committee's Report on the Bill. The Union Government, however, reserved the right to undertake legislation later, if circumstances should demand it.

Later, the Asiatics Land Bill was introduced by John Grobler making it impossible for white women married to Asians to acquire land. Jan H. Hofmeyr, then Minister of the Interior, denounced the Bills. N. C. Havenga, then Minister of Finance, stated that he personally was not in favour of legislation against mixed marriages. At the Transvaal Congress of the government party at Pretoria, Richard Stuttaford stated that out of a European population of 20 lakhs, an average of five persons each year had contracted mixed marriages and that introduction of legislation would cast a slur upon the whole white population. In his evidence before the Select Committee, the Indian Agent-General, B. Rama Rau, proved that there were only 14 Indians who had European wives and that in only three cases had property been held by the European wife of an Indian. The Report on Vital Statistics for 1935 issued by the Department of Census and Statistics showed that Europeans married two Asian women and only one Asian married a European woman. Even the previous Indo-Malay alliances were the necessary corollary of the disproportion between Indian males and females in the Transvaal as a result of the indenture system. Moreover, Gen. Hertzog, a former Prime Minister, had himself testified that there was no desire on the part of either the white or the coloured people that there should be social intercourse between them, and social separation was asserted by both as the definite and settled policy of the government.

However, a Commission was appointed to inquire into the question of marriages between Europeans and non-Europeans. This Commission held that opposition to mixed marriages was justified because, firstly, such marriages were partly responsible for the creation of a group which was unhappily situated in the existing social structure, and also formed a serious social problem; and, secondly, because they would assist in producing a people who could pass for Europeans, thus leading to the infiltration of non-European blood into the European population. The Commission expressed the view that the increased propinquity and familiarity of the members of the European and non-European groups, due to the similarity of housing and economic conditions under which they lived, would enhance the likelihood of marriages taking place between the members of the two groups. They therefore suggested that segregation by means of housing schemes, and separation of the different races at their places of work, would reduce the chance of marriages and illicit intercourse. They recommended criminal

penalty to deal with attempts at evasion by resorting to other countries for marriage and later returning to and cohabiting in the Union. They did not accept the argument that the prohibition of mixed marriages would lead to increased illicit intercourse on the ground that the knowledge of the legislative fact of penalty attached to an illicit union would deter them from entering into one. But (Mrs.) Spilhaus, a member who appended the Minority Report, asserted that attempts at prohibition did increase illicit intercourse and she even proved it with the help of the figures of the Majority Report itself. She concluded: 'I hold very strongly that legislation on the subject is quite unjustifiable. If we are to remain the ruling race, we must be worthy to rule'. There were only four cases of mixed marriages in every thousand European marriages and even that small proportion, according to the Report, was likely to diminish. The Commission had admitted that between 1925 and 1937 only four marriages took place between 2,000,000 Europeans and 219,000 Indians. Yet on such flimsy evidence the Commission recommended prohibitive legislation. They ignored such vital and fundamental facts as the numerical excess of European males, the problem of licit and illicit intercourse between the European males and coloured females, and the absolutely innocuous position of the Indian community.

The Mixed Marriages Bill introduced in the Union Parliament on 28 April 1948 provided that any person who appeared obviously to be white or non-white, as the case might be, should be deemed to be such unless they were able to prove to the contrary. A marriage officer who knowingly performed a marriage ceremony between a white and non-white was liable under the Act to a fine up to £50. If a person domiciled in the Union entered into a marriage outside the Union which could not be solemnized therein, the marriage would be deemed null and void.

BURMA

Amongst the sources likely to engender animosities between Indians and Burmese, the Braund Committee noted the anxiety in the minds of many Burmese as regards the marriage of their women with foreigners, particularly Indians. Under the customary law of the Buddhists in Burma marriage is a contract whereby two persons agree to live together in 'open cohabitation,' and there was no ceremony or formality necessary to complete a marriage. All that was required was an intention to contract a permanent union with a view to becoming husband and wife. Nor would the Burmese Buddhist law require the other spouse to be a Buddhist. The husband and wife worked together for mutual benefit and

shared the earnings between themselves. This makes clear how a Burmese woman, who cohabits with a non-Burmese in the belief that she becomes his lawful wife may be left in the lurch if the man does not reciprocate her belief. The Braund Committee therefore recommended some protection for the Burmese wife in such circumstances. Nobody disputes the necessity for such protection. The issue relates to the methods devised for such protection which bristled with dangerous potentialities.

In regard to Indians in Burma, difficulty arose only in regard to the marriages of Indian Muslims. For, as regards the Hindus, the Hindu law forbade inter-marriages between persons of castes other than those to which the parties belong. Moreover conversions were not countenanced except by some modern sects. Hence the difficulty in the case of Hindus arose mainly out of succession to property which could be easily rectified by legislation. In the case of Indian Christians, the disability of a Burmese wife to sue for divorce under the Indian Christian Marriage Act was likewise removed by legislation. The Buddhist Women's Special Marriage and Succession Act was passed to effect those objects and protect the position of Burmese wives of the non-Burmese. But the Act, under the guise of conferring equitable rights upon Burmese Buddhist women who married non-Burmese non-Buddhists, interfered with the personal law of non-Buddhist husbands of Burmese Buddhist women. The Muslim husband could make a will settling the disposition of his property which the Burmese Buddhist husband could not, and thus this law interfered with the laws of succession of non-Buddhist husbands of Burmese Buddhist women.

In spite of the unsatisfactory nature of these restrictions in the various countries, it would be unwise for Indians to ignore the strong feeling and indignation which underlie this interdict. The Burmese, Sinhalese and others should not be given an occasion to develop the tendency to view Indians as undesirables from whose clutches their women have to be saved. Indians overseas are the custodians of the glorious tradition of Indian spiritual culture and civilization. Particularly to Ceylon and Burma, India is a place of pilgrimage, and Indian culture their spiritual heritage. The obligation, therefore, rests on all Indians to maintain high traditions of character and inspire the illimitable confidence of India's cultural and religious daughters that are Ceylon and Burma.

DIVORCE

The divorce question was yet another problem which was agitating the minds of Indians in the West Indies and South Africa. The holy Koran provides for divorce and so the divorce law is

regarded by Muslims as part of the Koran. But the stipulation for registration had shut out Indians in the West Indies from the divorce remedy, with the result that Muslims could obtain divorce only on grounds recognized by the general law of the colony. The Trinidad Ordinance XXIX of 1935, which took effect from July 1935, recognized divorces according to Muslim law and such divorces were freely registered by the Muslims. J. D. Tyson commended the Trinidad example to British Guiana. He recommended that marriage and divorce pronounced by a trained *Kazi* or a board of three *Maulvis* should be registered but failure to register should not invalidate a divorce duly pronounced according to Muslim law.

In South Africa provision was made for the legalization of Indian marriages under the Indian Relief Act XXII of 1914, but the divorce laws according to religious tenets were not recognized. Consequently, Indians who had divorced their wives were not allowed to bring into the Union the wives that they had subsequently taken in India, and thus an indirect check was placed on the right of divorce according to the religious tenets.

CREMATION

The denial of the right of cremation for the Hindus by the West Indian colonial governments has offended their religious susceptibilities. Every one of the several Commissions had recommended this concession. In 1920 Thomas Greenwood recommended that 'religious observances — in particular the right to burn the dead on the sea-shore — should be treated with every consideration and respect'.⁹

The Hindus conceded that the selection of sites for cremation ground in thickly populated areas must be subject to the requirements of public health. They had shown the utmost deference to the feelings of others. They had also realized the necessity for adequate screening and disposal of ashes in the sea instead of in the running waters of the island. Tyson had recommended that, subject to the above three conditions, 'it was reasonable that the cremation by the pyre system should be allowed in an island where over 20 p.c. of the population are Hindus'.¹⁰

Even personal applications for permission were summarily rejected on the plea that there was no provision in the law to give such permission. The Royal Commission on West Indies 1938 recommended that the government should take steps to make the

9. Quoted in the Pillai-Tiwari Report, p. 125.

10. J. D. Tyson, p. 76, para 89.

legal position plain and ensure that, subject to necessary safeguards, no obstacles should be placed in the way of the Hindu practice of cremation.

It was then understood that the following conditions should be satisfied before cremation could be permitted :

- (a) The location of the cremation grounds should be fixed with due regard to the sanitary requirements and the susceptibilities of the other inhabitants ;
- (b) the cremation grounds should be suitably screened from public view ;
- (c) the ashes should not be immersed in the running waters of the place but at some suitable place in the seas.

The Hindus of the territories accepted these conditions. The colonial governments would, however, also want that cremation should be done in suitable crematoria and by accepted modern methods while the Hindus would want to do it by the pyre. It was only on 24 September 1940 that the first cremation ceremony in these colonies was performed on one personal application for permission. Permission should be made general for all Hindus to facilitate the observance of their religious tenets without hesitation or hindrance.

COLOUR BAR

The other social disabilities to which the Indians had been subject were the result of white racialism against all coloured people. Though the position of Indians as a part of non-whites was the same in all the countries, in Africa the attitude to Indians is outrageous. The Paddison Deputation reported that 'in South Africa almost every white person is endowed with colour complex'.¹¹ This 'white' psychology is the product of a distorted historical antipathy and the peculiar ethnic composition. This has led to the gradual introduction of the colour bar into all spheres of life. The above Deputation gave an interesting account of certain general phases of this colour bar, as it operated in Natal and the Transvaal in particular. There had been separate counters for Europeans and non-Europeans in post and telegraph offices. Even in law courts, European and non-European visitors were separately accommodated. In trams, non-Europeans could use only a few back benches on top. On railway trains they could travel only in carriages reserved for them, and the accommodation provided was very limited and of

11. Confidential memorandum submitted by the Government of India Deputation to South Africa (1926), p. 2, para 5.

inferior quality. Hotels, cafes, and theatres would not as a rule admit Indians. The Deputation found in Pretoria that even licences issued to barbers specified the class of persons, coloured or non-coloured, whom the licensee could serve in the shop. In Durban the Deputation saw a notice issued by the Registrar of the Provincial Division of the Supreme Court requesting persons desiring to obtain court processes to send Europeans only for the purpose, as non-Europeans would not be attended to.¹²

The position was slightly better in the Cape Province. On the whole South Africa had become the furnace to forge and perfect the racial technique. This was demonstrated by the Durban racial riots in January and May 1949 in which about 150 were killed and 1,100 injured. In its Report published on 17 April 1949, the Durban Riots Inquiry Commission found that there were Europeans who actively incited the natives to deeds of violence against the Indians. Due to the contradictory findings the Report smacks of a political document rather than a judicial report. While condemning housing strongly for its bearing on the riots, the Report surprisingly stated that the type of native who took part in the riots was in general satisfied with the amenities he could enjoy. Again, while pointing out emphatically that one of the most unsettling influences on the native's mind was the fact that South Africa had a hostile press, the Report rejected the contention that anti-Indian political propaganda by the whites in South Africa was also the cause of the riots. It is significant that the Commission had disallowed cross-examination, without which the root causes of the riots could not be brought out and that for that reason both the African National Congress and the South African Indian Congress should have withdrawn from giving evidence. Commenting on the Report the *Cape Argus* wrote that it bore 'too many traces of the whitewash brush.'

To non-Europeans, Dr. Malan's *apartheid* has come to mean no vote, no land, no skilled jobs, no trading rights, no family allowances, no unemployment benefits, no school feeding, no passports and no inter-provincial movement.

In British Columbia there were instances of restaurants refusing to serve orientals, and theatres and cinemas restricting them to certain seats. Apart from stray racial incidents systematic colour bar in social life is fast disappearing in other countries under the pressure of progressive world opinion.

12. Vide Report of the Deputation of the Government of India to South Africa (1926), para 13.

CHAPTER VIII

POLITICAL STATUS

NATAL PARLIAMENTARY FRANCHISE

The grant of responsible government to Natal in 1893 was a signal for the incessant discrimination against the Indian for political and economic reasons. In 1894, in the first session of the first Parliament under responsible government, a drastic Bill was passed depriving Indians of parliamentary franchise, and despatched to the Imperial Government for sanction. But Joseph Chamberlain, Secretary of State for the Colonies, refused to advise Royal Assent. He wrote that he was proud that Indians had not merely franchise but should represent them in the House of Commons.¹ He also wrote that he could not allow legislation excluding the enjoyment of common rights by Indians on racial grounds. On his advice the Bill was modified letting the door open for the admission of Indians to the parliamentary franchise, as soon as India became a self-governing Dominion. So long as India continued under the direct administration of the Crown, the Governor of Natal was empowered to exempt those Indian settlers whose names were already on the Voters' Roll and who were otherwise qualified and competent from the provisions of this Act. Giving reasons for refusing sanction to the original Bill, Joseph Chamberlain wrote that the Bill 'involves in a common disability all natives of India without exception and provides no machinery by which an Indian can free himself from this disability whatever his intelligence, his education or his status in the country; and to assent to this measure would be to put an affront on the people of India such as no British Parliament could be a party to'.²

On 3 December 1943, Senator Clarkson said in his address to the Natal Municipal Association that Indians should be given representation on a common roll, based on property and educational qualifications, on municipal and provincial councils and in the Union Parliament.

In its Interim Report, the third Broome Commission, while making no recommendation on Indian enfranchisement, emphasized that the only practical basis was 'loaded franchise', *i.e.*, franchise

1. Waiz, *Indians Abroad Directory*, p. 478.

2. *Ibid*, Quoted on p. 479.

to Natal Indians on the common roll with Europeans, qualifications for registration of Indians being more stringent than in the case of Europeans so as to ensure a permanent European majority. The Indian request for adult suffrage was thus rejected and that for common roll accepted after rendering it unhelpful to Indians. Yet the Land Tenure and Indian Representation Act 1946 provided for communal franchise to Indians who are (a) Union nationals over 21 years, (b) have passed the sixth standard or equivalent and (c) either have an annual income of £84 or own immovable property of the minimum value of £250. Indians would be represented by two European members in the Senate and three European members in the House of Assembly. They could return two Indian members to the Natal Provincial Council but none to the Transvaal Provincial Council.

On 28 June 1949, the Union Minister of the Interior said that the repeal of Part II of the Asiatic Land Tenure and Indian Representation Act of 1946 which provided for a limited parliamentary franchise was the first step in the long-range policy of repatriation, for if Indians were accorded franchise it would amount to accepting them as a part of the permanent population. Accordingly in September 1949, Prime Minister Malan moved the Asiatic Land Tenure Amendment Bill, repealing Part II of the Act.

In view of the disturbed situation and Indian opposition to the entire Act, Part II was not proclaimed by Smuts before he went out of office and thus it never came into operation.

NATAL MUNICIPAL FRANCHISE

Notwithstanding the terms of the Disfranchisement Act VIII of 1896, the Indian owners and occupiers of ratable property in boroughs and townships continued to enjoy municipal franchise from 1872 by virtue of the Natal Law XIX of 1872. But in 1907 and 1908, attempts were made through the Municipal Corporations Bill to deprive Indians of municipal franchise, but the attempts proved abortive as the British Government declined to accept the Bill. Thus Indians continued to possess municipal franchise till the Natal Township Franchise Amendment Ordinance III of 1925 withdrew the privilege in respect of townships, as the Boroughs Ordinance XIX of 1924 did in respect of boroughs.

TOWNSHIPS FRANCHISE

Section 36 of the Act of Union provided for the retention of qualifications for enrolment upon a voters' roll in terms of the Natal Disfranchisement Act VIII of 1896 whose effect was to disfranchise Indians except those whose names had been lawfully enrolled prior

to the enforcement of the Act of 1896. Ordinance IV of 1911 sought to amend the laws relating to local townships and prescribe for enrolment upon a voters' roll for the Provincial Council the same qualifications as those for the Union House of Assembly, in terms of Sec. 71 of the South Africa Act. This was the amendment that was sought to be introduced, while the qualification for enrolment upon an electoral roll framed under the Charter of Natal, 1856, was of general application to Indians and Europeans alike irrespective of race or colour. Section 1 of Ordinance IV which was to replace Section 4 of Law XI of 1881 contravened Sec. 147 of the South Africa Act, for it affected the special interests of Indians already resident in the province by substituting a racial for a general qualification and thus dealing with a matter not within the competence of the Provincial Council and Administration. It was also similarly *ultra vires* of Sec. 85 of the South Africa Act which did not empower a Provincial Council to alter, amend or repeal a franchise qualification, such powers being restricted to the Union Government and Parliament. The Union Governor-General, therefore, withheld his assent as 'Clause I of the Ordinance deals with a matter which, in their (Union Ministers') opinion, would require legislation by the Parliament of the Union'.³ Subsequently Ordinance IV was re-enacted without Clause 1 to which objection had been taken.

Further amendment of the Law XI of 1881 was attempted in 1921 in a non-official measure to restrict the rights of Asians already on the electoral roll. The Governor-General held, with reference to Sec. 147 of the South Africa Act, that the Ordinance was *ultra vires* as it 'proposed to confer on the Executive Committee of the Province the power of exemption from the disqualification sought to be imposed by the Ordinance'.⁴ In 1922, the same Ordinance was again introduced substituting Governor-General-in-Council for Provincial Executive Committee as the authority empowered to grant such exemptions. But this alteration did not confer on the Governor-General-in-Council the right of granting exemptions as previously proposed and it vested the officer preparing the town roll with unfettered discretion and so the Government of India requested that Sec. 9 of Law XI of 1881 be amended so as to allow appeal to decide whether the applicant could read or write one of the official languages. This Ordinance was not proceeded with, and a new Ordinance was again introduced in 1924. The Union Governor-General wrote that the provisions of the new Ordinance were

3. C. D. 6283, p. 7.

4. Selection of papers (1925), p. 70, Colonial Office Despatch, dated 9 Mar. 1922.

of a much more drastic character' than those of the previous Ordinances, and that

a comparison between Clause 1 in both Ordinances will show that the simple education test incorporated in the 1923 Ordinance has been eliminated from the new Ordinance in favour of the much more exacting expedient of making the parliamentary voters' roll the basis of qualification for township franchise — a pretension which Ministers are not prepared to countenance.⁵

The Union Government's opposition to the Ordinance was aggravated to an even greater extent by the total omission of Clause IV of the 1923 Ordinance which retained for citizens upon whom township franchise had already been conferred the right to continue to vote in municipal elections.

Thus in March 1925, the Natal Township Franchise Amendment Ordinance III of 1925 was passed when the total number of Asian voters in the townships in 1922 was only 346, the number being negligible except at Stanger and Verulam. Clause 10 (II) (a) purported to disfranchise Indians already on the electoral roll of the townships. The Union Governor-General promised that steps would be taken to ensure that franchise rights of Indians then on the voters' roll of a township were adequately safeguarded.⁶ Ultimately as passed, the Ordinance disqualified from township franchise all those Indians who were not enrolled in a town roll on 1 January 1925, thus preventing Indians in future from acquiring the right to vote at elections for town boards and thereby depriving Indians of their only remaining franchise right.

BOROUGH FRANCHISE

Clause 13 of the Boroughs Ordinance XIX of 1924, so far as the enrolment of burgesses in future was concerned, made the parliamentary roll the basis for borough franchise, a position which the Union Ministers discountenanced in February 1924 as regards townships. Clause 5 of the Ordinance enabled any township constituted under Law XI of 1881 to be proclaimed a borough under certain conditions' that might easily be fulfilled. Thus Section 13 was brought into operation in all the municipalities in Natal. The Union Ministers reserved the Ordinance at first for further consideration as 'Sec. 13 sought to introduce legislation which had been embodied in a previous Ordinance, namely, the Townships

5. Confidential Despatch of the Union Governor-General, dated 13 February 1924.

6. *Ibid.* p. 194, Telegram of the Union Governor-General, dated 31 October 1925.

Franchise Ordinance which was not assented to when it was passed by the Provincial Council, Natal, in the previous session'.⁷ Section 13 had a proviso that those names which were on the municipal voters' roll on 1 August 1924 should retain their existing rights. The Union Governor-General wrote to the Secretary of State for the Colonies :

The passing of this Ordinance is the latest of the series of attempts which have been made by the Natal Provincial Council to impose disabilities on the Indian in the Province.⁸

Section 13 (1) provided that every person who was a holder of ratable property of the value of £50 or who occupied property of a rental value of £10 per annum might be enrolled as a burgess qualified to exercise the municipal vote subject at the same time to such persons being entitled to exercise the parliamentary franchise.

Indians were disfranchised by Act VIII of 1896 when Natal was independent and now, after the merger into the Union, the Natal Government had perhaps no right to build upon power that she enjoyed before. Moreover, Section 13 (1) presumed to legislate for the Union Parliament, in that the person qualified as a provincial voter was *ipso facto* qualified as a parliamentary voter. The conclusion of Clause B of the Sub-Section was to the effect that in view of the Ordinance coming into force on 1 August 1925, all Indians enrolling themselves between 1 July 1924 and 1 August 1925 should, on the date of promulgation, *ipso facto* cease to enjoy the franchise and automatically drop out of the burgesses roll. The Union Governor-General stated that he had assented to the Ordinance according to the Prime Minister's recommendation because 'he was reluctant to curtail in any way the powers of dealing with purely domestic questions conferred on the province by the South Africa Act. Only in the event of provincial legislation affecting the Union as a whole, or if the Union contemplated legislation dealing with the same subject,'⁹ was it justifiable to exercise the vetoing power.

In view of the clear terms of the Natal Disfranchisement Act which disentitled an Indian for registration as a parliamentary voter, he was *ipso facto* debarred, although otherwise qualified, to become a voter in a borough or township. The effect of the above Ordinances was to exclude for all time any fresh names

7. *Ibid.*, p. 88, Confidential telegram of the Union Governor-General, dated 8 September 1924.

8. *Ibid.*, p. 89, para 3, Confidential Despatch.

9. *Ibid.*, p. 92, Telegram, dated 15 December 1924.

of Indians being placed on the voters roll, regardless of his rights as the owner or renter of property. Although Indians were required to pay rates assessed by the municipalities and they conformed to laws applicable to them, yet they had no voice in municipal affairs. All canons of the British Constitution were violated by imposing taxation and excluding representation. The legality of provisions affecting the municipal franchise hitherto enjoyed was tested, but the Supreme Court of Natal in *S. W. Abraham vs. The Town Council of Durban* gave an adverse decision, and the Appellate Court of South Africa also unfortunately confirmed the decision.

Early in 1947, the Administrator of Natal grudgingly mooted proposals for municipal franchise for Indians, but they were allowed to be defeated by the implacable racial prejudices of the whites. Thus, though Indians owned £4 million worth of Durban property and paid taxes, they had no voice in its municipal affairs.

CAPE PROVINCE

In the Cape Province the crippling of Indian franchise rights was indirectly achieved by the Women's Enfranchisement Act of 1930 which conferred the right of franchise on all European women not less than 21 years of age. This Act for the first time created racial distinction in the Cape Province, where till then Indians were entitled to a vote on the common roll with the Europeans on the basis of (a) education and (b) occupation of property or income. Indians were, however, not allowed to stand as candidates themselves, they could only vote for European candidates. This Act increased the number of European voters in the Cape from 167,000 to 332,000 and the effect of 1,500 Indian voters was substantially reduced. Lastly, on the pretext of an anomaly between Natal and the Cape in men's and women's franchise, the South African Franchise Laws Amendment Ordinance of 1931 was passed extending to all adult male Europeans the right of vote for elections to the House of Assembly and all provincial councils in the Union of South Africa. Thus the political personality of the Indian in South Africa was gradually obliterated.

KENYA

The franchise is communal, Europeans, Indians and Arabs having separate electoral rolls. In 1946, there were 11 elected European members in the Legislative Council as against 5 Indians and 1 Arab. Africans had no franchise and so an African had been nominated to represent them. Thus out of a total of 38 members, 32 were Europeans, 5 Indians and 1 Arab. The composition of

the Executive Council, which had 8 members including an Indian in addition to the Governor, was changed in 1946 to include 10 Europeans in addition to the Governor, and only one Indian.

When Pakistan was established, Muslims demanded a separate electorate, which was strongly opposed by the East African Indian National Congress as the demand meant a division of the electorate on religious basis. At the time of the general elections in 1948, the Governor of Kenya decided that two of the five Indian seats should be reserved for Muslims. In March 1948, an Ordinance was issued reserving two seats for Muslims in two double-member constituencies each voter having one vote only. The voting was joint. The Ordinance giving effect to this decision was limited to the life of the present Legislative Council.

In 1931, the Kenya white settlers suggested to the Hilton-Young Commission, that immigrant communities (by which was meant themselves) should be associated with the executive side of government and that certain departments should, for this purpose, be placed under the control of Ministers. The Commission rejected the suggestion. In 1945, they revived the proposal in a new costume on the pretext of reorganizing the administrative machinery. On 25 July 1945, the Legislative Council accepted in principle the proposals which included the appointment of special members of the Executive Council to whom some of the departments now under the Chief Secretary would be transferred. The departments would thus be transferred to Executive Councillors, if not to Ministers. Indians opposed the transfer on the ground that the white settlers, whose interests would conflict with those of natives and Indians, would wield power though they constituted one p.c. of the total population and that the present scheme would be followed by their demand for a non-official majority in the Executive Council and conversion of Executive Councillors into Ministers.

UGANDA

In Uganda there is a Legislative Council which in 1946 had three African and two Indian nominated members. There was no Indian in the Executive Council. There was no political franchise for any racial group, all members being nominated, with equal representation for all. The Legislative Council was purely an advisory body. Indians have been demanding franchise based on education and property qualifications. Indians enjoyed municipal franchise and were eligible for membership of the municipal councils.

TANGANYIKA

Tanganyika is administered by a Governor who is assisted by an Executive Council which in 1946 comprised 3 *ex officio* members, 3 official members and 4 nominated non-official members of whom 1 was an Indian. The Legislative Council consisted of 13 official members and not more than 10 non-official members, of whom 3 were Indians, all nominated.

ZANZIBAR

Here the Legislative Council presided over by the Sultan comprised four *ex officio* and four official members and six non-official nominated members representing various communities of whom two were Indians. The British Resident presided over the Executive Council.

CLOSER UNION OF EAST AFRICA

On 11 December 1945, the Colonial Office announced proposals for inter-territorial organization in East Africa, as a basis for discussion. They provided for creation of an East African High Commission consisting of the three Governors of Kenya, Uganda and Tanganyika and a Central Legislative Assembly to operate common services between the three territories in order to secure more effective co-ordination of policy in economic development and research and enactment of common legislation. The proposed Central Legislative Assembly was empowered to legislate on defined subjects throughout the three territories. It was to consist of 12 official and 24 unofficial members, of whom there would be 6 representatives each of the European, African and Indian communities. While Indians were attracted by the equality of representation and expressed their approval, Europeans opposed the proposals. As a result of the visit to East Africa during July-August 1946 of Creech Jones, Under-Secretary of State for the Colonies, the British Government published revised proposals in 1947 as 'a basis for further discussion.'

The revised proposals for inter-territorial organization in East Africa were framed to provide a constitutional and juridical framework for the efficient administration of specified departments and services which are in fact and by their nature inter-territorial. For the administration of the scheduled services, it was proposed to establish (a) an East African High Commission consisting of the officers administering the Governments of Kenya, Uganda and Tanganyika, to administer the scheduled services with the usual powers of a colonial government, (b) an East African Central Assembly, and (c) an executive organization supported by inter-

territorial advisory and consultative bodies. The High Commission is empowered to enact legislation applying to East Africa as a whole (a) with the advice and consent of each of the three Legislative Councils or (b) on certain specified subjects with the advice and consent of the Central Assembly and to operate a fund to defray the expenses of non-self-contained services directed by the High Commission. The Central Assembly is empowered to consider revenue and expenditure and to approve estimates subject to certain conditions, to consider matters dealing with the scheduled services and to legislate on specified subjects. Legislation intended to apply throughout Kenya, Uganda and Tanganyika would necessitate inter-territorial agreement at government level. These proposals abandoned the principles of equality of racial representation on the unofficial side of the Central Legislative Assembly and proposed instead equality of territorial representation. While under the original proposals there would be six Indian members, two from each territory, elected by the unofficial Indian members of the territorial Legislative Councils, under the revised proposals, the officers administering the governments of the three territories have been each empowered to appoint one Indian unofficial member. Thus as against the two Indians to be elected by each territorial legislature under the original proposals, now one is to be appointed by the officer administering each territory. So the number of Indians was reduced from two to one and the democratic principle of election has been substituted by the outmoded principle of nomination. Under the revised proposals the unofficial members of the Legislative Council of each of the three territories concerned would, voting as a whole, elect one member from among their number. Except in Uganda, where an African or an Indian might be elected under this arrangement, it is likely to result in the election of two European non-officials from the other territories. While under the old proposals, only the Central Legislative Assembly could enact legislation, the revised proposals provide two other methods: (a) the High Commissioner may legislate with the advice and consent of each of the three Legislative Councils and (b) any appropriate member of the High Commission establishment may, after reference to the Advisory Board concerned, make subsidiary legislation in the form of statutory rules or otherwise, only any regulations imposing fees, charges or penalties requiring the covering approval of the High Commission. Such additional methods of legislation without proper Indian representation are likely to injure the Indian interests. The Government of India has urged modification of the proposals so as to ensure their safety.

The history of this sinister scheme dates back to 1927 when the Hilton-Young Commission was appointed by L. S. Amery, Secretary of State for the Colonies, to make recommendations as to whether, either by federation or some other form of closer union, more effective co-operation between the governments in Central and East Africa might be secured, particularly in regard to transport and communications, customs, tariffs and administration, scientific research and defence. The conclusion of the Commission was: 'While it is wise to avoid forcing premature unification in any particular sphere of Government it is important to create machinery which will provide the possibility for advancing towards unification *step by step*, taking each step *in due course when the proper time for it has arrived*'. (Italics ours). The Commission affirmed that 'any union with Kenya would be most unpopular' and Sir Donald Cameron, Governor of Tanganyika, opposed the scheme on the ground that the morbid racialism of Kenya would infect Uganda and Tanganyika and seriously jeopardize the existing condition of Asians and Africans therein. When it was pointed out to him that the Hilton-Young scheme provided not for a political union but for the consideration and control of the economic services, he replied. 'That in my opinion is a cloak which has covered a multitude of sins'. These arrangements advanced in 1931 are rendered more powerful by the tragic experience of non-whites. The new proposals contain the same wine of L. S. Amery, though the bottles are of the Labour Government. They explain that 'no political union is involved'! But this is only according to plan—the sage counsel of the Hilton-Young Commission 'step by step'. There will be the fateful political union '*in due course when the proper time for it has arrived*.' (Italics ours).

The scheme for inter-territorial organization was brought into effect on 1 January 1948. The scheme does not involve political union or fusion of the existing governments of the three territories. Sir Geoffry Northcote, former Governor of Hongkong and now resident in Kenya, was elected Speaker of the Central Assembly. Yet it is feared that the High Commissioner's powers and duties could lead to a *de facto* political union and that Tanganyika, a British Trust territory, would become a mere province in the organization.

CLOSER UNION OF SOUTHERN RHODESIA WITH NORTHERN RHODESIA AND NYASALAND

A Royal Commission was appointed in 1938 to inquire into the question of closer association between the two Rhodesias and

Nyasaland. The Commission referred to the primary concern of Asians that while at present there were no restrictions, on their entry into Northern Rhodesia and Nyasaland, closer union of these territories with Southern Rhodesia might result in the extension of the Southern Rhodesian restrictions on Asian immigration to the other two territories.

On 18 October 1944, the British Government announced their proposal to set up a permanent standing Central African Council and a permanent Inter-Territorial Secretariat for the three territories. The Council was constituted on 31 March 1945, and held its first meeting in Salisbury on 24 April. Its general function was to promote the closest contact and co-operation between the three governments and their administrative and technical services. The Governor of Southern Rhodesia was the Chairman of the Council while the Governors of Northern Rhodesia and Nyasaland and the Prime Minister of Southern Rhodesia were *ex-officio* members. The Governors of Northern Rhodesia and Nyasaland and the Prime Minister of Southern Rhodesia would appoint three members each. The Southern Rhodesia Government still adhered to their suggestion for amalgamation of the territories, but His Majesty's Government came to the conclusion that such amalgamation under the existing circumstances was not practicable and that the present plan would contribute to the prosperity of the colonies by facilitating closer contact and co-operation between them.

PAN-AFRICAN MOVEMENT

Some sections of Europeans in Africa have been urging for some time for a Pan-African Federation of the Southern, Eastern and Central African territories to achieve 'closer relationship, better co-operation and larger collaboration'. In May 1943, the Parliament of Southern Rhodesia adopted a motion urging the government to approach the Government of the Union of South Africa to arrange a Pan-African Conference of governments for the purpose of co-ordinating the development of South and Central Africa. In January 1945, the Kenya Legislative Council passed by 11 votes to 7 a motion moved by the leader of the European elected members therein, calling on the British Government to invite the South African Prime Minister to arrange immediately a conference for planning and co-ordinating the development of British territories in Southern, Central and Eastern Africa. Indian members opposed the motion, for any affiliation with South Africa would lead to the extension of its virulent anti-Asian policy to the other territories as well. The Arab member and one African member too opposed it. The gov-

ernment members did not speak or vote, but the Governor made it clear that they would be exceedingly happy to participate, if invited, in any such conference.

CEYLON

An Order-in-Council of 1920 reconstituted the Ceylon Legislative Council with 14 official and 23 unofficial members under the Governor's presidentship. Indians were accorded one nominated seat on the communal basis in a Council of 38, though they constituted one-sixth of the total population. In December 1921, therefore, Indians demanded four elected members. But the ambition of the low-country Sinhalese ever since 1920, when for the first time officials were placed in a substantial minority of nine and provision was made for 16 elected seats out of the 23 unofficial, had been to capture and control political power. In December 1920, they demanded the abolition of residential qualification incorporated in the Order-in-Council of 1920 and expressed themselves in favour of reduction from one year to six months the qualifying period for a voter, and of extension of the franchise by the lowering of the property and income qualifications. They demanded so because this widening of the electoral base would not operate in favour of Indians who were to be nominated on a communal basis. They also tabled motions for the redistribution of territorial seats to increase the low-country seats by reducing the seats of other provinces and also by reducing the number of official members. A resolution was moved in the Legislative Council in March 1923 to the effect that the three non-officials of the Executive Council should be selected from the territorially elected members of the Legislative Council and should be Ministers with portfolios.

The Ceylon (Legislative Council) Order-in-Council of December 1923, with minor amending Order-in-Council of March 1924, provided for 37 unofficial members, of whom 34 were to be elected. Of these 34, only two were to be Indians elected on a communal basis. Under the 1923 proposals, Ceylon progressed from an unofficial majority of 23 with 32 Ceylonese members in a Council of 47 to an elected majority and to an increase from 11 to 21 in territorial constituencies. In the General Elections of 1923, all the territorial constituencies except one were captured by the Ceylon National Congress (political organization of the Sinhalese). Thus the Sinhalese who professed opposition to the communal electorates as being detrimental to Ceylon's national interests, changed the territorial electorates into communal ones — all territorial constituencies being transformed into Sinhalese ones

Though Indians had been given two elected seats, since one of the qualifying conditions was that the voter should have known either English or Tamil, the wealthy and influential Gujerathee, Khoja and Memon merchants from Bombay and the numerous and prosperous Malayalees were deprived of their votes.

The Sinhalese began to agitate for further constitutional privileges and responsible government. The Donoughmore Commission which was appointed to inquire into the question of reform of the Constitution of Ceylon stated that, in view of the backward character of social and industrial legislation in Ceylon, the extension of franchise was more urgent than responsible government.¹⁰ They, therefore, recommended adult suffrage so as to increase the electorate from 204,997 to 1,200,000. The adult franchise was to be subject to five years residential qualification (allowing for temporary absences not exceeding eight months in all during the five-year period) and registration should be restricted to those who applied for it, the method of application being definitely laid down and widely published.¹¹ These conditions were stipulated in order to confine the voting privilege to those having an abiding interest in the country and to subject actual voting strength to a gradual, instead of an immediate, increase to the maximum of 12 lakhs. As regards the retention of the two Indian seats on a communal basis, the Commission felt it unnecessary to retain them on the ground that, should Indians be represented, the British planters would naturally regard their relationship with their estate workers chiefly from the industrial point of view, while the Ceylonese members of the Legislative Council would not feel any great responsibility for Indians who would have their own representation.¹² The second consideration that weighed with the Commission was the considerable diversity of opinion expressed on the question whether the two Indian representatives had been able to secure improvement in the conditions of work on the estates. Thirdly, under the changes recommended in respect of franchise, a considerable number of Indian labourers would become entitled to a voice in the election of a territorial representative. Presuming that this would secure a more effective expression of grievances, they recommended the abolition of the two communal seats for Indians.

10. Report of the Special Commission on the Ceylon Constitution (Donoughmore Commission Report), 1928, p. 83.

11. *Ibid.*, p. 88.

12. *Ibid.*, p. 96.

The Sinhalese feared that adult universal suffrage as recommended by the Donoughmore Commission would enfranchise a large number of Indian labourers and so the Sinhalese unofficial members of the old Legislative Council got a motion passed, by a small majority of three, introducing the literacy test.¹³ The Sinhalese at first wanted to reject the Donoughmore proposals but, seeing that the grant of universal suffrage would give power to the majority community, accepted them in December 1929 by a bare majority of two, while protesting against the grant of universal franchise to Indians. They made some more proposals to the Governor calculated to strengthen their position and to whittle down the strength of the Indian voting. The Governor now stated that some additional restriction on Indian enfranchisement was necessary besides the test of five years residence as, in his opinion, the future relations between the Ceylonese and Indians would otherwise be embittered.¹⁴ So he stated that for the undomiciled (including any whose domicile in the Island might be in doubt) he would substitute a choice between two alternative qualifications in lieu of domicile: firstly, compliance with the franchise conditions of the Constitution then in force in respect of literacy, possession of property or income, as specified in Article XXVI (1) (h) of the Order-in-Council 1923, which provided for the enfranchisement of most of the British Indians engaged in commerce or professions and practically all European residents of British nationality; secondly, the production of a certificate of permanent settlement granted by some duly appointed officer, the conditions for grant being five years residence besides the intention to settle down therein and the readiness to renounce any claim to special protection by any other government.¹⁵ The Donoughmore scheme was substantially modified, particularly in regard to the franchise proposal, by the Ceylon (State Council Elections) Order-in-Council of 1931 which embodied several of the Governor's proposals. Under this Order, the Indian franchise was of three types. One was determined by an income and literacy qualification (Clause 8); the second by a Ceylon domicile, and in the case of an acquired domicile, residence in Ceylon for a minimum period of five years (Clause 7); and the third by the possession of a certificate of permanent settlement conditioned on residence in the Island for a minimum period of five years

13. Despatches Relating to the Ceylon Constitution, 1929. Sessional Paper XXXIV, p. 11, Governor's Despatch, dated 2 June 1929.

14. *Ibid.*, p. 14, para 35.

15. *Ibid.*, p. 13.

(Clause 9). The important recommendation of the Commission regarding the universal enfranchisement of every man or woman of 21 years and above with five years residential qualification irrespective of literacy and property qualifications was materially modified by the Order-in-Council, and 75 p.c. of Indians were debarred as voters under Cl. (g) which required qualifications which, a vast majority of estate labourers did not possess, *i.e.*, an income of Rs. 600 per year, or ownership of immovable property worth Rs. 15,000 or occupation of any house with an annual rental varying from Rs. 200 to Rs. 400. Further, to secure voting rights, they had either to declare themselves as Ceylon domiciled as per Cl. (g) (1) or obtain a certificate of permanent settlement as per Cl. (g) (3), to obtain which again there was a three-fold condition. When the constituencies were delimited in 1931, a deliberate attempt was made to materially reduce the massed strengths of the Indian community in provinces like the Central and Sabaragamuwa.

To further prevent Indians from getting registered even under the Draconian domicile test, the Ceylonese Ministry demanded that Indians should pay poll tax, or road tax and that Indians who were on the State Council register should be compelled to pay the village committee tax. This demand was later withdrawn as the Minister of Agriculture opposed it on the ground that if they paid the village committee tax they would claim the right for lands in the villages.

Later, the Sinhalese began to demand the Cabinet form of administration in place of the committee system. Indians generally objected to its introduction without adequate guarantee for protection of their rights under such a homogeneous form of government. In 1938, the Governor made certain proposals for the reform of the Ceylonese Constitution and between March and July 1939 there were 31 motions on the recommendations of the Governor. The amendment moved by an Indian member that the prescribed qualifications for vote based on a complex and unworkable domicile test should be replaced by a simple test of five years residence as recommended by the Donoughmore Commission was negatived by 26 votes to 7.¹⁶ Another resolution was passed to appoint a committee to consider and advise changes in electoral areas to afford more chances to the candidates of minority communities and to secure adequate representation of the Kandyan rural interests. Indians contended that Indian labour interests had never in fact swamped the Kandyan rural interests,

16. Report of the Indian Agent for 1939, p. 30, para 56.

for out of 21 constituencies in Kandyan areas only 2 had returned Indian candidates.¹⁷ The amendment of Indians to reserve 8 seats out of 68 for Indians was negatived by 37 votes to 5.

On 26 May 1943, the British Government made a declaration regarding the constitutional reforms for Ceylon. They undertook to examine through a Commission or a conference any scheme which might be formulated by the Ministers of full responsible government under the Crown in all matters of internal civil administration and approved by three-fourths of the Ceylonese State Council. The Reserved Bills in the Royal Instruction, it was added, would include Bills which 'evoked serious opposition by any racial or religious minority and in the Governor's opinion, are likely to involve oppression or unfairness to any community.' Placing a unilateral interpretation on some parts of the declaration, the Ceylon Board of Ministers drafted a constitution *in camera* excluding the minorities and the public from their confidence. Without placing the draft for discussion before the State Council, the Ministers sent it to the Secretary of State for the Colonies in February 1944 requesting that it should be examined as to whether it had incorporated in a suitable form the limitations prescribed in the declaration. They also made an urgent request that it should be considered earlier than after the end of the war, as originally contemplated. Acceding to this request His Majesty's Government announced on 5 July 1944 its decision to send a Commission to Ceylon before the end of the year to examine the Ministers' proposals and provide full opportunity for consultation to take place with various communities. This provision led to the withdrawal of the scheme by the Board of Ministers who also declared non-co-operation with the Commission.

What was the motive behind this attitude? The Ministers' draft left important matters like representation in the proposed Ceylonese Parliament to be negotiated later on, and if there was no agreement, to be referred to a special commission. It was their intention that the Commission should only examine their scheme and not have anything to do with others. They wanted to get His Majesty's Government committed to their whole scheme so that they might place it before the State Council as a *fait accompli* for acceptance by the stipulated three-fourths majority. They refused to publish their scheme along with the related correspondence.

Indians protested against this attitude. The White Paper published in Ceylon revealed that there was a dissentient voice even in the Board of Ministers. The Minister for Home Affairs

17. *Ibid.*

expressed disagreement with the proposal about representation and suggested that this controversial question should be settled by a Royal Commission.

Later the Ministers took a more reasonable view. They tabled the draft Constitution in the State Council on 12 September 1944. A unicameral parliament of 100 members was proposed to be elected through general constituencies. Weightage was to be given to the minorities by allocating seats on the basis of both area and population. Franchise was deliberately left in suspense. On top of all came the reservation of Defence and External Affairs to be the special concern of the Governor-General and it was not indicated how this concern was to be exercised in the legislative and executive spheres. Indians wondered if all this display of wounded pride was necessary for this inglorious result. Indians in Ceylon supported the Ceylonese claim to frame their Constitution without playing a petitioner before a British Reforms Commission. They however felt that a grievous error had been committed by the Ministers in bartering away the vital national rights in the fields of Defence and External Affairs to purchase imperialist support in their anxiety to restrict Indian franchise and citizenship rights.

The Soulbury Commission arrived in Ceylon in December 1944. In the meantime responsible Ceylonese leaders began to spread the impression that the Government of India wanted the Indian question to be held over till after the war and that therefore the Commission need not consider the question of the status of Indians. In order to preclude any possible misapprehensions in this regard, the Government of India conveyed to the Government of Ceylon their readiness to resume negotiations at any time, if the latter were agreeable to the proposal.

On 9 March 1945 the Ceylon Indian Congress submitted a memorandum to the Soulbury Commission embodying a five-fold demand on the franchise, citizenship, representation, re-entry and immigration questions. They demanded that adult franchise should be accorded to them absolutely on a par with the rest of the people of Ceylon. Every British adult subject resident in an electoral district for six months should have a vote. Secondly, equal citizenship rights should be given for those who had resided in Ceylon for five years and would give a declaration of intention of adopting Ceylon as their home. Thirdly, as Indians constituted nearly 16 p.c. of the total population, the constituencies should be so delimited as to ensure the return of 15 Indians to the legislature. Joint electorates were also favoured. Regarding the Executive, the Council of Ministers should be composite so that the distri-

bution of executive powers might neutralize any attempts at communal domination.

The Report of the Commission was released for publication on 9 October 1945. The decisions of the Secretary of State for the Colonies based on the Commission's recommendations were announced in a White Paper on 31 October 1945. On 9 November, the Ceylon State Council accepted the decisions by 51 votes to 3, two Indian members voting against them.

Regarding franchise, the Commission expressed the opinion that it should be within the competence of the Government of Ceylon 'to determine the conditions under which the inhabitants of Ceylon may acquire the franchise'. The Commission admitted that the number of Indians registered as voters under the existing rigorous tests had dwindled from 225,000 in 1939 to 168,000 in 1943. The Commission has also left the question of citizenship to the future Ceylonese Government. With regard to the question of representation the Commission expressed the hope that through delimitation of the constituencies, Indians could be facilitated to return, in proportion to their population, 14 Indian representatives to the proposed House of Representatives of 101 members. In the existing State Council Indians secured only 2 seats, although on the proportional basis they should have obtained 9 out of the 59 seats. Hence they felt that the achievement of this hope would depend on how the Delimitation Commission would do its work and the way its ideas would be put into effect. It must be remembered in this connexion that the Indian request was not for any special rights or weightage or reservation of seats but only for proportional justice, which is their due. On 1 July 1946, Indians submitted their case before the Delimitation Commission for multiple constituencies to return at least 12 Indians to the House of Representatives as envisaged in the Soulbury Report. Section 37 (1) (f) of the Ceylon (Constitution) Order-in-Council 1946 states that, subject to the provisions of Sub-section (2) of this Section, the Governor shall reserve for the signification of His Majesty's pleasure any Bill which in his opinion 'contains any provision which has evoked serious opposition by any racial or religious community and which is likely to involve oppression or serious injustice to any such community'.

Section 37 (2) (b) states that nothing in Sub-section (1) of this Section shall be deemed to require the Governor to reserve for His Majesty's assent any Bill to which the Governor has been authorized by His Majesty to assent or any Bill which in the opinion of the Governor falls within any of the following classes, 'any Bill relating solely to the prohibition or restriction of immi-

gration into the Island and not containing any provision relating to the re-entry into the Island of persons normally resident in the Island at the date of the passing of such Bill, which in the opinion of the Governor is unfair or unreasonable.' To express their dissatisfaction with the new Constitution the Ceylon Indian Congress declared a *hartal* on 12 February 1947.

The first general elections under the new Constitution were held in September 1947. The United National Party of the Sinhalese Ministers emerged as the largest single party in the House with 42 out of 101 seats. Exactly as apprehended only seven Indians were returned. The Senanayake Ministry was sworn in on 26 September. No Indian was included in the new Cabinet. On 4 February 1948, Ceylon became a Dominion.

The Indian political position, suffered gradually with the stipulation for progressively drastic qualifications. Under the 1923 Constitution, Indians with six months residence in the respective electoral districts had, on a footing of equality with the rest of the population, a vote in the territorial electorate as well as the additional right to elect two communal members in an all-Ceylon Indian electorate. The Donoughmore recommendation for a qualification of five years residence in Ceylon for Indians who did not come under the literacy-cum-property or income qualification was also accepted by Indians as a practical test of abiding interest though it constituted a fresh hardship. The subsequent political manoeuvres led to further restriction of the qualification with the result that, apart from the literacy and property qualifications, the other qualifications demanded were Ceylonese domicile or the production of a certificate of permanent settlement in Ceylon both based on five years residence.

These restrictions were further tightened under the Indo-Ceylon Joint Report, October 1941, which stated that the 1931 Order-in-Council should be amended so as to provide for the suggested alterations. As was done in the case of re-entry, applications for quotas etc., various classes of Indians were to be created for the purpose of franchise.

The difficulties involved in the prescription of domicile test in regard to a huge mass of illiterate labourers had been fully realized by all responsible authorities. The Secretary of State for the Colonies writing on the Donoughmore proposals observed :

The definition of 'domicile' involves legal questions of much difficulty and complexity and the qualification would hardly be suitable, if it stood by itself.¹⁸

18. Sessional Paper XXXIV, October 1929, p. 24, para 10, Despatch dated 10 October 1929.

The practical difficulties in the application of Clause 7 of the Order-in-Council mentioning domicile of origin was often the subject of consideration of the Government of Ceylon. Reporting on the general election to the State Council of 1936, F. C. Gimson stated :

Prior to the recent amendment of the Order-in-Council, an Indian labourer who forwarded an application for registration as a voter on the ground of domicile might be reasonably assumed to have given *prima facie* grounds for believing that he had acquired a Ceylonese domicile. The registration by Government of voters qualified by domicile had dispensed with the necessity of the forwarding of an application, and it was the duty of those responsible for the compilation of the registers to decide on the question of domicile of any Indian labourer. There are roughly a million Indian labourers in Ceylon and it is clearly impossible for the domicile of every one of these over the age of 21 to be made the subject of inquiry. Government therefore will have to consider seriously its attitude towards the registration of this large Indian population.¹⁹

A Select Committee of the State Council on Election Law and Procedure reported in September 1938 as follows :

The inquiry into the domicile of any person involves investigation into his future intention as regards his place of residence. In view of the very large number of Indian estate labourers, such an inquiry in their case is almost an impossible task.²⁰

The Registering Officers themselves were to be tutored in the procedure and law relating to domicile. In the Interim Report on the Revision of Electoral Registers 1940 with particular reference to first registration of Indians under the domicile qualification, the Legal Secretary has drawn attention to the main features which distinguished the procedure prescribed for 1940 for registration of Indians under the domicile qualifications from the procedure followed in previous years and to instructions given to the Registering Officers.²¹ The Report shows that out of 66,200 Indians in the preliminary lists, 43,900 were orally examined and of these 19,900 were finally registered.²² The Legal Secretary stated that of the number of Indians in electoral districts other than Colombo, whose

19. Sessional Paper VIII, 1937.

20. Sessional Paper XIV (Report of the Select Committee on Election Law and Procedure) 1938, pp. 6-7.

21. Revision of Electoral Registers 1940: Interim Report by the Legal Secretary with particular reference to first Registration of Indians under the Domicile Qualification, 1941, p. 2, para 4(1) and (2).

22. *Ibid.*, p. 3, para 5 (1).

names appeared in the preliminary lists, 41 p.c. of the males and 42.5 p.c. of the females did not appear before a Registering Officer for oral examination.²³ Among the reasons given by Registering Officers for such non-appearance were (a) lack of interest; (b) lack of knowledge of the purpose of the inquiry; (c) apprehension as to real purpose of the inquiry and fear of the consequences of attendance; (d) journey involved; and (e) loss of a day's pay where attendance involved absence from work. Again, of the number of Indians orally examined 42 p.c. of the males and 52 p.c. of the females were registered and the remainder were refused registration. While it is true that registration was refused in a small number of cases for the reason that the person had not attained 21 years age or did not fulfil the conditions in regard to residence, registration was refused in the great majority of cases for the reason that intention to make Ceylon a permanent home was not established. In Colombo (north, central, and south) approximately 82 p.c. of refusals to register related to men whose families lived abroad and whom they visited at fairly regular intervals; the number involved was approximately 6,900; almost all such persons stated their intention to settle indefinitely in Ceylon but registration was refused.

(4) Some Registration Officers in electoral districts other than Colombo reported that the number of Indians in the preliminary lists who were born in Ceylon was, in their opinion, surprisingly large; it is probably safe to say that at least 80 p.c. of those whose names appeared in the preliminary lists of electoral districts other than Colombo were either born in Ceylon or had resided in Ceylon for at least ten years.²⁴

Apart from the complexity and uncertainty of the domicile test, another important point is that the question of domicile of origin will arise after a lapse of 21 years. To expect an Indian to prove then that either or both of his parents were born in Ceylon is unjust, for it is quite probable that the father might be dead, and it would be almost impossible to find out whether he regarded India or Ceylon as his home at the time of his birth. Or it may be that the records which could be adduced as evidence might be difficult to procure and such proof as was adduced might not satisfy the Registering Officer. It is quite likely also that these investigations might extend to one or more weeks in each case for which the labourers dependent entirely on their wages could not afford to wait.

23. *Ibid.*, p. 3, para 5 (2).

24. *Ibid.*, p. 3, para 5 (3).

If thus the domicile of origin is difficult to prove, it is no less difficult to secure domicile of choice through a court according to rules of English law. It must be noted in this connexion that most of those who were entitled to obtain either the domicile of origin or the domicile of choice were Indian labourers who had lived there for one or two generations or even more, and in most cases they were born in Ceylon or had resided in Ceylon for at least 10 years as mentioned by the Legal Secretary. If the difficulties in getting estate labourers to appear before a Registering Officer for oral examination had been such as were detailed above by the Legal Secretary, it is easy to imagine the difficulties in establishing domicile in a court of law. Whatever administrative arrangements might be made to facilitate the establishment of such domicile as cheaply and readily as possible, only a very microscopic percentage of those entitled to be regarded as possessing domicile of choice would really be able to establish it in the manner prescribed.

The Report of the Select Committee on Election Law and Procedure which investigated the question of qualification for Indian voters says :

There can possibly be no difference between permanent settlement and domicile and a person who possesses a certificate of permanent settlement must necessarily be a person domiciled in Ceylon ; thus every person who is entitled to registration under Article 9 is also qualified for registration under Article 7.²⁵

In the previous paragraphs, the Committee states that Article 7

applies to all those who have a domicile of origin as well as those who have acquired a domicile of choice, provided that no person shall be regarded as qualified for registration on the ground of an acquired domicile unless he has resided in the Island at least 5 years.²⁶

It was the theoretical defect in the law as also the practical difficulty of its application that compelled the Select Committee to recommend that Article 7 be amended so as to apply only to those who had a domicile of origin.

In his memorandum submitted to the Delimitation Commission in 1945, the Indian Agent affirmed that, out of every 100 Indians resident on Ceylonese estates, only 20 had found their way to the electoral register while for a similar group of 100 of the non-estate (Ceylonese) population, 45 were registered as voters. Thus a group of the non-Indian population had roughly 2½ times the voting

25. Sessional Paper XIV (1938), p. 6, para 9.

26. *Ibid.*

strength of an equal group of Indians. Hence it is but fair that in any review of the number of seats on purely numerical basis, the claim of Indians should rest on *voting* strength and not on *numerical* strength. The Delimitation Commission rejected this viewpoint but agreed to take into account, in connexion with the demarcation of electoral districts, not merely their population figures but their voting strength (para 61). The Commission stated that the delimitation effected by them would secure to Indians a majority of votes in 7 electoral districts (Nuwara Eliya, Talawakelle, Kotagala, Nawalapitiya, Maskeliya, Badulla, Haputale) with a fair chance of returning one member in the three-member constituency (Colombo Central) and with a strong voice in two other electoral districts (Maturata and Balagoda). While this was the actual position, the exponents of the Ministers' draft proposals for the reform of the Constitution had earlier stated before the Soulbury Commission that the scheme of territorial representation with weightage of area proposed by the Ministers would result in 58 seats for the Sinhalese, 15 for Ceylon Tamils, 14 for Indians and 8 for the Muslims. Even the above expectation of the Delimitation Commission should be considered subject to the warning sounded by the Soulbury Commission thus :

If anything in the nature of a harsh or restrictive policy regarding the enfranchisement of Indian unskilled labour were pursued the basis of minority representation in the new legislature would be materially affected and the number of representatives to protect the interests of Indian labour seriously diminished.

Along with the Constitutional Order-in-Council 1946, the Ceylon (Electoral Register) Special Provisions Order-in-Council 1946 was also published on 17 May 1946, which introduced no changes in the existing qualifications of voters. Indians in Ceylon of either sex and over 21 years of age could become voters (a) if they could satisfy the Registering Officer that they were British subjects domiciled in Ceylon or (b) if they were literate and possessed certain property or income qualifications (*e.g.*, an income of Rs. 600 a year) or (c) if they possessed a certificate of permanent settlement duly obtained. Indians in Ceylon did not favour obtaining certificates of permanent settlement and very few among the labourers were eligible under the literacy-cum-property qualification. Hence such of the Indians, especially estate workers, as had been put on the electoral registers were registered under the domicile qualification. The Order-in-Council advanced the commencement of the usual annual revision of electoral registers from 1 August to 22 May and to further arrest the revision at the stage

of the preliminary registers. The Ceylon (Parliamentary Elections) Order-in-Council 1946 laid down the same qualifications for electors as in the earlier Order-in-Council.

After the official visit of the Prime Minister of Ceylon to Delhi in December 1947 for discussions with Prime Minister Nehru and protracted correspondence on the citizenship rights for Indians, the Indian and Pakistan Residents (Citizenship) Act was passed in August 1948 for the purpose of 'making provision for granting the status of a citizen of Ceylon by registration to Indians who have the qualification of past residence in Ceylon for a certain minimum period.' The Act abandons the usual tests of citizenship like birth and domicile and provides for two classes of citizens — by descent and by registration. A person might acquire citizenship by descent if his father or his paternal grandfather or paternal great-grandfather were born in Ceylon. Besides he must have been born before the appointed date to be fixed later. Only Sinhalese could acquire citizenship by descent and though Indians had spent their lifetime in Ceylon, they had been debarred. In regard to citizenship by registration, the Bill *inter alia* provides that unmarried Indian residents who have lived in Ceylon for ten years and married persons who have lived in Ceylon for seven years immediately prior to 1 January 1946 will be given the status of a citizen of Ceylon. Citizenship by registration constitutes an inferior class as it does not confer full citizenship rights. Registration is granted to 25 persons only for services rendered in any one year and the decision of the Minister concerned is final and shall not be tested in a court of law. There is an impression that actually the registration provision was meant to facilitate the acquisition of citizenship by Sinhalese abroad who wish to return to Ceylon. The stipulated period of seven to ten years of continuous residence in Ceylon for the purpose of registration is too heavy. Ceylon rejected the Indian suggestion that the period of seven years be fixed for both married and unmarried Indians. A person asking for citizenship should have such means of livelihood that he can maintain himself and his dependants. Hence Indians who went to Ceylon after 1938 will not be able to acquire citizenship, whatever the period of their stay there. Absence from Ceylon exceeding one year also entails a break in this continuous residence. The Government of India suggested that no person employed, though temporarily unemployed but employable, should be precluded from citizenship and any condition that the applicant should have adequate means of livelihood to support himself and his family be avoided as it might be so interpreted as to prevent Indian workers on the estates, however long their residence, from acquiring

citizenship. The Government of Ceylon argued that as the application for acquiring citizenship could be made within the first two years, those who would be unemployed only for a temporary period could not be affected. Exclusion from citizenship on the basis of means of living of those now retired from active work but continue to live in Ceylon means also exclusion of their minor children from citizenship.

Further, a person wishing to acquire citizenship should be able to show that he has lived in Ceylon with his wife and all his minor children, for even if one of the minor children lived outside Ceylon, he cannot claim citizenship. There is another stipulation that the candidate must show that he has the capacity to conform to the laws of Ceylon. According to the laws in Ceylon, one cannot marry his sister's daughter. There are also Indians who have more than one wife. Indians, therefore, apprehend that their applications may be rejected on the pretext of their peculiar social customs. It is rather difficult to produce evidence that will satisfy such stipulations.

The Government of India made it clear that it was not their intention to advocate the continuance of polygamy among those admitted to Ceylon citizenship and agreed that it was within the competence of the Government of Ceylon to regulate such social matters of citizens of Ceylon in future. The Indian Government, however, felt constrained to add that it would be unfair to consider past marriages as disqualification for citizenship on the ground that they would be polygamous or within the prohibited degrees if they had been contracted in Ceylon. The Government of India therefore suggested an amendment of this provision as follows :

The applicant should declare that he understands that on being admitted to Ceylon citizenship he will cease to be an Indian citizen. He should take an oath of allegiance to Ceylon in a prescribed manner on being admitted to such citizenship.

The Ceylon Government, however, could not accept it and expressed their inability to agree to any compromise on the question of marriages which were unlawful according to Ceylon law.

Prime Minister Nehru asked for an assurance from the Government of Ceylon that there would be no discrimination, either legislative or administrative, between citizens by descent and citizens by registration. Yet the Act makes a distinction between the two classes to the detriment of Indians. Firstly, Section 11 (1) (b) (iii) makes no provision for the wife of a citizen by registration to become a citizen, although the Act provides for registration of the wife of a citizen by descent. Secondly, Section 20 (1) requires the minor children of a registered citizen to take certain steps

to retain Ceylon citizenship while the children of a citizen by descent are not subject to any such requirement. The Act also makes a meaningless difference between children of the same parents born before and after the appointed date, *i.e.*, the date on which the Act comes into force and also between children born before one becomes a citizen and those born thereafter. Sections 21 and 22 which provide for loss of citizenship go much further than the corresponding provisions of the British Nationality and Status of Aliens Act, 1914. Also, in respect of distribution of land under the Land Development Ordinance, engaging in fishing operations under the Fisheries Ordinance and granting of licences for plying lorries and buses under the Omnibus Licensing Ordinance, Indians continue to suffer from legislative and administrative discrimination. The Ceylon Government replied that the difference between the two kinds of citizenship related only to the mode of acquisition and loss of citizenship status and hence it was unnecessary to remove it. It was agreed that the procedure for registration of citizens of Indian origin should be simple and inexpensive. Yet an elaborate procedure involving the production of affidavits and certified copies of documents and inquiries by investigating officers has been prescribed, though the rigour was relaxed by not making them obligatory.

Registration of all Indians will have to be completed within two years from the day it comes into operation. After that period there will be only two classes of people in Ceylon — Ceylonese and non-Ceylonese. It is felt that not more than a lakh of Indians would be able to acquire citizenship under this Act. The Ceylon Indian Congress has called for a boycott of registration, due to the inferior status attached to citizens by registration. Yet the disturbing fact remains that unless a workable settlement is reached, Indians will be disqualifying themselves by the boycott. Under the Indian Residents (Citizenship) Act, those desiring to acquire citizenship should declare so within two years of the 'appointed day'. After the two-year period for registration is over, the Government of Ceylon will have to insist that only Ceylonese will be entitled to vote and stand as candidates for the General Elections in 1952. This may lead to the disability of even the present seven Indian members of the House of Representatives from seeking re-election.

The Ceylon (Parliamentary Election) Amendment Act was passed in October 1948. It is feared that the Act would deprive many Indians of franchise as its effect will be to give franchise only to Ceylon citizens while now all 'British subjects' enjoy franchise. It was described as an anti-adult-suffrage measure. As

a bulk of Indians have not acquired and cannot qualify for Ceylon citizenship, they would all be disfranchised.

VILLAGE COMMITTEE FRANCHISE

The Village Committee Ordinance IX of 1924 did not apply to burghers, Europeans and Indian estate labourers. Under the Ordinance, therefore, only those Indians who owned land and paid the new village committees land tax had the right to vote at village committee elections while the lakhs of Indian estate labourers could not. In 1937, the Sinhalese Ministry introduced an amending Bill which sought to extend the franchise, and with it the responsibility to pay the tax to burghers and Europeans, but maintained the exclusion of Indian estate labourers. The third reading of the Bill was passed, all the minority communities voting against it. The Government of India represented to the Government of Ceylon that any differentiation between burghers, Europeans and Indians was undesirable. The Secretary of State for the Colonies told the House of Commons that he could not advise His Majesty's Government to give assent to the Bill which discriminated against Indian labourers. And, curiously enough, to remove the invidious distinction between Indian and Ceylonese labour, he suggested that all labourers, Indian or Ceylonese, overseers and *Kanganies* living on the estates, should be excluded from franchise to the village committees. The Ministry accepted the suggestion and accordingly Sec. 12 was amended. For all outward appearances, the discrimination was removed by securing equality in disability as between the Indian and Ceylonese labour. But this is like cutting the nose in order to spite the face. The Government of India wrote :

Indian opinion in Ceylon feels that though *de jure* discrimination against Indians has been removed, *de facto* discrimination remains as a very large body of Indian estate labour will in practice be excluded from village franchise while the effect upon Ceylonese will be negligible.²⁷

The Ordinance thus passed came into operation from 1 January 1939.

Several arguments were advanced justifying Indian exclusion from the village committee vote. It was pleaded that the Indian immigrant had not the vote even before. This was true, but Indian labourers did not have the vote because the estates were not then under the administrative jurisdiction of the village com-

27. Review of Important Events Relating to or Affecting Indians for the year 1938-39.

mittee. But, under the new Ordinance, estates were brought under the village committee for the purpose of taxation and administration, and so Indians should be accorded village franchise.

The second argument was that Indians were not entitled to the village vote as they were not paying the village committee taxes. But Indians were paying the commutation tax for the purpose of constructing and maintaining village paths and irrigation works. Indian labourers and estate owners had contributed enormously with labour and money towards the construction of roads under the Grants-in-aid Road Ordinance. The villages were benefited by the cart and motor roads though they contributed nothing towards them and the opening of roads had considerably increased land values in villages and secured ready markets for village produce. Since the employers had contributed substantially to the construction and maintenance of these roads, the immigrants were exempted from the payment of village committee taxes. There was therefore no special discrimination in favour of the Indians but only an exception reasonably and justifiably granted.

Thirdly, it was pointed out that the Indian immigrant enjoyed certain special privileges. Suffice it to point out that they were neither special nor privileges. Freedom from arrest for civil debts, the right to be repatriated at the cost of the State, the grant of first charge for wages on the estates, free issue of meals to children—all had been proved by competent authorities as having been instituted to the advantage of the planters. Moreover, some of these concessions to Indians were equally available to the Sinhalese.

The fourth argument was that there was no discrimination against Indian labourers, as Sinhalese labour had also been deprived of the vote. This argument is wrong. Firstly, while more than half a million Indian estate labourers were affected by the Ordinance, the total number of Sinhalese labourers employed by estates was only about 91,000 of which 28,000 were resident labourers, 43,000 non-resident labourers, 9,000 regular contractors and 11,000 casual contractors. Thus a vast proportion of the Sinhalese workers on estates were non-resident. Under the amended provisions of the Ordinance many of the Sinhalese workers were entitled to have the vote for the village committees without any hindrance. Secondly, by virtue of the 'double vote' it possessed, Sinhalese labour could afford to surrender its votes on the estates and vote in the villages proper which were adjacent to the estates. Moreover, even such of the Sinhalese labourers as

were resident on the estates were not automatically debarred from the exercise of the vote as the Indians were. Indians never wanted equality in disability, but always pleaded for equality of privilege as between themselves and the Sinhalese to work for the betterment of the rural life of Ceylon. Further, the formula of the Secretary of State for the Colonies of depriving the Sinhalese labour too of the vote along with Indian labour to secure this alleged equality had compelled the Sinhalese to look upon Indians as the people responsible for the loss of their own vote. And this strained the relations between the two classes.

Fifthly, it was contended that the estate labourers had no vote in India and so could not claim it in Ceylon. This analogy is wrong as, firstly, in India estates were outside the jurisdiction of the village *Panchayats*, while in Ceylon they were within the jurisdiction of the village committees, the labourers resident therein paying village committee taxes directly or indirectly. Also, in India there was no possibility of discrimination to their detriment by their own government.

Lastly, it was alleged that Indian estate labourers would swamp the village electorates. The Island was divided into 396 village committees and the census figures showed clearly that the Indian population in all the provinces other than in the Central, Uva and Sabaragamuwa Provinces was insignificant and they could not have any effective voice in the village committee elections. Moreover, while all the Ceylonese would be registered, in the case of Indians the several restrictions would reduce the electoral strength. There were no Sinhalese villages in areas above 3,000 ft. from the sea level and all villages and towns that were now seen in areas above 3,000 ft. or 3,500 ft. were places formed after the opening of the tea plantations with the assistance of Indian estate labour. Moreover, in about eight village committee areas in the Central Province, four in Uva and two in Sabaragamuwa, where Indians were likely to swamp the elections, the Indians were in a majority, and contributed most of the village committee taxes. Thus the possibility of Indians securing a controlling voice was only in 14 to 20, or at the most 24, out of 396 village committee areas. Could this afford a sufficient justification for a wholesale disfranchisement of Indians?

Besides the gross injustice indicated above, there was a more fundamental reason why Indians should have village franchise in Ceylon. The village committee vote was more important than the Parliamentary vote, as the future administration of the country was likely to be developed with the village committee as a nucleus. The village committee might constitute the last unit of a chain

of local self-governing institutions envisaged in the country. If Indians were disfranchised in regard to village committees their representation in the provincial councils might be prejudiced even in respect of the areas where they were concentrated.

The fact seems to be that the denial of franchise was a political move which, according to a representative of the Planters' Association, was intended to keep the Indian down and to prevent him, although resident and in many cases born in Ceylon, from having the same rights and bearing the same burdens as any other resident. It was stated that the Sinhalese wanted to keep Indian immigrants as a floating population and through their permanent disfranchisement, segregate the Ceylon Tamil community in the Northern Province without much political influence. They were afraid that if Indians were enfranchised, they would form an influential minority in the Sinhalese area and influence the political life of the Island. By keeping Indians as a floating population, they could also control the European element by threats of stoppage of the immigration of Indian estate labour and its repatriation as it suited them.

The draft Village Tribunals Ordinance of 1941 sought to replace the existing provisions of Sections 64 to 128 of the Village Communities Ordinance in regard to village tribunals and to widen their civil and criminal jurisdiction. Till then village tribunals had no jurisdiction, except in regard to breaches of by-laws made under the Ordinance, to try any civil or criminal case in which any of the parties were 'excepted persons' (which phrase included Europeans, burghers and Indian estate labourers) unless all the parties consented to it in writing. As Clause 11 of the draft Ordinance excluded only persons 'domiciled outside Ceylon or India' the effect was to bring the Indian estate labourers within the jurisdiction of village tribunals in respect of all classes of cases triable by them.

The Standing Committee 'A' in its Report presented to the State Council on 1 October 1942 proposed no modification to Clause 11 of the Bill. In their telegram dated 5 October 1942, the Government of India pointed out that while the Indian estate labourer was not deemed to have been connected with the village for purposes of village committee franchise, Clause 11 would regard him so for purposes of minor magisterial control and suggested that, if the object was only to provide judicial facilities to Indian labourers cheaply, they might be allowed the option to elect to submit to the jurisdiction of village tribunals. The Government of India also drew attention to the discriminatory nature of the Bill. In February 1943, the matter was settled by including within

the jurisdiction of the tribunals all persons resident in the Island without discrimination.

A Bill to amend the Village Communities Ordinance was published in October 1942. The object was to give effect to the decision of the Executive Committee of Local Administration to exclude certain towns from the operation of the Local Boards Ordinance and the Small Towns Ordinance and to bring them under the Village Communities Ordinance. Indians apprehended 'that if towns of the estate-*kaddai* type which cater essentially to the needs of estate labourers were converted into village committee areas, the Indian estate labourers will feel keenly the denial of franchise under Sec. 12 of the Village Communities Ordinance'.²⁸ Only equal franchise and citizenship rights to all Indians and recognition of Indian labour as part of the permanent population of the country on quinquennial residential test and declaration of intention to settle permanently in Ceylon will ensure the future of Indians in Ceylon.

MALAYA

As there was no system of elections to the legislative and other bodies in Malaya, the political question had not assumed such importance here as in other countries. In the F.M.S., the Federal Council consisted of the High Commissioner (President) and 12 other official members and 11 unofficial members, all nominated by the High Commissioner. In each of the four states, there was a State Council presided over by the ruler and consisting, besides various Malay Chiefs, of official and non-official members who were all nominated by the ruler. Till 1924, not a single Indian sat in the Federal or State Councils. It was only in 1927 that the Governor, Sir Hugh Clifford, appointed the first Indian member to the Federal Council, but he added the irregular rider that the seat could be held by the Ceylon Tamils as well. Though as per 1938 Census there were 466,702 Indians in F.M.S. constituting 26 p.c. of the total population, besides their being numerically strong in the three states of Selangor, Perak, and Negri Sembilan, the right of Indians to representation on the Federal Council was not specifically recognized. An Indian member of the Perak State Council was also replaced by a Ceylon Tamil. Similarly, in Selangor, the government nominated a Ceylon Tamil to a seat formerly held by an Indian though this necessitated the unusual procedure of amendment of the Constitution of the State Council to the effect that its definition of a British Indian was to

28. Review of Important Events for 1942-43, p. 12, para 32.

include a Ceylon Tamil as well. Indian protests went unheeded and in 1938 in Selangor and Perak, where Indian labour ran into lakhs, Indian seats were held by Ceylon Tamils and in Negri Sembilan, by a British Indian. Earlier Sir Lawrence Guillemont, Governor from 1920 to 1927, introduced the principle that a member of the Federal Council should also have been a member of one of the State Councils in the F.M.S. He also tried to exclude Indians by enunciating the negative proposition that among them there were no Indian rubber estate owners, as if ownership of rubber plantations was an indispensable qualification to membership of the legislature.

In the Straits Settlements the administration of the colony was in the hands of a Governor who was aided by an Executive Council consisting of 11 members. The Legislative Council consisted of 13 official members and 13 non-officials, 11 of whom were nominated and 2 elected by the Chambers of Commerce at Singapore and Penang. Indians numbered 150,778 out of a total population of 1,344,545; yet till 1924 there was not a single Indian member in the Legislative Council.

The constitutional proposals of His Majesty's Government announced in January 1946 to constitute a Malayan Union envisaged a common citizenship therein. It provided that persons born in the territory of the Union (which was to consist of the 9 states of Malaya and British Settlements of Penang and Malacca) or the Colony of Singapore and persons at the date on which the Order-in-Council became operative had been ordinarily resident in those territories for 10 years out of the preceding 15 would acquire Malayan citizenship. It was also contemplated that persons would be able to acquire Malayan Union citizenship after five years ordinary residence in the Malayan Union or Singapore. The Government of India inquired about the reasons for the disparity in the periods of residence to qualify for citizenship as between persons who wished to qualify on the date on which the Order-in-Council became operative and those who wished subsequently to acquire citizenship. In their reply dated 1 July 1946, His Majesty's Government stated that no definite reply could be given to the question raised till after the whole question of the qualifications for Malayan citizenship, deferred for local consultations, had been examined.

In July 1946, a Working Committee consisting of representatives of governments of the Malayan states and of the United Malay National Organization was appointed to make proposals in regard to the future Constitution of Malaya. The Committee

made proposals for a Federation of Malayan states and the Settlements of Penang and Malacca and a separate administration for Singapore. The Central Government of the Federation will comprise a High Commissioner appointed by His Majesty, a Federal Executive Council and a Federal Legislative Council. A Schedule of the Agreement will contain a list of matters on which the Federal Legislative Council is empowered to legislate. The list covers a field wide enough to guarantee a strong Central Government in all important matters. The Federal Legislative Council has 31 Malays out of the 61 unofficial members. The High Commissioner would in the first instance nominate its members as a temporary measure, till later representation by election is introduced. The Federal Executive Council will consist of the High Commissioner as President, three *ex officio* members, eleven official members, the nine Presidents for the time being of the Councils of State in the Malay states, two representatives of the Settlement Councils (one from each Council) and fifty other unofficial members nominated to represent interests, groups and activities. It was estimated that this arrangement would result in a distribution of 22 Malays, 14 Chinese, 5 Indians, 7 Europeans, 1 Ceylonese and 1 Eurasian. By an Order-in-Council of 27 March 1947, Singapore was given a temporary Advisory Council of nominated members until such time as a new Legislative Council could be inaugurated. This new Council consisted of four *ex officio* and five nominated official members, four nominated and nine elected unofficial members, thus having both an unofficial and nominated majority. A Committee appointed in 1947 recommended that six of the nine elected members should be chosen by territorial constituencies and three by the Chinese, Indian and Singapore Chambers of Commerce, the latter a predominantly British body. Elections to the six territorial constituencies were held on 20 March 1948. The principle of universal adult suffrage has been accepted, but the franchise, in this first election, had been restricted to British subjects — *i.e.*, Asians and Europeans born in British territories, including the former Straits Settlements.

The Legislative Council of the colony of Singapore consists of 22 members, only 6 of whom will be elected by secret ballot by the British subjects resident in the colony. Nearly half of the 22,000 voters are Indians; the Malayan Indian Congress boycotted the elections held in March 1948 along with the Chinese, on the ground that the Council was not democratic and elections would only perpetuate the separation of Singapore from the mainland. Eight Indians, however, contested in the elections, three of whom were elected.

A federal citizenship was created with a view to drawing together with a common loyalty all those who could be said to regard Malaya as their true home and the object of their loyalty. Citizenship might be acquired either automatically or on application. The constitutional proposals recognize that the Malays form an absolute majority among those who regard Malaya as their permanent home. This recognition governs future immigration policy, the position of the Malay community in any future constitutional proposals, the status accorded to the Sultans and the qualifications for Malayan citizenship. According to revised constitutional proposals accepted by His Majesty's Government, provisions for acquiring federal citizenship have become very strict and stringent. Persons born in the Federation should have resided in Malaya for 8 out of 12 years while others for 15 out of 20 years to qualify for citizenship. The Government of India felt that the qualification should be based either on birth or residence for eight out of ten years and made representations to that effect, pleading for their amendment. But they did not succeed in their efforts. On 1 February 1948, the new Constitution was inaugurated at Kuala Lumpur. The AMCJA called upon the people to observe *Hartal* on the day, as a day of sorrow.

The Constitution divides the people into Malays and non-Malays, and federal citizens and British subjects, and the country into the Federation of Malaya and the Colony of Singapore. Under the municipal law of Malaya the acquisition of Malayan federal citizenship does not detract from the particular nationality of any individual. The only condition of the Federation Agreement between the British Government and the Sultans which provides for the creation and acquisition of such federal citizenship is that he should make a declaration of permanent residence in Malaya and agree to regard the Federation as his home and the object of his loyalty. According to the above clauses of the Federation Agreement, on the coming into force of the provisions relating to federal citizenship a proportion of the Indians resident in Malaya will automatically become in law federal citizens, and the rest will have to apply for acquisition of citizenship. By accepting this citizenship, the Indian in Malaya is explicitly regarded as an Indian national and *not* as one who had exchanged his nationality for another by naturalization or otherwise. The only foreign nationality available to him is the Malay nationality; though, theoretically, it may be possible for him to become a naturalized subject of the Sultans, it is not being offered to him; he does not become a subject of the Sultans by merely becoming a federal citizen. Anyone not becoming a federal citizen will have no political rights, which is as it

should be ; but there is a fear of the possibility of his being denied most of his civil rights which he has enjoyed for generations, if the ominous manifestation of recent Malay nationalism should assume aggressive proportions.

If the definition of nationality should rest on permanent abode or domicile there was the danger of Indians in Malaya becoming Stateless. For, he would be deemed an Indian national under Malayan municipal law, while Article 5 (b) of the draft Indian Constitution, which based Indian citizenship on residence and domicile, would deprive him of Indian citizenship because he had acquired Malayan citizenship. When he thus became Stateless (unless he was to be deemed to continue to remain a British subject), he would have lost even the right of protection in Malaya as an alien, which by a universally recognized customary rule of the law of nations every State had over its citizens abroad.

BURMA

The Interim Government of Burma declared in 1946 its intention to deny electoral rights to those who were not of Burmese nationality. The fact of absence of any definition of 'Burmese nationality' and of a Nationality Act in Burma has cast a cloud of uncertainty over Indians and the question of their electoral rights, though many were born and bred in Burma. Indians felt cheered by the declaration of Gen. Aung San that 'self-determination for minorities would be assured in part through their inclusion in the Chamber of Nationalities provided for in the Constitution.' Yet not one of the 125 seats in this Chamber had been assigned to Indians or Chinese. On 5 July 1947, the Foreign Minister of Burma had, commenting on the status of Indians in Burma, most of whom, he said, were now Burmese nationals, stated that the Burma Constituent Assembly would constitutionally define who was a Burmese national and that this definition would cover the majority of Indians. 'They will have exactly the same rights as the Burmese and their leaders have honoured us by saying that they do not wish to seek any special protection,' he added. And yet the new Constitution of Burma distinguished for purposes of citizenship between those of indigenous and non-indigenous origin. Any person both of whose parents belong to indigenous races or who was born in Burma with at least one grandparent belonging to the indigenous race is automatically considered a Burmese citizen. But a person of purely Indian or Chinese ancestry who was born in Burma must have lived there eight of the last ten years or ten years immediately preceding 1 January 1942, and should agree to reside there permanently and specifically adopt Burmese citizenship. The equality in disability with the Chinese does not remove the injustice done to Indians.

The Burma Independence Act, 1947, provided that any person whose father or paternal grandfather was born outside Burma at a place within His Majesty's Dominions was a British subject. The nationality of people born in Burma before Burma became an independent country on 4 January 1948 is governed by this provision. The Act also provided that certain other people born in Burma before it became independent may, before 4 January 1950, elect to remain British subjects.

The Union of Burma Citizenship (Election) Act 1948 provides for citizenship to a person who was born in any of the territories which at the time of his birth was included within His Majesty's Dominions and who has resided in any of the territories included within the Union of Burma for a period of not less than eight years immediately preceding 4 January 1948 or immediately preceding 1 January 1942 and who intends to reside permanently therein and would submit his application in accordance with the stipulated procedure. Another Act — the Union of Burma Citizenship Act, 1948 — provides for acquisition of citizenship by persons born after 4 January 1948.

Burma extended the time limit to claim Indian nationality originally fixed for 4 April 1949 to 30 June 1949 for registration with the police under the Registration of Foreigners Regulations. Before registering, Indians — at least those eligible — have to decide whether they want Indian or Burmese citizenship. Up to 17 May 1949 only 40,000 Rangoon Indians had registered themselves as 'Indian nationals.' The time-limit for registration of Indians was extended up to 31 October to enable the 2½ lakhs Indians in Rangoon to get registered. During the six months ending 30 September 1949, over a lakh and half Indians got themselves registered, so that they could entitle themselves to Burmese citizenship.

Under Clause 11 (iv) of the Constitution of the Union of Burma every person outside the Union territories (but within the British Dominions) and who qualifies by a prescribed period of residence in any of the Union territories and intends to reside permanently therein may signify his election of citizenship of the Union. The Union of Burma Citizenship (Election) Act 1948 prescribes the machinery for the acquisition of citizenship by election. Under Section 8 of this Act, an applicant to a certificate of citizenship should subscribe to a declaration on oath *renouncing any other nationality or status as citizen of any foreign country* before he could get the certificate. Thus, conferment of Burma citizenship under this Section requires a deliberate, prior renunciation of one's existing nationality. In Malaya acquisition of federal citizenship requires no such renunciation but is declared to be a civil status

without prejudice to one's nationality. As regards all citizens of the Union generally Section 14 of the Union of Burma Citizenship (Election) Act, 1948, provides for an automatic loss of citizenship for every citizen who by a voluntary or formal act, obtains naturalization in a foreign State. The Government of Burma has decided that persons eligible for Union citizenship under the Union of Burma Citizenship (Election) Act 1948 who are abroad for *bona fide* reasons may send their applications in the prescribed form for election of Union citizenship to the Burmese Embassy in New Delhi not later than 31 December 1949. Many Indians have not opted for Burma citizenship owing to the insecurity of life and property and sentimental attachment to the mother country.

The Union Parliament consists of a Chamber of Deputies of 250 representatives elected on adult franchise by territorial constituencies on a population basis and of a Chamber of Nationalities comprising 125 members, 72 of whom represent the states, special areas and Karens and the remaining 53 represent the people of the Central unit.

BRITISH GUIANA

In 1920, when the Nunan-Lukhoo Deputation approached the Government of India for the reopening of emigration of Indian labour, the Government of India stipulated for equal political status to Indians as a condition precedent to their emigration. The Deputation laid before the Committee of the Indian Legislative Assembly a draft Ordinance assuring to Indians equal rights with the other classes of British subjects in the colony.²⁹ The Secretary of State for the Colonies informed the Government of India that the colonial government was willing to undertake legislation assuring to Indian immigrants 'equal political rights with other classes of British subjects'.³⁰ The above Ordinance was also actually passed by the British Guiana Court of Policy on 22 November 1923. Till 1924, Indians could not return even a single Indian to the Court of Policy, the legislature of the colony, though there was a provision for eight elected members even in 1910. Only in 1925 was one Indian elected to the Combined Court, which contained six Financial Representatives besides the above eight elected members of the Court of Policy. The demand of the Indians and natives for equal representation frightened the European planters who, therefore, lined themselves on the side of bureaucratic control. On the reactionary recommendations of the Wilson-Snell Commission of 1927,

29. Emigration to British Guiana: Collection of Papers, p. 7.

30. Report of the Indian Colonization Committee (1934), p. 17.

L. S. Amery, the Secretary of State for the Colonies, reduced the political status of the colony by transferring its financial control from the Combined Court with a non-official majority of 14 to the Secretary of State for the Colonies and the Governor, and vesting the whole control of government in the former. Accordingly, an Order-in-Council was issued in 1928 and another in 1935 replacing the Court of Policy and Combined Court by a new Legislative Council 'on the ordinary model in which the Crown will possess effective control'.³¹ Replying to the Wilson-Snell Recommendations, the elected members of the Combined Court stated :

We should like in this connexion to draw attention to the fact that negotiations with India have been always conducted on the basis that there was complete political equality in the choice of representatives for election to our Legislature. Apart from this understanding, it has been often emphasized that there was a perpetual guarantee given to India and Indians of the preservation of an elected majority in the Combined Court, controlled entirely by the untrammelled exercise of the franchise by all who make themselves eligible by registration.³²

They concluded that the proposal of the Colonial Office to vest the whole control of the government in the Governor and the Secretary of State for the Colonies would inevitably lead to the formation of a European bureaucracy and 'would be a gross breach of faith not only with the Indian Government but also with the Indians resident in the colony'.³³

The new Legislative Council consisted of the Governor as President, 10 official members and 19 unofficial members. Executive and administrative functions were exercised by the Governor and the Executive Council. J. D. Tyson says :

Though with a large labouring population living rent-free, East Indians fall far short of their proportionate figures as voters for the Legislative Council ; they at present hold three seats out of 14 in the Council and in at least two more constituencies, the Essequibo River Islands and the Essequibo Coast, the sitting members (a Chinese and a European) hold their seats by Indian support. One of the 3 Indian M.L.C's is also a member of the Governor's Executive Council.³⁴

31. Memorandum prepared by the elected members of the Combined Court of British Guiana in reply to the Report of the British Guiana Commission, 30 September 1927, Appendix E.P. XXIX, Despatch dated 25 May 1927.

32. *Ibid.*, p. 25 F 5.

33. *Ibid.*, p. 26, F 6.

34. *Op. cit.*, p. 39, Section III, para 17.

Thus Indians, constituting 141,000 or 42 p.c. of the total population of the colony, had but 3 seats in a Legislative Council of 30.

The West India Royal Commission recommended that in order to secure that the elected element in Legislative Councils shall be as truly representative as possible, the object of policy should be the introduction of universal adult suffrage. Some of us hold that this should be introduced forthwith; others that it should be reached by gradual stages and to this end recommend the appointment of local committees to consider the extension of the franchise, both for local and for central governments. Such committees should keep in close touch with their counterparts in other West Indian Colonies, and should consider carefully whether, as is strongly desirable, their recommendations would assure substantial equality as between the sexes.³⁵

The Commission also urged that in all West Indian colonies a careful examination should be made at an early date of the possibility of reducing substantially the margin between the qualifications for registration as a voter and those for membership of the Legislative Council, the latter being in several cases unnecessarily high.

The Report of the Franchise Commission appointed in British Guiana was published on 4 October 1944. A majority of the Commission recommended that the financial qualifications for the exercise of the franchise should be reduced as follows :

- (a) Ownership occupation or tenancy of land — from 6 acres to 3 acres
- (b) Ownership of land — from the value of \$350 to \$150
- (c) Occupation or tenancy of property on rental — from the value of \$96 a year to \$48 a year.
- (d) Possession of income — from \$300 a year to \$120 a year.

The Secretary of State for the Colonies accepted these recommendations. Universal adult franchise was recommended by a minority of the Commission. Again while the Majority Report recommended a literacy test in English, the Minority Report recommended the abolition of the existing literacy test (in any language). The Secretary of State accepted neither recommendation and approved the retention of the existing provision regarding literacy test in any language. Indians protested against the retention of the literacy test for, though they constituted over 40 p.c. of the population, a majority of them were illiterate and consequently were not able to exert influence in the politics of the colony to the extent they should have in proportion to their numbers under a system of universal adult franchise. The reason advanced for op-

posing adult franchise is not fair to Indians, for the Franchise Commission observed in this connexion thus :

We feel it our duty to subscribe to the view — very generally expressed — that in the event of universal adult suffrage being introduced immediately, a particular race, equipped as we have stated, would have so substantial a majority in almost every constituency as would render it impossible for the result of any election contest to be accepted as that of the expressed decision of the particular constituency so affected, or for the Legislature, when constituted on such lines, to be regarded as representative of the choice of the entire community.

Under the Franchise Ordinance of 1946, a voter to the Legislative Council is required to possess a monthly income of \$10 or an annual income of \$120 coupled with six months residence in his division and the passing of a literacy test in English, Hindi or Urdu. There are other property, land and lease qualifications. The illiteracy of more than 50 p.c. of Indian population has handicapped Indians in respect of the literacy test. The West India Royal Commission further recommended 'that official representation in Legislative Councils should be confined to the Colonial Secretary, the Treasurer and the Attorney-General.'³⁶

In 1943 the number of nominated and official members was reduced from 15 to 10, giving thereby a majority of 4 to elected members over the combined strength of the nominated and official members. In 1948 Indians held 3 seats out of 14 elected members. One Indian member of the Legislative Council had been nominated as a member of the Governor's Executive Council.

On 30 October 1949, the Governor of British Guiana announced that the Secretary of State for the Colonies would appoint a Special Commission in 1950 to consider constitutional reforms for the colony.

TRINIDAD

The Sanderson Committee paid a tribute to Indians for their 'natural indisposition to take any active part in political controversy although they have come to form so considerable a portion of the population of the colony' and wondered at the fact that 'there has been no agitation for the purpose of claiming this privilege up to the present time'.³⁷ The Committee recommended for the consideration of His Majesty's Government the suggestion that Indians should be allowed some representation on the Legislative Council. Indians numbered, in 1939, 158,000, being

36. CMD. 6656, p. 95.

37. Sanderson Committee Report, para 294.

35 p.c. of the total population, nearly 90 p.c. of whom were colonial-born. J. D. Tyson reported that there was not a single Indian either in the Executive Council or among the 12 official and 6 nominated members of the Legislative Council. Out of the seven elected members, three were Indians. Indians thus had but three seats in a Legislative Council of 26 though they constituted one-third of the total population. In his evidence tendered to the West India Royal Commission of 1939, E. A. Robinson of the Sugar Manufacturers' Association expressed the attitude of the planting community thus :

If an extension of the franchise were granted in Trinidad, Indians would rule this country. Trinidad is unfit for any extension of franchise.³⁸

This hostile European attitude was also evident from the fact that only 26,000 out of a population of 400,000 were enfranchised, and that there were only 7 elected members in a Legislative Council of 25 members — 12 official, 13 unofficial, excluding the Governor, who was the President.

The Report of the Franchise Commission published on 4 August 1944 recommended the abolition of the property and income qualifications. A voter must have an income of £62/10 per annum though his average earnings do not exceed £40. Candidates for election to the Legislative Council must own real estate of £2,500 in value or have real estate income of £200 per annum ; or they must have an income of over £400 from any source. The existing age qualification of 30 years in the case of women to vote was reduced to 21 years. No change was recommended in the existing qualification regarding understanding English when spoken. The Secretary of State for the Colonies recommended the introduction of universal adult franchise without English language qualification. The Trinidad Legislature, however, rejected by a narrow majority this recommendation for exclusion of the language test. Though Indians constituted a third of the total population, the retention of the English test would deprive them of voting rights. So the Government of India represented to the Secretary of State that he should abide by his recommendation. In June 1945, the language test was abolished and thus Trinidad came to have universal adult franchise.

Elections took place in 1946 under the new Constitution and some Indians were returned to the Legislative Council. The first Legislative Council on the basis of adult suffrage was created in

38. *Free Press Journal*, 26 May 1939.

the last quarter of 1947. It has nine additional elected members. In the Executive Council the elected members have a clear majority. The new Legislative Council consists of three *ex officio*, five nominated and eighteen elected members presided over by a person appointed by the Governor from outside the Council. The Executive Council is composed of three *ex officio* members, one nominated member (appointed by His Majesty on the recommendation of the Governor) and five elected members to be elected by the Legislative Council.

JAMAICA

Though Indians numbered in 1920 more than 18,000, there were only 375 Indians on the electoral rolls. Not a single Indian so far had sat either in the Privy Council or the Legislative Council of the colony though the latter consisted of 10 nominated and 14 elected members, besides 5 *ex officio* members. Adverting to the question whether there was any possibility of the Indian voters being numerous enough in any locality to exert influence upon election to the Legislative Council to secure the return of a candidate who, if not himself an Indian, would at least feel that he owed his election partly to Indian support, J. D. Tyson reported: 'I was told that in no area were Indian voters or potential voters numerous enough to achieve this result'.³⁹

A new Constitution was introduced in Jamaica in 1943 whose chief features were adult suffrage and the association of the leaders of the majority party with the permanent officials in the daily business of administration. No property or income qualification was required of candidates for election under the new Constitution.

In 1945 the Government of India strongly urged His Majesty's Government that provision should be made (a) for one East Indian always to be nominated to the Legislative Council and (b) that at least one seat in the Legislative Assembly (House of Representatives) be reserved for East Indians. His Majesty's Government replied that regarding (a) the Governor would, while making the appointments to the Legislative Council, endeavour to see that all important sections of the community which were not represented in the House of Representatives should be represented in the Legislative Council subject to the availability of suitable persons; fitness of the persons concerned to advise on matters of public policy was the overriding consideration in all selections. Regarding (b) they replied that it would not be possible to reserve a seat

39. *Op. cit.*, p. 8(d).

for East Indians as the House of Representatives was entirely elected. The first House of Representatives elected under the new Constitution introduced on a five-year trial basis was inaugurated on 9 January 1945. It consists of 24 elected members and the Legislative Council of 3 official and 12 unofficial members. The Executive Council consists of 10 members — 5 elected by the House of Representatives and 5 nominated by the Governor from the members of the Legislative Council. There has been no Indian member on the Legislature till 1949. Proposals for constitutional changes have been made by the Select Committee appointed by the House of Representatives.

There is some kind of representative, if not responsible, government in the West Indian colonies. In 1948, the Secretary of State for the Colonies made some proposals for constitutional reform in these colonies. They were under examination of the Government of India in 1948.

FEDERATION OF THE BRITISH WEST INDIES

Referring to the proposal for a federation of the British West Indies, the West India Royal Commission observed: 'Political federation is not of itself an appropriate means of meeting the pressing needs of the West Indies. Nevertheless, it is the end to which policy should be directed'.

In regard to the federation question, a cleavage appeared in Indian opinion in British Guiana, the entire working class opposing it and some of the prominent Indians supporting it. In September 1947, a Conference was held at Montego Bay to discuss the British Government's proposals. Opening the Conference, Creech Jones, Secretary of State for the Colonies, pleaded strongly for a federation on the two-fold basis of the impossibility of creating a self-supporting and progressive economy in these colonies except on the basis of a regional approach to the common problems of the area and of speaking with a voice which could be heard in international assemblies. The Conference agreed to the federation proposals and set up a Standing Committee to work out the details. It also made several recommendations to pave the way for a federation. Indians opposed the proposals for two reasons. Firstly, they felt that the federation proposals were but a subtle move on the part of Britain for consolidating her position and strength in a new guise. Reference was made in this connexion to the federation proposals for the East African territories and Malaya. Secondly, they feared that it was also a sedulous step to strangle their numerical strength in British Guiana, Trinidad and Jamaica where they constituted 43 p.c., 33 p.c. and 5 p.c. respectively of

the total population. In a federation with all other British West Indian possessions, this strength was sure to be badly whittled down. Unless, therefore, suitable provision was made recognizing the reasonableness of Indian apprehensions to ensure proper representation, Indians felt that they had no alternative except to oppose the proposals.

Fiji

The Sanderson Committee stated that the whole correspondence between the Indian and Fijian Governments would show that the former allowed Indian emigration only on the Fiji Government's willingness to concede equal rights to Indians and so 'any measures directed towards lowering the political status of the emigrants or reducing their economic freedom would, in our opinion, involve a breach of faith with those affected'.⁴⁰ Again, in 1920 when the Fiji Government approached the Government of India for Indian labour, the latter sent the Corbett-Sharma-Raju Deputation only after the Fiji Government had notified to the Secretary of State for the Colonies assuring to Indians equal political rights with the other classes of His Majesty's subjects settled in the land. This Deputation recommended, among other things, that if communal franchise was inevitable, there should be equal representation to the European and Indian communities.

Till 1924, though Indians numbered 60,000, they were represented by only one nominated member while 4,000 Europeans had seven representatives in the Legislative Council. In 1924, Indians were given two elected seats. The Government of India renewed the request in 1927 that Indians should be given the right to elect representatives equal to the number of Europeans. The Report of the Colonies Committee under the Chairmanship of Sir Hope Simpson also pointed out

that the importance of the Indian community is not adequately represented by the number of seats which it is proposed to allot to them, and that no reason which does not accord to the Indian community on a communal basis representation in the Legislative Council at least numerically equal to that already accorded to the non-official European community can be regarded as consistent with the principle of equality of status.⁴¹

Lord Birkenhead, Secretary of State for India, informed the Government of India that the Colonial Office was prepared to give only three out of the 12 non-official seats to Indians and that the

40. Sanderson Committee Report, p. 87, para 358.

41. Waiz, *Indians Abroad Directory* (1934), p. 202.

Government of India should accept the same. He added that further pressure for additional concessions would cause delay in giving effect to the policy in addition to the risk of their not being accepted. 'In his view the concessions now afford a reasonable basis of settlement and he would not feel justified in supporting a demand for further concessions'.⁴² The Government of India finally replied that they adhered to their opinion and that

the representation proposed for Indians is inadequate. But as the Colonial Office is at present unable to move further in the direction advocated by them, they are prepared to acquiesce in the proposals made and would be glad if the Letters Patent can be amended as proposed in time to enable Indians to elect their representatives at the next election.⁴³

In February 1929, under the new Constitution 3 communal seats were allotted to 72,000 Indians and 6 seats for 6,000 Europeans out of the 12 non-official seats in a Council of 25.

During the first sessions of the reformed Council, an Indian member, Vishnu Deo, moved a resolution on 5 November 1929 conveying to His Majesty's Government the views of the Council against the grant of political rights and status to Indian settlers on racial lines and its desire for the common franchise to Indians along with other British subjects resident in the colony. The motion was rejected by 22 votes to 3, only the 3 Indian members voting for it. The Indian members withdrew from the Council. In the 1932 elections, two Indians were returned to the Council, the third seat remaining vacant. Again on 14 October 1932, K. P. Singh, an Indian member, moved a resolution lending the support of the Legislative Council to the declaration of His Majesty's Government that the establishment of a common electoral roll in all the colonies where there was a mixed population was an object to be aimed at and attained with an equal franchise open to all races and welcoming the introduction of a common roll in Fiji. This resolution too was rejected by the Council. In 1936, the Legislative Council was again reconstituted but without reduction in the nominated element or increase in popular representation. The total strength of the Council was increased from 25 to 32 (President, 16 official and 15 non-official members) and the elective representation was reduced from 9 to 6. Indians, Europeans and Fijians were given each five seats—three elected and two nominated representatives each to Europeans and Indians and five nominated seats to Fijians. In September 1937, the Governor

42. *Ibid.*, p. 203.

43. *Ibid.*, p. 204.

of Fiji declared in the Fiji Legislative Council that Indians, Fijians and Europeans had all equal representation.⁴⁴ This is misleading, as there could be no equality of representation when, as per 1937 Census, 99,595 Fijians, 89,333 Indians, and 4,238 Europeans had each five seats. In 1940 fresh elections took place — three Indians were elected and two more nominated. In 1949 one Indian was nominated to the Executive Council. A Committee consisting of six non-official members of the Legislative Council including two Indians was recently appointed to consider and make recommendations on the proposed constitutional reforms for Fiji. The report of the Committee has not been published so far.

In accordance with the recommendations contained in the *Proposals for the Establishment of Local Government Councils in Fiji* it is proposed to have three new types of local authority (1) Rural Areas, (2) Urban Areas and (3) a County Council. The Urban Areas will have a Council of three elected Indian members, three European members either elected or nominated and not more than two additional nominated members.

MAURITIUS ✓

In 1922, the Government of India inquired of the Government of Mauritius whether the political conditions of Indians were such that they were in all respects both actually and theoretically on an equal footing with all other British subjects residing in Mauritius. Answering this telegram, the Colonial Secretary wired back saying 'Yes'.⁴⁵ Though theoretically Indians had been enjoying both municipal and political franchise, yet till 1924 not a single Indian sat in the Legislative Council, though the Council consisted of 27 members, of whom 10 were elected, 8 *ex officio* and 9 nominated. Indian electors were only 3,215 and they could not send even one representative to the Legislative Council in the 1932 elections. It was only in 1937 that two Indians were nominated to the Legislative Council. There was no Indian at all in the Executive Council.

S. Ridley reported in 1940 that the Indian's remuneration could never be high and, no matter what his education might be, so long as the existing rules remained unchanged, he could never hope to wield any voice in the election of members to the councils of government. Due to the high property qualification, Indians

44. Fiji Council Paper No. 1 F 381½, Address by H. E. the Governor, 24 September 1937, p. 1, para 2.

45. Vide Note prepared by the Department of Revenue and Agriculture (1923), p. 25, Telegram dated 2 September 1922.

constituted in 1940 only 30 p.c. of the electoral roll as against 24 p.c. in 1924, though they constituted about 70 p.c. of the total population. There were no elected Indian members. On 29 October 1946, the Governor announced the new constitutional proposals which provided for a Legislative Council with 19 elected members out of 39 instead of the existing 10 of 27. Female suffrage was introduced though there was no male adult suffrage. The proposals gave no political rights to the small farmers, workers and traders, who are mostly Indians. Indians opposed the proposal for special representation of workers on the ground that it would prove detrimental to the future of trade unionism in the island. After a discussion of these proposals with a representative committee, the Governor submitted further recommendations for the revision of the Constitution to the Secretary of State for the Colonies in his despatch dated 21 April 1947. The Secretary of State approved of them in his despatch dated 16 August 1947 to the Governor.

The modifications suggested by the Governor relate to (a) the composition of the Executive Council, (b) the composition of the Legislative Council, as it would be called in future, (c) the method of appointment of nominated unofficial members to the Legislative Council, (d) the qualifications for registration as an elector and (e) the abolition of property qualification and the introduction of female suffrage. The new proposals as accepted by the Secretary of State for the Colonies include : (a) selection of four non-official members of the Legislative Council by that Council for appointment to the Executive Council (b) setting up of a Legislative Council consisting of the Governor as President, three *ex officio* members (the Colonial Secretary, the Procureur and Advocate-General and the Financial Secretary), 12 nominated unofficial members and 19 elected members, (c) the appointment of nominated unofficial members by the Governor in pursuance of His Majesty's instructions through the Secretary of State, (d) right to vote to all persons who are British subjects of 21 years of age and upwards and have been ordinarily and bona fide residents of the colony for a period of two years preceding an election and (i) being ordinarily resident in some electoral district are able to read and write simple sentences and sign their names in one of certain specified languages to the satisfaction of the Registering Officers, or, being ordinarily resident in some electoral district, are qualified as serving in the Forces, or as ex-servicemen discharged with certificate of satisfactory service, or (ii) have been for six months previous to the date of registration owners or occupiers of business premises in an electoral district unless debarred under the

specifically mentioned qualifications. No person registered as an elector shall vote in respect of more than one qualification in any one electoral district or in respect of more than two qualifications in all. The multi-member constituencies have been retained.

According to the Census of 1944, the Indian population was 265,247 out of a total population of 419,185 which included 143,056 persons of European, African or mixed descent and 10,882 Chinese. But the number of electors, as registered on 31 December 1944, was only 11,437. Under the old Constitution, only 3·2 p.c. (4,349 out of a total Indian adult population of about 135,000 Indians) possessed the vote while only 15 p.c. were literate in English or French. The present advantage in the abolition of the property qualification seems, however, to have been neutralized by the introduction of a complicated literacy test and female suffrage without full adult suffrage. Even under the old franchise 49 p.c. of the total French, Coloured, British and Chinese adult population was literate and of these 18·3 p.c. had a vote. Indians fear that under the proposed female franchise, vote would be exercisable by the women of only one class to the prejudice of Indians. The business qualification stipulating an annual rental value of the premises of not less than Rs. 240 was not likely to assist the admission of many Indian small traders to the electoral roll. The Governor wrote to the Secretary of State that there was the special complication arising from the existence of permanent settlements of people of European origin greatly outnumbered by other races and that the adoption of the normal method of representation might eventually result in placing the Indo-Mauritian majority in political control of the 'European' minority. Constitutional proposals rigged up on such ugly fears of the democratic rights of the Indian majority could not have been otherwise than as proposed.

This new Constitution of 1947 revokes the 1913 Constitution. The new Executive Council is composed of three or four *ex officio* members and certain other members appointed by the Governor. The Legislative Council consists of the Governor as President, three *ex officio* members (the Colonial Secretary, the Procureur and Advocate General and the Financial Secretary), five nominated official members, twelve nominated unofficial members, nineteen elected members. For the purpose of electing the members, the colony is divided into five electoral districts. The qualifications of an elector are that he must be a British subject, 21 years of age and upwards, must have resided in the colony during the immediately preceding two years and possess ownership of immovable property or tenancy of immovable property, etc. There are also professional and military qualifications. The term of the members is five years.

In August 1948, the first General Elections for 13 years were held to inaugurate the new Constitution with an unofficial majority in the Legislative Council. They were held on a broader franchise, as all property qualifications were abolished. As much as 90·6 p.c. of the electorate voted and in one district actually 96 p.c. polled. Four-fifths of the electorate had the right to vote for the first time. Of the 19 elected members, 11 were Indians, 7 coloured and only 1 white.) ✓

UNITED KINGDOM

Although India will continue to be a member of the Commonwealth even after she became a Republic, constitutionally she will become a foreign territory and Indian citizens will cease to be British subjects as defined in the British Nationality Act, 1948, which came into force on 1 January 1949. The passing of the new Act involves the position that Indian citizens could also be regarded as British or Commonwealth citizens even after 26 January 1950. The India (Consequential Provisions) Act passed in December 1949 by the British Parliament provides for the continuance of the rights conferred on Indian citizens in Great Britain even after India became a Republic on 26 January 1950. Under Clause I of the Act, existing law in respect of Indians and Indian property would continue to apply as it would have applied if India had not become a Republic. Clause II provides that the same principle applies to Indians and Indian property in the colonies, protectorates and the Trust territories of the U.K.

CANADA

Domiciled Indians in Canada enjoy the federal franchise in all parts of Canada, except, till recently, British Columbia, where 1,300 of the total 1,500 Indians in the Dominion are settled. In 1931, an amendment to the Franchise Act was adopted which enabled the placing of the names of those Indians who served in the Canadian Forces during the first world war on the voters' lists of the province. They were, however, excluded from election to the provincial legislature, appointment to municipal office, from nomination for election as school trustees and from jury service. Till 1947, Indians in British Columbia continued to be debarred under Section (5) of the British Columbia Provincial Elections Act, 1945, from voting at provincial elections and consequently, under Section 30 (1) (g), they were also debarred from rights to federal franchise. In the result, Indians also suffered from occupational and other disabilities. An Electors Act Committee was formed early in 1946 to consider the provisions of the British Columbia Elections

Act. The Committee reported in favour of granting provincial franchise to Indians. In February 1947 the British Columbia Legislative Council considered the Report and passed in April 1947 the British Columbia Provincial Elections Amendment Act 1947 entitling Indians to provincial and consequently federal franchise.

As regards municipal franchise, the British Columbia municipalities met in a Convention and passed a resolution on 16 September 1947 favouring the grant of municipal franchise to Indians in the province. Formal legislative effect was also granted by passing a law in April 1948.

AUSTRALIA

In order to discourage immigration, the Immigration Act of 1901 was passed and Indians already domiciled were denied the right of franchise both in Western Australia and Queensland. In 1907 all the Asian immigrants were disqualified as electors. There were 2,400 Indians in 1921 permanently settled and they were allowed to exercise full franchise. Since then the number of domiciled Indians has been on the decline. The Rt. Hon. W. M. Hughes described the White Australia policy as 'an integral part of the national life of the Australian people.' In 1925, the Commonwealth Parliament passed an Act removing the disqualification on racial grounds from (a) natives of British India and (b) persons who were naturalized. Since Australia's acceptance of the resolution of the Imperial Conference relating to citizenship rights of Indians domiciled in the Dominions, an Act was passed admitting all adult Indians to the federal franchise.

NEW ZEALAND

Domiciled Indians are now accorded the franchise and other privileges of citizenship (excepting the benefits of the Old Age Pension Act).

UNITED STATES OF AMERICA

The Luce-Celler Bill was passed by both Houses of the Congress and received the President's Assent on 2 July 1946. It permits U.S. naturalization with all privileges of citizenship of some 4,000 Indians already living in the U.S.A. and also contemplates an annual immigration quota of 100 Indians on the same basis as the quota of 107 allowed to the Chinese. The quota is too minute to influence the composition of population or economic future of the U.S.A. Even this little trickle of new immigrants have to satisfy the personal tests stipulated by the

present immigration regulations such as literacy, freedom from disease, financial solvency etc.

MADAGASCAR

Under the French law, any person who was born in a French territory and was 21 years old could claim French nationality, but he would be liable to conscription for compulsory military service. Indians are entitled to become French citizens and some Indians had acquired French citizenship.

ADEN

The Aden Colony (Amendment) Order 1944 provided *inter alia* for a Legislative Council for Aden. It consisted of the Governor as President, 4 *ex officio* members, not more than 4 official members and not more than 8 unofficial members. The Governor was empowered, subject to any instructions from His Majesty's Government, to veto any legislation passed by the Council.

THE QUESTION OF COMMUNAL REPRESENTATION

The numerical advantage of the natives and Indians has become an obsession with the Europeans in Kenya and elsewhere, who conveniently forget the fact that they themselves enjoy a similar advantage to the disadvantage of natives and Indians in Canada, Australia and New Zealand. In order to render this advantage of non-Europeans ineffective, Europeans oppose the Indian demand for a common electoral roll and favour communal representation. They contended, firstly, that a communal roll was best suited to countries with heterogeneous racial communities; secondly, that a common roll would lead to the swamping of the European polling booths by Indians; and, thirdly, that it would endanger the paramountcy of native interests.

In countries like Ceylon, Burma and Fiji, where the political power was passing into the hands of the Sinhalese, Burmese and Fijian majority communities respectively, the native politicians had also recently begun to repeat the cry of Indian swamping, though being numerically superior they had not demanded communal representation like the Kenya Europeans but welcomed the territorial electorates.

The goal of Indian political aspirations has always been statutory equality with the other British subjects.⁴⁶ Thus wedded

46. CMD. 3234, p. 206.

CMD. 1312, para 10, Letter from the Government of India to the Secretary of State for India, dated 30 February 1921.

to political equality, the Indian demand for a common electoral roll had followed as a necessary corollary.⁴⁷ In making this demand the Kenya Indians had made it plain that their object was 'to see a system introduced which would remove the discrimination against educated Indians which is implicit in the communal system of election without in any way endangering the predominance of British methods, British tradition and in all respects of British civilization.'⁴⁸

As regards the Indian demand for common electorates, several Royal Commissions and the British Government itself had recognized its value. The Donoughmore Commission condemned communal representation as a

canker on the body politic eating deeper and deeper into the vital energies of the people, breeding self-interest, suspicion and animosity, poisoning the new growth of political consciousness and effectively preventing the development of a national or corporate spirit.⁴⁹

They stated that communal representation was originally devised to facilitate the development of democratic institutions in countries of varied races and religions, and remove the conflict of various interests in elections and thus provide peacefully an effective legislature which would justly represent the different sections of the population and promote unity. But the Commission found that the experiment had an opposite effect and that

the desire for communal representation tends to grow rather than die down, and in these circumstances, it being in itself admittedly undesirable, it would seem well to abolish it altogether while the number of seats involved is still comparatively small.⁵⁰

The Hilton-Young Commission concluded :

Our view is that inasmuch as the progress of the territory must depend on co-operation between the races, the ideal to be aimed at is a common roll on an equal franchise with no discrimination between the races.⁵¹

47. Report by the Rt. Hon. V. S. Srinivasa Sastri regarding his Mission to East Africa, (1930), p. 2.

48. Papers Relating to the Question of Closer Union. Colonial No. 57 (1931), p. 11, para 38, Despatch of the Governor of Kenya, dated 11 September 1930.

49. Donoughmore Commission Report, p. 39.

50. *Ibid.*, p. 100.

51. CMD. 3234, p. 210.

Lord Snell, in the House of Lords debate, condemning communal representation, stated :

It seems as though the intention of His Majesty's Government was to play off one section of the community against the other on the principle of divide and govern.⁵²

The Governor of Ceylon,⁵³ the Under-Secretary of State for the Colonies,⁵⁴ the Secretary of State for the Colonies,⁵⁵ an ex-Chief Justice of Kenya,⁵⁶ His Majesty's Government⁵⁷ had all condemned communal representation and declared themselves definitely in favour of common electorates. The Hilton-Young Commission opposed separate electorates also on the ground of the probability of their ultimate detriment to European interests. The Commission feared that the security afforded by separate electorates would prove illusory owing to the great disproportion in numbers between the natives and others and the possible assertion by the natives of their claims for effective representation in future. They stated that if Europeans were to be saved from being submerged by the rising tide of native consciousness, a satisfactory test of civilization franchise, which could be acquired by any British subject in the settled area, should be substituted for adult suffrage as a safeguard against a too sudden native preponderance. So they suggested that the Northern Rhodesian system of common roll for all British subjects might well be taken as the starting point. Thus, the argument of the European settler class that communal representation was best suited to the peculiar circumstances of the colonies was exploded by even official authorities themselves which, needless to add, were entirely European.

Regarding the second argument, that if a common roll was granted Indians would swamp the European voters, it may be pointed out, firstly, that the Europeans would not be morally justified in arguing against the numerical superiority of Indians or natives, unless they are prepared to forgo the same advantage which they enjoy in the countries in which they preponderate. Secondly, the cry of swamping by Indians sounds hollow as, in case a common roll is granted as demanded by them, Indians them-

52. House of Commons Debates, Vol. 167, No. 104, 25 July 1923, p. 587.

53. CMD. 5910, p. 3, para 5, Despatch of the Governor dated 13 June 1938.

54. Sessional Paper XXXIV (1929), p. 9, para 29.

CMD. 1679 (1922), p. 25.

55. Sessional Paper XXXIV, p. 26, para 29, Despatch dated 10 October 1929.

56. House of Commons Debates, Vol. 167, No. 104, 25 July 1923, pp. 527-29.

57. CMD. 3574 (1930), para 9.

selves are sure to be swamped by the native communities. Thirdly, while the Europeans were not swamped when they were far less in number, they cannot be swamped now when they had greatly increased in proportion of population due to various restrictions on Indian immigration. Lastly, Indians had given striking practical demonstrations of the absence of any intention on their part to dominate. Their aim is only to secure bare political justice which is their due.

At the time of the Treaty of Versailles, His Majesty's Government offered the Tanganyika Mandate to the Government of India and, subsequently, facilities for agricultural colonization of Indians in a portion to the exclusion of the natives. But Indian public opinion here and overseas unanimously rejected the opportunity for imperialist domination. Similarly, they proved their *bona fides* in South Africa. When G. H. Hulett moved a resolution in 1921 to disfranchise Indians to the township vote, the Administrator of Natal opposed the measure and testified, regarding the swamping cry, that in Stanger District, where only the question was important,

although the Asians were in a majority and could have elected an Indian Board, they had declared their intention of leaving the control of local affairs in the hands of Europeans and no Indian was elected.⁵⁸

Again, Indians in Kenya offered that

their representation might be so limited under the system of franchise to be established that a common electoral roll for Europeans and Indians would not seriously affect the British character of the electorate.⁵⁹

Indians agreed to the Wood-Winterton proposals to admit only 10 p.c. of the Indian population to franchise.⁶⁰ The Hilton-Young Commission calculated that this gerrymandering would give only 4 seats to 40,000 Indians and 7 seats to 9,000 Europeans in the Legislative Council.⁶¹ Yet, despite the request of the Kenya Indians and the Government of India, the Imperial Government

58. Selection of Papers (1925), p. 64, para 4, Confidential Despatch of the Union Governor-General, dated 7 July 1921.

59. Colonial No. 57, (1931), p. 11, para 38, Despatch of the Governor, dated 11 September 1930.

60. Memorandum Submitted by Dr. H. N. Kunzru, Janab Ali, Udani and Polak on behalf of the East African Indian Congress, 7 November 1929.

Also see Report of Maharaj Singh and R. B. Ewbank, p. 25, Letter dated 18 April 1928 to the Secretary of the Government of India.

61. CMD. 3234, p. 210.

refused to implement the proposals on the ground that the Kenya Europeans were prepared to give only two nominated seats to Indians on a communal basis! Similarly, the Uganda Indians requested that their representation might be limited to about 12 p.c. of the population.⁶² Indians also went a step further and agreed to the imposition of an educational test and to the principle of reservation of seats. They gave up their demand for proportional representation and agreed to a representation equal to that of Europeans.⁶³ Sir Samuel Wilson bears witness to these Indian offers in his Report.⁶⁴ During their interview with him, the East African Indian National Congress also offered that, if His Majesty's Government accepted the principle of common roll and made the inquiry recommended by the Hilton-Young Commission for defining the precise qualifications which should constitute a civilization franchise, the Kenya Indians were prepared to accept nomination to the Legislative Council pending the introduction of a common roll in order to prove their good faith and create the necessary atmosphere of goodwill during the period of inquiry.

In spite of these practical proofs, the European settlers continued mechanically their cry of swamping, apparently under the impression that frequent repetition or vehement assertion would somehow transform a bogey into a fact. This attitude had also unfortunately infected some of the Asian native communities, and one heard the tune from the Sinhalese politicians. In spite of the fears entertained by the legislators in 1928 that Indians would swamp the electorates and might return as many as 30 or 40 members and that they might also return European members, Indians numbering nearly 800,000 returned only 2 members to a House of 50 elected members in each of the two general elections under the Donoughmore Constitution, and the Governor was thus constrained even to nominate a third Indian member. While all the time raising a scare about Indian swamping, the Sinhalese swamped all the territorial electorates and transformed them into communal electorates. The Sinhalese politicians would not be justified in their fears of Indian swamping when even under manhood suffrage, 400,000 Indians in the Central Province could return only 2 members and 125,000 Indians in Uva province and 140,000 in Sabaragamuwa province could return none. Similarly, in respect of village franchise it was authoritatively estimated that Indians would secure a

62. Colonial No. 57 (1931), p. 103, para 4, Despatch from the Officer Administering Uganda, dated 26 August 1930.

63. *Ibid.*, p. 106, para 9.

64. Report of Sir Samuel Wilson (1929), CMD. 3378, Sec. 5, p. 23.

controlling voice at the most in 25 out of 396 village committee areas. In spite of all these ocular demonstrations, 'swamping' continued to be the battle-cry. It appears as though the cry of swamping was mere political claptrap, bolstered up to provide a plausible pretext for manoeuvring to the citadels of political power.

Thirdly, it was argued by the British Government that the grant of equal political rights to Indians on the basis of a common roll would assail the paramountcy of native interests in the East African territories, Fiji, etc. Indians had always recognized and upheld the paramountcy of native interests, and had demanded equality of rights only in relation to the other immigrant communities like the Europeans.⁶⁵ This was repeatedly made clear by the Central Council of the Indian Association of Kenya, Tanganyika, Zanzibar and Uganda, the Government of India⁶⁶ and the Officer Administering Uganda.⁶⁷ The Government⁶⁸ and the people of India⁶⁹ as well as the colonial Indians⁷⁰ even went to the extent of requesting the British Government to take over the control of native affairs and legislative power till the native had sufficiently advanced in intelligence and education to manage his own affairs and rule his country. Indians had always been opposed to imperial control but they offered to accept it in order to safeguard native interests as well as their own, though such acceptance meant violence to their deeply cherished political convictions. It is high time that the British Government gave up its pharisaical pretence of trusteeship which hardly accords with actualities.

Lastly, it was contended that Indians should not object to communal representation in the colonies as it was a part of the political framework in the mother country. As against this argument it might be pointed out, firstly, that separate electorates in the colonies were not communal but racial, carrying with them the hallmark of racial inferiority which was certainly not the case

65. CMD. 1922, para 8: Resolution No. 24, Government of India, Department of E. H. Overseas dated 12 January 1927.

66. *Ibid.*, p. 11. Letter from the Government of India, No. 172-Os. dated 27 March 1926.

67. Colonial No. 57 (1931), p. 97, para 7, Despatch dated 13 August 1930.

68. *Ibid.*, p. 127, para 4, Despatch from the Government of India, dated 24 December 1930.

Also see CMD. 1312, p. 7, para 14, Letter of the Government of India dated 10 February 1921.

69. Resolution of the Indian National Liberal Federation, Christmas Session, 1928.

70. Memorandum on the Kenya Situation by the Kenya Indian Delegation submitted to the Colonial Office, 1923, Part IV.

in India. Secondly, communal representation in India was originally introduced to secure to certain communities educationally, economically and politically backward their due share of representation and not to give a position of predominance to an immigrant community like the Europeans far ahead of the other communities in the above spheres. Thirdly, under the new constitution of free India, communal electorates have been totally abolished. Lastly, a government which finds fault with Indians that they were not identifying themselves completely with the interests of the immigrant country, should not switch back their minds to the political institutions of the mother country in the dead past.

The real consideration which seemed to have weighed with the European ruling class in the East and South African territories in denying equal political rights to Indians was the fear that any concession to the Indian claim would prove a signal to a similar demand by the natives. It was feared that the natives would toe the Indian line and, being numerically far more overwhelming than Indians, submerge the Europeans. Theoretically wedded to the paramountcy of native interests, the British Government could not concede the claim of Indians while withholding the same from the natives. The Governor of Kenya wrote :

If once a common electoral roll is established, the whole class of politically minded natives, small at present but certain in those circumstances to grow rapidly, will be concentrated on securing their own admission to the roll. It is also inevitable that Indian propaganda should speed them on that course.⁷¹

The South African Native Affairs Commission Report 1903-05,⁷² the Hilton-Young Commission Report,⁷³ the Officer Administering Uganda⁷⁴ had all advanced the same argument in justifying their reactionary attitude to Indian political aspirations.

EDUCATION AND PROPERTY TESTS

The above considerations persuaded the British and colonial governments to draw a red herring at every turn across the path of Indian and native enfranchisement in South and East Africa and elsewhere. The Governments of Ceylon and Burma were also unfortunately trying to toe the South African line. Education and property

71. Colonial No. 57 (1931), para 43, Governor's Despatch dated 11 September 1930.

72. Quoted by Maurice Evans in *Black and White in South East Africa*, (1911), p. 262.

73. CMD. 3234, p. 208.

74. Colonial No. 57 (1931), p. 104, para 6, Despatch dated 26 August 1930.

being usually the requisites for franchise qualification, these governments had cluttered and overweighted the franchise machinery with a view to exclude a vast number of illiterate and poor Indians. The innumerable Ordinances passed in the various countries restricting acquisition by and alienation to Indians of fixed property, rendering settlement and domicile of Indians extremely difficult, and the hopelessly inadequate facilities for the education of Indian children, had operated almost as a disfranchising factor. Australia is the putative father of the policy of exclusion through a rigorous language test. South Africa and other countries had followed the Australian example. Burma and Ceylon were the latest converts to South African methods.

The British Guiana Commission of 1927 admitted that the franchise in British Guiana was 'till 1891 confined, by a curious process of indirect election and a high property and income qualification to a small oligarchy of planters'.⁷⁵ Consequently in 1924, though Indians numbered 120,000 constituting 45 p.c. of the total population and adult male Indians were 41,000, only 500 Indians were on the electoral register, forming only 8 p.c. of the total electorate. Even in 1927, the franchise was extended only to those having an income of £62-10sh. or \$300. Ability to read and write English was also another qualification. And so rigidly was this rule applied that the claims of persons who did not specifically state that they could read and write but afforded unchallengeable evidence of that fact by filling in the forms in their own handwriting and affixing their signatures thereto had had their claims rejected on the ground of illiteracy. The Immigration Agent-General of British Guiana in his report for 1915, the McNeil-Chimanlal and Pillai-Tiwari Deputations—all complained that the small number of Indian voters was due to the complicated procedure for registration and the existence of voting papers in the English language, though the voter was only required to read and write some language, either European or Asian. They also stated that a large number of Indians, who might satisfy the property and income tests, were debarred from exercising the vote on the ground of illiteracy alone. In regard to the Fiji Legislative Council, the minimum income qualification for voting was £75 for every Indian. On account of the wide gulf between the poor income and heavy property qualification thus imposed, in 1939 only 3,188 Indians out of a total population of 92,000 Indians exercised the vote, while in the case of Europeans, the voting was as high as 17 p.c. Answering the ques-

75. CMD. 2841 (April 1927), p. 50.

tion whether the language test provided for in the Fiji Municipal Institutions Ordinance of 1909 had acted prejudicially to the Indian ratepayers, Sir A. K. Young in his report stated :

My conclusion, based on the evidence before me, is that it does, in that a number of Indians who are ratepayers are excluded from the electoral roll owing to the language test.⁷⁶

For similar reasons, though Indians in Jamaica in 1920 numbered more than 18,000 there were only 375 Indians on the electoral roll and the position had scarcely improved since then. Regarding Ceylon, the Donoughmore Commission said :

It was also brought out in the course of evidence that Rs. 50 per month income qualification ruled out a large number of propertyless workers whose income was much below that figure,⁷⁷

and so they recommended the abolition of the property qualification. Rejecting the literacy test, they stated :

Again amongst the Indian immigrants a literacy test would produce a mere handful of electors, as by reason of their low birth, and lack of opportunity, they are very largely illiterate.⁷⁸

Agreeing with the Commission,⁷⁹ the Ceylon Governor stated :

I feel convinced that if literacy were established it would not be long before a demand for the imposition of some further limitation on the admission of Indian labourers to the territorial electorate would be advanced and pressed. No one who has had experience of the disturbing effects of Indian questions in certain parts of Africa could contemplate with equanimity the emergence of such a question as a political issue in Ceylon.⁸⁰

Yet under the Order-in-Council of 1931, the Donoughmore recommendation for manhood suffrage was materially modified. Seventy-five p.c. of Indians were debarred as voters under Clause (g) which required an income of Rs. 600 per year or ownership of immovable property worth Rs. 1,500 or occupation of any house

76. Fiji Legislative Council, M.P., 1496/29. Report of Commissioner Sir A. K. Young on statement made in Minority Report of Indian Members of the Municipal Franchise Committee, p. 5, para 8.

77. Donoughmore Commission Report (1928), p. 82.

78. *Ibid.*, p. 86.

79. Sessional Paper XXXIV, October 1929, p. 12, para 29, Governor's Despatch dated 2 June 1929.

80. *Ibid.*, p. 13, para 30,

with an annual rental varying from Rs. 200 to Rs. 400. Under threat of rejecting the Donoughmore Constitution, the Sinhalese politicians got a motion passed introducing the literacy test. Clauses 7, 8 and 9 of the Order-in-Council required domicile as a qualification for the general franchise, and for the undomiciled there was the further requirement of five years residence in Ceylon supported by a certificate of permanent settlement, the chief consequence of which was the loss of protection which all civilized governments offered to their emigrants.

When, even after all these restrictions, it was found that on allowing individuals to apply for registration as voters, the Indian element in certain electorates increased, they made registration compulsory. The employers never cared to register Indian labourers for they found it difficult to compel them to vote for their nominees. It was also discovered, according to the Report of the Agent of the Government of India, 1931, that the number of Indians registered would have been higher had not Indian labourers on some estates been intimidated against applying for registration by the circulation among them of misleading pamphlets inspired by interested persons. The circular issued by the Legal Secretary on the initiative of the Pan-Sinhalese Ministry was interpreted by the Registration Officers in more ways than one, and the result was that the number of Indian voters was considerably reduced. The definition of 'domicile' in 1935 as descent from those who had settled in Ceylon for two or more generations disqualified a vast number of Indian workers in Ceylon.

The prescription of high property and education tests is a monstrosity when the governments had deliberately discouraged and prevented Indians from acquiring property and education. Hence, to refuse franchise to Indians on that ground 'would be equivalent to penalizing them for the fault of the State'.⁸¹ Recognizing this flagrant dereliction on the part of the colonial governments and the irresistible force of the Indian argument, Lord Passfield, the Secretary of State for the Colonies, pleaded for the inclusion of Indian languages in the language test. Referring to the correspondence that passed between the Government of India, the Secretary of State for the Colonies and the Fiji Government, the Governor of Fiji stated in the Fiji Legislative Council :

Lord Passfield pointed out that the Government of Fiji had done comparatively little to assist Indians to obtain education in English in local schools, and it would appear fair that so

81. Pillai-Tiwari Report (1924), p. 70, para 156.

long as Indian schools taught mainly Indian languages, anyone who wrote and read Indian languages should to that extent be qualified as an elector⁸². . . I agreed that the logic of the Government of India was unanswerable. There was no merit peculiar to the English language which would admit it, and debar Hindi and Tamil, as a voter's qualification.⁸³

But the same Governor argued again that the inclusion of Indian languages would widen the franchise, which was not desirable, for 'the control would merely pass from the European to the Indian.'⁸⁴ The British Guiana Constitution Commission of 1927, while not proposing any change in the literacy test, recommended that the ballot papers should be printed also in Urdu, and Deva Nagri characters, and that ample provision for polling stations should be made as the long distances between them had precluded many Indian voters from exercising their franchise. In his Report the Hon. E. F. L. Wood stated that though Indians in British Guiana and Trinidad constituted 42 p.c. and 33 p.c. of the total population respectively, they had been politically 'underdogs' when compared with the Negroes, owing to the superior educational advantages of the latter, and so he recommended that every endeavour should be made to make the younger generation literate in English.⁸⁵ In Fiji also even in 1921, the Dawson Commission recommended that the system of a simple educational test in various Indian languages as well as in English be introduced,⁸⁶ but nothing seems to have been done so far.

No approach to any problem which ignores the hard realities of a situation, however unpalatable, can prove effective in achieving its object. Hence Indians must count with the apprehensions, however unfounded, honestly entertained by the different communities. So far as South Africa was concerned, under the existing psychological conditions any demand for immediate parliamentary franchise for Indians was bound to prove abortive. Hence the Government of India should start negotiations for the extension of the restricted municipal franchise of Cape Province to the Transvaal and Natal Indians. To disarm opposition, it is better in the first instance to pitch the demands low. For the same reason, Indians should for the present even abstain from insisting upon

82. Motion on the Postponement of Operation of Ordinance No. 15 of 1935, Governor's Address, 12 November 1935, p. 256.

83. *Ibid.*, p. 257.

84. *Ibid.*

85. CMD. 1679 (June 1922), p. 67.

86. Resolution No. 24, Government of India Overseas, 12 January 1927, p. 3, para 6.

adult franchise. While not giving up their sovereign right to parliamentary franchise, Indians may agree to such municipal franchise as will safeguard their trading and other rights and enable them 'to work out their own salvation as subjects of the Union.' The Union Government should grant civic franchise to Indians in view of the facts that the Union Government had, under the Capetown Agreement, recognized them as citizens of the Union and undertook to uplift them, that Indians had enjoyed the franchise for half a century and were testified to as law-abiding citizens, and that 85 p.c. of them were South African-born.

In regard to Ceylon, what is required is the replacement of the double classification of citizenship by descent and citizenship by registration with varying rights by a formula recognizing the rights to full citizenship of all Indians who preferred to make and did make Ceylon their home. If the domicile test is inevitable, proof of domicile in a court of law according to English law may be stipulated in the case of Indians belonging to professional and trading classes but it should not be demanded of Indian workers.

In British Guiana, Trinidad and Jamaica, every Indian who paid a direct tax, however small, should be given a vote. If the imposition of any further test was unavoidable, literacy in any language should be regarded as adequate. The fact that most Indians in these countries were poor labourers far removed from the protection of the mother country necessitates a special and separate approach to their political needs.

In regard to the question of common roll representation of Indians, the problem may be tackled in three ways. In the case of East Africa and Fiji where the indigenous community is not socially and politically advanced, the Indian demand should be for a common roll to all the immigrant communities with safeguards for the indigenous community. A common roll may be introduced as a tentative measure for five years to watch its effects and see if the apprehensions entertained by the other communities are well founded. Secondly, a common roll may be introduced as a regular feature after restricting the Indian electorate to a certain percentage as offered by the Kenya and Uganda Indians, and recommended by the Wood-Winterton Report. Or the territorial seats can be so redistributed as to secure to the minority communities the same amount of representation as they are entitled to under communal representation. Thirdly, common electorates with reservation of seats may be tried until the political atmosphere is sufficiently cleared for the introduction of common electorates. Common roll

may be first introduced not on the basis of adult franchise, though it is a corollary of the common roll, but on the basis of civilization franchise with an educational test which provides for the inclusion of Indian languages. After introducing compulsory education with a provision for the teaching of English and local languages, the education qualification may, after ten years of such instruction, be extended to include those languages. Every individual should equally be able to attain such a qualification.

If the domicile test cannot be altogether abolished, once the period qualifying for a domicile is fixed by negotiation, opportunities should be given to Indians now resident in the colonies for a certain number of years to become domiciled after the completion of a fixed period, unhampered by any restrictions. As a broad principle, where an educational test is prescribed, till sufficient facilities have been provided for the educational needs of Indians, so far as the Commonwealth is concerned, all those who can write in any language spoken in any part of the Commonwealth should be admitted to the franchise.

In regard to the income qualification the basis should be the average income of the different functional classes and not racial affiliation. The Chettiar millionaires and the Indian plantation labourers in Ceylon should not be clubbed together on the basis of common nationality. Nor could all Indians be placed on a footing of equality with Europeans. In Ceylon the Rs. 600 income qualification which was required of European British subjects was also insisted upon in the case of Indian British subjects, though undoubtedly as between the two classes the average income of an Indian was very much lower than that of a European.

The fundamental rights of minorities should be declared in the preamble of the colonial Constitution enactments as was done in Soviet Russia, Poland etc. Articles concerning the political rights of future immigrants could be inserted in the Constitutions as was done by the Brazilian Constituent Assembly in 1934.

A clear-cut definition of 'Ceylonese', 'Burmese', etc., is very essential in order to avoid the facile resort to different interpretations for different purposes.

The complexity and uncertainty and other causes which render a domicile test inadvisable had been examined earlier. There are also other reasons which demand its replacement by a single residential test. As a basic principle of English law, the test of domicile was not included in the qualifications for franchise to the British Parliament, which was open to all British subjects who had

resided in an electoral district, formerly for a period of six months and later under the last of the Representation of the People Acts, for a period of three months. An alien was entitled to the vote on his obtaining under the British Nationality and Status of Aliens Act, 1933, a certificate of naturalization. Sir Herbert Stanley, Governor of Ceylon, regarded Indians as aliens in Ceylon and recommended that in the event of their not possessing a Ceylon domicile, they should obtain a certificate of permanent settlement, the language of which was, according to the Governor himself,⁸⁷ borrowed from the Naturalization Ordinance of 1890 applicable to aliens who sought denization in Ceylon. Also in view of the circumstance that the Indian labourer in Ceylon and other countries is not under any indenture of service, the fact of five years residence in the Island of one's own free choice and free will is presumptive of an intention on the part of the resident to remain in Ceylon for an indefinite time. This is what is regarded in law as *anima mundi*, by virtue of which a domicile of choice is acquired. It is also good law that a person who by his residence and conduct is deemed to have acquired a domicile of choice is nonetheless so domiciled because of the possibility that in future, as for instance when he becomes unfit for active work, he may wish to return to his former home. For in such a case the domicile of choice will be considered to have been abandoned and the domicile of origin will revive. So far as Ceylon was concerned there was also another reason for the abolition of the domicile test. The proviso in Clause 7 of the Ceylon Order-in-Council required that a domicile of choice should not be deemed to have been acquired without evidence of residence in Ceylon for a minimum period of five years. This is contrary to the law of domicile, as the weight of authority on this question is that, though the period of residence may be *evidence* of domicile, it is not an *element* of domicile. Accordingly, no length of time is necessary for the acquisition of a home or domicile in another country. Thus if an Indian leaves his home in India with his wife, children and belongings, and accepts an appointment in a Ceylon estate with the intention of continuing in such work as long as work is available, he should forthwith acquire a Ceylon domicile. The circumstance that for the first five years of his residence in Ceylon he continues to enjoy the protection of the Indian Government and is entitled to certain statutory rights does not alter the legal position. Though this is the real position,

87. Sessional Paper XXXIV (October 1929), p. 14.

Indians will not, however, object to a simple test of residence if the colonial governments deem it essential.

As regards the other requisite of a certificate of permanent settlement, it may be pointed out that a declaration made by an applicant for a certificate of settlement is not of any real value if the object of such a requirement is negative, *i.e.* to restrict the franchise to those Indians who are prepared to make Ceylon their permanent home. Dicey says :

Direct expressions, however, of intention may be worth little as evidence. The person who uses them may not know what constitutes the domicile. He may call a place his home simply because he often lives there. He may wish to be or to appear domiciled in one country while in fact residing permanently and intending so to reside, *i.e.*, being domiciled, in another.

This dictum was particularly true in the case of Indian labourers in Burma and Ceylon. However, such certificates could be required of Indians if they were statutorily assured beforehand of full political rights on their production, and of absence of any obligations, as a condition precedent to obtaining the certificate, to renounce the statutory protection they have from India. Also, the certificates should have been issued free and facilities provided for obtaining them.

It has been argued that a declaration of intention coupled with shifting of families, in the case of married people, and remittances in all cases, should be the test of a domicile of choice. But as was pointed out by a Lord Chancellor 'the devil himself knoweth not the mind of man'. As regards remittances to India, they are necessary to maintain aged parents even if wife and children lived in the immigrant country. Also, it is gross injustice to object to paltry remittances by labourers for maintaining their aged parents while not raising a little finger against the drain of millions effected by the European planters. Secondly, it was also pleaded that Indians made the immigrant country their place of occupation and India their real home by retaining their connexions with India. This argument is untenable, firstly, because the break of contacts with India would not constitute a test of abiding interest in the immigrant country but of stagnation and lack of vitality in Indian culture. Secondly, the Australians, Canadians and New Zealanders, though thousands of miles away, retain associations with Great Britain and pay periodical visits. And yet they are not denied citizenship rights on that score. But countries like Ceylon, Burma and Malaya are geographically contiguous to India, just across the southernmost districts of Madras and Bengal.

Fourthly, the restrictions due to the Hindu system of caste and sub-caste marriages and the opposition of the European, the Sinhalese and the Burmese to mixed marriages necessitate Indians to keep contact with India for getting their sons and daughters married. Fifthly, India is the religious home not only of Indians overseas, with whom religious allegiance is the ruling passion of their lives, but also of the people of Ceylon and Burma. Lastly, the breaking up of social and religious ties with India is not necessary for the secular purposes of citizenship.

It is not intended by these arguments to justify dual nationality. There can be no dual loyalty for economic and political purposes. What is stressed is the fact that the test should be more reasonable and easily ascertainable like the test of residence for five years as recommended by the Donoughmore Commission, or the founding of a family, or employment in government service. If the test of domicile of choice is unavoidable, there should be a definite understanding with regard to the limitation of franchise to Indians who adopted it.

CHAPTER IX

ADMINISTRATIVE MACHINERY FOR THE PROTECTION OF INDIAN INTERESTS

Under the Government of India Act, 1919, the Governor-General of India managed in his discretion India's external relations. The office of the Secretary of State for India and the British Foreign Office in London and the Foreign and Political Department of the Government of India directly under the Governor-General constituted the administrative machinery for the purpose. By creating the separate office of the Crown Representative for exercising the paramountcy function, the Government of India Act 1935 bifurcated the set-up in India into a Political Department and a Foreign Department. Again the Foreign Department was itself split into the Department of Commonwealth Relations, dealing with the Dominions, and the Department of External Affairs, dealing with foreign countries. In the field of external affairs, the Governor-General acted in his discretion as under the Act of 1919 but in respect of Commonwealth relations, he acted as Governor-General-in-Council advised by the Member for Commonwealth Relations in his Executive Council. The exclusion of India's relations with the Dominions from the field of his discretion was rendered necessary by the embarrassing position in which the British Government found itself frequently. Prof. Arthur Berriedale Keith observes :

...the treatment of Indian subjects of the Crown in the Dominions had aroused strong feeling in India and the British Government was presented with the alternative of contending with the Dominions on behalf of India, which had involved it in difficulties with the Dominions without much good accruing to India, or allowing India to stand out as an autonomous unit of the Commonwealth in this regard.¹

In principle, India's relations with the Crown colonies were similar to those with the Dominions, but, in practice, Britain decided through the Colonial Office in London the colonial attitude to Indian demands.

1. *A Constitutional History of India (1600-1935)*, p. 407.

In regard to the conduct of External Affairs with foreign (outside the Commonwealth) countries, British policy drew a minor distinction between countries proximate to India and the rest. In the case of the former, 'though relations were formally in the hands of the Foreign office, . . . British policy was largely based on Indian (*i.e.*, the Governor-General's) advice' while in the case of the latter 'the Governor-General was subject to the necessity of acting under the directions of the British Government and through its agencies'.² The territories in proximity with India were all Asian and consequently the earliest diplomatic relations in which any Government of India had its say happened to be with Asian countries. Though the Government of India in the Department of External Affairs was not empowered to appoint diplomatic representatives, 'the representatives of the British Crown in Afghanistan, in Nepal and Tibet and the Consuls in Afghanistan, Persia, Arabia and Kashgar were normally chosen from the Indian Foreign and Political Department.'³

This constitutional position continued up to September 1946 when, during the establishment of an Interim Central Government preceding complete transfer of power, External Affairs, along with Commonwealth Relations, were transferred to a member of the Governor-General's Council which *de facto* functioned as a Cabinet with sovereign power. After India's attainment of Independence on 15 August 1947, the Government of India assumed complete power in the whole field of her external affairs. In 1948, the name of the Ministry of External Affairs and Commonwealth Relations was shortened to Ministry of External Affairs with the Department of Commonwealth Relations incorporated therein as a wing.

With effect from 14 October 1941, a new Department of Indians Overseas was created. From 30 March 1944, the name of the Department of Indians Overseas was changed to the Department of Commonwealth Relations, which was entrusted, in addition to the functions assigned to the former, with the conduct of relations between India and the Dominions. In order to deal directly with all emigration problems in the post-war period on a uniform all-India basis, with effect from 1 October 1944, the Central Government had resumed the functions assigned to them under the Indian Emigration Act, 1922, (which were up to that date performed by the Provincial Governments of Madras, Bombay, Bengal, the United Provinces, Bihar, Orissa and Sind by virtue of entrustment from

2. *Ibid.*, pp. 407-08.

3. *Ibid.*, pp. 407-08.

time to time by the Central Government under Sub-Section 1 of Section 124 of the Government of India Act, 1935). These functions would now be performed by the Central Government through the Controller-General of Emigration, New Delhi. Now he administers the Act, through Protectors of Emigrants stationed at ports from which emigration is lawful.

MALAYA

In March 1889, the Straits Settlements opened an Emigration Depot in Negapatam with a Doctor as Superintendent. Routine inspection of the places of employment began on the subsequent appointment of a Superintendent of Indian Immigration at Penang with a number of assistants. In 1897, the Government of India left the control of migration between South India and Malaya to the colonial governments, and in 1907 the present system of assisted immigration began with the establishment of the Indian Immigration Fund and the appointment of the Indian Immigration Committee and the Controller. When the Committee was set up, the Indian Immigration Departments of the S.S. and the F.M.S. were amalgamated. The task of collecting funds necessitated the expansion of the Indian Immigration Department with additional staff. Close contact was on this account established with the places of employment and one of the first endeavours of the Department was to remove the abuses inherent in recruitment by agents for their own profit. After the passing of the Labour Code in 1912, the Labour Department in its present form was constituted which took over the duties of the old Immigration Departments. To deal with Indian labour in particular and Indians in general, there was thus in Malaya a well-organized Labour Department with the Controller of Labour at its head, two Deputy Controllers of Labour at Penang and Kuala Lumpur, four Assistant Controllers of Labour stationed in Penang, Ipoh, Kuala Lumpur and Klang, and one Extra-Assistant Controller of Labour in charge of the Labour Office in Singapore. There was also the Agent of the Government of India at Kuala Lumpur.

The Indian Immigration Committee possessed in India a large modern camp at Avadi which was capable of housing 6,000 persons and an overflow or segregation camp nearby at Melpakam with accommodation for 2,000 people. The Avadi camp was equipped with its own chlorinated and filtered water supply, electric lighting and modern bathing and cooking arrangements. There was also a General Hospital and a special Isolation Hospital besides accommodation for the Emigration Commissioner and other staff inside

the grounds. In 1925, the Committee also took over from the S.S. and F.M.S. Governments the two camps at Negapatam and Papakovil, which could accommodate about 3,000 and 1,200 persons respectively. The Negapatam Camp had also a small General Hospital and a small Isolation Hospital. The depots at Avadi and Negapatam were under the control of the Emigration Commissioner for Malaya stationed at Avadi and the Assistant Emigration Commissioner at Negapatam respectively. Both these officers were on the F.M.S. Government establishments, their salaries being paid by the Malayan Government.

The recruiting *Kanganies* used to be licensed by the Deputy Controller of Labour, Malaya, at Penang, and were examined by the Indian Agent, by whom the licences had to be endorsed. On arrival in India the *Kanganey* had to take his licence for registration to the office of the Malayan Emigration Commissioner at Madras or to the Assistant Emigration Commissioner at Negapatam. The licence would become valid only on endorsement by one of these officials. After receiving advances from the financial agents in India of Malayan employers the *Kanganey* would proceed to his village for recruitment.

Each recruit was given a copy of the official pamphlet containing official information about Malaya, rates of wages, hours of work etc., and a receipt taken. The Rules required that, before any recruit had left his village, he should be produced by the *Kanganey* before the village Munsiff, who, on satisfying himself that no valid objection had been taken to the emigration of the recruit, confirmed the fact that there was no objection by his signature against the recruit's name on the back of the *Kanganey's* licence. Every recruit was then received into the Emigration Camp by a Malayan Government Officer. The Protectors of Emigrants at Madras and Negapatam inspected these emigration depots at frequent intervals. They interviewed the intending emigrants before their embarkation for Malaya, and questioned every recruit and recruiter. Regarding quarantine, all assisted emigrants had to undergo medical examination before embarkation at Madras or Negapatam as the case might be. As regards transport, Indians sailed mostly by the vessels of the British India Steam Navigation Company. These steamers had on board inspectors and inspectresses employed by the Malayan Governments to look after the emigrants. The shipping company also employed food inspectors. On arrival in Malaya, they were again quarantined at Penang and Port Swettenham, where they would disembark, the period of quarantine being seven days and five days at the two places respectively. There were immigration depots at these two places

and also at Singapore for the accommodation of assisted emigrants till they were sent to their places of employment. These depots also would accommodate repatriates awaiting embarkation at these ports.

The Malayan Labour Department exercised jurisdiction throughout Malaya, but on the immigration side the work of the department was confined to Indians. The Controller of Labour, Malaya, was the responsible head of the Labour Department in each political unit and he had to ensure the uniform application of a common labour policy. As Chairman of the Indian Immigration Committee, he had, under the authority of the Committee, to administer the Indian Immigration Fund solely in the interests of the importation of Indian labour. The fund was collected by means of assessment on the employment of Indian labour, the basis of assessment being the number of days work done by Indian labourers and a quarterly rate for every 72 days work was fixed by the Indian Immigration Committee. The amount due by way of such assessment would be calculated in the Labour Office at Penang from quarterly returns submitted by the employers. The money was collected and placed in the banks there by the Deputy Controller of Labour, Malaya, who was in immediate charge under the direction of the Controller of Labour, Malaya. The principal purposes for which the Fund could be legally utilized were (a) train fare of emigrants from their villages to camps at Madras and Negapatam; (b) feeding and medical attention of emigrants awaiting shipment at the Indian camps; (c) steamship passages from India to Malaya; (d) quarantine charges in Malaya; (e) transport charges from ports to places of employment; and (f) repatriation to India. Besides this expenditure connected with the importing of labour, the Fund was also used for maintaining homes for decrepit and unemployed labourers and children and orphans of Indian labourers, and the repatriating and assisting of Indian labourers in need of relief.

In September 1941 Bills were published to amend the Labour Code in the colony and the F.M.S. in order to extend the scope of the Indian Immigration Fund so as to include Javanese labour (curiously called Netherlands Indian labour) in the definition of Indian labour. Despite Indian opposition, they were passed in November 1941 on a Certificate of Emergency. The Attorney-General, however, gave an assurance on behalf of the government that there was no intention to mix the funds collected in respect of Javanese labour with the Indian Immigration Fund and that any money loaned from the latter would be strictly accounted for and adjusted in due course. Nor was there any suggestion, it was

stated, that by any such financial arrangement the interest of one class of community would be benefited at the expense of the other. In July 1949, the Labour Department of the Government of the Federation of Malaya circulated a Bill for examination by the State Governments of Malaya seeking to appropriate Rs. 1 crore or \$6,000,000 (Straits dollars) from the Indian Immigration Fund for recruiting 'indigenous labour'. The Fund, called the 'Tamil Labour Fund' before 1912 and consisting of several millions of dollars, was raised not by donation but by a compulsory levy on the employers of Indian labour in Malaya, particularly rubber estate owners. The levy was collected once in three months, the rate of assessment being based on the total number of days the Indian labourers had worked during the period. The Fund was thus a part of the workers' wages, collected directly from the employers. To the extent of this assessment, their wages had been reduced. The planters often cited the enforcement of this assessment as one of the reasons for not increasing the wages of Indian labourers, especially of estate labour. The family of every Indian labourer who had worked or is now working in Malaya has a legal claim to this Fund and is its joint owner.

Part IX of the Labour Code which refers to this Fund says that, apart from providing free passage for Indian labourers to that country and for meeting other incidental expenses involved in such recruitment, the Fund shall be used, among other things, particularly for :

- (i) the maintenance of a home or homes for decrepit and unemployed Indian labourers and the children and orphans of Indian labourers ; and
- (ii) the repatriation of and assistance to Indian labourers in need of relief (Sec. 123 of the Labour Code).

Thus the Fund was actually meant to be used solely to finance recruitment of Indian labour and for their social security purposes. Section 117 of the Labour Code clearly states that the provision of Part VI should apply only to Indian labour. Even if, according to Section 129, Sub-Section II (j), the Council of the Federation of Malaya decides by a resolution to utilize this Fund for certain other purposes, such a resolution would be illegal in so far as the intention of the resolution was repugnant to Section 117 which governs the whole Fund. Further, in 1941 when the amendment to give an extended meaning to the term 'Indian' was debated in the legislature, it was clearly pointed out that the essential nature and purposes of the Fund would be affected by the amendment and that any portion of the Fund diverted for the benefit of non-

Indians should only be regarded as an 'advance' and consequently separate accounts for it should be maintained and the sum so diverted should be refunded. Besides, when the Bill to amend the Labour Code in the colony came up before the Legislative Council in 1941 so as to facilitate the recruitment of Javanese labour with the Indian Immigration Fund, the Governor of the Straits Settlements gave an assurance that it was not intended that one class or community should be benefited by any such financial arrangement. How then could the Labour Department sponsor legislation to appropriate the Fund for the recruitment of 'indigenous labour'? There was no necessity either to draw on this Fund meant for Indians. Thousands of dollars are being confiscated every week by the various State Governments by way of 'unclaimed deposits'. Instead of transferring the entire amount to the 'General Revenues', it could be utilized for recruiting 'indigenous labour'. Or the employers could be asked to pay a little more by way of income-tax to meet the additional expenditure to be incurred in supplying them 'indigenous labour'.

This Fund was managed by the Indian Immigration Committee which was a statutory body consisting of the Controller of Labour (Chairman), the Deputy Controller of Labour, Malaya (Vice-Chairman and Secretary), the Directors of Medical Services, Public Works, Drainage and Irrigation, the General Manager, F.M.S. Railways, the President of the United Planting Association of Malaya and a planting member from each of the states and Settlements of Kedah, Wellesley, Perak, Selangor, Negri Sembilan, Malacca, Johore and Kelantan. There was also an Indian member from the S.S., two Indian members from the Malay states and a prominent Indian business man resident in Penang.

The Head Office of the Labour Department was at Kuala Lumpur, where the Controller was stationed. The Deputy Controller of Labour, F.M.S., at Kuala Lumpur was in charge of labour questions in the F.M.S. He had under him (i) an Assistant Controller of Labour, Perak, stationed at Ipoh, who besides regular inspection of places of work throughout the states would also go to Taiping on two fixed days each month; (ii) another Assistant Controller of Labour with office at Serimban who had authority both in Malacca and Negri Sembilan and would visit the former Settlements at regular intervals; (iii) another Assistant Controller of Labour, Klang, whose jurisdiction extended to the three coast districts of Selangor. All these officers were drawn from the Malayan Civil Service and they gave their whole time to labour work. In addition, there were Indian Extra-Assistant

Controllers of Labour stationed at Kuala Lumpur, Klang and Ipoh and also a Labour Office at Kualalipis, Pahang, under the charge of an Indian Interpreter.

The S.S. was in the charge of the Deputy Controller of Labour, Malaya, at Penang, who was helped by an Assistant Controller of Labour, Penang. Both of them were full-time labour officers of the Malayan Civil Service. In respect of the labour questions relating to Malacca, the Assistant Controller of Labour, Serimban, worked under the Deputy Controller of Labour, Penang. Similarly, the Indian Extra-Assistant Controllers of Labour at Singapore and Penang also worked under the Deputy Controller of Labour, Malaya. Johore was under the authority of the Controller of Labour, Johore-Bahru, who had the powers of a Deputy Controller of Labour under the Johore Code. He was also a whole-time labour officer and a Malayan civil servant. The Protector of Labour, whose jurisdiction comprised both Kedah and Perlis, had powers similar to those of the Johore Controller. He was also a whole-time labour officer of the Malayan Civil Service and was assisted by an Indian Inspector of Labour. In Kelantan, the District Officer, Kualakrai, in whose district were most of the Indians in the state, was the Controller of Labour for the state. Unlike the above officers, he was a part-time labour officer and was assisted by an Indian Inspector of Labour. Similarly in Trengganu, the Assistant Adviser, Kemaman, was the labour officer for the states, as almost all the Indian labourers lived in his district and other labour officers paid special visits for which provision was made in the Trengganu budget. Lastly the Resident of Brunei was the labour officer for his own state.

The Malayan Civil Service officers of the Labour Department were those who had spent from eight months to a year in India, moving about in the districts which supplied labour to Malaya and learning Tamil or Telugu. Some of them had also had additional experience in India as Emigration Commissioners or Assistant Emigration Commissioners.

The Controller of Labour, Malaya, was the supreme head and constituted the pivot of the whole machinery connected with labour. The labour officers in each state submitted regular reports to him in regard to all aspects of their work, and he was thus apprised of the position throughout the whole country. Through his advice and order, wages, housing, sanitation, water supply, medical services etc. were maintained at satisfactory levels and were also improved wherever necessary. This improvement was

facilitated by experience and knowledge acquired by the various labour officers in all parts of Malaya.

There has been an Indian Agent of the Government of India since 1923. The headquarters of the Agent was also at Kuala Lumpur, which is the geographical centre of Malaya, headquarters of the Labour Department and also of the United Planting Association of Malaya. The Indian Agent was appointed from the Madras Provincial Civil Service, but from 1939, Malaya, like Ceylon, had an Agent who belonged to the Indian Civil Service.

As Malaya was under the British Military Administration, the designation of the Indian Agent was changed in 1945 to that of 'Representative and Liaison Officer of the Government of India with the Supreme Allied Commander, South-East Asia' and his headquarters was located at Singapore. On establishment of civil governments in Malaya and Singapore with effect from 1 April 1946, his designation was changed to 'Representative of the Government of India in Malaya'. From November 1945 the Representative was for some time accredited as Representative of the Government of India with the Governments of British North Borneo, Sarawak, Brunei and Hongkong.

In 1946, a Publicity Office (redesignated Information Office) was attached to the Representative's Office in Malaya. The Agent at Kuala Lumpur is under the administrative control of the Representative at Singapore.

CEYLON

The London Committee of the Ceylon Association expressed willingness for the creation of an Emigration Board in 1917, and the proposal was supported by the Committee of 1918. The next year, the Ceylon Government suggested the appointment of a Controller with complete power while the proposed Board would become a consultative body. The Governor stated that the success or failure of the above scheme would lie with the Controller. Under the Indian Emigration Act, 1922, and Ceylon Labour Ordinance I of 1923, a Controller of Indian Immigrant Labour and Ceylon Emigration Commissioner were appointed, a Board of Indian Immigrant Labour constituted, an Immigration Fund instituted, and recruitment except by licenced agents prohibited. Under Section 3(1) of the Indian Emigration Act, a Protector of Emigrants was stationed at Mandapam. Another Protector was also stationed at Tuticorin, the Port Officer, Tuticorin, performing the duties of the Protector of Emigrants at the Port of Tuticorin. Employers in Ceylon desiring to engage or assist the emigration

of skilled workers from India had to satisfy the Protector of Emigrants as to the terms of the engagement and fulfil certain other conditions to his satisfaction. Shop assistants, clerks and domestic servants were the most common types of skilled workers who emigrated to Ceylon. Agreements relating to terms of employment between the employee and the prospective employer were registered in the Protector's office. Skilled workers already in Ceylon who paid visits to India on leave which did not interrupt their employment were not registered. The Protector, with the help of his Medical Inspector, would examine the labourers to see whether the Indian Emigration Rules were being observed and whether labourers might be passed for despatch to the estates in Ceylon or rejected to be returned to the villages from where they had been recruited. He also ordered the supply of clothes to such of the labourers as were ill-clad. Under the Donoughmore Constitution, the above Board became part of the Department of Labour, Industry and Commerce. The Department was for the first time charged under the direction of the Executive Committee of Industry, Commerce and Labour with all the manifold duties in regard to labour of all kinds all over the Island, which the wide responsibilities of the Committee entailed.

As in the case of Malaya, Indian emigration to Ceylon was subjected to several administrative regulations to safeguard against recruitment by force or misrepresentation. An emigrant had to obtain his village headman's signature to Form III under the Indian Emigration Rule 39 (1). But in February 1939 the Madras Government issued instructions in this behalf to village headmen. An emigrant was required to secure and present to the village headman letters from relatives or friends on the estates who belonged to the same village. Next, the emigrant had to apply for his transportation to the agency nearest his village. There was a depot at Trichinopoly. The Ceylon Government maintained, by arrangement with the Government of India, a quarantine camp at Mandapam for passengers to Ceylon *via* Dhanushkodi. A portion of this camp was also the 'place of accommodation' for the reception of emigrant estate labourers in terms of Rule 31 of the Indian Emigration Rules, 1923. The Ceylon Labour Commission representative received and checked the number of labourers coming from the different Labour Depots, and generally looked after them during their stay in the camp. The Quarantine Department of the Government of Ceylon enforced the provisions as regards detention, medical examination, vaccination, disinfection etc. The Superintendent and Quarantine Medical Officer of the Department was always a highly qualified and senior mem-

ber of the Ceylon Medical Service and his assistants were also selected members of that Service. The Superintendent was the representative of the Emigration Commissioner. The Assistant Emigration Commissioner or an Inspector of Emigration resided in the camp itself.

The Protector of Emigrants with the help of his Medical Inspector would visit the Mandapam Camp frequently and report weekly on the conditions therein. The Labour Department in Ceylon registered the labourers as required by the Ceylon Labour Ordinances and arranged for their feeding and despatch to Ceylon accompanied by Labour Department escort peons. There were Labour Depots in Ceylon at Polgahawela and Colombo, and they were helpful to those who had to change trains at the places. The Indian Agent, whose headquarters was Kandy, would visit the estates whenever complaints were received alleging serious irregularities or at the request of the Superintendent to visit and settle disputes, besides occasional visits for general purposes. During the year 1946, the Agent visited 15 estates and the Assistant to the Agent, 66.

The Controller of Labour was also the Commissioner for Workmen's Compensation, Registrar of Trade Unions and Deputy Food Controller (Estates). He administered the Immigration Fund subject to the control of the Governor and issued a quarterly statement of funds besides making an annual report on the working of his Department. He was Chairman of the Board of Indian Immigrant Labour. The Governor appointed the personnel of the Board, which varied from 9 to 12, 2 of whom were members of the State Council. Membership of the Board was for three years. The Board had no administrative or executive functions; it merely advised the Controller in regard to matters arising under Ordinance I of 1923. Though the purview of the Controller was extended from estate labour to all kinds of labour in 1931, the staff of the Department remained the same. Thus the machinery became inadequate to collect information regarding conditions in the different spheres of employment. It became therefore essential, as recommended by Sir Edward Jackson, to enlarge the Department to facilitate the collection of information as regards labour conditions outside the estates. The Planters Association recommended the formation of a Labour Bureau. Sir Edward St. Jackson had also favoured it. The Bureau should be charged with the registration of all workers seeking employment irrespective of race, collection of information as regards the type of work they were willing to take up and particulars of their previous employment. Sir Edward St. Jackson has stated that such registration

should be restricted to the Ceylonese, the term 'Ceylonese' including Indians who were born in the Island or made Ceylon their permanent home. He expressed the opinion that the possession of political or municipal franchise would be one possible test. But this test proved of doubtful value in view of the obstacles placed in the way of Indian acquisition of franchise, particularly since Sir Edward St. Jackson had given his opinion. He suggested that registration might be limited to applicants for work of the type now mainly performed by the immigrant labour. The suggestion might be adopted, as the object of registration was to secure employment for Ceylonese labour. Sir Edward St. Jackson had also stated that the employer could, without being compelled to apply to the Bureau, apply for workers and the Bureau should send out Ceylonese workers in preference to others.

DEFECTS

The Ceylon Government more or less took over the establishment of the Ceylon Labour Commissioner and appointed an Emigration Commissioner and Deputy and Assistant Commissioners for supervising and controlling the recruitment of unskilled labourers with a view to prevent illegal recruitment. The Ceylon planters utilized the Emigration Commissioner as their agent on the coast to finance and facilitate the recruitment of as many emigrants as possible. But the Government of Ceylon utilized the services of the same officer to see that recruitment took place strictly according to emigration rules. Thus the Commissioner was vested with the dual role of agent of the employers and supervisor of such employers' conduct in recruitment. Ceylon would do well to follow Malaya in this respect and appoint independent civil servants as Emigration Commissioners.

The quarantine camp of the Ceylon Government at Mandapam is on Indian soil. It is reported that Indians are being harassed by Ceylonese officials. The lower class passengers are made to stay in the camp for a week, paying for their food etc., while the upper class passengers are inconvenienced by the medical officers. The Ceylon police officers posted to examine the passengers are proving arbitrary in their attitude. Wives of Indians holding decent positions in the Island are disallowed from accompanying their husbands unless they produce their marriage certificates. On coming into force of the Indian (Residents) Citizenship Act, a Deputy Controller of Emigrants and Immigrants was to be posted at Mandapam to examine passengers and allow only those Indians to enter Ceylon who had permits and visas. It is being suggested

that India should ask Ceylon to remove its quarantine camp to its own soil and restrict the entry into India of the Ceylonese by setting up its own quarantine camp there.

In view of the urgent need of creating a better understanding between India and Ceylon and of securing the speedy settlement of problems of mutual concern that arise from time to time between the two countries, including the question of food supplies from India, the Ceylon Government appointed her Representative in India in October 1942.⁴ In response to an inquiry, the Ceylon Government informed the Indian Government that they would welcome the appointment of an Indian Representative in Ceylon of a status similar to that of the Ceylon Government's Representative in India. Thus the Government of India appointed a Representative in August 1943 who, on Ceylon becoming a Dominion, was raised to the status of a High Commissioner. The Agent, whose headquarters is Kandy, works under the administrative control of the High Commissioner at Colombo. In April 1946, the Government of India appointed an Indian Trade Commissioner in Ceylon who took over from the office of the Indian Representative trade inquiries and other matters connected with commerce.

BURMA

Burma was conspicuous by the absence of any effective administrative machinery for the protection of Indian labour. But equally noteworthy is the fact that Burma was till recently a province of India and there was perhaps no need for such machinery. There was an Assistant Protector who was an officer from India. He represented in Burma the Labour Statistics Officer. He attended the ships bringing emigrants but at any rate for some years he had made himself so scarce that the Whitley Commission had expressed doubt as to whether the majority of those arriving were aware of his existence. The Commission stated that apparently no one was responsible for the welfare or protection of the immigrants after they had actually landed. They, therefore, recommended the appointment of a whole-time Protector who, while working in co-operation with the Burmese Government, would be responsible solely to the Government of India. The Commission also stated that there was no Director of Industries in Burma and that there was therefore no one charged with responsibility for supervising factory administration.⁵ The position has now changed.

4. Indian Agent's Report for 1942, p. 25, para 60.

5. Report of the Royal Commission on Labour, 1928, p. 35.

The political separation of Burma from India led to the appointment in 1939 of an Indian Agent in Burma as in Ceylon and Malaya. But there was no official system of registration and supervision of recruited labour as in those countries, and, therefore, once the emigrants left the landing stage, the duties and powers of the Protector became unavailing. The urgency engendered by the various Indo-Burmese questions and the improvement in the war situation emphasized the need for reviving the post of Indian Agent in Burma. The pre-war Agent had limited functions, being an officer appointed under the Indian Emigration Act. Hence, with the concurrence of the Burma Government, the Indian Government appointed her first Representative to the Government of Burma. He took charge on 30 October 1944, with headquarters at Simla. When India became a Dominion on 15 August 1947, by which time the Executive Council of Burma had also begun to function as a *de facto* Dominion Government under the Aung San-Attlee Agreement of January, 1947, the status of the Indian Representative was raised to that of a High Commissioner which was again raised to that of an Ambassador when Burma left the Commonwealth.

SOUTH AFRICA

Under the terms of the first Capetown Agreement, the Government of India appointed her Agent in South Africa. Later, the Agency was raised to Agency-General. With effect from 1 January 1941, the Indian Agent-General was raised to the status of High Commissioner for India in the Union. Since then he has been the sole channel of communication between the two governments. On the raising of the Status of the Indian Agency-General to High Commission, it was considered necessary to establish his office at Pretoria with a camp office at Captetown during the Parliamentary Session of the Union Government. The abortive attempts to secure accommodation in Pretoria led to the decision that, pending suitable arrangements being made in Pretoria itself, the headquarters of the High Commissioner's Office should be located in Johannesburg, which is about 45 miles run by car from the Union Government buildings in Pretoria.

This arrangement deprived the High Commissioner and his office of close touch with Natal Indian affairs. Hence a branch office in Durban under the charge of an Assistant Secretary was opened to keep the High Commissioner in touch with affairs in Natal and to advise and assist the Natal Indians. The Assistant Secretary took office in October 1942. As a protest against the

Pegging Act, the Government of India recalled her High Commissioner in 1946.

BRITISH GUIANA

The Immigration Department of British Guiana was in charge of Indian immigrant labour and the protection of its interests. The Immigration Agent-General was head of the Department. Ever since his appointment in 1846 he was entrusted with the duty of enforcing the Immigration Ordinance which contained several provisions in the interests of Indian labour. The Pillai-Tiwari Deputation reported: 'The general opinion would seem to be that the Immigration Department, though said to exist for the protection of the emigrants, in reality acts as if its main function was to protect the planters'.⁶

One of the chief reasons for this apathy, according to them, was the fact that no Indians were appointed to the senior posts in the Department. They, therefore, went to the extent of suggesting that one of the conditions precedent for the resumption of emigration from India should be the acceptance of the principle that in future the Department should be manned ordinarily by Indians only, so far as the senior appointments were concerned. In the Emigration Scheme of 1925, the Government of India stipulated for the appointment of an Indian Agent and reservation of wide powers to him. But this stipulation was not liked either by the planters or the colonial government. It, therefore, became one of the two reasons on the basis of which the British Guiana Commission of 1926 recommended the cessation of the Indian emigration scheme.⁷

In spite of its partiality to the planters, the Immigration Department proved helpful to Indians as a medium to ventilate the grievances of labour to their employers. But the abolition of the post of Immigration Agent-General in 1932, as a measure of retrenchment and the distribution of its useful functions amongst the unpopular officers of the District Administration Scheme, left Indian labour without administrative protection. The Labour Disturbances Inquiry Commission, 1937, observes thus:

What the indentured labourer was to the employer under the 'indenture system', the resident estate labourer is today under the 'plantation system', but he is without the assistance, safeguards and means of ventilating grievances which

6. Pillai-Tiwari Report, p. 47, para 107.

7. CMD. 2841 of April 1927, p. 42.

indentured and unindentured East Indians alike had enjoyed from 1846 to 1932, for, although the provisions of the Immigration Ordinance became inoperative with the cancellation of indentures in 1921, the Immigration Department continued to function as Protector of East Indian labourers until the year 1932, when the post of Immigration Agent was abolished and the duties of the Immigration Agent were distributed among the officers of the District Administrative Scheme (para 9).

It is a misnomer to call the new system a scheme. The estate labourers had given up going to district officers in the latter's capacity as Immigration Agents as they did under the old régime. The same Commission says that the reason for this

will be understood when it is remembered that the former as Tax Collectors institute legal proceedings against persons for non-payment of licences and village rates, whereas the whole-time Immigration Agent not only had no such duties to perform, but on the contrary frequently made representations on behalf of labourers to the Government through the Immigration Agent-General where it was found that measures being taken bore hardly upon an individual or upon East Indians of the labouring classes as a whole. (Para 10).

The result of the abolition of the office of the Agent-General was deterioration in the position of Indian labourers. Acts which were illegal under the old system had since become legal. The consistent refusal to let the labourer know before he began a task as to rates of wages he would be paid and illegal deductions from the wages, both of which were illegal under the old system, had become common to the new. The employers were, under the old régime, statutorily compelled to maintain pay lists and accounts in prescribed forms. But now there was none, and the practice varied from estate to estate. While some managers maintained the old forms 'other managers exercise no great care in regard to these matters and frequently enter the earnings of several persons under one name'. The old order gave Immigration Agents a statutory right to enter on any plantation and make inquiries but now nobody had the right. The Labour Disturbances Inquiry Commission 1937 observed :

We understand that no legal right is now conferred on anyone to enter upon estates, examine pay lists, and endeavour to settle labour disputes. The Section of the Immigration Ordinance which conferred the right is now inoperative. (Para 5).

The Commission recommended that the government should take early steps to establish an authority with the necessary powers for the efficient protection of the interests of both the em-

ployees and the employers. The colonial government should seek the co-operation of the Government of India in implementing this recommendation, for the bulk of estate labour was Indian. The Labour Department of Malaya would be a good model for British Guiana to follow. As much depends on the personal equation of the officers concerned, it is essential that Indians should be appointed to the Department whether they are locally recruited or imported from India.

TRINIDAD

In Trinidad also, there was the Immigration Department with a Protector of Immigrants. But it proved ineffective in preventing the large number of prosecutions of Indian workers during the days of the indenture system. Therefore the McNeil-Chimanlal Deputation recommended that the Department should be vested with more power and responsibility as a practical and effective remedy to reduce the number of prosecutions. They suggested that the previous sanction of an Inspector of the Immigration Department should be made a condition precedent for filing before a magistrate any complaint punishable under the Immigration Ordinance except in the case of desertion and breaches of provisions relating to sanitation. They favoured that the Protector of Immigrants and Inspectors should also, as in Jamaica, be authorized to deal with complaints with jurisdiction concurrent with that of magistrates. They held that the Inspectors could greatly help the labourers by more frequently attending Courts and assisting the accused immigrants, and in regard to cases disposed of by courts, by filing appeals. It was also expressed that the Immigration Office or Depot should take charge of the persons apprehended instead of allowing them to be lodged in a police station.

With the abolition of the indenture system in 1917, the employers were relieved of their legal responsibility towards the workers which the indenture system had imposed upon them and the fulfilment of which it was the duty of the Protector of Immigrants to secure. Even the Immigration Department was abolished about the year 1926. The Governor, Sir Murchison Fletcher, established an East Indian Advisory Board to advise the colonial government on East Indian affairs. But, says J. D. Tyson, the Board was popular neither with the East Indians nor with the other races.

In 1925, the Secretary of State for the Colonies sent a despatch to the Trinidad Government suggesting amongst other things the establishment of a Labour Department. He pleaded for 'adequate and properly co-ordinated arrangements for the regular super-

vision of the condition of the various forms of employment'.⁸ The colonial government took no steps in the matter. The Forster Commission reported to the Secretary of State for the Colonies :

It is a matter for regret that the Government of Trinidad took no action on this despatch and, indeed, sent no reply until after the recent disturbances when on 5 July 1937, the Governor telegraphed to you that he had in mind for a long time past the creation of a post of Secretary for Social Services.⁹

Similarly, provision was made in the legislation of Trinidad for the creation of an Industrial Court for purposes of industrial conciliation and for the registration of trade unions, but no court was established, and until the disturbances of 1937 little progress was made in trade union development. The West India Royal Commission of 1938 also recommended the establishment of an Industrial Court for the West Indies as a whole and Labour Councils for the civil services in the various colonies.

JAMAICA

In Jamaica, the post of Protector of Immigrants, which was the chief official link between Indian workers and their employers and the government, was abolished in 1934. J. D. Tyson had emphasized the necessity for the restoration of the office with duties and powers adequate to protect the Indian immigrants. He had also recommended that Indians should be appointed as Justices of the Peace to assist Indians in licensing matters and in the execution of documents, and also to ensure that the cases of Indian litigants were fully understood by the courts of law.

The West India Royal Commission, 1939, recommended that in order to secure substantial equality in the consideration of the problems of East Indians, some officer or officers, preferably members of the Labour Departments, should specialize in East Indian questions and if suitable candidates were forthcoming, East Indians should be appointed. The Commission also recommended that the possibility of appointing suitable East Indians to posts in government service should be carefully borne in mind by the colonial governments. In 1945, there were two East Indians on the staff of the Department of Labour. A government-appointed East

8. *International Labour Review*, April 1938, p. 498.

9. Report of the Commission on Disturbances in Trinidad and Tobago, (1938), CMD. 5641, page 51, para 172.

Indian Publicity Committee functions in close co-ordination with the Bureau of Publicity and Information. In 1945 two East Indians from Trinidad were sent to Jamaica for training in Social Welfare with a view to their undertaking social welfare work in villages where the population was mainly East Indian. Another East Indian holding the post of Health Education Officer was sent to the United States for a course of training. In Jamaica, the Administrator-General, who was also the Protector of Immigrants, dealt with East Indian affairs. East Indians are, theoretically speaking, eligible for appointment to government service on an equal footing with others.

In 1948, the Government of India appointed their Commissioner to look after the interests of Indians in the British West Indies.

FIJI

In response to the resolution passed by the All-Fiji Indian Conference 1937, the Governor of the colony appointed at the end of 1937 the Indian Immigration Committee of the Fiji Government. But the Committee included only the two nominated Indian members of the Fiji Legislative Council, but none of the three elected members.

There was also a Department of Indian Affairs. This Department was supposed to be assisted by Indian Advisory Committees. But the District Commissioners chose their own favourites from the Indian community. By refusing to be made odd pieces in such attempts at rigging up the trappings of consultative machinery Indians could contribute to a considerable extent in avoiding the distortion of this administrative provision. In 1938, a new class of officials—Indian Assistants to the District Commissioners—was created. On the whole, however, the Department of Indian Affairs was doing some useful work, but, unfortunately, it was also betraying a tendency to disrupt the Indian community. In his Annual Report for 1938, Dr. McGust supported the Young India Society, the organization of colonial-born Indians, who advocated closer restriction, if not actual prohibition, of immigration from India. If the Department had kept itself above such activity and concentrated its attention on the several matters of social welfare of all Indians, it would have proved really beneficial to the Indian community.

AUSTRALIA

In October 1943, the Australian Government proposed the appointment of a High Commissioner in India to promote co-

operation between Australia and India. The proposal was welcomed by the Indian Government who also decided to appoint a High Commissioner in Australia. The necessity to maintain close political contact with the Dominions led to this decision. The first Indian High Commissioner took charge in December 1944.

There has been a Welfare Officer to look after Indian seamen.

MAURITIUS

The Royal Commission of Inquiry 1944 recommended the reorganization of the Labour Department with Labour Inspectors, including a female inspector, who should reside at a convenient centre in the area for which they would be responsible. They also recommended the reorganization of the police force.

In 1948, the Government of India appointed her Commissioner to look after Indian interests.)

MADAGASCAR

Consequent on the deportation of Indians in the middle of 1949, Indians felt that the British Consul-General in Madagascar, who was also looking after Indian interests, had failed to help them. The Government of India deputed R. T. Chari in November 1949 to visit the island and report on the desirability of establishing an Indian Consulate there.

UNITED STATES OF INDONESIA

In October 1947 an Indian Consulate-General was opened at Batavia. The Consul-General has jurisdiction over the whole of Indonesia, including Republican territory, and has also under his control a Consulate at Jogjakarta, the capital of Republican Indonesia. With the establishment of the United States of Indonesia in January 1950, the status of the Consulate-General is expected to be raised to that of an Embassy.

SIAM, CHINA, INDO-CHINA AND TIBET

There is a Legation in Siam and also a Consul at Songkha therein. The Indian Ambassador in China and the Indian Consuls at Shanghai and Kashgar look after Indian interests in China. The Indian Consul at Saigon safeguards the welfare of the Indians in Indo-China. The Indian Mission at Lhasa and the Trade Agent in Gyantse working under it protect the Indian business interests in Tibet.

THE NEAR AND MIDDLE EAST

Formerly the British Embassy at Teheran had an additional Consul for Indian Affairs. The Indian Embassy at Teheran was established in 1947. There is also a Consulate at Zahidan. There are Indian Consuls at Baghdad and Jeddah. The British Minister in Afghanistan and his staff were supplied from the Indian Political Service. In 1948 an Indian Embassy was established at Kabul.

The Indian Ambassador to Egypt at Cairo is concurrently accredited as Minister to Jordan and Lebanon.

There is no Indian Representative in the Persian Gulf as yet, but it is proposed to open Consular offices at Bahrein, Basra, Khorramshahr, Kuwait, Muscat and Meshed.

U.K., CANADA, U.S.A

The offices of the High Commissioners for India in London and Ottawa and of the Indian Embassy in Washington look after the Indian interests in these countries.

CHAPTER X

SUGGESTIONS FOR THE FUTURE

Several of the problems of overseas Indians, particularly of the labouring class, are the result of European settlement in the tropical and sub-tropical zones, the application of capitalist plantation methods to colonial production by the European settlers, and the labour policies which the colonial governments had pursued under the influence of the European planting interests. The defective labour policies in particular have produced a crop of social and economic problems.¹ Increasing rationalization, the rise of the native classes, economic crises and growing unemployment in the colonial countries have all contributed to the rise of an economic policy prejudicial to Indians. Therefore a new economic policy alone could remove those problems, while only a complete change in the present social economy of the colonies could facilitate a new economic policy which would rectify the evil effects of the defective labour policies in the past. Again, such a change in the social economy is possible if experiments are made on the lines of nationalization of the colonial industries, or, in some countries, of peasant production. This necessarily means the complete abolition of all vestiges of the *Kangany* and *Maistry* control of labour.

While what is outlined above is the ideal solution, there are some other ways in which the position of Indian labour overseas could be improved under the limitations of the existing social economy. The labour policy of the colonies might be moulded with benefit by promoting Indian emigration, if any, with a view to colonization as permanent settlers and not as temporary labourers. In order to attain this object, the Government of India should strike a new path in her emigration policy with the willing co-operation of the colonial governments.

NEW EMIGRATION POLICY

ABOLITION OF THE EXISTING SYSTEMS OF CONTROL

A new emigration policy relates firstly to the control of Indian labour and secondly to the subsequent protection of that labour and other non-labouring Indians. In regard to the first, the Govern-

1. S. M. Roberts : *Population Problems of the Pacific* (1927).

ments of both India and the immigrant countries could share the responsibility of shaping that policy, while in regard to the latter, the initiative lies mainly with the immigrant country. It is in regard to the emigration of Indian labour that a change in the controlling system would contribute greatly to the reorientation of the Indian emigration policy, and, through it, to the labour policies of the immigrant countries. The *Kangany* and *Maistry* systems of control, which are based upon the aggrandizement of a middleman-employer to the detriment of labour, must first be replaced by a more satisfactory system.

The necessity for such a replacement is indisputable in view of the fact that both the *Maistry* and *Kangany* systems of control have in some respects proved more detrimental to the workers than even the indenture system. In the indenture system, there was at least a time limit for the worker to secure his freedom, but under the *Maistry* system there was no such limit and the worker was condemned to perpetual serfdom. The labourer was bound to the *maistry* under the guise of an advance which created a contract, and the *maistry* was interested in delaying the payment of that advance in order to tighten his hold for further exploitation. Secondly, in indenture the transport charges were met by the employers, and the labourer could at least start his life without initial indebtedness, while the essence of the *Maistry* system was to chain the labourer by compelling him to start his life in debt. Thirdly, there was no statutory obligation to provide housing, medical attention and other such amenities. Unlike under the indenture system before and in the *Kangany* system as obtained till recently, in the *Maistry* system, transportation, food and other expenses were charged to the labourer. Paras 19 and 20 of the Ceylon Labour Ordinance I of 1923, para 66 of Labour Enactment XVIII of 1923 in F.M.S., para 6 of the Mauritius Labour Ordinance XXXII of 1922 had all, by compelling the employers to bear the expenditure, facilitated the labourer to start life in the immigrant countries without debt. The Report on Emigration from India to the Crown Colonies says

As a matter of general principle, it appears to us that the cost of recruitment, of transport, of the treatment necessary for the welfare of the immigrant should fall on the class for whose benefit the system has been primarily instituted.²

Discussing this aspect of the question in 1910, the Supreme Court of the United States of America expressed that through the guise

2. Sanderson Committee Report, p. 106.

of contracts under which advances had been made, debtors could be held to compulsory service. This was exactly what had been going on in Burma for the last 80 years. A very large percentage of wages was appropriated towards payment of the debt so thrust upon the workers. In the United States of America almost every state has legislation exempting the wages of workers from attachment and execution for debt. The employers cannot touch even the tools of the worker and, along with personal property, the homestead also is exempted. The International Trade Union Congress held at Vienna in 1924 also called upon the various States to prohibit the engagement of contract labour and the activities of private recruiting agencies.

The *Kangany* system was no better than the indenture system. Though transportation, subsistence and other expenses were not being charged to labour, still indebtedness as a result of advances continues to be the essence of the *Kangany* system. The opinion has further been expressed that besides the *Maistry* and *Kangany* systems the present plantation labour system has lent itself to more dangerous abuses than the indenture system. J. D. Tyson has stated that the present plantation labour was more at the mercy of the management than was indenture labour. Particularly in the West Indies, the position of Indian labour under the new system had in some respects deteriorated more than under the indenture system. The British Guiana Labour Disturbances Inquiry Commission of 1936 says :

With the termination of the indenture system, labourers living in Estates' houses under the plantation system have, to all intents and purposes, taken the place of indentured immigrants, but are without the supervision, safeguards and assistance which both indentured and unindentured Estates' labourers had enjoyed under the Immigration Ordinance.³

The present system in British Guiana came to possess many of the evils of the indenture system without its relieving features. The Department of Immigration Agent-General whose duty was to enforce the beneficial provisions of the Immigration Ordinance was one of such relieving features. The abolition of that department in 1932 had adversely affected Indian labour under the new system. Again, the employers were no longer compelled to provide hospitals for their labourers as under the indenture system.⁴ Lastly,

3. British Guiana Labour Disturbances Inquiry Commission Report (1937), para 63.

4. *Ibid.*, para 52.

free housing and grants of land were no longer a right as under the old order, but were allowed as a matter of grace. The legal position was that

as no written agreements are entered into between resident labourers and estate authorities with regard to either free housing or free grants for rice or provision growing, it will be observed that either may be terminated by three days notice or application being made to a Justice of the Peace.⁵

Very much the same is the position in Trinidad and Jamaica. Therefore a radical change is essential in the plantation labour system too.

The great moral crusade which triumphed a century ago in the overthrow of slavery cooled off before completing the 'positive' work of which Powell Buxton and others had a vision. In the West Indies, later effort spent itself in an attempt to keep the old plantation system going in spite of that upheaval. The work of reconstruction still lies ahead.⁶

Besides, the evils connected with conditions of work took a large toll of Indian lives. The Colonial Secretary stated that in British Guiana between 1838 and 1917 a total of 239,029 Indians were introduced, but on 31 December 1917 they were only 137,959. Thus for every 1,000 Indians introduced under the indenture system, only 572 Indians remained. Of course 65,588 Indians were repatriated. Even, after this allowance was made, still the Indian population was, according to the Colonial Secretary, less by 35,482 than the number of immigrants introduced.⁷ Similarly according to the calculations made in respect of Ceylon, some lakhs of Indians had lost their lives between 1827 and 1930 due to defects in the regulation of emigration.⁸

It is, therefore, essential that all traces of *Maistry* and *Kangany* control should be ended and the plantation labour system fundamentally altered. But if complete elimination of the *Maistry* and the *Kangany*, around whom revolve the two systems of *Maistry* and *Kangany* control, is found impossible or inexpedient in the immediate future, at least they must be rendered harmless to labour. The simplest way of bringing about such a transformation in

5. *Ibid.*, para 44.

6. W. M. Macmillan: *Warning from the West Indies*, Penguin Edition (1938), p. 53.

7. Quoted by Waiz in *Indians Abroad* (1927), Vol. I, p. 604.

8. K. Natesa Iyer: *Indo-Ceylon Crisis*, p. 113.

their position is to make them salaried supervisors or overseers of estate labour with a provision for statutory penalty in case of default to act up to legislative requirements.

The object in abolishing *Maistry* and *Kangany* control should be the positive one of encouraging and promoting non-recruited labour. Undue pressure on the labourer and misrepresentation of the terms of contract have been the evils of recruitment. The Whitley Commission on Labour,⁹ and the Committee of Experts on Native Labour of the International Labour Office have expressed the opinion that organized recruiting¹⁰ should be eliminated and that necessary conditions should be created which would facilitate spontaneous offer of labour and render recruitment progressively unnecessary. The Committee recommended as some of such conditions the improvement of labour conditions and better transport facilities, and the creation of employment exchanges and other suitable organizations for regulating labour movements. The same principles should govern the emigration, if any, of Indian labour.

EMIGRATION OF NON-RECRUITED LABOUR

The Indian and colonial governments should, therefore, encourage the emigration of non-recruited labour. If there is an influx also of such labour, as was the case in Malaya in 1934, a system might be devised of applying quotas to individual employers according to their needs, and of instructing the depots in India not to admit any non-recruited emigrant for whom there is no definite offer of employment in the colony. The glut of Indian labour had led, in Ceylon and Burma, to depression of Indian wages on the one hand and to the discharge of the Sinhalese and the Burmese on the other, such discharge being rendered a necessity to provide work for Indian workers in conformity with the contractual obligations. The glut being the result of over-recruitment, abolition of recruitment and encouragement of emigration of non-recruited labour, together with the safeguard suggested above, will remove the possibility of over-recruitment and its evils. Moreover, the localization of emigration to Ceylon and Malaya in Trichinopoly, Ramnad and other districts, and that to Burma in some of the districts in Andhra, Bengal and Orissa had made emigration a familiar phenomenon, rendering recruitment practically superfluous. Further, as the saturation point had already been reached in emigration, the recruiting system may be completely dispensed with.

9. The Report of the Royal Commission on Labour (1930), p. 369-370.

10. The Institute of International Affairs: *The Colonial Problem*, p. 186.

With vast Indian populations in Ceylon, Malaya and Burma, the Government of India had not been able to exercise effective control on emigration. Hence free emigration should not be allowed to these countries, for India, as a free country, should now have a check on the type of people who go out. Hence the system of passports and visas should be effectively enforced for all those who go out of the country, leaving no possible scope for abuse of the permit system. When Malaya wanted sweepers for one of its areas, Indian sweepers were allowed to enter the country to meet the special need. This does not accord with the freedom and dignity of independent India. The Government of India had decided to introduce a uniform system of passports and visas for all those leaving the country so that the government could see that only the right type of people would go out of the country. The proposal should be gradually brought into effect. The Malayan Government's decision to introduce the permit system would help the Indian Government to control emigration to that country to begin with.

The several hardships which Indian workers had to undergo, as also the problems which confront them today, are the result of the Indian emigration policy which left the predominant control of recruitment, collection and transit of labourers to the foreign governments operating through their own officers. Such a policy is defective, because it is not practical economics to expect the colonial Labour Departments to safeguard the interests of Indian labour when they have to safeguard the colonial industries on which the economic life and financial resources of the colonies largely depend. Interested, as they had been, in providing as large a supply of cheap labour as possible for the development of the resources of their countries and for their public works, they were bound to tip the scales against India. There are several other reasons which make it necessary for the Government of India to adopt a new policy of initiative and control. The abnormal lowering of wages on any slight pretext; the circumvention, with the connivance, and in certain cases even acquiescence, of the colonial governments, of the legal obligations to pay a minimum wage and provide for other amenities; the army of repatriates dumped willy-nilly on India; the thousands of decrepits hurled back on India without any provision for old age after they had developed the resources of the colonies with their life-blood; the innumerable methods of creating a glut and competition in the labour market in order to depress wages even in the booming days of the colonial industries; the impunity with which the employers had set at

nought the several other protective legal provisions of labour laws without intervention in favour of Indian labour by the colonial Labour Departments; and, lastly, the reactionary attitude on the part of the Colonial Office till 15 August 1947 in protecting Indian interests—all these constitute a proof positive for the necessity of vesting and retaining in the hands of the free Government of India the initiative and control and the administrative machinery required for the regulation of Indian emigration. Recruitment of labour to serve overseas should be gradually banned as the only solution to protect unskilled Indian workers overseas against discrimination in conditions of employment. The ultimate aim should be the replacement of the *Kanganj* and other systems of recruited labour emigration by free and voluntary emigration of labour based on a full and precise knowledge of the conditions of employment and living in the immigrant countries. But improvement of rural conditions in India must precede any such ban. In the meantime, the administrative arrangements connected with systems of recruitment should be tightened up in terms of stricter administrative supervision and control at the Indian end. The unscrupulous methods of the recruiting agents should be ended to remove any possibility of misrepresentation and exertion of pressure on the illiterate labourers. Mere licensing of recruiters or recruiting regulations on paper alone cannot safeguard the existing practice of recruitment from becoming legalized forced labour which it has become today. To avoid deceptive means and illegal pressure by strict supervision, it is necessary to keep strict vigil on the details of recruiting operations.

BILATERAL CONVENTIONS

The Government of India must, therefore, take emigration increasingly under its control, and follow in this respect the example of Western nations¹¹ which have made Labour Treaties and Conventions effective bargaining weapons in securing favourable terms for their nationals. Migration movements in Western countries prove that a unilateral system of regulation is not compatible with any policy, barring those involving an almost complete freedom of immigration or an almost complete prohibition of immigration. Almost the same defective unilateral system of regulation had existed in India. The Indian Emigration Act of 1922 is not flexible, and its ability to secure and ensure proper treatment of Indians abroad without the threat of the drastic measure of pro-

11. K. A. Neelakandha Iyer, p. 110.

hibiting emigration had proved doubtful. The result of such inflexibility in several cases had been a breakdown in the regulation of labour emigration. When Ceylon and Malaya reduced wages and refused to accord equal status to the resident Indians, the Act had no other machinery by which the Indian Government could interfere except to suspend assisted emigration to those countries. Therefore, what is now required is a more flexible arrangement which will be essentially contrary to the conception underlying unilateral measures. This could be secured only by the Government of India entering into bilateral agreements with the countries which need Indian labour, such agreements vesting the initiative and control of emigration in the Government of India, which is the party most directly concerned. For this purpose, the Indian Emigration Act, 1922, should be amended, taking into consideration the abuses and hardships observed in the working of the indenture, *Kangany*, *Maistry* and the plantation labour systems during a century of Indian emigration.

The bilateral Conventions should be based on the recognition by the two governments of certain fundamental principles which should govern Indian emigration in future and the labour policy of the immigrant countries. The most important of the principles should be the acceptance of the fact that migration of labour affects the interests of the two parties to the Convention and not exclusively the interests of any one country. Under the Convention, the regulation and supervision of supply and demand in the case of migrant labour both as to quantity and quality should be correlated to the needs of the employment market. In this connexion it is interesting to study the work of the International Labour Organization. So far as migration is concerned, the activities of the I.L.O. are directed towards, firstly, facilitating migration in every possible way in the light of the manpower available for emigration in some countries and of the needs of other countries for trained and untrained immigrant workers; secondly, the formulation and application of suitable standards for protecting migrants and ensuring that their migration and employment will not prejudice the conditions of the national workers of immigrant countries. In order thus to relate manpower surpluses in one country to manpower deficits in another, the I.L.O. began in 1948 to collect and distribute information on workers available for emigration and on shortages which might be met through immigration; the I.L.O. establishes practical international standards both to facilitate migration movements and to protect migrant workers. There is an annexe to the proposed new Migration for Employment Recommendation which contains a 'Model Agreement on Temporary and Permanent Migra-

tion for Employment' which is designed to provide guidance to governments concluding such agreements.

At its session in January 1949, the Permanent Migration Committee adopted general principles on migration for land settlement and circulated to governments the draft of a model agreement on this type of migration. India must also do standard-setting for her emigration. She must organize co-ordinated bilateral action between India and the immigrant countries which will co-operate in tackling the possible economic, political and demographic problems connected with migration. The I.L.O. is expected in 1950 to formulate working solutions to current migration problems, including the conclusion of a series of precise agreements between governments on migration for employment and migration for land settlement.

There should be conformity of the conditions of recruitment and employment of workers to rules agreed upon between the countries concerned, due regard being paid to the individual and collective interests at stake.

One of the chief conditions of such conformity might be that restriction on the immigration of unskilled labour should be based on a system of quotas fixed in relation to the local conditions and requirements and not on racial considerations. Any Indian demand for free immigration should be grounded in the demands of justice and goodwill of the colonial communities. The Government of India should not forget that mass recruitment of Indian labour had already given a false view of Indian civilization and had become responsible for several hardships and humiliations.

All Conventions which the Government of India might enter into should be marked by flexibility, and it certainly should not be difficult to enter into a flexible arrangement on the basis of agreed principles, when such Conventions formed the crux of emigration policy in the Western countries. Such Conventions should first recognize that the presence of Indians in the immigrant countries was the direct outcome of a policy of invitation and assisted immigration, and their provisions should provide for the retention of such machinery as was required for the regulation and control of emigration in the hands of the Government of India, through the provincial governments wherever necessary. The principle of fixation of quotas by mutual agreement according to the demand for labour, the recognition of the principle of selection of emigrants to be recruited, the conditions of such selection, and the rules of assimilation and naturalization of certain classes of immigrants,

should all form part of the Conventions. A satisfactory *modus vivendi* on an agreed basis should also be formulated. All important questions affecting not only the workers and their children but also other non-labouring Indian emigrants, questions such as franchise, trading and professional rights, facilities for education, colonization, repatriation and social and religious rights of marriage, divorce and inheritance, etc., should be included in the Conventions. Provision should also be made for a satisfactory solution of future difficulties by simple methods of negotiation, as no difficulties involving major questions of policy are likely to arise. The rules of assimilation of Indian immigrants to the settler class on the basis of residence for a certain number of years or the founding of a family, as also the principles which should govern the status of resident Indians and their economic and political rights, should be embodied in the Conventions. The Conventions should also lay down for adoption by local Legislatures in the immigrant countries the qualifications required to acquire domicile and other rights of citizenship by Indian immigrants. Subsidiary to the main Convention between the two countries, there should also be precise covenants bearing on the principles on which wages should be fixed from period to period, and trade union organization, housing etc. Regarding employment contracts, the duration of the contract may be fixed in the individual contract or in the collective agreement covering the industry in question. In Turkey, the placement of migrant refugees who seek assistance in placement is handled by the Institute for Recruitment and Placement, and the Directorate for the Settlement of Immigrants grants refugees assistance if they become unemployed.

The Indian Government should examine the labour code of the immigrant countries and see that the contracts of employment contain the provisions required by the Labour Code and thus the Indian immigrant workers would have the same rights as the native workers. In the case of long-term engagements, separation of families should be avoided and stipulation should be made for small allotments of land for market gardening to enable subsidiary occupation and income enough for a family to live on. They should be allowed to take their *bona fide* dependants either with them or within six months of satisfactory employment. The contracts of employment should also specifically state that the same wages will be paid to Indian workers employed under exactly the same conditions as indigenous workers in the same occupation. In certain long-term contracts, special mention may be made that Indian immigrants will be enabled to settle in the country, say, after a residence of ten years, and will be able to obtain that country's national-

ity under the regular statutory provisions. The Ministry of Foreign Affairs should grant them an entrance visa and the Ministry of Home Affairs or the Interior should register them and grant them residence permits. After Indians have completed these years, they should be given along with their permanent card a Work Permit which will facilitate them to choose later whatever occupation they want. Some provision must also be made to assist them in case they become unsuitable for the work for which they are originally recruited or if they become superfluous. This is necessary in view of the manufacture of glut in the labour market to depress wages. Equal unemployment and other social security benefits, if he was gainfully employed for 12 months and is without means at the time he applies for unemployment allowance, should also be stipulated.

In order to safeguard indigenous labour, the collective contract for employment may mention a maximum percentage of native labour to be employed in the specified concern or industry ; so that so long as that number is employed, Indians may be sure of not being thrown out.

The conditions of work of Indians employed in the few industries not covered by the collective agreements should be fixed by a special agreement between the employer and employee, which specifies that the conditions of work shall be those customary in the occupation in question.

Trade unions in the immigrant countries may be consulted before allowing Indians to go there to avoid fear of replacement by native workers and to be sure that natives are not available for the specific jobs.

Where Indians are admitted as quota immigrants, they may be in the same position with respect to employment as other resident aliens in the immigrant countries. All the employers of Indian labour should be licensed with the Labour Departments in the immigrant countries and they should undertake to give complete effect to the agreements that might be arrived at between the parties to the Convention. There should be local legislation in the immigrant countries implementing such an inter-governmental understanding. The Government of India should not permit emigration to those countries which do not agree to such Conventions.

Once the Government of India thus takes into its hands the control and regulation of Indian emigration, the importance and complexity of the question of repatriation will be considerably diminished. At present, in British Guiana, Trinidad and Jamaica

free repatriation was being denied without assigning even reasons for refusal. If proper and essential conditions entitling the worker to free repatriation are laid down in the Convention, many of the difficulties experienced so far by the Indians will vanish. Under the new policy, the Government of India and the provincial governments will assume charge of all the Emigration Depots. And, as the emigrant passes through such depots under the immediate supervision of the Emigration Departments to be established as outlined below, there will be no occasion at all for departments and colonial governments to refuse repatriation on the ground that the person seeking repatriation is not an assisted emigrant. If the terms of the Convention are not fulfilled then the policy to be pursued is '*no more emigration, no more repatriation*'.

In so far as recruitment may be permitted, the question arises as regards the method and agency of recruitment. It is an admitted fact that the *Kangany* and *Maistry* systems of recruitment had wrought great havoc. So the special recruiting personnel should operate under the supervision of a government department. The government policy should be in accordance with the terms of an agreement previously reached between the two countries in accordance with I.L.O. standards. Branches of the Ramakrishna Mission, the Servants of India Society, the All-India Women's Conference, the Red Cross, Social Service Leagues and other non-sectarian, non-political, unofficial organizations interested in social welfare work in the recruiting districts should be entrusted with supervision of labour recruitment. Attention must be focussed not only on the movements of the licensed recruiters but on their numerous assistants.

Only employers licensed with the colonial Labour Departments should be entitled to recruit Indian labour that may be assisted to emigrate as outlined above. Such licensed employers should forward all applications for Indian workers to the Emigration Departments in India through the colonial Labour Departments. A Committee representing the Indian Ministries of Agriculture and Food, Industry, Commerce, External Affairs, Health and Education and the All-India Trade Union Organizations should consider applications from employers or governments for Indian immigrant labour. After they decide the question of granting the request or not, actual recruitment should be made as stated above.

The Government of India might, in consultation with the provincial governments and their representative in the country concerned, decide upon the necessity or otherwise of the number

of labourers requisitioned. There must be a Commissioner of Emigration in Madras, who, along with the Commissioner of Labour, will select the type of labourer that should emigrate with advantage to both India and the immigrant countries. Such a selection should invariably include, besides unskilled men, a certain percentage of the semi-skilled and skilled and a fair number of literates. This is of particular importance, for the policy so far pursued is basically wrong, in that it had left the social and occupational composition of large masses of recruited workers entirely in the hands of foreign governments.

TRAINING FOR EMIGRANTS

Many of the hardships of Indian labour were due to a lack of knowledge of the actual conditions that obtained in the immigrant country. And this ignorance was the product of illiteracy and misrepresentation. It is therefore essential that the emigrants should be well-equipped in this direction. At present after recruitment, recruits were brought to Emigration Depots and invariably detained there for a week or two. It is desirable that recruitment should be completed at least one or two months before the labourer is actually required on the estate. This period should be utilized in educating the emigrants for their life in the new country. The village headman should be requested to see that the recruits are properly trained in the village schools in simple arithmetic and other allied matters relating to their work and wages. As this training is given in their own village and in village schools, no additional expenditure need be incurred. At the end of this period, they should be brought to the Emigration Depots where they should be required to undergo further training for a fortnight. Here they should be made conversant with the fundamental rights and obligations of citizenship, the various problems that had so far confronted Indian emigrants together with their causes, the peculiar circumstances in the immigrant countries which present them with new problems, the charge of undercutting of wages by Indians, the customs, habits, and traditions of the colonial communities and their determination to maintain a higher standard of living, the necessity on the part of Indians for adapting themselves to those conditions, the culture and civilization of the country which they represent abroad, and their obligation to maintain the self-respect of their mother country. This training in the Emigration Depots should be given not only by the officials of the depots, but also by educationists and national leaders, and cultural and social organizations. They

should also be given short training and orientation courses on the immigrant countries to teach them the way of life and the language of the country.

Every emigrant should, prior to his departure from India, be supplied with a printed copy of the terms of the Convention and the subsidiary agreements in an Indian language known to him so that he might be thoroughly conversant with the terms of his service as well as with his rights and obligations in the immigrant country. Advances given to the worker in lieu of wages should be rendered legally irrecoverable unless they are officially reported with details of the purpose, amount, etc. A Labour Welfare Officer should be deputed to accompany every convoy transporting workers with a view to report on the amenities provided during the journey.

Indian officials should be charged with their care at the ports, on the voyage, and on landing. Thereafter, the Agents of the Government of India should take care of them in the immigrant countries. The governments of the immigrant countries should be responsible for the placing of the immigrants. The expenditure on the Indian side should be shared between the Government of India and the provincial governments, the local municipalities and the port authorities concerned.

Such a new policy of controlled contractual type of emigration as indicated above must replace the present one. As the bulk of labour in Ceylon, Malaya and Burma emigrates from Madras and as the Government of Madras, besides being vitally concerned, is also on the spot and as such best able to look after such emigration and provide the machinery required for putting the new policy into effect, it is essential that the task of working out the new emigration policy of the Indian Government in regard to these countries should be entrusted to the Government of Madras. A Department of Burma-Ceylon-Malaya Emigration should be established under the immediate control of the Madras Government. The Madras Government should supervise the selection and despatch of labourers requested for by the three countries according to their needs. Every worker who now emigrates under such conditions as outlined above will have a contract of employment with a specified employer before he emigrates. The Labour and Emigration Departments of the provincial government should bring out an annual volume giving details of the emigrating workers, conditions of their employment under contract and the economic and social effects of their emigration on the life of the districts, with particular reference to the employment position. Unless

there is distinct benefit, there is no purpose in permitting emigration, particularly for short periods on seasonal employment.

To secure and supervise the conformity to the terms of the Conventions in regard to the various questions concerning labour, there should be an Indian Labour Inspectorate. The Indian Agent reported in 1940 that with the help of only one Assistant, it would not be possible to undertake systematic supervision of conformity to the terms of the contract of employment.¹² It is essential that there should be a network of Indian Inspectorates spread over the chief centres of Indian labour. These Inspectors will work under the supervision of the Indian Agents. The Agents should bring all derelictions of the terms of the Conventions to the notice of the colonial Labour Departments. The Indian Agent and the head of the colonial Labour Department should meet frequently and discuss matters necessitating mutual consultation or common action. Thus they could eliminate several infringements of the Convention and integrate efforts for the promotion of labour welfare. Such increasing co-operation between the Indian and colonial governments should be directed towards the standardization of labour conditions in consonance with the national legislation in advanced countries. The Government of India should also establish Emigrants' Homes in different parts of the country for help, guidance, advice and temporary shelter to the repatriates.

EMIGRATION OF NON-LABOURING INDIANS

As regards the emigration of non-labouring Indians, the Government of India has no option except to agree to the quota system. She might plead for a maximum annual quota at the rate of say two p.c. of the total number of Indian immigrants who had settled in the particular country during the past 50 years, thus forestalling by the demand for this very small quota any argument regarding problems likely to arise in connexion with their assimilation. In view of the imperious nature of the sentiment of nationalism and the zealous struggle for upholding it in India itself, India should agree to reasonable quotas. It is obvious that emigration is no solution for the Indian population problem. So it is desirable to concentrate on securing decent and honourable conditions of living to those already settled and self-respecting conditions of Indian immigration, even on a limited scale, in regard to Ceylon, Burma, Malaya and other well-populated countries.

12. Annual Report of the Indian Agent in Ceylon for the year 1940, p. 18, para 32.

Such a system of national quotas in conjunction with individual conditions of admittance, would sufficiently allay any possible apprehension of Indian immigrants depressing the national labour market, or professional and political opportunities of the local communities. Such a system will also keep the volume of future immigration in harmony with the composition of population as determined by the traditional currents of immigration. In regulating Indian emigration, the Government of India should, in the light of past experience, take particular care to guard against the predominance of completely commercial and capitalist classes in any immigrant country, which has given rise to an apprehension, though without great justification, that Indian emigration in the case of these classes had proved but Indian exploitation. Also, the two governments should arrange to prevent the growth of dangerous localization of racial preponderances, leading to the formation of isolated ethnical zones thus giving rise to a crop of social and political problems, particularly the problem of minorities. This is also essential to facilitate and accelerate the process of assimilation which is often delayed, less by racial and psychological differences than by lack of contacts. The Administrations of the immigrant countries can make such assimilation possible by legislating that no settlement, official, estate, or otherwise, should be established only with the Indian immigrants or with immigrants of a single nationality, and by making it compulsory for a certain proportion of the indigenous population to be established in such settlement. This method of assimilation can be augmented by common schools and other means of cultural synthesis.

If, in spite of all the above precautionary provisions to safeguard the native communities, a certain amount of restriction of Indian rights is found necessary, it should be embodied in a separate covenant in as unmistakable terms as possible. By restricting the number of future Indian immigrants the position of the resident Indians can certainly be improved. The whole policy must be directed towards reciprocity in immigration laws and equality of treatment for the domiciled Indians.

The question of Indian emigration to countries overseas should be re-examined against the background of the basic facts of the present economic, social and political conditions in those countries with special reference to the position of Indians therein *vis-a-vis* the native communities. Immigration is an essential counterpart of development and so planning of immigration should be based on statistical data and correlated to the pace and extent of development at every stage. All such data should be first collected from the Indian immigrant countries so that India could reorientate her

emigration policy. In matters relating to Indian immigration it is necessary to divorce the economic problem from the disturbing influences of racial and political sentiment. Where the only method of achieving such divorce seems to lie through measures of immigration control, such control should be adopted so as to meet the immediate demands of sentiment and throw into bold relief those economic factors which would soon facilitate the adjustment of the balance and the recognition of the due importance of practical considerations. India found herself in this position in 1941 in relation to Burma and she took the initiative in restricting the flow of unskilled Indian labour by imposing a ban with effect from 21 July 1941. Such a policy could be increasingly adopted in respect of other Asian countries like Ceylon and Malaya where there is already a large Indian population. Any attempts to further promote the flow of Indian emigration might prove detrimental to the interests of those already resident overseas, particularly in view of the rise of competitive interests of the native communities. This feeling was mainly responsible in the past for the reluctance of the Indian Government to inquire into the possibilities of Indian colonization and settlement in the tropical and sub-tropical parts of the Commonwealth and outside.

The problem of emigration in India, as everywhere, has an essential international aspect. Also the problems engendered by immigration are fundamentally the same in every country. Therefore an International Migratory Code is essential for the minimization of the possibilities of friction due to racial discrimination in immigration policies. As was suggested by Albert Thomas at the World Population Conference in 1926, the establishment of an International Authority on Migration will also greatly help Indian emigration problems.¹³ Bilateral, multilateral or international Conventions under the guidance of such an international authority will largely contribute to the solution of immigration and emigration problems of all the countries including those of India.

RACIAL DISCRIMINATION : A WRONG APPROACH

Now the immigration policy of most of the Dominions and colonies is not one of selection and regulation but of exclusion of Indians and other Asians mostly on racial grounds, though these countries advance economic reasons. Both on grounds of national honour and self-respect, India is uncompromisingly opposed to all

13. The Colonial Problem, p. 59.

manner of racial discrimination which is obviously a wrong approach to solve an essentially economic problem. The United Nations has unequivocally condemned racial discrimination in any sphere of human activity both by its Charter (Preamble and Article 1, paras 3 and 4) and its Declaration of Human Rights. The Sub-Commission on the Prevention of Discrimination and the Protection of Minorities has, in its report which was adopted by the Commission on Human Rights at its second session, also condemned racial discrimination and advocated legal action to prevent and to punish such discrimination. The I.L.O. in its Philadelphia Declaration of 1944, affirmed: 'All human beings, irrespective of race, creed or sex, have the right to pursue both their material well-being and their spiritual development in conditions of freedom and dignity, of economic security and equal opportunity'. The I.L.O. is entitled to high authority in dealing with racial discrimination in immigration, because, unlike the U.N., the I.L.O. is a tripartite body representing governments, employers and workers, with welfare of the workers as its chief concern, and immigration is largely of workers.

Again the Third Conference of American State Members of the I.L.O. which met at Mexico City in 1945 said: 'Discrimination based upon race, colour, creed or sex or national origin is repugnant to the principles embodied in the Declaration of Philadelphia, the Act of Chapultepec and the recommendations adopted by the International Labour Conference'. And yet, discrimination based on 'national origins' is the basis of the quota system in the U.S.A.

The Permanent Migration Committee of the I.L.O., which is its expert adviser and which held its first session in Montreal in 1946, unanimously condemned racial discrimination in immigration: 'The Permanent Migration Committee affirms unanimously its conviction that the principle of non-discrimination in regard to race is one of the fundamental conditions of progressive and orderly migration movements, . . . having had its attention called to certain practices in connexion with migration which being based upon racial discrimination are to be condemned . . .'. This Resolution was passed unanimously in the presence of the representatives of the United States, Australia, New Zealand — which practise, directly or indirectly, racial discrimination in immigration.

During the hearings before the U.S. Congress on Emanuel Celler's Bill to give a quota to Indians, many witnesses claimed that it would eliminate racial discrimination against Indians and

every witness who opposed racial discrimination supported the quota system which would permit about 100 Indians to enter the United States of America every year. They felt that this would facilitate expansion of trade with India besides elevating them morally in Indian estimation. But actually the quota law is only another new name for racial discrimination. For the object of the quota law is to maintain the racial composition and ethnic proportions of the U.S. people as they were at some arbitrarily fixed date. Not only does the quota law restrict the total number of immigrants per year but apports quotas to various racial and ethnic groups from emigrant countries with the deliberate object of facilitating immigration from Northern and Western Europe and limiting immigration from Eastern and Southern Europe as well as from Asia while leaving the door wide open to immigration from Canada, Mexico etc. Consequently, as Prof. Davie observes, the quota law is 'discriminatory in practice, though no overt race distinction was made' and it merely 'lessened the validity of the charges of racial discrimination'. There is no rational basis for it and is just Nordic ethnocentrism.¹⁴ P. Kodanda Rao observes :

Migration is a dynamic process for economic betterment, while race is a biological fixture and 'national origin' an immutable historical accident. Nobody can choose or change his race or national origin. There can be no rational correlation between migration for economic improvement on the one hand and race and national origin on the other.¹⁵

Advocates of racial discrimination and quota restriction in immigration defend them on economic grounds, namely, that higher 'white' standards of living must be protected from lower 'Oriental' standards. Prof. Davie says :

Most economists and statesmen acknowledge that competition in the labour market should take place on a certain plane of living. It is unfair to ask working men to compete against labour based on a standard of living which the nation would be unwilling to see him adopt. It is unwise for the community to allow competition which, if unchecked, would bring the whole labouring class to a lower standard of civilization.¹⁶

There is a flaw in this argument for no correlation is possible between race and national origin, a static and immutable biological

14. Davie, *World Immigration*, p. 377.

15. Race vs. Quota in Immigration, Data Paper prepared for the India-America Conference, December 1949, p. 10.

16. *Op. cit.*, p. 243.

factor, on the one hand, and standard of living, a mutable and dynamic economic-cultural factor, on the other. People who are homogeneous by race are not necessarily homogeneous by standard of living; conversely, people who are homogeneous by standard of living are not necessarily homogeneous by race. In so far as the purpose of migration is to change the standard of living, racial solutions for economic problems will not avail, for economic problems need economic solutions, even as racial problems need racial solutions.

ECONOMIC RESTRICTIONS NOT A SOUND SOLUTION

Restriction of immigration even on economic grounds is not morally justifiable, for to huddle up people in high-density areas with necessarily low standards of living and prevent their migration to low-density areas with higher standards of living amounts to unjustified oppression of the poor. The restriction does not seem to be even economically sound; for people with lower standards of living would not be able to purchase the goods which the people with higher standards of living must manufacture and sell if only to maintain their higher standards. The United States has been taxing herself heavily to bolster up the poor economies of Western Europe by Marshall Aid and enable them to purchase her goods. So long as the United States, Canada, Australia, New Zealand etc., do not permit poorer Europeans and Asians to migrate to these countries and raise their own standards as well as those of their compatriots left behind, these countries would have, in some form or other, to tax themselves heavily and dole out aid to the backward countries of Europe and Asia. But they cannot also continue doles indefinitely, for while work is economic, doles are uneconomic. Hence the United States of America had to stipulate that Marshall Aid would continue only up to 1951 and would be discontinued thereafter whether the Western European countries recovered by then or not.

Like water, which finds its level, differential in standard of living promotes migration. With diminishing differential, migration will diminish. Immigration into the United States from England has thus practically stopped. Restrictions on immigration, therefore, even for economic reasons are not entirely sound and often superfluous.

Racial discrimination is inherent in the quota system on the basis of national origins and constitutes, therefore, a violation of the objectives of the U.N. and the I.L.O. and democratic principles and Christian ethics. International bickerings are then bound to persist, for, in the words of Prof. Davie,

struggles will continue to arise from inequalities in population density, for example over the question whether nations with vast unexploited areas are justified in excluding less fortunate peoples.¹⁷

If the hope of millions for 'one world' is to be realized without further ghastly wars, migration should be free from racial and, to a certain extent, economic restrictions. India's attitude from the economic standpoint has always been that her nationals, most of whom have emigrated as workers, must not be made to suffer from lesser standards of living than those enjoyed by the other classes. For there is no meaning in their migration in case they are to be forced to accept lesser standards. The quota system may be adopted in the narrow national interests, but let it be clearly understood that it is no less racial in its character.

QUESTION OF ECONOMIC SANCTIONS

The blatantly humiliating racial discrimination by South Africa has compelled India to impose economic sanctions and reciprocal restrictions on the South Africans. The application of such sanctions when India was in a strong trade position, it was felt, would prove effective in securing justice to Indians in South Africa. Burmese rice, Mauritius sugar, Zanzibar cloves, and African coal depended largely on the Indian market. But certain counteracting economic facts limit the possibilities of economic retaliation.

Experience has shown that effective economic retaliation would succeed only in the case of East Africa as demonstrated in the successful boycott of Zanzibar cloves in 1938. The success was due to the adverse balance of trade for India, so far as Zanzibar was concerned. By reducing the railway freights for Indian coal and by improving the transport facilities and giving other encouragement to the local coal industry, it was suggested, South African coal could be gradually boycotted. The Indian Legislative Assembly had also recommended a heavy new import duty on South African coal. But this method cannot be adopted in all cases, for it is a strain on the Indian consumer. The imposition of economic sanctions against South Africa has not proved quite effective. Export of gunnies from India to Singapore was stopped by the Indian Government in January 1949 on the ground that a considerable quantity of them was finding its way to South Africa from Singapore either *via* Hong Kong or direct from Singapore. About a thousand tons of gunnies were being im-

17. *Op. cit.*, p. 5.

ported into Malaya annually and Indian traders in sago, rice and flour, pepper, spices and similar commodities were hard put to find packing for their exports. The prices of gunnies had gone so high that the selling prices of these commodities in India were bound to rise. Indian business men wanted India's embargo on export of gunny bags to Malaya to be lifted as the Indian export trade was suffering. Further, jute substitutes are likely to be developed. Economic retaliation is, therefore, except in the case of East Africa, bound to have an adverse effect on the Indian export trade.

In 1921 the Indian Fiscal Commission laid down the principle that no agreements based even on reciprocity in trade should be entered into with any Dominion or colony which had on its Statute Book any anti-Asian legislation applying to the Indian people. To the Indian people their self-respect is no less important than any economic advantage which any Dominion might choose to confer by means of preferential treatment. The Government of India may follow this method. It can also withdraw the preferences it offered to colonial produce and thus bring the colonial governments to the realization of their obligations to Indian nationals.

India can further adopt the negative method of withdrawing all co-operation in raising the price of colonial produce. She could refuse to co-operate with Ceylon in her desire to raise the price of coconuts, and, similarly, in respect of Australian butter, West Indies and Mauritius sugar, and Zanzibar cloves, if discrimination against Indians should continue. Also, so long as the Sinhalese politicians evade the obligation of creating the necessary economic conditions for a reasonably comfortable life for Indian labour in Ceylon, the Government of India may disallow the Ceylon coconut industry to compete with the Indian industry which supports lakhs of lives in India.

There is also an international economic approach. The countries consuming Malayan rubber or Ceylonese tea, or West Indies sugar, etc., should demand that in return for their acceptance of international restrictions and control of output, there should be an improved standard of living for the workers and industry in all the producing countries or at least a rise in the standard of living of the worker to the levels which other countries with comparable conditions had found it possible to raise.

IMPOSITION OF RECIPROCAL RESTRICTIONS

Besides the imposition of economic sanctions where it is likely to prove effective, another possible approach is the imposition of

reciprocal restrictions in respect of franchise, eligibility for public services, the right of trading and acquisition of property and of mining and navigation licences etc. As the principle of reciprocity had been widely recognized, the benefits extended to the colonials under the Racial Distinctions Removal Act with regard to special procedure in criminal cases might be withdrawn. Yet another method suggested was compulsory retirement of all colonials employed in the military or civil offices in India. But retaliation this way was not likely to prove effective as would be evident from the following figures :

Statement showing the number of persons born in Australia, New Zealand, South Africa and Canada and resident in India according to the Census of 1931.

Australia	..	539
New Zealand	..	160
South Africa	..	1,558*
Canada	..	628

(*Note : Mostly Indians born in South Africa. The number of South Africans of non-Indian origin resident in India is very small).¹⁸

There is not much change in these figures since then. While there were about 290,000 Indians in South Africa, South African Europeans in India numbered less than 100 ; so is the case with the Sinhalese, Burmese, etc., in India. Therefore, compulsory retirement of the colonials might not lead to any immediate or final solution of the problem, but there is no gainsaying the fact that it is bound to have a profound moral effect in driving home to the people of these countries the serious view that Indians take of the matter. The prevention of Australian doctors from entering India was also suggested, but this is of little practical use as no Australian doctor is found willing to come and settle down in India for purposes of practice. But again the moral effect of such exclusion alone should suffice for taking such a step. The Government of India had as a retaliatory measure, put a ban on the recruitment of Ceylonese to the Indian Civil Services since 1939. The Reciprocity Act, 1943, provides for the treatment in India on a reciprocal basis of persons of non-Indian origin domiciled in other British possessions in regard to the entry into, travel, residence, acquisition or holding or disposal of property, enjoyment of educational facilities, the holding of public office or the carrying on of any

18. Legislative Assembly Debates, 2 March 1937. Vol. II, No. 6, Official Report, p. 1172. See also Debates on 13 March 1936.

occupation, trade, business or profession in British India or personal domicile. The Act, which was brought into force on 3 November 1944, has three sets of Rules *viz.*, (i) the Reciprocity (South Africa) Rules under which all persons of non-Indian origin domiciled in South Africa have been declared prohibited immigrants and as such they are not allowed to enter or reside in British India without obtaining exemptions or entry permits; (ii) the Reciprocity (Natal and Transvaal) Rules under which persons of non-Indian origin domiciled in Natal and the Transvaal provinces cannot acquire any property without a permit from the Government of India or occupy any land or premises in India which was not occupied by any South African before 1 December 1944; and (iii) the Reciprocity (South Africa) Local Franchise Rules which debar persons of non-Indian origin domiciled anywhere in the Union excepting the Cape Province from the franchise of a local authority in India unless he was already on the electoral roll of that local authority before the commencement of the Rules. These provisions should be effectively used to serve notice on the countries adopting discriminatory policies against Indian nationals abroad.

India made this law to retaliate against South Africa. It may be interesting to note in this connexion that India figures among those countries which impose statutory discrimination on racial grounds, while surprisingly enough, Australia and South Africa do not expressly and by statute exclude Asians including Indians. Australia has adopted the dictation test in any language. In South Africa too Asians including Indians are effectively excluded under the general provision of Section 4 (1) (a) of the Act of 1913 which prohibits the entry of any person or class of persons deemed undesirable by the Minister.

CONSTITUTIONAL APPROACH

Clause 9 of the Royal Instructions of 1920 to the Governor of Ceylon, like Sec. 65 of the South Africa Act, gave power to withhold assent to discriminatory measures. The Donoughmore Commission recommended the incorporation of a clause in Article XIII of the Royal Instructions of 1920 to obviate any possible discriminatory action against any section of the population including Indians. The Soulbury Constitution of 1947 also provides for the withholding of assent of the Governor-General to laws discriminating against Indian and other minorities. Such provisions should be included in the Constitution Acts of the other countries.

Section 65 of the South Africa Act, 1909, was inserted in the Act on the definite request of the Government of India for the protection of Indian interests. Section 147 of the Act of Union was also amended leaving control and administration of matters especially or differentially affecting Asians to the province of the Governor-General-in-Council. The Secretary of State had assured that this provision would 'ensure consideration of questions affecting Indians in a broad and generous spirit' and he also specially pointed to Section 148 of the Act of Union as intended to protect the potential rights of Indians. Section 148 runs thus: 'All rights and obligations under any conventions or agreements which are binding on any of the colonies shall devolve upon the Union at its establishment.' In several of his despatches to the Union Government, the Secretary of State for the Colonies made it plain that the policy of the Union Government was a perpetuation of the policy governing Natal since pre-Union days, and that the Union Government was a consenting party to this declaration. Under the Statute of Westminster, which gave legislative independence to the Dominions, any exercise of constitutional veto by the British Government is not possible. The Government of India may, therefore, request the British Government to persuade the South African Government to fulfil its promise to the Indian community.

The Government of India can also request the British Government to induce the Dominion and colonial governments to implement the Resolutions of the Imperial Conferences, the Ministers' Conference of 1921 and subsequent Conferences. A Resolution repeated by every Imperial Conference stated that each 'community' of the British Commonwealth should enjoy complete control of the composition of its own population. The Indian Government might interrogate whether 'community' comprises, say, in South Africa, the millions of natives or the 20 lakhs of Europeans. Secondly, the Resolutions of the Imperial Conferences apply only to the self-governing Dominions, and so there is no vested right on the part of the British colonies to regulate, on their own initiative, their immigration and other policies which have all along been reserved to the Colonial Office. The British Government should refuse to abdicate its responsibilities to the natives and Indians, and reject the claims of the Europeans in Kenya and elsewhere.

The above argument is advanced on a technical, constitutional ground. But in practice it may prove ineffectual, for with the passage of time, the Crown colony of today becomes the Dominion of tomorrow. Further, these subtle constitutional differentiations have no meaning and relationship to the essentially economic prob-

lems that confront the Indian immigrants. Also, the invocation for help to the Colonial Office is bound to provoke the native communities against Indians. It is, therefore, desirable that the argument should be based upon the broad and humane ground of the necessity for equality and justice amongst the different communities in the Commonwealth.

APPROACH THROUGH THE U.N. ORGANS

Besides the above constitutional methods, there is an international approach to the question. In so far as the United Nations is an international organization established for the preservation and promotion of peace and understanding amongst the different countries, the United Nations could, as was done in the case of South Africa, be utilized by India to focus world attention on the ill-treatment of Indian nationals elsewhere.

A majority of the members of the old Permanent Mandates Commission were nationals of non-Mandatory Powers ; their functions were also restricted, with no power to examine problems on the spot. The new Trusteeship Council set up by the United Nations is better in respect of both composition and functions. It is authorized to formulate questionnaires on the advancement of the peoples of the Trust territories and to ask for reports from their administering authorities. But these powers alone will not enable the Council to achieve its purpose. All members of the United Nations must co-operate in its work. When the British Colonial Office declared its intention to transfer Tanganyika and Cameroon to the Trusteeship Council, South Africa attempted to incorporate South West Africa in the Union. Even the Kenya Government adopted a motion vehemently opposing the decision of the British Government. In view of the presence of half a lakh of Indians in Tanganyika, not to speak of India's equal interest in the cause of the African natives, she should strengthen the Trusteeship Council and use its forum effectively to draw the attention of enlightened world public opinion to the position of Indians and other Asians in Tanganyika and Kenya. The European Convention in Kenya, known as the 'Settlers' Parliament', wields considerable influence with the government and even the Governors were known to be subservient to it. In Northern Rhodesia, the Labour Party opposed the principle of paramountcy of native interests propounded in the White Paper on Kenya (Cmd. 1922 of 1923) and demanded its withdrawal. It appears almost certain that there could be no reconciliation between the organized demands of the European vested interests and the doctrine of the

Commonwealth Government's trusteeship for Africans. This is obvious from the British policy in Kenya. The Kenya highlands comprise eight million acres of land at a height of five to nine thousand feet above sea level and lying between Kiu station and Fort Teran station on the Uganda Railway. They are very fertile and proved suitable for plantation crops like coffee, sugarcane etc. Hence the white landholders acquired huge tracts for nominal amounts. The government decided to restrict the Indians and natives to the lowland districts though it was the 35,000 Indians imported at the turn of the century who helped the construction of the Kenya-Uganda Railway which opened out these highlands for settlement. Only 43,000 sq. miles has been reserved for 3 million natives and that too precariously. India has no alternative but to fight this brand of white trusteeship of the natives. The Government of India can take the disputes between India and these territories to the International Court of Justice at The Hague for advisory opinion, as its statutory powers have been accepted both by India and the British Dominions and the colonies.

In the case of Kenya, the Government of India should demand the re-examination of the Congo Basin Convention. The Convention under Section 3 of Article 1 thereof extends to Kenya in its general applicability. Section 3 runs thus :

In the territories specified in Article 1 and placed under the authority of one of the signatory Powers, the nationals of those Powers, or of State Members of the League of Nations which may adhere to the present Convention, shall, subject only to the limitation necessary for the maintenance of public security and order, enjoy without distinction the same treatment and the same rights as the nationals of the Power exercising authority in the territory with regard to the protection of their powers and effects, with regard to the acquisition and transmission of their movable and real property and with regard to the exercise of their profession.

Thus, the only limitation made in respect of the general applicability of the principle of equality is the maintenance of public security and order. And, surely, the highlands policy cannot be justified in the light of this limitation. His Majesty's Government is a party to the Convention and as India is a member of the United Nations in her own right, the Indian Government can demand that the Kenya white highlands question should be examined in the light of the obligations involved in the Treaty of St. Germain, 1919. Major Cavandish Bentick, leader of white highlands policy, stated, commenting on Articles 3 and 4 of the Treaty, that, as per Article 3, the nationals of Powers and members of the League of

Nations were to be given equality of treatment with the nationals of the Power exercising authority in the territory, and that ' it says nothing about differentiation amongst or control of its own population by any community which might form such a Power or State '. The Government of India must take the violation¹⁹ of its treaty obligations by Kenya to the International Court of Justice. When H.M.'s Government ratified the Statute of the Permanent Court in 1921 and later the Optional Clauses of the Permanent Court in 1931, they stated in a rider to the instruments of ratification that, even though they recognized the jurisdiction of the Court, they wished to settle disputes between the Members of the British Commonwealth by other means. The Government of India must take the dispute to the International Court of Justice. The Statute of the International Court of Justice, an integral part of the U.N. Charter, is based upon the Statute of the Permanent Court of Justice and the countries concerned here have ratified this Statute.

India convened the Delhi Conference on Indonesia in January 1949 to consider the peril to the freedom of a sister Asian country by Dutch aggression and to supplement the efforts of the Security Council to find a rapid and peaceful solution. Similarly, the Delhi Conference on Burma was convened in February 1949 to devise means by which interested countries of the Commonwealth like India, Pakistan and Ceylon could enable the Government of Burma to restore order and normal civil government within its territories. These efforts on the part of India are an aspect of her new political and diplomatic functions and relations which is likely to increase intra-Asian co-operation to the benefit of Indian settlers in other Asian countries and facilitate the increasing role of Asia in world affairs *vis-a-vis* the West to the permanent benefit of all Asian settlers in Western countries. India could secure goodwill to her nationals by continuing such interest in her Asian neighbours.

ADMINISTRATIVE STEPS

Certain administrative steps require to be taken by the Government of India in order to facilitate a solution of the several problems. In future all High Commissioners and Agents should be appointed from the front rank of Indian public men. The persons selected for these offices should be not only eminent Indians commanding the confidence of Indian public opinion but also should possess scholarly equipment and administrative experience

19. Quoted in *National Herald*, 20 May, 1939.

so as to represent Indian culture and discharge the delicate duty efficiently.

Unofficial Advisory Committees should be set up which the Indian official authorities might profitably consult in making representations to the local governments, thus respecting the local Indian opinion which is very essential for a successful fulfilment of any understanding that may be reached with the governments of the immigrant countries.

Commercial relations should also be promoted between India and the immigrant countries. The appointment of Indian Trade Commissioners for improving commercial relations, and the establishment of Industrial Museums for exhibition of Indian manufactures will act as a powerful cementing factor between Indians and the local communities. Promotion of trade between India and Ceylon, Burma and other countries should be utilized to forge closer comradeship between India and these countries. India wants Ceylon's copra and rubber, Burma's rice and oil. Ceylon needs India's jute manufactures, cotton yarn, piecegoods, coal, subsidiary foodstuffs such as onions and chillies and Burma requires India's textiles.

During the Indo-Ceylon trade talks in October 1949, K. C. Neogy, Indian Minister for Commerce, expressed the hope that they would be able to adopt a system of mutual preferences by which each country would provide goods to the other so far as the physical availability of supplies was concerned. He felt that some of the common problems arising out of devaluation could be dealt with in this manner. Reciprocating the feeling, H. W. Amarasuriya, Minister of Commerce in Ceylon, hoped that India and Ceylon might with advantage adopt a uniform policy for marketing of tea. The government informed rubber producers of its readiness to acquire uneconomic rubber lands at Rs. 200 per acre and use it for reforestation and village expansion. The U.K. and the U.S.A. which held the rubber industry in Ceylon during the war had failed to come to its rescue with a better price. India gave the rubber producers some hope by announcing to purchase 3,000 to 4,000 tons of Ceylon rubber though it was a small amount for Ceylon whose exportable surplus of rubber was considerable. If India becomes a regular customer of Ceylon, she might buy more in future years when the needs of Indian industry increased.

Such co-operation is also necessary to enforce successfully India's economic sanctions against delinquent countries. In 1946, the Government of India received information that Indian exports of gunny bags were being diverted from Ceylon to South Africa.

They, therefore, requested the Ceylon Government to conserve for domestic use the whole of its stock of serviceable gunnies, particularly in view of the acute world shortage of jute and jute manufactures and the difficulties experienced in the distribution of available supplies equitably to all consuming areas. The Government of Ceylon then ceased issue of further export licences to export used gunny bags surplus to Ceylon's requirements. Similarly, it was found that Indian jute exports to Singapore were being re-exported to South Africa, thus undermining India's economic sanctions against South Africa. The Government of Singapore in August 1949 assured the Government of India that the Singapore regulations relating to the re-export of jute goods from that colony would be strictly enforced. Nevertheless, on 16 March 1949 the Commerce Minister said in Parliament that the Government of India had gone to the 'furthest limits' in regard to precautions against Indian jute goods going to South Africa, and that on account of these precautions he was afraid that legitimate trade in jute was suffering. Despite these precautions, he added, the government had however not succeeded in stopping smuggling totally. Hence it is necessary to promote close trade relations with these countries. A system of mutual preferences and a Customs Union between India and these countries will bring about closer commercial and economic relations which would greatly help in eliminating the possibilities of discriminatory legislation against Indians. Such systems can be established particularly with Ceylon, Malaya and Burma with comparative ease and advantage. This might also forge a new weapon in the armoury of India for economic retaliation.

PARAMOUNTCY OF WHITE SUPREMACY

The colour bar has today become an economic weapon in the hands of the whites and their governments. It is an aspect of economic imperialism which uses its political power to exclude Indians through the colour bar. The Asians and other coloured peoples are far too awakened today to acquiesce any further in the supremacy of the whites and are today looking upon it as a challenge to their existence and honour. The Commonwealth comprises a quarter of the world's population and land surface of the earth. Yet while the Dominions of Canada, Australia, South Africa and New Zealand account for only 30 million people, India alone has 360 million. In a Commonwealth consisting of nearly 470 million coloured people out of a total of 540 million people, racial discrimination against non-whites may engender a terrific racial conflagration. After the epic achievements of the Indian

Army in North Africa, East Africa and the Western Desert, how can Indians be denied racial equality in Africa without giving rise to inter-Dominion bitterness? Yet even the British Dominions consider Indians as subject-citizens and not citizens. During a debate in the House of Lords as long back as 30 July 1913, Lord Amptill said :

For ten years Indians had been waiting for the justice which the British Government was bound to secure for them and which British statesmen had again and again pledged themselves to secure. One of the main causes of the South African War consisted in the grievances of our fellow subjects in the Transvaal.

Following Lord Amptill, Lord Sydenham said that it was not easy to explain to Indians how it was that they could not obtain as much consideration for some of the subjects of the Empire in the Dominions as in foreign countries. In May 1914, General Sir Ian Hamilton declared in a speech at Auckland that 'it may be decided whether Europeans or Asians are to decide the destinies of the world'. The policy of racial discrimination in South Africa, Kenya, Australia etc. knocks the bottom out of the democratic ideals on which the Commonwealth is supposed to be based. The political disabilities of Indians even in territories directly under British administration as in Tanganyika had disillusioned Indians in regard to the 'British sense of justice'. The socio-economic disequilibrium in these countries is due to racial conflict and bickerings. The South African racial discrimination constitutes a live danger to the very existence of the suppressed nationalities of Asia and Africa, an affront to Asia's honour and a real threat to world peace; it is a matter of tremendous importance to the continued existence of the Commonwealth.

The Australian Government has threatened to deport under the War-Time Refugees Removal Act about 800 Chinese, Malays and Indonesian war-time refugees in Australia. The Australian-born wives of the Chinese have petitioned the Human Rights Commission of the United Nations at this flagrant violation of the Declaration of Human Rights involving separation of families. On 14 November 1949, A. A. Calwell, Immigration Minister in Australia, appealed to Australians to open their homes to British immigrants so that 80,000 could be accommodated this year. Yet he was 'opposed under any circumstances' to the Japanese entering Australia even to compete in the Olympic Games in Melbourne in 1956. Australia, which for nearly 150 years considered herself a member of the European community, must adjust herself to the

new concept of geography and security which draws Australia into the orbit of Asia and the Indian Ocean region. History gave her one chance during the Second World War to realize that her security interest lay with neighbouring Asian countries. History may not give her a second chance. Already there are rumblings of strong Asian reaction against her racial policies. A native of the Philippines was prevented by Australia from joining his Australian wife and children. So in April 1949, the Philippines passed a law prohibiting the entry and residence, permanent or temporary, of foreign nationals from countries where Filipinos suffered similar disabilities. The Act caused the expulsion of 60 Australians and 30 Australian wives of American and other business men.

INSTITUTES OF RACIAL RELATIONS

Now that India has chosen to remain within the Commonwealth, it is necessary in the interests of Commonwealth solidarity to adjust the humiliating position of Indians in South Africa, Kenya etc. *vis-a-vis* the European immigrants and the natives. This adjustment to satisfy the needs of Indian and Asian self-respect and honour is necessary in the interests of intra-Commonwealth relations, not to speak of the larger East-West co-operation. To soften the colour prejudice, some efforts should be made to study the question from an objective viewpoint and to deal with it through personal contacts. Leaders of thought of the different communities may also consider the desirability of establishing Institutes of Racial Relations not only for intellectual study but for actual promotion of inter-racial contacts and goodwill. By offering objective and constructive criticism, they could soften the rigours of racial legislation. Particularly, university professors, judges, editors of newspapers and literateurs should be enlisted to participate actively in the establishment and working of these institutes. Leaders of Christian religious thought like the Christian missionaries in India should appeal to their co-religionist leaders in these countries not to be a party to policies of racial discrimination in complete violation of the basic Christian principles. A solution for racial antagonism, particularly in the sphere of labour in South Africa and other countries, may be attempted along horizontal lines through the medium of the labour organizations in India and these countries. For operation of organized economic forces through friendly negotiations may succeed where the political approach has failed,

PLANNED DEVELOPMENT OF SPARSELY POPULATED AREAS

Racial restrictions on the entry and residence of Indians and other Asians in the British Dominions and colonies and other European countries are imposed on the ground that Indians would, in the absence of such restrictions, swamp the countries to their detriment. But really there is no justification for any such apprehension. Except Zanzibar, all the territories of East Africa have vast spaces with sparse populations and unlimited scope for development. This was recognized by the fact of Kenya's subsidization in 1946 of the immigration of British farmers and retention of refugees from Europe. Out of the total area of the highlands in Kenya, which is 7 million acres, only a relatively small portion is under cultivation. Actually only a sixth of the 17,000 sq. miles reserved in the best part of the colony to the Europeans is in beneficial occupation. The large plans of development which are likely to increase with time in range and variety would require increased manpower, enterprise, initiative and finance. In view of their tremendous contribution, Indians are entitled to at least equal treatment with Europeans as regards immigration. Only about 35 p.c. of the area in Australia is suitable for normal European settlement as the opening of the tropical north of the continent requires people physically adapted to the rigours and problems of tropical climate. Nearly half the population of the continent is concentrated in five principal cities and about a third in only the two cities of Sydney and Melbourne. Dr. Dudley Stamp says :

Indian agriculture as far as crops are concerned could be applied to a considerable part of uninhabited Northern Australia. When the time comes for the development of this great area of Northern Australia, the lessons learnt in India will be invaluable. It is scarcely too much to hazard that in the dry, light soils of North Australia, the oilseeds, particularly perhaps the groundnut, will prove a salvation as they have done over much of the dry belt of Burma.

Though Canada was twice India in size, the density of population was only about three per square mile. Between 1911-14 immigration averaged 3 lakhs a year, 402,432 being the figure for 1913 alone. Yet about 330 Indians were not allowed to land in spite of their fulfilling the almost impossible condition of an unbroken journey of thousands of miles. British Guiana has an area of 83,000 sq. miles and British Honduras, 8,900 sq. miles. Between them the two colonies have a population of less than 500,000. The neighbouring British West Indian islands have a total area less

than that of British Honduras alone but a total population of more than 2,250,000. The Report of the British Guiana and British Honduras Settlement Commission²⁰ has detailed proposals for new developments in agriculture and industry with estimates of cost for a ten-year development plan. The Commission believes that these developments should be able over, say, ten years, to absorb about 100,000 men, women and children, including some 25,000 adult workers. This would, it was hoped, start a chain reaction of further development and settlement in subsequent years. The cost of these schemes over the ten years would be between £14,000,000 and £20,000,000. As *The Economist* says, 'these plans can hardly fail to benefit the two colonies, but will have practically no effect on the overpopulation problems of the West Indian Islands. As regards the possibility of European settlement, the report clearly shows that the scope is very limited indeed'. Referring to the vast undeveloped areas in the north-western districts of British Guiana awaiting development, G. F. Keatinge also suggested in 1919 that they could be reclaimed by setting up a Land Company to which the colonial government would grant about 50,000 acres on condition that 5,000 Indian families would ultimately be settled thereon as small-holders. According to Sir Cecil Rodwell, Governor of British Guiana, the colony could sustain a population of 30 lakhs while now it is only about 3½ lakhs and that the only source from which population could usefully be drawn was India. The Report of the Royal Commission on Agriculture in India has stated that there were 30 lakhs acres of cultivable land in the strip between the sea and the mountains which is suitable for growing rice, sugarcane, coffee and cocoa. Indians should be permitted to colonize in particular the areas in Essequibo and the North-West District. On 4 September 1949, Hadji Agoes Salim, Foreign Minister of the United States of Indonesia, stated in an interview that Indonesia, when fully sovereign, would be a rich, arable land, capable of absorbing Asians from adjacent lands who otherwise might envy Australia's open spaces and that Asians would be able to settle more easily. North Borneo has similar climate to India's. So also New Guinea, whose population density is only 4 per sq. mile, the population not exceeding one million over an area of 320,000 sq. miles.

As owner of the most colonial possessions in which Indians have been settled, Britain wants to exclude alien influence therein so as to be able to preserve high monopoly profits for herself

20. CMD. 7533, (1948).

through her capitalist control on their economies. The colonies provide raw materials for the British industries, a preferential market for the sale of British manufactured goods and also offer a fruitful field for investment of British surplus capital and savings. Thus Britain values the colonies from mercantile, industrial and financial standpoints. Hence she wants to exclude therefrom all alien influences which might prove prejudicial to the British interests. But after the emergence of the three Asian Dominions of India, Pakistan and Ceylon and their decision to remain in the Commonwealth, Britain should change her exclusive attitude. The Commonwealth Prime Ministers' Conference should take a broader perspective and decide on a long-term plan to develop these parts as an extension of the policy underlying the institution of the Colonial Development Fund Scheme. Necessarily, such a plan will succeed only when it is subject to a thorough investigation of the economic possibilities of these parts and of the special interests of the natives. India will participate therein only to the extent to which her participation is warranted under this two-fold limitation. Such a planned development of the undeveloped regions of the Commonwealth is bound to contribute not only to the welfare and stability of the Commonwealth, but to the progress of the world as a whole, in view of the fact that the Commonwealth sprawls out to the farthest reaches of the world.

The Report issued by the Empire Development and Settlement Research Committee suggested a plan in 1934 for the redistribution of the population of the British Empire. Since World War I the policy of white settlement in the outlying areas of the British Empire had been encouraged through a policy of assisted emigration. Between 1923 and 1929 over £800,000 a year were spent by the Imperial Government to assist white emigration under the Empire Settlement Act. Though about 4 lakhs were enabled to settle overseas since 1918, this number proved less than the figure for the pre-war years when assisted emigration was not in force. Since 1930 there was even an excess of returned immigrants over emigrants. Thus assisted white emigration for agricultural purposes has proved uneconomic and has failed. W. A. Carrothers says: 'The conclusion seems to be that the policy of the redistribution of the white population of the Empire has failed, and that in so far as the Empire Settlement Act was intended to be the instrument of that policy, it shares in its failure. This failure is in no sense associated with a faulty or inefficient

administration of that Act'.²¹ This is particularly true of white emigration to tropical areas which are climatically unsuitable for permanent white settlement. The position is worse where the whites have to labour as primary producers. Only tropical races could develop these parts. The hot tropical areas, except the coastal parts of Queensland (Australia), the moderate tropics of Florida, Panama, Cuba, Puerto Rico, should be thrown open for settlement by Asian tropical races.

Selected emigration from India should be encouraged to the tropical and sub-tropical regions of the Commonwealth. It should not be difficult to come to an agreement particularly on the basis of Prime Minister Nehru's policy in this connexion. Germans realized the advantage of Indian agricultural settlement in the tropical areas of German East Africa and so introduced Indians even half a century back. But British Dominions prefer even white enemy nationals to Indians. Out of the 10,111 immigrants admitted into Australia in 1939, while only 881 were British, as many as 5,321 were Germans! This despite the anxiety of the Australian Commonwealth to exclude 'alien thought and feeling'. It is wrong to leave habitable tropical areas undeveloped where nationals of the overpopulated Asian countries of the Commonwealth were unable to eke out a bare existence. A policy of selected emigration from the densely populated areas to sparsely populated areas of the Commonwealth should be adopted as part of the programme to develop the undeveloped countries. Beginning with the Commonwealth, the programme can be extended outside to achieve an economic and political equilibrium: both material interest and moral obligation demand just action in this direction. Climatic conditions and environments do not exist in these regions for white settlement. Epidermis of the race alone cannot be allowed to be the decisive factor in immigration policy. In all schemes of European settlement, useful distinction should be made between settlement in tropical and sub-tropical regions and settlement in temperate zones. There should be no statutory obstacles in respect of colonization in the former, which should be subject to the principles to be drafted by such international bodies as the I.L.O., the Trusteeship Council and the F.A.O. which are most competent to decide from the standpoint of international interest. Demographic studies now being done by the UNESCO and the work of the U.N. Population Commission may partly be focussed to survey the over- and underpopulated areas with a view to explore the possibilities of their settlement and

21. Quoted by N. Gangulee in *Indians in the Empire Overseas*, p. 200.

colonization by other nationals. In an expanding planned world economy, such selected migration under international auspices is a necessary and useful factor. So far as emigration of labour, Indian or otherwise, is concerned, the I.L.O. should be asked to frame the necessary regulations to avoid all national and racial animosities. As most of the United Nations are members of the I.L.O., there should be no difficulty to abide by its regulations in the formulation of which every country would have a voice. Immigration laws are no more sacrosanct than any other laws; they must be substantially revised to serve the purpose of re-adjusting inter-racial relations.

It is argued that Indian immigration would lead to wage competition and that the flow of cheap Asian labour with its low standard of living would bring down the present wage structure and standard of living of the whites which can only be maintained by the existing restrictions on immigration. It is forgotten that standard of living is not something which is rigid; it is flexible; it could be raised or lowered by circumstances and it is a primary function of all civilized States to raise it by promotion of social services. The discrimination against Indians even in social services has stagnated the standard of living of Indian labour. Uncertainty shrouding their status in the immigrant countries has added to the neglect of Indians. Undercutting by Indians could be prevented by minimum wage legislation. Racial complications involved in selected immigration can further be removed by an adjustment of the economic factors through friendly negotiations between the trade unions in India and these countries.

ASSIMILATION OF STANDARDS OF LIFE

Most of the anti-Indian legislation is sought to be justified on the ground of economic competition by Indians. It is argued that Indians, with their low standard of life, undercut the white traders and drive them off the field. This argument presumes that there is one stereotyped standard of living for Indians as a race or nationality, and similarly another for whites, with no mobility. Such a presumption is wrong as in every race or nation there are the big capitalists, the middle class and the labourers with sharply varying purchasing power and standards of living.

However, an attempt to solve the question of economic competition whether in labour, industry or trade on racial lines is neither equitable nor sound. Economic maladies demand economic remedies. Too much interference with the natural laws of trade competition is bound to prove difficult and futile. A man's standard of profit is an individual and personal affair, and nobody

can pretend to regulate it effectively. So far as competition in trade is concerned, unless the standard of profit is equalized, the equalization of trade expenses will not make the conditions of competition equal. But the standards of profits could be equalized only when the standards of life of Indians and the whites were equalized. Indians should be enabled to raise their standard of living to that of the Europeans and the indigenous communities in Ceylon and Burma etc., if ultimately the evils of unfair competition should be diminished. When Indian wants are as numerous as those of Europeans, the Sinhalese, the Burmese etc., Indians cannot but refuse to work or trade for a smaller wage or profit, and cannot but demand a higher wage or percentage of profit and refuse anything less. Therefore, the only permanent remedy is the assimilation of the Indian standards of living to those of the Europeans in South Africa, and to those of the Sinhalese and Burmese in Ceylon and Burma.

A satisfactory land position is an essential part of the foundation of a sound labour policy. As was pointed out by Major Grogan :

Proletariat is a danger to capitalist land monopoly with the necessary corollary of a huge landless society. A wise colonial labour policy and a just land policy are essential and colonies should not be regarded as mere projections of Europe. The assumption that it is only the landless who make good labourers should be buried.²²

Indians should be enabled to occupy and cultivate land as independent tenants or owners in their own rights.

It is also essential to develop the industrial position in India to counteract the effects of adverse seasons on agriculture which necessitate the migration of agricultural workers from South India. Indian labour should be made more mobile by giving training to it in some subsidiary occupations. Many of the problems can thus be avoided by reducing to the minimum the economic causes which necessitate emigration. This should not be difficult in the case of India whose total nationals overseas hardly equal the annual increase of Indian population. So, to the extent to which the Indian emigration problem is not the manifestation of or an aspect of the population problem,²³ to that extent the development of a diversity of industries in both India and the immi-

22. Debates in Legislative Assembly of Southern Rhodesia, 12 May 1927. Official Report, p. 330.

23. A. M. Carr-Saunders : World Population, pp. 293-94.

grant countries would prove considerably helpful in reducing the economic necessity of emigration.

RECOGNITION OF INDIANS AS PART OF THE PERMANENT POPULATION

The overseas countries should be made to appreciate the inexorable implications of the fact that with the increasing size of the colonial-born Indian population, Indians are fast ceasing to be an immigrant community. In most of these countries they are becoming part of the local population with longer standing than most of the European immigrants in Australia, Kenya or elsewhere. It should be remembered in this connexion that efforts at white settlement in tropical areas had not proved successful. For political purposes, all resident Indians in every country should be recognized as part of the permanent population and accorded equal political rights. All colonial-born Indians, all those who have been in the country for a certain number of years, and all who indicate their intention to make the immigrant country their home should be regarded as resident Indians for the purpose of full-fledged citizenship. The rest who do not wish to settle down and become merged in the local population should be considered as respectable aliens and granted such rights as are granted to Europeans. The determination of the absorbable quantum of Indians in the body politic and the body economic of the immigrant countries should be conditioned both by the economic limitations of those countries and the just rights of Indians by virtue of their association with them. Above all, the long established cultural and trade relations between India and those countries should be given due consideration.

Indians should change their attitude and refuse to invoke the special vetoing powers of the Governor or the Secretary of State for the Colonies. They should abandon the cry for artificial ropes and pulleys to haul them up, for this is bound to antagonize the indigenous communities with whom their future is indissolubly intertwined. Such an attitude is essential as the designing bureaucracy will not fail to trip the political ineptitude of the different communities by throwing so many political puddings. Pandit Nehru observed in Ceylon in 1941 :

In India we protest against the Governor and Viceroy using special powers. Are we going to ask the Governor in Ceylon to use his special powers? We have no policy, no principle

then. Remember not to ally yourselves with the opponents of the people of this country. I warn you again.²⁴

Indians should be sober in demands, just in aspirations, and persistent in efforts.

FRANCHISE FOR INDIANS

The right and approved method of protecting the economic interests of labour, stated Wedgwood Ben, is to give it a vote to defend itself. This is essential as the planters wield immense influence in the counsels of the colonial governments. Aneurin Bevan stated: 'The position in Trinidad is that the actual Government of the Island has not been in the House of Commons but in a number of propertied interests who have done what they could without check or hindrance.'.²⁵ The Parliamentary Commission, 1927, described the position in British Guiana as 'A Government of sugar, by sugar, for sugar, inevitably tending to restrict the development in other ways'.²⁶ What Lord John Russell wrote about the British Guiana planters in a despatch in 1855²⁷ has been confirmed after 80 years. It is therefore essential that labour should be given a vote. Secondly, in order to secure an effective articulation of labour interests, wherever labour is organized into trade unions, such unions should, as was recommended by the Royal Commission on Labour,²⁸ be formed as special constituencies. In the transitional period, trade union constituencies and special labour constituencies will serve as a vital solution of the problem of labour representation.²⁹

The formula suggested by Maulana Mahomed Ali for Hindu-Muslim representation in India of obliging every successful candidate to secure a certain percentage of votes from the other communities may be adopted with much benefit.³⁰ The constituencies may also be periodically delimited to neutralize the disproportionate increase in population leading to unfair political advantage to any one community.

24. Quoted by K. Natesa Iyer in *Indo-Ceylon Crisis*, p. 139.

25. Quoted by P. Kodanda Rao in *Servant of India*, 14 April 1937.

26. Quoted in *The Economist*, Vol. VXL No. 5102, 7 June 1941, p. 758.

27. CMD 2841, April 1927, p. 50.

28. The Report of the Royal Commission on Labour, 1930, pp. 462-64.

29. The Report of the Indian Franchise Committee, CMD, 4086 of 1932, pp. 101-04.

30. Indian Round Table Conference. Vol. III. Sub-Committee No. III (Minorities). Appendix I, pp. 160-65.

IMPROVEMENT IN DOMESTIC CONDITIONS

In so far as the population problem is an aspect of socio-economic life, particularly rural life in the case of India, the pressure should be eased by agrarian reforms like reclamation of cultivable land, extension of irrigation facilities, development of small-scale industries etc. The abolition of the *zamindari* system and reform of other antiquated land tenure systems and provision of subsidiary occupations in rural areas would ease the agrarian disequilibrium, thus removing the basic causes of Indian labour emigration. The unsatisfactory conditions of labour, the cankerous communal prejudices, the horrifying mass illiteracy and the sectarian schools are all equally indigenous to India. So long as these conditions remain in the mother country, Indians overseas have to hang their heads in shame when the argument is flung in their face that their position is equally bad at home, if not worse. Such an argument may not be a convincing justification of the miserable position of Indians overseas but will serve as an ostensible extenuation of it.

No doubt, it is the hope of better conditions that has persuaded Indians to go thousands of miles across the seas, and so they have a right to expect decent conditions even as the Europeans that joined Indian services demanded and enjoyed them. But what moral authority or sanctity will an Indian's demand for equal economic and social justice command when he is denied the elementary needs in his own country? It is therefore incumbent on the Government and people of India to improve the conditions in India if only to avoid the affront of the argument of the colonial governments that the position of Indian labour overseas is better than that of labour in India.

CITIZENSHIP RIGHTS

In the British Dominions and the colonies the problem of citizenship rights of Indians did not arise till recently, as in law all Indians in these countries were 'British subjects'. The issue has assumed a different aspect as India, Pakistan and Ceylon have attained Independence and Burma has left the Commonwealth and Canada and Australia have begun to stress the aspect of Dominion nationality as distinct from Commonwealth nationality. If this distinction is accepted, Canadian and Australian nationals will have certain rights in these countries which no other person will have though he is a British subject.

The Government of India wants overseas Indians to make their own choice in regard to their nationality—every single Indian must decide whether he wishes to continue as an Indian national or whether he prefers to accept the nationality of the immigrant country. In case he opts to be an Indian national, he will not be able to claim franchise or voting privileges, but have only the rights of a respectable alien, though the Indian Government will do its best to secure for him most-favoured treatment on a footing of equality with other aliens. In the case of those who choose the nationality of the immigrant country, India will insist on full and equal rights with other nationals.

The basic policy is to avoid double citizenship and to encourage overseas Indian nationals to settle down permanently and to identify themselves with the interests of the immigrant countries. The social, cultural and religious ties with the mother country are to a certain extent responsible for their inability to do so. It should be equally noted that the policies of the overseas countries are not such as to inspire them with confidence and hope to cast their lot with these countries. Most of the Indians in Burma, Ceylon etc. are now opting for local citizenship with mixed feelings and hoping that they could always go back to India.

In the case of Malaya, however, the position is different. The federal citizenship offered by Malaya does not connote nationality and does not confer national status for international purposes. Hence, unless Indians in Malaya retain Indian nationality, they will become a people without any nationality and consequently will have no protection in case the Malayan authorities deny them Malayan nationality. Further, people of different nationalities live in Malaya.

Article 5 (b) of the Indian Constitution, as originally drafted, based citizenship on domicile. It was later felt desirable to define a citizen in terms of birth and allegiance, hence Article 5 was amended.

Article 5 (c) of Part II of the new Indian Constitution says that

any person who or either of whose parents or any of whose grandparents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any territory outside India as so defined, shall be deemed to be a citizen of India if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country where he is for the time being residing on an application made by him, to such diplomatic or consular

representative whether before or after the commencement of this Constitution in the form prescribed for the purpose by the Government of the Dominion of India or the Government of India.

Thus all Indians overseas who or whose parents or whose grandparents were born in India could become Indian citizens. They have to make an application and register themselves with the Indian Consular Officer or a diplomatic representative abroad. Nationality by birth of any citizen of India is not to be affected in any other country whose laws permit local citizenship of that country being acquired without prejudice to the nationality by birth. This provision was made to cover the case of Indians in Malaya.

The choice of acquiring Indian citizenship by Indians abroad was left very largely to them. It was, to a little extent, left to the Indian Consuls-General or other diplomatic representatives of the Indian Government. If they thought that a person did not qualify for Indian citizenship, they could refuse to enter his name in the register. Indians overseas are pleased with the extension of Indian citizenship rights to even grandsons of those born in India.

Modern trends in constitution-making suggest that the denial or deprivation of nationality by reason of the acquisition of any foreign nationality is a matter to be regulated by subsequent legislation, and not by the Constitution Act. Hence the citizenship provisions in the new Constitution are only *ad hoc* provisions, and the business of laying down the permanent law of citizenship had been left to the Parliament of the Indian Republic. Fundamentally, nationality is based on allegiance and not on citizenship, much less truncated citizenship. Citizenship is not co-extensive with nationality. Neither permanent residence in a foreign country nor the acquisition of a foreign domicile has anything whatever to do with one's nationality. An Englishman who leaves England and settles permanently in the U.S.A. with the settled intention of not returning to England does not cease to be a British national. According to well-known writers on international law, emigration involves the voluntary removal of an individual from his home State with the intention of staying abroad, but not necessarily with the intention of renouncing his nationality. It is, therefore, obvious that emigrants may well retain their nationality. Martin Wolff writes :

In all these respects nationality differs from domicile. Any legal system may validly determine the conditions upon which domicile depends. It may hold the domicile to have been established in a foreign country, though the law of that country

regards the domicile as established elsewhere. The law of a given country can answer the question 'where is the domicile of X?' It cannot answer the question 'Of which State is he a citizen?', but merely 'Is he a citizen of my State?'. Therefore English law may prevent a person from being without domicile or from having more than one domicile in the sense of English law. It cannot prevent him from having two or more nationalities or from having none.³¹

Nevertheless, some laws and even some Constitutions lay down that 'nobody shall simultaneously be a citizen of this State and of any other State'. (Article 8 of the Polish Constitution of 17 March 1921, Article 10 of the Lithuanian Constitution of 15 May 1928 and Article 8 of the Latvian Law of 2 June 1927). This is ineffective. A State can prevent dual nationality only by prescribing loss of nationality for any *subject* acquiring or possessing nationality of a foreign State.

In cases where the citizenship of Indians, as in Malaya, is not something that affects Indians' nationality and therefore allegiance, prior acquisition of such citizenship is not a bar to retention or acquisition of Indian citizenship under the Indian Constitution. Dual and even multiple nationality is a very common phenomenon in international law. It is the incidental result of the right of every sovereign State to define its own nationals and the conflict of laws that arises therefrom and to prescribe for the loss of nationality for any subject acquiring or possessing nationality of another State.

Article IX of the Indian Constitution says that 'no person shall be a citizen of India if he has voluntarily acquired citizenship of any foreign State'. A distinction is made between 'voluntarily acquiring' and 'conferred by a foreign government'. India could have no objection to a person enjoying dual nationality provided that person satisfied the conditions prescribed for acquiring citizenship in both the countries.

Under the British Nationality Act, 1948, which came into force on 1 January 1949, persons belonging to the Commonwealth countries enumerated in it by name are *ipso facto* regarded as British subjects or Commonwealth citizens. Section 32 (8) of the Act however says :

In this Act, the expression 'citizenship law' in relation to any country (Commonwealth countries mentioned in the Act itself) means an enactment of the Legislature of that country declared by order of the Secretary of State made by a statu-

31. Martin Wolff: Private International Law (1945), p. 128.

tory instrument at the request of the Government of that country to be an enactment making provision for citizenship thereof.

As far as India is concerned, there is no enactment of the legislature in regard to citizenship as stipulated in the sub-section. Presumably the United Kingdom must have considered the reference in the Indian Constitution itself to citizenship on the date of the commencement of the Constitution as coming within the meaning of this sub-section. The main principle of the British Nationality Act, says Sir B. N. Rau, 'is that the people of each of the self-governing countries within the Commonwealth have both a particular status as citizens of their own country and a common status as British subjects'.³² At the instance of India, an alternative description of 'British subjects' as 'Commonwealth citizens' was incorporated in the Act. The first Section of the Act provides that every person who under the Act is a citizen of the U.K. and colonies or who under the law of any of the other units of the Commonwealth, namely, Canada, Australia, New Zealand, South Africa, Newfoundland, India, Pakistan, Southern Rhodesia and Ceylon, is a citizen of that unit shall, by virtue of that citizenship, be a British subject. The Act merely declares that Indian citizens will be accorded the status of British subjects when they are in the U.K. During the discussion in the Parliament, it was suggested that the privileges and rights which the Indians or Commonwealth citizens could enjoy in the U.K. should be specifically mentioned, but the government felt that it was best at that stage not to attempt their exact definition. Though the other Commonwealth countries had enacted legislation on similar lines, the crucial issue relating to the definition of the rights and privileges which would accompany conferment of the status of a British or Commonwealth citizen has been left untackled. Consequently, India does not know where she stands in regard to the beneficial nature of these enactments nor of the reciprocal measures she could adopt. Actually, in spite of the legislation conferring the status of a British subject or Commonwealth citizen on Indian citizens, there are disabilities on Indians preventing them from settling down as citizens of those countries, whatever their basis—colour, race or economic grounds. India can only deal with this aspect on a reciprocal basis as between one country and another. And the proviso to Article 367 in the new Constitution empowers the

32. Sir B. N. Rau: *Reciprocity in Citizenship Rights* (Data paper prepared for the Commonwealth Relations Conference, (1949), p. 1.

President 'to declare by order any State not to be a foreign State for such purposes as may be specified in the order'. This means that if India enacts a law of citizenship then the President may, for the purpose of that law, declare any country as not a foreign State, such a declaration being based on the existing position in each of the Commonwealth countries. In the case of those who genuinely wish to acquire Indian citizenship and settle down in India as Indian citizens, there may be no complication in according full reciprocity. But in the case of those persons who merely wish to take advantage of the conferment of Commonwealth citizenship for launching on industrial or commercial enterprise, grant of such full reciprocity may not, in view of India's industrial backwardness in comparison with the other Commonwealth countries, be quite so desirable. While the citizens of the other Commonwealth countries are in a position to fully utilize the unrestricted rights conferred on Commonwealth citizens to their maximum advantage, Indian citizens are not in a position to embark on similar missions in other countries even if they are accorded such special and unrestricted rights. This therefore is an important aspect which should be tackled by specific bilateral agreements between India and the Commonwealth countries. Sir B. N. Rau observes :

A Commonwealth citizen has not necessarily all the rights of a citizen of the country where he settles or resides. From a purely legal point of view this is intelligible, because the Commonwealth is not a Federation but a group of independent States, each entitled to make its own citizenship law. Nevertheless it is to be hoped that the Commonwealth will in this respect strive for the federal ideal of a common citizenship involving no discrimination between the citizens of one unit and those of another. It may be possible to start this process by mutual agreement between certain countries of the Commonwealth. For example, suppose A and B are two such countries ; it may be possible for them to agree that A will admit annually as immigrants not more than a certain number of the citizens of B and *vice versa*, so that there need not be any fear of unrestricted emigration from either country to the other. This fear having been allayed, it should not be impossible for the two countries to agree further that the citizens of one country shall have all the incidents of citizenship of the other upon settling therein. When an agreement of this kind is reached, it can be given effect to by appropriate legislation in each of the countries concerned.³³

33. *Op. cit.*, p. 1.

Thus reciprocity of citizenship may be promoted between the various units of the Commonwealth *inter se*.

Article 367 of the new Constitution defines a foreign State as including all States other than India. Article 5 deals only with persons who could become citizens on the date of the commencement of the new Constitution. Thus there is no general law of citizenship in existence in India now. The question is 'Will India in her enactment of a general citizenship law incorporate provisions conferring similar rights and privileges on British or Commonwealth citizens as those conferred on Indians by the India (Consequential Provisions) Act, 1949?' There is no specific reference in the Indian Constitution to the Commonwealth. Although India is a member of the Commonwealth, the relations between India and the Commonwealth countries are more or less extra-constitutional. But there is no recognition of this relationship in the new Constitution. Owing to these two reasons, whatever the actual relationship between India and the U.K., it is constitutionally impossible for India to regard the U.K. as not a foreign State. Any exception made in the case of the U.K. would equally apply to the other Commonwealth countries.

Referring to the possible reciprocity of citizenship rights between the countries of the Commonwealth as a whole and countries outside the Commonwealth, Sir B. N. Rau observes :

This is suggested by the position accorded to citizens of Eire under the British Nationality Act. Although they are not Commonwealth citizens, nevertheless, under Section 3 of the Act, they have the same position as Commonwealth citizens, and under Section 32 they have been expressly excluded from the definition of 'aliens'. It follows that a citizen of Eire is not an 'alien' or foreigner in any country of the Commonwealth, nor is he a citizen of the latter country; he is something in between. And, reciprocally, it has been agreed that a Commonwealth citizen will have a comparable status in Eire. Such, then, is the position resulting from mutual agreement, although Eire is now a Republic outside the Commonwealth. A similar arrangement may be possible with other countries outside the Commonwealth.³⁴

With India inside the Commonwealth, although as a Republic, it should not be difficult for other Western Christian nations with almost the same social, economic and political institutions as the Commonwealth countries to come to such an arrangement with India in respect of the citizenship rights of Indian nationals in their countries.

34. *Op. cit.*, p. 2.

The Conference of the International Bar Association held at The Hague in August 1948 passed the following resolution on the basis of a paper presented by Sir B. N. Rau :

(1) That in order to promote tolerance and good neighbourliness among the people of different countries, as many of these as possible should secure by mutual agreement, and other appropriate means, that the citizens of one country shall, while residing or sojourning in another, have the incidents of citizenship of the latter ; and

(2) That this Conference would welcome, as an example, any arrangement whereby the incidents of Commonwealth citizenship under the British Nationality Act could become available, on a reciprocal basis and under agreed conditions, to the citizens of countries outside the Commonwealth.³⁵

POLICY REGARDING REPATRIATION

In regard to the question of repatriation of Indians from the immigrant countries, India should not agree to compulsory repatriation if they have continuously resided in these countries for five years. She should insist on equal and full citizenship rights on compliance by them with a simple and easily ascertainable factual test of residence and declaration of intention to settle permanently in the immigrant country. But the settled Indians must fight for these rights as Ceylonese, Africans etc., and not as Indians. Where the Government of India is a party to the repatriation of overseas Indians, as for instance in the case of South African Indians under the Assisted Emigration Scheme, India should take all possible steps for their rehabilitation and settlement under proper conditions. The failure of the Government of India in respect of the repatriates from South Africa is a tragic episode which should not be repeated. How can the Government of India, after failure to look after her own nationals as per her word, arraign the other countries for their default ?

The Government of India should set up a Repatriated Indians Rehabilitation Board to make a survey of the climatic, social, employment and other conditions in India similar to those of the areas from which the repatriates had returned. Many repatriates from South Africa, Fiji, West Indies etc., had yearned to go back to these countries owing to the different social and economic conditions in Indian villages and towns. They felt terribly disappointed at the attitude of the Indian Government and people and returned. The Board should be provided with the required

35. *Op. cit.*, p. 2.

financial resources to help in the settlement not only of labour but of others engaged in trade and professions through small loans. To assist the repatriated agricultural workers, collective farming schemes may be initiated to reclaim the undeveloped areas. In the case of skilled labour and artisans, cottage industries may be taken up. In all these schemes, the main difficulty will be to win their confidence in the light of the past sad experience. Unless this is won, it will be difficult to induce those Indians who should be repatriated for reasons of national self-respect — Indians taken mainly for scavenging and other work — to return. State Agricultural and Industrial Banks should also be established to finance these plans.

PARAMOUNTCY OF NATIVE INTERESTS

It is necessary for the Chettiers in Ceylon, Burma and Malaya and other vested interests in other countries to realize that the Government of India cannot prevent the nationalization programme in regard to land and industries, but only can ask for fair and reasonable compensation in the context of the economic conditions in the immigrant country concerned. The Indian trading and professional classes should assume a more sympathetic attitude to the Indian working class. Cases are not wanting where Indian big business joined hands with the European capitalists to trample upon the interests of their less fortunate brethren. In Uganda, a majority of Indians who are small retail traders had to suffer thus. The Uganda Development Commission, which reported in 1920, recommended internal free trade in cotton in the Protectorate, but the Indian ginnery owners joined the European owners in resisting this recommendation, particularly after the fall in cotton prices in 1920. In Mauritius, the Indian planters had dissociated themselves from the protests of Indian labour leaders against the revision of the Penal Code denying the workers the right to picket and peacefully persuade others to lay down their tools. The Indian Member of the Legislative Council and the Mayor of Port Louis waited in deputation on the Governor and opposed the views of Indian labour while the European members strenuously opposed this revision and its passage till the end, though for reasons of their own. The trading and professional class Indians should do something more to help the labourers than content themselves with merely using them 'as a springboard to indulge in and make an exhibition of their political horse-vaulting'.

Indians should not also become minor partners in the exploitation of the natives, Indian planters in Uganda joined the Europeans

in prevailing upon the Government of Uganda to pass the Masters and Servants Ordinance to enable recruitment of contract labour. Again, Indian capitalists became a party to the Uganda Development Commission recommendations subjecting the natives to pass laws and heavy taxation, forcing the natives to work under the whites. Indian settlers, particularly of the commercial and trading class, should realize the necessity to readjust their relationship with the indigenous communities in these countries. They should not make profiteering their main interest as much in the larger and higher interests of the Indian community as a whole as in the practical interests of their own future. For, once they alienate the natives, their very existence in these countries will become impossible. Speaking on 4 August '49 at a reception in Delhi in honour of Peter Koinange, an East African leader, Prime Minister Nehru said :

The Government (of India) did not want Indians in Africa to exploit the people (Africans) or have privileges which would interfere with their progress. This was based to some extent on motives of idealism, but from practical considerations as well it was necessary for India and Africa to understand and help each other. . . . This has been repeatedly made clear to our representatives abroad.³⁶

Indians abroad should utilize at least a portion of their earnings for the development of education among Indians and the natives, and for the establishment of cultural relations, especially with the natives. It was admitted in Kenya that Indians had given training to the natives in skilled occupations like carpentry, agriculture etc., more than the Europeans had done. Yet Indians have not done as much as they should have for African and other natives. But this fact is now being recognized and they are realizing their duty in this respect.

SALVATION IN EDUCATION

In education lies the real salvation of Indians abroad. The Basic Education Scheme adopted in India should be extended to Indians overseas through non-official efforts to end illiteracy among them and facilitate acquisition of citizenship rights and exercise of intelligent citizenship. The Chettiars and other rich Indians can contribute substantially to the promotion of Indian education by the establishment of private schools and hostels and the institution of scholarships for the prosecution by colonial Indian students of

36. *The Hindustan Times*, 5 August 1949.

technical and University education in India or foreign countries. Further, every University in India should institute some scholarships for the benefit of promising Indian boys and girls who might come to India for higher education. Moreover, Indians abroad should, while not disregarding their mother tongue, concentrate their attention first on the acquisition of the English language, which alone gives them a social status in the peculiar conditions of colonial life.

CHANGE IN ATTITUDE

The colonial governments should give up the imposition of their religious and social institutions on Indians, which is a cause of much travail to Indians. In countries like Mauritius, Fiji, and West Indies, where the Indian population preponderates, some of the healthy Indian social institutions may even be grafted on those countries for the enrichment and harmonization of their social life. Writing about Indian immigration into Mauritius, T. Hugon stated in 1840 thus :

Mauritius being likely to become, within a comparatively short period, an Indian Island, by its population as well as its position, ought to be prepared for it by the adoption of some of the social institutions of India ; it would not be the first time that European society borrowed with advantage from that old cradle of civilization.³⁷

Considerable ill-feeling between Muslims and non-Muslims arose as a result of the municipal elections in 1946 in Nairobi where, in spite of Muslim preponderance, in some wards, no Muslim had been elected to any of the seven seats open to Indians. Indians should avoid a repetition of such a situation likely to engender communal animosities. It is also equally essential that Indians should give up their allegiance to polygamous marriages and their caste and sub-caste prejudices etc., which are as much out of tune with modern Indian social ideals as they are likely to excite the derision of those advanced in the pursuit of such ideals.

South Africa should abandon its policy of proclaiming, deproclaiming and reproclaiming of areas, driving Indians from post to pillar and from pillar to post. Segregation has proved a synonym for callous disregard of human personality on flimsy pretexts. The inferiority complex which it infuses condemns the lakhs of Indians and their unborn generations to a violent psychological oppression

37. Parliamentary Paper No. 331, dated 28 May 1840: Report of T. Hugon enclosed in Despatch dated 13 January 1840, p. 189, para 27.

culminating in a life of haunting agony and desolation. Indians would fight to the last ditch the issue of segregation, for with them, firstly, it is a question of the self-respect of their race and the honour of their country, and, secondly, it is tantamount to their economic asphyxiation. The colonial people should realize that they have an opportunity to build a multi-racial society. Several of the problems of Indians in the immigrant countries are not so much those between the governments as between the communities. In the larger interests of the future of humanity, South Africa and other European countries should call a halt to their racial perversity and its child, the segregation policy. In this connexion it is necessary to remember what attitude Indians should adopt in regard to the question of their joining a Non-White United Front. Mahatma Gandhi told Rev. S. S. Tema, a Bantu leader :

A Non-White United Front will be a mistake. You will be pooling together not strength but weakness. You will best help one another by each standing on his own legs. The two cases are different. The Indians are a microscopic minority. They can never be a 'menace' to the White population. You, on the other hand, are the sons of the soil who are being robbed of your inheritance ; you are bound to resist that. Yours is a far bigger issue. It ought not to be mixed up with that of the Indian. This does not preclude the establishment of the friendliest relations between the two races. The Indians can cooperate with you in a number of ways. They can help you by always acting on the square towards you. They may not put themselves in opposition to your legitimate aspirations or run you down as 'savages' while exalting themselves as 'cultured' people in order to secure concessions for themselves at your expense.³⁸

PROMOTION OF SOCIAL AND CULTURAL CONTACTS

In all the countries, Indians should avoid becoming a separate entity in their social life. Nearly 85 p.c. of the Burmese people are Buddhists, looking up to India as their holy land. The ties are not only spiritual but material, due to their reciprocal trade and, till recently, similar constitutional and administrative systems. There are close ties between India and other South Asian countries. Indians must look upon the immigrant country as their home country and not a place of sojourn. The colonial governments deny political privileges to Indians on the ground of their retention of associations with India, which was largely necessitated by the Hindu caste marriage system. Hence encouragement of mixed marriages of Indians with members of the other communities, due

38. *Harijan*, 18 February 1939.

regard being paid to the educational and social status of the parties, will prove a great unifying factor in rounding off the racial, social and psychological angularities of the different communities. Also, the participation of different communities in the festivals of each other will promote harmonious relations amongst them all. Indians, intellectually and economically equipped, should do their best to disseminate Indian culture and civilization among non-Indian communities in these countries. A sincere appreciation of Indian thought is bound to make a change in their attitude to Indians. They must also establish cultural contacts with all non-Indians. Exhibition of Indian paintings, classical books, and important Indian industrial products would help this process of understanding and appreciation. A real and lasting foundation for friendly understanding should be laid by frequent official and non-official Deputations between India and the immigrant countries. The Beyer Deputation and the Hofmeyr Deputation from South Africa constitute a monumental proof of the helpfulness and necessity of such deputations in the solution of even the most intricate problems. Such Deputations will help in acquiring first-hand information regarding the peculiar conditions in India and those countries, indispensable for mutual understanding and adjustment. Indian legislators, particularly members of the Standing Committee on External Affairs, should visit those countries, study the legislation affecting Indians and make responsible representations to the governments of India and the immigrant countries and thus facilitate a solution of the problems by their impartial inquiries. The members of the Madras Legislature can visit Ceylon, Malaya and Burma and help Indians there. The Bharat Sevashram Sangh, a socio-religious organization of Calcutta, sent a Cultural Mission in June 1948 to East Africa. The Mission spent 14 months touring the territories extensively and delivering a series of lectures. It also established a branch of the Sangh at Nairobi. The Gita Prachar Samiti of Ahmedabad has also sent in October 1949 a cultural mission to East Africa to propagate the great teachings enshrined in the *Bhagwat Gita*. Indian national leaders, thinkers and artists should visit these countries and inspire Indian nationals therein to the lofty traditions and ideals of the mother country, besides giving the people of the countries an insight into Indian culture. The visit of Jawaharlal Nehru to Ceylon in 1941 provides a striking illustration of the immense benefit of such visits. Peter Koinange, a great African leader and educationist, visited India at the invitation of the Government of India during September-October 1949. During his tour he obtained 34 scholarships for African students to come over and study in India. The visit of Peter Koinange is

symbolic of the new relationship India is forging with her neighbours, particularly the backward native peoples therein. The All-India Women's Conference should send their best representatives to study the conditions of their sisters abroad and infuse in them the great ideals of Indian womanhood. Christian missionary leaders in India may, with great advantage, appeal to their fellow missionaries and European officials in those countries to evince interest in the transformation of the poor Indian community into a virile section of the colonial population. All should encourage Indians to cast their lot with the native communities and contribute their best to the evolution of a common citizenship.

With Independence of India, non-domiciled Indians overseas are entitled to be treated as 'friendly and respectable aliens.' Yet it is necessary to realize that Indian nationals can in fact receive such treatment only in proportion to India's national strength to stand up for her nationals and thus enforce such respect. In 1936, when two of the Bills involving discrimination against Indians in South Africa were referred to a Select Committee, the Committee refused even to allow the Indian Agent-General and his Secretary to be present during the hearings of the evidence, while, on a strong representation of the Japanese Consul, the Union Government excluded the Japanese from the definition of the word 'Asiatic'. Similarly, the United States originally excluded the Chinese by its own unilateral law but secured the restriction of Japanese immigration by means of a gentlemen's agreement with Japan. In the words of Will Rogers, 'the powerful Japanese Army and Navy made the difference.'

MUTUAL SYMPATHY AND UNDERSTANDING

Indians overseas should give up all personal bickerings and petty dissensions amongst themselves and make a common cause in all matters affecting the welfare of the community. They should cultivate personal contacts with the members of the other communities and develop a broad cosmopolitan outlook transcending all narrow sectarian and religious prejudices. The rank and file of the Indian community had to suffer due to personal animosities amongst the leaders of the community and this Achilles heel has proved the steel of the opponents. Indian leaders in these countries have, therefore, a special responsibility to discharge in this direction.

As regards the guidance and support of the people and the Government of India to our nationals abroad, the Indian leaders of different political affiliations should always speak, as they have done so far, with one voice and strengthen the hands of the Government of India in all matters affecting the Indian nationals.

All the above suggestions can help in solving the problems only when they are reinforced by a spirit of mutual sympathy and understanding of each other's difficulties, and a spirit of toleration to respect each other's feelings. It is the duty of the Indian community to inspire, by its character and magnanimity, the illimitable confidence of the other communities. And in this task they have behind them the glorious tradition of India ringing through centuries of her cultural history. It is equally the duty of the local communities to be fair and just to Indians, who blazed the trail of economic development and civilization of the immigrant countries and pegged the stakes for posterity with their heart's blood during a century of Indian emigration.

APPENDIX I

STATEMENT OF INDIAN POPULATION IN OVERSEAS COUNTRIES

	Name of the Country	Indian Population	Year of Estimate
1.	South Africa	.. 282,407	(1946)
	Natal	.. 228,492	
	Transvaal	.. 37,000	
	Cape Province	.. 16,901	
	Orange Free State	.. 14	
2.	East Africa	.. 184,100	
	Kenya	.. 90,295	(1946)
	Tanganyika	.. 44,248	(1946)
	Uganda	.. 33,820	(1948)
	Zanzibar and Pembo	.. 16,000	(1946)
3.	Nyasaland	.. 1,851	(1946)
4.	British Somaliland	.. 520	(1946)
5.	Italian Somaliland	.. 1,000	(1947)
6.	Southern Rhodesia	.. 2,547	(1947)
7.	Northern Rhodesia	.. 1,484	(1946)
8.	Ethiopia	.. 500	(1949)
9.	Nigeria	.. 375	(1947)
10.	Sierra Leone	.. 76	(1948)
11.	Ruanda Urundi	.. 866	(1948)
12.	Madagascar	.. 14,945	(1950)
13.	Ceylon	.. 732,258	(1946)
14.	Malaya and Singapore	.. 604,508	(1947)
15.	Burma	.. 700,000	
16.	Indonesia	.. 27,638	(1940)
17.	Indo-China	.. 1,310	(1949)
18.	Sarawak	.. 2,300	(1949)
19.	Brunei	.. 436	(1949)
20.	British North Borneo	.. 1,298	(1947)
21.	Siam	.. 20,000	
22.	The Philippines	.. 1,258	(1948)
23.	Hongkong	.. 1,900	(1946)
24.	Japan	.. 170	(1940)
25.	Fiji	.. 133,941	

INDIANS OVERSEAS 1838-1949

	Name of the Country	Indian Population	Year of Estimate
26.	Australia	.. 4,544	(1933)
27.	New Zealand	.. 1,116	(1945)
28.	Mauritius	.. 285,111	(1950)
29.	Seychelles	.. 285	(1947)
30.	Maldives	.. 550	(1933)
31.	Iran	.. 2,500	(1948)
32.	Iraq	.. 650	(1948)
33.	Afghanistan	.. 200	(1948)
34.	Bahrein	.. 1,138	(1948)
35.	Muscat	.. 1,145	(1948)
36.	Kuwait	.. 1,250	(1948)
37.	Egypt	.. 1,000	
38.	Palestine	..	
39.	Turkey	..	
40.	Syria	..	
41.	Lebanon	..	
42.	Transjordan	..	
43.	Aden	.. 5,594	
44.	Gibraltar	.. 41	(1946)
45.	The United Kingdom	.. 7,128	(1932)
46.	U. S. A.	.. 2,405	(1947)
47.	Canada	.. 1,465	(1941)
48.	British Guiana	.. 180,129	(1949)
49.	Trinidad and Tobago	.. 214,177	(1949)
50.	Jamaica	.. 22,821	(1949)
51.	British Honduras	.. 1,366	(1946)
52.	Grenada	.. 5,000	(1932)
53.	St. Lucia	.. 2,189	(1946)
54.	Windward Islands	.. 7,948	(1949)
55.	Leeward Islands	.. 99	(1950)
56.	Barbados	.. 100	(1950)
57.	Panama	.. 450	(1948)
58.	Brazil	.. 21	(1948)

Less than 100 each

APPENDIX II

ORGANIZATIONS OF INDIANS OVERSEAS

CEYLON

1. The Ceylon Indian Congress
Colombo.
2. The Indian Mercantile Chamber
Colombo.

BURMA

1. Burma Indian Chamber of Commerce
Rangoon.
2. Burma Nattukottai Chettiars Association
Rangoon.
3. Burma Muslim Chamber of Commerce
62/68, Edward Street, Rangoon
4. Burma Indian National Union
199, Phyare Street, Rangoon.
5. Indian Farmers' Welfare Association
355 Parke Street, Rangoon.
6. Indian Officers' Association
Rangoon.
7. Bharat Chamber of Commerce
666, Merchant Street, Rangoon.
8. All-Burma Indian Congress
65, Lewis Street, Rangoon.

MALAYA & SINGAPORE

1. Malayan Indian Congress
Kuala Lumpur.
2. Indian Chamber of Commerce
Singapore.
3. Federation of Indian Organizations
Kuala Lumpur
4. Malayan Indian Association
Kuala Lumpur.
5. Indian Association
Singapore.

SIAM

1. The Thai Bharat Cultural Lodge
849, Silon Road,
Bangkok (Siam).

MAURITIUS

1. The Indian General Purposes Committee
Port Louis (Mauritius).

FIJI

1. The Indian Association
Suva (Fiji).
2. The Indian Central Organization (Janata ki Kendria Sabha)
Suva (Fiji).
3. The Muslim League
Suva (Fiji).
4. The Farmers Association of the Southern District
Suva Office, P.O. Box No. 266, Suva (Fiji).
5. The Akhil Fiji Krishok Maha Sangh
Suva (Fiji).

NEW ZEALAND

1. The New Zealand Indian Association
Box 12, P.O. Waipukuram,
Hawke's Bay,
New Zealand.

HONGKONG

1. The Indian Merchants Association
Hongkong.
2. The Sindhi Merchants Association
Hongkong.

SOUTH AFRICA

1. The Natal Indian Congress
P.O. Box No. 2299,
Durban.
2. The Transvaal Indian Congress
18, Barkly Arcade, 38 Market Street
Johannesburg.

3. The Natal Indian Organization
P.O. Box No. 200
Durban.
4. The South African Indian Congress
1, Tyne Street
Cape Town.
5. The Cape Indian Congress
Cape Town.
6. The South African Indian Organization
19, Baker Street
Durban.

EAST AFRICA

1. The East African Indian National Congress,
Desai Memorial, P. Box No. 186
Nairobi (Kenya).
2. The Indian Association
Zanzibar (Zanzibar).
3. The Indian Association,
Desai Memorial Hall, P.O. Box 1903,
Nairobi (Kenya).
4. The Indian Chamber of Commerce
Central Buildings, Government Road,
P.O. Box 329, Nairobi (Kenya).
5. The Central Council of Indian Associations in Uganda,
P.O. Box 160, Kampala (Uganda).
6. The Indian Association
P.O. Box 259, Jinja (Uganda).
7. The Indian Association
P.O. Box 160, Kampala (Uganda).
8. The Indian Association, Tanganyika Territory,
P.O. Box 46, Dar-es-Salam, (Tanganyika).
9. The Hindu Mandal,
P.O. Box 581, Dar-es-Salam, (Tanganyika).
10. Standing Committee of the Nationals of
the Republic of India,
Dar-es-Salam (Tanganyika).
11. The Muslim Association,
Nairobi (Kenya).
12. The Indian Association
Eldoret (Kenya).
13. The Indian Association,
P.O. Box No. 129,
Mombasa (Kenya).

PORTUGUESE EAST AFRICA

1. The Beira Hindu Association,
P.O. Box No. 42,
Beira (P. E. Africa)

SOUTHERN RHODESIA

1. The Umtali Indian Association
P.O. Box No. 111
Umtali (Southern Rhodesia)
2. The Hindoo Society
P.O. Box 868
Salisbury (S. Rhodesia).

NORTHERN RHODESIA

1. The Association of Indian Chambers of Commerce of
Northern Rhodesia
P.O. Box 67
Broken Hill (N. Rhodesia)

NYASALAND

1. The Oriental Club
P.O. Box No. 155
Blantyre (Nyasaland)

ETHIOPIA

1. The Indian Association
P.O. Box No. 1040
Addis-Ababa (Ethiopia)

TANGIER

1. The Indian Merchants' Association
P.O. Box No. 96
Tangier (North Africa)

BRITISH GUIANA

1. The East Indian Association
Lot 133, Church Street,
Georgetown (British Guiana)
2. Islamic Association
P.O. Box 264
Georgetown (British Guiana)

3. Berhice Central Arya Samaj
The Strand and Nicolay Street
New Amsterdam, Berhice (British Guiana)
4. The Man-power Citizens' Association
(Registered Trade Union)
61, Hadfield Street
Georgetown (British Guiana)
5. Jamaiat-Ul-Ulema
P.O. Box 264
Georgetown (British Guiana)
6. * Balak Sahaita Mandalee
110, Duke Street
Georgetown (British Guiana)

TRINIDAD

1. Indian Cultural Association
San Fernando, Trinidad
2. The Hindustani Sevak Sangha
Fyzabad, Trinidad
3. The India Club
9, Queen's Park West, Port-of-Spain
Trinidad
4. The Arya Samaj Mandir
Debe Settlement, South Naparima
Trinidad
5. Seundarayani Panth
Cedar Hill, *Via* Princes Town
Trinidad
6. The East Indian National Association
Princes Town, Trinidad
7. The Palms Club
25-31, Pointe a Pierre Road
San Fernando (Trinidad)
8. Arya Pratinidhi Sabha
Victoria Street
San Fernando (Trinidad)
9. Hindu Temple
San Fernando (Trinidad)
10. Sanatan Dharma Maha Sabha
Port-of-Spain (Trinidad)

JAMAICA

1. East Indian Progressive Society
42, Duke Street
Kingston (Jamaica)

UNITED KINGDOM

1. The India League
47, Strand, London W.C. 2
2. Indians Overseas Association
Danes Inn House
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