

THE PASS LAWS AND OTHER RESTRICTIONS
ON THE MOVEMENT OF NATIVES.

I. General.

It is true that certain legal provisions are in force in the Union placing restrictions on the movement of Natives, but these restrictions are by no means of general application. They are, for example, not of force inside the areas specially set aside for Native occupation but apply only in certain European areas.

Great play is usually made of the restrictive provisions of this legislation but no mention is made of its protective provisions. Yet the reason for its existence is the protection it affords to the community in general and the Natives in particular.

The legislation referred to falls broadly into three groups, viz., the Pass Laws, the Natives (Urban Areas) Act and the Native Service Contract Act. The first mentioned provides for a certain measure of control over the movement of Natives who leave their own areas and travel either to European towns and cities or in European farming areas. The second contains provisions in regard to the sojourn and permanent residence of the Native population in urban areas and the third provides regulatory measures in connection with the labour tenant system operative in certain areas of the Transvaal and Natal.

There are established communities of Natives in all towns as also in European farming areas. These people have made rapid strides in civilisation and speak the official languages of the Union. But it is not generally realised, even amongst South Africans, that more than two-thirds of the Bantu speaking population of the Union are primitive, unsophisticated people with their own tribal traditions, speaking a variety of languages and observing rules of customary law which have been handed down by oral tradition from generation to generation. These people speak no less than seven distinct Bantu languages and numerous dialects and few of them can make themselves understood in either of the official languages on their first emergence from their tribal homes.

In the reserves, which have been set aside for them and which, with certain exceptions, no European or other non-Native may enter except under authority of a permit, they lead a sheltered existence. Here no restriction is placed on their movements.

Only when they leave their reserves in search of employment do they become subject to the Pass Laws.

II. The Pass Laws.

In the provinces of the Transvaal and the Orange Free State a Native travelling outside a Native reserve must be in possession of a pass issued either by a Government officer or by his employer or by his Chief according to the nature of his business or the reason for his journey. If he is in a town his permit to look for work or his service contract, after he has found employment, serves as a pass.

A Native

A Native of Natal is free to travel within that Province without any pass, but if he desires to leave the Province he must arm himself with one. Similarly, a Native desiring to enter this province must have a pass. Having once obtained one to regularise his entry, his movements are unrestricted within the Province.

In the Cape Province, the largest of the four Provinces constituting the Union of South Africa, no law requiring a Native to carry a pass when he travels, is in force. It is a notable fact, however, that both in this Province and in Natal a voluntary or administrative pass system is in operation. Natives, realising the value of the system, apply of their own free will to sympathetic Government officers for passes and are granted these. The persons agitating for the total and immediate abolition of the so-called iniquitous pass system either do know this, or if they do, would never publicise this fact. Though very vocal, they represent the feelings of only a limited group of urbanised persons, who care little for the needs of thousands of their untutored brethren from the Reserves.

The reasons why Natives make voluntary use of passes are these: A pass forms an easy, and for an illiterate person finding difficulty in making himself understood in a European language, a very necessary means of identification. By the mere production of a pass he indicates who he is, where he comes from, where his relatives are to be found and where he is bound for. It indicates to the railway station official to what point a ticket is required. Not only can the relatives of the holder of a pass be traced in the case of his death or of other emergencies, but conversely relatives in the Reserves can call in the assistance of officials in tracing, with the aid of the pass system, neglectful husbands or sons in distant labour centres. The voluntary use made of the system by the illiterate portion of the Native population of the Cape Province and Natal testifies to the fact that they regard it as a necessity.

But there are other advantages too: advantages which Natives at times do not recognise as such, because the pass system is at times used to divert them from labour centres habitually visited by them. Natives have very definite preferences for working in particular places. For example, the Natives of the district of Lady Frere like to work in the Simonstown Naval Dockyards, those from certain areas of the Nongoma District feed the ranks of ricksha-boys in Durban, those from the eastern parts of Cape Province generally prefer to go to work in Cape Town and surroundings. But there are times when the favoured occupations dry up and the labourers must be diverted elsewhere. The pass system is used for this purpose. It was so employed when e.g. the Diamond Mines closed down in Kimberley. During the depression of the early 1930's the pass system was used for keeping Natives in their Reserves, where relief works were instituted, and for preventing them from undertaking expensive and fruitless journeys to labour centres where there was large-scale unemployment.

During the last two years emergency steps had to be taken to clear up widespread unemployment occasioned by the cessation of work on military establishments at Cape Town and Durban and the position at Cape Town was aggravated by large-scale migration from the Eastern Province due to the unprecedented droughts in that area. Shocking conditions of overcrowding, with all its attendant evils of disease,

immorality and

immorality and crime had developed in the Cape Peninsula. These conditions have now been cleared up and the flow of labour from the Eastern Province diverted to other labour centres closer to the Natives' homes than Cape Town. It is well-known, however, that before this could be done, many thousands of Natives undertook the 700 mile journey to Cape Town only to find that they had to retrace their steps for part of the way on a 1,000 mile journey to Johannesburg.

The application of the Pass system for such purposes not only saves the individuals the expenditure on fruitless journeys and months of misery while looking for work in a glutted labour market, but also prevents a general depression of wages in such a market, or, what is more common with Natives, a general impoverishment of those who are lucky enough to have secured employment in such a market; for it is a well established custom with Natives that those in employment support their compatriots from the same area in the Reserves while the latter are looking for work. When work is plentiful this custom creates no hardship, but when the labour market is saturated the burden becomes heavy.

III. Labour Exchanges.

It could be argued that labour exchanges and not Pass Laws should be employed to direct the flow of labour to particular places. But the person who uses that argument would at once display his ignorance of the people with whom he is dealing. A labour exchange cannot function unless it is patronised by those for whose benefit it is established and unless the directions issued by such an exchange are followed.

Reference has already been made to the Natives' preference for visiting the labour centre habitually patronised by all residing in a particular locality. More than a mere direction from a labour exchange is necessary to overcome that preference, and, to make the direction compulsory, the Government would have to introduce a modified form of Pass Law, even if it were called by a different name.

But there is another obstacle, viz. the noted characteristic of the South African Natives of preferring to find their own employers without the assistance of intermediaries and their inherent suspicion of work to which they are directed. Even those who approach Employment Offices operating in towns for work fail to carry out the directions given to them by these offices. If left to themselves the majority change their minds on the way to their prospective employers and never turn up at the work-places. Labour bureaux are never certain, therefore, of being able to carry out their undertakings to employers and they now make general use of conductors who take the prospective labourers to their proposed employers.

Another illustration of this tendency of Natives to insist on finding their own employment is the development which has taken place in connection with the recruitment of Natives for the Transvaal Gold Mines. The recruiting agency of these mines has offices throughout the Native territories. The Natives apply at these offices for work, are put through a medical examination and are then engaged on contracts to whichever mines they may chose. These contracts are attested before the local Government officers. The Natives are then

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given such advances as they may require for the support of their families until they can remit their wages home, and they are furnished with railway tickets to the mines. Notwithstanding this service, large numbers of Natives used to prefer to borrow money at usurious rates in order to be able to travel from their reserves to the mines and be free on their arrival at the Witwatersrand to apply to the Compound of the particular mine fancied for work. In view of this practice the Recruiting Organisation of the mines has established a special system for assisting these Natives to proceed to Johannesburg. This is called the "Assisted Voluntary System" and is distinct from the contract system. Under it Natives are furnished with tickets to travel to Johannesburg and are then free to travel up and down the Reef to select whichever mine they prefer. Needless to say they could have selected the same mine and entered into a contract to proceed to that particular mine while in their home district.

Nevertheless, labour bureaux are being established in all the larger towns and it is hoped to take steps to establish a central exchange to direct the flow of labour from the Reserves to the centres where work is available. But unfortunately it is likely to take many years to popularise a system of Employment Offices with the Natives. When this happens the need for the Pass system will be greatly reduced.

IV. Exemption from Pass Laws.

It has been mentioned that the Natives in towns have attained a certain standard of civilisation. They speak the official languages of the Union and have learnt the ways of living of the European population. No claim is made that Natives falling in this category still require the protection of the Pass system. For their benefit the law contains comprehensive provision for exemption from the necessity to carry passes.

Exemption is either de jure or by virtue of the issue of a certificate of exemption. All professional men, chiefs, headmen, Councillors, teachers, Ministers of religion of recognised churches, persons in Government employ and many other categories too numerous to mention here fall in the class who are exempt from the Pass Laws by virtue of their standing.

The second class of exemption is provided for the borderline cases. Any Native who is certified to be a person of good character and repute and fit for exemption from the Pass Laws, can obtain a Certificate of Exemption. Many thousands of illiterate Natives, mostly unskilled labourers and domestic servants, have been granted these certificates after they have proved their ability to fend for themselves in towns and other European Areas.

V. The Natives (Urban Areas) Act.

This law deals, as its name implies, with Natives after their entry into Urban Areas. It places the responsibility for the housing of these Natives either on their employers or on the local authority concerned and contains provision for restricting the entry of Natives into towns and for their control while there.

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It is in the towns that the impact of the primitive Native society on the higher civilisation of the European is most severely felt; to avoid chaos, legislation of the type mentioned is, and will for many years remain essential.

The Act takes cognisance of the fact that there is, in the majority of towns, a relatively small settled Native society and a large floating population. The individuals comprising the latter group have their permanent homes in the reserves, but visit the towns for periods of varying duration to secure wages at the higher rates prevailing in the towns.

Natives entering towns in search of employment must proceed forthwith to a registration office where they receive permits to look for work. These permits are valid for a period of one week (in some centres the period is longer). If the Native fails to obtain employment within the period stipulated, the permit is usually renewed for one or more similar periods. If he still fails within the extended period to find work he is required to leave the urban area and either return to his home or to look for work elsewhere.

Employment bureaux have been started in a number of urban centres but Natives do not always make the best use of this service, as has been mentioned.

In all the large towns there are Reception Depôts in which Natives looking for work are given sleeping accommodation free of charge. This is done because many of the Natives coming to the towns to look for work would be complete strangers in those towns and would not know where to find accommodation. But even those who may have been to the town before would have no such accommodation. Therefore, they would rely on the hospitality of their friends, and in so doing would trespass on the private property of the employers of those friends. The law thus requires them to sleep in the reception depôts. Failure to do so renders them liable to prosecution. But had there been no such provision in the law they would still have been liable to prosecution for trespassing on the properties where they would find accommodation with their friends. This provision in the law is, therefore, of material benefit to and a protection for the Natives themselves.

When a Native finds employment his employer is required to register the contract before a Registration Officer. This involves not only registration of the names of the parties, but also of the duration of the contract, the wages paid and other privileges granted. No contract is registered until the Native has signified his agreement with the various conditions. The numerous disputes, which would otherwise arise between employers and Native employees in regard to the conditions of contracts of service, are therefore prevented. This requirement of the law is undoubtedly of great benefit to the Natives.

As stated before the permit to seek work and the service contract function as passes for the period the Native is in the urban area. Exemption from the Pass Laws has the effect of also exempting the person concerned from the necessity of taking out a permit to look for work, and of registering his service contract.

Most of the areas where the urban Natives reside (commonly known as locations) are in terms of the legislation owned by the local authorities. Very often too the houses in those areas are also owned by the local authorities and provisions exist to prevent unauthorised influx, overcrowding and other abuses. The receipts issued for rent and other charges therefore take the form of permits which show that the holder's presence in an area is in order. Non-residents may obtain visitor's permits to legalise their stay in these areas.

There is a further provision in the Natives (Urban Areas) Act requiring Natives to carry passes. Reference is here made to the curfew provisions of the Act. The hours of the night during which the curfew applies are fixed after consultation with each Urban Local Authority, but are usually 11 p.m. to 4 a.m. The Native Affairs Department will not agree to any hours which are regarded as unreasonable. During the curfew hours no Native may travel about in the European section of the town without being in possession of a note from his employer or a pass issued either by the Police or by the Registering Officer concerned. This is a very necessary protective measure. This provision does not apply to Natives moving about within the Native section of the town, and those who are exempted from the Pass Laws are also exempt from these curfew regulations.

VI. The Native Service Contract Act.

The main provisions of this act apply only to the Transvaal and Natal and are intended -

- (a) to regulate the labour tenant system applying in these Provinces; and
- (b) to secure better control for Native parents over their minor sons.

The Labour Tenant System, once of very general application in all Provinces of the Union, has gradually been disappearing, and now applies only in limited areas of the Transvaal and Natal. A labour tenant contract usually provides for a non-Native farmer to allow a Native with his family to reside on the non-Native's farm, to build his huts thereon, to cultivate a certain piece of land for his own benefit and to graze a stipulated number of cattle on the farm. In return for this privilege the Native undertakes either for himself or his sons to render free service to the farmer for a specified period during the year. The period varies according to what is customary in different localities, and is usually from three to six months a year. During the remainder of the year the persons concerned are free either to undertake their own farming operations or to enter into service contracts with other employers.

It was found that Natives did not carry out their side of these contracts. They went to work in towns and failed to return to the farms to render the service stipulated, while in the meantime their wives and children were living on the farms, were cultivating the land and were grazing stock there. The only remedy the farmers had was to eject the families of such Natives from their farms and this, needless to say, caused extreme hardship.

Legislative provision was, therefore, made prohibiting the taking into employment of Natives in the Transvaal and Natal unless they are in possession of Documents of Identification which show that they are domiciled in Native Reserves. If any such document shows that the holder is domiciled on a private farm in one of the two provinces he must in addition produce a statement from the owner of the farm or his duly authorised representative to the effect that he is not bound by any labour tenant obligations, or, if so bound, the definite period during which he is required to render service as a labour tenant must be stated. No person may employ him during the latter period. If the Native concerned is a minor, then, in addition, his father or guardian must also endorse his consent of the boy's entering into employment, on the document of identification.

VII. Relaxation of the Pass Laws.

It has been and still is the steadfast endeavour of the Union Government to relax the Pass laws as much as possible. Complete relaxation of control has, however, unfortunately led on occasions to large-scale influx into the main labour centres in the Union with most undesirable results. Recently for instance there were tens of thousands of Natives squatting illegally in the Johannesburg area under the most primitive and unhygienic conditions. A state of emergency existed and the Government has been dealing with it accordingly. A similar position arose in the Western Province approximately eighteen months ago. There the difficulty was resolved by stricter control over the issue of travelling passes.

VIII. Legal Sanctions.

It is inevitable, human nature being what it is, that there should be infringements of the control measures dealing with the movements of people. Any attempt at control would be ludicrous unless suitable sanctions were applied to the offenders. To say, however, that 100,000 persons are imprisoned annually for contraventions of the Pass Laws is a gross exaggeration. If 100,000 cases are brought before the courts, that does not mean that 100,000 offenders undergo periods of imprisonment. Contraventions of the Pass Laws are very minor offences and are treated as such by the courts. The punishments are nominal. The maximum penalty provided by the law is a fine of £2 or alternatively imprisonment for one month, but the courts usually impose fines of 2/6d or 5/- with the alternative of a few days imprisonment, and the vast majority of offenders pay their fines immediately, similarly as do offenders against all minor regulations. Only a small percentage of persons convicted are actually admitted to gaol.

During 1946, 101,159 Natives were prosecuted for offences against the regulations mentioned in the preceding paragraphs. Roughly one-fifth of this number were unable to pay their fines forthwith and were consequently imprisoned. Of the total number only 41,667 were convicted of contraventions of the Pass Laws proper. The balance is made up as follows :-

Failure to

Failure to sleep at Reception Depôts	6,592
Entering Urban Areas after removal therefrom	261
Failure to register or produce Service Contracts	29,053
Curfew Regulations	30,782
Natives from Foreign Territories entering Urban Areas without permission	10,759
Miscellaneous Offences against Natives (Urban Areas) Act	11,953

The Union Government is nevertheless fully alive to the gravity of the position and recently appointed an official Commission which is at present enquiring into the future application of the laws described above. It is anticipated that this Commission will submit its report to the Government in the course of the next few months, when it will be decided what changes in the law should be effected.

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