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SOUTH AFRICAN INDIAN CONGRESS

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THE IMMIGRANTS' REGULATION AMENDMENT BILL

INTRODUCTION.

The Immigrants' Regulation Amendment Bill has passed the third reading in the House of Assembly and is on the way to becoming a law of the land. When passed it will be an addition to the long list of unjust and racially discriminatory laws enacted by the Nationalist Government of the Union against the Non-European population of South Africa.

In spite of an appeal made by the South African Indian Congress to all members of Parliament to use their influence in halting this specially discriminatory legislation, the United Party had voted with the Government on the Bill.

The Prime Minister, Dr. D. F. Malan, intervened in the debate during the second reading of the Bill and made an important statement regarding the Government's policy of expatriating Indians from South Africa. He stated that this policy cannot be implemented without the co-operation of the Government of India and said that such co-operation was not forthcoming from that Government. In his statement, Dr. Malan also alleged that India had collected two million pounds for the Defiance Campaign.

It is regrettable that the Prime Minister should make statements which are not factual. According to our knowledge there is no truth in the statement that India has collected two million pounds for the Defiance Campaign. This is not the only instance in which the Prime Minister has made such an incorrect statement. In the past he boasted of the membership of the Bantu National Congress to a figure of 400,000, knowing full well that it was not true.

The Government is carrying out a ruthless programme of making the life of the Indian Community difficult with a view to making its position untenable in the country. The present Bill fits in with this immoral purpose. Its provisions are aimed at making the life of the Indian Community intolerable in the vain hope of achieving the declared objective of uprooting and expatriating a group of people in the name of Apartheid.

The Indian Community of South Africa will never countenance or accept repatriation and is firmly resolved to fight it with all the means at its disposal. It thanks the Prime Minister of India, Pandit Nehru, the Government and people of that great country, for taking an honourable stand on a question which is of vital importance to the world.

The Indian Community is determined to fight racial discrimination and oppression in co-operation with all sections of the people of South Africa and the South African Indian Congress firmly believes that in doing so it will be serving the best interests of our country. It will be well for the Government of South Africa to pause and retrace its steps and reverse its policy from that of injustice to one of justice and democracy.

BACKGROUND.

1. On the 10th of February 1953, the Minister of the Interior, Dr. T. E. Donges, stated in Parliament that Indians domiciled in the Union were permitted to bring their wives and minor children into the country under certain circumstances. He contended that this was a

concession as a result of the Smuts-Gandhi Agreement and was embodied in the Immigrants' Regulation Act of 1913. According to him it was necessitated at the time because of the existence of disparity between Indian males and females, and as the situation has now changed the reasons for concession have disappeared. Consequently he promised a new legislation to impose further restrictions on the Indian Community as soon as possible after the General Elections which were scheduled to take place on 15th of April 1953. In making the announcement he warned that the contemplated legislation would be retrospective in its effect as from the date of his statement, that is the 17th of February 1953.

2. The reasons contained in the statement of the Minister for introducing the amending Bill, which affects all Asian citizens of the Union, are not only incorrect but fallacious and misleading: The entry of wives and minor children of Indians domiciled in the Union is not a concession but a natural and fundamental right and it is not governed by the Smuts-Gandhi Agreement which came into being in June 1914.

There has been a total ban on further "Asiatic" immigration into the Union since 1913, except for the entry of wives and minor children of lawfully domiciled South Africans of Asian origin, under Section 5(1)(g) of the Immigrants' Regulation Act of 1913, which recognised existing marriages and guaranteed the right to marry and found a family of one's own choice. It was a protection to the persons concerned afforded by the State. Any civilised government should afford such protection.

The question of parity between Indian males and females is not really the point at issue; it never was. What justification can there be for such an attitude? Is it not an incontrovertible reality that certain factors govern and restrict marital relationship as far as society and individuals are concerned? The so-called parity in numbers between males and females, as far as the Indian community is concerned, is illusory and untenable. It is, however, significant that the statement was made by the Minister of the Interior on the eve of the General Elections.

3. Immediately after the Minister's statement on the 10th of February 1953, the Department of Immigration and Asiatic Affairs suspended its normal practice as far as the functioning of the law was concerned, and inter alia, refused to :

- (a) accept any application for introduction of wives and minor children of Asians domiciled in South Africa;
- (b) forward procedural D.1. 91 Certificates to India for investigation and completion, even in cases in which applications were made prior to the 10th of February 1953;
- (c) extend time limit to those who possessed completed D.1. 91 Certificates;
- (d) permit the re-entry of wives and minor children who had previously entered the Union by virtue of a D.1. 91 Certificate, but who had returned to India or Pakistan without acquiring domicile in South Africa;
- (e) issue the completed D.1. 91 Certificates which were in possession of the Department;
- (f) facilitate the entry of children who were born in the Union prior to the acquiring of domicile by the mother and who had gone to India or Pakistan without acquiring their own separate domicile; and

- (g) facilitate the entry of wives and minor children who had already acquired domicile in the Union, but who had overstayed abroad for more than three years.

In accordance with the accepted practice between the Governments of India and South Africa, persons so involved could not obtain the necessary travelling documents without a letter of permission from the Authorities in South Africa. Consequently the departmental action had the effect of stopping the entry of wives and minor children of Indians of South African origin and domicile, in spite of the legal right as contained in Section 5(1)(g) of the Immigrants' Regulation Act. The separation of members of South African Indian families from each other caused anxiety and consternation.

4. The restriction of lawful entry into South Africa of these persons by autocratic departmental action constituted a grave injustice and the South African Indian Congress lodged its protest to the Government. The Governments of India and Pakistan also lodged their protests to the Union Government in the matter.

The unilateral action of the Union Government in withholding the issue of letters of permission to enable the concerned persons to travel to South Africa was overcome by the issue of emergency travelling documents to these persons by the Government of India. To date more than 900 wives and minor children of Indians in South Africa have been able to join their families.

THE IMMIGRANTS' REGULATION AMENDMENT BILL

5. In accordance with his statement the Minister of the Interior did introduce the Immigrants' Regulation Amendment Bill in Parliament. Although the Minister has used all the legal skill and ingenuity at his command to avoid the mention of the words "Asiatic" or "Indian" in the Bill, its provisions are deliberately calculated to take away the existing rights of all South Africans of Asian origin born or domiciled in the Union of South Africa as regards their marriages outside the country, and the entry into the country of their wives and minor children.

6. In terms of Section 4 (1)(a) of the Immigrants' Regulation Act, 1913, "persons or class of persons deemed by the Minister on economic grounds or on account of standard or habit of life to be unsuited to the requirements of the Union" can be declared prohibited immigrants. Since the 1st of August 1913 all "Asiatics" have been deemed prohibited immigrants by each and every Minister of the Interior. Section 5 provides that certain categories of persons shall, however, not be prohibited immigrants for the purposes of the Act. In terms of the last mentioned section the following "Asiatics" have at present a right of admission to the Union :

- (a) A person who has maintained his domicile in South Africa.
- (b) A person ("Asiatic") born outside the Union while both his parents are domiciled in the Union, provided he enters or is brought into the Union before the age of three years.
- (c) The wife of any person ("Asiatic") domiciled in the Union.
- (d) The child under sixteen years of age of a person ("Asiatic") domiciled in the Union.

7. The Bill proposes to take away the above rights, in the following manner :

- (a) that any such wife by marriage or union entered into after the statement by the Minister of the Interior in the House of Assembly on the 10th of February 1953, and child born outside the Union out of such marriage or union, cannot enter the country;
- (b) that any such wife by a marriage or union entered into before the Minister's statement, and any child born outside the Union on or before the 10th of February 1954, out of such marriage or union, cannot enter the Union subsequent to the 9th of February 1956;

8. More clearly stated, the implications of the Bill are as follows :

- (a) South African males of Indian or Asian origin born or domiciled in the Union cannot marry any woman outside the country as he will not be able to bring her into the Union.
- (b) If married outside the Union prior to the 10th of February 1953, he will not be able to bring into the country his wife or minor children after the 9th of February 1956.
- (c) Children born of existing marriages or unions outside South Africa after the 10th of February 1954, will not ever be eligible for entry into the country.

From the above explanation it is clear that the provisions of the Bill will have far-reaching and very serious repercussions for the members of the Indian Community. One preposterous result of the Bill will have the effect of imposing inhuman hardship on a family as it aims at separating parents from children. Children born outside the Union before the 10th of February 1953, will be eligible for entry into the Union prior to the 9th of February 1956, whereas children born of the same parents after the 10th of February 1954, will not be able to enter the country.

Formerly, children born outside the Union of domiciled parents automatically acquired their Union birth-right if they came into the country within three years of their birth. The present Bill takes away this very important birth-right.

An expectant Asian mother will in future not be able to travel abroad at will, because if she does not come back to South Africa to give birth to her child within the borders of the Union, such a child may never be able to enter the country. On the contrary, European expectant mothers are not restricted and children born abroad of domiciled European mothers will be able to come into the Union and acquire their birth-rights, if they were to enter within three years of their birth.

9. The Minister of the Interior, in terms of the Bill, reserves unto himself discretionary powers to make exceptions. It is obvious that such discretionary powers are no safeguards whatsoever as far as the "Asiatic" people of South Africa are concerned. The provisions of the Bill are specific and deny fundamental rights to people of Asian origin on grounds of their race and colour.

10. The right to marry and found a family of one's own choice is a fundamental human right and such right being natural is entitled to protection by society and state. The new Bill disregards this inalienable and fundamental right and therefore it is not only unjust but immoral. It is an attack on the honour, reputation and family of Asians born or domiciled in the Union. The right of unhampered freedom of movement and choice in marriage are to be restricted or denied to "Asiatics" for no other reason than that they are "Asiatics". It is an affront to millions of Asian people and contravenes the principles and purposes of the United Nations Charter and infringes upon rights enshrined in the Universal Declaration of Human Rights.

Issued by :

The Joint Honorary Secretaries,
South African Indian Congress,
Johannesburg.

1st October 1953.

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RESOLUTION ON SUPPRESSION OF COMMUNISM ACT.

Conference expresses its strongest indignation at the threats of Government Spokesmen to ban the African National Congress in terms of the Suppression of Communism Act. We regard such threats as the expression of a police-state mentality, which is unable either to answer or to tolerate democratic criticism and opposition, and which will if not restrained, bring the country under a one-party dictatorial regime of a fascist character.

We declare that the Suppression of Communism Act itself is nothing but the expression of such a fascist mentality. The Act has been used to penalise and restrict, without trial or hearing, scores of experienced and capable leaders of the Liberation and Trade Union Movements. ~~Communists and non-Communists alike.~~

We therefore direct the incoming Executive to seek to enlist all the forces of democracy and freedom in South Africa in a powerful campaign for the repeal of the Suppression of Communism Act and other laws restricting freedom of thought and speech, for the right of the Congress Movement and all other anti-racial parties and groups freely to advocate and organise for their beliefs.

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RESOLUTION ON GROUP AREAS ACT.

This 22nd Conference of the S.A.I.C. held at the Gandhi Hall, Johannesburg on 19th, 20th and 21st October, 1956 reiterates its total rejection of the Group Areas Act and demands its immediate repeal.

The recent proclamation of Group Areas under this Act clearly indicates the callous and inhuman intentions of the Government. The effect of these proclamations will be the uprooting of thousands of non-whites from their homes and places of business and to deprive them of their means of livelihood.

This Conference expresses its determination to defend to the utmost their homes, places of business and means of livelihood and all the social, educational, cultural and religious institutions which were built and fostered with sweat and toil.

We have been heartened by the All-In Conferences on the Group Areas Act held in Durban, Johannesburg and other places at which were present organisations and people of various shades of Political opinion. This is an indication that the people are realising the danger and threat to their future. There is also an awakening amongst important sections of the Europeans in industry, commerce and other economic interests which fear disruption through the application of the Group Areas Act.

This Conference therefore solemnly resolves that in order to mobilise the people effectively against the Group Areas Act:

- 1) to establish Regional and Local Committees of all sections of the people to bring into united action all those who are opposed to the Group Areas Act.
- 2) To prepare the Indian people against accepting any Group Areas.
- 3) Instructs the Provincial Committees to organise a day of Hartal and prayer to arouse the conscience of our country and the world.
- 4) Approves the establishment of the Council of Action by the T.I.C. for the prosecution of the struggle against the Group Areas Proclamations.

5) and instructs the constituent bodies to co-operate with all sections of the people and the Congress Movement to fight back every attempt of the Government to make the Group Areas Act effective.

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TREASON TRIAL, 1956 1961

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