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S.A. Institute of Race Relations,
University of the Witwatersrand, Milner Park
JOHANNESBURG

DIE SUID-AFRIKAANSE
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A QUARTERLY JOURNAL DEVOTED
TO THE STUDY OF RACE RELATIONS
IN SOUTHERN AFRICA

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GRATIS AAN LEDE

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INSTITUUT VIR RASSEVERHOUDINGS

SOUTH AFRICAN
INSTITUTE OF RACE RELATIONS

In the Transkei, in Natal, and in Native reserves, Native law can be amended by proclamation and has sometimes been in the past. The Transkeian *Bunga* and now the newer Ciskeian *Bunga* follow the admirable practice of appointing at every annual session a *Select Committee on Native Law and Customs*. When the *Bunga* itself and the Magistrates endorse the recommendation of such a *Select Committee*, the Administration has been known to act on it by issuing a Proclamation embodying the desired amendment to Native Law.¹⁷

The Transvaal still awaits its *Bunga*. Changes introduced in this way are, however, only regional changes. Fortunately, we have at hand new machinery, in the form of the Native Representative Council, which is Union-wide in its structure. I should like to see this Council also adopt the practice of discussing changes in Native law desired by the Native people themselves.

But we must not expect too much from that direction. In discussing particular amendments to Native law or to Court procedure, we are in a realm where few laymen are competent to express an opinion, and where the Natives must needs trust their European friends almost blindly.

On the need for continuous revision of the law in the light of judicial decisions and of changing circumstances, it is hardly necessary to lay emphasis. Even in England, not exactly the home of law reform, the Lord Chancellor a few years ago created a permanent commission whose

¹⁷ For a good example of this procedure, see my article on Tribal Tradition and Native Administration in South Africa, in the *Journal of the Royal African Society*, April 1939. Both the Transkeian and the Ciskeian *amso-Bunga* have in recent years debated defects in the rules of the Native Commissioner's Courts. It may be noted that in the Transkei the Courts must follow virtually the same rules as the Magistrates' Courts. See Proclamation No. 145 of 1923.

task it is to report to Parliament from time to time whether certain changes in the Common Law are desirable.

To recognize Native law should not be to petrify it. Since the Native Appeal Court has shown itself so reluctant to encourage growth and change, we must look for another mechanism whereby the avowed aim of the Native Administration Act can be realized, namely, "the flexible adjustment" of Native law to the changing social and economic circumstances of the Native people.

Parliament, which in 1927 showed but a slender grasp of the issues involved in its legislation, might well entrust the task to a *standing Select Committee of both Houses*, and it might do this more confidently now that its own numbers have been not only increased but enriched by the addition of seven members elected by the Natives. In the reports of such a *Select Committee*, Parliament and the Administration would have the material they now lack on which to base a policy of regular revision of Native law and custom. Law is a social institution, made and moulded by men at every stage of its development. If it fails to reflect the changing nature of other men's activities, it runs the risk of falling deeply into disrepute.

A word in conclusion. If I have seemed to stress the weaknesses of the Union's system of law for Natives, I assure you that it is not for any lack of appreciation of its merits. On the contrary, I believe that no aspect of its general Native policy does our country so much credit as that concerned with the application of Native law. Nowhere in British Africa has there been any effort at all comparable with ours in this field, and perhaps nowhere in the whole continent. That is why I am anxious that we should not fall below the standards we set ourselves in the beginning of our effort to secure for the Bantu people that part of their social heritage that we call Native law, while offering them full access to that part of our civilization that we call the Common Law.

THE SOUTH AFRICAN INDIANS

A PLEA FOR A COMPREHENSIVE PROGRAMME OF RESEARCH

THE Union is full of grave social problems: everyone knows this, who looks beneath the surface.

There are problems of poverty, of malnutrition, of ill-health, of insufficient education, of depressed standards of living.

All these problems affect, to a greater or less extent, every section of the Union's population regardless of race, colour or creed.

However, in accordance with the multi racial structure of South African society, we prefer to investigate these problems separately for each social group.

Thus, on the *Poor Whites* we have had a Report in five volumes by a Commission which was financed by the Carnegie Corporation of New York.

On the *African* population we have had the Report of the Native Economic Commission of 1932, and, in 1935, the Report of the Inter-Departmental Committee on Native Education.

The position of the *Coloured* Community was thoroughly investigated and reported on by a Commission in 1937.

On the *Indian* population of the Union—numerically the smallest of the non-European groups, but in civilization the most advanced—there has been no investigation of corresponding scope or thoroughness. There have been several Government Committees and Commissions appointed to investigate particular problems. The most important of these were: the *Indian Enquiry Commission* of 1914, appointed as a result of riots in Natal, caused by taxation and other grievances; the *Asiatic Enquiry Commission*, appointed in 1919 to enquire into complaints of Asiatic "encroachment" in respect of trading and the occupation of land; the *Indian Colonization Enquiry Commission*, which reported in 1934 on its efforts to find possible territory outside South Africa and India to which Indians could be assisted to migrate; the "Feetham" Commission on Transvaal Asiatic Land Tenure, which issued reports between 1934 and 1936, on the extent to which Asiatics and Cape Coloured had "encroached", and on the areas which might be set aside specially for them; and the "Murray" Commission appointed in 1938 to enquire into the extent to which Asiatics have acquired properties in the Transvaal. In addition the Report of the Natal Education Commission, published in 1938, contains chapters on the education of Indian children. At the present time there is in existence a Commission which has been appointed to investigate the alleged penetration by Indians into so-called European areas in Natal and the Transvaal.

All these enquiries were narrowed in their scope by the demand for prompt legislative or administrative action in particular directions.

There has been no thorough survey of Indian life in the Union to bring out the main features of the various types of Indian society; to assess the effects of new social, economic and cultural forces upon them; to evaluate the contribution which the Indian people make to the well-being of the country; and to consider what place they are to have in the political, economic and other spheres of the State. The politically dominant White section which legislates and rules over the Indian people of the Union knows next to nothing about them.

When the "Cape Town" Agreement was entered into in 1927 between a delegation from the Government of India and representatives of the Union Government the "uplift clause" was hailed as marking a new attitude on the part of the European Government, of the Union and as providing a charter of human rights for the Indian people of the Union. Under clause two of the Agreement, the Union Government agreed to recognize that Indians domiciled in the Union, who are prepared to conform to Western Standards of life, should be enabled to do so.

No steps have been taken by the Government or by any other competent body to translate this clause into energetic action. Indeed, all that has happened since in legislation has been of an entirely different character.

The truth is that no one knows the facts about the Indian people, and, where no one knows, who can be wise? Without knowledge of the facts and an understanding of their meaning it will not be possible to bring the White people of the Union, who have assumed sole responsibility for law and Government, to the point of recognizing that the Indians are now an integral part of the Union, and that the Union is responsible for their welfare no less than for that of the Europeans, Africans and Cape Coloured.

There are other good reasons why an investigation of the position of the Indians in the Union should be undertaken without delay.

In the first place, there is the debt which is owed by the Union as a whole, and Natal in particular, to Indian workers for the part they have played and are playing in the Natal Sugar Industry and the Natal Coal Mines. The removal of Indian workers, with their aptitude for skilled as well as semi-skilled work, would be a major disaster.

In the second place, there is the place which Indians have gained for themselves in the economic life of Natal and the Transvaal as cultivators of small holdings, as traders and merchants, as artisans and professional men. The spending power of some 230,000 Indians is of considerable value to South African trade and industry.

In the third place, there is the fact that more than eighty per cent. of all Indians in the Union have been

born here, and acknowledge the Union as their country and their home.

In the fourth place, there is the interest of India—destined soon to be sister-dominion of the Union—in all Indians settled in Africa, from Nairobi down to Cape Town. Even now this interest is finding expression through the presence in the Union of a diplomatic representative of the Indian Government, the Agent-General for India. After all, it was in the Union, and in fighting against the disabilities of the Indians here, that Mahatma Gandhi learnt his first lessons in political leadership. South Africa will not for ever be able to ignore India in dealing with the Indians in the Union.

And lastly, whatever dividing lines or barriers it may be desirable to maintain between racial groups, it is the right of every individual in South Africa to be given the opportunity for a full human life. South Africa, as little as any other country, can afford to waste her human resources by denying to large sections of her population both the training through which their capacities could be developed to the full, and the right to use their trained capacities in whatever work they are fitted for, to the greater welfare of South Africa as a whole.

Of one thing there can be no doubt: the future, as the outcome of the present war, holds far-reaching changes for all of us. The present unstable structure of South Africa's multi-racial society cannot be expected to endure for ever. Members of all non-European groups in the Union are making voluntary contributions to South Africa's war-funds, whilst volunteers from all non-European groups are enlisting in the various special units organized for them. That they should do so in spite of the disabilities and disadvantages imposed upon them under our present system, is a demonstration of loyalty which we shall not be able to ignore.

But, if the future relations between Europeans and non-Europeans are to be organized in such a way that fuller opportunities are made available for the latter, we shall need not only good-will, but also knowledge.

This knowledge is most urgently required in respect of that section of which we know least—the Indians. Here is a gap which can be filled only by a comprehensive and authoritative study.

In 1937, the South African Institute of Race Relations approached the Agent-General for India of that time (Syed Sir Raza Ali) with the suggestion that an investigation of this kind would have great value not only for the Indian people of the Union themselves but also for the country generally, as it would complete the picture of our national life which had been left unfinished. The suggestion was heartily endorsed, and later the co-operation of the Natal University College was sought by the Institute. The head of the Department of Economics of that college, Professor H. R. Burrows, has had experience of socio-economic investigations and this experience would prove of great value in the conduct of an investigation of this kind. It is natural that Natal should be the focal point of

any investigation. In Natal alone there are 183,000 Indians out of the total Indian population of the Union of 220,000. Historically and numerically the problems to be studied are, therefore, predominantly the problems of Natal.

Small beginnings—all that restricted resources in money and men permitted—have already been made by the Department of Economics of Natal University College under Professor Burrows. Mrs. Mabel Palmer, M.A., has collected data especially on the history of the Indian community. Mr. J. G. Halliday has prepared a report on Indian Market Gardening.* A house-to-house survey of an Indian urban area is in progress for a study of family budgets and standards of living. A sample survey of local public finance in an Indian district is being planned. The Indian worker forms part of a study by Mr R. H. Smith of labour resources in Natal, which is the first section of an Economic Survey of Natal. Indian education is being studied by Mr. P. Sykes, and Mr. P. J. de Vos is engaged in sociological aspects of this research.

But all these efforts, promising as they are, touch only the fringes of the whole problem, or, where they go deeper, they will still produce only fragments of information from which it will be impossible to frame a complete picture of the position of Indians even in Natal only—let alone in the rest of the Union.

What would a complete programme of research look like? Here is a sketch:—

I. Historical

1. Immigration

- (a) Importation of Indian Labour
- (b) Free Immigration
- (c) Racial
- (d) Geographical Distribution

2. Settlement

3. Cultural Institutions introduced by Immigrants

- (a) Religious
- (b) Social
- (c) Linguistic

4. Political and Economic Struggles

- (a) Natal
- (b) Transvaal

II. Present Character of Indian Population

1. South African Born

2. Sex and Age Distribution and Reasons therefore
3. Occupational Distribution and Reasons therefore
4. Cultural Assimilation—extent of changes in Religious life, use of Indian languages, etc.

III. Nature and Effects of Differential Legislation

1. Social

- (a) Residential
- (b) Marital

2. Economic

* A copy of this report has been lodged with the S.A. Council of Educational and Social Research, which assisted the enquiry with a grant.

IV. Social Life

1. Family Organization, with indications of changes due to legislation and other causes.
2. Health
 - (a) Social Habits and their effects on Health
 - (b) Housing
 - (c) Physical Disabilities
 - (d) Incidence of Diseases—T.B., V.D., etc.
 - (e) Diet, nature, changes, relation to nutrition and diseases
 - (f) Medical Services
 - (g) Training and Employment of Indians for health services
3. Delinquency
 - (a) Nature and Extent
 - (b) Causes
4. Social Welfare Agencies

Existing Agencies and their effectiveness and possible development.

 - (a) Child Welfare
 - (b) Old Age Pensions
 - (c) Training and Care of Blind, etc.
 - (d) Probation and Preventive Work
 - (e) Recreation
5. Effects of Differential Legislation and "Colour Bar" on social Life

V. Education

(c.f. Report of Natal Education Commission)

VI. Economic Status

1. Detailed Study of Indians as
 - (a) Producers
 - (b) Workers
 - (c) Traders
2. Effects of Differential Legislation and Implicit "Colour Bars" on (I)

VII. Indian Organisations and their Influence

1. Religious
2. Social
3. Economic
4. Political

Every one of the summary headings set down in this scheme covers a vast range of detailed topics. To investigate them all adequately would require more money and more men than the Natal University College or the Institute of Race Relations has at its disposal.

The men could be found. Experienced investigators—economists, sociologists and educationists—from India might be invited to collaborate with similarly qualified South Africans, and South African born Indians students might be trained to play their part in carrying through the investigations, and in this way prepared for useful service to their people and the country.

It is a task which should not be entrusted to persons for whom political issues are the prime consideration. The Carnegie Commission on the Poor Whites was the first—and so far is the only—enquiry of its kind which has been undertaken in a scientific spirit and with scientific methods. It was a great advantage that the nomination of the investigators did not rest with a Cabinet Minister alone, and that the funds were largely provided by a non-Government body.

Where, then, is the money to come from? Seeing that the problems concern not Natal alone but the Union; and not the Union alone, but also India, it is reasonable to hope that the money will be provided from more than one source. The Union Government should welcome the investigation because of the value of the data to be gathered which should long ago have been at the disposal of Government officials, parliamentarians, and Commissions. The Union Government should, therefore, contribute a fair share of the cost.

The Government of India should be asked to help. It has actively interested itself in the welfare of the Indian people of the Union and has spent large sums in sending deputations to South Africa and in receiving deputations from South Africa. It also maintains an Agency in this country, which is constantly called upon to intervene on behalf of Union Indians, without having at hand information that is essential for the tasks entrusted to it. When the Indian deputations visited South Africa, they were greatly handicapped by the lack of the kind of factual material which the proposed enquiry is intended to provide.

There are among the Indian people—in the Union as well as in India—men who have wealth and who have shown their desire to help their people by generous gifts to one good object or another. It should not be difficult for them to realize that the welfare of their people is hindered through ignorance of their needs and that the enquiry here proposed would prove directly helpful to their people.

The future of the Indian people of the Union depends upon the knowledge and wisdom with which the problems confronting them and the country are approached and dealt with. "The heart of the prudent getteth knowledge: and the ear of the wise seeketh knowledge." Surely, then, the first task is to seek knowledge.