The Asiatic Act

THE ASIATIC LAND TENURE AND INDIAN REPRESENTATION ACT OF SOUTH AFRICA

A BRIEF SURVEY OF ITS BACKGROUND, TERMS AND IMPLICATIONS

by

GEORGE SINGH, B.A., LL.B.

SIXPENCE
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FOREWORD

In times of stress it is the unknown factors which increase tension. Too often do we accept other peoples opinions, frequently based on insufficient data, as being the truth. Too seldom do we take the trouble to read and investigate for ourselves in order to arrive at an objective independent picture of a given situation. We all have to guard against a judgment based on sentiment rather than on fact.

In commending this clear exposition of a controversial legislative measure we are convinced that it serves not the obvious transitory implications, but the inner and lasting good of South Africa. It is a duty we owe to ourselves, our fellow countrymen and to the greater South Africa—of which every individual should be given the opportunity of being worthy. We must know exactly where we stand in principle and not be blinded by momentary expediency.

Few have had the opportunity of studying this Act. Few have the knowledge of the background or the vital experience possessed by the writer, who as a lawyer and an estate agent, has daily to face the issues raised by it.

Looking back on the past eighty years, with its achievement of our Indian people in their social and economic life we get an inkling of their vital determination to arrive at a place in the South African sun. Can we prevent it? What is the brand of morality that would try to do so? Is South Africa strengthened or weakened by a denial to others of her own precious heritage?

There may be a psychological conflict between European and Indian. There can be no justification for complicating this by withholding rights on which life and liberty are based. It is this life and liberty that is at stake. No community and no government can enjoy its heritage and at the same time withhold it from a section of its people. To harm part of humanity is to harm humanity. A study of this booklet will compelled every right-thinking citizen to ask the question: "Does this Act harm part of humanity?"

It is in the faith that there are always better things round the corner that we commend this booklet. We give it our sincere blessing and if round the corner there is both a breaking-down and a building-up, the booklet and the blessing will not have been in vain.

PAUL C. SYKES.
W. HAROLD SATCHELL (Rev.)
INTRODUCTORY

June the 13th will go down in South African annals as a Red Letter Day. For the 280,000 Indians in South Africa it was Hartal Day—a day on which they closed all shops and business houses to mark their solemn protest against the passing of the Asiatic Land Tenure and Indian Representation Act.

It was the day on which they officially embarked upon a struggle which they very well knew would cost much in time, money and sacrifice. For the rest of South Africa, June 13th must also be regarded as a Red Letter Day, for it marks the beginning of a Campaign of Passive Resistance, which, though affecting primarily only one-fiftieth of the total population (1) is likely to spread and have its effect on the other non-European groups in South Africa.

(1) The latest available (1946 Census) population figures are:
(a) For South Africa as a Whole—
   Africans (Natives) ................................. 7,725,809
   Coloureds (of mixed parentage, largely Euro-Africans) ................................. 905,050
   Europeans ............................................... 2,335,460
   Asians ..................................................... 282,539

(b) For the Province of Natal—
   Africans ......................................................... 1,699,068
   Coloureds ...................................................... 22,623
   Europeans ..................................................... 232,923
   Asians .......................................................... 228,119
The fact that one-fiftieth of South Africa's population should have so much faith and confidence in themselves as well as in a struggle, which on the face of things, would appear to the western mind to have small chances of success, does certainly inspire an interest, if nothing else; and it is to the curious as well as to those who are sincerely desirous of knowing what this struggle is about, that this booklet is addressed.

Even for those who claim to be au fait with the South African Indian question, it is well that their memories should be refreshed; and that every European, whether he be pro-Indian or anti-Indian, should pause to take stock of the position, at this crucial juncture in South African history.

To the average European and to those in authority the present Passive Resistance Campaign would appear to be one against great odds. But a warning is necessary. No matter what our individual views may be in regard to Passive Resistance, there should be no under-estimation of the complete confidence which the Indians have in themselves and in their struggle. It would be foolish to make the same mistake as the British Raj did in India when they, in the early twenties, ridiculed that frail, meek and harmless man—Mohandas Karamchand Gandhi.

There is every possibility that the present struggle of the Indians and their methods of opposition are likely to inspire and encourage other non-European groups in South Africa into similar opposition, not only to specific discriminatory laws, but, in general, to the entire principle of economic oppression and colour discriminatory legislation.

**INTERNATIONAL ASPECT.**

There is, however, a greater and far more serious aspect to the present Campaign launched by the Indians. To-day, as never before, world opinion has been set in a frame-work, ready at a moment's notice for mobilisation against injustices and discriminatory treatment. Even though it may be argued at world conferences that the South African Indian question is essentially a domestic one, no one can dispute that the Union
Government itself has already recognised the principle of India's intervention on behalf of Indian nations in South Africa — for did she not invite India to send her representatives to meet the Union Government's representatives in Cape Town in 1927? And was not the Cape Town or so-called "Gentlemen's Agreement" a result of that Conference? And did not the Uitlanders in the Transvaal in the 1890's seek the aid of the British Imperial Government?

In any case, the probabilities of international conflict are not remote especially when we consider carefully the definition of the word "Asiatic" as defined in the Land Tenure Act:

"Asiatic means any Turk and any member of a race or tribe whose national home is in Asia, other than a member of the Jewish or the Syrian race or a person belonging to the race or class known as the Cape Malays, and includes any woman, to which ever race, tribe or class she may belong, between whom and a person who is an Asiatic in terms of the foregoing provisions of this definition, there exists a marriage (whether or not of a monogamous nature), under the tenets of any Asiatic religion."

Although the Franchise provisions in the Act are confined to Indians, the segregatory principles in regard to land tenure apply to the nationals of Turkey, India, China and other Asiatic countries. In brief, the Act is a blow to the self respect and dignity of more than half the world's population. To-day the 400 millions of India—Moslems, Hindus, Christians and Parsees—are firmly opposed to the principles of the Act and we have been given every indication in word and act as well as in reciprocal legislation, of India's united protests. The Chinese Government has protested and the Arab countries in the Middle East have resolved to oppose the Act. Are not these indications of growing international conflict? Who can deny that in these conflicts lie the seeds of future wars and a tearing asunder of relations between East and West?

Nothing less than the removal of this Act from the Statute Book of this country can dispel the grave dissension and dissatisfaction of Asiatic Governments and peoples.

THE BACKGROUND.

Although the present struggle of the Indians is directed specifically against the Asiatic Land Tenure and Indian Representation Act, we cannot close our eyes to the fact that the Indians, in general terms, are opposing the entire principle of race discrimination as applied by the Government to themselves. We must view the present Act, therefore, in its proper perspective and have some knowledge of the way in which the Indians
have been discriminated against ever since their advent to this country. Time and space would preclude a detailed survey of each piece of anti-Indian legislation; but for the moment it would suffice if we made a cursory note of the various anti-Indian Laws passed.

A CHRONOLOGICAL LIST OF ANTI-INDIAN LEGISLATION IN SOUTH AFRICA.

1. Law 3 of 1885, Transvaal: Prohibition on taking up residence except in segregated areas. Denial of all civic rights.
   (a) Law passed to amend Act 3 of 1885.
   (b) No political rights.
   (c) Cannot own properties.
   (d) Segregation in Streets, Wards and Locations.


4. Law 17 of 1895, Natal: Imposition of £3 Tax on Indians after indenture; failing payment, perpetual re-indenture to the Whites; failing that, either imprisonment or deportation to India (2).


8. Law 3 of 1897, regulating the marriages of Coloured persons within the South African Republic (Transvaal); Criminal offence for an Indian to marry a White woman.

9. Law 15, of 1898, Transvaal. Indians prohibited from operating in gold mining areas.


11. Act No. 1 of 1900 to amend the Immigration Law, Natal: Laws relating to Indentured Indians made more severe.

   (2) Mahatma Gandhi, then a promising young barrister in South Africa, launched his first organised passive resistance struggle against this obnoxious law. The struggle ended successfully in the Gandhi-Smuts Agreement.
12. The Immorality Ordinance, Law 46 of 1903, Transvaal, imposed severe penalty for "immorality" between European and Asiatic.

13. The Immigration Restriction Act of 1905, Transvaal. Indians allowed to go into Transvaal only if they were issued a special permit.

14. The Immigration Act, 1906, Cape Colony. Cape also prohibited immigrants from India.


16. Act No. 3 of 1906, to amend the 1903 Immigration Act, Natal: Still more restrictions on the movements of Indians.

17. The Arms and Ammunition Act, No. 10 of 1907, Transvaal: Indians prohibited from carrying firearms.

18. The Immigration Act, No. 15 of 1907, Transvaal: Total prohibition of Indians to Transvaal.

19. Asiatic Law Amendment Act, 1907: Compulsory registration of Indians; Fine £100 or 3 months.


21. Act 27 of 1907, the Vrededorp Stands Ordinance, Transvaal: Those Indians who had stands were ejected on the pretext of insanitary conditions.

22. The Workmen's Compensation Act, No. 36 of 1907, Transvaal: Denying the benefits of the Workmen's Compensation Act to Indians and restricting the term "worker" to European employees.


24. The Township Amendment Act, Law 34 of 1908, Transvaal: Residence in town restricted to domestic servants. Trade and residence for Indians in segregated areas.

25. The Gold Law, Act 35 of 1908, Transvaal: Absolute prohibition for Indian Traders to reside and carry on Trade in proclaimed areas.

26. The Asiatic Registration Amendment Act, No. 36, of 1908, Transvaal: Indians were ordered to undergo registration and to carry passes.

27. The Public Service and Pensions Act, No. 19 of 1909, Transvaal: No provision made for Indian Civil Servants.


32. The Immigration Regulation Act, 1913: Immigration from Asia absolutely prohibited for the whole Union.


34. The Township Franchise Ordinance, 1924, Natal: Municipal Franchise taken away.

35. The Rural Dealers' Ordinance, 1924, Natal: Arbitrary powers given to Rural Boards to deal with Indian Licenses.

36. The Durban Land Alienation Ordinance, 1924, Natal: Power given to Durban Municipality to sell Corporation land to Indians under restrictive conditions.

37. The General Dealer's Control Ordinance, 1925, Transvaal: Extraordinary powers given to the authorities either to grant or refuse Licences.

38. The Colour Bar Act, 1925: Absolute prohibition to non-Europeans in handling any machinery run by steam and electricity.

39. The Local Government (Provincial Powers) Act, 1925: Provincial Councils given wide powers to deal with subjects of local importance according to their discretion.

40. The Immigration and Indian Relief Act, 1927: Condonation certificates for illicit entrants were granted. At the same time vigorous action was taken in the direction of hastening repatriation of the poorer class Indians under the Cape Town Agreement.

41. The Liquor Act, 1927: Prohibition (Statutory) of Natives and Indians in being employed in Liquor Trade.

42. The Asiatics in the Northern Districts of Natal Act, 1927: Indians prohibited from going to and trading in Vryheid in Northern Natal.

43. The Nationality and Flag Act, 1927: Indians not recognised as South African Nationals.

44. The Old Age Pension Act, 1927: No pension given to Indians.
45. The Immigration Amendment Act, 1931: Laws made more stringent.


47. The Transvaal Asiatic Land Tenure Amendment Act, 1934: Further restrictions on acquisition and occupation of property.

48. The Slums Act, 1934: Demolition of Slums. Under the plea of Sanitation, the Act is used to demolish and expropriate with the ultimate aim of segregation.

49. The Transvaal Asiatic Land Tenure Amendment Act, 1935: Act amended to make it more severe.


52. The Marketing and Unbeneficial Land Occupation Act, 1937: The right of farmers (Indian) to till their own soil challenged.

53. The Immigration Amendment Act, 1937: Further tightening up of immigrational restrictions.

54. The Transvaal Asiatic Land Tenure (Further Amendment) Act, 1937: Feetham Commission appointed to allot separate areas for Asiatics.

55. The Asiatic (Transvaal) Land and Trading Act, 1939: Asiatics forced to trade only in their own allotted areas.

56. The Town Board and Health and Malaria Committee Ordinance, 1940, Natal. Public Health Regulations: The aforesaid regulations entrusting executive officers with enormous discretionary powers, operated in the direction of race discrimination.

57. The Durban Extended Powers Ordinance, 1940, Natal: Extensive Powers given to Municipal authorities to tax as well as to deal with people in Municipal and Greater Durban Areas according to the discretion of officials.

58. The Factories Machinery and Building Works Act, 1941: Gives extraordinary powers to differentiate in factories between Europeans and Indians.

59. Resolutions for the exemption of the Feetham areas in the Transvaal, 1941: Those who had established long-standing businesses in areas not demarcated in the past, exempted from the operations of the Laws.
60. The Asiatics (Transvaal) Land and Trading Act, 1941: Extension of Segregation policy in Rural Areas.

61. The Pegging Act, 1943, Natal: Indians prohibited from residing on or from buying property or land in the City of Durban, except under permit. Indians prohibited from purchasing property from Europeans in Durban.

62. The Special Housing Act, 1945, Natal: Extraordinary powers given to housing board to expropriate property with a view to segregating Indians.

63. The Asiatic Land Tenure and Indian Representation Act (Act 28/1946): Restricts acquisition and occupation of land by Asiatics and grants Indians a "special" Communal Franchise.

Although the Acts enumerated are by their very nature anti-Indian, we must remember that a number of other Acts, not apparently anti-Indian, are often used as a camouflage for anti-Indian activity. The Durban City Council, for example, under cover of the Public Health and Slums Acts (and the various amendments) has expropriated, on a wholesale basis, large areas of Indian-owned and Indian-occupied property in Sydenham—a suburb in close proximity to the centre of, and within the City boundaries of Durban—with the unconcealed intention of setting up in those areas housing schemes for Coloured or Euro-African people.

This wholesale expropriation is being carried out annually as part of the segregational design to separate the various races into clearly demarcated zones. It will be recalled that less than five years ago the whole of the Riverside Area (also within the City of Durban) was threatened with similar expropriation (3).

Ever since the advent of the Indians to South Africa in 1860, anti-Indian legislation has been imposed upon them with regular periodicity. When the Indian people came to South Africa they came under pressure at the special behest of the Natal Government. At that time they were promised equality of treatment. Lord Salisbury, in a despatch to the Government of Natal in 1870, said:

(3) As these lines were being written and in the midst of the Present Passive Resistance Campaign, the City Council has again signified its intention of using the Public Health and Slums Acts to expropriate the Madras Road Indian area. This area lies within the central City boundaries of Durban and has been owned and occupied by Asiatics for over 50 years. It is obvious, therefore, that even in areas where Asiatic ownership and occupation are protected by the Act, there can truly be said to be no permanent security of tenure. This latest move on the part of the Durban City Council is indicative of the City Council's policy towards Asiatics and of its determination to drive the Asiatics and other non-European groups into clearly defined ghettos. (Ref. Report, "Natal Daily News," 23rd July, 1946).
"Above all things we must confidently expect, as an indispensable condition on the proposed arrangement, that the Colonial Laws and their administration will be such that Indian Settlers who have completed the terms of service to which they agreed, as the return for the expense of bringing them to the Colony, will be free men in all respects with privileges no whit inferior to those of any other class of Her Majesty's subjects resident in the colonies."

Comment on the fulfilment or the non-fulfilment of these promises would seem unnecessary in the light of the legislation passed by successive Governments and which have already been referred to.

THE CASE OF INDIAN PENETRATION.

Underlying the various arguments advanced by anti-Indian politicians for the necessity of curbing Indian expansion in regard to Land Tenure, the main reason, seldom admitted, seems to be a desire on the part of the Government and European politicians to stem the growing economic expansion of the Indian people. A comparison in any case, of Indian and European purchases in Natal would weigh heavily against the European. Large tracts of land on the outskirts of the City of Durban, which were formerly owned by Indians, have subsequently been bought off by Europeans. Today suburbs, like Westville, Sea View, Malvern, Escombe, etc., are for the large part European areas.

Indian expansion on the other hand, has been generally speaking, on the lines of contiguity and it is obvious that Indians would never have been able to purchase in any case, if Europeans were not prepared to sell to them. What is more, there is undisputed evidence of the growing neglect by the City Council of Indian welfare, both in regard to the providing of sites and social amenities. While the proportion of the population of the Asiatics to the Europeans in Durban is about the same (Asiatics 113,440; Europeans 124,792) (4) the Durban City Council has provided very little land for Asiatic purchase. The only housing scheme which has been provided by the City Council is at Cato Manor, which made provision for only 50 houses. The Springfield housing scheme is not open for Asiatic purchase, Indians having the right to occupy only on tenancy (5).

(4) According to the latest 1946 Census.

(5) The most convincing answer to the "penetration" bogey is contained in the following figures:

The Old Borough of Durban covers 8,000 acres, valued at £37,000,000.

Of this land Indians own approximately 339 acres, valued at £1,000,000.

As for the Province of Natal, where the overwhelming bulk of the South African Indian population resides, there are
Coupled with the neglect by the City Council of already occupied Indian areas; the lack of such amenities as are provided to the Europeans, constitutes a prima facie case against the City Council. This fact was admitted in Parliament in 1943 by both the Prime Minister, Field Marshal Smuts, and the then Minister of Interior, Mr. H. G. Lawrence.

Apart from this, even in other spheres, there has been no change of heart on the part of the City Council. On the other hand, there has been an intensification of their anti-Indian activities. In July of this year, for example, they intended to make more stringent, the existing segregatory restrictions on Municipal trams and buses.

**THE PEGGING ACT.**

The Pegging Act of 1943 was the prelude to the present Asiatic Land Tenure and Indian Representation Act. Being a voteless and voiceless minority the Indian had always looked to liberal-minded Europeans for sympathy and support. Their methods were, therefore, very largely constitutional and for their part, nothing was done and nothing was left undone which might justify the criticism that Indians were not playing their role. So much so that when Indian nationalists in India had decided to postpone their decision to join hands with the allied forces, several thousand South African Indians, despite the unjust system under which they were living and despite race discrimination even in the army, were prepared to join hands with other allied forces in South Africa. It was while these men were engaged on the bloody fields of North Africa that the Pegging Act was perpetrated against their families and against their homes in South Africa.

The Lawrence Committee as well as the First and Second Broome Commissions were well planned attempts to induce the Indians into acquiescing in the principle that there should be no further acquisition of properties by them. Despite considerable opposition from the Indian people themselves moderate leaders of the Indian community, nevertheless, co-operated in these commissions, with a view to arriving at an amicable settlement.

The Second Broome Commission which hurriedly carried out its investigations, and which directly paved the way for the Pegging Act, revealed that Asiatic economic expansion could not be stemmed except by radical legislative prohibi-
tion. It failed, however, to reveal that Indian ex-

pansion was natural; and it further failed to give
comparative evidence of the equally rapid, if not
greater expansion of other communities, par-
ticularly of the European. It failed also to reveal
that European penetration into areas hitherto pre-
dominantly Indian, was a feature which not only
induced but in fact, outweighed the so-called
"penetration" by Asians.

With effect from March, 1943, the Pegging Act
laid down that no Asiatic could purchase property
from a European and vice versa, except under per-
mit from the Minister of Interior. The Act referred
to the entire City of Durban, where the density of
of the Indian population is highest. It also laid
down that Indians could not occupy property un-
less such property was already occupied by In-
dians prior to March, 1943. South African Indians
had been dealt a fierce blow in regard to their
economic expansion. From the European point of
view, it was a bold piece of work.

The Indians naturally, were up in arms against
this legislation. All methods of constitutional oppo-
sition were adopted. The Indian Government, too,
strongly voiced its condemnation of the Act.

At that stage the Indians were ready and pre-
pared for a united struggle against the Govern-
ment's segregatory design, but their determination
was weakened and their fears allayed by daily
statements and promises made by Government
spokesmen during the Parliamentary session in
which the Act was passed. The Indians were told
that a commission would be appointed to investi-
gate the prima facie case which had been made
against the City Council and they were told that
the Pegging Act was essentially a PEGGING Act.
It would merely peg the position as it stood in
March, 1943, and that within the three years' dura-
tion of the Act (the Act was due to expire in March,
1946) "a solution would be found" for the In-
dian problems.

As for the Indians, a conference of the South
African Indian Congress voiced in no unmistakable
terms its opposition to the Act. Resolutions were
also passed at this conference at Johannesburg that
an appeal should be made to world opinion. But,
in the hope of some substantiation of the Govern-
ment's promises, the Indians, with characteristic
patience, decided to wait and see.

A statement, however, was later made by Field
Marshall Smuts that Durban should essentially be
a "White City" and Government spokesmen
asserted the Government's intention to separate the
various races of South Africa into different zones.
It left no doubt as to what was in store for the
Indians in South Africa.
THE PRETORIA AGREEMENT.

Field Marshall Smuts was due to go to London. A few Indians, representing a small minority of moderates, believed that the Government was prepared to compromise.

At a meeting in Pretoria, the so-called Pretoria Agreement was drawn up. Ill-conceived, this "agreement" intended to establish the Pegging Act status quo by mutual agreement. The Government, too, was ready to shirk its burden by shifting the onus on to the Natal Provincial Council. This Agreement was ill-conceived because it was acceptable neither to the Indians nor to the Europeans. There was never unanimity on the various points of the agreement and it was not long before both the letter and the spirit were disregarded by the Government including Field Marshall Smuts himself. As for the Indians, it was just as well that this should have happened, for no agreement acquiescing in the principle of race discrimination could ever leave the Indians as a whole, a satisfied and contented people.

THE ASIATIC LAND TENURE AND INDIAN REPRESENTATION ACT (6).

(a) General.

The Pegging Act was due to expire in March, 1946. On the 21st January, 1946, Field Marshall Smuts made a Parliamentary pronouncement indicating in no unmistakable way the Government's determination to introduce the Asiatic Land Tenure and Indian Representation Act, and indicating also, in general terms, the principles that would be involved. The lot of the South African Indian was sealed.

The Act was passed despite total opposition from both the South African Indians and the Government and peoples of India and in complete disregard of the plea that a Round Table Conference should be held, to discuss the South African Indian problem. Deputations to the Prime Minister and other methods of constitutional protest, including India's formal request for a conference, were all of no avail.

In principle, the Act is nothing new. While the Pegging Act's application was restricted to the City
of Durban and was for three years' duration, the new Act covers the whole of Natal and is of a permanent nature. As for the Transvaal, its restrictive Land Tenure provisions had already been established in that Province. The Orange Free State is not included, but it must be remembered that there are only 14 Asiatics in the Orange Free State and Asiatics are barred by immigration laws from entering and living in the Orange Free State. The Act also does not apply to the Cape, because of the comparatively small number of Asiatics who are resident there and because of immigrational prohibition against their entry into that Province.

So much has already been said of this Act that it would be wise to set out in a general way the terms and principles which it establishes:—

(b) The Act Openly Discriminatory.

The Act is essentially an Act discriminating against Asians generally and against Indians in particular. For, the very preamble to the Act reads as follows:

"Whereas it is expedient to regulate the acquisition and occupation of fixed property in the Province of Natal and Transvaal by Asians, and to extend to Indians in the said Provinces a special franchise to the end that they may be represented in Parliament and in the Provincial Council of Natal . . ."
It is of interest to note also that any non-Asiatic wife of an Asiatic also falls within the category of "Asiatic."

(e) Land Tenure and Occupational Restrictions.

The Land Tenure provisions are applicable to Asiatics generally. The Act follows the Pegging Act very closely in that it applies control of both occupation and acquisition of property throughout Natal and Transvaal in respect of urban and rural areas.

Two kinds of areas are created: (1) The Controlled Areas; (2) The Uncontrolled Areas.

(1) The Controlled Areas are non-Asiatic areas except for properties which were already owned or occupied by Asiatics on January 21st, 1946. In these areas an Asiatic may not occupy any property, even his own property, if such property was not in Indian occupation prior to the 21st January, 1946. In these areas no Asiatics may purchase a property from a non-Asiatic and vice versa, save under permit.

(2) The Uncontrolled Areas are areas set out by schedules attached to the Act and are commonly termed "free" or "exempted" areas. In these areas there are no restrictions on acquisition or occupation of properties.

A study of these areas reveals that they are already, for the most part, owned and occupied by Asiatics. The remaining few properties in these areas which are not presently owned by Asiatics may be purchased by Asiatics.

In the Controlled Areas, all transactions between Europeans and Asiatics are prohibited unless authorised by permit granted by the Minister of the Interior upon the recommendation of a specially set up Land Tenure Advisory Board. This Board will have five members, of whom two may be Indians. The Chairman is to be a legal man of at least ten years standing.

Very rigid control is exercised over property transactions and the definition of "fixed property" includes a mortgage bond for more than 50 per cent. of the value of the property. Passing of such bonds in favour of Asiatics is therefore prohibited except under permit. In effect this will mean that in controlled areas, Building Societies will be barred from advancing more than 50 per cent. by way of loans, whereas previously Building Societies could lend up to 75 per cent. Acquisition of property by buying shares in Companies is also controlled. Asiatic Companies are not permitted to acquire fixed property in controlled areas without a permit. The Act goes further, and stipulates that if a Company should acquire fixed property in a controlled area, particularly an Asiatic Com-
pany, the State may step in and prevent the property from becoming Asiatic owned and occupied. Foreign Companies, that is, Companies floated outside the Union of South Africa, whose shareholders are unknown, and may therefore be Indian, are prohibited from acquiring property in controlled areas unless that Company is registered also in the Union.

Asiatics are barred from purchasing property in controlled areas not only from Europeans but from anybody who is not an Asiatic, even if that person belongs to any other of the non-European groups of South Africa.

In regard to occupation, where land was unoccupied on the 21st January, 1946, and was owned by Asiatics, an Asiatic may occupy buildings that are erected on that land (7).

(7) On the 19th July, 1946, however, the Governor-General by Proclamation, has now “pegged” all vacant land in the controlled areas. From this date, the owner of vacant land must first apply to the Land Advisory Board for a ruling as to whether buildings erected thereon may or may not be occupied by Asiatics. The Pegging Act principle is thus re-established, to the detriment of Asiatics. Although Europeans will also have to apply, the move has been designed to coerce Asiatics into making applications to the Land Advisory Board, which they have agreed to boycott.

Specific directions are given to the Minister that no permits are to be issued unless there are special circumstances making the grant of a permit necessary or expedient. In effect, therefore, except in exceptional cases, and these are bound to be very few in number, permits will not alter the general racial character of the areas.

In regard to the Transvaal the same kind of restrictions already existed. The Act now makes the position in the Transvaal and Natal uniform.

The Act also provides for the appointment of inspectors with wide powers, including the right to enter premises at any time and to seize documents suggesting contraventions of the Act.

(f) Penalties.

The penalty for infringement of terms of the Act are a fine not exceeding £100, or imprisonment not exceeding one year, or both. The Court may also issue an order for the forcible ejectment of persons convicted. There is also provision for the imposing of a continuing fine of £5 per day, which may be additional to the penalty aforementioned.

(g) Franchise.

The qualifications, under the Act, for Indian voters are—an age of 21 years, Union Nationality, Standard VI education and either an income of at
least £84 a year or ownership of immovable property valued at not less than £250, over and above any mortgage thereon.

The Act contains no reference to municipal franchise.

Two Indian representatives will be elected to the Natal Provincial Council for five years, but the Transvaal Indians have no representation whatever on the Provincial Council of that Province.

Three Europeans will be elected to represent the Indians in the House of Assembly. For this purpose Natal and Transvaal are divided into three electoral zones, two of which will be in Natal and the third comprising the Transvaal and part of Northern Natal.

Two European Senators will also represent the Indians—one to be elected by the Indians and the other to be nominated by the Government. The Indian representatives will be elected for five years and are not affected by dissolution of Parliament or of the Provincial Council for a general election.

Although the Land Tenure sections of the Act apply to all Asians, the franchise provisions relate to Indians only.

It is obvious that the Indians have been given a "Special" communal form of franchise. Indians will not be on the same roll as European voters. They will elect their own representatives to the Assembly and to the Senate, who must be Europeans. In the Natal Provincial Council Indians are not barred from standing for election, but they will have to be elected on the same communal basis.

In brief, the Act deals with the Indians in the same undignified way as the 1936 Act deals with the Natives, who were given a communal form of franchise—"a form of franchise with which the Natives have never been satisfied."

Prior to 1936 the Natives in the Cape enjoyed the franchise on the common roll; and so did the Indians in Natal until 1896, when their Parliamentary franchise was taken away, and until 1924 when their municipal franchise was also taken away.

As was to be expected, the diminution in the numbers of Indians on the common roll was followed by the growth of anti-Indianism, displayed in stark naked fashion at municipal elections, where candidates, no longer responsible to an influential Indian electorate, played upon racial sentiments to suit their own ends. This feature accounts for the rabid anti-Asiatic feelings that pervade the policies and activities of most local
authorities and particularly of the City Council of Durban, where the Indian population is almost equal to that of the European.

The communal franchise granted to the Indians under this Act will, therefore, not stem the tide of anti-Indianism.

Apart from these considerations, there is the further important matter of a race being discriminated against; and it is this treatment, on an inferior basis, which the Indians are rightly opposing and so stoutly fighting against.

It is interesting to note, en passant, that the Government has ignored its own appointed Natal Indian Judicial Commission, which, while urging the need for Indian representation, recommended strongly against the communal franchise for the Indians.

As for the Government, this "charitable" gesture in providing for Indian representation is no more than a diversionary tactic designed to cover the fierce blow it has dealt Indian economic expansion under the land tenure sections of the Act. Anticipating the strongest opposition from the Indians themselves, and possible international repercussions, it was a cunning attempt to show to world opinion that the Government was making an endeavour to be "fair" to the Indians.

(h) The Act Affects All Indians—Rich and Poor.

Contrary to opinions expressed through the European Press (before the passing of the Act) that the Act would affect only some sections of the Indian people, a study of the Act reveals that its provisions directly and vitally affect all sections of the Indian people—rich and poor. No longer will the rich be able to buy properties as they have done in the past; and even if they are able to do so, they will have to pay fabulously for those properties. To-day the Indian £ is hardly worth more than 7/6d. The poor man will never be able to buy properties in the future because prices have soared beyond his reach; and in any case, there will be no land for him to buy. Moreover, all sections of the Indian people will be forced during the years to come to live and trade in sorely-neglected bazaars, ghettoes and locationS, as rich and poor are already doing in the Transvaal.

(i) The Act an Expression of Herrenvolk Mentality.

We have read of Cecil Rhodes, that the dream of his life was "nothing less than the government of the world by the British Race." Cecil Rhodes has had no small influence on the politics of South Africa. The economic oppression of the Indian people is part and parcel of the general idea of race domination by White South Africa over the millions of non-Europeans. It was this same
herrenvolk mentality that was developed to the highest pitch in Nazi Germany, and which constantly finds expression in Acts of oppression against non-White races in this country. To-day, in South Africa the Indians are being treated in the same way as the Jews were treated by the Nazis. This Act is one aspect of this treatment and is the visible manifestation of the dictum that the non-Europeans "must be kept in their places." Both the land tenure and franchise provisions of the Act bear this out.

CONCLUSION.

It would be futile for anyone to minimise the importance of the repercussions which the Act has brought in its train. South Africa itself is in political turmoil. While the Europeans—save for a small percentage of valiant liberals—are on the one hand divided only on the matter of the intensity with which the Act should be applied, the entire non-European population on the other hand is seething with explosive discontent. The world cannot turn a deaf ear to the cries of the hundreds who now languish behind South Africa's prison bars for daring to vindicate their rights.

Across the seas, Asiatic Governments and peoples have voiced their loud protests. We find also that large democratic forces within non-Asiatic Governments are also violently opposed to the principles of the Act. Already more than three-fourths of the world's population is perturbed. In the light of these facts, who can deny that South Africa, politically, is heading for complete isolation?

Even from an insular point of view—that of South Africa's own future economic progress—the Act is a most retrogressive measure. A blow to the economic expansion of any one section of South Africa's population must, in the long run, adversely affect the general economic progress of the whole country. Economists have pointed this out time and again in regard to the South African Government's economic oppression of its African peoples; and the same warning might not be out of place here when we consider that this Act spells the economic oppression of South African Asiatics—rich and poor.

The Act is nothing less than a blatant negation of the principles of justice and equity, for which the last War was fought. It is totally inimical to the spirit of the United Nations Charter, in the drafting of which Field Marshall Smuts himself played so prominent a part. Whatever interpretation the international jurists may place upon the Charter proclaimed by the United Nations for maintaining peace of the world, by no stretch of the imagination can the South African Indian question be considered a