

THE
COLLECTED
WORKS
OF
MAHATMA
GANDHI

VOLUME TWELVE



THE PUBLICATIONS DIVISION

the necessary amendments will be made next year, and if he considers it worthwhile to discuss the points personally with me, I shall be pleased to wait on him. I hope that Mr. Fischer will see his way to consider my letter in the spirit in which it has been addressed. I beg to assure him that I have no desire to precipitate an acute crisis, which is certain to arise if no settlement can be arrived at between the Government and the Indians.

In the event of an appointment being made, it will be necessary to discuss at the interview the administration of the Act as to the admission of married women in cases where the marriage is not monogamous, as also the mode of regulating the entry of educated Indians. I do not discuss them here for fear of making this letter too long, and because I believe that, if the law can be set right, the question of administration is a comparatively easy matter.

I need hardly say that I have throughout this letter assumed that there are no other existing rights disturbed by the Act which have not formed the subject matter of correspondence, telegraphic or written, between the Government and myself.¹

As I shall await your reply before advising my fellow-workers, may I ask for a telegraphic reply?²

*I remain,
Yours faithfully,*

From a photostat of the typewritten office copy: S. N. 5811

88. LETTER TO SECRETARY FOR INTERIOR

[JOHANNESBURG,]
July 2, 1913

SIR,

With reference to the interview between us this morning, and in accordance with your wishes, I reduce to writing the points discussed between us:

1. With reference to Indians born in South Africa and their right under the Cape Immigration Act to enter the Cape, in my opinion, under Section 5 of the new Act, such men will not be able to enter the Cape by reason of the Proviso of Section 5. If the Government intend to recognize their right to enter the Cape on

¹ This paragraph, in Gandhiji's hand, appears to have been added later.

² This letter was followed by an interview on July 2. Gandhiji reduced the points discussed to writing; *vide* the following item.

proving their South African birth as heretofore, they can do so without further legislation, by regulations that would exempt them from the operation of Section 1 Clause (a) of the Act. It may be observed that, if such Indians can pass the simple education test of the Cape, they can enter that Province under Paragraph A of sub-section 2 of Clause 5. As you are aware, most of the Colonial-born Indians have passed through the Government Indian schools and possess sufficient knowledge to undergo the Cape examination. It is also a well-known fact that, throughout the time that the Cape Act has been in force, hardly any South African-born Indian not belonging to the Cape has endeavoured to migrate to that Province; the reason is that there is no scope for them there.

2. With reference to the indentured Indians who entered Natal under the amending legislation of 1895, as I have already told you, the Natal Courts have held that these indentured men, after they have finished their indentures, are free to settle in Natal and could not be treated as prohibited immigrants if they have not re-indentured themselves, and that, after three years' residence without indenture, these people acquire under the Natal Immigration Act full rights of domicile in the same manner as other Indians; such Indians now appear to be affected by the definition of the term "domicile" in the present Act. I have already told you that we have obtained best legal opinion in Natal, which is to the effect that the definition does not cover such Indians and that their rights will not be affected by the new Act. However, I do not wish to take upon my shoulders the responsibility of advising my countrymen that they may be guided by that opinion alone. It is my sincere desire that any points which I, at least, can foresee should not be left open or not entirely understood. If the Government, however, give the same interpretation to the term "domicile" that our Counsel does, an assurance to that effect settles this point. Let me state it as clearly as I can. We are not seeking to gain any new rights for indentured Indians, but we are anxious that their present rights should be left intact, and these according to the belief of the Indians are that, if an indentured Indian entering into a contract of service after 1895, having become free at the end of his contract, does not re-indenture, lives in the Province for three years, then goes to India and returns, he has a right to re-enter under the present Immigration Law of Natal by reason of his three years' free residence.

3. As to the Free State, I have drawn your attention to the letter from General Smuts to the effect that, in his opinion,

possibly the Free State declaration was not required. If that is the legal position according to the opinion of the legal advisers of the Government, a statement to the effect that such is the position will meet the difficulty. I venture to suggest that the declaration that will be required in terms of Section 19 of the new Act may have all the disabilities printed at the back thereof, including Section 28 of the new Act. Then there need be no repetition of a declaration when a British Indian is recognized as an immigrant for the Free State.

4. As to the marriage question, in view of the Scarle judgment¹, it is absolutely necessary to legalize Indian marriages celebrated or to be celebrated within the Union. This can be done by amending the new Act by removing the words "outside the Union" from the marriage clause of the Act, or by amending the Marriage Laws of the different Provinces authorizing the Government to appoint Marriage Officers for different denominations whose certificates as to the celebration of marriages according to the rites of the respective religions of the parties would be recognized as proper proof of marriage.

With reference to the marriage amendment in the new Act, I understand that only monogamous marriages will be recognized, and I appreciate that nothing more can be done in law at present, but an assurance is necessary to the effect that the present practice of admitting one wife of an Indian immigrant so long as she is the only one in South Africa, irrespective of the number of wives he might have in India, will be continued.

Then there will remain the question of polygamous marriages. As I have told you, there are not many such cases, but it is necessary to admit or re-admit plural wives of Indians who are already resident in South Africa. No new polygamous unions need be administratively recognized. A list can easily be prepared of those who have more than one wife either in the Union or outside it. My remarks are naturally applicable to the children of these unions also. I may point out that, in the July of 1911, General Smuts gave the assurance that special cases of polygamy would be considered by the Government.

I think that I have now exhausted all the points we discussed. If you think that there is anything omitted or that I should supplement this letter, kindly let me know. It is clear to me that the solution of this difficulty is very easy because, with the exception of

¹ *Vide* Appendix I.

the marriage difficulty, all the points can be settled without an Act of Parliament.

If a settlement is arrived at, it will be necessary to discuss the mode of admitting new entrants and the number for the various Provinces. May I suggest that, if the solution suggested by me is considered acceptable by General Smuts, you should telephone to me, so that I can come over to Pretoria and a final letter setting forth the terms of the settlement may be given to me. I make the suggestion so that there may be no correspondence necessary in order to elucidate any doubt that might arise as to the language of any letter that might be given to me, and the question of new entrants could also then be discussed. I have told you how urgent the matter is, and may I rely upon your courtesy to let me have an early reply?¹

I am sending this letter per Mr. Pragji Desai², who will be at your disposal to carry any communications you may wish to send me, and, if you require me at the telephone, you have only to ring up 1635, and I shall be at the telephone from wherever I may be.

Indian Opinion, 13-9-1913

89. LETTER TO JAMNADAS GANDHI

Jeth Vad 14, 1969 [July 2, 1913]

CHI. JAMNADAS,

You have asked me some questions about serpent-bite and cited the experiences of others. What I say about this should be treated as no more than my inference. It is not based on experience. The instances you have come across do not deserve much attention. There may be something behind the cases of frenzied shaking of the head from side to side, but for the most part they are cases of fraud. I believe the same about cures of snake [-bite] and scorpion[-sting]. Possibly there is something in them, but one had better not go inquiring into these matters. We are to concern ourselves only with activities that tend to spiritual welfare. Everything else—even health—is subordinate to that.

¹ *Indian Opinion* reported that, for a time, the negotiations were suspended by Smuts due to civil disturbance in Johannesburg. When, however, peace was restored, Gandhiji resumed the correspondence on August 11, 1913.

² Pragji Khandubhai Desai, a satyagrahi