

IMMIGRATION POLICY OF BURMA IN RELATION TO INDIA—A BRIEF SURVEY

By
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The immigration of Indians into Burma is as old as the history of the two countries. Mr. Morgan Webb, in his Report¹ on the Census of Burma in 1911, has observed, "As far back as the history of Burmese national life can be traced by means of its chronicles and its legendary lore, migration from India has been one of its most prominent and continuous features." For centuries there was no hinderance to this migration and since the annexation of Burma by the British in 1886, it was an Indian province and Indians had the right to reside there as sons of the soil. However, after the separation of Burma from India in 1937, the Indian immigration into Burma came to be on a different footing. It was now to be regulated by Section 138 of the Government of Burma Act of 1935, and the Order-in-Council based upon it, known as the Government of Burma (Immigration) Order, 1937. According to the Order-in-Council immigration into Burma was to be subject to the restrictions in force immediately before the commencement of the Government of Burma Act, 1935 and to no other restriction. This in effect meant no restrictions at all, as there had been no restrictions on Indian immigration before the commencement of the Act. The Order was to remain in force for three years from the date of separation of Burma or till the lapse of twelve months from the giving of notice by the Governor of Burma to terminate it, whichever was longer. The Burma Government gave formal notice on the 1st April, 1941 to terminate the Order-in-Council on the 1st April, 1942.

In regard to the immigration policy, Section 44 of the Government of Burma Act, 1935, contained separate regulations for British subjects domiciled in the United Kingdom and those domiciled in India and Indian States. While the Burma Legislature could lawfully impose restrictions on the right of entry into Burma of persons who were British subjects domiciled in India or subjects of any Indian State, no such restrictions could be imposed by them on the entry of

1. *Census of India, 1911, Volume IX, Part I, Para 75.*

British subjects domiciled in United Kingdom. This clearly indicated a preferential treatment for the British subjects domiciled in the United Kingdom. Apart from this, however, Indian immigrants were given complete protection, and the Burma legislature was not authorised to make laws purporting to discriminate Indians on the ground of place of birth, race, language, religion, or duration of residency or domicile. As such, Indian immigrants were free to travel, reside, acquire, hold, or dispose of property, hold public office, or carry on any occupation, trade, business or profession within the territory of Burma. This meant in effect that there were practically no restrictions on Indian immigrants in Burma.

However, Indo-Burman Riot in 1937 altered the situation. The Government of Burma, after going through the Riot Enquiry Report declared its intention of instituting an inquiry to examine the question of Indian immigration into Burma, and a Commission of Inquiry was set up for that purpose under the sole charge of Mr. J. Baxter, assisted by two assessors, one Indian and one Burmese, to go into the question of Indian immigration into Burma.

Mr. Baxter made the following recommendations:¹

1. That from a date to be agreed upon after negotiation with the Government of India, Indian nationals entering Burma should be provided with a duly registered Indian passport and that they should be required to obtain a visa from a competent authority under the Government of Burma;
2. That the fact should be recognised that Indians who are born and bred in Burma and have made Burma their home are entitled to a Burmese domicile, and therefore to the benefits of Section 44 of the Government of Burma Act, 1935;
3. That Indians who had worked in Burma for at least five years (immediately before a date to be specified) be regarded as privileged immigrants;
4. That at an early date negotiations should be initiated with the Government of India for the conclusion of an immigration Agreement, and
5. That unskilled labour in the port of Rangoon should be compulsorily registered.

On the basis of the above recommendations, the Government of Burma invited the Government of India to negotiate an Immigration Agreement. The Government of India accepted the invitation and

1. *Report on Indian Immigration*. J. Baxter, 1941, Paras 110 to 112 and 118.

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sent a Delegation headed by Sir Girja Shankar Bajpai on 29th June, 1941. The negotiations resulted in the initiating of a draft Agreement, the main provisions of which were as follows¹:—

1. No Indian should enter Burma without a valid Indian passport and a visa or an immigration permit issued by or on behalf of the Government of Burma;

2. A visa on Indian visitors' passport would be available on payment of a fee of Rs. 20/- and would be valid for three months;

3. Immigration permits were to be of two kinds: 'A' permits, which would entitle the holder to remain in Burma for an indefinite period and to acquire a Burma domicile if so desired, and 'B' permits, which would be for limited periods only and would not entitle the holder to acquire a Burma domicile;

4. The Government of Burma had the authority to impose a literacy test on applicants for 'A' permits and also to restrict the number of such permits at discretion. A fee of Rs. 500/- was to be charged for such permits;

5. Indians residing in Burma were to be classified in three categories; (i) those who were born and bred in Burma, had made Burma their permanent home so as to regard their future and the future of their families as bound up with its interests. They were entitled to the benefits of Section 44 of the Government of Burma Act, 1935; (ii) those who had resided in Burma for seven years out of nine immediately preceding the 15th July, 1941. They were 'privileged immigrants' and had the right to further residence in Burma without limit to time; (iii) those who were already in Burma but had not qualified as 'privileged immigrants'. Once they had left the shores of Burma, their claim to re-entry was to be dealt with in the same manner as of a new Indian immigrant;

6. The visa or permit granted to a male Indian could be cancelled on the ground of marriage or co-habitation with a Burmese.

The draft Agreement was accepted by the two Governments, without material alteration. The Government of Burma agreed (vide clause 2 of the Agreement) that the notice given by them to terminate the (Immigration) Order-in-Council of 1937 would be treated as withdrawn and they further undertook not to give notice to terminate the same before the 1st October, 1945. The Agreement was to remain in force for atleast five years.

1. *The Indo-Burma Immigration Agreement, 1941, Articles 4-23.*

The Agreement, however, was destined to remain a dead letter. In order to enforce the terms of the Agreement it was necessary to obtain a varying Order-in-Council issued by His Majesty. Owing, however, to the outbreak of war with Japan such measures could not be taken. As such the Agreement by which the Government of Burma had declared that the notice given by them to terminate the 1937 Order-in-Council would be treated as withdrawn, could not become operative. As the notice given by the Government of Burma thus remained in operation, the 1937 Order-in-Council, therefore, terminated on the lapse of twelve months from the date of the notice, viz. on the 1st of April 1942. Further, as neither Section 138 of the Government of Burma Act, 1935, nor the proviso thereto, provided for the issue of another Order-in-Council, no Agreement between the Government of India and Burma regarding immigration of Indians into Burma could now be enforced by an Order-in-Council.

The Agreement had attracted serious criticism from the public. There was a storm of protest, specially against the literacy test and the marriage or co-habitation clause. Mahatma Gandhi described it as "an unhappy Agreement". "Indian interests had been badly let down", remarked Sir Mahomed Usman, ex-Governor of Madras. A section of public opinion even questioned the competence of the Government of Burma to restrict the immigration of Indians in this high-handed manner. It was asserted that in view of the assurances given by the Government spokesman in the Parliament in the course of discussions on the Government of Burma Bill and the Draft Instrument of Instruction, the Government of Burma had no right to adopt a restrictive attitude towards Indian immigrants.

As the opposition to the Agreement grew stronger the Government of India had to reconsider the whole situation and to conclude that the Agreement required modification in certain respects. The Government of Burma and His Majesty's Government were apprised of the public opinion in India. On the intervention of the Secretary of State for India, the Government of Burma agreed to open negotiations. However, as owing to war new problems had to be tackled, the negotiations could not commence. Shortly afterwards, Burma had to be evacuated, and some five lakh Indians left Burma in 1941-42.

When Burma was being reoccupied by the British Forces, the Government of Burma approached the Government of India with certain proposals to form the basis for further discussion with a view

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to arriving at a fresh Agreement regarding the immigration into Burma of Indians after the reoccupation of that country by the Allies. Early in 1945 Burma was reoccupied and in June 1945, as a result of a conference at New-Delhi between the Government of India and the Government of Burma, it was decided that identity certificates may be issued so that bonafide evacuees might be enabled to return to their homes in Burma without delay. A large number of Indian evacuees thus returned to Burma. Even unskilled labourers, whose emigration to Burma had been prohibited under Section 30-A (1) of the Indian Emigration Act in July 1941, were allowed to return to Burma by a subsequent notification in October, 1945. The relaxation was in operation during 1946 and was going against the interests of Indian labour in Burma in general. A decision in August 1946 was accordingly taken that unskilled labour (evacuee) emigration must be restricted and in October the same year it was further decided that emigration of skilled labour would be permitted only if the contract of employment guaranteed a minimum, stipulated, basic wage plus cost of living allowance as the Burma Government might sanction in the country from time to time.¹

From 1946 to January 4, 1948, when Burma became a Sovereign Republic, no new Indo-Burma immigration Agreement could be made owing to the rising Burmese nationalism on the one hand and the deteriorating communal situation in India on the other. On January 4, 1948 Indians became foreigners in the eyes of law and their entry into Burma came to be regulated under provisions of the Registration of Foreigners Act (Burma Act VII, 1940) and Foreigners Act (Indian Act III, 1864 subsequently adopted). New pass-port regulations came into effect from July 1, 1950. Only persons holding valid national pass-ports visaed by a competent representative of the Government of Burma could enter Burma from July 1, 1950. Immigration permit and evacuee identity certificates issued to Indian Citizens became invalid for entry into Burma from January 1, 1951. Since then there had been little change in the immigration regulations pertaining to Indians, and the present requirements² for entry into Burma are a valid pass-port and a visa (which is valid for one to six months) for direct transit through Burma; an international health certificate which must show vaccination against small pox and cholera inoculation; an entry registration within 24 hours for passengers staying in the country

1. Annual Report of the Agent of the Government of India in Burma for the year 1946, paras 51 and 52.

2. Mackyay's Guide to the Far East and Middle East, Chapter XII, pages 163-69.

for more than ten days at the Foreigners' Registration Office Rangoon; and an exit permit by the police obtainable from the same office for surrender at the port of embarkation,

We thus note four stages in the Immigration policy of Burma : In the first stage which remained till Burma's separation in 1937 there was free and unrestricted entry of Indians. In the second stage which began when Burma as a separate country secured legal right to control immigration, its Government set about devising a policy guided by a desire to restrict immigration of Indians. It was then that we had the Immigration Agreement of 1941 between the two Governments which, however, could not be implemented owing to the outbreak of war in the East. In the third stage which followed after the recovery of Burma by the British from Japanese occupation, there was reversion to the policy of encouraging free entry in view of the demand of Indian labour consequent on their large scale evacuation during the war. And in the last stage it was again a policy of restriction and control. However, this restriction is not due to any prejudice, racial or otherwise, against the Indian community as such, and is merely governed by the fact that Burma, being a small country, can absorb or hold only a limited number of foreigners without detriment to its own interest. Moreover, she has a constitutional right to determine the composition of her population.

seasonable and cannot fail to help the satyagrahis of India. For though the pamphlet is written in a manner attractive for the West, the substance is the same for both the Western and the Eastern satyagrahi. A cheap edition of the pamphlet is therefore being printed locally for the benefit of Indian readers in the hope that many will make use of it and profit by it. A special responsibility rests upon the shoulders of Indian satyagrahis, for Mr. Gregg has based the pamphlet on his observation of the working of satyagraha in India. However admirable this guide of Mr. Gregg's may appear as a well-arranged code, it must fail in its purpose if the Indian experiment fails.

M. K. GANDHI

A Discipline for Non-violence

28. STATEMENT TO THE PRESS

WARDRA,
August 24, 1941

Being vitally connected with immigration problems and having been in South Africa for twenty years, I am naturally interested in the Indo-Burma Immigration Agreement. It has caused me deep pain. I have collected as much literature as I could on the subject. I have studied as much of it as was necessary to enable me to form an opinion and as was possible during the very limited time at my disposal.

My study has led me to the conclusion that it is an unhappy agreement.

It is panicky and penal. In the papers I find no reason to warrant any panic nor do I find any warrant for the severe punishment meted out to the Indians resident in Burma.

The burden of proving the right to remain in Burma has in every case been thrown on the Indian resident. One would have thought that the least that should have been done was to have automatically recognized as fully domiciled every Indian found in Burma on the date of promulgation of the Agreement.

I am acquainted with the immigration laws of South Africa and other countries. In every case the restrictions have been imposed by legislation and, after fairly full opportunity being given for the expression of public opinion, legislation has been preceded by considerable lapse of time for the ventilation of views on the mere proposal for legislation.

In this case secrecy and mystery have surrounded the Agreement which has been sprung upon an unsuspecting public.

The whole thing appears still more hideous when we recall the fact that only a few years ago Burma was an integral part of India.

Does the partition make India a leper country the presence of whose inhabitants must carry heavy penalties including the tickets of leave such as criminals carry? They do not cease to be less offensive because they bear the inoffensive name of passports and permits. I should be prepared to understand the validity of the permit and passport system when the necessity is clearly established. I must refuse to believe that this Agreement is in response to a vital cry from the great Burmese nation with which the people of India never had any quarrel and with which India had enjoyed cultural contact long before the advent of the foreigner from the West.

We can never be in Burma or the Burmans in India foreigners in the same sense as people from the West. There has been free commerce and emigration to Burma for hundreds of years.

This drastic Agreement is an undeserved slur both on India and Burma.

This Agreement is a brutal reminder that both India and Burma are under the British heel and that the Government of India Act and the Government of Burma Act gave no real freedom to the respective peoples. They give no scope for full growth to us. I fear that this statement of mine will not please the Premier of Burma who may think that the Agreement is a popular Act. He will soon discover the error, if he has not already, that he has not served his people but that he has played himself into the hands of those who would want to exploit Burma to the exclusion of any rivals. I must admit that Indians have been partners with the Westerners in the exploitation of Burma, but with this fundamental difference, that the Westerner went to Burma with his gun, while the Indian went on sufferance as he has always done in every part of the world.

We cannot exist in Burma for one single day without Burmese goodwill.

I would plead with the Burmese Ministers and the Burmese people that they should wait for the regulation of immigration till both of us are free and independent for such regulation. I flatter myself with the belief that when that happy day arrives, as it must, such matters will regulate themselves, for we shall never want to impose our nationals on one another.

But I have strayed. My purpose just now is to show that this Agreement must be undone inasmuch as it breaks every canon of

international propriety. It becomes less defensible in that an Indian¹ instead of an Englishman was sent to negotiate the Agreement. It is an old and familiar trick, that of putting up an Indian to perform a disagreeable task. Nor is it relevant that the Agreement had the approval of local Indian opinion. For the Agreement is an insult to the whole nation, not merely to the particular individuals whose material interests lie in Burma. But even if it was relevant, there should be evidence to show the volume and character of that opinion.

When I come to examine the Baxter Report², which became the prelude to the Agreement, it contains nothing to justify the Agreement. This was the reference made to Mr. Baxter:

The enquiry will be directed to ascertaining:

- 1 the volume of Indian immigration;
- 2 to what extent it is seasonal and temporary and to what extent permanent;
- 3 in what occupations Indians are mainly employed and the extent to which they are unemployed or underemployed;
- 4 whether in such employment Indians either have displaced Burmans or could be replaced by Burmans, due regard being paid to both the previous history of such occupations and their economic requirements; and
- 5 whether in the light of the statistics obtained and other relevant factors any system of equating the supply of Indian unskilled labour to Burmans' requirements is needed.

Thus it was purely a fact-finding commission. Here is the fact found by the Commission:

There is no evidence of any kind to suggest that Indians have displaced Burmans from employment which they had previously obtained.

Indian labour in the past has been supplementary rather than alternative to Burmese labour.

That surely does not justify the restrictions imposed by the Agreement on the movement of Indians in Burma. The recommendations made in the Report appear to me to be in excess of the reference and therefore of no effect. Add to this the fact that the opinion of the assessors finds no mention in the Report. It may not have weighed with the Commissioner but surely it should have found mention in the Report.

¹ Girija Shankar Bajpai; *vide* "Letter to Amrit Kaur", 27-7-1941

² James Baxter, Financial Adviser, with two assessors, U Tin-Tut and Ratilal Desai, was appointed by the Government of Burma to examine the question of Indian immigration into Burma. The report was submitted to the Government of Burma in October 1940.

Now let me for a moment examine the pertinent sections of the Act. Here they are:

Section 44(3) of the Government of Burma Act, 1935, says:

The provisions of Sub-section (2) of this Section shall apply in relation to British subjects domiciled in India and subjects of any Indian State as they apply in relation to British subjects domiciled in the United Kingdom, but with the substitution in the provision to the said Sub-section for references to the United Kingdom or references to British India, or as the case may be, that Indian State:

Provided that nothing in this Sub-section shall affect any restriction lawfully imposed on the right of entry into Burma of persons who are British subjects domiciled in India or subjects of any Indian State, or any restriction lawfully imposed as a condition of allowing any such persons to enter Burma.

Section 138 of the same Act:

His Majesty may by Order-in-Council direct that, during such period as may be specified in the Order, immigration into Burma from India shall be subject to such restrictions as may be specified in the Order (being such restrictions as may have been mutually agreed before the commencement of this Act between the Governor of Burma-in-Council and the Governor-General of India-in-Council and approved by the Secretary of State, or in default of agreement as may have been prescribed by the Secretary of State), and no other restrictions:

Provided that any such Order may be varied by a subsequent Order-in-Council in such manner as appears to His Majesty necessary to give effect to any agreement in that behalf made after the commencement of this Act by the Governor with the Governor-General of India or the Governor-General of India-in-Council.

The first read as a whole does not appear to contemplate any interference with the present Indian population. The second is decisive.

According to this Section restriction by agreement cannot be imposed on the present Indian settlers.

I have no doubt whatsoever that the Secretary of State for India should not pass the Order-in-Council and should withhold his assent to the Agreement. Any restriction should be a matter for legislation by the Burmese Assembly in consultation with and with the co-operation of the Government of India.

It is pertinent to the examination of the Agreement to know what declarations were made by His Majesty's Ministers when the Act was passed. Here is the assurance of Sir Thomas Inskip, the then Minister for Co-ordination and Defence, on the subject:

Nobody wants to discriminate between British subjects domiciled in India

or Indian States' subjects when they go to Burma, any more than one wants to discriminate between the British when they go to British India.

Mr. Butler (then Under-Secretary of State for India) also stated in the House of Commons:

In connection with unskilled Indian labour, the Governor of Burma is asked to confer with the Governor-General with a view to regulating the immigration of unskilled labour into Burma. The reason we cannot make a simple rule is that we have to make this differentiation in regard to unskilled labour, while at the same time we do not want to stop the free entry of Indians in general.

Such declarations may have no validity in the interpretation of the Act in a court of law. But politically considered they have or should have the effect of promissory notes.

The Agreement is a clear breach of the declarations quoted by me. I am glad that responsible Indian public opinion is being expressed in unmistakable terms in condemnation of the Agreement.

The Bombay Chronicle, 25-8-1941

29. LETTER TO VIJAYA M. PANCHOLI

SEVAGRAM, via WARDHA,

August 24, 1941

CHI. VIJAYA.

I got your letter written from Junagadh. If you had any imagination you would have given a description of the town, what you saw there, what you learnt, and so on. Does not Nanabhai ask you whether you lost in Sevagram all the intelligence you had cultivated? My health is fine, as also Ba's. Did I write to you that Prabhavati and Kusum are here at present? Rajkumari is still in Simla and as she is having fever and cough she is not coming here in the immediate future.

Blessings to both or to three of you(?) from

BAPU

From a photostat of the Gujarati: G.N. 7140. Also C.W. 4632. Courtesy: Vijaya M. Pancholi