

CHAPTER III.

BIRTHPLACE.

21. The series of tables in this chapter is designed to show the extent to which the Indian population (including Nepalese) was composed of immigrants at the several census dates. Column 3 is entitled "Born in India". Actually the 1931 figures represent the number of Indians born outside Burma. This is a distinction without much difference as Indians born outside Burma may for all practical purposes be assumed to have been born in India.

All Burma.

Census.	Total Indian population.	Born in India.	Percentage born in India.
(1)	(2)	(3)	(4)
1881	243,123	184,748	76.0
1891	420,830	282,947	67.2
1901	568,263	419,863	73.9
1911	743,288	499,696	67.2
1921	887,077	586,242	66.1
1931	1,017,825	630,090	61.9

It will be noticed that there were considerable declines in the Indian percentages on the last three census dates.

Lower Burma.

Census.	Total Indians in Lower Burma.	Born in India.	Percentage born in India.
(1)	(2)	(3)	(4)
1881	243,123	184,748	76.0
1891	355,454	237,965	66.9
1901	497,981	358,125	71.9
1911	651,459	424,743	65.2
1921	763,043	490,521	64.3
1931	849,481	507,806	59.8

The percentages for Lower Burma are appreciably influenced by the high proportion of the Indian population in the Arakan Division which was born in Burma. At the 1931 census nearly 77 per cent of the Indians in Arakan were born in the country. In Lower Burma excluding Arakan, the percentage of the Indian population born in Burma was low amounting to only 27.6 per cent. Separate figures for Arakan and Lower Burma excluding Arakan, are given below. It will again be remarked that the percentages register declines, indicating that the proportion of the Indian population which is immigrant is diminishing.

Arakan Division.

Census. (1)	Total Indians in Arakan. (2)	Born in India. (3)	Percentage born in India. (4)
1881	113,557	71,104	62·6
1891	137,922	62,884	45·6
1901	173,884	76,445	44·0
1911	197,990	46,591	23·5
1921	206,990	51,825	25·0
1931	217,801	50,565	23·2

Lower Burma excluding Arakan Division.

Census. (1)	Total Indians. (2)	Born in India. (3)	Percentage born in India. (4)
1881	129,566	113,644	87·7
1891	217,532	175,081	80·5
1901	324,097	281,680	86·9
1911	453,469	378,152	83·3
1921	556,053	438,696	78·9
1931	631,580	457,241	72·4

In Upper Burma, the Shan States and Karenni, there were in 1931 168,444 Indians of whom 122,284 were born in India, that is, 72·6 per cent, or practically the same percentage as in Lower Burma excluding Arakan. The growth of the Indian population and the proportions of it born in India in the above areas are shown below :—

Indians in Upper Burma, Shan States and Karenni.

Census. (1)	Total Indians. (2)	Born in India. (3)	Percentage born in India. (4)
1901	70,282	61,738	87·8
1911	91,829	74,953	81·6
1921	124,034	95,721	77·2
1931	168,444	122,284	72·6

The Indian population in Upper Burma, the Shan States and Karenni increased by 44,410 between 1921 and 1931, that is, by 35·8 per cent. In the Shan States it increased by 94·8 per cent from 16,733 to 32,604 persons, some 41 per cent of whom were Gurkhas. There was an increase of 78 per cent in the Gurkha population in Burma between 1921 and 1931 the numbers having risen from 22,251 to 39,532. One-third were found in the Shan States ; one-third in Myitkyina and Katha ; the remainder were widely scattered, the only other district containing a large number being Mandalay where there were 3,377 Gurkhas.

22. The birthplaces of Indians born in India were not tabulated by districts at the 1931 census. For information on this point one must go back to the census of 1921 where it appears that four districts in Bengal, seven in Madras, three in Bihar and Orissa and four in the United Provinces supplied 53 per cent of all Indian immigrants and probably, according to the census report, a considerable part of those for whom the district of birth could not be identified. The districts from which the largest numbers of immigrants came are shown below :—

1921 Census : Indian Immigrants by birth place.

Districts in India.	Numbers in Thousands.
Chittagong (Bengal)	88
Ganjam (Madras)	49
Vizagapatam (Madras)	36
Godaveri (Madras)	26
Fyzabad (United Provinces)	18
Tanjore (Madras)	14
Ramnad (Madras)	13
Sultanpur (United Provinces)	12
Calcutta (Bengal)	11

Telugus came chiefly from the Ganjam, Godaveri and Vizagapatam Districts ; Tamils from Ramnad and Tanjore ; two-thirds of the Oriyas were from Ganjam ; four-fifths of the Bengalis and Chittagonians from Chittagong and the Hindustanis from Sultanpur and Fyzabad. The figures for Calcutta are probably too high, owing to the port of departure being recorded instead of the districts of origin. Tamil and other immigrants from the extreme south of India usually embark at Madras ; Telugus and most of the Oriyas at the Coromandal ports ; Bengalis, Hindustanis, Gurkhas, Punjabis and other northern Indian races at Calcutta. Chittagonians arriving by sea mostly embark at Chittagong but some embark at Cox's Bazaar.

23. Appendices 3 and 4 show the numbers of Indians "born in" and "born outside" Burma by race and for selected areas at the time of the 1931 census, when the "born out" constituted about 62 per cent and the "born in" about 38 per cent of the total Indian population. But the preponderance of the "born outs" was in fact greater than these percentages indicate because of the influence on them of figures for Akyab District where 79 per cent of the Indian population was born in Burma, evidence of the presence in that district of a large and established Chittagonian agricultural community. If Arakan is excluded, it will be found that 72·4 per cent of the Indian population enumerated in Lower Burma in 1931 was born outside Burma. The highest proportion of all was found in Rangoon where 84·3 per cent of the Indian inhabitants were born outside Burma. The following table shows the numbers of Indians born in and born outside Burma as recorded at the 1931 census for the more important of the Indian races. It illustrates in summary form the degree to which the Indian population was predominantly immigrant.

*Indians "Born in" and "Born outside" Burma by race
to nearest whole thousand.*

Races.	Total.	Born in.	Born out.
Chittagonians ...	252	169	83
Tamils ...	150	66	84
Hindustanis ...	175	50	125
Telugus ...	160	28	132
Bengalis ...	66	25	40
Oriyas ...	62	5	58
Others ...	153	45	108
All races ...	1,018	388	630

CHAPTER IV.

AGE AND SEX.

24. It is necessary to consider the age and sex distributions of the Indian population since these are among the factors which will determine the future racial composition of the population of Burma. The series of tables and diagrams in *Appendices 10 to 12* give a sufficiently complete picture for the purposes of this enquiry, of the age and sex distributions of the indigenous and Indian populations at the time of the 1931 census. It will be seen that the distributions for the indigenous races were those of a balanced and stable community whereas the exact contrary was the case as regards the Indian population. Except in Akyab District where the Indian community is predominantly settled, the age and sex distributions of the Indian population were in a state of acute disequilibrium due to the presence of a large excess of immigrant males especially in the age groups of 15 years and over. The abnormal age distribution of Indian males at the 1931 census is shown in the following table :—

Age distribution per 10,000 Males.

Age group.	Indigenous Races.	Indians.	
		Burma less Akyab District.	Rangoon.
0—5	1,397	565	329
5—10	1,282	535	362
10—15	1,186	576	448
15—20	916	1,023	1,092
20—30	1,724	3,051	3,410
30—40	1,380	2,389	2,638
40 and over	2,115	1,861	1,721
Total ...	10,000	10,000	10,000

CHAPTER VII.

INDIANS IN ARAKAN.

66. Indian immigration into Arakan shows special characteristics, due fundamentally to the existence of a land frontier with India across which movement between Chittagong in the province of Bengal and the Akyab district in Arakan is, because of the natural configuration of this region, easy, quick and cheap. About 97 per cent of the Indian population in Arakan in 1931 was concentrated in Akyab District. The following figures give a summary view of the main facts as they were at the time of the 1931 Census.

Arakan Division.

Total Population	...	1,008,538
Indian Population	...	217,801

The Indian population was distributed as under :—

Akyab District	...	210,990
Arakan Hill Tracts	...	500
Kyaukpyu District	...	4,321
Sandoway District	...	1,990
Total	...	217,801

Akyab District.

Total Population	...	637,580
Indian Population	...	210,990

The numbers of Indians in Akyab District born in and outside Burma respectively were as follows :—

—			Born in Burma.	Born outside Burma.
Male	...	...	86,000	38,000
Female	...	...	81,000	6,000
Total	...	...	167,000	44,000

Females constituted 48·5 per cent of the Indians born in and 13·6 per cent of the Indians born outside Burma. The great deficiency of females in the "born out" population indicates the highly immigrant and unsettled nature of that part of the Indian population while on the other hand the approximation to sex equilibrium in the "born in" population is indicative of its settled character.

67. The main racial constituents of the Indian population in Akyab District were as follows :—

—	Total.			Born in.			Born out.		
	Male.	Female.	Total.	Male.	Female.	Total.	Male.	Female.	Total.
Chittagonians	104,769	81,558	186,327	80,680	76,153	156,833	24,089	5,405	29,494
Bengalis (other than Chittagonians).	10,998	4,588	15,586	5,320	4,276	9,596	5,678	312	5,990
Hindustanis	2,955	632	3,587	311	366	677	2,644	266	2,910
Oriyas	3,809	10	3,819	18	4	22	3,791	6	3,797

The Oriyas were practically all born outside Burma and were practically all male. Only 677 of the 3,587 Hindustanis were born in Burma and 2,955 of the total were males. Of the Bengalis other than Chittagonians, 61 per cent were born in Burma. Of the "born in", the sex ratio was about four females to five males. Of the 5,990 Bengalis born outside Burma only 312 were females. Over 88 per cent of all the Indians in Akyab District were of Chittagonian origin and 84 per cent of all Chittagonians in Akyab were recorded as having been born in Burma. The sex distribution of Chittagonians born in Burma was in the proportion of 94 to 95 females to every 100 males while that for Chittagonians born outside Burma was in the ratio of 22 to 23 females to every 100 males.

68. There were 71,306 male Indian earners in Arakan at the 1931 Census, 69,461 of whom were occupied as under :—

Occupation.	Number.
Agriculture	42,947
Clerical Workers	744
Craftsmen	3,347
Unskilled and Semi-skilled labourers ...	16,429
Traders and Shop assistants ...	5,994
Total ...	69,461

Of the male earners engaged in agriculture, 9,442 were cultivating landowners, 12,848 were cultivating tenants and 19,436 were agricultural labourers. It is of interest to note that only 5,570 of the agricultural labourers were born outside Burma and to remember that the census was taken on February 24th, 1931, that is, when the paddy had all been harvested and most of the immigrant Chittagonian reapers had either returned to their homes or had gone in search of work in the rice mills, in the port of Akyab, as boatmen or elsewhere. No information on which any reliance can be placed seems to exist regarding the number of Chittagonians who come to Akyab every year to reap the paddy crop. In 1930-31 the then Director of Public Health reckoned that in a normal year not less than 40,000 coolies entered the Akyab District from Chittagong. These Chittagonian immigrants would not all be agricultural labourers. Some would be boatmen and others engaged in a miscellany of occupations. But it is known that the bulk of the Chittagonian immigrants come for the harvest and it is hard to believe that anything like an annual influx of 40,000 Chittagonians could find work as harvesters, or indeed as anything else, in Arakan which at the 1931 Census returned a total number of male earners of all races and in all occupations of only 251,945. The Commissioner of the Arakan Division in 1934 thought the number of Chittagonian immigrant agricultural labourers in Arakan was probably about 20,000 during the harvest season.

Unlike Indian immigrants in general in other parts of Burma who commonly spend periods of three years or thereabouts in the country without returning home, the bulk of the Chittagonian immigrants in Arakan who come to reap the paddy crop go back to Chittagong when the harvesting operations are over. The nearness of their homes and the small amount of money required for the journey make this possible.

69. Eight Arakanese witnesses, seven of whom were members of the Legislature, maintained that Chittagonian penetration in Arakan is steadily continuing and is resented not only by the Arakanese proper but also by the settled Chittagonians. The witnesses claimed that these classes could not compete with the cheap labour supplied by the new entrants whose standard of living was lower and who were an extremely hard-working folk. The view was expressed that it was inadvisable to let Chittagonian immigration go unchecked as it contained the seed of future communal troubles. All the witnesses agreed that immigration from Chittagong should be restricted. It appeared to be generally believed that the settled population in Arakan could reap the paddy crop to a much greater extent than is now the case if cheap Chittagonian labour were less easy to find. It was thought that the restriction of immigration would result in an increase in wages which in its turn would bring forth a supply of local labour. The witnesses seemed to have no doubt that a considerable amount of labour already existed which was not prepared to come on the market for the wages paid to the Chittagonian immigrants but would come forward if the wages offered were higher. It was admitted that although it is difficult to assess the extent to which immigrant labour is necessary to harvest the paddy crop, some immigrant labour is required. The witnesses were of opinion that it should be possible to devise an administratively practicable scheme by which the numbers of Chittagonian immigrants could be progressively diminished. In any case they were all agreed that restriction was desirable.

CHAPTER VIII.

LABOUR EMPLOYED IN THE PORT OF RANGOON.

70. Circumstances in recent years have tended to focus public attention upon the composition of the labour force employed in the port of Rangoon. The Royal Commission on Labour in India, 1929-30, called attention in its Report to various unsatisfactory features of the conditions of employment in the port and decided that "a policy of decasualisation was urgently needed." The Coringhi riots, 1930, expressed the growing resentment of Burmese workers at their inability to secure employment at the docks in competition with immigrant Indians, and the movements since Separation from India to open up additional avenues of employment for Burmans have brought into prominence the anomaly that in the capital city of the country, which as a port handles approximately nine-tenths of the total trade, the greater part of the work should be carried out by Indians.

In the present enquiry, use has been made of material collected in 1934 by Mr. Searle, supplemented by valuable memoranda submitted by the Chambers of Commerce and by private individuals as well as the evidence obtained orally from a large number of witnesses with special knowledge and experience of dock labour in Rangoon. Reference may also be made to the Interim Report of the Rangoon Industrial Inquiry Committee published on the 10th of August, 1940, which gave its attention first of all to the same problem of dock labour.

71. This enquiry has been no more successful than previous attempts at arriving at any precise figure of the total number of workers employed in the port of Rangoon, nor has it been possible to classify the workers accurately

THE INDO-BURMA IMMIGRATION AGREEMENT AND THE JOINT REPORT OF THE INDO-CEYLON DELEGATION.

The Honourable Mr. M. S. Aney (Leader of the House): Sir, I lay on the table a copy each of:

(i) the Indo-Burma Immigration Agreement; and

JOINT STATEMENT BY THE GOVERNMENT OF INDIA AND THE GOVERNMENT OF BURMA.

In two Reports issued at the end of 1938 and early in 1939, the Riot Inquiry Committee, under the Chairmanship of the Hon'ble Mr. Justice Braund, drew particular attention to the existence of a serious apprehension in the minds of many Burmans that Indian immigration was largely responsible for unemployment or under-employment among the indigenous population of Burma. The Committee recommended that, in the interests of both countries, some public examination of the grounds for the existing apprehension in Burman minds should be undertaken urgently.

2. Accordingly the Government of Burma in a Resolution, dated the 15th July 1939, after consultation with the Government of India, appointed the Hon'ble Mr. James Baxter to examine the question of Indian immigration into Burma, with the assistance of two Assessors, U Tin Tut, I.C.S., and Mr. Ratilal Desai, M.A. Mr. Baxter presented his Report to the Government of Burma in October 1940. His recommendations were carefully examined by both Governments and it was agreed without commitment on either side that these recommendations formed a suitable basis for negotiation. The Government of Burma, therefore, invited the Government of India to send a delegation to Burma, and the invitation was gladly accepted.

3. As a result of the conversations the two Governments have agreed upon certain measures which in their view are calculated both to remove from Burman minds any reasonable apprehension that Burma may be subjected to undue economic competition by reason of Indian immigration and at the same time to secure for the Indian community settled and resident in Burma recognition of their legitimate rights.

4. The text of the agreement is attached to this statement. The agreement is based upon two main principles, firstly, that Burma has, subject to the provisions of the Government of Burma Act, 1935, the right to determine the composition of her own population, and secondly, that Indians who have wholly identified themselves with the interests of Burma should enjoy the same rights as members of the permanent population.

5. It is obvious that in the peculiar circumstances of the two countries, their geographical proximity, their cultural and economic ties and their long political association, the problems arising from regulation of immigration are of special complexity and delicacy. Both Governments have approached these problems in a spirit of cordiality and mutual understanding and are agreed that in giving administrative effect to the measures now proposed the closest co-operation will be required in the same spirit of mutual adjustment and identity of purpose which characterised the negotiations. It is their earnest desire that the agreement now achieved will serve to remove any causes for misapprehension which may have arisen either between the two countries or between the two communities in Burma and may furnish a lasting foundation for the development in the future of the firmest ties of friendship and goodwill.

AGREEMENT.

1. In this Agreement, unless there is anything repugnant in the subject or context,—
Definitions.

- (a) "dependant" means a person who is wholly and directly dependent for maintenance and support on a person who holds or is about to be granted a permit under the provisions of this Agreement and is related to such person as being—
- (i) his wife, or
 - (ii) his or his wife's parent, or
 - (iii) his or his wife's daughter or grand-daughter who is either unmarried or a widow or is divorced, or
 - (iv) his or his wife's son or grandson who is under the age of 18 years or, being over that age, is permanently disabled and incapable of supporting himself ;
- (b) "Indian" means a British subject domiciled in India or the subject of an Indian State ;
- (c) "work", "skilled work" and "unskilled work" shall have the meanings assigned to them in Section 2 of the Indian Emigration Act, 1922.

2. The Government of Burma agree that the notice given by them to terminate the operation of the Government of Burma (Immigration) Order, 1937, with effect from April 1st, 1942 will be treated as withdrawn and that notice to terminate the same will not be given before October 1st, 1945.

Restriction in regard to the termination of the Government of Burma (Immigration) Order.

3. Indian immigration into Burma will, with effect from the 1st October 1941, be subject to regulations and restrictions in the manner hereinafter explained.

Date of Operation of Measure of Control.

4. No Indian may enter Burma without a valid Indian passport containing his photograph and other particulars sufficient to establish his identity.

Passports.

5. No Indian may enter Burma without a passport *visa* issued by or on behalf of the Government of Burma or an immigration permit issued by or under the authority of the Government of Burma.

Passport *Visas* and Immigration Permits.

6. (1) The Government of India, or officers employed by them, may issue, on behalf of the Government of Burma and subject to terms and conditions imposed by the Government of Burma, *visas* on passports granted to Indians desiring to enter Burma as visitors or as students in educational institutions.

Passport *Visas*.

(2) A *visa* on an Indian visitor's passport will be valid for three months but this period may be extended by or under the authority of the Government of Burma up to a total stay in Burma of twelve months.

(3) A fee of Rs. 20 will be charged for visitors' *visas* but no fee will be charged for extensions.

(4) A student's *visa* will be valid for a stated period not exceeding five years.

(5) No fee will be charged for a student's *visa*.

7. (1) Save as otherwise provided by the terms of this Agreement no Indians may enter Burma without one of the following classes of permits :—
Immigration Permits.

- (i) " A " permits, which will entitle the holder to remain in Burma for an indefinite period and to accept employment therein. No bar will be placed on the acquisition of a Burma domicile by holders of " A " permits ;
- (ii) " B " permits, which will entitle the holder to reside in Burma for a specified period and to accept employment therein. " B " permits, being for limited periods, will not allow the holders to acquire a Burma domicile. They will be issued for a maximum period of three years and may be extended at the discretion of the Government of Burma for further periods which, with the original period, may not exceed a total of nine years. The holder of a " B " permit may apply for an " A " permit on the same terms as an original applicant for an " A " permit, provided that any other terms and conditions so prescribed shall not be inconsistent with the objects of this Agreement.

(2) The issue of immigration permits will be subject to the terms and conditions set out in this Agreement and also to such other terms and conditions as the Government of Burma may prescribe after consulting the Government of India. The acceptance of these terms and conditions shall be a condition for the entry of the immigrants into Burma.

8. (1) The number of " A " permits to be issued will be at the discretion of the Government of Burma and they will be issued only to persons whom the Government of Burma consider to be of sufficient financial standing or possessed of an assured income in Burma of sufficient amount and to be persons who are likely to be suitable for permanent residence in Burma.
Restrictions on the numbers of Permits and Visas.

(2) " B " permits will be issued within such limits as may be prescribed in any year or other period by the Government of Burma after considering the advice of an Immigration Board.

(3) The Government of Burma reserve power to impose limits on the number of students and visitors' visas to be issued by the Government of India on their behalf.

9. (1) Applicants for " A " or " B " permits will be required to declare particulars of dependants whom they intend to bring to Burma either with them or at some future date.
Dependants of Immigrants with " A " Permits or " B " Permits.

(2) Should the applicant receive his permit, dependants declared under sub-clause (1) will be granted on application by the former the same class of permit as the applicant.
Declared Dependents.

(3) Other dependants of the applicant may also, on application by him and at the discretion of the Government of Burma, be granted the same class of permit.
Undeclared Dependents.

(4) The period of validity of a permit granted to a dependant will not extend beyond the period of validity of the permit held by the person on whom they are dependent.
Limit validity of Dependents' Permits.

10. The two Governments will co-operate in devising and effecting measures to deal with and to control immigration across the land frontier between the two countries. It is understood that this will require consultation by the Government of India with the Provincial Governments concerned.
Land Frontier Migration.

11. The Government of Burma will institute at an early date an Immigration Board to examine the relevant data and to tender advice to the Government of Burma generally on matters of policy relating to Indian immigration into Burma and in particular on the fixing of quotas for the grant of permits. The Board will be of mixed racial composition and Burmans, Indians and Europeans will be represented on it.

12. The penalties imposable under Burma Legislation shall not exceed imprisonment of six months or a fine of Rs. 1,000, or both, on persons convicted before a Magistrate of an infringement of the immigration rules or of a breach of the conditions of a permit, or of making a false statement in order to obtain a permit or other privilege relating to entry to or residence in Burma or to secure registration as a privileged immigrant.

13. The Government of Burma may impose a literacy test on applicants for " A " permits :

Provided that such a test shall not be made in Burmese or in any other language indigenous to Burma.

14. Marriage or cohabitation with a woman belonging to the indigenous races of Burma established to the satisfaction of the Government of Burma may be made a condition for the cancellation of a permit or *visa* granted to a male Indian immigrant :

Provided that exceptions will be made of marriages entered into with the sanction of the Government of Burma and that such sanction will be given if the immigrant makes, before the proposed marriage, provision which is sufficient in the opinion of the Government of Burma for the permanent maintenance of the woman he desires to marry.

15. The following scale of fees will be charged for immigration permits :—

" A " permits.—Rs. 500.

" B " permits.—For unskilled labourers, an entrance fee or a *visa* fee, of Rs. 12 plus a residential fee of Rs. 5 for every year or part of a year for which the permit will be valid. For other " B " permits, an entrance fee or a *visa* fee of Rs. 30 and a residential fee of Rs. 20 for every year or part of a year for which the permit is valid. Arrangements will be made to enable immigrants to pay the residential fee in yearly instalments if they so desire.

Dependants.—Half the rate per dependant of the fees payable by the immigrant himself.

16. The Government of Burma accept the principle that the incidence of entrance or *visa* fees and of the stamp duty charged in respect of " B " permit holders should fall on the employer and undertake to collect such fees from the employer or prospective employer in cases where a permit is issued at his instance.

17. Before entry into Burma a deposit of Rs. 20 will be made to the Government of Burma by persons who are granted " B " permits and by their dependants to cover the cost of repatriating them. Repatriation will be at the choice of the repatriated Indian, to the ports of (a) Calcutta, (b) Chittagong, (c) Madras (d) Vizagapatam and (e) Gopalpur. The deposit will be refunded if the person concerned leaves Burma of his own accord or obtains an " A " permit.

18. Applications for all classes of permits under the immigration control arrangements shall be subject to stamp duty under the ordinary law of Burma.

Stamp Duty.

PROVISIONS RELATING TO INDIANS ALREADY IN BURMA.

19. The Government of Burma recognise that Indians who are born and bred in Burma, have made Burma their permanent home and regard their future and the future of their families as bound up with its interests are entitled to be regarded as having established a claim if they wish to make it, to a Burma domicile and therefore to the benefit of Section 144 of the Government of Burma Act, 1935.

Indians who are born and bred in Burma and who have made Burma their permanent home.

20. No restriction will be placed on the acquisition of a Burma domicile under due process of law by Indians lawfully residing in Burma excepting those who by the terms and conditions of a permit which entitles them to reside in Burma are not given the right of residence beyond a specified period.

Acquisition of Burma domicile by Indians in Burma.

21. Indians who prove a total residence in Burma of seven calendar years between the 15th July 1932 and the 15th July 1941 will be termed "privileged immigrants."

Privileged Immigrants.

Such privileged immigrants shall have the right to further residence and to the acceptance of further employment in Burma without limit of time but they will lose their status as privileged immigrants should they be absent from Burma for a continuous period exceeding one year after the 15th July 1941.

A privileged immigrant, so long as he retains his status, will be given the right of free re-entry into Burma on his return after an absence of less than twelve months.

22. The following classes of dependants of a privileged immigrant will be given "A" permits free of charge for entry into Burma :—

Dependants of Privileged Immigrants.

- (i) One wife if there is no other wife residing in Burma.
- (ii) His sons below the age of 18 by the wife who is granted an "A" permit under this clause or by a wife residing with him in Burma.
- (iii) His unmarried daughters by the wife who is granted an "A" permit under this clause or by a wife residing with him in Burma.

23. Other Indians who are in Burma on the 15th July 1941 will be entitled to remain in Burma indefinitely and to accept work for an indefinite period and will retain their privileges under Section 44 of the Government of Burma Act, 1935.

Indians who are already in Burma but have not qualified as Privileged Immigrants.

Should an Indian of this class leave Burma for any period, his claim to re-entry will be dealt with in the same manner as an application for entry by a new Indian immigrant and if re-admitted into Burma, such person will be treated as a new Indian immigrant with the exception that he will have a preferential claim to a "B" permit over new Indian immigrants

24. During the transition period pending the constitution of an Immigration Board and the consideration by the Government of Burma of proposals to be made by the Board for the quotas for permits to be issued to Indian immigrants, the Government of India will prohibit the emigration to Burma of Indians for the purpose of unskilled work from the 21st July 1941 with the exception of seasonal labourers who may, at the instance of the Government of Burma, be granted passports up to numbers agreed upon between the two Governments.

Transitory Provisions.

25. The Government of Burma will institute at an early date a system of registering Indians in Burma.
Registration of Indians in Burma.

GENERAL.

26. The Government of Burma may exempt any person from any or all the conditions and restrictions that may be imposed under this Agreement.
Power of Exemption.

27. The two Governments will act in close co-operation to achieve the objects of the Agreement and will freely consult each other on points of difficulty that may arise.
Co-operation between the two Governments.

In particular the Government of Burma will grant the Government of India an opportunity of commenting on proposals to fix quotas and on the recommendations of the Immigration Board on which such proposals are based.

Your confidential note, dated the 18th August, regarding Indian immigration. I would advise as follows:-

1. The Agreement reached between the two Governments in 1941 did not in itself have the force of law. In order that an agreement of this kind should have the force of law in either country it is necessary that it should be ratified in accordance with law; that is, if the Order in Council of 1937 was still in force, it had to be ratified by a new Order in Council under the proviso to section 138 of the Government of Burma Act; whereas if the Order in Council had terminated, the Agreement had to be ratified by an Act of the Legislature of each country passed in accordance with the provisions of the Government of Burma Act and the Government of India Act, respectively. The Agreement has never been ratified in any way, and, consequently, is not, and never has been, of any force or effect.

2. The wording of clause 4 of the Order in Council is ambiguous, and, in accordance with the ordinary rule of construction, it must be construed so as to give proper effect to all the words thereof. In my opinion, if that is to be done, the only way in which the clause can be construed is that the Order in Council automatically terminated at the end of three years from the 1st April, 1937, unless a notice to terminate the operation of the Order was given by the Governor of Burma during that period of three years, and then, if such notice were given, the Order in Council would terminate on the expiry of three years from the 1st April, 1937, or on a date twelve months after the issue of the notice, whichever date was later. In my opinion, it is impossible to hold that a notice under clause 4 could issue after the period of three years had expired, for, if that were possible, clause 4 would then mean that the Order terminated at the end of three years but could subsequently be revived for a period of twelve months by a notice of the Governor of Burma, and there must then be a hiatus between the date of the expiry of the period of three years and the date of the notice during which no Order in Council was in force, which is plainly absurd. Moreover, there is nothing in clause 4 to suggest that the Governor of Burma by unilateral action had the power to revive the Order in Council after it had expired under the provision for its continuance for a period of three years. Consequently, in my opinion, the Order in Council terminated on the 31st March, 1940. Therefore the notice given by the Governor of Burma on the 1st April, 1941, had no legal significance and was a mere nullity. For the same reason clause 2 of the Agreement regarding the operation of the Order in Council had no significance at all and was also a nullity.

3. But both Governments have acted on the assumption that the Order in Council was still in force in October 1941, and on this assumption have entered into the Agreement. Therefore it is necessary to consider the matter on the basis of this assumption. The issue of the notice of the 1st April, 1941, was a legal act done under a provision of law, namely, clause 4 of the Order in Council. An act which has been done under

the authority of law can be recalled or undone only under the authority of law. There is nothing in the Order in Council which permits the withdrawal of a notice which has been given under clause 4 thereof, and it is clear that no such withdrawal could be permitted; otherwise clause 4 of the Order would be rendered meaningless. The Governor of Burma had no authority to withdraw the notice of the 1st April, 1941, and therefore clause 2 of the Agreement was ultra vires.

4. The Agreement of October 1941 is one and indivisible: each clause is interdependent on all the other clauses: no clause can be brought into operation by itself. The clause regarding the withdrawal of the notice is dependent on all the other clauses, and the contracting parties never intended that the notice should be treated as withdrawn unless and until all the other provisions of the Agreement were carried into effect. No attempt has been made to implement any part of the Agreement except clause 24 thereof, and the Agreement has never been ratified in accordance with law. Consequently, the whole agreement has become void and inoperative, and clause 2 fell with the remaining clauses of the agreement.

5. Hence, from whatever viewpoint this question is considered, the answers to the questions propounded are the same, namely:-

- (1) The notice was a nullity because the Order in Council had already terminated before the notice was given; but, on the assumption that the Order in Council was still in force, the abrogation of the other clauses of the Agreement includes the abrogation of clause 2 thereof, and therefore the notice given by the Governor/had the effect of ^{/of Burma} terminating the Order in Council on the 1st April, 1942.
- (2) The agreement to regard the notice as withdrawn did not constitute in law a withdrawal of the notice. A notice once issued could not be withdrawn.
- (3) The Order in Council terminated on the 31st March, 1940.

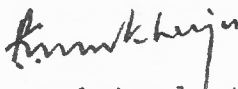
Sd/- H.F.Dunkley

26/8/44.

U Tin Tut, Bar-at-Law, I.C.S.,
Adviser, Reconstruction.

No. L.A 51/44(1437), dated the 28th August, 1944.

True copies,


Superintendent.