

THE
PARLIAMENTARY DEBATES

OFFICIAL REPORT

IN THE FOURTH SESSION OF THE EIGHTH PARLIAMENT OF THE REPUBLIC OF
TRINIDAD AND TOBAGO WHICH OPENED ON OCTOBER 17, 2002

SESSION 2005—2006

VOLUME 22

HOUSE OF REPRESENTATIVES

Wednesday, March 21, 2007

The House met at 1.30 p.m.

PRAYERS

[MR. SPEAKER *in the Chair*]

MR. BASDEO PANDAY
(Presence in Chamber)

Mr. Speaker: Hon. Members, I note the presence of the hon. Basdeo Panday seated in the Front Bench. [*Desk thumping*] For the benefit of *Hansard*, let me repeat it. Take your time, hon. Members. I note the presence of Mr. Basdeo Panday seated in the Opposition Front Bench. I note also from media reports the decision of the Court of Appeal delivered yesterday concerning the appeal of Mr. Panday against the decision of the Chief Magistrate. I have today requested a copy of this decision from the Registrar of the Supreme Court.

This issue arises as to the effect of the decision of the Court of Appeal and the fact that the seat of the Member for Couva North had previously been declared vacant. I have noted sections 52 and 56 of the Constitution, and in this regard, in light of opinions received, I advise that I intend to cause immediate steps to be taken to make application to the High Court for its opinion as to whether, consequent on the decision of the Court of Appeal, Mr. Panday may resume his functions as a Member of this honourable House and for such further advice as may be appropriate.

ORAL ANSWER TO QUESTION

National Chutney Foundation
(Subventions by the Government)

33. Mr. Nizam Baksh (*Naparima*) asked the hon. Minister of Community Development, Culture and Gender Affairs:

Could the hon. Minister of Community Development, Culture and Gender Affairs indicate whether any subventions have been given by the Government to the National Chutney Foundation of Trinidad and Tobago for the propagation and development of this art forum?

Mr. Speaker: Is the Minister prepared to answer this question?

Hon. Member: No.

Mr. Panday: Shame! Shame!

Mr. Speaker: Order!

This is a repeat of the last occasion when we met. Let me express my total disappointment with the attitude of those on the Government Bench in answering questions. It is totally unacceptable.

Question, by leave, deferred.

**DEFINITE URGENT MATTERS
(LEAVE)**

**Tabaquite/Rio Claro Road
(Wanton Neglect of)**

Dr. Adesh Nanan (*Tabaquite*): Mr. Speaker, in accordance with Standing Order No. 12 of the House of Representatives, I hereby seek your leave to move the adjournment of the House for the purpose of discussing the following as a definite matter of urgent public importance namely: The wanton neglect by the Government of the Tabaquite Rio Claro Road that has now rendered it impassable.

The matter is definite since recent large potholes along the said roadway have left the motorists abandoning the use of this said roadway and utilizing alternate routes.

The matter is urgent since the deplorable condition of the said roadway has placed severe hardships on all commuters using the Tabaquite-Rio Claro Road resulting in those commuters having to start their journey long before the normal time it would take to reach their destination.

The matter is of public importance since the Tabaquite-Rio Claro Road is one of the main arteries linking Rio Claro to Chaguanas via the Brasso Tabaquite and Brasso Caparo Roads.

Mr. Speaker: Hon. Members, this Motion does not qualify under Standing Order No. 12, but will certainly do so under Standing Order No. 11.

**Prime Minister's Statement
(Chief Justice Impeachment Proceedings of)**

Mr. Subhas Panday (*Princes Town*): Thank you very much, Mr. Speaker. I humbly seek leave of the Parliament to discuss a matter of urgent public importance.

The matter is definite because it relates to the Prime Minister's statement that he intends to proceed with section 137, impeachment proceedings against the hon. Chief Justice at this time.

Mr. Speaker, it is urgent because this honourable House should discuss the Prime Minister's anticipated action before he embarks upon same by communicating to the President of Trinidad and Tobago.

It is of public importance because the main witness in the proposed impeachment proceedings is the same person who caused criminal proceedings recommended by the Privy Council to collapse by his refusal to testify in public.

Mr. Speaker, the matter is such an important public issue that it will be extremely important to the concerned public that this matter be discussed in Parliament, the highest forum in the land.

Mr. Speaker: Hon. Members, this matter does not qualify under this Standing Order, but it may qualify under the appropriate one.

EQUAL OPPORTUNITY BILL

Order for second reading read.

The Minister of State in the Ministry of National Security and Minister of State in the Ministry of Trade and Industry (Hon. Fitzgerald Hinds): Mr. Speaker, I beg to move,

That a Bill to prohibit certain kinds of discrimination, to promote equality of opportunity between persons of different status, to establish an Equal Opportunity Commission and an Equal Opportunity Tribunal and for other related matters, be now read a second time.

Mr. Speaker, under section 4 of the Constitution of Trinidad and Tobago, a person has a right to equality of treatment from any public authority and if that right is contravened, he can bring a constitutional motion seeking to redress that contravention.

However, his right of action is limited by the very Constitution to an action only against the State or any public body exercising coercive power or any private body exercising public powers with public law consequences.

Mr. Speaker, where the inequality or discrimination results from the action of private entities, the individual has no redress under the Constitution. Often such persons are unfortunately left with a deep sense of injustice and it undermines their faith in the rule of law.

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The Equal Opportunity Bill, 2007 seeks to provide the mechanisms for such persons to access justice. In other words, the Bill seeks to enhance access to justice in respect of contraventions by private entities. The Bill will provide the legal framework to allow a right of redress to persons who feel they have been discriminated against by others in the private arena.

Remedies such as constitutional motions and judicial review to protect persons against acts of discrimination already, and for a long time, exist in the realm of public law, but not in private law. In fact, the law is clear that it is only the State or such state bodies exercising public and coercive authority that can infringe one's constitutional rights.

Mr. Speaker, this Bill seeks to prohibit certain kinds of discrimination, to promote equality of opportunity between persons of different sex, colour, race, and origin including geographical origin, religion, marital status, or ability. The Bill however does not create an open-ended or general right. It is restricted to dealing with discrimination in only four instances, they are: discrimination in relation to employment, education, the provision of goods and services, and discrimination in relation to the provision of accommodation.

In addition, the discrimination must be either discrimination on the ground of status which is defined to include sex, race, religion, origin, or marital status, or on the other hand, discrimination by victimization which is defined in clauses 6 and 7 of the Bill.

Mr. Speaker, about the year 2000, a Bill was brought to this House, this Bill—well, not in exact terms because some modifications had to be made—was brought to this House and it was passed by the then government of the UNC by a simple majority. And I read some of the debate from that passage of the Bill and the Member for Arouca South indicated in general terms that she felt that there were already measures and methods for seeking redress in the circumstances that were being proposed at that time. I think more poignantly she indicated that in substance she saw nothing terribly wrong with the concepts that came behind the legislation, and I think that was the general feeling of all on this side as we were then in Opposition.

In my own view, I remember I did not speak in the debate, but I had felt that the Government in the proposals presented were apparently creating more problems in the society than they were about to resolve. That was my gut feeling on the matter. I did not speak in the debate but that was my gut feeling.

Mr. Speaker, I suspect that I was quite right because having studied carefully the terms of the 2000 Act because it was passed and having looked at *Hansard* and the contribution made by the presenter of the Bill who interestingly enough sits among us today.

Mr. Panday: On the anniversary of the Equal Opportunity Bill.

Hon. F. Hinds: I have always said in response to my friend from Princes Town, democracy and the Constitution of Trinidad and Tobago and in fact all systems of democracy must be so big, so brave, so bold and so lion-hearted, that it must be able even to embrace those who are opposed to, or even threaten democracy in one way or another.

Mr. Panday: The lion is back.

Hon. F. Hinds: Very tolerant, very absorbent and that is the essence of the matter, this is why I am so pleased to see some of the developments in Mother Trinidad and Tobago today. Interesting! In some countries like Pakistan, there are issues that would have been resolved in ways that you and I would never want to see in Trinidad and Tobago. Suffice that to be so for the moment, there is much more to be said, but later.

Mr. Speaker, I am saying that it was my gut feeling then that the way in which the Bill at the time was presented was creating more problems than it solved. Let me say why I said that; because all that came from the person who presented it then, the then Member for Couva North who is sitting here today, put it in the context of race and race alone and that is what incensed people in the national community.

Mr. Panday: That is not so, read the *Hansard*.

Mrs. Job-Davis: That is what he did.

Hon. F. Hinds: That is what raised the ire of so many persons and gave the wrong impression because a close examination of the Act clearly demonstrates, as the Member for Arouca South pointed out, nothing was inherently innocuous about it, but I rather suspect it is the manner in which it was presented.

Let me quote *Hansard* to demonstrate the point. The Member, as he then was for Couva North, Prime Minister at the time began by saying and I quote:

“Mr. Speaker, I regard it as a great honour and great privilege to move the second reading of the Equal Opportunity Bill, 1999. For me, it is a

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dream come true in the continuum of a struggle that I began since my student days in London.”

Do you hear the rhetoric? He went on to say:

“I am convinced now, as I was convinced then, that the greatest problem facing mankind today is its failure to manage diversity.”

As though the Bill was focused on managing diversity alone.

“If one looks across the globe, whether it be Africa, Asia, eastern Europe or even some of the developed countries, one will notice that the conflagrations taking place, the wars and the conflicts, have as their basis a single theme and that theme is their failure to manage diversity. Whether that diversity is based upon a difference of tribes or ethnicity as in Rwanda and Burundi; whether it is based on a difference of religion as the conflict in Nigeria between Christians and Muslims; whether it is a diversity that is based upon a difference, again, of religion as in Lebanon; whether it is a diversity based on the difference of religion as in Ireland between Catholics and Protestants; whether it is diversity based upon race giving rise to so much conflict in developed nations such as in the United States and even in Britain; whether it is Indonesia, in Timor, wherever one sees conflict in the world today, that conflict is based on the failure of man to manage diversity. The purpose of this Bill is to help us deal with the management of diversity in our own society.”

Mr. Speaker, while all of that in principle are perhaps factually and historically correct, in the context in which it is put in a Bill that has little to do with race, it really was creating problems where none existed and I submit that was the problem. That is the reason Members on the other side went all over this country clamouring for the Equal Opportunity Bill and created an issue around it.
[Interruption]

Mr. Speaker, in keeping with the model of the Act that was declared unconstitutional—because that was an issue—they were being told at that time that the provisions of the Bill would have been struck down by the court as being unconstitutional, but in their usual typical UNC way, especially in the heady days of Ramesh Lawrence Maharaj as Attorney General at the time, they did not heed, but pressed on and passed it with a simple majority and it took a Court of Appeal to knock it down flat and demonstrate that it was indeed unconstitutional and we have to come again today.

Mr. Panday: After how many years?

Hon. F. Hinds: It matters not. I will not sacrifice accuracy for speed. “Drink yuh porridge cool, the old people say.” Take it easy, take it soft.

Hon. Member: “Take yuh medication.”

Hon. F. Hinds: The present Bill is not only restrictive, but spells out a number of exceptions. The Government acknowledges that in a society with diverse races, religions and culture, it is indeed important to manage diversity. I want to say that Trinidad and Tobago, regardless of what the soothsayers and those who want to see different would say, we have done an excellent job as a nation in managing the diversity that we inherited from our past.

Mrs. Job-Davis: Great job, of course. Tell them!

Hon. F. Hinds: The people of Trinidad and Tobago deserve all our sincere complements and salutations. They all deserve, in my view, a Trinity Cross. We have done exceptionally well as a nation.

Mrs. Job-Davis: We all, including you.

Mr. Panday: That is rhetoric.

Hon. F. Hinds: Thankfully, they had the strength to resist the encouragement and the incitement of those who sought to make it different. I salute the people of Trinidad and Tobago solidly. [*Desk thumping*].

Mr. Panday: This is Parliament, not a circus.

Hon. F. Hinds: Mr. Speaker, legislation of this nature should indeed seek to foster cohesion rather than conflict in the society and this is why we have to be particularly careful about the way we present arguments and facts, even though they are facts; the style, the method, the way we do it we have to be very careful. That is what we were saying at that time.

To this end, the Bill will not apply in a number of instances which are set out in Part V, in particular, clauses 20 to 26. These are in relation to competitive sports; rights or privileges in connection with pregnancy or childbirth; membership of single sex clubs—and there are few left in this country—voluntary non-profit bodies; charities; insurance; and the administration of religious bodies. It therefore creates a right of redress in certain specified circumstances with clear exceptions.

Mr. Speaker, to expedite the remedy given under the proposed legislation, the Bill seeks to create a mechanism outside of the normal judicial stream. The intent

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is to allow the average person or the so-called poor or small man to be able to access the remedy quickly and at little or no cost. He would not have to trouble himself with legal fees and all those things.

To achieve this policy, the Bill seeks to establish an Equal Opportunity Commission and an Equal Opportunity Tribunal, and more than that, in 2007 we seek to establish them properly, such that they will be able to withstand the scrutiny of the Constitutional Court and those who look at this Parliament to see what we do and how we do it as leaders.

Mr. Speaker, a person who feels discriminated against may file a complaint to the Equal Opportunity Commission which will investigate the matter and seek to resolve it between the parties. If reconciliation fails, then the Commission will publish a report for public inspection, and if the matter is still not resolved then the Commission would initiate proceedings before the Tribunal with the consent of the complainant.

Mr. Speaker, I just want to mention in passing that some people may feel that these matters have a criminal sanction, but there is record in the United Kingdom with respect to the Race Relations Act of 1978, which was passed, perhaps for the first time with absolutely no criminal sanction. It was, as the jurist explained, for educational purposes. It was to design the minds of the British population in a certain way before any sanctions would be imposed and later on, the Act was amended to include criminal sanctions for certain things.

I think that is kind of a sensible, solid approach and I read some of the debate of that as well, and while the circumstances are markedly different from ours, I noted that there were no inflammatory tones, and it was presented in a certain way, even though they have more real issues of race and differences and diversities than we have.

Mr. Speaker, the Tribunal is to be created as a court of record, and given the jurisdiction to deal with the complaints filed by the Commission. It will have powers of a High Court to make such orders or declarations as it considers just in each particular case, an aggrieved person or rather a person aggrieved by the decision of the Tribunal would have a right of appeal to the Court of Appeal.

However, before I proceed, let me in a more thorough way remind hon. Members of some of the history of this legislation. We passed the Equal Opportunity Bill in 2000, it was Act No. 69 of 2000 and it was passed, as I said earlier, by a simple majority against all good advice. The Act was assented to by the President on October 20, 2000; it was then amended by the Equal Opportunity

(Amdt.) Bill 2001—which was Act No. 5 of 2001—which received Presidential assent on June 11, 2001.

Pursuant to section 2 of the Act, Part IV of the Act was proclaimed with effect from November 20, 2000 by Legal Notice No. 285 of 2000, and by this same legal notice, the remaining seven Parts were proclaimed with effect from January 31, 2001. Hence on February 01, 2001, the entire Act came into force.

Mr. Speaker, it is well known to hon. Members and lawyers that unlike the United Kingdom where Parliament is supreme, our Parliament is not supreme. It is the Constitution of Trinidad and Tobago that is supreme. Many people are incorrectly heard to say that the Parliament is the highest court of the land, that too is not correct.

Mr. Ramnath: You are boring the House man. [*Interruption*]

Hon. F. Hinds: Mr. Speaker, I crave your protection from the venerable Member for Couva South, he is a little worried these days having seen certain developments in this House today, he is afraid of even further developments, but take it easy. [*Interruption*] The lion is back and the beast may be coming.

2.00 p.m.

Unlike that jurisdiction where Parliament is supreme and Parliament can pass any law and the courts must observe those laws scrupulously, in this Constitution and in our context, the courts of Trinidad and Tobago—the constitutional courts, so-called—have the power to find Acts of Parliament unconstitutional and in this case it certainly did. It is common knowledge that attempts were made by various persons to have the Government establish the Equal Opportunity Commission and the Equal Opportunity Tribunal after the passage of the Act and since we came into Government. These are provided for, according to them, in the legislation, and they were precursors to the full implementation of it. In fact, as you may well know, many politicians, including some of our friends, made a song and dance over the legislation, giving the impression, as I said, that it would resolve all the problems, real and imagined, in Trinidad and Tobago and most of them were imagined, quite frankly. At another stage I would be able to demonstrate that but not today.

However, the position of the Government was that the Act was unconstitutional and some of the provisions contravened the Constitution and ought therefore to have been corrected, and the Bill establishing the tribunal and

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other measures therein, required a special majority. That was our position then and it remains our position today, but our advice went unheeded at that time by a hot-headed, hot-mouthed, hot-footed Attorney General. He remains that way.

Mr. Ramnath: Where is the present one?

Hon. F. Hinds: The Act was enacted by the previous government and when it was declared unconstitutional by the lower court at first instance and by the Court of Appeal, the policy had to be reconsidered in the light of that ruling and pronouncements of the court. As a result of the ruling of the court, this Government reconsidered the policy underlying this legislation and the present Bill was prepared with the elements of the powerful ruling of both those courts firmly in our view.

The issue of constitutionality of the Act was dealt with by the Court of Appeal in the case of *Kenneth Suratt and others v. the Attorney General of Trinidad and Tobago*: Civil Appeal No. 64 of 2004. In that case the Court of Appeal in its judgment delivered on January 26, 2006—only then—affirmed the decision of the High Court—the decision that was rendered by Mr. Justice Smith in High Court Action No. 1526 of 2003—that the Act was indeed unconstitutional. The Court ruled that the Act was unconstitutional for a number of reasons. Let me synopsise some of them.

Section 41 of the Act—the one that was debunked and destroyed by the court and properly so—sought to establish the Equal Opportunity Tribunal as a superior court of record without giving the tribunal the protection that the Constitution, our supreme law, requires must be accorded and afforded to all superior courts of record. The manner of the establishment of the tribunal was contrary to the principles set out by the Privy Council in the case of *Hinds v. the Queen* (1976) 2 *West Indian Law Reports* at page 366. I just share that with Members in the event that you need to see it.

At common law, courts are divided into superior courts of record and inferior courts; those that are not of record, so to speak. A superior court is one that is vested with both an original and inherent or supervisory jurisdiction. It has original jurisdiction in regard to certain classes of civil and criminal cases and may also exercise appellate jurisdiction or concurrent jurisdiction with other superior courts. Usually its original jurisdiction is conferred on it by written law, for example, the Constitution or an Act of Parliament such as the Supreme Court of Judicature Act, Chap. 4:01.

The Constitution, from the date of its commencement in Chapter 7, saves and provides for the continuing existence of our superior courts, those that existed before its coming into effect. On the other hand, its inherent or supervisory jurisdiction is derived directly from common law. The decision of a superior court is not subject to judicial review and can only be challenged by an appeal to a higher or superior court. As lawyers and Members would know, and in some cases ought to know, judicial review and appeals are markedly different things—different concepts.

Lord Diplock, in the case of *Hinds v. Queen*, hinted at the rationale for the continued existence of the two types of courts at page 213 when he stated, and I quote:

“...the legislature, in the exercise of its powers to make laws for the ‘peace, order and good government’ of the state, may provide for the establishment of new courts and for the transfer to them of the whole or part of the jurisdiction previously exercisable by an existing court. What, however, is implicit in the very structure of a Constitution (based) on the Westminster model is that judicial power, however it be distributed from time to time between various courts, is to continue to be vested in persons appointed to hold judicial office in the manner and on the terms laid down in the Chapter dealing with the judicature, even though this is not expressly stated in the Constitution.”

Lord Diplock stated that Parliament had the power to create other superior courts. We did, and it was constitutionally proper to label the court by any name, whether you call it a board; whether you call it a commission or whether you call it a tribunal. Lord Diplock further pointed out that where the Parliament confers judicial power to a court described by a new name, the central question is whether the substance and not the form of the law, conflicts with the Constitution.

Miss Lucky: Thank you very much, hon. Member for Laventille East/Morvant for giving way. I am, in fact, following your presentation and more specifically your reference to the Court of Appeal decision as was delivered: Civil Appeal No. 64 of 2004. There is something that I am hoping that you would address that has me troubled right now. In that decision, the learned Justice of Appeal, speaking on behalf of the entire panel, indicated that with respect to the appointment of the chairman for the tribunal, the concern was not only did the Equal Opportunity Act of 2000 not get a special majority but also if you are using the Judicial and Legal Service Commission (JLSC) to make that appointment which is also reflected in 2007, there would be a specific need to amend the

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Constitution and I am not seeing that reflected in the 2007 legislation. It was not there in 2000. I am therefore respectfully asking—and this is not with any view of seeking to embarrass in any way—whether you could just address your mind, if not now, but certainly during the debate, to page 22 and 23 of the Judgment, Appeal No. 64 of 2004, when that specific point was made—

Hon. F. Hinds: By Justice Archie.

Miss Lucky: Yes. Because I am understanding what you are saying with respect to the fact that no special majority was given with respect to the 2000 Act, but on that particular point what was stated was, there can be no silent or indirect amendment to the Constitution and therefore there must be the declared intention to amend the Constitution. I am saying, I am just not seeing it here, so if it is that that may be an amendment that has to be brought, if we could bring it, please.
[*Desk thumping*]

[MR. DEPUTY SPEAKER *in the Chair*]

Hon. F. Hinds: Yes, we studied the judgment and we will address our minds to that at a later stage. But before I proceed, I must say your colour combination and your national tie look rather resplendent and you deserve—

Miss Lucky: And that, coming from you, I take it as a compliment.

Hon. F. Hinds: Most certainly. And more than that, the dignity and the wisdom that you have demonstrated over the past few months, you deserve it.

Miss Lucky: Flattery shall get you nowhere. [*Laughter*]

Hon. F. Hinds: Every time I see you now I identify you with the word “integrity”.

Miss Lucky: Proceed.

Hon. F. Hinds: I think it follows then when I see your opponents, I associate them with the concept of anything other than integrity, but we will deal with that at a later stage.

Mr. Panday: “All of them is one.” Go ahead!

Hon. F. Hinds: Oh gosh, take it easy, “nuh”.

Mr. Panday: “All ah all yuh is one.”

Hon. F. Hinds: But good point and we shall address our minds to that.

Judges of superior courts are given a more firmly rooted security of tenure. They are protected by entrenched provisions of the Constitution against the Legislature enacting ordinary law to abolish their office, reduce their salaries while in office, provide that their tenure shall end before the age specified in the Constitution, and so on. Lord Diplock in the *Hinds* case explained the consequence of this distinction as follows, and I quote again:

“The manifest intention of these provisions is that all those who hold any salaried judicial office...shall be appointed on the recommendation of the Judicial Service Commission and that their independence from political pressure by Parliament or by the executive in the exercise of their judicial functions shall be assured by granting to them such degree of security of tenure in their office as is justified by the importance of the jurisdiction that they exercise.”

The second reason—while the lower court and the Court of Appeal affirming the lower court’s position had to reject the Act as unconstitutional, much to the embarrassment of the Parliament—was that the power to set penalties is a matter primarily for the Parliament and if not the Parliament, then for those Judges whose independence from political pressure by the Legislature or the Executive is fully protected by the Constitution. The tribunal is empowered under the Act to make payment of compensation, damages, or fines without restriction. That was the 2000 Act. Under the Constitution, such powers are confined to Judges of the Supreme Court who are protected by the Constitution. An even cursory examination of the 2000 Act will demonstrate that the members of the tribunal enjoyed no such protection. But the hot-headed haste of the then Attorney General, Mr. Ramesh Maharaj, could not be contained.

Thirdly, by sections 4(b) and 4(d) of the Constitution, the Supreme Court is given the jurisdiction to deal with discrimination by the State. After the commencement of the Constitution, no other body can deal with discrimination by the State other than by way of an amendment to the Constitution or by special majority. The Constitution, as I have stated before, is the supreme law, but the Act was passed by a simple majority in the face of all of that.

Fourthly, the Act infringes the—I cannot call it a UNC Act; I have to call it “the Act” because we all passed it. The Parliament has to take responsibility. But it was passed by a simple majority, notwithstanding our objections. But it will still, in principle, be incorrect for me to say a UNC Act; it is the Act. So I will leave it like that.

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The Act infringes the rights of persons—so the court found—enshrined in sections 4 and 5 of the Constitution because it was not passed by a special majority required by section 13 of the Constitution. For example, section 18 of the Act provides that persons were not entitled to discriminate against another person in respect of accommodation. This clearly restricts an individual's right to enjoyment of his or her own property. That was an infringement. We ignored it at that time. The then Attorney General and the then Prime Minister ignored it. Section 17 of the Act also infringed other fundamental human rights. The court also ruled that section 7 infringed the rights of freedom of expression as guaranteed by section 4(1)(i) of the Constitution. It was also noted that section 7 was vague and duplicitous.

Finally, the Constitution does not give the power to the Judicial and Legal Service Commission to advise the President on the appointment of the chairman of the Equal Opportunity Tribunal and no ordinary Act of Parliament can give it that power. By section 42(1) of the Act, the chairman of the Tribunal is appointed by the President on the advice of the Judicial and Legal Service Commission. It is important to note that both before the High Court and the Court of Appeal, Kenneth Suratt and others in the matter I quoted earlier, were represented by lawyers who included none other than Mr. Ramesh Lawrence Maharaj. They lost in both courts, as I have said before. This is a case, in my honest view, en passant—if I am permitted—where, having failed the Parliament as Attorney General, having passed unconstitutional legislation, determined, as you could have it, went to the lower court and lost; went to the Court of Appeal and lost; it is a case, and there are many examples of that in our society—where they use the law and they use the court to fight political battles against the Government. We see it all the time and in due course we will expose a little more of it.

It is political war dressed up in legal clothing! But this country must note, you know, we, the PNM, have some strong and beautiful traditions. We are not jumping into the fray and running our mouths. We have a responsibility to the people of this country which we have honoured now for 50 years. We drink our porridge cool; we take it easy. We do not jump in and talk race so; we are slow to talk about race and make allegations of racism. We take it nice and easy in the issues with the Chief Justice and those that are happening. Look today—we did not welcome him, but we made no fuss about his presence in this House.

Mrs. Persad-Bissessar: You have no choice! You have absolutely no choice!

Mr. Panday: What nonsense is that?

Hon. F. Hinds: We do that. That is how we do business on this side. [Crosstalk]

The matter notwithstanding, with Kenneth Suratt and others against the State is before the Privy Council. The major issues raised by the appellants before the Privy Council, although the matter is pending, are as follows—the questions they have raised for the Privy Council—[Crosstalk] Mr. Deputy-Speaker, I crave your protection.

Mr. Ramnath: You have no business in determining who sits here and who does not sit here! You have no basis for making those statements!

Mr. Deputy Speaker: Hon. Member for Couva South.

Mr. Ramnath: Why are you pulling me up? He is making the trouble and you are pulling me up?

Mr. Deputy Speaker: Hon. Member for Couva South, the hon. Member for Laventille East/Morvant has the floor. Let him please continue.

Mr. Ramnath: I did not trouble him at all.

Mr. Deputy Speaker: But you are speaking loudly and that is causing a problem.

Mr. Panday: And in your last few days or months, Mr. Deputy Speaker, we must not disturb you.

Mr. Deputy Speaker: That is right. It may be months nonetheless, I do not know. But, please—

Mr. Panday: Ask him how many days he has.

Mr. Deputy Speaker: I am not interested in that. [Crosstalk] Hon. Member, do not plead my case. I am not interested in that and I already know where I am going.

Mr. Panday: Nobody is kicking you out.

Hon. F. Hinds: Mr. Deputy Speaker, may I continue?

Mr. Deputy Speaker: Please continue.

Dr. Rowley: They are a little nervous around you.

Hon. F. Hinds: They are. [Crosstalk]

Mr. Deputy Speaker: Hon. Member, please address me.

Hon. F. Hinds: I was saying that the matter, having suffered two stumbling and grovelling defeats at the High Court and the Court of Appeal, they have gone now to the Privy Council. The points that are raised at the Privy Council are as follows:

- Whether the High Court of Trinidad and Tobago has jurisdiction to declare an Act unconstitutional other than by way of an application by a person aggrieved (not the State) under section 14 of the Constitution.

That is one of the points they went to the Privy Council with, to determine whether the High Court has jurisdiction to strike down an Act as unconstitutional.

- Whether the Executive can allege that an Act is unconstitutional when the Executive has brought the Act into force and especially where the Act affords protection against discrimination.
- Whether it is constitutionally permissible for the Executive to suspend an Act by refusing to implement it on the basis of its unconstitutionality (my God!) in circumstances where the Executive can amend or repeal the Act.

Frivolity in the extreme!

Mr. Panday: Mr. Deputy Speaker, on a point of order.

Mr. Deputy Speaker: Please state your point of order.

Mr. Panday: Standing Order 36(2), please, Mr. Deputy Speaker.

Mr. Deputy Speaker: Standing Order 36(2) indicates:

“Reference shall not be made to any matter on which a judicial decision is pending, in such a way as might, in the opinion of the Chair, prejudice the interest of the parties thereto.”

Which judicial decision you are talking about, the Privy Council?

Mr. Panday: The Privy Council matter, Sir.

Mr. Deputy Speaker: Hon. Member, be guided.

Hon. F. Hinds: I will be guided by the Deputy Speaker, respectfully.

Mr. Deputy Speaker: I would prefer you to be guided by the Standing Orders.

Hon. F. Hinds: Much obliged—

Mr. Panday: The Standing Orders! [*Crosstalk*]

Mr. Deputy Speaker: Please, hon. Member for Princes Town, allow me to deal with that.

Hon. F. Hinds: I assure you that nothing here is prejudicial to any—

Mr. Panday: You cannot rule that; it is the Chair to rule.

Hon. F. Hinds: Mr. Deputy Speaker, there are a number of other points that will, in the course of time, be ventilated at the Privy Council, and just like the first three that I managed to get in, [*Crosstalk*] the others, I can assure you, are equally frivolous.

The Government, to keep faith with the commitments made in the discussions with the other side in the interest of all the people of Trinidad and Tobago to surmount some of the difficulties that they pose, which began in November 2005 to discuss and agree on measures to reduce the incidence of crime in Trinidad and Tobago, has now reviewed the Bill with a view to making it constitutional in light of the decision of the courts and particularly the Court of Appeal in the Suratt case.

Consequently, the Government has prepared the Equal Opportunity Bill, 2007, which would be enacted by a two-thirds majority. In our proposal section 7 would be deleted. Where a decision of the lay-assessors is in conflict with that of the chairman of the tribunal, the decision of the chairman is to prevail. Further, the chairman of the tribunal would be given a pension equivalent to that of a judge of the High Court. This Bill will repeal the Equal Opportunity Act, 2000 because of its grave and fundamental disastrous provision.

I shall now take the opportunity to more fully elucidate on some of the clauses of this Bill. It contains nine Parts and in all 60 clauses. In the Bill there are certain preliminary provisions in Part I with respect to the short title, commencement of the proposed legislation, inconsistency with sections 4 and 5 of the Constitution and the definition of certain expressions. Of note in clause 4 is the definition of “Minister” which means “the Minister to whom responsibility for equal opportunity is assigned.” “Family business” is defined to mean “an enterprise owned or controlled by members of a family”, which would include parents, brothers, sisters, uncles, aunts and cousins. “Race” is defined to cover colour, ethnic origin or mixed race. “Sex” expressly “excludes sexual preference or orientation” and the “status” of a person refers to his or her sex, race, origin, including geographical origin, religion, marital status or, indeed, disability.

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“‘disability’ means—and I want to just read it because citizens are participating in this by looking on now:

“‘disability’ means—

- (a) total or partial loss of a bodily function;
- (b) total or partial loss of a part of the body;
- (c) malfunction of a part of the body including a mental or psychological disease or disorder; or
- (d) malformation or disfigurement of part of the body.”

Mr. Deputy Speaker, ‘ethnicity’ in relation to a group of people means “the origin, characteristics, classification and distinctive cultural or aesthetic traditions of that group of people;”

Of course, in my reading in a case called *Mandla v. Dowell Lee* there is a more detailed definition of what ethnic origin is all about that I found attractive and we can consider it, if necessary.

“‘Religious shop’ means a commercial enterprise that trades predominantly in religious items.

“‘Status’”

I want to read this definition into the record:

“in relation to a person means—

- (a) the sex;
- (b) the race;
- (c) the ethnicity;
- (d) the origin, including geographical origin;
- (e) the religion;
- (f) the marital status; or
- (g) disability of that person;”

Do you see how far “status” goes? Well beyond race. This is why I made the point earlier that to have centred the whole discussion or debate on equal opportunity legislation on the minute issue in the context of this Bill, of race, was mischievous, provocative, in the extreme.

Part II of the Bill provides for the types of discrimination which are prohibited under the proposed Act. According to clause 5, the proposed Act only applies to discrimination in relation to employment, education, the provision of goods and services and the provision of accommodation. This discrimination must be on the ground of status or discrimination by victimization, as defined in clauses 6 and 7 respectively and I need not read those because we have the Bill before us.

Part III of the Bill makes special provisions with respect to discrimination in the field of employment. By clauses 8, 9, and 10 respectively, discriminating against an applicant for a job, an employee or a trainee or prospective trainee is prohibited. For example, under clause 8, an employer must not discriminate against a person in the manner he adopts to determine who would be employed, or the terms and conditions of employment, or refuse or deliberately omit to offer employment to the applicant.

I think I need to say in passing, again, that these measures here are applicable and would bring a stream of redress in the realm of private circumstances, because we concede that in respect of public bodies and public functions and private bodies carrying out public or coercive functions, the Constitution and other laws will take care of those. I think I am correct to say that as at today's date in an independent Trinidad and Tobago, a court has never found against the State on the grounds of race—never!

Mr. Panday: Because it is not the tort in law. [*Crosstalk*]

Hon. F. Hinds: I think it is important to say so. I am not studying the Member for Princes Town. I only say so because there is a lot of talk in this country about race and discrimination. We are saying today, these measures put in place a regime of protection for persons in the private sector, so to speak. The public realm is already covered in constitutional motions under the Constitution and judicial review, where applicable.

Mrs. Persad-Bissessar: That is not true. The Act says it binds the State so it is public and private—

Hon. F. Hinds: You will have your moment and I will listen to you when you speak! [*Crosstalk*] You will have your moment, Member for Siparia!

Mr. Deputy Speaker: Hon. Member and the hon. Member for Siparia also, allow the hon. Member to make his contribution. You will have your opportunity.

Hon. F. Hinds: Thank you, Mr. Deputy Speaker. Playing lioness!

Mrs. Job-Davis: The real lion come back.

Mr. Deputy Speaker: Please continue.

Mrs. Job-Davis: The lion come back, boy. Sorry for the lion. [*Laughter*]

Hon. F. Hinds: With the emphasis on “lie”.

Mr. Deputy Speaker, may I continue undisturbed? The Bill, as I indicated earlier, recognizes a number of exceptions to the prohibition against discrimination in employment. It is quite clear. If you just spoke about discrimination in the realm of unemployment, you will, indeed, create more problems in business and in the workplace than you would have attempted to deal with. As a result of that and taking into account the sensitivity and the peculiarities of this, there are a number of exceptions to the prohibition against discrimination in employment.

These include being of a particular sex as a genuine occupational qualification for employment. There are some jobs that require a particular sex, and it would be unthinkable for the Parliament to attempt to interfere with that.

2.30 p.m.

Mr. Ramnath: Give some examples.

Hon. F. Hinds: You ought to know. You have been here long enough, according to my friend.

Mr. Deputy Speaker, employment in a religious shop which is defined to mean a commercial enterprise that trades predominantly in religious items, like a puja shop. One cannot expect for us to legislate, insist for example, that in a puja shop they employ a Christian or Muslim. [*Crosstalk*] I am not saying anything is wrong. I am simply saying to impose that would provide difficulty.

Mr. Panday: No.

Hon. F. Hinds: Okay. If, of course, the Members on the other side want to urge an amendment, we are quite prepared to consider it. If you want to insist anyone can work in a puja shop, for example, or in a religious shop persons of other religions, we are of an open mind, we will be prepared to accept it. So I look forward to hearing from the Member for Couva South and alternatively, the Members for Fyzabad and Siparia on that point. Employment in relation to domestic or personal services and in family businesses, very sensitive family businesses: To impose a legal obligation that you must employ people who are not members of the family in a family business could be troublesome.

Mr. Deputy Speaker: Hon. Member for Couva South, you are running a constant commentary on what the Member is saying. You will have your chance.

Hon. F. Hinds: Mr. Deputy Speaker, the employment of persons with disabilities who may be unable to perform the particular job or in order to do so, would impose unjustifiable hardship on the employer, I think that is self-explanatory, or where there may be a risk of injury to others or the disabled person himself.

Mr. Deputy Speaker, under the proposed clause 11, sections 8 and 9 shall not apply in a case where being of a particular sex is a genuine occupational occupation. Similarly, under clause 12, sections 8 to 10 shall not apply in a case where a person—and to repeat what I said, where a person seeks to be employed in a religious shop.

Under clause 14, sections 8 to 10 will not apply to an employer in relation to employment of the disabled person in the circumstances explained.

Part IV of the Bill will prohibit, with certain exceptions, discrimination against students and prospective students of educational institutions and against members of the public who seek to avail themselves of goods, facilities, services or accommodation to which members of the public have access.

Clause 19 provides an exception in cases of unjustifiable hardship.

Part V of the Bill stipulates that the Bill does not apply to competitive sporting events, the granting of privileges to women in connection with pregnancy and childbirth, the membership of single sex clubs and voluntary non-profit bodies.

In terms of the question of childbirth, in other words, a man could not be heard to say that since women are getting maternity leave, he ought to get some too.

Part VI of the Bill provides for the establishment of the Equal Opportunity Commission. The Commission would comprise five commissioners appointed by the President after consultation with the Prime Minister and the Leader of the Opposition. Commissioners would be qualified and have experience in law, industrial relations, sociology or administration, and the membership would reflect a balance of race and gender. This is an interesting development, and one that has become obviously welcome in the context of modern day Trinidad and Tobago.

The Commission would, among other things, work towards the elimination of discrimination; promote equality of opportunity and good relations between persons of different status, generally; review the working of the proposed Act;

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and receive, investigate, and as far as possible, seek reconciliation in respect of allegations of discrimination.

Clause 31 makes it an offence for a person to submit to the Commission a frivolous and vexatious complaint. I think this is very important, because frivolous and vexatious complaints are not unknown to law. This law is no different, particularly given the circumstances and the sensitivity, many people will want to come with frivolous action and the law, as we present it, attempts to deal with that.

Part VII of the Bill provides for the lodging of complaints, alleging discrimination with the Commission, the investigation of those complaints and conciliation of the parties to those complaints. By clause 40 where a complaint is settled by conciliation, the settlement would be embodied in a written agreement and registered with the tribunal which is established in the Bill. Where the Commission is unable to settle a complaint by conciliation, the Commission would, under section 41, prepare and publish a report on the investigation for public inspection—I think it is about a little embarrassment here—not again unknown to international laws and agreements where they use embarrassment as a tool and if that does not work, the complaint would be the subject of proceedings before the tribunal with the consent of and on behalf of the complainant.

Part VIII of the Bill establishes the Equal Opportunity Tribunal comprising a chairman and two lay assessors. The chairman would be equal in status to a judge of the High Court. The chairman would be appointed by the President on the advice of the Judicial and Legal Service Commission. This is the same manner in which judges of our High Court are appointed. On the other hand, the lay assessors would be appointed by the President in his own discretion, where they are suitably qualified in fields such as law, religion, gender affairs, education and culture. And that provision, Mr. Deputy Speaker, is a direct response to the Court of Appeal suggestion that the chairman of the tribunal ought to have given his functions, his power to have the status of a judge in accordance with the Constitution, something that the Government at that time sorely and sadly overlooked.

The chairman would preside at all proceedings of the tribunal. The tribunal would be a superior court of record and would have the power to hear and determine complaints referred to it by the Commission, and to make such declarations, orders and awards as it thinks fit, to summons persons to attend

before it. Section 52 in particular, provides for the appeal from a decision of the tribunal to the Court of Appeal on a point of law and with leave, on a point of fact.

Finally, Part IX provides for the submission to Parliament of annual reports prepared by the Commission for the offence of the non-disclosure of information concerning the affairs of persons acquired by the Members of the Commission or the Tribunal or members of their staff in the course of their duty and for the withdrawal of a member of the Commission or the tribunal in the case of a conflict of interest in a matter before him.

Mr. Deputy Speaker, that is about accountability. They are required under this law to submit annual reports to the Parliament so that we can see what is happening in respect of their work.

Clause 59 would provide for the proposed Act to bind the State.

Clause 60 would repeal the Equal Opportunity Act, 2000.

Mr. Deputy Speaker, as I indicated earlier, this Bill seeks to prohibit certain kinds of discrimination; to promote equality of opportunity between persons of different sex, colour, race, origin including geographical origin, religion, marital status or ability and to establish an Equal Opportunity Commission and an Equal Opportunity Tribunal.

The Act from which we will create out of this Bill, would be inconsistent with sections 4 and 5 of the Constitution and, as I have indicated twice before, requires a special majority, three-fifths of the Members of this House.

This is, clearly, socially oriented legislation designed to bring about the continued and improved cohesion of our unique and diverse society. It seeks to create rights and remedies in the realm of private law. My friends on the other side who have been constantly clamouring for this legislation, for them, I feel sure that they would welcome this Government's very sober, thoughtful and studied attempt to re-enact the previously written bad law, and to do so in proper accordance and in harmony with the Constitution of Trinidad and Tobago.

Mr. Deputy Speaker, I beg to move.

Question proposed.

Mrs. Kamla Persad-Bissessar (*Siparia*): Mr. Deputy Speaker, the drivel that came out from the Member for Laventille East/Morvant highlights the hypocrisy of himself and his Government. They have taken over five years to bring back the

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equal opportunity law. They are saying it was bad law then, and they are coming to make it right.

At that time, the only reason it was bad law was because the PNM failed to vote and give a special majority to support the Bill. That is what happened. They come here today to attack a Member whom persons in their party have persecuted and prosecuted, who cannot stand up in this Parliament to answer because of their actions. He cannot defend himself, and they have the gall to attack the Member for Couva North when, at this time, he is not allowed to stand up in this Parliament to defend himself. That is spineless, and it shows the kind of thinking of the PNM.

The Member said when then Prime Minister Basdeo Panday piloted the Equal Opportunity (No.) Bill in 2000, he said and dealt with race. Nothing is further from the truth. In the *Hansard* that he quoted from, not a word in it showed that the Member for Couva North was focusing on race. But that is how he thinks. That is how they think. Everything for them is predicated upon race and the Member said do not talk about race, and that is exactly what the Member stood and did. So it is quite all right when they do it, but it is wrong when anybody else does it. So the Member accuses the Member for Couva North when the Bill was piloted in 2000 of dealing only with race. And I will read what Prime Minister Panday then said.

“...I beg to move this Bill...”

and he went into the long title of the Bill.

“I regard it as a great honour and a great privilege to move the second reading of the Equal Opportunity Bill, 1999. For me it is a dream come true in the continuum of a struggle I began since my student days in London.”

Where is the focus on race in that? There is no such focus. He continues:

“I am convinced now, as I was convinced then, that the greatest problem facing mankind today is its failure to manage diversity.”

Where is the race? This is what the Member quoted from and when he quoted his conclusion was that the Member for Couva North, then Prime Minister Panday was focusing on race.

Mr. Panday continued:

“If one looks (around) the globe, whether it be Africa, Asia, eastern Europe or even some of the developed countries, one will notice that... conflagrations (are) taking place, the wars and the conflicts, have as their basis a single theme and that theme is the failure to manage diversity.”

Where is the race? It was a great speech. It was a brilliant speech and as history would have it because as we all know God does not sleep, he only wears pajamas. The mover of the Equal Opportunity Bill, Mr. Panday, had said it was his struggle since his student days, and as God would have it, he is in the Parliament today after we forced the Government to bring this Bill back for debate. All is well, Mr. Deputy Speaker. [*Desk thumping*]

Mr. Panday continued:

“Whether that diversity is based upon a difference of tribes or ethnicity...whether it is based on a difference of religion...”

so ethnicity, religion—but the Member says Mr. Panday focused on race. That is how the Member thinks.

“...Whether it is a diversity that is based upon...religion as in Lebanon; whether it is a diversity based upon the difference of religion as in Ireland between Catholics and Protestants; whether it is diversity based upon race giving rise to...much conflict in developed nations...”

So race is one of the factors Mr. Panday spoke of in his speech.

Mr. Panday went on to quote from the Working Paper on Equal Opportunity legislation which had informed the framing of the then Bill.

“In a society rich in diversity such as ours, it is important to safeguard the integrity of different races, social groups and men and women from unjust and unequal treatment and the denial of equal opportunity. Equally important is the need to arrest institutionalized and historically entrenched patterns of discrimination all of which are evident in Trinidad and Tobago...in varying degrees.”

Where is the race? He reads the entire thing and then the Member is a stranger to the truth. He was misleading the House. We are not only dealing with race because you see what status refers to, and he quotes from clause 3, the interpretation section of the Bill.

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He said status means the sex, race, ethnicity, origin, religion, marital status or any disability of that person, because we have brought a Bill that does not only deal with race, totally misleading the House. Others will say he lied; I am saying he is a stranger to the truth.

When we go to the Act that was passed in this Parliament and piloted by Mr. Panday in 2000, this is what status means: sex, race, ethnicity, origin, religion, marital status or any disability of that person. Is anything different? It is identical. The status then and status now, the wording is identical. What the UNC proposed and what the Member is now piloting it is identical but he tells this House, and, therefore, the nation, that they did not focus on race, they dealt with all these other matters relating to status. But they are identical positions with respect to the 2000 Act passed by the UNC. Then he goes on to mislead the House by saying that this Bill is only for the private sector because the Constitution already handles the public sector.

Mr. Deputy Speaker, clause 59 says: "This Act binds the State." The Member did not read the Bill. When I picked up my Order Paper I saw a Bill entitled an Act to prohibit certain kinds of discrimination, to promote equality of opportunity and so forth by the Attorney General. But in the events that have transpired, and I will speak of them in a moment, because that was discrimination too. The Attorney General does not come, he hands a brief to the Member for Laventille East/Morvant, which the Member obviously did not even read last night. So he comes to say this Bill is only for private purposes. "This Act binds the State", clause 59. What is the State? Clause 4 tells us: "'State' includes—

- (a) Government Ministries;
- (b) Municipal Corporations;
- (c) Statutory Authorities;"

Are those private concerns? It continues.

- “(d) Enterprises owned or controlled by or on behalf of the State or which received funding from the State...
- (e) Service Commissions;
- (f) The Tobago House of Assembly.”

Are those private concerns?

This Act binds all those and, therefore, the Member was totally misleading this House when he said this is only for private purposes. And why is it necessary for this Act to bind both the State and private citizens?

It is true that we have a Constitution that guarantees rights to people, rights that are not to be infringed by the State. Rights in the Bill of Rights which is in section 4 of the Constitution; recognition and declaration of rights and freedoms enshrined. Section 13 of the Constitution spells out that if any person alleges that his rights have been, are being or likely to be contravened that person could make an application to the High Court for redress. So if your rights to freedom of speech, liberty, equality of opportunity and so forth, equality before the law, protection of the law, the right of the individual to equality of treatment from any public authority in the exercise of any functions, yes, you can go for a constitutional motion.

But what has happened, the courts have framed the interpretation of these rights in such a restricted manner, that where you are complaining of discrimination and equality of treatment, the courts have restricted that to say there must be a person that is identically comparable to you.

In the diversity of human life, you are really not going to find a person who has identical circumstances as you do. It is exceedingly difficult to get those identical circumstances. So you must have a comparator. That comparator then has to have most of the same processes, the same circumstances that you would have. So that becomes very restricted in the way it can be used by any citizen in terms of dealing with their equal opportunity. If this does not have anything to do with the provision of jobs, goods and services you could not use the Constitution for that. This is where the UNC piloted by Mr. Panday then, brought the legislation to ensure that there was equality of opportunity in this regard.

Mr. Deputy Speaker, since we did this Act in 2000, the Member for Laventille East/Morvant comes five years later and talks about this Bill as though it is something totally new. They took five years. Do you know what they did in those five years? All they have done is to remove one section. They amended two sections and removed one in an Act that has 60 sections. They took five years to remove section 7 of the Act and to amend two other sections. That is all they did, and they stand there saying they are committed to equal opportunity and want to use the court case saying it was bad when at the end of the day, it is the PNM that failed to support the 2000 Act. That is why the court ruled that it was unconstitutional. Because, we are passing here now—this is unconstitutional; the preamble to it now recites that it is inconsistent with section 45 of the Constitution, but we will support it because we are committed to equality of opportunity.

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I would like to ask, when we go into the Committee stage, that it is very vital if we are talking about preventing discrimination in clause 4, the interpretation section under “status” that we must include “political affiliation”. That no person should be discriminated against because of political affiliation, none. [*Desk thumping*] We must put that in now.

In the events that have transpired from 2002 to up to yesterday, we are convinced that there has been political discrimination, harassment, and persecution of the Leader of the UNC, Basdeo Panday. We are convinced of that.

Mr. Deputy Speaker: I had hoped you would not go there for the same reason why the hon. Member—36(2), I do not want you to repeat that.

Mrs. Persad-Bissessar: No matter is before the court.

Mr. Deputy Speaker: Hon. Member, I am on my feet. There is a matter before the Court. [*Crosstalk*]

Mr. Panday: No, no.

Mr. Deputy Speaker: Yes, there is. Please. Hon. Member for Couva South, I am on my feet. There is a matter before the court and Mr. Panday has been remanded to stand trial and he is on bail and, therefore, it is before the court. I am saying that, and if you contradict me, I will ask you to leave.

Mrs. K. Persad-Bissessar: Thank you. We are talking about political discrimination and the need to include under status the term “political discrimination”. Because when there are persons in public life who fail to furnish particulars to the Integrity Commission and they are not brought before the courts but someone else is hauled before the court that is discrimination. That is targeted. Here is a sitting Member of this House—I read in the newspaper the Integrity Commission has put out a notice that that Member has failed to furnish particulars requested. How is it that one person in public life is put before the courts and persecuted, what about other persons? So that is political discrimination that is targeted.

We need to put into the legislation; we need to add political discrimination. [*Crosstalk*]

Mr. Deputy Speaker: Please, hon. Members, let the Member continue.

[*MR. SPEAKER in the Chair*]

Mrs. K. Persad-Bissessar: The Member seems very concerned about that. I do not know why. So there are several questions to be asked and that is why I am very sorry the Attorney General did not see it fit to come to this House. We have

to find out why the Attorney General asked Michael Anthony Fifi, the managing director and CEO of HCL to finalize the purchase reasonably quickly? Does the Attorney General realize that the average person might conclude in the AG trying to help the Chief Magistrate sell his land while he was deliberating on a case, that it looked as if the AG was seeking to influence the verdict? How could the AG on the one hand claim to be angry about the cheque and yet simply tell Clico to clean up its mess? [*Inaudible*—to whom he had made a report? My colleague is saying he became a real estate agent attempting to help the Chief Magistrate sell his land. Does the AG not know his actions then make it possible for anyone to now conclude that the Chief Magistrate owns him and thus was willing to facilitate the Government's clear wish for the criminal case against the CJ to fall apart. The AG should be well aware of all of this.

Is the Prime Minister to whom the AG made a full report about the lands sale issue, the very day Mc Nicholls had visited him? This is why there is a letter talking about invoking section 137 of the Constitution that was sent on February 21. And while there has been all this nonsense about the oppressiveness of non-existent parallel proceedings. There are no parallel proceedings. Is this why the DPP was being pressured to drop the case? Is it because the statements by the accusers raise more questions than the answers to these questions and would put the Government and the Chief Magistrate into a particular light?

The tragedy is unless there is no public enquiry into the matter, we will not know the truth of what really happened between the Chief Justice, Mc Nicholls, the Magistrate, the DPP, the AG and the Prime Minister.

It seems as though this Government cannot afford a tribunal, an enquiry or a criminal case on hold. We will never know and people are asking this everywhere. One has to say the Judiciary in some ways yesterday redeemed the Judiciary, because we had seen the administration of justice brought into such utter scandalous disrepute, the highest offices in the land.

3.00 p.m.

So we saw, in every one of those high offices, a breach and a violation of the separation of powers. That is what has come forward in the public light. It shows that the Attorney General and the Prime Minister are involved and we will never know what really happened. However, everything comes to light one day. Who would have thought that this land sale where the Attorney General was being real estate agent to sell land would have come at this later date? But the evidence

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came out and more will come to light. So in this Bill we must include, under status, political affiliation.

Secondly, given the PNM's track record when it comes to implementing legislation, given the fact that we had to draw them by the nose to force them to bring this Bill to the Parliament, we have no confidence that they will implement the legislation. Their track record shows that we still have to proclaim and implement the Land Adjudication Act, 2000; the Land Tribunal Act, 2000; the Registration of Titles to Land Act, 2000; the Children's Authority Act, 2000; the Children Community Residences (Foster Homes and Nurseries) Act, 2000; the Adoption of Children Act, 2000; the Children (Amdt.) Act, 2000; all that package of legislation designed to assist the children of this country. They will not proclaim these. Recently, the Constitution (Amdt.) Act, 2006 and the Police Service Act, 2006, the Police Complaints Act, 2006 took a year to proclaim and have not been implemented up to today.

So, Mr. Speaker, I suggest, in clause 2 of this Bill, which reads:

“This Act comes into force on such date as is fixed by the President by Proclamation.”

that we put a deadline within which it should be proclaimed. We should fix a date in the legislation. We should legislate a deadline by which the Act is to come into force. We see all the time that the PNM continues not to proclaim legislation and, even when proclaimed, will not implement. This is the only way we can ensure that this Bill is carried into law and implemented.

Whilst we are dealing with the Equal Opportunity Bill, we need to remember the position of the PNM, then Opposition, when the Bill first came. As I have said, it is basically the same Bill. There are just two clauses amended and one removed and, of course, the preamble put in to seek the special majority.

In May 2000, when the parent Bill was being debated, the Member for Arouca South—and the Member for Laventille East/Morvant made mention of what she said. She was very clear on the PNM's position. She said:

“I would also like to reiterate that the existing laws of Trinidad and Tobago already deal with the issues raised in this legislation. I would like to reiterate that the legislation would only set another layer of bureaucracy. Furthermore, decent behaviour, public or private, can never ever be truly legislated. Decent behaviour at all levels of society could never, ever be truly legislated.”

Their position was that there was no need for equal opportunity legislation and, given that mindset, even when the Member for Laventille East/Morvant spoke today, he was not convincing in his arguments. In fact, he seemed to be arguing against the very Bill that he was piloting. Given that mindset of the Government, it is important for us to legislate a time frame within which the legislation should take effect.

Along with the equal opportunity law, we have to look at the Government's track record on human rights and freedoms. So we come to something known as the Human Rights Unit in the Office of the Attorney General. This unit is supposed to file reports with the United Nations with respect to several matters, but they have not been filing. While the Government seems to be content to deny the existence of discrimination on the one hand and assure the nation that existing legislation deals with any eventuality, the United Nations remain of the view that discrimination continues to exist.

The Office of the United Nations High Commission for Human Rights, in its report dated January 27, 2006 reviewed the performance of this Government in implementing the UN Conventions on Children's Rights. This document was sharply critical of Government's lack of performance in various aspects of securing the interest of children in Trinidad and Tobago. It pointed also to deficiencies in a wider context. I quote from that report, paragraph 28, under the heading "General Principles":

"While noting that discrimination is prohibited in the Constitution, the Committee is concerned that:

- (a) The grounds mentioned in the Constitution are not in full compliance with Article 2 of the Convention, and that no additional legislation exist that explicitly prohibits all forms of discrimination and in greater detail;
- (b) Some groups of children in particular children living in poverty and children affected by HIV/AIDS may suffer from discriminatory attitudes and disparities in accessing basic services.
- (c) Only battery and assault against male children is punished under the Children Act, Chap. 11:02, section 5(1) and that discrimination remains in the sentencing of male and female offenders for sexual offences against children.

The Committee recommended that the State party—“
—that is Trinidad and Tobago—

- “(a) Increase its efforts to ensure implementation of existing laws guaranteeing the principle of non-discrimination;
- (b) Adopt appropriate legislation, where necessary, to ensure that all children within its jurisdiction enjoy all the rights set out in the Convention without discrimination, in accordance with Article 2 of the Convention;
- (c) Amend the Children Act and the Sexual Offences Act in order to ensure that girls and boys are equally protected under both Acts.”

So at the moment girl children are not protected under those Acts in the same way that boy children are.

This report was done about a year ago. Several children have been brutally murdered; many continue to be abused and still this Government has not moved. The international community is well aware of the level of discrimination that persists in this country, just as they are aware of the level of crime that smothers this country. Far away, Australia has now updated its travel advisory warning its citizens about the high level of serious crime in Trinidad and Tobago. Crime, like discrimination, continues to benefit from Government’s incompetence and unwillingness to act.

So we come now to the point that we are a signatory to the International Convention on the Elimination of all forms of Racial Discrimination adopted by the UN General Assembly in 1965. We received our instrument in 1973, followed by entry into force on November 03, 1973. We are also signatories to the Convention on the Elimination of All Forms of Discrimination Against Women. This was adopted in 1979 by the UN General Assembly, often described as an international bill of rights for women.

Whilst we are signatories to these treaties, Mr. Speaker, the UN has ensured that the states keep their obligations contained in the convention. They set up various committees to monitor the compliance by states to the convention and countries are mandated to submit regular periodic reports to these committees for evaluation.

Mr. Speaker, let us deal with the issue of racial discrimination first. In 1965, the UN General Assembly adopted the International Convention on the Elimination of all Forms of Discrimination. Apart from spelling out the obligations to various state

parties, the convention established something called the Committee on the Elimination of Racial Discrimination. That committee was the first body created by the United Nations to monitor and review actions by states to fulfil their obligations on the specific human rights agreement.

When the report comes before the committee for examination, a representative of the country concerned may introduce it, answer questions from the experts and comment on observations they make. The committee's report to the General Assembly summarizes these proceedings and then offers suggestions and recommendations. That convention establishes three procedures to make it possible for the committee to review legal, judicial and administrative steps to be taken by the individual states to fulfil their obligations.

The first requirement is that all states must ratify or see to the convention and, once they have done that, they must submit periodic reports. Secondly, the Convention provides for state-to-state complaints. The third procedure makes it possible for an individual or a group of persons who claim to be victims of racial discrimination to lodge a complaint with the committee against their own state. This may only be done if the state concerned is a party to the convention, of course, and has declared that it recognizes the competence of this particular committee.

Trinidad and Tobago is one of 157 state parties to the convention. As such we are obligated to provide the committee with periodic reports on how we are implementing and managing the provisions of this treaty. The country's eleventh, twelfth, thirteenth, fourteenth and fifteenth periodic reports of Trinidad and Tobago, due on November 03, 1994, 1996, 1998 and 2000, have all been submitted to the committee for the years 1994, 1996, 1998 and 2000. You will recall that the UNC came out of office in 2001.

After reviewing those reports, the committee made the following concluding observations and remarks:

“The Committee welcomes the eleventh, twelfth, thirteenth and fourteenth periodic reports as well as the updated additional information that the state party's delegation provided during its oral presentation and expresses its appreciation for the opportunity to renew its dialogue with the state party after more than six years.

The Committee notes with appreciation that the report was more exhaustive and of a higher quality than the previous periodic reports.”

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Mr. Speaker, as I said, these were the reports done at the time the UNC was in office. I quote further from the committee's report:

“The Committee welcomes the relevant statistical information provided by the State party in the report, which demonstrates an encouraging effort to provide the Committee with information requested during consideration of the ...report.

The Committee welcomes the establishment of the Human Rights Unit in the Office of the Attorney General and Ministry of Legal Affairs to address, inter alia, the compliance with treaty obligations, and the positive announcement by the delegation of the various measures envisaged to disseminate the International Convention on the Elimination of All Forms of Racial Discrimination.”

It is most interesting to note that since the PNM has come into office, they have failed to file a single report for the past five years—from 2002 to the present time. It may well be that they are aware of discriminatory practices that are taking place and prefer not to file a report. It may well be that the Attorney General is so busy meddling in people's affairs; trying to set-up people and fix cases, that he does not have the time to ensure that the work in this office continues.

So here it is the UNC fully complied for the period it was in office, sent all the reports; but not a single report has been filed since the year 2001 to the present time; the last having been filed in 2001. The Attorney General has not come, so I ask, through the Minister piloting the Bill, to tell us our progress with respect to the periodic reports. [*Interruption*] He could not stay so the Member for Diego Martin Central will advise him that in his winding up he should let us know the status of the periodic reports we are supposed to send to the UN Assembly with respect to the Convention on the Elimination of All Forms of Discrimination, especially with respect to racial discrimination.

The failure to report has not stopped. The Prime Minister made some very uneducated comments on ethnic profiling discrimination recently. His conviction to the elimination of bias, racial and otherwise, is manifested in the refusal to advise the United Nations and the world of what progress this Government has made in dealing with an issue which he himself has recently identified as a cause for concern.

When we come to the next treaty, the Committee on Elimination of Discrimination against Women, the situation is very much the same. The Convention on the Elimination of All Forms of Discrimination against Women

was signed by Trinidad and Tobago on June 27, 1985. This Convention obliges member countries to submit to the Secretary General a report on the legislative, judicial, administrative, other measures that they have adopted to implement the convention within a year of this entry into force and then at least every four years. These reports, which may indicate factors and difficulties in implementation, are forwarded to the UN committee.

The last report was submitted by the UNC on February 06, 2001. Once again, this Government has failed to live up to its obligations when it comes to dealing with the elimination of discrimination against women. I have already said that they failed to file any report since they came into office with respect to the treaty on the elimination of racial discrimination. Likewise, when it comes to the Convention on the Elimination of Discrimination Against Women, this Government has failed to live up to its obligation.

Last year, there were three sessions of the committee and, in 2007, there are also three sessions scheduled to consider the state party reports. Trinidad and Tobago is not among them because the Government failed or refused to submit the relevant reports. Again, we are not surprised because this Government stands accused of not dealing with the specific concern of discrimination against women.

Recently, for International Women's Day, we saw the various women's groups saying that they do not have the support; they do not see the Government taking the steps necessary. This convention defines discrimination against women as any distinction, exclusion or restriction made on the basis of sex, which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women in respect of their marital status on the basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or other field.

By accepting this convention, Mr. Speaker, member countries commit themselves to undertake a series of measures to end discrimination against women in all forms. We agreed when we signed this treaty—and it remains in force—to incorporate the principle of equality of men and women in the legal system, abolish all discriminatory laws and to adopt appropriate ones prohibiting discrimination against women; to establish tribunals and other public institutions to ensure the effective protection of women against discrimination and to ensure elimination of all acts of discrimination against women by persons, organizations or enterprises.

The convention provides the basis for realizing equality between men and women to ensure women's equal access to equal opportunities. State parties

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agreed to take all the appropriate measures. The convention is the only human rights treaty which affirms the reproductive rights of women and targets culture and tradition as influential forces. Mr. Speaker, the Government, as I said, has not taken a single step to further the aims and objectives of that treaty to which we are a party. It affirms one's rights to acquire, change or retain nationality. The countries that have ratified or ceded to the convention are legally bound to put the provisions into practice. They are also committed to submit national reports.

After viewing the reports, the committee issued a release which indicated that they were satisfied—that was in 2001—with the Trinidad and Tobago's delegation response on the issue of marital rape. They commended Trinidad and Tobago for its many successes regarding the situation of women.

You will recall, Mr. Speaker, that in this very Parliament a UNC government gave pregnant women—the Member for Nariva, the then Minister of Labour—maternity protection under the Maternity Protection Act [*Desk thumping*] ensuring that they were not fired from their jobs because they were doing one of the things that God gave them to do—the great gift to bear a child. There was no protection whatever. It was a UNC government that also dealt with the domestic violence legislation and strengthened it in a way that gave more protection to women.

On the issue of marital rape, it was the UNC government again that put forward those clauses into legislation. There were several instances in which, within our time frame, we were able to deal with legislation in compliance with human rights and freedoms, in compliance with the treaty Convention on the Elimination of All Forms of Discrimination Against Women. But this Government has not done one single thing when it comes to dealing with the protection of women or eliminating discriminatory practices against women.

There was a gender policy that was put out. I do not know what became of that. It seems that it has just died. There was a lot of noise—song and dance—about it. It was discussed all over the country, but it seems to have gone the way of all things PNM. It has totally disappeared from public life; sitting on a shelf somewhere as all things PNM become.

Where is that commitment? There is no commitment. We come here today with this Equal Opportunity Bill only because the Opposition has repeatedly called for it. The Opposition has said to the Government that they must honour the commitment to have legislation for equal opportunity. Left to them, they would not bring this legislation. For five years they did not do it; they did not support it in 2000, and we are very concerned that even when this is passed, like

all these other things dealing with discrimination that this Government would not implement—what is the answer to that? The only answer could be that the Government would not implement legislation that would give equal opportunity and protection to all. It has to be that we must move the Government in the next election and the UNC form the government. [*Desk thumping*]

The Government has failed to implement legislation. It has failed to put anything in place. Look at the legislative agenda of the UNC when it came to the protection of women. I mentioned the Domestic Violence Act, 1999. I mentioned the Maternity Protection Act, but we also brought into law something that gave tremendous protection to women. It was called the Cohabital Relationships Act, 1998. All those women living in what we call common-law relationships—and there are many of them—if their spouses had died or if they had left their spouses, they would have had no benefit to get.

The Act recognized that in the Caribbean and in Trinidad and Tobago, there are these common-law relationships. Really the marriage certificate, the piece of paper, was a creation of the slave masters and so the way our society developed—I know certainly for Hindu families where the pundit would marry many of them “under bamboo”, many of them did not have marriage certificates signed and delivered. So people would live with each other for 20 and 30 years and they would not benefit at all. If a wife lived with a husband for 30 years and he died—and it still happens—the common-law husband's family could say: “Get out of the house!”

It took a UNC government to recognize that as a fact of life and give that protection out of our culture; that part of our history. At the moment the PNM has failed in every regard when it comes to legislating or administering the protection of women. They have not complied with the convention dealing with that.

There is a third issue that is related. The Human Rights Unit in the Ministry of the Attorney General was initially mandated to prepare all the periodic reports due as part of the treaty obligations for Trinidad and Tobago under certain international human rights instruments. It is important to note that the Human Rights Unit was not established to receive complaints or to provide advice to members of the public about violations of their human rights. Staffing was approved by Cabinet and now we would like to know the status of that unit in the Ministry of the Attorney General. They have not filed any of the reports for the past five years. Has the Government disbanded the unit? What has happened to that unit that was there to send in the reports and to monitor the protections? Is it that the Government does not care about human rights violations?

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It is very easy to contrast the inactivity of the PNM when it comes to implementation and protection against discrimination versus the aggressiveness of the UNC's policy. We therefore call on the Prime Minister and his Government to take immediate steps to prepare and submit the relevant reports so that the world may be advised of this Government's track record in the fight against discrimination on the basis of race and with respect to discrimination against women.

We call on the Government to maintain its obligations under the conventions and, more importantly, to tell the nation of its progress or lack of it in establishing and maintaining the structures that these two conventions mandate that we do. Government must also indicate why it has refused or failed to submit these reports to date. I ask again, through the Member for Diego Martin Central, because the Minister is not here, that the Minister in his winding up give us some information with respect to that.

I end as I started. I started talking about political discrimination. It is a prevalent form of discrimination and it is not contained within the Bill. You will say it was not in the original Act either. Our answer is that it was not an issue then; it has become an issue now because of the deliberate policy, sometimes spearheaded by the leader of the PNM himself. There have been many instances where persons have brought legal matters against government officials for interference and so on. For example, Marlene Coudray, the Maha Sabha, Devanand Maharaj; all these matters have been outstanding.

Mr. Valley: Does the Member consider the firing of Henry Sealey, Malcolm Jones and the one from NCB, political discrimination?

Mrs. K. Persad-Bissessar: I am saying that the Bill has no provision with respect to political discrimination. That nonsense he is asking is not relevant; totally irrelevant. When he asks about who fires whom, this Government has discriminated against every single person who was working in the public service when the UNC left. They fired all of them. They fired all the ambassadors who, I think, were recalled on the very day of the election results. Have you forgotten that? They went into all the state companies and they fired everyone and now stand up here to ask me who fired or did not fire Jones.

We are saying, whichever government it is—this law is for every government—this law must include a clause that says there must be no discrimination on the basis of political affiliation. Therefore, if you think it is political discrimination, it is going to be dealt with whoever is in government. We have seen all these matters

where people have been discriminated against and they go through this lengthy court procedure.

Mr. Speaker: The speaking time of the hon. Member for Siparia has expired.

Motion made, That the hon. Member's speaking time be extended by 30 minutes. [*Hon. K. Valley*]

Question put and agreed to.

Mrs. K. Persad-Bissessar: Thank you very much, Mr. Speaker, and I thank my colleagues on both sides of the House for the extended time.

They are saying that persons in public life—I remember the Marlene Coudray case where it was alleged within the case that the Prime Minister said, “I will do for you”. There is the case of the Maha Sabha licence that had to go right up to the Privy Council to get their licence. [*Interruption*] Stop disrupting and sit there quietly! You will get your turn.

Mr. Speaker, you can go to court on a constitutional motion, for judicial review as some of them, which is how these actions came into the public, but the cost is prohibitive. How many ordinary citizens would be able to spend that kind of money? When the Minister was talking, he talked about legal costs where, within this, you will be minimizing legal costs by coming to this tribunal rather than going through the court. You will then not spend so much money.

What happens when you persecute a citizen and that citizen has gone to all kinds of court to get justice and spends all of this money? Who will pay the legal costs now, the time, the stress and the strain?

3.30 p.m.

This Bill is a very important piece of legislation in that regard because not every citizen would go through the stress, trauma and the cost of legal proceedings straight to the Supreme Court up to the Court of Appeal and the Judicial Committee of the Privy Council. We feel that is a very important area where people would be able to get something at a cheaper rate.

There is discrimination in many ways as well. This is seen again when we come to status, which includes geographical origin. It is very important because, for example, the constituencies of Siparia and Caroni East do not have a single CEPEP project, not one and never had. Yet \$1.6 billion is spent on the CEPEP project. Why, is it because of our political affiliation in Caroni East or Siparia? Or is it because you are down in the countryside and nobody cares? Is it because

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of geographical origin? I do not know. Is it geographic that no one needs to access a CEPEP job? There is no contractor in Siparia or Caroni East. That is discrimination. I am being reminded that you have a project officer with no project. On top of it being discriminatory, it is also corrupt. How can you have a person hired as a project officer in a constituency that does not have a single project taking place? This is mind-boggling. In addition to discriminating, you are also corrupt. It is a total fraud. Why is that person collecting pay when there is no project in the area? This Government discriminates against persons, in terms of their jobs and their status. They also discriminate against various regions.

Community activists in Laventille believe that because the area has been marginalized over the years, they continue to be fed crumbs. Are you also discriminating against Laventille? It cannot be political affiliation there because they are your supporters. If it is Siparia or Caroni, you can say that they are UNC supporters and they can fall under the heading of political affiliation, which I have now asked to be included in this Bill. How do you explain that you discriminate against your own PNM members in Laventille? How do you explain that? I said that it cannot be political discrimination. Tell us what kind of discrimination is that? There are all kinds of discrimination. There is geographical, political, regional and sectoral discrimination under this Government.

The agricultural sector continues to be strangled to death by this Government. There is sectoral discrimination as well. Once again, they have turned their attention to the sugar industry which they manipulated and wounded over the past five years to justify closure. Under this Government, the agricultural sector continues to shrink despite the Prime Minister's stated intentions to the contrary, every year, budget after budget.

In 2005, he said that our goal is to increase the sector's contribution to economic and social development and employment creation, while providing an increase in the level of the food requirements of the nation.

In October 2004, Mr. Manning solemnly promised in this House that he would launch a National Agriculture Information System for the further modernization of the sector. He indicated that databases have already been developed on technology, markets, livestock, crops, disease control, fertilizer use, seeds and other relevant agricultural information. He said:

“We shall promote fish production through the establishment of the Fisheries Monitoring and Surveillance Unit, and we will put sustainable management techniques in place for renewable marine and island fisheries.”

The Minister of Finance in an interview entitled "Last Chance for Farming" reported in the *Express* of 2006 that over 19,000 local farmers are concerned that they are being edged out of existence to make way for heavy industrialization.

Mr. Norris Deonarine, President of the National Food Crop Farmers Association, has lambasted the Government for frustrating farmers. Every year the Prime Minister promises that he will do something with agriculture and every year those promises go aside. Is this sectoral discrimination? It seems as though there is discrimination in every regard. The only sector is where they put priority into gas and oil. What is happening to agriculture, which is where our food import bill is so high? This is where the cost of food is so high. This Government continues to discriminate, in terms of the sectors in the economy that it will give priority to. This year the agricultural sector's contribution to the economy fell from 1.4 per cent of GDP in 2004. That is already so minute.

In 2002, agriculture's contribution to GDP was 1.4. Last year, after four years of the PNM, it dropped to 0.6 per cent. With all the promises budget after budget, the sector continues. What does the Minister of Agriculture, Land and Marine Resources have to say about that? Is it that they are discriminating against your Ministry and you are not getting the resource that you need to get?

The areas which the Government has consistently exhibited discrimination tend to have the following characteristics, when it comes to regional and geographical characteristics. Usually, these are constituencies held by the Opposition, which would make a clear case of political discrimination and/or are generally rural-based communities. They are populated in a general majority by persons of Indian descent. In that regard, will it be covered by political, racial or geographical discrimination? Whatever it is, it is most important that this legislation be passed in this House today with whatever amendments we make in the committee stage. Certainly, we would do that.

I would like to make some suggestions. As I said before, we must include political affiliation as one of the matters under the definition of status.

Secondly, we must put a time frame for the implementation of this legislation and we must include it in clause 2 of the Bill, where it states that the Act is to come into force on a date to be proclaimed. We should place there instead: "This Act is to come into force within one month of its passage in the House." That is the time frame for implementation.

There are a few other words, which are really minor technical points, which we will deal with at the committee stage.

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I want to repeat: when the Bill was piloted by the then Prime Minister of Trinidad Tobago, Mr. Basdeo Panday, that this Bill—[*Interruption*]

Mr. Hinds: Just to complete your submission, would you like to propose a definition of “political affiliation”?

Mrs. K. Persad-Bissessar: Sure, we will do it in committee stage.

I close as I began, with a very—which is still so useful today. This is totally in place today. This is why we need equal opportunity then and why we need it now. I quote from the *Hansard* contribution of Mr. Basdeo Panday of Friday, May 19, 2000:

“Mr. Speaker, I regard it as a great honour and a great privilege to move the second reading of the Equal Opportunity Bill, 1999. For me, it is a dream come true in the continuum of a struggle I began since my student days in London.

I am convinced now, as I was convinced then, that the greatest problem facing mankind today is its failure to manage diversity. If one looks across the globe, whether it be Africa, Asia, eastern Europe or even some of the developed countries, one will notice that the conflagrations taking place, the wars and the conflicts, have as their basis a single theme and that theme is their failure to manage diversity. Whether that diversity is based upon a difference of tribes or ethnicity as in Rwanda and Burundi; whether it is based on a difference of religion as the conflict in Nigeria between Christians and Muslims; whether it is a diversity that is based upon a difference, again, of religion as in Lebanon; whether it is a diversity based on the difference of religion as in Ireland between Catholics and Protestants; whether it is diversity based upon race giving rise to so much conflict in developed nations such as in the United States and even in Britain; whether it is Indonesia, in Timor, wherever one sees conflict in the world today, that conflict is based on the failure of man to manage diversity. The purpose of this Bill is to help us deal with the management of diversity in our own society.”

We give our full support, with some minor amendments, to this Bill which, in effect remains. There are three clauses. One was removed and two were amended slightly. We give our full support.

However I ask the Government to tell why it is they have removed section 7 of the Equal Opportunity Act, 2000. We have seen no reason and you have given

no reason whatsoever. We will be asking for that section to be reinserted in the Equal Opportunity Bill. It is a very important section.

Section 7 states:

“(1) A person shall not otherwise than in private, do any act which—

(a) is reasonably likely, in all the circumstances, to offend, insult, humiliate or intimidate another person or a group of persons;”

What is wrong with that? Why have you taken that out? It continues:

“(b) is done because of the gender, race, ethnicity, origin or religion of the other person or of some or all of the persons in the group; and

(c) which is done with the intention of inciting gender, racial or religious hatred.

(2) For the purposes of subsection (1), an act is taken not to be done in private if it—

(a) cause words, sounds, images, or writing to be communicated to the public;

(b) is done in a public place;

(c) is done in the sight and hearing of persons who are in a public place.

(3) The section does not apply to acts committed in a place of public worship.”

Why have you removed clause 7 from the Bill? This is a very powerful, vital and important clause. It is saying if you want to do these things in private, that is your problem, but you must not, in public, do any act which is reasonably likely in all circumstances to offend, insult, humiliate or intimidate another person. Why did you take that out? What is wrong with that? You must not do anything because of a person's gender, race, ethnicity, origin or religion. You must not do anything in public with the intention of inciting gender, racial or religious hatred.

In this country, you can blaspheme against the Christian religion and there is an offence for blasphemy. Blasphemy is when you say something against the Christian religion. When you belong to another religion, whether it is Hindu,

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Muslim, Sheik, Buddhist; whatever it may be, there is no protection for persons of those persuasions or faiths. Anybody in this country could get up, as happened. When we put in this section 7 at that, there were persons in this country who were blaspheming, with respect to the Hindu religion. Mr. Panday, reminded me that it was the Thusians.

They referred to Mother Lakshmi as a whore. Any Christian—if you talk about Mother Mary in that regard, you could be charged in court. You cannot do it. When it came to the Hindus, it was perfectly all right. There was no protection. Why have you taken this out? That is why we had put section 7, so that nobody could stand and call Mother Mary or Mother Lakshmi a whore and get away with it. You cannot do that in public. Why have you removed this? You have given no protection anywhere else. A man's religion is sacred, because we all worship one God. We may do it in different forms but we all worship and pray to God. Therefore, it is diversity again. We have to manage that diversity and we must not allow—We are now bringing such an important piece of legislation after all these years, to protect people. Why have you removed section 7 from the Bill?

Therefore, I ask now that section 7 be reinserted into the Bill that you have brought. In that regard, we give you full support for the Equal Opportunity Bill.

I want to thank you very much.

Mr. Winston Dookeran (*St. Augustine*): Mr. Speaker, may I acknowledge on this very important debate, the presence of Mr. Basdeo Panday in this Parliament. It is a triumph for our beleaguered justice and judicial system. It is an opportunity for us to restore the very elements of justice and rule of law in this country. I say that this Parliament should take the appropriate steps in order to ensure that Mr. Basdeo Panday's presence in this House is restored in full, so that he can be the representative of the constituents of Couva North.

This, I feel must also apply to the tragedies that have happened in our judicial system over the last few years and came to the fore in the last couple of weeks. The time has come for us to re-establish the rule of law. There is another prominent office holder in the country who, today, is under no legal proceedings and, in my humble view, ought to be able to discharge his constitutional duty in this country, and I so make the call for the Chief Justice to also be reinstated in his office in this country.

I say that in the context of the Bill that we have before us, which is to deal with the very fundamental issue of equality in a society. Equality before the law is one of the very fundamental precepts upon which our democratic system is based.

No one, therefore, and no institution should, in any way, stand before the equality of persons before the law. The law is here to protect us and no one is, indeed, above the law.

The reason we have this Bill today is because it will appear that in the practice of that fundamental principle in our democracy, there have been major concerns expressed by the citizens of our country.

It is in that context, therefore, that I felt that this Bill is of such importance that I wondered why the Government had relegated it to a lower level of priority, not only in terms of the delay in bringing it here after six years, but also by having the Bill piloted by the junior Minister of National Security whose portfolio is not directly linked to justice. I believe it is an affront to this Parliament and this country that someone whose responsibility it is in justice, such a person clearly being the Attorney General, is not here to pilot this Bill on behalf of the Government which will then reflect the priority that the Government places on this Bill.

I say that because when we look at the provisions in the Bill, we face the risk that this legislation can become a piece of paper and it is important for us, if we are to ensure that we are in fact doing things that will reflect the equality for all the citizens, that they do not simply be a piece of paper in which one might have to take very onerous steps to secure those rights.

When the Minister piloted this Bill, he made the outlandish statement that this Bill is not about diversity. I think it is in fact an admission of the fact that he has not quite understood and perhaps, Members of his Government, have not quite understood the philosophical underpinnings of this Bill, for this Bill is really about managing diversity in Trinidad and Tobago.

It is a point that has been reflected for many years, ever since independence. At that time the Prime Minister of our country, Dr. Williams, lamented on Independence Day that in spite of some of the very important attributes that we have in our country, there is one attribute that we have not had and that is the attribute of having a national character in Trinidad and Tobago. The absence of the creation of that national character has now left us in the position where we have to enact legislation to force behaviour, in order to develop that national character. That fundamentally, is what this Bill is all about. Therefore, I feel very uncomfortable that the Minister would argue that this Bill is not about diversity. It reflects his very superficial view of the underlying problems of the country, which would have brought us to this point.

Mr. Hinds: Would the Member give way kindly? Thank you. It appears as though the Member for St. Augustine did not hear precisely what I said. I did say that we are dealing with issues of diversity. The point I was making, however, is that to focus purely on the issue of race was not the right approach. That is what I was saying and I made that very clear.

Mr. W. Dookeran: Mr. Speaker, the Member has made another error. Diversity and race are not necessarily the same thing. To equate diversity and race as if that is the same topic—once again, he is reflecting the fact that the Government's sense of priority and urgency for this Bill and, therefore, the Government's sense of commitment to comply with the provisions of this Bill is up in the air, even today.

We need to get firm assurances in this Parliament and in the action thereafter, to ensure that level of commitment remains intact, or else this legislation, as important as it is, will not be able to build the national character of Trinidad and Tobago.

This is what we are about. That is what all of us in public life are about and that is what we have been arguing. It is time that this country build a consensus on a national character in Trinidad and Tobago that has eluded us for the last 44 years.

The Bill is not only about managing the diversity of this society and building the national character. The Bill is also about underlying the fundamental foundations that must be able to allow us to build that national character; the moral strength of our society and the trust that people have in the governance process and in those who govern. The Bill is really an indictment by the people of the lack of trust in the governing process of Trinidad and Tobago.

It is such an indictment that today the society at large feels very disturbed that the very fundamental precepts upon which the governing process works, is now in jeopardy. We have had enough incidents over the last couple of weeks in which there is now a lack of compliance between the fundamental principles of governance by the separation of the Executive, the Legislature and the Judiciary. We have to use this opportunity to back that national character, that moral strength and be able to find the legislative framework for the management of the diversity of our society.

That is why, when I looked at the objectives of this Bill, they stated very clearly that the Bill seeks to prohibit certain kinds of discrimination and to promote equality of opportunity. Two fundamental objectives: prohibit certain

kinds of discrimination and promote equality of opportunity. Therefore, what I shall be speaking about is how do we go about achieving those two objectives, particularly the objective of promoting equality of opportunity.

Before I go into some of the arguments underlying the basis for this responsibility and this challenge being placed before us, there are two or three minor issues with the Bill that must be addressed and I have no doubt that during committee stage we shall do so. One of them has certain implications. I believe it is in clause 27 of the Bill, which allows for the establishment of advisors to the commission and that those advisors will be appointed by the Minister.

Elsewhere, the Bill allows for the commissioners to be appointed by the President, after consultation with the Prime Minister and the Leader of the Opposition. It is not quite clear to what extent the members of the commission would be bound by the advice of the advisors. In any event, why should the advisors be appointed by the Minister and not the President? Is it one way of subverting the attention of the Bill by bringing the political aspect of the Bill to bear in the administration of the Bill itself? This is something we should give consideration to because if this Bill is to maintain any trust in the people, we must not leave any room for political interference in the discharge of the commission that is to be established—real or perceived, it must not be there.

The second issue deals with the question of the appointment of the Chairman of the Tribunal. From my understanding, this Bill is about ensuring that there is no discrimination based on race, class, age and gender. We have some amendments which include no discrimination based on positive HIV status, political affiliation, sexual orientation and the rehabilitated convicts. There are others. We shall not introduce in this Bill discriminatory measures on any of these grounds. When I look at the criteria for the appointment of chairman of the commission, I see that there is an implied discrimination on the basis of age. In today's world, the age of 65 is a very young age. As outlined and reflected in the institutional provisions of this Bill, there is such a discrimination on the basis of age. I believe that is a contradiction of a Bill that is promoting equality of opportunity for all the citizens of our country. Therefore, serious consideration should be given to ensure that we do not have such provisions in the Bill, in order to have full equality of opportunity in all the different areas.

But what is the fundamental precept upon which this Bill has been based? Many of us would remember many of the incisive words of our very good friend, colleague and intellectual giant of this country who passed away a day or so ago, Dr. Lloyd Best. One of the things that Mr. Lloyd Best used to say is that this

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society, Trinidad and Tobago, is a society in which each group feels that it is a second-class group. Whether we have come from the heritage of our African, Indian or Chinese, European ancestry or wherever we are, we all felt that we are all second-class. Here we are to build a national character for an independent country and we have not been able to overcome that sense of all being second-class. If this Bill has to have any real meaning in this country, it must mean that every group in this country must believe that they are first-class citizens of Trinidad and Tobago.

That leaves me, with your permission, merely to pay a sense of tribute to Dr. Best. Dr. Lloyd Best has written on this and many other issues. I think it is appropriate for us to acknowledge his contribution in so many different ways. Known for his radical non-conventional philosophies, Lloyd Best was not the passive participant in the region's status quo, therein to disagree and advance cogent alternative viewpoints about the political, economic and intellectual realities of Caribbean society.

This earned him the title of “Doctor of Politics” which, by no means, captured the brilliance, tenacity and fertile intellect of a great West Indian social philosopher and thinker.

With your consent, Mr. Speaker, I pay tribute to this intellectual giant of the Caribbean who stimulated the rethinking of accepted models and practices in institutions of politics, economics and development as a whole, giving direction to the principles of support, the establishment and continuity of the Caribbean Integration Movement and Caribbean civilization.

It is, therefore, appropriate that we are dealing with this Bill on this occasion when Dr. Best—one of his famous statements was:

“My counter-strategy to dealing with the realities of Caribbean society has been to locate myself in a landscape and to play for change.”

This Bill is about change to a new political culture. This Bill is not simply a Bill of legalistic arrangements to protect citizens. It calls for a fundamental play for change. It is in this context that we should celebrate in his particular contribution to our society, the fact that he has enriched our space with tireless endeavouring to disclose the possibility of a new world to us.

That is what I hope that this Bill will be able to do, to inspire us in this Parliament and the entire country that there is a possibility of a new world ahead of us. That is why I believe this Bill is also linked to his many dissertations and many comments that he has made over the years on building foundations in a society.

This foundation ought to have been built at the transition period when this country began its journey into a new national destiny, but that foundation was never built, because those who took power at that time were more interested in merely replacing those who had power in the colonial period, without constructing the foundations for the new society. No wonder, almost 50 years later, we have found ourselves in a position where we have to react by bringing a Bill on equal opportunity, when in truth all the provisions of that Bill are in fact reflected in the very Constitution of Trinidad and Tobago.

Because we have not been able to create that national character of which I speak, and we have not been able to conduct our politics and public affairs in a manner, there is a sense of trust in the equality of citizens of this country by the governing process. We in Parliament, of course, are part of that governing process.

It is therefore in that context that I began to reflect on what was the underlying premise of the discrimination that has been taking place in the country on different levels and then I came across this judgment by Justice Peter Jamadar on the question of the radio licence that was denied to the Maha Sabha sometime ago. In giving his judgment, Justice Peter Jamadar actually did a thesis on the historical origins of discrimination in Trinidad and Tobago, going long before our times, but they are essential. Society reflects prejudice today that was set in motion many years before.

Therefore, in his judgment, I thought it appropriate to put on the agenda of this Parliament some of the concerns that he reflected to establish the real root sources and origins of discriminatory practices. He did this by looking at the religious, cultural, historical and sociological context of the society. This he did in order to give a judgment on a simple matter like the provision of a radio licence for the Maha Sabha. That, he said, was linked very much to the sociological context in which the society was placed.

I would quote one or two things from this judgment, which I think is one of the best commentaries on the need for the national character in Trinidad and Tobago. One of the things he said in this judgment:

“What was the attitude of the governing agencies towards the non-Christian population in Trinidad and in particular towards the Hindus and Muslims?”

He went on to say:

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“That is, the Indian immigrants sought to retain their identities. This choice to preserve identity and this resistance to change and to assimilation of the dominant customs and values set the East Indian immigrants apart from the rest of the society, a separation that can be de-linked from the tensions that existed between the dominant Christian religion and the ‘newly arrived’ Hindu and Muslim religions.”

He referred to a study that was done by Idris Hamid on Trinidad and Tobago, another very distinguished son of the soil who passed on some years ago in which he quoted:

“It is indisputable that the generally prevailing attitude of the governing class in Trinidad was that Trinidad and Tobago was a ‘Christian’ society...”

He went on further:

“Ironically, this...discriminatory attitude by the governing class in Trinidad, based on religion, was contrary to the attitude of the founder of Christianity, Jesus, whose life was a critique of religious exclusivity and discrimination.”

In other words, he was saying that the Trinidad and Tobago society was in fact embedded in a historical bias over the many years that have resulted in our actions today.

He went on to argue:

“...this discriminatory attitude is important to note because it forms part of the collective ‘ancient memory’ and psychological context of Hindus and Muslims in Trinidad and Tobago even today.”

I can go on and on.

I want to put on *Hansard* these comments made by Justice Peter Jamadar very recently, trying to arrive at the historical basis of the problems that we face today as we attempt to build national character in Trinidad and Tobago, as we have attempted for the last 44 years to so do. We must understand the historical origins that have led us into the behaviour that we have today. I believe the Government has taken this Bill, not as a serious measure in order to change the national character of the country, the way we conduct business and the way we take decisions, because if they did they would find, perhaps, that the very philosophy of governance is at variance with the philosophy behind the Equal Opportunity

Bill. That philosophy of governance is now at stake. That is why there has been so little anxiety and urgency on their part to bring this piece of legislation for so long.

It does not fit into the current governing class view of building a national character. It is in that context that we have found that our society has reached the stage where we have violated many of the very principles of our Constitution.

When I read the Preamble to the Constitution I do not think it could have been better said. I wish to put it on the record because the Equal Opportunity Bill is but the reaction of a society that has failed to honour the charter of its Constitution.

“Whereas the People of Trinidad and Tobago—

- (a) have affirmed that the Nation of Trinidad and Tobago is founded upon principles that acknowledge the supremacy of God, faith in fundamental human rights and freedoms, the position of the family in a society of free men and free institutions, the dignity of the human person and the equal and inalienable rights with which all members of the human family are endowed by their Creator;
- (b) respect the principles of social justice and therefore believe that the operation of the economic system should result in the material resources of the community being so distributed as to subserve the common good, that there should be adequate means of livelihood for all, that labour should not be exploited or forced by economic necessity to operate in inhumane conditions but that there should be opportunity for advancement on the basis of recognition of merit, ability and integrity;
- (c) have asserted their belief in a democratic society in which all persons may, to the extent of their capacity, play some part in the institutions of the national life and thus develop and maintain due respect for lawfully constituted authority;
- (d) recognize that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;
- (e) desire that their Constitution should enshrine the above-mentioned principles and beliefs and make provision for

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ensuring the protection in Trinidad and Tobago of fundamental human rights and freedoms.”

If we were in the governance process, complying with the fundamentals as enshrined in the Constitution of our country, there would be no need for an equality of opportunity legislation today.

The question arises. Why has it happened? What has happened to this society that it has deviated so much from these fundamental precepts, that today we have to enact special legislation? Even at that, we do not have the assurance that the special legislation could be effectively implemented in a reasonable time frame, to be able to win the confidence of a society, because, the historical basis upon which the management of diversity became a real issue was not tackled in this country and it was another kind of discrimination.

We do not face, in this country, discrimination purely on the basis of a person. There is something called an institutional discrimination in Trinidad and Tobago. It is an institutional discrimination that ends up reflecting itself in the way we spend money, in the way we distribute our resources and the way in which we conduct our public life because the current Government had an opportunity, once again. But instead of relieving themselves from the politics of patronage, they became prisoners of the politics of patronage in Trinidad and Tobago. They believe that it is by so doing that they can retain the power.

The purpose of retaining power and having political influence is not necessarily to serve the interest of all the people in this country, but to ensure that they can remain in power. The right to govern is a right that this Government believes is their right now and forever. It is that underlying thinking that has led us to so much noncompliance with those fundamental concepts of the Constitution that have, therefore, not only historical bias but an institutional bias.

It is not only reflected in the issues of ethnicity, it is reflected in the issues of gender, how we deal with the children of our society and how we deal with senior citizens of the country. If we are concerned only about the retention of power, we are not concerned about satisfying those constituencies that will help us maintain that power.

Hence, today, children do not have a proper environment in which they can grow and prosper and all the advances we have made, in order to put the legislative machinery in place and also to be able to put the public programmes in place, are not in place. Today the Children's Authority has not been established, in

spite of the many tragedies we have had in this country over the last two years on children matters.

We see reflecting, a political philosophy that is based on keeping power in the hands of a few, not using that power to satisfy those who ought to be satisfied whether it is the children or the senior citizens. That is why I have been talking about a society that will do two things: It would ensure that there are great opportunities for our children and the cycle of poverty, to which we are condemned, can be removed. They may be the unborn generation. They may not have votes to sustain the government in office, but they are part of the next generation and we must deal with providing opportunities, even for the unborn children who one day will have to become the citizens of this country. They may not vote and, therefore, the current political philosophy of those in power will see that as not important. If the objective is to build national character, that requires to have a sensitivity to equality of opportunity for our children in our society. There are ways and means to do that and then to deal with our senior citizens.

Today, it is unthinkable that our senior citizens in oil-rich Trinidad and Tobago will have to go through harassment in order to get themselves qualified as eligible for their pension payment. What the Government's response has been is to change the name from pension payments to granting funds. That establishes the fact that when you accept a fund from the Government, you are now obligated to them. If you have a pension, that is your right and entitlement. It is a different philosophy.

We are not interested in building a society in which the governing class makes people obligated to them. We are trying to build a society in which the governing class gives people freedom by which they can express their own dignity. That is why I say that this Bill before us is not a simple legal instrument. It is an instrument that is deeply weeded and anchored in the philosophy of governance and that is why today we face so many challenges with the senior citizens who are facing that problem.

We have put proposals and we will put even more proposals to build a society for opportunities for the children and protection for the aged. In between, we will call on the rest of the society to build a robust, competitive and strong economy during the productive years.

We will use, therefore, the power of the purse to keep half the people in unproductive ventures so that they can vote for them. We shall create a new society in which those who can afford to work by virtue of their age and

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otherwise must be able to contribute to the society but this society must provide that kind of opportunity for the young to break the cycle of poverty and to create protection and dignity for the old people.

The measures to that are very simple. After six years in office, if we are talking about equality of opportunity and we are talking about ensuring that there is equal access to state resources and there are opportunities for the whole society to get that freedom, then this Bill will mean little. It will be a legislative requirement, unless the methods of politics and the process of government changes, in this country. This Bill will have little meaning for building the national character of Trinidad and Tobago. That is what this debate is all about and that is what I would like to place before the *Hansard* of this country, for we must look at both the historical and institutional biases that led to where we are.

In terms of real manifestation of what I am talking about, I had the privilege recently to read quickly a book called the *Public Service and Service Commissions* that was edited and written by Kenneth R. Lalla. In that book there is a wealth of information about how our public institutions are in fact based in a situation where they are anchored in various prejudices that reflect itself in action. It is no wonder that the Maha Sabha had to go through that and the Cabinet had to get involved, in order to grant a licence to the Maha Sabha, because the institutions of State have inbuilt biases against equality of treatment in Trinidad and Tobago.

[MR. DEPUTY SPEAKER *in the Chair*]

It is that we have to change, the very operations of the institutions of state that have these inbuilt biases. It reflects itself by the leadership and the governance of these institutions. Some of them operate within the law as if the law is in fact the object itself. That is why I got very concerned when I see all the leading actors in Trinidad and Tobago today in the Judiciary and governing process, all the major office holders who are supposed to hold this centre on the basis of common values, running for cover; each one seeking legal advice as to how they should operate. It is because there is an ingrained bias against the exercise of equality of treatment in the public institutions in Trinidad and Tobago. That is what we must tackle, if we want to build the national character of which Dr. Williams spoke in 1962 and we have, for the last 44 years, been dealing with, as Lloyd best said:

“There are new possibilities in a society. There are new possibilities to which we must aspire. We must not be condemned to the fact that because those who have come before us have failed, we must now honour their failure by not accepting the new possibilities for the future.”

When I looked at this particular publication, I saw an important chapter dealing with the insulation from political interference of our public institutions. In particular, he was speaking about the issue of the Police Service Commission, the Public Service Commission and the Judicial and Legal Service Commission. He was talking about the debate: Should the service commissions be abolished? I am quoting from Professor S.A. Smith who said:

“A government that refuses to contemplate the possibility of being turned out of office by constitutional means will almost certainly insist on establishing political control over the public service. Fearful of encountering obstruction to the implementation of radical policies, resentful of the need for persuading plain spoken officials that their objections to proposed courses of action must be overborne and suspicious of any non-political permanent fixture in a monolithic party structure, it will have the constitution changed so as to share the Commission of executive powers and would proceed to install its own in key places. Where authoritarian trends are less pronounced the stature and authority of the Commission may still be diminished by a process of gradual erosion. Indirect and informal pressure may be applied to members of the Commission in order to induce them to be swayed by party, communal or personal considerations. The range of special posts withheld from its jurisdiction may be enlarged. And political factors may become paramount in the selection of members of the Commission.”

Mr. Deputy Speaker, the very issue of political interference in the conduct of our public institutions is the number one issue that we must tackle immediately, in order to make this Bill a reality. Therefore, there should be a programme of action to ensure that these kinds of fundamental precepts upon which the Bill is based and the Constitution is founded can be honoured, or we will be going through another period in which we shall not be building national character for a Trinidad and Tobago.

We can go on. There are some specific cases in which the integrity of the system was questioned. This book, on page 83, spoke about no confidence in the integrity of the system. The author referred to a number of cases:

“The new regulations required the Commissioner of Police to give reasons to officers being by-passed for promotion thus reducing the opportunities for nepotism, favouritism and political interference that had previously plagued the system. In *Mohanlal Bhagwandeem v the Attorney General*, Narine J said:

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‘In my view, Regulations 15(2) and (3) are extremely important in relation to the instant case. The officer who is not recommended for promotion had not only the right to be advised of his omission from the promotion list, but also to be advised of the reason for that omission at the same time. The provision clearly relates to the officer’s right to natural justice. He needs to be informed of the reasons for his rejection so that he will be in a position, assuming that he accepts his shortcomings, to improve his performance...’”

A particular citizen of this country had to go all the way to the Privy Council in order to get this ruling in his favour, which was simply to give him equality of opportunity in the public service.

There is another case referred to in this book, which deals with the issue of Rajkumar. He was interviewed four times by the Promotion Advisory Board, but was denied promotion on each occasion, without being given any reason for so doing. The board's decision was secret and confidential. The Privy Council allowed Rajkumar's appeal and held that:

“‘For some the way they had done their work might commend them more effectively for promotion than answering questions in an interview...In the circumstances their Lordships are of the view that the appellant is entitled to a decision that insofar as the decisions impugned did not promote him they are flawed...accordingly is that the case should be remitted to the Public Service Commission urgently to review the appellant’s application for promotion, to take into account in that consideration for the length of time which the appellant has served in the position as acting Prison Officer II without complaint or adverse comment...and if the Commission decides not to award the promotion it shall give it reasons for not doing so.’”

This is a call for transparency in the operations and management of the Police Service Commission, the Public Service Commission and the Judicial and Legal Service Commission. Therefore, if we want to make the Equal Opportunity Bill real, we must also introduce a system of accountability and transparency because people's lives are being affected with promotions and they have to go all the way to the Privy Council in order to get the rights. That is why I make the point.

Mr. Deputy Speaker: Hon. Members, the speaking time of the Member has expired.

Motion made, That the hon. Member's speaking time be extended by 30 minutes. [*Mr. G. Singh*]

Question put and agreed to.

Mr. W. Dookeran: Thank you and I thank Members. To conclude that point, I was saying that if there are institutional biases in the management of the public institutions, they will reflect themselves in the inequality of treatment of the citizens of the country and that is where we will start.

Mr. Deputy Speaker: The sitting of the House is suspended for tea and will be resumed at 5.00 p.m.

4.32 p.m.: *Sitting suspended.*

5.00 p.m.: *Sitting resumed.*

[MR. SPEAKER *in the Chair*]

Mr. W. Dookeran: Mr. Speaker, when we broke for the tea interval, I was making the point that the Equal Opportunity Bill before us will only be meaningful if we are to introduce in our national character and in our public institutions, the values that will promote equality. That is why I said when I looked at the purpose of the Bill, the view was that it will prevent discrimination; it will prohibit certain kinds of discrimination; and it will promote equality of opportunity. This is a serious objective, and to promote the equality of opportunity, there are many areas which we can look at but, clearly, the Public Service Commission.

In that regard, it is unthinkable that if a society that has a multiracial structure, and had been in existence for some 44 years as an independent country, if our public service commissions were, in fact, operating in accordance with the charter in the Constitution for equality, then today we would not have found ourselves in a position where the protective services in the country do not reflect the total mosaic of the country, Trinidad and Tobago. [*Desk thumping*]

Mr. Speaker, it would have happened naturally, because if you were applying the rules of equality, the statistical challenge will suggest that this would have happened automatically, certainly after 44 years. If it did not happen that is because there was intervention of some aspects of the management of that process that led us to that situation. So, I make the point here today that if we want to have serious trust in the equality of opportunity in Trinidad and Tobago, we must take immediate steps to ensure that our protective services reflect the total mosaic of the society of Trinidad and Tobago. [*Desk thumping*]

Mr. Singh: They did it in Ireland.

Mr. W. Dookeran: Those are the kinds of measures that I believe the Bill would have suggested when it talks about promoting the equality of opportunity. To do that will require a firm commitment that the principles that we talk about fairness, the principle of equal access and the principle of non-prejudicial involvement in promotion, et cetera, will be adhered to.

Mr. Speaker, I have been talking about the building of the national character, and I just referred to what Dr. Eric Williams said in his *History of the People of Trinidad and Tobago* on the building of the national character. He was lamenting on the absence of the national character and he was saying: in Trinidad and Tobago the political rather than the physical dominates. "...Social climbing has become the major industry of Trinidad and Tobago—invitations to cocktail parties, and appearing in photographs and social columns of the newspapers...". The pronounced materialism and the disastrous individualism have spread to all parts of the fabric of the society; Vidya Naipaul has dissected them mercilessly in his recent book *The Middle Passage: The Caribbean Revisited*. The political parties are riddled with individualism. The trade unions are riddled with individualism. The professions are riddled with individualism. Each seeks aggrandisement at the expense of his neighbour, giving rise to attitudes that threaten equality of opportunity and jeopardise political democracy.

This is Dr. Eric Williams talking about our search to the journey of independence for a national character. [*Desk thumping*] Has this Government interpreted, not the substance of what the leader said, but the shadow in which he operated?

Today, they do not understand, in my view, the fundamental precepts of building national character based on equality of treatment in Trinidad and Tobago. What does equality of treatment and equality mean to the average person? We want to live in a society in which we shall look at the governing class as the class which will treat us equally, regardless of whether we live in Barrackpore or Laventille or wherever. That equality must reflect itself in the application of equal resources to all the people in the country; that equality must reflect itself in feeling a sense that when you apply for a scholarship in the government system, your chances would be equal to everyone else; [*Desk thumping*] and that equality and national character would be reflected in a situation that when you have to get any kind of subsidy, if that is within the policy

framework, you do not have to go through a period of persuading public servants; it will be your right to get it as a matter of right.

It will be a rules-based society and people who administer those rules shall be held accountable for the performance of their duties in the administering of the rules of the society. [*Desk thumping*] That equality to the average man would feel a sense of belonging; would feel that as a citizen of this country, regardless of our historical background that we are all treated equally before the corridors of government and before those in politics. That is what we are missing today.

I believe that the Equal Opportunity Bill that is before us comes at a very important juncture. It has come at a time when this country is, in fact, reflecting the largest degree of fragmentation of the society that we have had for the last 50 years. This has happened because we have failed to adhere to those very fundamental principles that were enshrined in our Constitution and now reflected in this legislation.

So, it is important for us to look at this measure, not only as a legal measure, Mr. Minister, not only as a measure that we will put on the books to claim that we have the Equal Opportunity Bill. I hope that this will not be a situation where the Government can boast to their international friends that they have an Equal Opportunity Act in Trinidad and Tobago when, in fact, the people of the country do not believe that there is equal opportunity for them all. [*Desk thumping*]

Steps must be taken to promote the equality. It has to be promoted by encouraging a new value system; by encouraging better values in the schools; by encouraging respect for each other's religion; each other's background; and it has to be a proactive programme to build national character in our country. That is the only way that we can effectively get the rewards of this particular legislation.

So, to the ordinary citizens of this country, the Equal Opportunity Bill will only be meaningful if they see it reflected in the fact that they will be able to secure the necessary resources as a matter of right.

I made a suggestion sometime ago that, perhaps, we should move away from having our senior citizens go through a test of qualification which takes a lot of time but, beyond that, people are disqualified for all sorts of reasons. Our senior citizens have reached the stage that whatever little pension they get, in many cases, is all they have.

Recently, a constituent came to me and said that his rent was more than half of his pension. [*Interruption*] I am saying that they are having a difficult time. Many times they are not qualified to receive it. I am saying that the time has come for

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us, in building national character in the country, to be able to establish the equality of access to the pension funds and, therefore, there should be a universal acceptance of it. There are ways to deal with the problem of distribution. The rich among us must have their role in distributing the resources of the country to allow those who are not so well off to have a decent way of life. Mechanisms can be put into place.

You will remember that sometime ago I talked about using the Heritage and Stabilisation Fund as an instrument to provide opportunities for the underprivileged children in the country. I said that it did not belong to the Government, it belongs to the people. That is why I say that the philosophy of governance is what this Bill is all about. The Government refused to accede to that view, because their view of governance is for the purposes of those who govern, and they are trying to, at all times, keep that as their goal.

Mr. Speaker, I think that this Bill that is before us could have pushed back the boundaries of inequality and ignorance in public life, and in public policy. Therefore, I will hope that the Minister will be able to outline his programme of action to promote equality. I challenge the Government now to identify their programme of action that will promote equality in this country; promote equality in all the different facets of life to the people all over the country.

I have been talking to my colleagues in Tobago and, once again, I saw the philosophy of the Government is where the problem is, where the current Government views our sister island as a ward of Trinidad. I am saying that in our framework of the 21st Century politics of this country, we must discard those old concepts and accept the fact that we can establish a side by side relationship with our citizens in Tobago and in Trinidad. [*Desk thumping*] I am calling for an abandonment of that old philosophy of control; that old philosophy of patronage; that old philosophy of building clientele; that old philosophy that has reflected itself in creating clients of the State; and that old philosophy in which there shall be accumulation of resources and power in the Government and distribute that to the entire society in the new model of full participation by the people in the governing process. [*Desk thumping*]

That is why I also felt that if you want to make this Bill meaningful, you will also have to look at the philosophy behind the proposals for local government reform. If you want to bring the benefits of governance to the people themselves, there is need to be able to change the philosophy of that governance process. What the Government is talking about is giving the people an implementing role; but what the people want is not an implementing role, because they want to be

part of the determination of the political process itself. [*Desk thumping*] Therefore, we need radical thoughts.

Lloyd Best said that he was an advocate of radical thinking in so many different ways, but one of the fundamental things that he was always clear about was building foundations for a new society. That is why, perhaps, he never attained any high political office, because he was not interested in getting the fruits of the labour of those who work to build. He did not pander to the populace sentiments of the country; he simply built and created institutions that will build the politics, that will build the governance and that will build the society, because in our kind of society we can easily pander to the populace will, and we will never build a society. This is the result of where we are.

I know my friend, the Member for Diego Martin Central, may not want to agree with me publicly, but I know based on my discussions he shares some of these views. This is where we are today. We have to create a new juncture in the politics. We cannot be consumed by all the failures of the present system. We have to create that new juncture. That is why, today, I thought I should take this opportunity to put this Bill in some context so that we deal with the issue of institutional discrimination frontally and reflect a programme.

If there is one thing that I should ask the Minister in the Ministry of National of Security who piloted this Bill, is to consider how he shall promote and how he shall announce to this Parliament a programme to remove institutional discrimination in Trinidad and Tobago. That is the fundamental test of the sense of sincerity that will have to be reflected for this Bill to be accepted in the country.

Mr. Hinds: Could you give me an example?

Mr. W. Dookeran: Mr. Speaker, I think I have covered all that I wanted to say on this Bill. I said that I considered it a very important one. I would just close by referring to the United Nations Convention when they talked about the issue of the observance of human rights and fundamental freedoms. I would just like to bring to the attention two of the fundamental rights to which we ascribe:

“Convinced that any doctrine of superiority based on racial differentiation is scientifically false, morally condemnable, socially unjust and dangerous, and that there is no justification for racial discrimination, in theory or in practice, anywhere,”

We have subscribed to that.

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“*Reaffirming* that discrimination between human beings on the grounds of race, colour or ethnic origin is an obstacle to friendly and peaceful relations among nations and is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State,”

Mr. Speaker, a large part of the social tensions in the country emerged for us not adhering at the level of the governance to the equality of treatment of all the citizens. If we can do that, then we can debate the higher things, the bigger things and the visionary things, so that we do not have at all times to be engaged in searching for our rightful place.

As it is said here, “every creed and race has an equal place” that is the vision of the society; that is not how the society views itself. I think Lloyd Best was so right—every group whether it is the disadvantaged; whether it is those who are disabled, they do not have equal treatment.

I met with the disabled group when we met with all the non-governmental organizations, and they were talking about the lack of equality of treatment in the community which they represent. So, this is not a peculiar problem to one or the other, it is the very ethos of our public management; the very ethics upon which we conduct public management that has resulted in this feeling that everybody feels unequal in this society, in spite of the fact that we have a parliamentary system that ought to be able to bring the people together.

I want to end by saying that I am convinced and I have no doubt that many of us are convinced and, certainly, those who sit here with us are totally convinced, that there are the possibilities ahead of us through which we can move to higher frontiers. There is the opportunity available for us to break the barriers of ignorance and to get into this area that we are talking about. It is not beyond us as a nation; it is what we started to do in 1962; it is what we have failed to do; and it is not beyond us.

Now, as we embark today on this important piece of legislation, and we take into consideration the concerns for having it located in the philosophical context, to be able to take this country forward in building national character, that is the only way we would have a lasting contribution on our society and on the next generation.

So, I thank you for this opportunity to express these views with you, and I look forward in seriousness to getting some firm response from the Government on how they shall ensure that they will promote equality in Trinidad and Tobago.

Thank you. [*Desk thumping*]

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Mr. Speaker, I had intended to adjourn the House at this time, but I think the Member for St. Augustine said a few things that, I believe, I must respond to rather quickly and, of course, then we would adjourn.

I start by making the point that our position really has not changed with respect to the equal opportunity legislation. We see it, at best, as public relations. The Member for St. Augustine talks about the importance of this legislation suggesting, as he speaks, that in Trinidad and Tobago we do not have equal opportunity. I want to say categorically that is not the view on this side.

Mr. Speaker, our Anthem is correct. In Trinidad and Tobago every creed and race has an equal place. [*Desk thumping*] That has always been so; that has always been the situation in Trinidad and Tobago. Now, this legislation, of course, is negotiated legislation. The Government had certain pieces of legislation that it is interested in that requires a special majority; and the Opposition had this as a requirement, and our position is that if this is going to provide comfort to our nation yes, we are going to have it.

I go to my colleague's contribution as recorded in the *Harsard* dated May 19, 2000. My colleague, the Member for Arouca South, Mrs. Camille Robinson-Regis. She was our lead spokesperson when this Bill was debated in 2000. [*Interruption*] In looking at the Bill, and after listening to the opening contribution by the then Member for Couva North, the Member for Arouca South opined:

“...I am concerned that throughout his presentation he did nothing to indicate to us or to the national community, how important this legislation will be to the country of Trinidad and Tobago, or, how it will change what already subsists in Trinidad and Tobago.”

Hon. Member: She was talking rubbish.

Hon. K. Valley: Mr. Speaker, that is the position. Even when the Member was making a case for this legislation, he drew instances of persons who used what already existed, that is, the courts to get redress. Mr. Speaker, there is the Industrial Court available; there are a number of institutions available for the few instances when there are persons aggrieved. So, when the Member talks about putting systems in place to promote equality, I say that there is nothing that is required. There are systems in place from the early stages. Who stops anybody from writing common entrance?

Equal Opportunity Bill
[HON. K. VALLEY]

Wednesday, March 21, 2007

In 1962 when we moved to Independence, we ensured that there was an independent Public Service Commission to ensure that every person had an equal chance to gain employment in the public service. When the Member speaks about transparency and accountability and asking for transparency and accountability with respect to public offices, for example, the police and so forth, there is already in our legislation the system of the joint select committees of Parliament which oversees the state companies and the public services and so forth. There was no reference to the legislation or any particular clause of what it would do and so forth because, at best, the legislation consolidates pieces from different legislation into one place.

If that is going to provide some level of comfort to the national community; if that is going to be the result we say, fine, that is okay. We do not have any difficulty with that, but it must not be sold that this is breakthrough legislation; that in Trinidad and Tobago one does not have equal opportunity and there is need for this legislation so as to ensure there is equal opportunity.

I point out, however, that it is in the private sector. I think Members looked at the public service, but the public service has always been well taken care of. I point to clause 13 of the legislation which says:

“Sections 8 to 10 shall not apply—

- (a) to domestic or personal services in or in relation to the home of the employer; or
- (b) to or in relation to a family business or private company where three persons or less are employed.”

Mr. Speaker, what this means is that this legislation applies to any firm where more than three persons are employed. So that any firm—in the private sector or in the public sector where more than three persons are employed would be bound by this legislation. In other words, they cannot discriminate with respect to employment. That is where the breakthrough legislation is. When we looked at the private sector and we saw what obtains in the private sector yes, I would agree, there is cause for concerns.

Dr. Moonilal: What obtains?

Hon. K. Valley: You check and see what obtains in the private sector, and you will realize that there is cause for concern. I would continue on the next occasion. [*Desk thumping*]

I made the point, simply, that this is not breakthrough legislation; that Trinidad and Tobago has always been a country of equal opportunity; and in the few cases where somebody feels aggrieved that person is always free to use the avenues available, whether it is judicial review—Mr. Speaker, the number of times that the Government has been taken to judicial review in the recent past, I do not know. And you are talking about money to pay the court! This is legislation also, and one can also appeal from this legislation and, therefore, there will still be a cost attaching. It is not going to be any cheaper going this way rather than what obtains at present.

Mr. Speaker, do you remember the Dangerous Dog legislation? There was a big hullabaloo when they came to the Parliament to pass the Dangerous Dog legislation. What has happened? It is a PR stunt. That is what it is. [*Desk thumping*]

I remember also the same individual coming to the Parliament with legislation to avoid discrimination at clubs and so forth. What has happened with that? This is in the same vein. We already have whatever is required. [*Interruption*]

Mr. Speaker: You know, if you all do not respect the Chair, have some respect for the Hansard reporter. I am appealing to everybody. The Member is making his contribution and almost everybody else is talking. Please, continue. [*Interruption*]

Hon. K. Valley: Let me make it clear—I am not arguing against my own Bill, I am arguing against what the Member for St. Augustine said—that we brought this legislation because we said that it is negotiated legislation and we believe that by consolidating the different legislation under one piece called the Equal Opportunity Bill, it is going to provide comfort to the national community.

As a fact, because of the diversity in Trinidad and Tobago, if it is going to assist in providing comfort, and a sort of guarantee to say, listen, we can get it—I think that is what they play on, because of the different places where the legislation is at present, the individual may not be able to find it easily, and they play on that. The fact that it is now in one place, perhaps, that would provide comfort.

Mr. Speaker, as I said, I shall continue on the next occasion. [*Desk thumping*]

Adjournment

Wednesday, March 21, 2007

ADJOURNMENT

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Mr. Speaker, at this time, I beg to move that this House do now adjourn to a date to be fixed.

Dr. Rafeeq: Mr. Speaker, before the adjournment is taken, the next sitting should have been on Friday which is Private Members' Day. Could you tell us if the next day that we are going to meet is going to be Private Members' Day? *[Interruption]*

Mr. Ramnath: Are you going to cricket on Friday?

Mrs. Persad-Bissessar: No, they do not want Panday back in the House. *[Interruption]*

Mr. Speaker: Order please. Before I put the question on the Adjournment, is there a matter to be raised by the Member for Chaguanas? *[Interruption]* Okay. Well, you will need to consult your Chief Whip.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 5.35 p.m.