

Laws Prohibiting any Person or Political Party from causing Racial or Ethnic Violence or Hatred

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Article 149 of the Constitution protects a person from discrimination on the grounds of his race.

Under the Racial Hostility Act, Cap. 23:01 there are provision for preventing conduct tending to excite hostility or ill-will against persons by reason of their race. In addition, Sections 139 D and 139 E were inserted in the Representation of the People Act, Cap 1:03 by the Representation of the People (Amendment) Act 2001 to prohibit any person or political party from causing racial or ethnic violence or hatred.

Section 2 of the Racial Hostility Act creates an offence of excitement of hostility or ill-will against a section of the public or against any person on the grounds of their or his race. This can include by means of words spoken by him in a public place or spoken by him and transmitted for general reception by wireless telegraphy or telegraph; or by causing words spoken by him or by some other person to be reproduced in a public place from a record. It can also be by means of written or pictorial matter. Exemption is given to anything said or done in the course of any proceedings of the National Assembly or any judicial proceedings; or the publication of any matter by order, or under the authority, of the National Assembly. Any person guilty of an offence under this section shall be liable on summary conviction to a fine of sixty-five thousand dollars and to imprisonment for two years.

Once a person is convicted under section 2 of this Act, then irrespective of any punishment to which he may be sentenced in pursuance of that section, he shall be disqualified for a period of five years for certain offices and appointments including, but not limited to, being a member of the National Assembly or of any local government authority, the appointment of editor of any newspaper or any appointment on the editorial staff of any newspaper; and any appointment on the managerial or editorial staff of any broadcasting station.

The Ethnic Relations Commission was established under Article 212 A of the Constitution.

It has many functions and two important ones are to –

1. Provide equality of opportunity between persons of different ethnic groups and to promote harmony and good relations between such persons;
2. Promote the elimination of all forms of discrimination on the basis of ethnicity.

There are provisions in sections 138D and 139E of the Representation of the People that sets out the procedure for the Ethnic Relations Commission to take certain measures or issue instructions in consonance with its functions given to it under the Constitution.

Section 139 D (5) states -

“Subject to the provisions of subsection (8), where in the opinion of the Judge or of the chairperson of the Ethnic Relations Commission the notes of evidence disclose the involvement of any political party in the matter considered under subsection (1), the chairperson of the Ethnic Relations Commission shall summon, as a representative of the party the Leader of the political party, or if there is no Leader, the General Secretary of the political party, by whatever name either office is designated to attend meetings of the Commission for the purpose of participating in investigations by the Ethnic Relations Commission with regard to the aforesaid involvement ; and if after hearing the Leader of the party or the General Secretary, as the case may be, the Commission is satisfied that the statement or action, the subject of the enquiry related to subsection (1), was made or published or it was caused to be made or published on behalf of the political party, or the action was taken on behalf of the political party and the political party has not publicly disassociated itself from the statement or the action, the chairperson of the Ethnic Relations Commission shall send, in such form as he or she thinks fit, the findings of the Commission to the chairperson of the Elections Commission, and also deliver a copy with a clearly stated date of notification to the representative of the party who participated in the investigations.”.

Once the Ethnic Relations Commission finds that a political party has not publicly disassociated itself from the statement or the action, the chairperson of the ERC shall send the findings of the Commission to the chairperson of the Elections Commission.

The chairperson of the Elections is required under subsection (7) not to accept any list of candidates from a political party.

Under section 139 E of the Representation of the People Act, the ERC functions as an investigative body where there is a complaint against a political party of statements or actions by such party on racial and ethnic violence or hatred.

The framework of the laws makes provision for preventing conduct tending to excite hostility or ill-will against persons by reason of their race. The laws create offences. They also disqualify persons found guilty of these offences from holding specified offices. They also sanction political parties.

What the laws do not specify is what precisely is conduct (words spoken or written or action) that tends to incite ethnic or racial hostility. Under section 2 (1) (c) of the Racial Hostility Act, a person can be guilty of an offence if he even publishes pictorial matter. Therefore a cartoonist can be guilty of such an offence. Under section 139 D (1) (b) of the Representation of the People Act a person can be guilty of an offence if he takes any action which results or can result in racial or ethnic violence or hatred among the people. When a person is charged, the court will make a determination. In law, there is a legal presumption that every man is a reasonable man and is presumed to know what is right or wrong. A person is criminally liable at the age of fourteen. Guyanese with mature minds will understand exactly what constitutes conduct which tends to incite racial or ethnic hostility. Their experiences in life ought to teach them that.

In Guyana most of us feel uncomfortable when discussing racial or ethnical issues, probably due to Guyana's recent turbulent history or the law itself that prohibits any person or political party from causing racial or ethnic violence or hatred. One author states that the word "ethnic" does not have a pleasing sound. The use of the word makes many people anxious. What sorts of repression account for this anxiety? What pretences about the world are threatened when one points to the realities denoted and connoted by that ancient word? An internal history lies behind resistance to ethnicity; such resistance is almost always passionate, convictions, not all trivial. Many persons have tried to escape being "ethnic," in the name of a higher moral claim.

One must be circumspect before speaking and carefully edit any speech even with the help of others on this delicate subject. It can lead to serious implications.

In Guyana, two roughly equal segments face one another across a great social, historical and ethnic divide. Trinidad, Fiji, Malaysia, Canada and others are considered to have similar divisions between ethnic groups.

Books were written and theories advanced explaining ethnic conflict in Guyana.

Colonial Segregation – Divide and Rule

Not only was the culture of the Indian labourer alien and incomprehensible to the existing Guyanese (most of the Indians to enter Guyana were and still are Hindus) but they posed an economic threat to African-Guyanese struggling to compete for wage labour. The newly contracted Indian workers were in most cases placed in villages, created to serve the various plantations. This planted the seeds of physical segregation. These villages were almost exclusively Indian. There were of course villages where Indians and

Africans lived together (or at least side by side) but on the whole the two groups formed separate enclaves.

It has frequently been argued that colonial regimes depend on this type of segregationist policy to maintain their authority. For example Gonzalez maintains that, 'racism and racial segregation are essential in the colonial exploitation of some peoples by others. They influence all configurations of development in colonial cultures...' The claim here is that in Guyana a range of factors existed, which created the conditions for the development of distinct African and Indian identities. These include, firstly, segregation by the planters; separating physically the African (Creole) from the Indian. Secondly, the whole context into which the Indians arrived was one of competitiveness and antagonism. This bitter climate was created by an aggressive colonial power which reinforced itself by engendering divisions between the imported groups. One source of virulent stereotypical images, at this point, was the planters themselves. Their often derogatory and racist discourse served to demean and undermine time-honoured traditions of both Africans and Indians.

Most of us have close friends of all races and there are also inter marriages. These theories may sound alarming and far-flung. They do not apply to us and should remain so. Understanding ethnic conflict goes a long way in dealing with it. We must discourage and prevent the conduct by a person or political party that causes racial or ethnic violence or hatred. We must be ever vigilant to preserve the peace and protect our democracy in Guyana especially in election year.