HOUSE OF REPRESENTATIVES

Friday, August 04, 1995

The House met at 1.35 p.m.

PRAYERS

[MR. DEPUTY SPEAKER *in the Chair*]

MADAM SPEAKER'S ABSENCE

Mr. Basdeo Panday *(Couva North)***:** Mr. Deputy Speaker, on a point of order, please, Sir. Section 58(2) of the Constitution says that this Parliament shall be presided over by the Speaker. That is confirmed by Standing Order 5(1). May I ask you, Sir, where is the Speaker? You cannot sit, Sir, unless we know what has happened to the Speaker. Where is the Speaker?

Mr. Deputy Speaker: I have been advised by the Clerk of the House that the Speaker is absent from today's sitting. Standing Order 5(1) states:

> "The Speaker, or in his absence the Deputy Speaker, shall preside at sittings of the House, and, except as provided in paragraph (4) of Standing Order No. 64 (Finance Committee), shall act as Chairman of Committees of the whole House."

Mr. B. Panday: Mr. Deputy Speaker, has the Speaker applied for leave? The Clerk announces that she is absent, but has she applied for leave? Has she been restrained from coming here today, and by whom? These things are important. The Speaker is not just restrained and the Deputy Speaker assumes office. The questions is: Has the Speaker applied for leave? She did not turn up. If she did not turn up, where is she?

Mr. Deputy Speaker: I have responded to the hon. Member with respect to Standing Order 5—

Mr. B. Panday: With the greatest respect—

Mr. Deputy Speaker: Will you take your seat, please. I shall ask the Clerk to proceed.

Mr. B. Panday: With the greatest respect, Mr. Deputy Speaker, I am entitled to refer you to Standing Order 5(5). You are not supposed to take instructions from the Prime Minister to proceed. That is not how this House operates. Standing Order 5(5) states:

> "Whenever the unavoidable absence of the Speaker from any day's sitting is announced by the Clerk at the Table, the Deputy Speaker shall take the Chair

> and shall be invested with all the powers of the Speaker until the Speaker resumes."

No statement has been made to this House by any Clerk with respect to the absence of the Speaker and I ask you, Sir, for a ruling on that matter.

Mr. Deputy Speaker: I have taken note of what the hon. Member said and I am asking the Clerk to proceed.

Mr. B. Panday: Mr. Deputy Speaker, this is not a dictatorship, you know! You cannot do that! You have to rule! You have to tell this House whether the Standing Order is being violated.

Mr. Deputy Speaker: Take your seat, please.

Mr. B. Panday: Certainly.

Mr. Deputy Speaker: I have ruled. I have read Standing Order 5(1) in response to what you have said. I have ruled and I ask the Clerk to proceed with the business of the House.

Mr. R. L. Maharaj: Mr. Deputy Speaker, I ask you to reconsider your ruling I the light of the fact that it has been pointed out to you, quite clearly, under Standing Order 5(5) that there has to be an announcement by the Clerk before you can assume any jurisdiction to preside as Speaker. It says so in the Standing Orders. That is the law. If you want to rule that you are not abiding by the Standing Order—you are not adhering to the Standing Order—so be it. But with the greatest respect to you and in conformity with the practice in this House, you are supposed to rule, and we ask you to rule in this matter, with reasons.

Mr. Deputy Speaker: I have ruled on this matter. I am saying in accordance with Standing Order 5(1)—I read it into the record of this honourable House and I am asking the Clerk once again to proceed with the order of business for this House.

Mr. B. Panday: Mr. Deputy Speaker, with respect, that does not answer Standing Order 5(5). Standing Order 5(1), if I may say so, says:

> "The Speaker, or in his absence the Deputy Speaker, shall preside at sittings for the House…"

We accept that. But Standing Order 5(5) says:

> "Whenever the unavoidable absence of the Speaker from any day's sitting is announced…"

Is she unavoidably absent today? Is the Speaker being held against here will from coming to this House? That is the issue.

Mr. Deputy Speaker: Could we proceed.

Mr. B. Panday: Is that the way you all want to run this Governemnt?

Mr. Humphrey: They can run the Government how they want, but not this Parliament!

Mr. B. Panday: This is worse than Gairy and Burnham!

Mr. Deputy Speaker: Will the Clerk proceed.

PETITION

J. D. Sellier and Company

The Minister of Works and Transport (Hon. Colm Imbert): Mr. Deputy Speaker, I beg to present a petition on behalf of J. D. Sellier and Company.

I now ask that the Clerk be allowed to read the petition.

Leave requested therein be granted.

Petition read.

Question put and agreed to, That leave be granted.

SELECT COMMITTEE REPORTS

Presentation

The Parliamentary Secretary in the Ministry of Legal Affairs (Mr. Andrew Casimire): Mr. Deputy Speaker, I wish to present the following reports:

Faith International Spiritual Baptist Convention (Inc'n) Bill

1. Report of the special select committee of the House of Representatives appointed to consider and report on a Private Bill for the incorporation of the Faith International Spiritual Baptist Convention and for matters incidental thereto.

Universal African Improvement Association (Inc'n) Bill

2. Report of the special select committee of the House of Representatives appointed to consider and report on a Private Bill for the incorporation of the Universal African Improvement Association and for matters incidental thereto.

1.45 p.m.

ORAL ANSWERS TO QUESTIONS

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Mr. Deputy Speaker, the Government will be answering question No. 151 today, and requests a deferral of the other questions for a period of two weeks.

Mr. Maharaj: Mr. Deputy Speaker, these questions have been appearing on the Order Paper over and over and the Government is misleading this House. The Government keeps promising that these questions would be answered in one, two or three weeks, and this may amount to a contempt of this House. The Government is disobeying the Standing Orders of the House in not answering the questions.

Mr. Deputy Speaker, I ask that you do not accommodate this at all. The Government should be placed on some kind of terms to answer these questions. It is making a mockery of this House.

Mr. Deputy Speaker: I take it that Members would take note.

The following questions stood on the Order Paper:

Crime Wave—Central Trinidad

170. Could the Minister of National Security state:

(a) Whether he is aware of the recent crime wave in Central Trinidad? If he is aware, could he state what his Government intends to do to provide security and safety for the people of Central Trinidad?

(b) In respect of each police station in Trinidad and Tobago, the number of police vehicles required for the police to discharge their duties, and the number provided at each station for them to perform their duties?

(c) The number of police officers required at each police station in Trinidad and Tobago for the police to discharge their functions and duties, and the number of officers attached to each station in order for them to perform their functions and duties? *[Mr. R. L. Maharaj]*

Princes Town Road Repairs (Lengua/North Roads)

171. Could the Minister of Works and Transport state:

(a) Whether his ministry has any plans to repair the following roads in the Princes Town constituency:

(i) Lengua Road;

(ii) North Road;

(b) If the reply is in the affirmative, can the Minister state, for each project:

(i) type of repairs planned;

(ii) estimated cost of repairs;

(iiii) when will the repairs begin;

(iv) anticipated date of completion? *[Mr. M. Haniff]*

Road Repairs
(Unis and Sixth Company Road)

172. Could the Minister of Works and Transport state:

(a) Whether his ministry has any plans to repair the following roads in the Princes Town constituency:

(i) Unis Road;

(ii) Sixth Company Circular Road;

(b) If the answer is in the affirmative, can the Minister state, for each project:

(i) type of repairs planned;

(ii) estimated cost of repairs;

(iiii) when will the repairs begin;

(iv) anticipated date of completion? *[Mr. M. Haniff]*

Princes Town Hospital
(Construction of)

173. Would the Minister of Health state when would construction of the new hospital in Princes Town commence? *[Mr. M. Haniff]*

Hall of Justice
(Maintenance Costs)

175. Could the Minister of Works and Transport state:

(a) The annual cost of maintenance/cleaning of the Hall of Justice, Port of Spain.

(b) The name of the organization responsible for this work? *[Mr. T. Sudama]*

Queen's Park Savannah/Whitehall (Cleaning and Renovation Costs)

176. Could the Minister of Works and Transport state:

(a) How much money has been spent in 1994 and to date in 1995, on cleaning the Queen's Park Savannah?

(b) How much money has been spent form 1992 to date on the renovation of Whitehall, Maraval Road? *[Mr. T. Sudama]*

Questions, by leave, deferred.

Schools Construction (Caroni)

151. Mr. Raymond Palackdharrysingh *(Caroni Central)* asked the Minister of Education:

(a) Would the hon. Minister state whether any primary and secondary schools would be built in county Caroni?

(b) If the answer is in affirmative, would the Minister state where and when they would be built?

The Minister of Education (Hon. Augustus Ramrekersingh): Mr. Deputy Speaker, the Government of Trinidad and Tobago is in an advanced stage of discussions with the World Bank for an education loan. The proposals include two new primary schools and one new secondary school in county Caroni. In addition, five dilapidated primary schools are scheduled for reconstruction under the programme. Two other schools are earmarked for renovation and extension.

The names of the schools and their locations are as follows:

<u>Primary Schools:</u> New

Chaguanas North Government	Capacity	Location
Edinburgh Government	840	Orchard Gardens
<u>Replacement:</u>		
Longdenville Government	840	Londenville
Cunupia Government	840	Cunupia
Couva South Government	840	Church Street, Couva

Carapichaima RC	840	Bucarro Road, Carapichaima
Gran Couva RC	360	Gran Couva
Renovations and Extension:		
Madras Government	320-450	Madras Settlement
Palmiste Government	280-420	Caparo Valley
Secondary School:		
Cunupia Government School		Hassarat Trace, Cunupia

It should be noted that the Basic Education Programme will be implemented over a period of five years, and it is expected that construction work would begin in early 1996. Because of the number of schools in the programme—52 schools—it would be necessary to implement the construction works on a phased basis. The process of prioritization is not yet complete so that the Ministry of Education cannot, at this time, give precise details on scheduling to the hon. Member.

It should also be noted that once the Basic Education Programme is finalized with the World Bank, discussions for a loan exclusively for secondary school construction would be initiated.

Mr. Palackdharrysingh: Mr. Deputy Speaker, a supplemental question. Would the hon. Minister state whether the schools mentioned for building would adequately meet the needs of the expanding school age population in Central?

Hon. A. Ramrekersingh: Mr. Deputy Speaker, based on the available data, we feel that this expansion would adequately meet the needs of the primary school age population in the educational district of Caorni.

STATEMENT BY MINISTER

Mr. Ralph Maraj *(San Fernando West):* Mr. Deputy Speaker, we agreed a short while ago that I would make a brief statement under this item.

Mr. Deputy Speaker: I would allow you that opportunity a little later on.

STATE OF EMERGENCY
(CITY OF PORT OF SPAIN)

The Attorney General and Minister of Legal Affairs (Hon. Keith Sobion): Mr. Deputy Speaker, the Government, last evening, advised the Acting President

of the Republic to proclaim a state of emergency, limited to the City of Port of Spain. Subsequently, an order of detention was served on the Speaker of the House of Representatives, Madam Occah Seapaul. Madam Seapaul will remain in detention at her residence, No. 9 Mary Street, St. Clair until further order.

Mr. B. Panday: Bad John! Bad John Manning!

Hon. K. Sobion: For the past few weeks, the parliament of the Republic of Trinidad and Tobago has been subjected to action by the Speaker which is unprecendented, and which now threatens to usurp the rights of the elected representatives, in Parliament, and in particular, those of the representatives of the majority.

Indeed, these actions were aimed at destroying the very parliamentary democracy to which we all subscribe. The Government, throughout this unfolding drama, has sought to act with restraint and within the bounds of proper legal, parliamentary and constitutional procedures. We saw it as our duty to uphold the dignity of Parliament and that of the office of Speaker. In doing so, we endeavoured to protect the interest of the citizens of Trinidad and Tobago.

Whilst as a Government we had several options, it was our hope that we would not have had to apply the ultimate constitutional powers of the State. At every stage we hoped that good sense would prevail, and that moral suasion and established parliamentary procedures and conventions would prevail. Regrettably, this was not to be.

In keeping with this approach, the Government did pursue the following courses of action:

(i) It initiated private and confidential discussions with the Speaker. That failed.

(ii) The Government, then, was forced to file a Motion of no confidence in the Speaker;

(iii) Common decency and established conventions dictated that the Speaker not be a judge in her won cause. The application of this convention was dismissed by the Speaker.

(iv) The Government then introduced a constitutional amendment which was passed in the Senate—the other place—with an overwhelming majority.

These measured and procedurally correct approaches have been met at every turn by arbitrary and capricious action by the Speaker. In short, the Speaker

effectively sought to frustrate the will of the elected Members of Parliament, the representatives of the people.

The final act of usurpation was the suspension by the Speaker of the hon. Member for Diego Martin Central, in clear breach of the Standing Orders and procedures of Parliament. Even then, recourse was first had to the courts of this country. It was only when there were clear indications that the order of the court would not be accepted by the Speaker, and that the reckless suspension of other Government Members was to follow, that the final option had to be exercised.

1.55 p.m.

Make no mistake, the constitutional option of declaring a state of emergency was always available, but the Government chose to exercise it only to prevent the systematic overthrow of the duly elected Government and the dangerous instability which would have followed such an action.

A state of emergency under our Constitution is a vital instrument to be utilized in order to preserve our democracy. The Government are concerned, however, that we, as a country, should return to a normal state in the shortest possible time. The Government recognizes that a state of emergency such as this, would occasion some inconvenience to some members of the national community. We, however, believe that this is much more palatable than the state of constitutional crisis into which the Speaker was leading this Parliament and this country.

It should be noted that while the regulations would restrict, without permission, the holding of public meetings in the city of Port of Spain, no curfew will be in effect, either in Port of Spain, or any other part of the country. The normal day-day activities of citizens, for all practical purposes, will remain unaffected by the proclamation of the last evening.

The Government is committed to maintaining our democracy which is founded on the principle that the elected Members of Parliament must uphold the Constitution and the law. It is no part of our tradition that any person or group of persons, whether elected or not, should seek to control or overturn our Parliament and other democratic institutions. Any such action must be firmly resisted by right-thinking citizens and met with the appropriate legal and constitutional response.

This Government is carrying out its mandate which was obtained in free and fair elections, and will govern with sensitivity, caring and resolute commitment to defend the interest of the people of Trinidad and Tobago. In so doing, the

Government will not be intimidated by or succumb to threats and subversion in whatever form they may choose to express themselves.

Thank you, Mr. Deputy Speaker.

MR. RALPH MARAJ
(RESIGNATION FROM CABINET)

Mr. Ralph Maraj *(San Fernando West):* Mr. Deputy Speaker, we did agree that I would make a very brief statement under this item.

I take the opportunity to inform hon. Members of this honourable House that I have today resigned from the Cabinet of Trinidad and Tobago as the Minister of Public Utilities for reasons which I have already elaborated at a press conference held earlier today.

Thank you, Mr. Deputy Speaker.

SEATING ARRANGEMENT
(MR. R. MARAJ)

Mr. Deputy Speaker: I have granted leave to the hon. Member for San Fernando West to sit where he is located at this time, pending a decision of the Chair.

CONSTITUTION (AMDT.) (NO. 3) BILL

Order for second reading read.

The Attorney General and Minister of Legal Affairs (Hon. Keith Sobion): Mr. Deputy Speaker, I beg to move,

> That a Bill to amend the Constitution of Trinidad and Tobago, be now read a second time.

The Bill seeks to amend section 50 of the Constitution, in order to provide a mechanism whereby the presiding officer of the House may be required to vacate the office of presiding officer. The simple procedure as set out in the Bill is that following the preliminary mechanism where a motion of no confidence is moved in the presiding officer, that presiding officer shall demit office.

Effectively, section 50 provides for several mechanisms whereby the presiding officer of the House will be required to demit office and this amendment which is before this House today seeks to add one further mechanism. That is the specific purpose for which this Bill is before the House.

There is, however, a more general purpose and that is, we are seeking by way of this measure to incorporate into the Constitution of Trinidad and Tobago, a

well recognized convention of the Constitution and particularly, parliaments in the Commonwealth. If one looks at some of the writings of some of the learned authors in this area of convention, one would see that that convention to which I referred, is well recognized and well accepted in a number of Commonwealth countries.

I want to refer in that context to the text, *The Office of Speaker* which is written by Mr. Phillip Laundy. For the information of the House the author of that text is the Clerk Assistant to the Canadian Parliament and he has been the author and co-author of several texts relating to Parliament including an *Encylopaedia of Parliament, The Office of Speaker* and *The Office of Speaker in the Parliament of the Commonwealth.*

At page 102 of that text the following statement appears:

> "The moving of a resolution of censure against the Chair is necessarily a distasteful procedure, but the right to do so is indispensable to the machinery of a free Parliament. Were such a resolution ever carried a Speaker would have no alternative but to resign—in fact, these days, he would probably feel compelled to do so if the motion receives the support of a substantial minority. He would find it difficult to fulfil the functions of the Chair knowing that he lacked the confidence of a sizeable body of opinion in the House."

The convention as stated and the statement by Mr. Laundy in that text underline the nature of the particular convention and how well recognized and well accepted such a convention is. It is well known that over the past few weeks this Parliament and, indeed, the nation has undergone trauma over actions which occurred in the Parliament. This Bill is now being introduced because it has become clear that such a well recognized convention was not being accepted as binding on the Parliament of Trinidad and Tobago.

It is therefore necessary to ensure that such a well recognized convention attains the force of law, and that is what the Bill simply seeks to achieve.

Before I deal with the substance of the Bill, perhaps I should say a few words on conventions and their nature. I refer to the text, *Constitutional and Administrative Law by* Wade and Bradley, the 10th Edition at page 19. This is what these authors had to say:

> "Constitutional writers have applied a wide variety of names to these rules: the positive morality of the constitutions, the unwritten maxims of the constitution, and 'a whole system of political morality, a whole code of precepts for the guidance of public men'."

Those are some of the terms which have been used to describe what we commonly refer to as Conventions of the Constitution.

2.05 p.m.

Dicey, who was one of the foremost authorities in this area, says:

> 'Conventions, understandings, habits or practices which, though they may regulate the conduct of the several members of the sovereign power…are not in reality laws at all since they are not enforced by the courts."

When one reads those two statements one would understand that whilst conventions are not binding in the sense that they are enforceable by the courts, they are enforceable by reason of public morality as Wayne and Bradley refer to it in the text *Constitutional and Administrative Law.*

There is another preliminary matter to which I should refer and that is how conventions become part of our system and gain some binding effect. There are essentially three ways. They remain as unwritten principles and are enforced merely because of the sense which persons apply to the nature of the particular convention. Where there is a well recognized convention, even though it is not written into law, persons who are affected by it through a sense of morality apply the sense of that convention.

The second way is by general reference and incorporation by general reference, and the Constitution of Trinidad and Tobago provides examples of such. If one looks at section 55(3) of the Constitution of Trinidad and Tobago one would see an example of the incorporation of conventions by general reference. This section deals essentially with the privileges and immunities of Parliament. It states:

> "In other respects, the powers, privileges and immunities of each House and of the members and the committees of each House, shall be such as may from time to time be prescribed by Parliament after the commencement of this Constitution and until so defined…"

and this is the relevant portion—

> "shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of this Constitution."

By general reference, section 55(3) incorporates the privileges and immunities of the United Kingdom Parliament without making specific reference to any particular convention.

There are conventions which are reduced into law. If one examines the Commonwealth countries, one would find very interesting examples of conventions being incorporated into law. Again, in our Constitution there are specific provisions relating to the fact that the President should act on the advice of the Cabinet. This convention has been specifically enacted into the Constitution of Trinidad and Tobago. I raise that particular point in order to cite an instance of another Commonwealth country and to demonstrate at the same time how conventions are treated even when they are not enacted into law.

One would see in the Constitution of India that there was no specific provision that the President must act on the advice of Ministers. That provision is enacted into the Constitution of Trinidad and Tobago. S.A. de Smith in his text *The New Commonwealth And Its Constitutions* notes the interesting situation which developed as a result. Page 79 of that text states:

> "According to the Constitution, the president is to be aided and advised in the exercise of his functions by a Council of Ministers with the Prime Minister at its head."

That is the President of India—

> "The Council of Minister is to be collectively responsible to the lower House, and Ministers are to be appointed on the Prime Minister's advice. Yet, although it was clearly understood by the Constituent Assembly that the President was to be a constitutional head of state, the Constitution refrains from stating that the President must act on the advice that he receives from the Council of Ministers, and it leaves him with an unfettered discretion in the choice of Prime Minister, the dismissal of Ministers, the prorogation and dissolution of Parliament and other important matters."

What is important is the observation which the learned author makes. He says that although there was that omission in the Constitution of India, the President of India never sought to act on his own without the advice of the council of Ministers. That is a demonstration of a convention at work without being incorporated in to law. S.A. de Smith advanced the following reasons.

> "In the event, political and personal factors have so far ensured the maintenance of the understandings on which the Constitution was based,…"

Even though the convention was not written into law, it was because of personal and political factors that the convention continued to be recognized. Therefore, we must have some understanding and appreciation of conventions in the

operations of our constitutional life. However, if those conventions are not accepted and recognized, the only way to ensure compliance and enforcement is to enact them into law. That is what this Bill seeks to do.

By way of comparison as well, it may be important to note that the Constitution of Trinidad and Tobago, as I said before, recognizes some conventions by way of the written word. It has always been difficult for legal draftsmen which convention should be put in or left out, and which convention should be left to that concept of public morality. It is interesting to observe that in the case of the Constitution of Trinidad and Tobago, section 77 provides for a motion of no confidence in the Prime Minister but not in the Speaker. One is tempted to ask, why?

Some of the authors in this area indicate that in certain instances when one is dealing with a purely political office, as a matter of course, one may choose to enact a convention into law, otherwise in the case of other offices, one may choose to exclude it because one could be of the view that that concept of public morality would be more readily accepted. Our Constitution, like other constitutions, has that element of choosing conventions selectively, incorporating some by general reference and omitting others altogether.

2.15 p.m.

The face remains that the underlying feature of conventions is that by reason of the concept of public morality, one expects that persons who are affected by a particular convention would abide by it in the normal course of things.

When that does not happen, one has to examine one's constitutional arrangements to determine whether it should be incorporated in a specific way. We have chosen to do so, and when one looks at the specific provisions of the Bill, one sees that we have also sought to maintain three fundamental principles of our legal system.

The first of those is that a person should not be a judge in his own cause. The second is that notice of allegations against a person must be made and brought to the attention of that person. Thirdly, the persons so affected should have an opportunity to reply. So that, in enacting the convention, we have also looked at fundamental principles of our legal system and sought to enact them into the legislation itself.

Mr. Maharaj: Would the Attorney General tell this honourable House whether, under this Bill, before the Speaker is suspended from office, on the

signing of the 19 Members of the House, there is any requirement that he be told the nature of the accusation and be given an opportunity to answer it, and whether there will be an unbiased body determining that matter?

Hon. K. Sobion: Mr. Deputy Speaker, the Member for Couva South is a bit previous this afternoon. I am getting to the particulars of the Bill and surely I would respond to the matters which he has just raised.

There are three fundamental principles which we sought to enact. The first of those is that a person should not be a judge in his own cause. The Bill provides that on the presentation of a resolution signed by a majority of the Members of the House, the person holding that office should temporarily vacate the office.

It has been said in the course of the debate that the presiding officer of the House is not really a judge, but one has to understand, for instance, that if a motion is presented and the presiding officer has a judgment to make on the validity of that motion and that motion affects the presiding officer himself, then the presiding officer would be making a determination with respect to a matter which affects him. So, a person can take a motion, and because it adversely affects him, amend that motion to suit his own purpose. That is the concept of acting a judge in one's own cause.

Once the resolution is signed by a majority of all Members, the person against whom that resolution is addressed should have nothing to do with the management of that motion. The Bill provides that the presiding officer should temporarily vacate office.

To answer the specific question of the hon. Member for Couva South, clause 3(b)(10) of the Bill states quite clearly that:

> "The resolution shall state the grounds on which the Speaker's removal from office is proposed."

That takes us to the second fundamental principle—that the allegation must be brought to the attention of the person. So, the resolution must contain the grounds on which the removal is being sought.

Mr. Maharaj: I do not want to trouble the Attorney General during his contribution, but I would appreciate it very much if he would respond to the question asked. Before the Speaker is suspended, would he know what the allegations are, and be given an opportunity to answer those allegations before a decision is made to suspend him?

Hon. K Sobion: Mr. Deputy Speaker, I thought I had made myself clear on that point. There are three fundamental principles involved. I will repeat them for the benefit of the Member for Couva South. The first principle is that we should not be a judge in our own cause. The second principle is that one must be informed of the matters alleged, and thirdly one should be given an opportunity to reply.

In order to effect the first principle, once the majority of Members of the House moves a resolution setting out the grounds, the presiding officer must remove himself from the management of the motion, so that there is a temporary removal of the presiding officer.

The second principle is that the presiding officer must be informed of the grounds. Clause 3(b)(10) of the Bill specifically states that the resolution must contain the grounds on which the removal of the Speaker is being sought.

The third fundamental principle is met by clause 3(b)(11) of the Bill, which says that:

> "The Speaker may, within twenty-one days of the delivery of the resolution…"

and this provision was amended in the other place to read 14 days—

> "supply to the Clerk of the House in writing, any grounds in which he resists his removal from office, and the Clerk of the House shall supply a copy thereof to each Member for the House."

Those three fundamental principles are satisfied by the provision of the Bill. The right to be heard is contained in the fact that the presiding officer has an opportunity to reply to those grounds. We have seen, and the Member for Couva South ought to know, that recently the Privy Council stated that the right to be heard did not necessarily entail and oral response, but could be done in writing. The fact is that we have sought, in the mechanism which we have set up, to maintain some of those fundamental principles which affect our legal system. Those are all stated in the Bill.

That, therefore, is the mechanism which this Bill seeks to enact. It is a mechanism which is an improvement on the existing, well-accepted convention which merely required the moving of a motion of no confidence. It goes beyond that simple procedure and provides proper safeguards for the person who is to be affected by the resolution of the House.

There is one additional mechanism which was not part of the original bill, but which, after the debate in the other place, was included as a result of matters raised, particularly from the Independent Benches. Provision is now made for a review of the proceedings to be done by an independent tribunal appointed by the President. Having gone through the mechanism of allegation, reply, debate and conclusion, an independent tribunal appointed by the President would have an opportunity to review. That provision has generated some degree of debate, and I may say that whilst that independent review is done, the House need not accept the findings of that independent tribunal.

2.25 p.m.

The reason, quite simply, is that at the end of the day the Parliament remains supreme. That is a fundamental principle of our Constitution. So that there is the benefit of an independent review, and comments to be made by that independent tribunal but the Parliament will then have the opportunity to look at it. Ultimately the decision rests with the Parliament. That concept of supremacy of Parliament is well known.

I would want to make one additional observation on that point. There is the view expressed from time to time that Members of Parliament will act in a whimsical fashion. I do not subscribe to that view. In any democratic institution there are checks and balances, and there are certain democratic institutions which have a serious effect on the operations of other institutions. So that I do not believe that Members of Parliament will act in a whimsical fashion.

If the independent tribunal assesses and makes observations of its own I think it would be a foolhardy Parliament which would disregard serious comments coming from such an independent tribunal.

As I said, there are other democratic institutions which affect other institutions, one among them is the press; the concept of the media and the freedom of the press brings to bear on all our democratic institutions some certainty that persons involved in those institutions will act in a proper fashion. That is what an open democratic society is all about. So to suggest that it is a waste of time having the independent tribunal is to fail to understand the operations of our democratic institutions and to understand where the checks and balances lie.

In introducing this Bill it is unfortunate that it has become necessary to enact into law such a well recognized principle. I am of the view that our country can only mature and our democratic institutions can only become stronger where there

is a recognition of conventions and traditions and when those conventions and traditions are supported in our everyday life. It is with some tinge of regret that this Bill is before the Parliament, but it is necessary if these conventions and traditions are not accepted in our day-to-day life.

In the circumstances, I beg to move.

Question proposed.

Mr. Basdeo Panday *(Couva North):* Mr. Deputy Speaker, simply put, what this amendment to the Constitution seeks to do is to make provision for 19 Members of a 36-Member House. I want to emphasize that. When the hon. Attorney General was speaking, he was speaking about Houses comprising 300 and 400 members.

What this Bill seeks to do is to make into law, provision for 19 Members of a 36-Member House, to first of all, go to Balisier House or anywhere else, not to the Parliament; go to Smokey and Bunty and the 19 of them sign a document—I am reducing this Bill to its simplest form so that the population may understand what it is all about—they can go to Smokey and Bunty and 19 of them sign a document saying, that the Speaker should demit office, the Speaker is fired, so to speak.

They can put any reasons they want: the Speaker's foot is too long—I am reducing this to absurdity so as to make the point—and they hand that piece of paper to the Clerk. The moment they do that the Speaker is automatically suspended from office. If I am wrong at any point in my presentation I invite the honourable Members on the other side to stop me right away because I do not wish to mislead the public and myself in this matter.

That is the first thing that is objectionable about this Bill. Not even a cleaner in the Minster of Works is treated in that manner; not even a porter on the docks is suspended without first being called and given an opportunity to say why his position should not be affected to his prejudice, but the Government suspends the Speaker.

The Speaker having been suspended—let me read it so that the House would know what I am talking about. It says:

> "Upon delivery by the Clerk of the House to the Speaker of a resolution signed by a majority of the Members of the House that the Speaker be removed from office, (Hereinafter referred to as 'the resolution') the Speaker shall vacate his office temporarily and cease to perform his functions as Speaker.

The Resolution shall state the grounds on which the Speaker's removal from office is proposed.

The Speaker may, within twenty-one days of the delivery of the resolution, supply to the Clerk of the House in writing any grounds on which he resists his removal from Office.."

That is what is referred to as an opportunity to be heard. After suspension without being heard, the Speaker has 21 days to state in writing why the Speaker should not be removed. Then within 14 days where no grounds have been supplied—let us deal with it. It says:

"Unless a motion in support of the resolution is moved in the House—

(a) within fourteen days…"

So those 19 people who sat at Smokey and Bunty could come back to the House now, but if they do not come back within 14 days, the Speaker resumes office.

"(b) where no such grounds have been supplied, within fourteen days of the time prescribed therefore, the Speaker shall resume the performance of her functions as Speaker."

What happens thereafter is that those same 19 Members who signed that resolution can come to this House and pass a Motion that the Speaker should demit office. Do you know what happens? The Speaker is fired.

The amendment in the Senate is—and I do not know if this is an opportunity to be heard—that the Speaker's reasons for not being dismissed and the reasons she should be dismissed by the 19 Members in this House should be sent to a tribunal of persons who are not Members oft this House—that is extremely important—to be appointed by the President, after consultation with the Prime Minister and the Leader of the Opposition. But no matter what the tribunal recommends, those same 19 people can ignore that recommendation by the tribunal and proceed to effectively dismiss the Speaker. That is what this law is about.

2.35 p.m.

I have heard nobody say anything so I imagine I have stated the law, quite simply, properly.

I want to make it absolutely clear that we are not speaking about the incumbent. It does not matter who the incumbent is, whether it is Miss Seapaul,

whether it is Gopaul, whether it is the Deputy Speaker who may become Speaker; it does not matter. We are not speaking about the persons here; we are speaking about any Speaker. Any Speaker who takes that Chair if this Bill becomes law is subject to being dismissed at the whim and fancy of 19 Members in a 36-Member House. By definition, that is by the government of the country.

The Government by definition, has the majority, otherwise it would not be the Government. The Opposition, by definition, does not have a majority; that is why it is the Opposition. So this Bill is really to permit the government to dismiss the Speaker at will. Every fortnight it can remove the Speaker from this House because 19 people on that side—not even the whole Government, if they had 20—can remove the Speaker. Surely the Constitution of this country did not anticipate that kind of situation.

Mr. Manning: Mr. Deputy Speaker, I thank the hon. Member for Couva North for giving way. I just want him to be kind enough to answer a question, please. What is the minimum number of votes in this Parliament to elect a Speaker to office?

Mr. B. Panday: A Speaker is elected in this House by convention and that convention is consensus. But strictly speaking, I will answer the hon. Prime Minister—19 Member can appoint a Speaker. That does to alter in any way the argument that objects to this Bill.

Having said that, the Constitution did not intend that the Speaker should hold office at the whim and fancy of the Government. No matter how he is appointed; no matter who appointed him, it is clear that what the Constitution has said is that once the Speaker has been appointed, the Speaker must hold the scales evenly between the two sides in a political system that is adversarial by nature.

We adopt the Westminster system. We sit on this side of the House. We do not let them come over here, unless there are special circumstances. And we do not go over there—

Hon. Members: Not at all!

Mr. B. Panday: —except when we move them and put them here.

The point I am making is that the nature of our political system is adversarial. That is the Government; this is the Opposition. The function of the Opposition is not to make the Government look good; it is to be an alternative government to replace the existing Government and to put forward its own policy. It is never to make the Government look good.

In that adversarial struggle that takes place within the Parliament, the Speaker must hold the scales evenly between the two sides in interpreting the rules; must not favour the Government; must to favour the Opposition, but apply the rules without bias and without prejudice. That is what was anticipated by the Constitution.

In order to ensure that the Speaker has an impartial position and there is a certain amount of security of tenure of the Speaker's office, the Constitution provides, in section 50 that:

> "When the House of Representatives first meets after any general election and before it proceeds to the dispatch of any other business, it shall elect a person to be the Speaker of the House; and if the office of Speaker falls vacant at any time before the next dissolution of Parliament, the House shall, as soon as practicable, elect another person to that office."

Now this section 50 does not deal with forcing a Speaker out of office, so to amend the section in the first place is wrong, because the intent and purport of this section is to state the qualifications of persons who are entitled to be elected, not to be fired—to be elected to the office of Speaker.

It continues:

> "(2) The Speaker may be elected either from among the members of the House of Representatives who are not Ministers or parliamentary Secretaries or, subject to subsection (3), from among persons who are not members of either House."

This states that the Speaker could come from outside the House or from inside the House. It continues:

> "(3) A person who is not a member of either House shall not be elected Speaker where—"

I invite you, Sir, to listen to the wording of that section. It is talking about the election of Speaker, not the demitting of office of Speaker, and the qualifications are that such a person shall not be elected if that person "is not a citizen of Trinidad and Tobago." It continues:

> "(b) he is a person disqualified for election as a member of the House of Representatives by virtue of subsection (1) of section 48…"

I will read that later on. Subsection (4) says:

> "When the House of Representatives first meets after any general election and before it proceeds to the dispatch of any other business except the election of

the Speaker, the House shall elect a member of the House, who is not a Minister or a Parliamentary Secretary, to be Deputy Speaker of the House;…"

which we did in your case, Sir, as you will recall—

"and if the office of Deputy Speaker falls vacant at any time before the next dissolution of Parliament, the House shall, as soon as practicable, elect another such member to that office.

(5) A person shall vacate the office of Speaker or Deputy Speaker—"

It speaks of vacating the office—having been elected—automatically, because of several provisions. One is where a person, Deputy Speaker, that person shall vacate office if the Speaker is appointed as a Minister or Parliamentary Secretary. We have a case in point here at 59(5)(b) where that kind of Speaker shall vacate office, and it states:

"in the case of a Speaker elected from among persons who are not members of either House—

(i) when the House first meets after any dissolution of Parliament."

So where a person is appointed Speaker and the House goes to election, or the House is dissolved and a new House comes into being, the Speaker of the old House cannot automatically be the Speaker of the new House. That is what they really wanted to say there, and (ii) states:

"where he ceases to be a citizen of Trinidad and Tobago."

2.45 p.m.

Obviously, this is the Parliament. One notices what the Government is talking about. How one vacates office is only if one ceases to be a citizen, and if Parliament is dissolved. If one reads section 48(1)(a)—which I think I had better read now for clarity—it states that the Speaker would also demit office if the Speaker becomes a citizen of another country;

"(b) is an undischarged bankrupt… or otherwise declared bankrupt under any law…"

(c) is mentally ill, within the meaning of the Mental Health Act;

(d) is under sentence of death…"

You have not sentenced her to death, yet, have you?

"(e) is disqualified for membership of the House of Representatives by any law in force…"

That is to say for acts which contravene the elections and so forth—Also, if the Speaker is

"(f) …convicted of any offence…"

And if the Speaker ceases to be a registered elector of Trinidad and Tobago. These are the conditions under which a Speaker, who comes from outside the House, should demit office.

One would see that it is not where the Government is given the power to fire the Speaker. This clause does not deal with firing the Speaker. This clause deals with the automatic vacation of the office because certain conditions which subsisted before are no longer fulfilled.

Mr. Maharaj: To remove an existing Speaker, a sitting Speaker.

Mr. B. Panday: That is the point: to remove a sitting Speaker.

One sees the kind of security of tenure that is given to the Speaker, which the Constitution envisaged, so that the Speaker may hold the scales evenly between the contending parties in this House. To reinforce that position, section 58(2) of the Constitution went on to say that:

> "The Speaker or, in his absence, the deputy Speaker or, where they are both absent, and member of the House of Representatives, not being a Minister or a Parliamentary Secretary, elected by the House for that sitting shall preside at each sitting of the House."

I do not mean to question your ruling, Mr. Deputy Speaker—I use it only as an argument—but that is the point I was making when I rose to make my objection on the point of order—that automatically, when one walks into this House, one expects to see the Speaker in the Chair and not the Deputy Speaker, or anybody else, because the Constitution says that. If we do not see the Speaker there, then we should have heard from the Clerk.

Mr. Maharaj: what are the grounds? What are the reasons?

Mr. B. Panday: Where is the Speaker? Did she break her leg? What happened to the Speaker? Is she ill? Then we should adjourn the House and go wish her well.

Mr. Sudama: You have to get a pass to do that.

Mr. Maharaj: They should be ashamed to do a thing like this; having to debate a Bill like this.

Mr. B. Panday: That section of the Constitution requires a three-fifths majority to amend it, the one which requires the Speaker to sit in that Chair at a sitting of the House. Section 50, which merely states the qualifications for election—and when those qualifications do not exist to cease office—requires a simple majority. What the government is seeking to do here is to effectively amend section 58(2) by a simple majority, but which requires a special majority.

How can we support this Bill when that is the case? We swore to an oath to uphold the law and the Constitution when we became Members of this House. That is what we did.

When the statement came that there was a state of emergency in the country, and the Speaker had been detained, many of our friends told us that we should show our protest by boycotting the House. I can tell you that we called a caucus of the parliamentary arm this morning to discuss whether we should boycott this House as a mark of our protest for the violation of the Constitution, and we came to the conclusion that we must not. We took an oath that we would fight against any attempt to violate the Constitution of this country.

Therefore, that place is here. We have come here, not to legitimize these proceedings in any way, but to indicate to this House and this country, the extent to which this Government would go to hold on to office.

It may very well be that this House is sitting illegally, and we have a duty to point that out to this House.

We have heard from the hon. Attorney General that the Speaker of this House is not here today because she is under house arrest—

Mr. Maharaj: By the Government.

Mr. B. Panday:—by the Government, of course.

She is under house arrest following the state of emergency that was declared under section 8 of the Constitution. Section 8 of the constitution says:

"(1) Subject to this section, for the purposes of this Chapter, the President may from time to time make a Proclamation declaring that a state of public emergency exists.

(2) A Proclamation made by the President under subsection (1) shall not be effective unless it contains a declaration that the President is satisfied—"

Satisfied about what?

"(a) that a public emergency has arisen as a result of the imminence of a state of war between Trinidad and Tobago and a foreign State;"

Would the government kindly tell us if we are being invaded by Grenada?

From the looks of it, we may be invaded by Tobago, as I do not see the Members here today. Surely, we are not in a state of war, so that condition does not apply.

Secondly, what would justify a state of emergency?"

"(b) that a public emergency has arisen as a result of the occurrence of any earthquake, hurricane, flood, fire, outbreak of pestilence or of infectious disease, or other calamity whether similar to the foregoing or not;"

The only infectious disease that we know about is in this House here—

Mr. Maharaj: Pestilence.

Mr. B. Panday: Pestilence.

Mr. Maharaj: The member for Diego Martin East.

Mr. B. Panday: Thuggery! It cannot be declared for thuggery. It does not say so. Maybe they would like to declare it for thuggery and hooliganism, but the Constitution does not say that. It cannot be declared for thuggery and hooliganism even when it appears in the House.

None of these conditions exist today. A state of emergency may also be declared, if the President is satisfied:

"(c) that action has been taken, or is immediately threatened, by any person, of such a nature and on so extensive a scale, as to be likely to endanger the public safety or to deprive the community or any substantial portion of the community of supplies or services essential to life."

2.55 p.m.

Is Miss Seapaul, the Speaker of this House, preventing people from getting flour? Surely, that condition does not exist at all. Nothing has arisen of late to worsen the situation that people are being denied supplies. Of course, they are being denied water, and there is flood and so forth but the Government should have declared a state of emergency against itself a long time ago and put the Prime Minster under house arrest. But that is not the reason.

The reason is that a little lady is interpreting the rules according to how she sees them—I am not here to say whether she is right or wrong; that is not my

business. The Member is here to say that. That is the whole point about this Bill. They have come to take back "their" "House". Have you heard it? "We are going to take back we "House'. It is theirs. That is the trouble in this country—mentally prone to dictatorship and authoritaranism, fascism. It is their "House."

Mr. Humphrey: I call it mental derangement.

Mr. K. Sobion: He should know.

Mr. Humphrey: I should know! The Prime Minister is mentally deranged.

Mr. B. Panday: If these conditions do not exist, then the state of emergency may be invalid. If the state of emergency is invalid, then the detention of the Speaker is invalid. If the detention of the Speaker is invalid then the fact that she is not sitting in that chair may invalidate the proceedings of the House. It is important that we see the trend that the Government is taking.

The Government is seeking to introduce a clause, that when it does not like the Speaker, the Speaker must go. The Speaker is coming to take back our "House."

The Speaker took away the House from them. It is theirs. I think what is significant is what has been stated by the hon. Member for Ortoire/Mayaro, the hon. Member for Ortoire/Mayaro, the hon. Attorney General.

The Attorney General has admitted that the purpose of this Bill and the state of emergency is to lock up the Speaker to prevent her from coming to the House. That is clear. He wants to prevent the Speaker from coming to the House so he locks her up. This the first time I have ever heard that state of emergency has been declared for one person. *[Laughter]*

Mr. Deputy Speaker: Would persons in the public gallery be silent if they want to remain in here. Please do not let me have to say this again.

I am asking the officers present to ensure that persons in the gallery remain extremely quite during the proceedings. Hon. Member, you may proceed.

Mr. B. Panday: There is nowhere in the Constitution that says because of one person, one can declare a state of emergency. The Government declared a state of emergency limited only to around her house. I am reminded that it had been done once for CLR James. My friend referred to Laundy but may I remind him that the reference was to Houses with 300 and 500 Members, not a 36-Member House. Principles apply to suit particular situations.

For example, do you know what is going to happen in this House when this Bill is passed? A Government elected by a minority—they are sitting there as a minority. The persons who sit on this side of the House got more votes in the last election than they did but because of the political system—when my Friend is talking about majority, he must realize that democracy is not the rule of majority. Democracy is the rule of majorities. They, who were elected on a minority of votes—20 seats in the House, 19 of them—

Mr. Valley: Mr. Deputy Speaker, it is incorrect to say that the Members on that side got more votes than the Members on this side.

Mr. B. Panday: The parties representing the Opposition got more votes. The Member cannot count. Or, is he claiming those votes? The Member who sit on this side of the House got more votes than those who sit on that side of the House. And a minority will now have the power to remove the Speaker of this House. My Friend does not understand the Constitution. Democracy is not the rule of the majority.

If democracy were the rule of the majority, then that would be the tyranny of the majority. Democracy is the rule of majorities of persons whose interests are of concern. Not in this House here! If it is in this House here then that is a parliamentary dictatorship.

The hon. Member has said that there is no provision for a no confidence motion in the Speaker. I agree with him that as far as the Constitution is concerned, there is no provision for a no confidence motion against the Speaker. He is totally wrong when he says that there is no provision in our system for a no confidence motion against the Speaker. There is! One can move a motion of no confidence against the Speaker in this House. As a matter of fact, there is a difference between a motion of no confidence and a motion of no confidence to quit the House.

We moved a motion of no confidence against the Speaker in this very House when we thought that she was being biased.

We were angry with the Speaker when we thought she was biased. We voiced our anger in no uncertain terms and if we were motivated by spite, ill-will and malevolence, we would have voted for the Speaker to go. But we do not operate on spite, malevolence, bad mind and wickedness. We operate on principle, and that is what we are arguing in this House.

It does not matter whether it is Occah Seapaul, Dr. Rupert Griffith or whosoever, we would fight to protect the office. There is provision for moving a

motion of no confidence against the Speaker. My Friend is totally wrong when he said there is none. It is significant that the Constitution did not make provision for no confidence motions against the Speaker because it anticipated that such motions would come from the Opposition who is dissatisfied. The Government, having appointed the Speaker, said that any opposition and allegation of dissatisfaction would come from this side.

The Government has no power to move a motion of no confidence in order that a Speaker may demit office. That is what the Government sought to do. The Government sought to move a motion in this House, that this House express its lack of confidence in the Speaker and be it resolved that the Speaker demit office forthwith. That was totally wrong and totally unconstitutional—against all the rules—and the Government admitted that.

Mr. Sobion: When?

Mr. B. Panday: It has not been the first time we have had bungling and stumbling. But bringing this Bill before the House the Government admits it cannot remove the Speaker by a mere motion of no confidence.

Mr. Sobion: When?

Mr. B. Panday: What the Government could not have done by a motion, it has this Bill to do.

Mr. Sobion: Mr. Deputy Speaker, I would like to remind the Member for Couva North—so that his contribution would be accurate—that the motion of no confidence which is before this House was ruled unconstitutional with the support of Members on the other side. It was not withdrawn by us and this Bill is not as a result of the Government withdrawing a motion of no confidence.

3.05 p.m.

Mr. B. Panday: If that were the case and they thought that the Speaker and Members on this side were wrong, they could have gone to court. Is that no what the Member did? They could have gone to court to test the validity of the Speaker's ruling, but they did not do that. They succumbed to the correct argument that they were wrong, bungling and stumbling and did not know what they were doing. As a matter of fact the Speaker demanded that the motion be debated in this House and they refused. When the Speaker called on them they wanted an adjournment. They refused to debate the motion because they knew they were wrong and they sought leave to adjourn.

The other point made by the Attorney General is that the Bill seeks to preserve three fundamental principles. The first is that a person should not be a judge in his own cause. The role of the Speaker, as we understood it, is to be governed by the Standing Order.

If the Standing Orders, which make provision for the filing of motion of no confidence against the Speaker, did not also provide that the Speaker should not sit, then the Standing Orders allowed for her to sit in a motion of no confidence against herself. Neither the Standing Orders nor the Constitution says that where a motion of no confidence is filed against the Speaker, the Speaker shall vacate office. If that were the intention, then it would have said so specifically.

The second point is that notice of the allegation must be brought to the attention of the person. Notice of the allegation being brought to the attention of the person has a purpose. It is not done in a vacuum or as if it falls from the sky. There is a reason for that principle that a person against whom allegations are made is given notice of the allegations. The purpose for giving someone notice is for that person to know for what he is being charged. There is also a reason for letting the person know for what he is being charged; who would have an opportunity—to prepare his defence.

The third principle is to be heard in his defence before a decision is taken to alter his position to his prejudice. The law which is being propose here is that when the 19 Smokey and Bunty boys sign the paper, send it to the Clerk and she hands it to the Speaker, and the Speaker says that everything they say is wrong, they would go ahead and pass the motion. Before they pass it they would send it to a tribunal that would look at the paper and send it back to the House. And the House would say, "thank you for that rubbish". They would go ahead and pass the motion and remove the Speaker anyway.

That could never, by the widest stretch of the imagination, be regarded as an opportunity of being heard. An opportunity to be heard must be a genuine one and must have as part of its ingredient, the opportunity to influence the other side by what is said. An opportunity to be heard *via voce;* to question your accusers; to call witnesses and back up your story is a genuine case of being heard What have they done here? They say to send the paper to somebody nobody knows and sees; the person who is being charged is not being heard, and there is no evidence form any witnesses, no chance of looking at their demeanour or anything at all, and send it back to them.

Even if the tribunal says that that person should not be dismissed because from looking at the cold naked paper, they find it is wrong to dismiss a Speaker

on those grounds, the 19 Bunty boys may still go ahead and come to this House and fire the Speaker. Surely if those 19 persons charged the Speaker with certain offences and demanded that she leave, it follows naturally, that they will come to the House and vote for her departure. There is an institutional bias involved there which they have not taken care of.

More reprehensible than that is the fact that they have broken one of the most sacred traditions in the parliamentary system They are putting Members of Parliament of be judged by some tribunal outside Parliament. That is a dangerous precedent. Putting Members of Parliament, the elected lawmakers of this country, the servants of the people, under a position of possible pressure from a group of people cannot be correct; they are breaking a fundamental principle of democracy.

No parliamentarian should be put under pressure from people outside Parliament. The only persons by whom parliamentarians should be pressured are the electorate, the ultimate arbiter n political matters, and not a little group somewhere. They may not, but the point is the Government would put them in a position where they can exert pressure upon Members of Parliament. And that should never be.

These are your legislators. If they do not like them they cannot move them; it is the people who have to move them, not a small group of people appointed by the President. "After consultation," "between consultation" or "before consultation" has nothing to do with it. It is a breach of the fundamental principle to put parliamentarians under the pressure of people outside Parliament. Only the electorate should have that power because we are elected by the electorate.

I cannot believe what I heard from the other side. Such ignorance is unbelievable! My learned Fried, who has been referred to as a thug in other places, has said that the three persons who form the tribunal are not part of the electorate. Does that mean they could not have elected a Member to Parliament? It he is equating them with the electorate, they could elect a Member to Parliament.

What has happened in this House today is an awful tragedy. This government has brought this nation into contempt, ridicule and disrespect, not only in Trinidad and Tobago, but also in the Caribbean and the world. This morning we got some telephone calls from people in the United States of America and they asked what was going on in Trinidad and Tobago. They said that the Government has locked up the Speaker and this is the country in which they are being asked to invest; a country with so much political instability. We have been disgraced.

Mr. Deputy Speaker: The speaking time of the Member has expired.

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

Question put and agreed to.

3.15 p.m.

Mr. B. Panday: Mr. Deputy Speaker, I thank you and hon. Members for granting me the opportunity to continue. *[Interruption]* As I always do.

This country has been brought into shame, contempt and ridicule for one single reason—the bungling incompetence of the Government. Sometimes it is difficult to know what they are doing. I think it is more due to the fact that they will not do the right thing. That is the reason we are here today. They talk about convention, but will not do what is right.

In most civilized parliaments of this world that practise our system, there is an ethics committee. We have recommended one, and if the Government had taken our advice, we would not have been in this trouble today. We would not have had this state of emergency; we would not have had to lock up our Speaker.

We have called for the establishment of an ethics committee made up of the Parliament. We did not say the House of Representatives alone, because we must deal with our peculiar situation. We have a small House. We do not have 630 members as they do in Indian. An ethics committee, as made up of both Houses of Parliament, would share complaints of acts of impropriety against Members of Parliament. This House would have the power to give this committee the authority to suspend, charge, find, expel, or whatever it decides.

If an ethics committee had been set upon, a Member who is charged would have had a genuine opportunity to be heard, not on paper but to sit and give evidence, and the evidence heard in public or private depending on the circumstances. Witnesses would also give evidence.

In the United States there is an ethics committee which is investigating the President, so the police do not have to declare a state of emergency and lock up the President. They have set up the machinery whereby there can be accountability for members' conduct in the House. However the Government will not do that; they are afraid that they themselves would come under the scrutiny of the ethics committee. We are here today because they know what to do and will not do it. They want to continue the corruption.

I was surprised when I heard the learned Attorney General speak about conventions. *[Phone rings]* It is his House; he can do what he wants. He has taken over the House and installed a telephone in it, too.

The Attorney General had the audacity to speak of conventions. The convention broken more than any other in this Parliament is his party permitting someone who was not a Member elected by the people, to sit as the acting Prime Minister of this country. That is the worst breach of convention that there can ever be. The Prime Minister of this country is someone elected by the people. The Constitution says so. It is not only a convention, it is written into the Constitution.

The Constitution says that the person who is Prime Minister shall be the person of the party which has the greatest majority elected to the House of Representatives. That is the convention, but because of corruption and nepotism, they have allowed a person who is not an elected Member of this Parliament to sit as Prime Minister, the highest office in this Parliament. They talk about convention. Have they no shame?

I have one bit of advice for this Government. Before it is too late, withdraw this Bill, remove the state of emergency, set up an ethics committee of the House and if anyone is in breach of the ethics of this House, bring that person before the House.

The Bill also seeks to have retroactive effect. As far as I know, this Bill has never set up a code of ethics of the Parliament. An attempt was made to set up a code of ethics n 1987 under the NAR Government. It did not come into law; it just had persuasive effect. Obviously, they are going to deal with a person—and I come to the personal aspect of this case—for what they regard as an offence, which they have never defined as an offence.

No one knows what the Speaker has done. No evidence has been brought or charges laid. If it is, as has been reported in the press, that the charges against the Speaker are that the Speaker told untruths under oath, what is the offence, the "under oath" or the "untruth"? If the offence is the "untruth", why is that a crime only to the Speaker? Why is there not a code of ethics that Members who tell untruths should be suspended or fired and have an ethics committee so that Members who commit that offence should be subjected to it. Why should not everybody be subjected to it?

I am a lawyer and the first thing that comes to my mind when one punishes people is equality of treatment. They are going backwards. They are trying to pass a law here today, to have retroactive effect, for an offence committed, which was never defined as an offence. That is reprehensible in law. They should, therefore,

withdraw this Bill. Take the advice of the Opposition for once and set up a committee to deal with matters like this and save this nation from further disgrace.

I thank you.

Mr. Hedwige Bereaux *(La Brea):* Mr. Deputy Speaker, I whish to take this opportunity to make a brief intervention in this debate. The Explanatory Note to the Bill under debate states:

> "The Bill seeks to amend the Constitution to provide for the vacation of the Office of Speaker of the House of Representatives where a motion to that effect has been passed in the House, and for the procedure to be followed in the circumstances."

Before I get into the meat of my contribution, I take note of the statement made by the hon. Member for Couva North that we should withdraw this Bill, set up an ethics committee and they will support us on it. I recall that the Member for Couva North and the Members of the UNC were the persons who were requesting, as soon as the particular mater came up, that the Speaker demit office.

Mr. Palackdharrysingh: Mr. Deputy speaker, on a point of order, please. We on this side have never called for the Speaker to demit office. The Member is misleading the House. Let him please be aware.

3.25 p.m.

Mr. H. Bereaux: Mr. Deputy Speaker, I will treat that comment with the disdain it deserves.

Since this episode has come about some six weeks ago, comments have been made about its unfortunate nature. I want to take a different position. I see no problems in this life, only opportunities. In fact, I do not see this particular impasse which caused us to bring this Constitution (Amdt.) Bill to Parliament after it was passed—Thank God—in the Upper House—The reason for that is, there was a situation existing in the country and we thought all persons concerned understood the type of behavious which was expected. The Constitution of Trinidad and Tobago at section 55(3) states:

> "In other respects, the powers, privileges and immunities of each House and of the members and the committees of each House, shall be such as may from time to time be prescribed by Parliament after the Commencement of this Constitution and until so defined shall be those of the House of Commons of the Parliament of the United Kingdom and of its members and committees at the commencement of this Constitution."

Although this particular provision seeks to incorporate the practices and privileges of the Hosue of Commons into our Parliament, yet it appears that some of the conventions, and particularly the convention which would cause a Speaker the demit office if a vote of no confidence is filed, does to seem to have gotten into the practice in Trinidad and Tobago.

There are countries and parliaments not recognizing conventions, particularly when we look at the comparative age of the parliaments concerned. There is in the United Kingdom, a Parliament of 700 years or more; we are only 33 years old. We recognized that. In the development of any system one expects to have situations like this so that we could develop our own codes, laws and rules to govern our behaviour. What you see happening here, is this House dealing with a dynamic situation in respect of the Parliament and the rules of Trinidad and Tobago.

The Member for Couva North tried in his very persuasive manner to indicate that there was a situation where 19 Members on this side of the House would just sign a resolution and cause a Speaker to demit office, or seek immediately to suspend a Speaker. He brought as an example that not even a cleaner in the Ministry of Works could be moved like that. *[Interruption]*

Mr. B. Panday: Could the hon. Member tell me if I am wrong, when I said that 19 Members can remove the Speaker if this Bill becomes law. Am I wrong?

Mr. H. Bereaux: The Member had his opportunity. I will carry on with my contribution. *[Interruption]* I was not going to say that the Member was incorrect. What the Member did not say, and admitted only after some persuasion, was that in terms of the appointment of a Speaker, all that is required in this House constituted as it is, is a vote of 19 persons. The Constitution is not the only law of Trinidad and Tobago; the Constitution is the most important law; it is the bedrock of our entire situation, community and our country. We have also a law called the Interpretation Act, and I refer to the Interpretation Act, Chap. 3:01, which says at section 39(1):

> "Subject to the constitutional laws of Trinidad and Tobago, words in a written law authorizing the appointment of a person to any office shall be deemed also to confer on the authority in whom the power of appointment is vested—
>
> (a) power, at the discretion of the authority, to remove or suspend him;"

I just want to say it is a power at the discretion of the authority to remove or suspend him. Just as this honourable House has the power and authority by the

votes of a simple majority of the Members of this House which translates in this context to 19 Members only, so too, I see no mischief in this House being able in a similar fashion to so suspend or remove because this is the law. I bow to it. Further:

"(b) power, exercisable in the like manner and subject to the like consent and conditions, if any, applicable on his appointment—"

(i) to reinstate him on his suspension, or reappoint him on his removal, his resignation, the expiration of his office, or otherwise;

(ii) to appoint another person in his stead or to act in his stead and to provide for the remuneration of the person so appointed;" and

(iii) to fix or vary his remuneration,…"

And so forth.

This hullabaloo that is being made about the capability of 19 Members of this honourable House being able, by a resolution, to suspend the Speaker is really an act of passing red herrings around. Let us look at what has happened. In order to understand how this Bill operates, it is necessary to look also at the composition of the other House in this two-Chamber Parliament.

In that House there are six Opposition Senators, nine Independent Senators appointed by the President in his discretion, and 16 Government Senators to make up the 31-Member House. In naming the Independent Senators the President is expected to take into consideration persons of influence and knowledge within the entire community. That was the reason that the Government in seeking to bring this particular Bill to Parliament, because it dealt with an office as sensitive as that of Speaker, sought to bring it through the other place.

3.35 p.m.

What is instructive about what went on in that other place—I made it my business to go and listen to the contributions of hon. Members there. Those Senators who were appointed by the President, took objection to certain portions of the Bill and they brought an amendment, which, to some extent, has been attacked by the Member for Couva North, and which I will deal with as I go on. But that amendment—and I recall a particular Member saying, "I have a problem because the principle of natural justice does not appear to be resident in this Bill."

The Member referred to that portion of the Constitution which speaks about the removal of the President and the manner in which, if you sought to do so, you

[MR. H. BEREAUX]

would have to—I think it would bear reading so that we could see the area from which it came, This is section 36(d) which says:

> "a tribunal, consisting of the Chief Justice and four other Judges appointed by him, being as far as practicable the most senior Judges, investigate the complaint and report on the facts to the House of Representatives.".

In fact, I know that attempts were made to massage and to look at the various permutations of the amendment. At one time it was thought that the Integrity Commission would be the tribunal to which these facts, the resolutions, the speeches of the Members of Parliament, would be referred. Then eventually what happened? I would tell you. It was decided, "to transmit the records of the proceedings in the House to a special tribunal comprising a chairman and two other members appointed by the President after consultation with the Prime Minister and the Leader of the Opposition." Obviously that method of peopling, of getting the tribunal together was intended to make it as impartial a body as possible.

So here it is, if the Government or if 19 Members of this honourable House sought to choose anybody as Speaker, once such a person was not disqualified via the provisions of section 48(1), and 19 persons in this present situation voted for such a person to become Speaker, that person would become Speaker. Regardless of what somebody may say; regardless of the allegations made that that person was not suited to be Speaker, once that person did not fall within those prohibited provisions of section 48(1), that person would be made Speaker.

But when the time comes to remove that same person, notwithstanding the provisions of section 39(1) of the Interpretation Act, this Government, upon the advice of those persons who are not circumscribed by political pressure, agreed to put this provision in. I also recall when the provision was put in, particularly the provision which says:

> "(16) The Tribunal shall review the record and within twenty-one days of its receipt of the record shall make a recommendation to the House accompanied by a brief statement of its reasons therefor either—
>
> (a) confirming that the Speaker should vacate office; or
>
> (b) withholding confirmation."

It says at (17):

> "Where the Tribunal confirms that the Speaker should vacate office the Speaker shall do so immediately upon delivery to him of the confirmation of the Tribunal by the Clerk of the House.

(18) Where the Tribunal withholds confirmation the House by resolution may resolve not to follow the recommendation of the Tribunal and to confirm the motion that the Speaker should vacate office and where such a resolution is passed the Speaker shall vacate office immediately."

Now the Member for Couva North made a very important statement, which was that those of us who are Members of this honourable House are controlled from outside this House by the electorate. Those are the final arbiters of tour performance here.

As a consequence—and that was the point that was made—if you seek capriciously, or for simple political reasons, to remove a Speaker, and a distinguished independent tribunal should say that your reasons for trying to remove a Speaker were capricious or not sufficiently weighty, you ignore such a recommendation and you have the audacity to come to this honourable House and deal with that resolution, then what would happen is, you would pay the political price, as many Government, Minister, Opposition Members and leaders have paid from time to time.

So I see here the ability of 19 persons to move a Speaker, as really nothing sinister and not contrary to the Constitution, but the Member for Couva North also sought to imply—he did say it, but I want to believe he knew better than that—he referred to section 58(2) of the Constitution which says;

"The Speaker or, in his absence, the Deputy Speaker, or, where they are both absent, and Member of the House of Representatives, not being a Minister or a Parliamentary Secretary, elected by the House for that sitting shall preside at each sitting of the House."

Then the Member for Couva North looked at section 54 and says that section 58 is one of those sections which require a special majority in order to change it, and extrapolates that in those circumstances if we choose to alter section 50, although section 50 is the section which says how you move a Speaker or how a Speaker demits office then in principle you would require a special majority.

Well you know, he keeps telling me from time to time that I do not know any law and asks me how many cases I have done. But I shall only refer the hon. Member to the case of Errol McLeod and the Attorney General in which the learned law lords at the Privy Council—I think it was the crossing of the floor Act—indicated that various sections of the Constitution do not affect each other. If it were intended that section 50 of the Constitution were to be amended by a special majority, it would have found itself mentioned in section 54. I dismiss his argument.

3.45 p.m.

The Member also implied that the state of emergency, if invalid—in fact, we ought not to be going at this time to seek to debate the state of emergency but he implied that the state of emergency was invalid and it might mean that the proceedings in this honourable House might be invalid. I want to refer him to section 9 of the Constitution which says:

> "(1) Within three days of the making of the Proclamation, the President shall deliver to the Speaker for presentation to the House of Representatives a statement setting out the specific grounds on which the decision to declare the existence of a state of public emergency was based, and a date shall be fixed for a debate on this statement as soon as practicable but in any event not later than fifteen days from the date of the Proclamation."
>
> (2) A Proclamation made by the President for the purpose of and in accordance with section 8 shall, unless previously revoked, remain in force for fifteen days."

It was always intended in the Constitution to have this entire matter debated, and at that time the reason for the declaration of the state of emergency, and more importantly where the claim was made that one person—section 8(2)(c) states:

> "that action has been taken, or is immediately threatened, by any person …"

It does not say "persons" alone. So much for that.

The point was made about 'opportunity to be heard.' I want to get back to that. The learned Attorney General indicated that there is a decision in law which says "opportunity to be heard" also includes "to be heard in writing". There was the question about "Members of Parliament" being judged by persons outside Parliament.

We need look at who could be Speaker of this honourable House. It says a Speaker may be a Member of this honourable House or a person who may be from outside this honourable House. In respect of a Speaker who has been elected as a Member of this honourable House, if that Speaker is removed, he reverts to his position as a Member.

Mr. B. Panday: I thank the hon. Member for giving way. Mr. Deputy Speaker, I just wanted to inform him though, that when a person from outside this House is elected as Speaker, that person becomes a Member of this House.

Mr. H. Bereaux: Mr. Deputy Speaker, I am aware of that. The Member seems so anxious to help me.

Mr. B. Panday: Always! Always!

Mr. H. Bereaux: It is only in the instance where a person becomes a Member from outside the House that on removal from the position of Speaker, he has to leave the House. However, that person, to put it nicely under the Constitution, came into this Parliament not by the direct vote of the citizens of a constituency, but by proxy; the votes of the Members of this honourable House who represent constituencies.

I want to say that the vast majority of the opinions out there is that the Members of this honourable House must do something to regulate its business and ensure that the business of the people can be conducted properly and expeditiously.

We all recognize that the office of Speaker of the House of Representatives is one of great antiquity. Much power, prestige, privilege and much dignity must attend the performance of the duties and the behaviour of the Speaker.

However, regardless of the high position of an office, there is no divine right to speakership—no divine right. At one time we had what was called the divine right of kings. Therefore, kings had prerogatives, but the prerogatives of kings became the privileges of the people. It follows that there can be no divine right of the Speaker. The highest office in the land is the President of the Republic of Trinidad and Tobago—the Speaker is third. When a President is to be appointed in Trinidad and Tobago, that person must be appointed by an electoral college comprising both Houses of Parliament.

Mr. Palackdharrysingh: That is proxy too.

Mr. H. Bereaux: When I am speaking, why do you not listen and learn?

Mr. Humphrey: By what kind of majority? By what majority?

Mr. H. Bereaux: By an electoral college appointed by both Houses of Parliament. I want to read from section 35 of the Constitution which ways:

"(1) The President may be removed from office under section 36 where—

(a) he willfully violates any provision of the Constitution;"

3.55 p.m.

I am seeking to keep this debate without personalities but one cannot. The Speaker of the House of Representatives is a presiding officer who deals with rules and procedures. It is improper and outside the function of Speaker to rule on constitutional matters. If a Speaker does that, according to our Constitution as

[MR. H. BEREAUX]

interpreted by the Member for Couva North, nothing can happen; but one can move a President for that. He now sees that he behaves in such a way that could bring the office into hatred, ridicule or contempt. As I said, we will have another debate on it.

From the information received, this may very well be applicable in the instant case and that is the reason we are here today and that is the reason the original motion was brought, a motion which was summarily, and in contravention of the Standing Orders, thrown out of Parliament—ridicule of Members, refusal to accept and/or follow the Standing Orders of this honourable House. Unfortunately, there are no rules in the Constitution which would permit that to happen except we are able to import via section 55(3), the conventions of the House of Commons.

When there is a situation like that and the Speaker seeks not to permit the debate to go on, what do we have? The tyranny of the Speaker. In the face of such tyranny all democratically elected Members of this honourable House and, in particular, a democratically elected Government, needs to do something.

There was a situation in this honourable House where the hon. Member for Naparima was suspended for three weeks because it was felt that his behaviour was unbecoming. The procedure as set down in the Standing Orders was followed scrupulously. It was not through ignorance that the procedure in respect of the Member for Diego Martin Central was not followed. If it was not through ignorance—I do not want to impute any improper motive, but one could come to one's own conclusion. One would normally want to say that it is through malice. I do not know that any malice was held. It may be through an error, pressure or whatever, but I am definitely certain that the Standing Orders in respect of suspending a Member were known by the hon. Speaker, the Speaker having applied those Standing Orders before.

I am not going to deal with the severity of the sentence but in the statement made by the hon. Speaker, in several areas where the word "House" should have been put in, the word "Chair" was substituted. In fact, I have looked at the claim in respect of the ability of the Speaker to incarcerate and that, too, in my opinion, and I understand from the 17th Edition of May's went out. There is a situation of what appears to be wilful violation of the Standing Orders and the Constitution.

I am dealing with the President now—this is how one can remove a President; he behaves in a way that endangers the security of the State. When a Minister of Government is suspended, he cannot come to the House. I am not dealing with his

perks or his earnings—the Member for Diego Martin Central can earn much more than he makes as a Minister, and has earned much more.

Earlier in these proceedings there was a claim by the Member for Couva South that a Government Ministers were not answering questions and Friday after Friday, Government Ministers were being badgered to answer questions. The question time in this honourable House is one of the ways in which the Members on the other side and Members like me are able to ask Government to account. For persons who are concerned, or say they are concerned about accountability, I would expect that the Members on the opposite side would not want any Minister of Government to be able to escape coming to this honourable House particularly since it prevents such a Minister from being able and available to answer questions in Parliament, one of the most effective ways in which the concerns of the electorate can be addressed in this honourable House.

There is a situation where, if something like this happens, there is no redress. The Government tries to bring a motion of no confidence and the motion is turned down capriciously. The House is adjournment or purported to be adjourned without a motion being put for the adjournment of the House. We are in a state of anarchy. I am going to exclude the question of physical or mental incapacity; some commentators have made comments but I am not going to get into that.

4.05 p.m.

The circumstances which would cause this honourable House to seek to move a President are spelt out quite clearly. I know they would tell me that the President can be moved by a two-thirds majority. That is because the President is the President and he has a lot of powers including the appointment of Independent Senators and powers that the Speaker does not have. The key to it is that there is a situation in which the President of the Republic of Trinidad and Tobago is open to censure and removal by vote of the same body that elected him, and there is no such clear sanction for the Speaker of the House.

I know that a comment was made about the stability of Trinidad and Tobago; a stability which we have tried to maintain over the years and successive PNM governments have done a tremendous job in maintaining it. Here you are faced with a situation of an officer running amok. As one commentator puts it. You have invited someone into your house and when you tell him it is time to leave, he says that he is not moving. There was the threat to remove duly elected officers. Over a six-week period this Government has sought to deal with this matter in a measured and clam manner.

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

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

Question put and agreed to.

Mr. H. Bereaux: I thank hon. Members for giving me additional time although I do not think I would need much.

The population has been looking at what has been going on. We as this Government had to do something about it. None of us like having to go this route; we would have preferred for the conventions to be adhered to and for the dignity of the honourable House to be maintained. I am still saying that we have to accept that in a situation in which the Constitution is still in a state of flux, these things will happen.

I suspect that the hon. Members opposite—somebody made a Freudian slip earlier, I think it was the Member for Couva North, when he said the extent to which this Government would go to hold on to office. What was he trying to say? I ask him: Are the shenanigans in which the Opposition is involved designed to get the Government out of office? I am not saying they are. I have to ask that, having regard to the on and off position which the hon. Leader of the Opposition has taken from time to time.

I say that as difficult as this position is, and as hard as some people may want to appear, I do not think the Government of Trinidad and Tobago would have been discharging its responsibility to the population if it did not seek to bring this Constitutional (Amdt.) Bill to Parliament. I take this opportunity to thank Members, particularly the Independent Senators, for the degree of consideration and the level-headed approach which they took in proposing the amendment they did.

I beg to support this Bill. Thank you.

Miss Hulsie Bhaggan *(Chaguanas):* Mr. Deputy Speaker, today marks a dark day in the political history of this country. I state at the outset that I am very uncomfortable making a contribution to this debate. Our Parliament has been brought to the brink or ruin. Today we are the laughing stock not only of the Caribbean, but also I am sure of many other parts of the world.

The issue before this House has become so clouded with other extraneous matters that today the population is no longer certain as to what is right and what is wrong. I am sure there are other ways and means by which we could have effected whatever was necessary, but instead we have a situation where brute

force is being brought upon the people of this country. What we are seeing five years after 1990 is the rape of our democracy.

I have my clear views with regard to the position of the Speaker of this House. I have my own case with respect to the incumbent, but I want to make it very clear that I am very committed to democracy and to the rule of law in this country. I will not be part and parcel of any move to undermine that democracy. Like every other citizen in this country, I was traumatized in 1990 and I do not think that anyone of us should aid and abet any situation which once more traumatizes the people of this country.

On many occasions in this House I have said that in this country we have formal democracy; that is to say where every five years we go to the polls and vote, but we do not have real democracy. We do not have democracy where the people of this country would feel comfortable to participate in its affairs. In the Parliament 36 of us have been elected, but decisions are being take by the majority. The other Members of Parliament as far as the Government are concerned, do not exist and have little or no influence on what takes place in this House.

If we are looking at amending our Constitution as we are doing today or attempting to do with regard to this particular move that this Government is making, I should have expected that the Members of Parliament would have at least been consulted from the outset, even before this crisis had taken place. I want this Government to explain to this country and the Parliament in particular, why this particular move of initiating a motion of no confidence was taken without Members of Parliament being consulted on it.

It shows the decadence of the political culture to which we all belong. Unfortunately, I am part of it. I am not going to remove myself from what has been happening to our political culture. Unfortunately, however, we have had a political party which has been in power for most of my life, more or less, except for five years, and that political party has done absolutely nothing to ensure that the so-called conventions about which we speak are adhered to, or to develop our political culture of which today we could have been proud.

4.15 p.m.

I am happy for one thing, though, that this crisis has taken place: our people, who have so long been alienated from this Parliament are once more focusing on it and are placing all of us under scrutiny. Some of us will pass the critical test; others will not. When I say others, I mean on both sides of the House.

I am suggesting that when we speak about democracy in this Parliament, and when we have adopted the conventions of the British Constitution, their laws and so forth, we have to understand that we are a young nation, that we are a republic, and we have to chart our own destiny. I do not believe, therefore, that we must have for all time, 19 Members making decisions for this House, except in the case of a special majority.

I believe that it is the responsibility of this Parliament and those who steer it to ensure that there is a greater degree of consensus in what happens in this House. I am saying that on both sides of the House there should be comprise, debate and discussion and, in the final analysis, whatever happens must be in the interest of the nation.

So far, I have seen many Bills come to this House, and I believe on a few occasions when critical legislation was being brought, the only time that the Government really sought consensus was when the population was rallying for something to be done in the Parliament. This was the time when much crime was being committed and legislation was being brought. We ought not to have been in the situation we are today.

I do not know if there is a precedent anywhere in the world where a Speaker was placed under house arrest so that the government could put someone else to act in his or her position. If there has not been, it means that we are setting a precedent and the question here is whether it is one that we would have like to set. I would hate to think that from this time, in all parts of the world, that particular action by this Government would now be quoted and be used to guide other so-called democracies.

I am extremely uncomfortable about the reason we are sitting here today, and it is important for me to register my disapproval. Today, I took time out to listen to those talk shows on radio and I have found that the population is confused. But what is interesting is that the population is very much informed and has become so conscious about what is happening here that I want to suggest to all parties in this House that we can no longer play the shenanigans and games that we do, with the effectiveness with which we have played them in the past. Our population is now more informed and has greater expectations, and we are all under further scrutiny.

I want to make it clear that I do not support tyranny of the majority. I also want to make it clear that when we are in this Parliament, we ought not to be driven merely by the thought of power and retaining office. We are here elected to

serve for five years at most and as such we ought to run the affairs of the country in the interest of the population, and not in the interest of maintaining power. I also want to make the point that while I understand that we cannot have any position so entrenched that the holder cannot be accountable, we have to ensure that whatever we do is done in a manner for which we will not be criticized and become the laughing stock of the world.

We are very much aware that the position of hon. Prime Minister is one of much power, so we also need to look at that position to see whether or not there should be some sort of reform to ensure that the office is not so all-powerful. There are other positions also.

The hon. Member for Ortoire/Mayaro has been speaking about constitutional reform. I would love to have constitutional reform, but firstly he has to let us know, based on the commissions which have looked at the Constitution in the past, whether or not the recommendations made by those commissions are valid or acceptable. He has to tell use what the recommendations are, and before he even thinks of reviewing the Constitution, he has to let the House know some of the proposals he is putting forward.

If in the past we have had commissions that have reviewed our Constitution, then we need to review their work and not recreate the wheel. If we want to reform our Constitution in keeping with what is happening in the world, with respect to modernization and democratization, then I believe that is important. At the same time, it is not to be done so that the reforms and amendments made ensure that this particular Government, or government for that matter, is entrenched in office.

It is very clear that today this Government has committed its own coup—maybe against itself, I do not know. All I can say is that I am very unhappy by the fact that we had to wait until 1.30 p.m. to be advised of the circumstances surrounding this particular issue. This morning, I am sure, all Members of Parliament were bombarded with telephone calls or visits from people who wanted to know what was happening. Why is it that as a country we have to leave our population in abeyance, in fear, especially when there was a situation five years ago where this nation was traumatized?

I expected that this hon. Prime Minister, at the point when this notice was being given to the population, would have gone on radio and television, addressed the national and calmed it. Why was that not done? There must have been some reason why it was not done. I believe that it was in contempt of the people of this

[MISS BHAGGAN]

country that they were left in abeyance with nothing being said, except a few words by one of his spokespersons, that the Speaker has been placed under house arrest.

In the final analysis, do you know what I believe? I believe that this Government ought to have done the correct, decent and perhaps honest thing. In the past it was trying, I suspect, to manage the whole situation in this House, but I believe that the most recent act has totally undermined its credibility. It seems to me, therefore, that the Government's only recourse is to resign and seek fresh mandate from the people of this country.

I was not saying this before because I was allowing the situation to develop where I feel that there could have been some resolution to the problem. But when the Government took this final step, it showed me, and I think the rest of the population, that it had lost control; that it seemed no longer to care about the population and what happens to our image. I believe, therefore, the most decent thing the Government could do especially as we have heard about conventions this afternoon, is as I have said, to resign and seek a fresh mandate from the people of this country.

We have said many things in this House in the past but there are a few elements I want to introduce because I do not intend to be very long. There must be serious reform in this Parliament if this Government is serious, and it is not into fire-fighting, it must engage in a debate about reform of this Parliament. The first thing I want to recommend is that there must be a conscience vote, which must be part of the system.

I agree that there must be more than a 19-Member majority to pass something like this in this House. I suspect that if there is a conscience vote, the required majority necessary to pass an amendment of this nature, would be given. But as long as there is something called party paramountcy and leader paramountcy, there will always be lines drawn and the people out there will always suffer.

4.25 p.m.

The introduction of a conscience vote in our system, and the introduction of the secret vote in such a case would help us to run this Parliament more effectively, because all Members of Parliament—most of them—would have a conscience and would actually listen to it; those who do not have a conscience will have their constituents influencing them and helping them to make up their minds when they cannot.

We can no longer run this country on straight clear party lines; there are only 36 of us, we are a very small island, we have many resources as a country and a nation and as such, we ought not to be so torn apart as a people. When election time comes and the date is announced, we can go to the polls and fight like "dog-eat-day," but during those five years as parliamentarians, we are expected to make the laws of this country and we ought to be more mature and professional in our approach in this House.

I also believe that there ought to be public hearings with respect to the various committees. In Jamaica the Public Accounts Committee is a public body where, in fact, the media are allowed to question the officials who come before that committee. I believe that there is need to introduce the issue of public hearings for our various committees, especially where we speak about accountability.

I want to make a strong case for the election of an independent Speaker. We are told that once someone who belongs to the House is elected to sit in the chair, that individual gives up his or her party affiliation. With all due respect to you, Mr. Deputy Speaker, I do not buy that. I believe that as long as one belongs to a political party it means that one is answerable to that party. If we want to run this Parliament in the way we are outlining it here, then we ought to make some serious reforms one of which must involve the election of an independent Speaker.

I suggest that before an individual is elected to the position of Speaker, he or she must be up for public scrutiny. I am not saying that the person should face a barrage of people but, basically, there should be some kind of open system where those who have valid information or evidence which suggests that that person is not suited for the position, can give the information in writing and there can be a private hearing. I do not believe that the affairs of this Parliament should be run by any person who is likely to be partisan in the way that he or she behaves.

This is why I said earlier that I have my own contention with respect to the incumbent but, at the same time, I do not support the way in which this is being done, because it really smacks of a kind of Fascism, as the Member for San Fernando West has indicated. Today, I really feel pain for him because can understand his feelings with respect to what he has faced within his own party and, at the same time, what has been meted out to his relative.

I want, therefore, to emphasize the seven principles of public life which have been circulated to us by Senator Carter the President of the Trinidad and Tobago Branch of the Commonwealth Parliamentary Association (CPA). It was said that

this was done in the British House of Commons. It was published by one of the committees established there. It is called the *Nolan Committee's First Report on Standards in Public Life*. There are seven principles which were enunciated: selflessness, integrity, objectivity, accountability, openness, honesty and leadership. Those are the standards we have to set as a country, as a people and as a Parliament if we want to ensure that those who hold high office and public office carry out their duties in such a way that our people could look at them and have respect for them.

Mr. Deputy Speaker, I want to make it very clear to this House: I have my own issues with respect to the incumbent, but I do not support the present position being taken by this Government; I do not support the measures it is adopting, and I believe in a democratic system. And in any democracy there must be proper consultation and consensus, especially when the Parliament is affected. All of us here are elected and we ought to have been consulted on that matter.

I thank you, Mr. Deputy Speaker.

4.30 p.m.: *Sitting suspended.*

5.05 p.m.: *Sitting resumed.*

Mr. Ramesh Lawrence Maharaj *(Couva South):* Mr. Deputy Speaker, this Bill is being debated today under circumstances which are unprecedented in the civilized world. I have not been able to find any precedent whereby a Bill is debated for the removal of a sitting Speaker of the Parliament, and whilst that Bill is being debated, the Government, which has the control of the coercive machinery of the State, uses raw power to imprison the Speaker of the House so that the Speaker would not be able to preside in the House of Representatives.

Unprecedented too, when one considers the history of this matter which shows that up to today the Speaker and the national community have to been informed of the particulars of the reasons for the Speaker to demit office.

If it is that the Speaker should demit office because a court did not accept her evidence, then the question must be asked in the recently concluded case of the Jamaat Al Muslimeen—Justice Brooks did not accept the evidence of Sen. Emmanuel Carter, acting President of Trinidad and Tobago, and he was not asked to demit office. The reason for that, obviously, was that the fact that a court does not accept evidence can be no real basis for the removal of a Speaker.

We I this House do not know exactly what the reasons are. What is more significant is that the Government, after it tried terror tactics, after it tried to force

the Speaker out of office by using the media in a smear campaign—and the media was a part conspirator in trying to force her out of office. I am saying this so that we can decide whether we, as a Parliament can, in conscience, pass such a piece of legislation in order that history would have it recorded that in respect of a fundamental matter like this we placed sanctions.

After that terror tactics campaign failed, they tried to bully the Speaker out of office. It has been mentioned that Ministers of this Government made remarks to the Speaker to the effect that "If you do not go things would be hard", or "you have to go or there will be a motion of no confidence." That failed. The Speaker stood up and she was standing up, obviously, for the independence of the office.

It may be—we do not know—that there are very good reasons to remove the Speaker. It may be so, but we do not know and we are now going to sanction a piece of legislation in which it has been held by the courts, in the same case that the hon. Attorney General referred to, that even on suspension you do not deny a person the right to be heard unless it can be shown that the exigencies of the situation warranted it. Exigencies in those matters would involved, something like if you had an aeroplane, a pilot and you had a bomb on the place and the person is employed with the State and therefore you cannot give him a hearing in order to suspend him—and we will come to that.

Quite recently, in the matter of Mr. Rodwell Murray, Assistant Commissioner, he because the subject of this typical smear campaign PNM style and after he made allegations about the drug trade, he faced suspension by the Police Service Commission without a hearing. Why did he do so? Because it was thought that the Police Service Commission could have heard the matter lower down the road and it was a preliminary matter, that the Assistant Commissioner of Police could be suspended without a hearing. The High Court said, no. I refer to High Court Judgment, No. 19 of 1992: Rodwell Murray v. the Police Service Commission.

Mr. B. Panday: Who was the lawyer for the applicant?

Mr. R. L. Maharaj: It happened to be the Member for Couva South.

Mr. B. Panday: I just wanted to know.

Mr. R. L. Maharaj: But I am sure that the hon. Attorney General would recognize, and that the hon. Member for Diego Martin Central would recognize, that some of the matters which were dealt with by the Member for Couva South have been used as precedents and would give him the basis for filing a constitutional motion. As a matter of fact, I am branded "Mr. Constitutional

Motion." That is an evil thing to them filing a constitutional motion. But I am today seeing that the Member for Diego Martin Central has had to resort to filing a constitutional motion. Do not be afraid, Mr. Deputy Speaker, we would file a constitutional motion for you if this Bill is passed.

In this case where this senior police officer was suspended without a hearing, Justice Ramlogan, reviewing all the authorities, even the matter of Crane and Rees and others, held that he was entitled to be told and to be given a hearing. A hearing does not mean a hearing like in a court of law; a hearing could even be a written hearing, if I could put it that way. You can tell the person in writing what are the particulars; you can give the person a certain amount of time to respond, and then the decision-making authority makes that decision.

Do you know the reason for that? It is for a decision to be respected by the population, to have morality init, to have the spiritual values in it. It is recognized that where you are making a decision to affect a person's rights or interests or legitimate expectations, that person is entitled to be heard before a decision is made.

As I am on it, the case of Rees and Crane—and as you know, this matter—

Hon. Member: Finished with Rodwell Murray's case?

Mr. R. L. Maharaj: I am finished. Do you want me to read the case? *[Interruption]* Mr. Deputy Speaker, it is a 23-page judgment and the ruling of the court is what I stated. He declared that the suspension was illegal, void and ordered damages to be paid. I do not want to read 23 pages; I have a lot of other things to do.

If the Minister of National Security, who is responsible to a great extent for denying the Member for San Fernando West the right to see his sister, the Speaker, and he is talking about essence of justice—if he does not understand, it is not my fault.

Evan Rees and Crane, 1994, Three Weekly Law Reports (3WLR) at page 476—this was the case of a Judge who was suspended, in effect, first by the Chief Justice and then suspended by the Judicial and Legal Service Commission without a hearing. The Judicial and Legal Service Commission had communicated with the Judge and it was thought that he would have had an idea not officially—of what he was being suspended for. The Court of Appeal in Trinidad and Tobago and the Privy Council, dealt with the whole question—well explained in the judgment—of the right of a person to be heard where that person's interests and rights are affected.

The Privy Council held that the Court of Appeal was right. On page 487 of the judgment—

5.15 p.m.

Mr. Valley: How come you did not find that last week when I was not even heard.

Mr. R. L. Maharaj: No, the Member for Diego Martin Central was heard, and he apologized. He admitted to the contempt. He apologized.

Mr. B. Panday: He pleaded guilty.

Mr. R. L. Maharaj: Mr. Deputy Speaker, as a matter of fact, the Speaker told him that the case of Maharaj and the Attorney General, which is known by all lawyers who expect to be charged for contempt, that they are entitled to be told the particulars of the charge so that if the judge makes an error they would know the particulars.

Mr. Deputy Speaker, page 487 of the judgment states that:

> "Essential features leading the Courts to this conclusion have included the fact that the investigation is purely preliminary, that there will be a full chance adequately to deal with the complaints later, that the making of the enquiry without observing the audi alteram partem maxim is justified by urgency or administrative necessity…"

At page 488 (h):

> "One thing is abundantly plain in this case namely, that the appellants cannot rely on urgency or administrative necessity to justify not telling the respondent what was being complained of."

If it is that this Government was committed to the rules of natural justice, which we have heard so much about today—this matter is going on now for about four to six weeks—it would have at least been able to tell the Speaker, "Listen, these are the allegations and you have a certain amount of time in order to respond. Let us hear the response."

I do not think it is right, fair or just for anyone to stand up in this House—especially the Attorney General—to give the impression that this law would provide the rules of natural justice. As a matter of fact, in order to understand the impact of this law, we have to understand exactly, not only what the law purports to do, but also the functions of the respective bodies which would be involved by

[MR. MAHARAJ]

the invocation of the law. For example, this law purports to remove the office of the Speaker. We ought to understand what is the role and function of a Speaker.

Mr. Valley: To remove the office?

Mr. B. Panday: Not the office; to remove the Speaker.

Mr. R. L. Maharaj: To remove the officeholder of Speaker; sorry.

We have to understand the role and function of the Speaker. The Speaker presides in the Parliament, so we have to understand what the role and functions of the Parliament are. Now, the Speaker, under our system, is like a referee and is able to make ruling which would cause the Government to give account. The Speaker would have the power to refuse to grant leave for a motion of urgent public importance, and if the Speaker does so, the Government is eased up in not giving account.

If we have a Speaker who continually eases up the Government by not granting leave for motions of urgent public importance, the Government would be eased up in not having to give account; and who would suffer? The people. When the Opposition seeks leave to bring motions to make the Government account for either corruption, nepotism, mismanagement, water, roads, hospitals, and so forth, and the Speaker eases up the Government by saying no, then the Government would not have to give account.

Therefore, the whole question of the accountability of the Government to Parliament is being affected by a biased Speaker, or a Speaker who is in the pocket of the Prime Minster or the Government. Similarly, the Speaker has the power to censure, stop or rule irrelevant any questions or motions.

So, if the Speaker is in the pocket of the Government, knowing that if he or she does something contrary to their wishes on a Friday, after the get-together at Smokey and Bunty on Saturday he or she is suspended on the Monday; the Speaker knows that the Opposition cannot remove him or her, but the Government can; therefore, what would the Speaker naturally do with no security of tenure?

The Speaker, to keep his or her job, would naturally decide in favour of the Government. Then, who suffers? The people. The Opposition Members would not have any personal suffering except with respect to their commitment, but it is the people who would suffer.

As a matter of fact if the Speaker is in the pocket of the Prime Minster of the Government, the Speaker could suspend Members of the Opposition with the

support of the Government. Because, according to the Government, with only a majority resolution, it can cause the suspension of a Member. So, a Speaker can, with the support of the Government, suspend most of the Opposition Members.

What is more important is that the Government could verbally assault the Speaker, and the Speaker knowing that the government could move her, would do nothing, tolerate it; but, would rule the Opposition irrelevant; and suspend them with the support of the Government.

Members' contribution can be ruled irrelevant. Therefore what could happen in this House is that as long as there is machinery by which the Speaker would be in the pocket of the Prime Minster—because let us face it, the Prime Minster controls the Members of the Cabinet, or the majority Members—there would be a situation where secret government would be promoted. The people would suffer.

This Bill is an attack by the Government on the people's right to have the Government accountable. We are going back to the dark ages and the days of the Star Chamber when the monarchy controlled the Parliament. We are going back in history. With this Bill we are, in effect, providing for a prime minister to be king; King Manning, if I could use that expression. That is what this Bill is doing. We are going to have a Speaker being controlled by the Government.

Mr. Deputy Speaker, as I would show you in the history of section 58(3), when we came to discuss the Republican Constitution, the people of this county did not want such a Speaker, because in the 1962 Constitution the Speaker could have been removed by an ordinary majority. The office was not entrenched.

Under section 58(3), the Speaker could have been removed by an ordinary vote. When the discussions were held and the Constitution had to be rewritten—several Commonwealth countries adopted the position that one should not stop a Speaker from presiding by an ordinary majority because the Speaker would be in the hands of the Government. That is why no precedent for this Bill could be fond in any part of the civilized world. Nowhere!

This thing about convention is being misunderstood, I would hope unconsciously misunderstood. Because a convention cannot be a convention unless it is a settled practice; unless it has happened before. I ask the Attorney General to tell this House where in England did a Government ever move a motion of no confidence against a Speaker and the Speaker was removed by an ordinary majority?

Where in the Commonwealth, including England, a Government—in England there were separate Parliament; there was a Parliament in Oxford at one time. The Member does not know the legal history.

5.25 p.m.

Mr. Valley: Of course not.

Mr. R. L. Maharaj: Nowhere in the passage the Member read about conventions would he find that there is any convention that a government, by an ordinary majority, can remove a Speaker. Even if conventions apply in Trinidad and Tobago, when we were doing the 1976 Constitution we decided that conventions would not be part of the law. We excluded what we did not want. As a matter of fact, this section is being read about the powers and privileges that existed in England.

Section 55 has nothing to do with conventions. I should report to the Parliament that I was informed that the High Court of Justice this afternoon granted an injunction against the Clerk of the House in effecting the spirit and intention of this Bill, if it is passed.

I am saying this because I want it to go down on the record in this debate. As our Political Leader, the Member for Couva North, has stated, we want to discharge our responsibility and put on record that this Bill is bad. We are asking the Attorney General in the discharge of his duties, to genuinely and seriously consider the legality of this Bill in the public interest.

Conventions are not powers. Conventions do not give legal right. A convention cannot give a power. Conventions cannot give a privilege. Convention cannot give immunity. In law—this is not a law court but the hon. Attorney General can ask his junior officers in his department—there were several cases in the Commonwealth recently—for a convention to be regarded as a convention, there must be a precedent existing. It must be a settled practice. It must have legal effect to some extent because of some settled practice.

To say that there were conventions in England, and, therefore, when we passed our Constitution this convention was there and, therefore, this Bill is to give effect to that convention is incorrect. There is no convention. In any event, section 55(3) does not cover a convention. In 1976 we specifically put in the Republican Constitution, which was not there before, that a Speaker cannot be stopped from presiding by a simple majority. It had to be passed under section 58 by a two-thirds majority.

Under section 54(2) (a), section 58, which gives the constitutional entitlement to the Speaker to preside, cannot be altered except by a specified majority of two-thirds.

The hon. Leader of the Opposition mentioned that one cannot do indirectly what one cannot do directly. The hon. Attorney General looked at the case of Mc Leod and the Attorney General. Then, the hon. Member for La Brea used the case. There are two points. Mc Leod case was one concerning a Member of Parliament vacating office. It had to do with a situation where, in respect of that section which was to be amended, it was not altering property rights. We are not dealing with a situation like that. We are dealing with the removal of an existing Speaker. There is no new Constitution being drafted. There is a person in the office.

It may not make sense to them but they would be accountable to a higher authority. Under section 13 of the Constitution of Trinidad and Tobago where any Bill is being passed which is inconsistent with fundamental rights of a person or individual, there are certain procedures to be followed, and there is also the requirement that it be passed by a three-fifths majority.

Under section 4, the Constitution guarantees the right to the enjoyment of property. Property in constitutional law has been held to include both tangible and intangible objects: entitlement to pension payments, salary and to office. Those are regarded as property rights for the purpose of constitutional law. This Bill is being passed to suspend and remove the Speaker from office but, in effect, threatens or will infringe the right to property. As has been decided in the Crane, Morris and in several other cases, if one is going to take property, one has to take it in accordance with the due process of law.

In the constitutional motion against Crane when he was suspended, it was regarded as a contravention of the right to the enjoyment of property. It has to be done in accordance with the due process of law. The Constitution guarantees the protection of the law. If we are correct—if the Attorney General feels that it makes *prima facie* sense, he can consider it, whether he agrees or not—that this Bill affects property rights, the due process rights and the protection of the law rights of the Speaker who is to be suspended or removed, then it has to be passed by a three-fifths majority.

And if it is passed by a three-fifths majority, the courts have the power to declare the Bill unconstitutional if it is not reasonable justifiable in a society that has a proper respect for the rights of the individual.

If the government thinks that by locking up the Speaker and keeping her away from presiding and passing this Bill by an ordinary majority and getting a resolution signed, that that is the end of the matter, it must know that is not the way to deal with this because that is not the end of the matter.

The Attorney General would know from recent history that even with respect to other matters, not only the Court of Appeal here, but also the Privy Council have the right to grant conservatory orders to allow the person to enjoy his or her rights until the matter is determined. To come to this House and say that the Speaker was involved in a plan to overthrow the Government—words to that effect—and, therefore, a state of emergency had to be called and she ought to be imprisoned is another part of the smear campaign to provide some excuse for calling a state of emergency. The real reason for the State of Emergency is for the Government to use its raw power to try to pass this Bill and put the Speaker out of office.

5.35 p.m.

Mr. Valley: Mr. Deputy Speaker, would the Member then explain why the Bill would not have been debated today? If he is saying that we put the Speaker under house arrest to be able to pass the Bill—it was on the Order Paper; it is Bill No. 1—what then would have stopped the Bill from being debated today?

Mr. R. L. Maharaj: Nothing would have stopped the bill from being debated. I would have expected the Bill to be debated.

Mr. Valley: The statement that she is in detention to allow us to pass the Bill is incorrect because even if she were here, we would have passed the Bill.

Mr. R. L. Maharaj: The Government did not want the Speaker to preside; they wanted to show that they have more power than the Speaker and they were taking back the House. This is a clear case of raw power. They seemed to be afraid. This little lady had them so scared that they called a state of emergency and placed here under house arrest so they would not be subjected to the ruling and presiding of the Speaker. They probably would not have had the courage to get up to talk.

Mr. Valley: Mr. Deputy Speaker, I will inform the Member that we are not afraid of the ruling of the speaker as much as we are afraid of the ruling of the Chief Whip.

Mr. R. L. Maharaj: The hon. Member is saying that the Chief Whip makes the ruling. Therefore, the Government wants to entrench the right to make the ruling for the Speaker.

We have heard a lot about conventions in this House. We must also understand that with respect to conventions, we live in a different society and political culture, and even if conventions exist and they may be appropriate for the United Kingdom, they may not be necessarily appropriate for Trinidad and Tobago. There are different kinds of institutions, checks and balances and political cultures. In the report of the Wooding Constitution Commission they had to deal with that kind of thinking. Page 8 states:

> "26. The United Kingdom was generally regarded as a country in which the rights and freedoms of the individual and the democratic way of life as understood in the West were dearly cherished and effectively protected. There was a tendency to think that this was due solely to their institutions of government. This led to the uncritical acceptance of the theory that a constitution which was good enough for the United Kingdom was good enough for Trinidad and Tobago. This point of view did not, however, take into account the differences which exist between the British political culture and that of Trinidad and Tobago.
>
> 27. In reality the Westminster political system has a propensity to become transformed into dictatorship when transplanted in societies with political cultures which support its operative conventions."

Here the Wooding Constitution Commission recognized that if those kinds of conventions were merely transplanted, it did not necessarily mean that they would work because we have a different kind of political culture that would not support those operative conventions.

> "The underlying principle of the Westminster system is that the party which controls the majority in Parliament following an election is invited to form the Government. The person who is leader of the majority party becomes Prime Minister and head of the Cabinet. He chooses his Cabinet colleagues and junior ministers and he can dismiss them at will. He also allocates the portfolios for which they are responsible. Once Cabinet decides on a policy, it can easily be translated into law through the use of the party's majority in Parliament.
>
> 29. Under contemporary conditions the Executive in the Westminster model is so powerful that it has been referred to as Cabinet dictatorship. Some observers even claim that it is not really the Cabinet which is dominant but the Prime Minister himself, assisted by his inner Cabinet, the Cabinet Secretariat and a few individuals who may not even have any formal responsibility in the system."

[MR. MAHARAJ]

We see that there is no valid argument to even say that because there is a convention in the United Kingdom we must have that convention here. As a matter of fact, in the United Kingdom a person does not become the Attorney General of the country unless he or she had a distinguished career at the Bar. A person would be able to look at the law reports to see what the Attorney General did. Persons are not appointed to high political office in that country unless they can subject themselves to public scrutiny.

We must not use conventions conveniently. They have said that a Speaker must not be a judge in his cause, but they are passing a Bill which gives the 19 Members who meet at Smokey and Bunty or Balisier House, the role of accusers, prosecutors, judges and court of appeal because those 19 Members first decide whether to accuse. The same 19 Members decide whether to suspend, remove or appeal, to determine whether they are going to accept. Even if they accept the tribunal, they do not have to accept it in law, or pay any consideration to it. They are judge, jury and executioner. Yet the hon. Attorney General says that they believe in the principle that a person must not be judge in his own cause. I find that is unthinkable.

The hon. Attorney General talked about the media being a check and balance against governmental action in Trinidad and Tobago. I think even the Attorney General would agree with me on this one. It is very rare that one would see, if at any time at all, the daily media writing anything in support of the Opposition in this country. As a matter of fact, if one takes up the daily newspapers to read the editorial, one would see they compare. One is printed on one day and the other is printed two days later and by circumstantial evidence one can say that somebody in the Government writes the editorials for them.

There is an interesting passage in the press from this Wooding Commission Report. This Commission had very distinguished people: Dr. Selwyn Ryan, Mr. J. Hamilton Maurice, Mr. Solomon Lutchman, Mr. Reginald Dumas, Mr. Michael de al Bastide, Justice Telford Georges, Mr. Mitra Sinanan, Dr. Anthony Maingo. Comparing the British system, where we talk about conventions and accountability, to our political culture page 9(31) states:

> "Despite the formal correctness of these observations, there are extremely important constraints which limit the powers of the Prime Minister. A British Prime Minister always has to be sensitive to the fact that there exist in Britain a vigorous press, powerful interest groups and an alert public opinion. Freedom to criticize is an institutionalized part of the political process.

> There are things which the Prime Minister knows he cannot get away with, and failure to recognize these limits has often led to disaster. The British Prime Minster is also continuously influenced by what Cabinet colleagues think…as well as the sentiments of back-benchers on his own team which he is always careful to monitor through party whips."

5.45 p.m.

I am sure that the Member for St. Ann's West—I am not asking him to say anything—and even the Member for La Brea would understand what I am saying here. They are entitled to their opinions.

> "While there is a great deal of deference to the Prime Minister and to authority in general, the British public has a high degree of confidence in its capacity to influence policies and does so continuously either by the actions of individuals or more often through organized groups."

In this country, the Government does not even consult the public.

> "There is also a large and vigorous academic community with a long tradition of political participation, as contributors to government policy or as critics of government. This participation is not held to be inconsistent with their professional status. Their stance is never regarded as either subservient or subversive.
>
> The same cannot be said about Trinidad and Tobago, a society which has just emerged from the fetters of colonialism. Here democracy is still a very tender plant needing a great deal of care and nurture. If anything, the political culture can be characterized as being highly bureaucratic. There is no deeply entrenched tradition of political commitment and involvement on the part of the 'better off' people in this society. That which existed during the colonial era at the national and local level has long since disappeared.
>
> Few people have bothered to seek information about or attempt to influence the outcome of public policy in a systematic and organized way. The public still very largely believe that policy-making was a matter for 'them' (the Government) and not for 'us' (the people).
>
> Those who are in a privileged position to know or gather information and who themselves possess the ability or can assemble the skills to make pertinent and reasoned comment in support of or in disagreement with government policies have for the most part been silent or have preferred to comment or grumble in private. The few who made efforts to contribute to policy-making often found that their efforts were not seriously entertained."

At page 9, paragraph 35:

> "Also, all the media are understandably sensitive about anything which may affect their income, so that they are sometimes hesitant … in taking stands on issues affecting government, advertisers or particular group interests."

Here the Wooding Commission is saying that the press in Trinidad and Tobago look at their pockets.

So we are here dealing with a matter which is really a non partisan matter which involves the machinery to remove the office holder of Speaker of the House. Therefore, we should look at this matter objectively and dispassionately. Whatever stand we may have taken in the past, we must look at this as responsible legislators. The country, the Caribbean and the world are looking at us as a people. How will we deal with such a matter which affects fundamental principles?

This Bill involves the question of the rule of law and the doctrine of separation of powers, in addition to what I have said. When one considers the functions and the purposes of Parliament, the role of Speaker, one sees that if this Bill is passed Parliament would become a totally useless utility for Government to account, or be pressured to account, to the people of Trinidad and Tobago.

Mr. Deputy Speaker. The hon. Member's speaking time has expired.

Motion made, that the hon. Member's speaking time be extended by 30 minutes. *[Mr. R. Palackdharrysingh]*

Question put and agreed to.

Mr. R. L. Maharaj: I am much obliged to the Members of this honourable House.

As I was saying, sir, the Parliament would become a totally useless utility for Government to be pressured or for Government to account to the people. Parliament would become meaningless. Secret government would be promoted; dictatorship would be entrenched; corruption, nepotism and mismanagement can be hidden by the machinery in the bill because the Speaker would not have security of tenure of office. Public interest would be subverted. The Prime Minister's political power and patronage would be increased. He would have the power to further manipulate, misuse and abuse—and I mean anyone who occupies the office of Prime Minister—political power in relation to the Parliament.

The important safeguard of the independence of the office of Speaker, so that the people would benefit from the accountability of Parliament, would be

removed and the Speaker would be subservient and sycophantic to the Government. An important check and balance against the exercise of arbitrary government would be removed. The power of the people, which has been gained over hundreds of years of struggle, and for which several persons in history have lost their lives, will be taken away and Parliament would now become totally controlled by the Government.

Parliament is not government, and we have to understand that. A misconception of the Government is that it administers and must control Parliament. That is not the position. The Executive, which is the Government; the Legislature, which is Parliament, and the Judiciary, which is the court, have separate functions. Under our system, and as entrenched in our Constitution, Parliament is not the Government. Parliament is part of the State. The Parliament and government are two different things.

I read in the newspapers this week that people think that the Parliament belongs to the Government. There seems to be a misconception by some people in this House that Parliament governs the country. Parliament does not govern the country. The Government govern the country. The Parliament scrutinizes governmental action and approves laws which are introduced by the Executive. Parliament is not responsible if the Government is not providing water, reasonable food prices or roads. The Government is responsible for that.

What has happened is that Members on that side think that they want to take back their House, which belongs to the Government, so they have taken back their House. That has serious repercussions on the doctrine of the separation of powers.

It is therefore important for us to understand this doctrine of the separation of powers and the rule of law. Before I do that, let me get rid of some small house matters, if I may use that expression.

It has been mentioned that the other House passed this Bill be a large majority, and that is the gospel truth. Firstly, Senators are nominated Members. Secondly, the Senate debated this Bill quickly and if they were misled by the Government—and I will put it that they were misled—they did not comprehend. In any event, the Government decided to introduce a Bill in the Senate which affects the Lower House and the office of Speaker. Do you know why they did that? So that if they get the Senators to vote for it, that would put pressure on the Opposition and they would probably have to go along with it.

5.55 p.m.

Mr. Justice Telford Georges, a distinguished Jurist, in delivering the tenth lecture in the Dr. Eric Williams Memorial Lecture Series in May 1992 at the Central Bank, under the heading "Creating Constitutions in the Eastern Caribbean", dealt historically with nominated chamber, and in dealing with constitutions like ours—and our Constitution—which provides for Independent Senator, said:

> "I confess to having grave doubts whether any such independents can be found also in the mould that the demands to be made upon them would require."

Although they are called Independent Senators, we must understand historically nominated Members of a House and as traced in this development—very good reading; I know the Minister of National Security like to read—one really cannot in constitutional law where one is thinking about public opinion, consultation with the population, and about having the elected people or special interest groups participate, look at a nominated Senate to say that they passed it and we must accept it.

Mr. B. Panday: What utter rubbish! Stupid!

Mr. R. L. Maharaj: There is another matter that I want to get rid of because I want to deal with matters that are much more fundamental. The Interpretation Act only applied where there is no machinery for the Speaker to vacate office. The Interpretation Act specifically says—it only applies where machinery is absent. I could understand why the Attorney General did not rely on that. The Interpretation Act does not apply where there is machinery where the Speaker can vacate office.

Here it is that we have a situation where section 58 specifically says, "instances where the Speaker vacates office." The Interpretation Act cannot be relied upon as an authority that the person can be removed for any other reason except stated therein.

The Member for La Brea quoted about the President, but then he realized that that argument is self-defeating because in order to remove the President there must be a two-thirds majority. Here there is the President elected by an ordinary majority, but he must be removed by a two-thirds majority. Similarly, a judge—the body that appoints a judge cannot remove him by an ordinary majority; there are special entrenched procedures to remove the judge. The matter of appointing someone has a different juridical status from someone being removed from office.

For example, the law in respect of granting a licence for a television or a gun is different from the law which is involved in revoking such a licence. In the application for the grant of a licence a person may not have the right to be heard, but in revoking the licence he has the right to be heard. So that one has to understand the juridical concept and the principles which go behind these matters, and not look at them superficially.

I want to bring to the attention of this House some of the countries which have had a situation where the Speaker could have been removed as occurred in 1962, where the Speaker's right to preside was not entrenched. I want to show how in some of these countries they have developed their constitutions to ensure that if one has to remove the Speaker, although the Speaker is appointed by an ordinary majority, one cannot remove the Speaker by an ordinary majority. The reason for that is that is was recognized that one could not transplant the British conventions if conventions apply, or one could not transplant the British system into those countries because there was different institutional machinery.

In the Virgin Islands, the Seychelles, Lesotho, and the Turks and Caicos Islands, all those islands in their constitutions provide for the Speaker to be removed, if he or she has to be removed, by a two-thirds majority. Only this morning I found that in Malaysia—for the record I shall refer to the Constitution of Malaysia, its development from 1957—1977 by Suffian and others. At page 149 it says:

> "In order to ensure the independence and impartiality of the Speaker and the Deputy Speaker, the Constitution also formally makes certain significant provisions in addition to that of the Standing Order. Their salaries and allowances are to be fixed by a law made by parliament and are not subject to the annual vote of Parliament and are charged to the Consolidated Fund. There is thus no special opportunity to criticize their work and conduct in Parliament. Further, none of them can be removed from office except by a resolution passed by a special majority of the House itself."

If this Government is serious about accounting to the people and really performing its role and functions to the people, and not promoting secret Government and not wanting to control the holder of the office of Speaker, this Government would put in that Bill that it has to be supported by a specified majority. But they are not serious.

Mr. B. Panday: And we would support the Bill.

Mr. R. L. Maharaj: Yes, we would support the Bill with certain amendments, with a right to be heard and we would support the Bill if the

resolution is to be passed by a specified majority of two-thirds. But this Bill should be renamed. The removal of Madam Occah Seapaul as Speaker Bill because it makes no provision for the Deputy Speaker if the Deputy Speaker has to act as Speaker for a while. It leaves out the Deputy Speaker and it treats the Deputy Speaker as a presiding officer completely different from that of the Speaker. It discriminates in favour of the Deputy Speaker against the Speaker.

Mr. B. Panday: This is an Occah Seapaul Bill.

Mr. R. L. Maharaj: So the Bill on its face is discriminatory.

Mr. Deputy Speaker, in 1987, when the now Prime Minister, the Member for San Fernando East was in Opposition, he stated during the Constitution (Amdt.) (No. 2) Bill on July 31, 1987 that:

> "…I want to draw to the attention of the hon. Minister that any amendment to the Constitution, however simple it might appear, is something that any Parliament has to look at with utmost care."

If we adopt those words of the Prime Minister, when he was in Opposition, and we look at this Bill with utmost care, we would see what can be done with this Parliament if this Bill is passed.

6.05 p.m.

I would like to deal a little with the doctrine of the separation of powers because I want this contribution to reflect that. There are really three arms of the State—the legislative, the executive and the judicial—and the doctrine is that they must, in a free democracy, be kept separate. Therefore, the Executive, under this doctrine, cannot really exercise the legislative or judicial powers. Similarly, the Judiciary cannot exercise the executive powers and can only exercise powers given to it under the Constitution in respect of legislation. So the three arms respect their functions and do not really trespass on each other's functions.

In 1748, Montesquieu said:

> "When the Legislative and Executive powers are united in the same person, or in the same body of Magistrates, there can be no liberty, because apprehensions may arise, lest the same Monarch or Senate should enact tyrannical laws, to execute them in a tyrannical manner. Again there is no liberty if the Judicial power be not separated from the Executive and Legislative. Where it is joining with the Legislative, the life and liberty of the subject would be exposed to arbitrary control. Where it is joined to the Executive power the Judge might behave with violence and oppression.

> There would be an end of everything were the same man or the same body, whether of the nobles or the people, to exercise those three powers, that of enacting laws, that of executing the public resolutions and of trying the causes of individuals."

Those words are as alive today as they were in 1748.

In influencing the development of constitutions—and yes, the British system did not carry the entire doctrine of the separation of powers, and we did not follow, completely, in our Constitution, the British system. We have a mixed system: the American system and the English system.

Lord Acton rightly said: "Power tends to corrupt and absolute power corrupts absolutely. In his book *Commentaries on the Laws of England*, published in 1765, Blackstone observed that if the legislative, executive and the judicial functions were given to one many, there was going to be the end of personal liberty.

Madison said that accommodation of all powers—legislative, executive and judicial in the same hands, whether of one, a few or of many, and whether hereditary, self-appointed or elective, may justly be pronounced the very definition of tyranny. Those words apply today in this Parliament. They apply to this Bill.

Hon. K. Valley: Mr. Deputy Speaker, if the Member is going to be all-inclusive, he would know—I think it was Jennings who said in talking about Cabinet government, the hyphen that joins the buckle that fastens the Cabinet to the Government or the Executive to the Legislature—as a fact in our system the Executive must have a majority in the Parliament for the system to work. There is no separation.

Mr. B. Panday: Yes, but they are not the Parliament!

Mr. R. L. Maharaj: Mr. Deputy Speaker, the hon. Member for Diego Martin Central does not seem to comprehend what I am talking about. I am talking about the interference in each function. I have also agreed that in the British system you have some trespassing in function. I am also saying that our system is a mixed system. But my Friend can reply.

The doctrine of the separation of powers was accepted and strictly adopted by the founding Fathers of the Constitution of the United States of America. In the United States of America the legislative powers are vested in the Congress, the executive powers in the President and the judicial power in the Supreme Court and other courts. In the American system, therefore, there are these checks and balances and the powers of the different organs are circumscribed.

[MR. MAHARAJ]

In the British system, there is no written Constitution and the Parliament is supreme. We are like the American system where the courts are supreme. The court is the guardian of the Constitution, not the Parliament. There are certain matters about which the courts do not have jurisdiction, but when it comes to the legislative arm of the state and its action insofar as legislation is concerned, the courts are supreme. The courts can even declare a Bill which has been passed by a three-fifths majority as being unconstitutional.

So that we have a mixture of the British system and the American system. Both systems have been married in order to come up with a system which it was thought would be able to apply to our system.

Why we cannot follow England blindly. In England, for example, the Lord Chancellor is head of the Judiciary. He is also Chairman of the House of Lords. So he is with the Legislative and also a member of the Executive and often sits in the Cabinet. Do you think we can have such a system in Trinidad and Tobago and it would be accepted? Because it is a different culture. We do not have that system at all.

So when we see that we have different systems and that we have married the two systems in order that the Parliament can be separate and the Government cannot control the Parliament, it is a retrograde step for us to consider giving to the Government the control of the Parliament so that the government can, in effect, preside in the Parliament.

What this proposed law is saying is that the Government must, in effect, preside in the Parliament, for the Speaker would be the mouthpiece of the Government, the agent of the government; would listen to the dictates of the Government, and if the Speaker does not listen, out he goes—suspended.

We come now to the principle of the rule of law. It was Sir Edward Cook, the Chief Justice in England in the reign of James I who was the originator of this concept. In a battle against the King, the Chief Justice successfully maintained that the law should be under God and the law be established as supreme even against the Executive. Dicey, that great thinker, developed that theory in his classic book, *The Law and the Constitution* published in the year 1885. According to Dicey, there were three fundamental principles of the rule of law:

(1) Supremacy of the law;

(2) Equality before the law; and

(3) Predominance of legal spirit.

Supremacy of the law simple means that the law is supreme. The Prime Minister, President, whoever in the country, must subject himself to law and must not be involved in the exercise of arbitrary power and arbitrary government.

The rule of law therefore requires that a government must not be given uncontrolled power or must not be given power to control the Parliament, and must not be given arbitrary power.

To do otherwise, then the Government would not be acting under law; it would be exercising unrestricted arbitrary power.

6.15 p.m.

Equality before the law: Centuries ago, the Romans—it was a fundamental principle that one does not legislate for an individual because when one does that, one is promoting inequality of treatment.

When one legislates, on the face of it, one is, in effect, treating a Speaker in one way and a Deputy Speaker—who can perform the same functions as Speaker—in a different way. One is legislating in contravention of the principle of equality before the law.

Predominance of the legal spirit is that it is the function of the Government not to look at tabulated legalism, but to look at the spirit and intent of the Constitution and the law.

Therefore, if, as in this case, it is the spirit of the law that a Speaker who presides should not be removed by the whims and fancies of the Government, and there must be machinery whereby that person must be treated fairly, it cannot legislate. That is called the doctrine of corroborable legislation. The Government cannot legislate.

We are all legislators. We are here to do a job and that job involves upholding the Constitution and the law. Probably, what has happened in this country is that Madam Occah Seapaul, the Speaker, unconsciously, did something which would, perhaps, settle the law once and for all, that government are not governments of men and women, but governments of law.

What we are doing here today is, in effect, undermining and subverting the very Constitution the Preamble of which states:

> "Recognize that men and institutions remain free only when freedom is founded upon respect for moral and spiritual values and the rule of law;

[MR. MAHARAJ]

Mr. Deputy Speaker, in concluding, may I quote the words of Mr. John F. Kennedy in 1961 when he said:

> "Today, the eyes of all people are truly upon us—…
>
> For we are setting upon a voyage…"

Then he said:

> "History will not judge our endeavours—…"

He then went on to say:

> "For of those to whom much is given, much is required. And when at some future date the high court of history sits in judgment on each one of us—recording whether in our brief span of service we fulfilled our responsibilities to the state—our success or failure, in whatever office we hold, will be measured by the answers to four questions:
>
> First, we were truly men of courage—with the courage to stand up to one's enemies—and the courage to stand up, when necessary, to one's own associates—the courage to resist public pressure as well as private greed?
>
> Secondly, were we truly me of judgment—"

When I say "men", it means women also.

> "with perceptive judgment of the future as well as the past—of our own mistakes as well as the mistakes of others—with enough wisdom to know what we did not know, and enough candor to admit it?
>
> Third, were we truly men of integrity—men who never ran out on either the principles in which we believed or the people who believed in us—men whom neither financial gain nor political ambition could ever divert from the fulfillment of our sacred trust?
>
> Finally, were we truly men of dedication—with an honor mortgaged to no single individual or group, and compromised by no private obligation or aim, but devoted solely to serving the public good and the national interest?"

In conclusion, just so that I would not be accused of mentioning something which High Court Action No. 2589 of 1995 in the matter between Occah Seapaul and Patrick Manning, Keith Sobion, Kenneth Valley, Augustus Ramrekersingh, Keith Rowley, Wendell Mottley (on behalf of themselves and the Member of the House of Representatives on the Government side) and the Attorney General of Trinidad and Tobago and Jacqui Sampson, Clerk of the House of Representatives, before the honourable Justice Stanley John.

"It is ordered and directed:-

1 That Jacqui Sampson, the Clerk of the House of Representatives, whether by herself, her servants, or agent or otherwise howsoever, do undertake not to deliver to the Applicant and/or not leave or cause to be left at the office of the Speaker, any resolution for the removal of the Applicant as Speaker of the House of representatives purportedly issued pursuant to the provisions of the Constitution Amendment No. (3) Bill 1995 when enacted until the adjourned hearing of this application which has been adjourned to Saturday 5th August, 1995 at 10.00 a.m. or until further order".

Mr. Sobion: Mr. Deputy Speaker, I know that the Member for Couva South does not like to be incomplete. I wonder if he could tell us whether the Member for Couva North swore to an affidavit in support of that application.

Mr. B. Panday: The Member for Couva North would answer for himself. The answer is, yes. *[Interruption]*

Mr. R. L. Maharaj: Mr. Deputy speaker, it shows the commitment of the Leader of the Opposition the Member for Couva North, in order to take to the courts and to assist in the administration of justice and ensuring there is no political oppression in Trinidad and Tobago.

Thank you very much, Mr. Deputy Speaker.

The Attorney General and Minister of Legal Affairs (Hon. Keith Sobion): Mr. Deputy Speaker…*[Interruption]*

Mr. Sudama rose.

Mr. Deputy Speaker: Does the Member for Oropouche want to make an input?

Mr. Sudama: A brief one.

Mr. Deputy Speaker: All right, the Member for Oropuche.

Mr. B. Panday: Mr. Attorney General, a brief intervention.

Mr. Humphrey: The Deputy Speaker has already ruled.

Mr. Trevor Sudama *(Oropouche)*: Mr. Deputy Speaker, I would have gotten up earlier, but I thought someone from the other side wanted to make a contribution. I promise I would be brief on this occasion because I merely want to point out a few issues and ask a few questions. That is all I wish to do on this occasion.

[MR. SUDAMA]

It is a very sad day and an unusual and unique one that we have to be sitting in a Chamber of which the presiding officer happens to be under house arrest. I think it is sad for Trinidad and Tobago for it has brought to us a kind of reputation which I do not think we want to have in this country, that the Government resorts to these high-handed measures in order to exercise executive power.

The question I ask is: Could this situation have been avoided? My answer is, yes, it could have been easily avoided. I feel a sense of shame, really, in being a Member of a House of Representatives who has to sit and speak in the situation in which we have fond ourselves.

I think one of the reasons is our persistent failure to deal with basic fundamental issues in a democratic society. Not that these issues have not been brought to the fore to the Governemnt, but it is the hostility in proceeding to deal with matters in a way that appreciates the democratic principles on which we wish to form our society that one encounters. I think that is one of the problems we face.

6.25 p.m.

Secondly, we have, over the years, not shown a commitment to standards of public behaviour and morality which, if we had established in this country, this situation with which we are confronted today would not have arisen in the first place—standards of behaviour and standards of public morality about which we have heard much from the Attorney General.

A third source of our problem in located in personality types who are dominant in the Executive of this system. Were it people of a different character and personality make-up, we would have tried to solve this problem in another way. Those who wield power in this country, those who have dictatorial tendencies, instead of dealing with the problem in a way which would resolve it, deal with it by ascending to another level of autocracy, and this is why today the Parliament is sitting with the Speaker under house arrest in a declared state of emergency.

Unless we deal with some of these basic issues, I do not think we can solve the problem. We would be continually having symptoms of this problem cropping up when we fail to deal with fundamental issues.

I emphasize that one of the sources of our problem is that we really have not discussed, analyzed and appreciated the role of the House of Representatives of the Parliament. This has not really been defined despite the fact that we have had Constitution Commissions sitting, and producing drafts.

The question we have to ask is, to what extent does this Parliament have a life of its own? To what extent it ought to be independent of the Executive of Trinidad and Tobago? As has been mentioned before, one of the difficulties is with the separation of powers. The Executive sits in the Parliament and, indeed, dominates the Parliament. Does the Executive have the right to dominate the procedures and processes of this Parliament? It is a question which we have never addressed.

To what extent does the Parliament have the capacity and the freedom to regulate its own affairs, procedures and its own practices and not be the handmaiden of the Executive? Is there a distinction and to what extent will we observe that distinction? This Legislature, if it has to regulate its own affairs—as indeed the election of the Deputy Speaker and the continuing tenure of the Speaker are matters on which we are attempting to regulate our own affairs has not really given much thought to that.

When is it felt that in pursuit of our democratic philosophy a consensus is required as against when majoritarian rule should prevail? That is a very vital distinction we have to make with respect to the democracy that we want to promote. How do we preserve the integrity of this institution we call Parliament?

What do we do as its Members in terms of preserving its integrity and not allowing this Parliament to be at the whims and fancies of any other force? To what extent do we think this Parliament should act as a check on Government's arbitrariness and extravagance? I will elaborate on those matters later.

I merely want to point out the areas where I feel we have to give thought to what we are doing with respect to the continuance and integrity of this Parliament. Its *raison d'être* is that it ought to enforce accountability from the Government on behalf of the population. To what extent are there limits to the sovereignty of Parliament? Or is this Parliament supreme and the status of the Constitution, vis-à-vis this Parliament, we have really never incisively discussed and investigated?

To what extent do we regard this Parliament as a problem-solving institution? How do we regard this Parliament? We make speeches at the end of the day we go home. If those problems crop up, as indeed they do, can this Parliament be sued as a problem solving institution? What do we need to do in order to have the Parliament function in that way?

The second problem we have had, which has been mentioned uncritically but very selectively, is to adopt certain forms, procedures and practices from another societal context with a different historical evolution. We have done that without

having evolved with the ethos, norms and standards, and, even conventions and traditions.

The Attorney General spoke, for example, about political morality and public morality. He based his assertion on what transpired in the United Kingdom. True, if indeed, one loses confidence in this House as the convention is, then there are certain matters that ought to be done. But that is one aspect of public morality about which we speak.

There is public morality which deals with standards of behavious; conventions adopted in the United Kingdom with respect to standards of behavious which they had been adopted in this country a long time ago, we would not have been in the position we are today. For example, those conventions would require that certain investigations be held into any allegations of an association with a drug dealer. That is a convention of the United Kingdom. In fact, even before an inquiry is held certain persons who are tainted with that allegation may see it fit to demit office.

Mr. Deputy Speaker, there is the situation in Trinidad and Tobago where, the Prime Minister, for example, has sold, on the basis of a certified copy, his motor car.

Mr. Valley: Mr. Deputy Speaker, on a point of order. According to Standing Order 35(10), a Member's conduct can only be raised on a substantive motion. The Member is using this debate to start talking about the Prime Minister's car. If he wants to raise it he has to file a substantive motion.

6.35 p.m.

Mr. T. Sudama: Mr. Deputy Speaker, I was raising this issue in the context that we want to oppose standards of public morality. I am taking my cue from the Attorney General. There were conventions which were applicable to political behaviour in the United Kingdom which they thought should be applicable here. I am drawing an example. If they want those conventions to be applicable here, then they should define the standards of behaviour and public morality that should exist in Trinidad and Tobago to which they should conform.

In the case of the Prime Minister and the alleged sale of his car, on the basis of a certified copy of ownership, to someone who now stands accused of murder in connection with drug transactions and is imprisoned, that required an investigation. We are not saying that one the basis of such allegation, the Prime Minister should demit office.

Mr. Valley: Mr. Deputy Speaker, once more on a point of order. I drew your attention and that of the House to the fact that a no confidence motion was raised on the Prime Minister when all these matters were debated at length correctly at that time. I am saying that the Member is out of order in accordance with Standing Order 36(10) to attempt to raise it here.

Mr. T. Sudama: I am on the issue of the circumstances under which a person should demit office voluntarily. The Government has been arguing all along that on the basis of certain allegations made in the courts and alleged contradictions, the Speaker of the House ought to demit office. My argument is that if that is the contention, on what basis are they selective in terms of whom they choose to demit office? If we are going to apply conventions which exist in another society, let us apply them across the board equally. We should not choose one instance to apply a convention and then ignore another obvious instance in which they convention ought to be applied.

There are conventions with regard to the behaviour of politicians in the United Kingdom. There was an allegation that a Minister was sexually involved with someone who was not his wife. The convention applied there and he voluntarily demitted office. Let us amplify the area of the convention which we want to deal with in respect of standards of public morality and behaviour.

In the United Kingdom there was an allegation that a Minister of Government had some dealings with a business, and as a result certain favours were granted to the business—they had access to certain government concessions. On the basis of those allegations that Minister had to resign. He gave up office because they were dealing with conventions of political behaviour which if enforced here, in my own view, would have resulted in a number of people on the Executive having voluntarily to demit office, they would have lost the confidence of the population.

There is an allegation, there is the perception too that a Government Minister used his office to get debt forgiveness from a State financial institution which is part of a consortium. If that is merely an allegation and the matter is raised, any self-respecting government which say that they are upholding public morality, democratic principles and operating via the example of the United Kingdom Parliament and democracy would have held a commission of inquiry, as we on this side have suggested, to establish innocence or guilt, and on the basis of that they would have acted accordingly.

There is a certain attitude by Members on the other side with regard to establishing standards, having open government and being accountable both to the

Parliament and people of Trinidad and Tobago. When we raised this issue we got a certain kind of stuck response from the Government. We had asked for an investigation into certain allegations made with respect to the Member for Diego Martin East about his involvement in the use of his office to promote a transaction for someone who was alleged to be his friend. There was enough evidence to go by. In a speech to the House on the Central Tenders Board (Amdt.) Bill of January 15, 1993, this was the Prime Minister's response.

> "What they believe the end result is going to be is the destruction of the Government."

This is paranoia. Once there is open government there would be destruction of the Government, he believes.

> "what, in fact, they are doing is seeking to undermine the integrity of parliamentary democracy…"

In seeking an investigation to clear the air, to dissipate the cloud hanging over a Minister of Government, we are accused of seeking to undermine the integrity of parliamentary democracy.

Mr. Deputy Speaker, do you know what they have accused us of today? The paranoia continues. According to the Attorney General, the accusation is that the Speaker of the House wanted to overthrow the duly elected Government of Trinidad and Tobago. It is not a case of undermining parliamentary democracy by asking for an investigation; today, we are hearing this wild allegation that the Speaker of the House wanted to overthrow the duly elected Government of the country.

6.45 p.m.

I do not find this amusing. If there is a problem with a Member of this House with respect to ethics, let us establish a select committee. If this House has to regulate its own procedures, let us establish a committee to deal with the adjudication of peers over someone who is a Member of this House. When we raised that question during the debate on the Central Bank (Amdt.) Bill on January 15, 1993, do you know what the Prime Minster's response was?

> "Do you know what they want? The only investigation that they would now accept is a select committee of the Parliament or a joint select committee of both Houses with powers to summon and to conduct what can be described as a kangaroo court."

Do Members understand the mentality with which we are dealing? Do you understand the autocratic tendencies and the dictatorial mould of the Leader of this Government, who is the head of Cabinet and who sits here and dominates the Executive and the House? Do Members understand the mentality?

If a person wants to reform the system and is asking for open Government, for matters to be aired and resolved, then he is trying to establish a kangaroo court. It is an established principle in so many jurisdictions, in all self-respecting democracies, whether in the American or British system where the Parliament sits as a joint committee and investigates. In Trinidad and Tobago suddenly it becomes a kangaroo court. Do you understand why we are in this mess today, Mr. Deputy Speaker? Because of those attitudes.

I had asked that we set up a parliamentary committee to monitor financial operations, the administration of funds and so forth which the Government was going to raise via the issue of Treasury Notes. When I asked the question of the Minister of Finance in a debate on July 7: "Would the Minister respond to the request that we should have a parliamentary committee to monitor the financial and monetary operation under this system?" This goodly gentleman responded as follows:

> "There are existing parliamentary committees at this time. They are operating. I know the Government's position is a practical one, in that we find it difficult, as it is, with even some of the joint select committees that have to review legislation, to master the limited manpower—and the Ministers' time and the key permanent secretaries and the technical officers in ministries—to staff those committees."

I asked: "In other words, there is no need for oversight?" And his response was"

> "We are not saying that, but there are other mechanisms…"

What the other mechanisms are, he did not elaborate.

> …and we have to explore those because if the Ministry of Finance, for instance, had to be drawn here daily…"

We are not asking for the Minister of Finance to be here daily.

> "…and the permanent secretary and the key operators at several of these committees—and many of them impact on finance—we would find a virtual breakdown in the practical day-to-day operations in the Ministry of Finance."

This is merely an excuse; nobody is asking for this. Maybe one is asked to come here once a month to give evidence before a committee. They are committed to

[MR. SUDAMA]

secret government; they are committed to autocracy; they are committed to government that does not want itself to be scrutinized and they do not want to be accountable to anyone, whether to this Parliament or the people of Trinidad and Tobago.

Part of our problem stems from the fact that if the Government had been a little more open and had sought to use this Parliament as a problem-solving Chamber; if the Government had leveled with us, I am certain that we would not have reached this low point in the parliamentary democracy of Trinidad and Tobago.

I want to make the point because there is confusion on the other side which has to do with equating democracy with majority rule. They have a majority in this House so they bulldoze their way, and that is democracy to them. What else is democracy as far as they are concerned? I want to tell this Government that majority rule can have different expressions and different consequences in different contexts, and I want to give an example.

In the United Kingdom there is majority rule, but in the United Kingdom Parliament there is alternating majority rule, and that is a tremendous check and balance in any system such as the one we practise here. A check on a sitting government is the prospect of it being removed from office at election. If that check is not present then, what we would have, as in the case of Trinidad and Tobago over three decades, is a permanent majority and a permanent minority. If a situation exists where the so-called majority is not in fear of being removed from office, then there is majority tyranny.

Therefore, when we are extrapolating from the context of the United Kingdom to here, we have to understand the societal differences which operate. I want to disabuse the Government of the notion. This has all to do with what is behind this Bill. What is the reason for this Bill being brought to this House. I am arguing that if we had adopted a different course, we would not have had need to bring this Bill to the House in this manner.

The other issue I want to raise has to do with the Constitution and the sovereignty of Parliament. If, I understand it correctly, in the United Kingdom—because it is one of their arguments that this Parliament is supreme and can pass any law it wishes. They are basing their case on the precedent in the United Kingdom. That is how the situation operates there. But we have a written Constitution supreme law? Is any law we pass here, which is in conflict with the Constitution to have effect if we do it without a certain entrenched majority?

How do we view the Constitution of Trinidad and Tobago? Do we view it as that supreme law by which we will be guided and it is only in situations of dire necessity that we would want to amend it? Do we have that perception of the Constitution? It seems to me, that if that is the case, then to a certain degree and through certain processes, the Parliament's authority is somewhat curtailed in that it cannot pass law, except it does it in a way which violates the provisions of the Constitution.

As I said, these matters have not been thoroughly aired and cannot be thoroughly aired in a parliamentary discussion. This has to have a long genesis of academic, legal and constitutional debate in order that we clarify these problems and we understand for ourselves as a society where we want to go. Where do we want to go with respect to these basic principles?

6.55 p.m.

If we regard the Constitution in that way then it follows that the procedure one adopts in trying to amend the Constitution would be one where there would be widespread discussion, public debate, the establishment of broad consensus, where, in fact, there would be, what is called, the collective exercise of deliberative reflection.

The question I ask is: Has that process been adopted in bringing to Parliament this Bill which attempts to amend the Constitution? If this has not been adopted the question we ask is: How do we view the Constitution?

If the Government comes every Monday morning to amend the Constitution, then what is the status of that document? On many occasions the Government came to this House during this term of Parliament in an attempt to amend the Constitution. It could not succeed because many of the sections which it came to amend required a specific majority.

That entrenchment was put in there for a certain purpose; that one does not deal with this Constitution every Monday morning as another piece of paper; as another law to be dealt with in a haphazard manner and to realize certain political and partisan objectives. One should not deal with the Constitution in that way. When we come to amend the Constitution, do we ask the question: How beneficial it is to the general citizenship to the body politic? How beneficial is that Bill which we bring to this Parliament to amend the Constitution? Do we take the views of the citizenry into account? Or, is it just the views of the Executive? In fact, one view of this parliamentary sovereignty which is not accepted, for example, in the American system, is that this parliamentary sovereignty which the

Government comes here to promote is a mere assertion of factionalized self-aggrandizing power, because that faction which forms the Executive has the majority in the House; and masquerades as an elevated impartiality. Therefore, if we view our Constitution in sacrosanct terms as being a law which is supreme to ordinary law, then the process for its amendment ought not to the one which the Government has adopt in this instance.

The Constitution is there—if we accept that view—to protect the citizenry from the tyranny of changing factions within the society. Any faction that happens, for the time being, to form the Executive of a country can come to change the Constitution at their whims and fancies and, therefore, the citizenry becomes subject to the tyranny of changing factions. There are problems which, as I said, we ought to address; these are the fundamental issues of which the crisis we have here is merely a symptom.

I want to deal a little with the process of the election of the Speaker and to associate that with the authority of this House and the life of this House, its integrity, its independence, if it does, in fact, have an independence, separate from the Executive. How do we elect the speaker under the present system? The Leader of the majority party informs the Leader of the Opposition before the House sits that they are promoting "So-and-So"—no discussion or consultation, merely information that so and so is going to happen.

By custom and convention here we do not contest the position of speakership, and for very good reasons. One does not want from the beginning to put oneself in a position of having to oppose the Speaker because one feels that if one puts oneself in that position from the very beginning, then that might affect the impartiality of the Speaker in the conduct of the affairs of the House. So that one does not do that; it is a convention.

I think that if that convention is to be given flesh and blood, the procedure should be different. The whole House should meet in committee to discuss the pros and cons of names which are thrown up and the whole House, where every Member has an equal say, should then come, after thorough discussion, arrive at a position, and that position should then come to the House merely to be ratified. In other words, the whole House takes responsibility for its own action.

If there were a procedure of that sort, I do not believe that this problem would have arisen today. Similarly, if it came to a question, on good grounds, that one wanted to remove a Speaker from office, then one would have approached it by an attempt to get consensus in the same way that one got consensus with the

election of a Speaker. There could be variations of this, but what I am saying is that if the House were involved in the process of election—we are fighting this whole issue of executive dominance of this House and what is before us is merely an example of that dominance.

The Executive dominates the House, it appointed a Speaker and now it wants the whole House to retrieve a position in which it has found itself, when it got into that position by its own making. I am saying that if the procedure were different, maybe, it would not have reached this pass.

You see, in such a way the House would have exercised a certain measure of independence in its own right to regulate its own procedures starting with whoever is the presiding officer. It would have shown the kind of maturity in dealing with a problem of selection and, indeed, if the need arose, dealing with the problem of removal.

7.05 p.m.

So that we would not have recourse to an outside body, a tribunal, having to give some opinion on whether, in fact, charges laid against a Speaker, or the attempt for the Speaker to vacate office had any validity. We do not have need for that. I find that it is a violation of the principles that this House is a supreme body.

The Parliament has the capacity to regulate its own affairs and yet you want to introduce this element of a tribunal from the outside in order to adjudicate on matters which ought to be the province and the prerogative of this House, meeting in committee, with all its membership having an input, and through that discussion and debate arriving at some consensus. So all this state of emergency would have been avoided; all this unseemly manner in which all efforts are being made to force the Speaker from office would have been avoided.

So that at the root, the problem is a political one and it cannot really be solved either by legalistic manoeuvres, and no matter how long this procedure takes, it would be one legalistic manoeuvre after another. It would be a recurring decimal and we may not be able, in good conscience and in good time, to really solve the problem because we have taken a different approach. So that it cannot be solved by legalistic manoeuvres nor can it be solved by the crass exercise of hand twisted executive power.

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

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

Question put and agreed to.

Mr. T. Sudama: Mr. Deputy Speaker, when this House passes a resolution, who is it and what is it that passes that resolution? I have an authority here from a book: *Parliament: Function, Practice and Procedures* by Griffith and Ryle—I suppose not your good self.

It says here, under the system we practise and which has been adopted from England:

> "…although both Houses frequently come to resolutions expressing opinions in such words as 'The House believes…' or 'condemns…' or 'welcomes…' which purport to express the views of the House, these conclusions normally in no way summarise the opinions of the House as a whole."

That is what we need: the opinions of the House in consensus as a whole. It does not do it.

> "In the Commons they are rather the opinion of the Government side secured by the exercise of their majority in the division lobbies."

So when this House moves a motion and it gets majority support, the House as a body, seldom expresses that opinion. So that I just want to make that point in order to support the case for consensus when we are dealing with certain issues; when it is that consensus ought to prevail; when it is that majority decision ought to prevail in the operations of this House.

I want to make myself very clear, that no Parliament would want to obstruct a government in the implementation of its legislative agenda as duly sanctioned by the electorate, but it must do it according to the rules and procedures of the House. That is the first thing. Once that is done, the majority view will carry. However, I want to ask the other side is the removal of the Speaker from office, an inherent part of the legislative agenda to implement its programme and policies, and was agreed upon in 1991? I want to know. When the Government went to the electorate with its programme, in 1991 did it include in it, "We want the right to remove the Speaker as and when we see fit"? Did it include that as part of its programme for implementation?

What is worse is that the Attorney General has said here that the Speaker sought to frustrate the will of elected Members. How has the Speaker sought to do so? Did the Speaker tell the Government that it cannot bring a motion to change the pension laws of the country, or bring a bill to divest T&TEC? Did the Speaker tell the Government it cannot bring a motion to this House to deal with the problem of squatting.

I want to know in what way the Speaker would frustrate the Government's will in implementing it policy and programme, because that is the key thing at issue. If you say the Speaker is an obstructionist, in what way did the Speaker prevent you? What has happened here is that this problem with the Speaker and the decision to remove her has nothing to do with the programme, policy and legislative agenda of the Government.

Then we have this amazing admission that one of the reasons for bringing this Bill and in fact for declaring a state of emergency, and for putting the Speaker under house arrest, is the suspicion, according to the Attorney General, of what the Speaker might do in not accepting the order of the court.

So here we have a Parliament reduced to dealing with legislation on the basis of a suspicion that the Government may have regarding the reaction from the Speaker. So that the whole question of the declaration of this state of emergency, the whole question of putting the Speaker under house arrest, was based on the suspicion—that is what he said, I have it down here in my notes—that the Speaker is not likely to accept an order of the court. Of course, that puts the whole issue of the relationship of the court to this Parliament and to this House *[Interruption]* It is here in the speech. He is trying to deny where it came from. It is here in the speech.

Mr. Sobion: Mr. Deputy Speaker, for the record of *Hansard,* the statement made by me was: "It was only when there were clear indications that the order of the court would not be accepted by the Speaker…" There is no reference to suspicion; there is reference to a clear indication.

Mr. T. Sudama: Mr. Deputy Speaker, he did not elaborate. We did not get any clear indication on this side so it had to be on the basis of a suspicion by him. There is no clear indication, as far as we are aware, that the Speaker would not have accepted and that the reckless suspension of other Government Members was to follow. How did they get that idea that there was going to be a reckless suspension of other Members?

7.15 p.m.

Mr. Deputy Speaker, I am saying that any Attorney General who makes such a statement is not fit to hold office. Hear what he said:

"…the Government chose to exercise it…"

That is declaring the state of emergency.

"only to prevent the systematic overthrow of the duly elected Government…"

Mr. Deputy Speaker, that is treason!

Mr. B. Panday: Sedition.

Mr. T. Sudama: Sedition! Systematic overthrow of a duly elected government is a seditious act. The Government is accusing the Speaker of being engaged in, or contemplating, a seditious act.

Mr. B. Panday: Without any evidence.

Mr. T. Sudama: Without the evidence. This is an Attorney General, a man who is supposed to uphold the law and the Constitution of Trinidad and Tobago. I am really amazed.

Let me quote from Standing Order No. 36(5) which says:

"No Member shall impute improper motives to any other Member of either Chamber."

Mr. Humphrey: That is the Attorney General's imputation!

Mr. T. Sudama: The Attorney General said this. This is his imputation.

Mr. Humphrey: The Attorney General said that the Speaker was tying to overthrow the Government!

Mr. T. Sudama: Your imputation—

Mr. Humphrey: You are all so paranoiac!

Mr. T. Sudama: Standing Order 35(10) says:

"The conduct of the Governor…shall not be raised except upon a substantive motion."

But here is this Attorney General of this Parliament coming here and making such a very reckless statement! Totally reckless! If that came from someone else who was not acquainted with the law—

Mr. Humphrey: And misleading the House as well! Deliberately misleading the House. In fact, we should apply to put him before the Committee of Privileges. He is unfit to be Attorney General!

Mr. T. Sudama: —one might have said, "Well, okay, there is an excuse for it. The person has no acquaiintance with the law."

Mr. B. Panday: She was going to overthrow the Government.

Mr. T. Sudama: Here is a man who studied law, is the attorney General and holds this very high position under the constitutional provisions. This man is the premier upholder of the law and the Constitution of this country and this man made this statement today. Why did this man—the premier upholder of the law—make this statement? He should not have made it. He should have got somebody else to make these statements. Not by him as Attorney General.

Mr. Maharaj: You fellows are sick.

Mr. T. Sudama: I do not think the word "prostituting" is the right one—

Mr. Humphrey: That is correct.

Mr. T. Sudama: —but he is prostituting the office of Attorney General by making such a statement—that the Government chose to exercise its authority only to prevent the systematic overthrow of the duly elected Government and the dangerous instability which would follow such an action.

Mr. B. Panday: "Terrorist" Occah Seapaul.

Mr. T. Sudama: I am amazed that I had to be in this Parliament to listen to the Attorney General make such an assertion.

Mr. B. Panday: Occah "Fidel Castro" Seapaul.

Mr. T. Sudama: Not an off-the-cuff assertion, but a deliberate one, to this Parliament that the Government chose to do so to prevent the systematic overthrow—

Mr. B. Panday: Of the Government.

Mr. T. Sudama: Systematic means—

Mr. Humphrey: A destruction of parliamentary democracy.

Mr. T. Sudama: —that there was a system employed to overthrow this Government. *[Interruption]* Also, if that were the case, where is the systematic—

Mr. Humphrey: These were aimed at destroying the very parliamentary democracy to which we all subscribe.

Mr. T. Sudama: Mr. Deputy Speaker, I just want to quote from the Attorney General's statement where he quoted from Phillip Laundy from the Office of Speaker, which is a long quote. What Laundy also said, in terms of causing someone to demit office, is—

"The House elects its own Speaker…"

He says:

"The House has a right to move a vote of no confidence."

I cannot imagine any Speaker wanting to remain under those conditions. The point is, and this is what the Attorney General omitted to say:

"…if such a motion is carried on a partisan basis, it would be very unfortunate indeed".

Mr. B. Panday: Exactly!

Mr. T. Sudama: If the Speaker were to be ejected strictly on party vote.

Mr. B. Panday: That is why you need the special majority.

Mr. T. Sudama: This is Phillip Laundy who wrote the book called *The Office of Speaker* from which my good friend, the Attorney General quoted.

The point is if such a motion is carried on a partisan basis, it would be very unfortunate if the Speaker were to be ejected strictly on party votes.

Mr. B. Panday: Exactly.

Mr. T. Sudama: This is what we are saying. If we had addressed the question of a special majority which would have encompassed all Members of Parliament in subscribing to whatever view was arrived at, then I do not think we would have found ourselves in the situation in which we find ourselves today.

Let me deal with this question of the independence of tribunal, commissions of inquiry, or whatever it is. One would recall that when the issue of Project Pride, and the tendering procedures and the award of that contract to Pegasus became public, there was a great commotion inside and outside the House—there was something in the media as well. When that came up the Prime Minister sought to defuse the situation, and appointed a one-man tribunal or commission of inquiry—whatever you name it—but with the same function of inquiry—Justice Collymore. Justice Collymore presented a report. The Prime Minster looked at the report.

Mr. B. Panday: He did not like it.

Mr. T. Sudama: He did not like it. The Prime Minister sent it back to Justice Collymore!

Mr. B. Panday: For another report.

Mr. T. Sudama: For another report which excised certain sections of the original report to make it more acceptable to the public, the Parliament and everybody.

So the Government is going to appoint a tribunal? What guarantees are there that it would not treat the findings of a tribunal in the very same manner that it has treated the Collymore Report and the Project Pride fiasco. We had that experience.

So to merely put this in a Bill and say, "Well, if this tribunal makes findings this Parliament could not easily ignore those findings." Is not good enough, for we see what the Government does even before the findings reach the Parliament. It tries to doctor the findings in order to have its way and cause people to demit office as it chooses.

This Bill—with whatever amendment the Government claims—was passed in the other place, could in no way satisfy our basic objections.

Mr. Humphrey: It is undemocratic.

Mr. T. Sudama: In other circumstances if the Government were not trying to pacify some opinion in the other place and urging Members there to vote for it, they would not have considered this. If the Opposition had suggested a tribunal, the Government would have said, "No."

The Government inserted that merely to mislead Members of the other place to have the Bill passed, so that when it came to this House the Government would make intense propaganda of the fact that it was passed in the other place. This is the only reason for inserting that, but it has no effect, impact or consequence in terms of what we are trying to deal with, which is the basic and fundamental issue, and our objections to the manner in which this Government is proceeding with this matter.

7.25. p.m.

We are not here dealing with the person who occupies the Chair of Speaker; we are dealing with the office of Speaker. How is that office to be in any way insulated from the pressures, dominance and the whims and fancies of the Executive? My contention is, that if we are to give some measure of independence to that office and the person who occupies that office, it cannot be by a simple majority vote.

There has to be a bipartisan approach to the resolution of the problem. Otherwise, we would not really have the capacity to regulate our own affairs,

hence the need for the special majority which would ensure a measure of consensus with respect to any allegations which may be made and any course of action to be pursued. That is our basic position and I think it is a reasonable position to take. In fact, that position we will take to the public at large as our stand in this matter.

As you know, our position is undermined and our views are distorted by the media. So we have to go to the public on a one-to-one basis. I understand that the emergency is confined only to Port of Spain, so we can hold meetings in order parts of the country to explain to the public the dangerous trend which this Government has embarked upon and, indeed, to explain, to them our own position. We are not protecting any person as such; we are, protecting a principle; we are protecting the dignity and the integrity of the Parliament of Trinidad and Tobago by standing up to the Government's arrogance that it has displayed so often, inside and outside this House without thinking of the consequences of imposing a state of emergency in this country has declared one. Such a declaration is done only in limited cases.

The Leader of the Opposition has outlined the instances when a state of emergency is justified under the Constitution. The President has to satisfy himself that those conditions exist before he puts his signature to the declaration of a state of emergency.

Hon. Member: The acting President was satisfied.

Mr. B. Panday: He could not possibly be.

Mr. T. Sudama: If he so satisfied himself, when those conditions are not existing today in Trinidad and Tobago, then something has to be wrong. I find it amazing. It is one of the areas in which the President of the country has a certain measure of discretion. The Constitution gives him that right to be satisfied but one ought to be satisfied on the basis of the conditions and on one's own knowledge as to whether those conditions exist or not. The conditions must be there, the situation is spelt out and on the basis of that he ought to satisfy himself.

I am amazed today—and this is what is fearful, this is what causes anxiety, fear and foreboding in our country. It is how such far-reaching decisions can be made in a very casual manner. That is so significant and it sends shivers down the spine of many, many citizens. So casually the Government embarks on such measures to limit the rights and liberties of people. It is curious that the Attorney General would come in the circumstances with a statement which is not worth the paper on which it is written.

In any other self–respecting democracy such an Attorney General coming with such a statement would be required to resign. If standards of conduct were to apply to him, he ought to demit office and so should the Member for San Fernando East and the Member for St. Ann's East, not to mention the "Prime Minister," in the other place. They do not demit office; they sit with such "brassface" and talk about conventions. Look at the one who has been associated with all kinds of corruption, the Member for Diego Martin East, corruption in the Ministry of Works and Transport.

Mr. Imbert: You are boring me.

Mr. T. Sudama: Their "brassfacedness" will have to meet the electorate some day. We say, vehemently, the manner in which this Government has proceeded we cannot support it. In fact, it has created a crisis. It is a crisis of the Government's own creation and now they are coming in an arm twisting manner to change the Constitution in order to deal with the crisis. It is trying to influence the Opposition, and we are saying that no way under the sun, having taken the oath of office we took, are we going to support the Government in this nefarious measure.

Thank you very much.

The Attorney General and Minister of Legal affairs (Hon. Keith Sobion): Mr. Deputy Speaker, I am a man of my word. When I say I will be brief, I will be brief. Much has been said in this debate, much of which is not strictly relevant to the Bill before the House. There has been much academic discussion on the separation of powers and the constitutionality of legislation. From the Member for Chaguanas much has been said about the need for constitutional reform in a very general way and, at times in a more particular way in relation to the Parliament.

Whenever I hear the Member for Chaguanas speak in this Parliament, I am heartened by the fact that some of us do think about raising the standard in the Parliament, whereas we have others, such as my good Friend the Member for Oropouche who suddenly discovered Standing Order 36, after having spent an hour spreading rumours on Members of the Government. That is in keeping with the standard which this House has come to expect from that Member.

There are a few matters which I think I should address from the outset. They were considered to be minor matters raised by the Member for Couva South. One was the question of the introduction of this Bill in the Senate. The suggestion was put that there was something improper about that.

Section 63 of the Constitution provides that a Bill may be laid, except for a money Bill, in either House of Parliament. Indeed, Mr. Deputy Speaker, for a Bill to become law, it must be passed by both Houses of Parliament.

7.35 p.m.

I think on that occasion I made the observation that it was perhaps fortunate that the Bill was introduced in that place because one had the benefit of the views of persons who were not part of the pure political process and who were chosen by the President to sit as Independent Senators. I am afraid I do not share the view expressed by, I believe, the Member for Couva North, that there is no such being as an Independent Senator. I am satisfied that one had the advantage of persons who were not closely connected to the partisan political process and therefore were able to bring a certain amount of reason to the debate in that place.

The point was raised by the Member for Couva south, and I think to some extent other Members opposite, with respect to the need for a special majority for removing the presiding officer. I think the argument was raised in two ways; one was that there was precedent for having a special majority as appeared in the Turks and Caicos Islands and in some other places; and secondly, that it would ensure that there would be consultation and some degree of bipartisanism in arriving at a decision to remove the Speaker.

I merely want to say that on both counts that argument really gets us nowhere. In fact, in the Constitution of India the provision is for a simple majority. The fact that another country has a special majority does not mean that a simple majority is not a proper process to adopt. In this case, we have chosen to utilize the precedent as established in the Indian Constitution. Perhaps for the record I can refer to the specific provision in the Constitution of India. It states:

> "A member holding office as Speaker or Deputy Speaker of the House of the People may be removed from his office by a resolution of the House of the People by a majority of all the then members of the House."

Mr. Maharaj: With respect to India, will the hon. Attorney General indicate whether the right of the Speaker to preside is not an entrenched position? Secondly, under the procedure for the removal of Speaker, leave of the House must first be obtained before starting the proceeding. There are two safeguards, the entrenchment and—

Hon. K. Sobion: Mr. Deputy Speaker, those provisions do exist in the Indian model. As I said, when I moved the second reading of this Bill, we sought to

introduce protection as we see necessary to suit our condition. The point I was making is that there is precedent for a simple majority as well as precedent for a special majority. The Constitution of India has a simple majority and it is the model we have followed to that extent.

The second limb of the argument really is a non-starter because if you say that you require a two-thirds majority, the argument therefore has to depend on no party at any time having a two-thirds majority in the House.

In the last Parliament there was a situation where the ruling party had 33 seats, which was far more than the two-thirds which is being suggested as appropriate. Therefore, that party could have moved without consultation with the three other Members on the other side. The argument is a non-starter. It get nowhere and there is precedent for the procedure which we have adopted. In fact, that was not the only Parliament where the ruling party had in excess of the prescribed special majority.

The argument which we have advanced in support of this Bill rests on the matter of convention. I think that the arguments from the other side were clearly misdirected in relation to the Government's position on this Bill. One of the arguments raised was that conventions ought to be rooted in the conditions of the society. It is an argument with which I fully agree but which does not address the specific argument in relation to this particular convention. It is not solely a United Kingdom convention, but one which I sought to demonstrate is universally accepted: that a presiding officer of a House can be removed by a vote of no confidence.

The Member for Couva South listed a number of varying countries such as the Turks and Caicos Islands in the Caribbean; and the Seychelles, with small parliaments. Those countries in addition to the United Kingdom and the Constitution of India recognized that this particular convention should be upheld. More than that, it should be enacted into the law and constitution of the particular country.

We are looking at different types of societies which have accepted and recognized the particular convention that we are now seeking to enact into law, because it has not been followed. That is the simple position. All the arguments on the other side, whilst they touched around the area, failed to appreciate that that is specifically why the Government has moved the provisions of this Bill.

We agree that not all conventions will apply to Trinidad and Tobago, but quite clearly that is not the point. The argument is that this particular convention ought

to apply to the Parliament of Trinidad and Tobago because it is accepted as a practice in the laws of a wide range of countries, and we have acceptable machinery in place for this constitutional amendment.

A lot has been said as well about the question of the special tribunal. The argument again came in two different forms. It came in one form from the Member for Couva North, and in another from the Member for Couva South whose argument was why fetter the—to use the words of the Member for Couva North—why set up machinery which will put pressure on the elected representatives of Parliament. That was how he conceptualized the machinery that we had developed. Coming from the Member for Oropouche, the argument, again in his usual style was quite different in that he asked how can we be sure that the independent tribunal will not be interfered with.

I do not start from that basis when I approach the Constitution and the laws of Trinidad and Tobago. I expect that if the president of the Republic, acting after consultation with the Leader of the Opposition and the Prime Minster appoints an independent tribunal to review a debate coming from the Parliament—I start with the unshaken presumption the President would have acted in a reasonable and responsible way, and would have appointed reasonable and responsible individuals to that independent tribunal.

7.45 p.m.

Unlike the Member for Oropouche, I start on that basis. I do not assume that the President will, in some way, seek to influence the members of the independent tribunal which he appoints, or indeed, that members of that independent tribunal will feel somehow pressured by the President. That is an argument which I reject out of hand.

All I can say in relation to the argument that somehow the independence of Parliament will be put under pressure because of this independent tribunal is if that is to happen, what is wrong with that? If the deliberations of that independent tribunal were to cause the Members of this Parliament to think again about an action they had taken, then, quite frankly, I see nothing wrong with that.

It is the argument I made when I introduced the Bill—that Members of Parliament, at least Members on this side, do not act in a whimsical fashion, because we are aware that there are other democratic institutions, including the press, which serve as a check and balance with respect to the actions of Members of Parliament and other democratic institutions.

Another machinery which will cause the Parliament to think again about a decision it has taken seems to me to be in keeping with the development and strengthening of our democratic institutions in a new and novel way. I was at pains to make the point in my introduction that we tried, in developing the mechanism, to preserve the independence of Parliament.

If one reads the Bill, the independence of Parliament is preserved because they need not accept the recommendations of the independent tribunal. What we have done is to put in a mechanism which provides an independent and impartial review of what the Parliament has done and we say that that independent, non-partisan tribunal will examine what the Parliament has done and make its comments, which will then be sent back to Parliament for the Parliament to have a second thought and review.

Quite simply, let us assume that a motion of no confidence is passed in this House against a presiding officer, and a presidential tribunal reports that it has reviewed the grounds; it has reviewed the response of the presiding officer; it has reviewed the debate on the no confidence motion, and it feels that the only basis on which this Parliament has removed the presiding officer was that her legs were tool long.

Now the tribunal submits that report to Parliament; that document becomes a public document and the public would then be aware that it has a Parliament which acted in a particular way and, therefore, a view would be formed of the Members of that House who disregard the findings of that independent tribunal.

Mr. Maharaj: Would the hon. Attorney General agree that in the Bill, the Government has the option of putting that if the tribunal disagrees with the majority, it will accept that decision?

SITTING OF THE HOUSE

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Mr. Deputy Speaker, I beg to move that the House continues to sit until the completion of this matter and the motion that would be raised on this matter.

Question put and agreed to.

CONSTITUTION (AMDT.) (NO. 3) BILL

Hon. K. Sobion: Mr. Deputy Speaker, we cannot have it both ways. The Member for Couva North is saying, on the one hand that by even appointing an independent tribunal to review, one is interfering with the independence of the

Parliament, and the Member for Couva South, his convenient neighbour, is now saying to put in a provision that says the Parliament must accept.

Mr. Maharaj: I am saying to put in a provision. I am saying that if the Government is saying that it wants checks and balances, and is really interested in checks and balances, it has the option to do that. We do not agree with the Bill.

Hon. K. Sobion: I understand the Member for Couva South fully. The point I am making is that the suggestion that the Government should put in a provision which would affect the independence of Parliament will then be met by the objection from the Member for Couva North that one cannot affect the independence of Parliament. The arguments that have been raised are matters of pure convenience—to suit the purposes of Members opposite.

I have no doubt that there may be merit I some of the suggestions made by the other side. Indeed, there is perhaps no one solution to any particular problem, but the fact is, where a problem exists that can be cured by legislation, a solution has to be identified and put forward for debate. I do not think the Member for Oropouche can claim that his suggestion of an ethics committee is the only answer. There must be other answers and, indeed, the Members of Parliament in India found an answer, which is quite similar to the solution we have found as a Government in Trinidad and Tobago. They did not go for the ethics committee.

Indeed, we find again a conflict between the contributions of the Members opposite. One the one hand, it was argued by the Member for Couva North that our Parliament is too small to have a provision for removal of the Speaker in this particular way. On the other hand—and the argument was raised that this is something for large parliament with 430 and 630 members—we also had the Member for Oropouche advancing an argument that we, a small Parliament with very little resources to draw on, must set up committee after committee, to have persons sit on a series of committees. And the arguments again start to conflict.

Well, we have found a mechanism whereby all the members of Parliament will have the opportunity to have their say. Every Member of Parliament, in the debate on a no confidence motion will have the opportunity to state his position in relation to the particular matter, and the matter will be dealt with by the small convenient Parliament of Trinidad and Tobago in one sitting.

Whilst there may be merit in the suggestion of an ethics committee, one has to consider the circumstance of the Parliament of Trinidad and Tobago and try to devise a solution which suits the needs of this Parliament.

The question of the conventions was not treated in a way that recognized the argument which the Government has advanced. We have looked at different options and we have come up with one which, whilst not on all fours with the option which we have preferred, is closely similar to and, indeed, provides as well that the presiding officer shall not preside on such a matter.

7.55 p.m.

Again, I turn to the Constitution of India. The provision at section 96 (1) reads as follows:

> "At any sitting of the House of the People, while any resolution for the removal of the Speaker from his Office is under consideration, the Speaker, or while any resolution for the removal of the Deputy Speaker from his office is under consideration, the Deputy Speaker shall not, though he is present, preside, and the provisions of clause (2) of Article 95 shall apply in relation…"

So we have drawn from a model which is closely similar—I will give one of the differences that exist. The Indian constitutional provisions have provided that the Speaker, whilst not presiding in such a situation, is entitled to speak.

Again, as we say, not all conventions are applied in the same way, but the difference is that in the Indian situation both the Speaker and Deputy Speaker must be elected Members of the House, so that by being forced to give up their position as presiding officer, they are not denied their seat in the Parliament and their right to speak. So that is a difference. Under our situation a Speaker can come from outside the House and therefore has no right to a chair in the Parliament as such. Therefore if the provision requires that that person not preside, certainly one could not put into the amendment which we have proposed that that person shall have a right to speak.

However, I may make the observation that the House regulates its own procedure and that certainly any responsible Parliament in dealing with such a matter could be persuaded to allow a presiding officer who is not an elected Member of the place to speak in response to a Motion of this nature. There are precedents in relation to that particular matter as well. The view of the Government is that unlike the Indian situation, the Speaker and Deputy Speaker are not taken from outside the House, so that they have a right to speak.

I am always impressed by the Member for Couva South with the enthusiasm with which he pursues legal points whether they be right or wrong. At least the enthusiasm is there and that adds to the colour and the drama of the Parliament.

I understand his argument today in relation to the case of McLeod and the Attorney General that property rights were not involved in that case. I also got the impression that the Member was seeking to make a distinction between the provisions of section 39 which the McLeod case was about and sections 50 and 58 of the Constitution which relate to the Speaker.

But I can tell you, Mr. Deputy Speaker—and if need be, we will argue that in a different place at a different time—that quite clearly, the Privy Council in the case of the Attorney General and McLeod based on the judgment they rendered in this matter and based on the very argument of protection of the law, ruled that section 49(1) which was entrenched could not, by extension, entrench 49(2), and what the Privy Council found in that case was that institutions may be entrenched.

In the McLeod case there was a provision which said that a person elected has a right to sit in Parliament until the next dissolution. That did not mean that he could not be removed if he did something under another provision. Because 49(2) was not entrenched an amendment could have been made to provide for another means whereby the Members could be removed from office.

There have been many arguments that section 58 entrenches the Speaker in the Office. I fail to understand the argument and I fail to understand it in relation to the decision in the Attorney General and McLeod. Quite clearly, if one wants to propose that some other person, or a person holding some other office be appointed to preside in the Parliament, one would have to amend section 58.

So if one wanted to have the Sergeant-at-Arms be the presiding officer, one would have to amend section 58, and in doing so, one would need to have recourse to section 54 and one would then require a special majority. But section 50 is not entrenched and it provides mechanisms for removing the sitting person of Speaker. In that situation, based on the decision by the Attorney General and McLeod, I find it difficult to understand the enthusiasm of the Member for Couva South.

I may add as well that the question of property rights is also well accepted. But a person does have property rights is also well accepted. But a person does have property rights in remuneration, for instance. I fail also to understand, and I am not convinced by the Member for Couva South, that a Member of Parliament does not have property rights in his office as Member of Parliament, but that is an argument that I suppose the Member for Couva South will pursue with his usual vigor in another place.

Despite the fact that this debate has proceeded for a long time, quite simply the Government's position on this Bill is to provide a mechanism in the

Constitution which would have the purpose of enacting a convention which is universally recognized and accepted and to provide a machinery which has built into it the elements of some of the fundamental principles of our legal system as I have outlined in introducing this Bill.

8.05 p.m.

I can only urge those Members of this Parliament, who have taken oaths to uphold the law and the Constitution and are part of the body which under the Constitution is there to provide for the peace and good order of government in Trinidad and Tobago to consider the mechanism that we have put into this legislation.

We want them also to recognize that it is an accepted machinery by reference to the Indian Constitution model which we have looked at and largely incorporated— except for the differences and I have pointed out—and to appreciate that the Parliament also, by the Constitution, is permitted to regulate its own procedure on this matter of some importance to the conduct of our Parliament, and has built within it the necessary safeguard of our legal system.

I therefore beg to move.

Question put.

The House divided: Ayes 17 Noes 12

AYES

Valley, Hon. K.

Sobion, Hon. K.

Mottley, Hon. W.

Ramrekersingh, Hon. A.

Rowley, Dr. The K.

Eckstein, Hon. J.

Baboolal, The Hon. Dr. L

Collis, Hon. K.

Imbert, Hon. C.

Lasse, Dr. The Hon. V.

Pierre, Dr. The Hon. J.

Casimire, A.

Narine, J.

Hart, E.

James, Mrs. E.

Allum, D.

Bureaux, H.

NOES

Maharaj, R.L.

Panday, B.

Humphrey, J.

Sudama, T.

Sagewan, Miss I.

Palackdharrysingh, R.

Singh, Dr. C.

Hanoomansingh, G.

Jurai, K.

Haniff, M.

Hosein, s.

Sharma, C.

Miss H. Bhaggan abstained.

Question agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee.

Clauses 1 to 3 ordered to stand part of the Bill.

Question put and agreed to, That the Bill be reported to the House.

House resumed.

Question put, That the Bill be now read the third time

The House divided: Ayes 17 Noes 12

AYES

Valley, Hon. K.

Sobion, Hon. K.

Mottley, Hon. W.

Ramrekersingh, Hon. A.

Rowley, Dr. The Hon. K.

Eckstein, Hon. J.

Baboolal, Dr. The Hon. L.

Collis, Hon. K.

Imbert, Hon. C.

Lasse, Dr. The Hon. V

Pierre, Hon. J.

Casimire, A.

Narine, J.

Hart, E.

James, Mrs. E.

Allum, D.

Bureaux, H.

NOES

Maharaj, R. L.

Panday, B.

Humphrey, J.

Sudama, T.

Sagewan, Miss I.

Palackdharrysingh, R.

Singh, Dr. C.

Hanoomansingh, G.

Jurai, K.

Haniff, M.

Hosein, S.

Sharma, C.

Miss H. Bhaggan abstained.

Question agreed to.

Bill accordingly read the third time and passed.

ADJOURNMENT

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Mr. Deputy Speaker, I beg to move that this House do now adjourn to Monday, august 7, 1995 at 1.30 p.m.

I would like to inform hon. Members that we would be following the Order Paper on that day, that is, "Government Business", "Motions" and then—

Mr. B. Panday: This same Order Paper?

Hon. K. Valley: No, there would be a new Order Paper that would be prepared tomorrow, I understand.

Mr. Maharaj: Mr. Deputy Speaker, can the Member tell us what is on the Order Paper that we are coming to deal with on Monday? Today is Friday; obviously, we would not get that Order Paper until we reach the House on Monday. I know that a Bill has been passed to control the Speaker but, it certainly does not control the Opposition.

Unless we are told what we are coming to deal with on Monday, we may not come.

Government Members: Oh!

Hon. K. Valley: Mr. Deputy Speaker, as a fact, matters on the Order Paper are now being settled, as I understand it, but it would be circulated tomorrow.

Mr. Maharaj: Mr. Deputy Speaker, I want to put on the record that the hon. Member for Diego Martin Central is aware of what we are convening this House for on Monday. He knows!

Mr. B. Panday: and he is not telling us.

Mr. Maharaj: He knows what we are convening it for. He has mentioned it to the Clerk for the House, and there were discussions as to a motion. He was supposed to put it this afternoon. He knows! He wants to meet on Monday—the normal sitting is on Friday—but he has decided not to tell us.

Mr. B. Panday: if the Government does not know, what are we meeting for?

Mr. Maharaj: Mr. Deputy Speaker, we are asking that the Government tell us what we are meeting for on Monday.

Mr. B. Panday: What are we meeting for, then?

Hon. K. Valley: Mr. Deputy Speaker, there is Bill No.2 on the Order Paper that we would be doing. There is a particular Motion that may be on the Order Paper that we are not sure about as yet.

Mr. Deputy Speaker, I am assured that the Order paper would be out tomorrow. [*Interruption*]

Mr. Sobion: That is why we want Members to come.

Hon. K. Valley: As a fact, I am advising that we would be dealing with Bill no.2 on the Order Paper and it is possible that we would be doing a particular Motion. *[Interruption]* Members would get the Order Paper at the same time we would get it.

8.15 p.m.

Mr. R.L. Maharaj: I would like the hon. Member for Diego Martin Central to tell this House whether the Government is going to bring a Motion on Monday in relation to the Speaker of the House, we are entitled to know what they are doing.

Mr. Valley: Mr. Deputy Speaker, I have done the best I can. Let me just say to answer the concern of the hon. Member, that even if one is bringing a Motion with respect to the Speaker, notice is not required.

I now therefore beg to move again that the House do adjourn to Monday, August 7, 1995 at 1.30 p.m.

The House divided: Ayes 17 Noes 13

AYES

Valley, Hon. K.

Sobion, Hon. K.

Mottley, Hon. W.

Ramrekersingh, Hon. A.

Rowley, Dr. The Hon. K.

Eckstein, Hon. J.

Baboolal, Dr. The Hon. L.

Collis, Hon. K.

Imbert, Hon. C.

Lasse, Dr. The Hon. V.

Pierre, Hon. J.

Casimire, A.

Narine, J.

Hart, E.

James, Mrs. E.

Allum, D.

Bereaux, H.

NOES

Maharaj, R.L.

Panday, B.

Humphrey, J.

Sudama, T.

Sagewan, Miss I.

Palackdharrysingh, R.

Singh, Dr. C.

Hanoomansingh, G.

Jurai, K.

Haniff, M.

Sharma, C.

Hosein, S.

Bhaggan, Miss H.

Question agreed to

House adjourned accordingly.

Adjourned at 8.17 p.m.