HOUSE OF REPRESENTATIVES

Friday, March 22, 1996

The House met at 10.03 a.m.

PRAYERS

[MR. SPEAKER *in the Chair*]

LEAVE OF ABSENCE

Mr. Speaker: Hon. Members, I wish to advise that I have received communication from the Minister of Trade and Industry and the Member for St. Joseph, Hon. M. Assam, advising that he was going to be out of the country on official business from March 19 to 22. His absence is therefore excused.

ARRANGEMENT OF BUSINESS

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move that Motions Nos. 1 to 3 under 'Government Business' be deferred to a later stage in the proceedings, and that the House proceed with the Bills Second Reading at this time.

Agreed to.

HABEAS CORPUS (AMDT.) BILL

Order for second reading read.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I beg to move,

That a Bill to amend the Habeas Corpus Act, Chap. 8:01 be now read a second time.

Mr. Speaker, the Bill before this honourable House seeks to amend the Habeas Corpus Act, Chap. 8:01 by providing that only one application for a writ of habeas corpus may be made by or in respect of any person to a court or a judge unless a subsequent application can be supported by fresh evidence or is made upon different grounds. It also seeks to establish that a right of appeal is available to the state.

The jurisdiction to issue writs of habeas corpus was vested in the Crown in England as part of a prerogative and such jurisdiction historically was exercised by the courts of the Queen's division. We have over the years as part of the

common law adopted that principle and the courts were given jurisdiction in Trinidad and Tobago specifically by our Habeas Corpus Act. The term "Habeas Corpus" really means "bringing the body of the person" and the writ is a process for securing the liberty of the subject by affording an effective means of immediate release from unlawful or unjustifiable detention, whether in prison or in private custody.

Mr. Speaker, as developed today, it is applicable as a remedy in all cases of wrongful deprivation of personal liberty. In order to regulate the procedure to be followed in the courts, the United Kingdom Parliament enacted two laws: One, the Habeas Corpus Act of 1679 to set out the procedure dealing with applications for Habeas Corpus in criminal matters. Two, the Habeas Corpus Act of 1816 which dealt with the unlawful detention of persons in non-criminal matters, for example, where children were unlawfully detained by persons not entitled to their custody.

Mr. Speaker, by the Habeas Corpus Act in Trinidad and Tobago, Chap. 8:01, the provisions of the two English Acts were extended in Trinidad and Tobago by providing *inter alia.* And I quote:

> "...shall have effect as though they were written laws of the Parliament of Trinidad and Tobago intended for the purpose of securing the liberty of persons in Trinidad and Tobago, so far as such statutes are not repugnant to any written law for the time being in force in Trinidad and Tobago..."

and vest the powers, jurisdiction and authority under those Acts in the High Court of Trinidad and Tobago.

Mr. Speaker, if one looks at section 4 of this Act which was passed in Trinidad and Tobago on October 19, 1841, it states:

> "The High Court or any Judge thereof may, if he thinks fit, award a writ of habeas corpus for bringing any prisoner detained in any prison within Trinidad and Tobago before any Court Martial or Court of Justice in Trinidad and Tobago for trial, or to be examined touching any matter depending before the Court; and the like proceedings shall be had upon such writ of habeas corpus so to be awarded as mentioned above as by law may for the time being be had in England upon writs of habeas corpus awarded by the Judges of the High Court of Justice for bringing persons detained in gaol before

Magistrates or Courts of Record for the purpose as mentioned above, any law, custom, or usage to the contrary notwithstanding."

Mr. Speaker, I think that we can say quite clearly that the Habeas Corpus Act, Chap. 8:01 of 1841, in effect, made the law which was applicable in the United Kingdom insofar as applications for habeas corpus in criminal and civil matters, applicable to Trinidad and Tobago. It was thought that having regard to the crucial constitutional importance of the writ because it was the procedure, whereby anyone who was unlawfully detained—and historically this was by the Crown or the King—could have approached the court to get that detention examined and the person had to be brought to the court in order for the court to determine the validity of the detention.

Because of the crucial constitutional importance of this writ it was regarded as permissible to make fresh applications to each court or judge in turn and each was bound to consider every fresh application without having regard to or be influenced by any previous decision refusing to discharge the prisoner detained. What happened is that if Mr. "A" was detained and Mr. "A" made an application before judge "B" and judge "B" refused the application, Mr. "A" could have gone before judge "C", "D", "E" and "F" and made similar applications. The whole rationale of the rule was that the liberty of the subject was so important that it was permissible; nothing was wrong to have several applications made.

10.10 a.m.

These applications were not regarded as appeals but they were regarded as fresh applications and were to be dealt with on their merits. Mr. Speaker, there was judicial recognition of this. In 1928, the Privy Council in a case which originated from Nigeria known as the Eshugbayl Eleko Case (1928) AC 459 and for the records, it is 1928 appeal case AC 459, the Privy Council recognized and affirmed that in habeas corpus one could have gone from judge to judge and it was not to be treated as an appeal but it was an application to be determined on its merit.

Like everything else, as time went on, the law developed and what was law at one time may not be law another time. The common law developed and as time went on, the existence of this right came to be doubted, that is a right to go from court to court to make the same application. Without going into the cases, it is sufficient to say that this right was doubted in several decisions and jurisdictions but, what was decided was that the principle of estoppel did not apply to anyone

of these applications, and what was decided also was that the whole principle of *res judicata* did not apply to a particular decision in making an application for a habeas corpus.

What happened was this principle had been doubted but the courts were still saying that they did not think the principle of *res judicata* applied. So that yes, it is possible to make a fresh application; and we do not think that estoppel applies. But then the law evolved and said that there was a principle of abuse of process and the common law always gave a court a jurisdiction to dismiss an application on an abuse of process and a law developed that it could have been an abuse of process for a second application to be made on the same set of facts, therefore, the courts found a way of trying to regulate these kinds of applications.

May I say that the court found that it could have been an abuse of process to raise in subsequent matters, the matters which were raised in the first application and for the records, that was decided in 1979 in a case of Re Tarling (1979) 1 All England Report 981:987. But even before that was decided, the United Kingdom Parliament decided that it was going to intervene in these matters and in 1960, they introduced legislation to the effect that applications for habeas corpus were to be restricted, in the sense that a new application could have only been made upon fresh evidence being available to the applicant, and such fresh evidence was not evidence which was merely additional to, or different, but evidence which the person who was applying for the writ could not have put forward on the first application, or he could not reasonably have put them forward.

What this Bill really seeks to do is to introduce into our laws the concept of the United Kingdom legislation of 1960 by enacting that in an application for habeas corpus one could not make a fresh application unless it was supported on new facts. In clause 2(6) of the Bill:

> "Notwithstanding any law to the contrary where an application for a writ of habeas corpus in a criminal or civil matter has been made by or in respect of any person, no such application shall be made again by or in respect of that person on the same grounds, whether to the same court or judge or to any other court or judge, unless fresh evidence is adduced in support of the application."

10.20 a.m.

Mr. Speaker, having regard to the common law which developed before 1960, it was quite clear that the common law did not recognize there to be any appeal by the Crown in the United Kingdom from a decision in habeas corpus. Even in 1873 when the United Kingdom Parliament passed the Judicature Act which gave right of appeal in civil cases, this right was interpreted as applicable to rights of appeal in habeas corpus application only in respect of a refusal for an order for discharge or a refusal for the writ to be issued.

So that even though in 1873 there was legislation the court construed that that was an appeal in respect of a refusal, in civil matters, of an order. The only exception which the law developed at that time was the exception in respect of child custody cases where the courts say the interest of the child was of paramount consideration rather than personal liberty being at stake. Therefore, the courts restricted the interpretation in the construction of the laws to a situation where the order for discharge was refused.

In 1960, also, the United Kingdom Parliament decided that it was going to state the law to make it quite clear that both sides have a right of appeal; both the applicant and the Crown—in our situation, the state. That is why clause 7 of the Bill states:

> "An appeal shall lie in any proceedings upon application for a writ of habeas corpus, whether civil or criminal, against an order for the release of the person restrained as well as against the refusal of such an Order."

Mr. Speaker, it is important for us to understand that, having regard to the history of the writ and what the writ was used for, in modern day, the writ really has been deployed in many areas. It has been deployed in areas to challenge the validity of detention in respect of almost any matter as long as the liberty of the subject is at stake; for example, even in respect of emergency regulations. Even where regulations specify that the writs will not apply, it is still being used, and jurisdictions are being used, that one really cannot prevent the remedy from being sought.

I am saying this to illustrate the importance of the writ, and the importance of the remedy of habeas corpus. Its concept is that it should always be available because it is recognized that any State/Crown can at times imprison people or there can be the exercise of law or discretion which can result in unlawful imprisonment.

It has been deployed in respect of immigration laws, decision pending extradition, cases where persons are in custody and cannot get a speedy trial. It has been used in many instances and I do not think I need to tell this House the wide variety of matters in which it has been used because one can talk on and on in respect of that.

This administration recognizes the importance of the writ and the remedy, and it is in that context that we want to ensure that the procedure is such that there will be fairness in the administration of the law; for example, what happened in the United Kingdom in 1960, that if there is going to be a right of appeal it should be to both sides so that if they agree they would have the opportunity of challenging whatever decision the court gives.

Mr. Speaker, the Constitution of Trinidad and Tobago provides for a right of appeal and also an appeal to the Judicial Committee of the Privy Council in certain matters. We have recognized that an appeal in this matter would lie to the Court of Appeal as a right having regard to the provisions of the amendment and after a decision of the Court of Appeal, one can appeal to the Judicial Committee of the Privy Council. One does not have to specifically put that in legislation but what we have decided to do is to circulate two additional amendments which, in effect, would provide the machinery to remove all doubts whatsoever in order to ensure that it is in black and white, that there is this right and what can happen.

The new subclause (8) to be added to clause 2 of the Bill seeks to spell out, for the removal of any doubt, the right of a successful applicant in respect of whom an order for release has been made to be discharged even though there is an appeal pending by the state.

Mr. Speaker what we are saying is that even though the state files an appeal, there is the power of the successful applicant to get the court to release him pending an appeal.

10.30 a.m.

Although section 48 of the Supreme Court of Judicature Act provides that prisoners awaiting trial and kept in custody are to be treated as prisoners unless they obtain bail on an application to a Judge of the Court of Appeal, it would appear that this rule can be argued to apply only where there are convictions; and habeas corpus are not really conviction proceedings; they are pre-trial proceedings, therefore this sub-clause is inserted to ensure that there is that machinery.

The new section 8, therefore, Mr. Speaker, would emphasize that there would be no deprivation of an arrested or detained person of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the determination is now lawful. So that the right of appeal at the proposed section 7 would be conferred in all civil or criminal proceedings, therefore the right of a successful applicant to be discharged and to remain at large regardless of the decision where there is an appeal, would apply across the board except where the respondent gives notice of his intention to appeal. In such cases the court may make an order providing for the detention of the applicant, or for bail pending an appeal. If I may simply explain that, Mr. Speaker— *[Interruption]*

Mr. Bereaux: Thank you very much for giving way. We do not have a copy of the amendment, so it is difficult to follow.

Hon. R. L. Maharaj: Could he be provided with a copy? You will get one, but I will explain it to you.*[Copies being handed to Members]* I will probably read it very slowly. In clause 8, add the following subsection, 8(1):

> "An appeal under section 7 shall not affect the right of the person restrained to be discharged in pursuance of the order under appeal...unless an order under subsection (2) is in force at the determination of the appeal, to remain at large regardless of the decision on appeal."

So that is saying that an appeal shall not affect the right of the person restrained to be discharged. It gives an entitlement or a right for the person to be discharged and under subsection (2) it states:

> "Notwithstanding subsection (1), in the case of an application for habeas corpus relating to a criminal cause or matter, where the appellant would, but for the decision of the court below, be liable to be detailed, and immediately after that decision the respondent gives notice that he intends to appeal, the court may make an order providing for the detention of the appellant, or direction that he shall not be released except on bail so long as any appeal under this Act is pending."

So that gives the court a discretion that a person who is discharged, where the other side has appealed, the court can determine whether a person should be released or remain in custody, and it could give the right to persons for bail.

Mr. Speaker, it would seem that this could have been implied from the provision of the Constitution, but it was decided to specify these matters clearly, having regard to the nature of the Bill before us.

Mr. Speaker, since the application for habeas corpus can be used in so many ways and the state can be affected in so many ways if orders are made against it, the legislation clearly states that the state is entitled as of right to appeal; and it also states that an applicant is entitled as of right to appeal. The Bill also makes it quite clear that one can make an application for habeas corpus, but if one has to make a fresh application it must be supported by new evidence. This is in keeping with the Administration of Justice (Amdt.) Act in 1960 and therefore what this Parliament is trying to do is update its laws and provide laws which appear to all sides that justice is being done between the people and the state.

Thank you very much, Mr. Speaker. I beg to move.

Mr. Imbert: Total rubbish!

Question proposed.

Dr. Keith Rowley *(Diego Martin West):* Mr. Speaker, I crave your indulgence to make a brief intervention in this matter, and to begin by acknowledging my own area of specialty is not law. However, Mr. Speaker, we on this side choose to respond, because we view this matter not only in the narrow confines of law, as such, but something far deeper than that.

As I listened to the ramblings of the Attorney General, Mr. Speaker, hoping to get a clearer picture as to what has caused this extraordinary sitting this morning, I must confess, with all due respect to the Attorney General and his colleagues, that while I wish to be as generous as I could this morning, I cannot find the basis for the position of this matter on the Government's priority list.

Here we are this morning, Mr. Speaker, at twenty-five minutes to eleven on a Friday morning when we normally would meet at 1.30 in the afternoon. Therefore we assume that there is something extraordinary that has caused us to come to Parliament in this way. I am a little disappointed that the kernel of that urgency has not been identified in the presentation of the Attorney General. Mr. Speaker, we on this side have some serious concerns and it is in that context that I would seek to treat with this item on today's proceedings in this extraordinary session.

Mr. Speaker, I must thank the Attorney General for his discourse on the origin and history of the evolution of the writ of habeas corpus. I think he made the point that it had its origin in the very root of man's relationship to his fellowmen in civilized society. One would find the source of this conflict back in the early part of the 13th Century, when the people of the United Kingdom, or England specifically, had to treat with a monarchical system where the power and authority of the monarchy was supreme, to the extent where it belittled the existence of "subjects".

If one goes back to—I think the year was 1215—when King John was forced to sign the Magna Carta, one will find that it was the people saying, 'while we are prepared to accept a monarch and submit ourselves to the authority of the throne, we also want to ensure that as living, human entities, we have some right'. Thus it evolved out of the common law, and I think it goes back to the mid 17th Century—if I am wrong I am sure the Attorney General will correct me—when it was established by law. Even as it evolved out of the system, one ought to recognize this basic tenet, that in the United Kingdom it was found that there was need to put it down in such a way that it was recorded as one of the laws; and the Attorney General made reference to our following the law of 1841.

If one looks at what it really means, Mr. Speaker, it means that in a system where there are courts, the court could issue an order, or writ, designed to determine whether a person is being legally detained, as he said, whether by the state or by private individual. Mr. Speaker, this concept of liberty is what defines a civilized society from the jungle and that is why liberty is so important. If one looks at our own Constitution, Mr. Speaker, one will see that Chap. 1 Part I, section 4(a) starts out as it lists the fundamental rights and freedoms. *[Interruption]* He can laugh but to us, as I said, Mr. Speaker, we have concerns.

Under "The Recognition and Protection of Fundamental Human Rights and Freedoms" in our own Constitution it is written "Rights enshrined". The very first item listed is:

"the right of the individual to life, liberty, (and) security..."

That is the very first pillar that we constructed, as we sought to construct our society. It is in that context that one would find the writ of habeas corpus—to preserve that basic tenet of the right to liberty. So when this Bill appears on the Order Paper, as I would say "out of the blue" with an amendment to treat with the writ of habeas corpus, one's ears would prick up. What is causing this?

10.40 a.m.

When an extraordinary session of Parliament is called to treat with it, one also asks: What is his cause?

Mr. Speaker, in our country this thing has been in force, and has been working. I am not aware that the average citizen in this country has an agenda; from 1—100, the workings of the writ of habeas corpus. I am not aware of that. If that were so, I would have thought that the Attorney General would have provided us with the information in one form or fashion to show how difficulties with the writ of habeas corpus is impacting negatively or adversely on the average citizen. We were not told that.

I am advised that the majority of cases in which this writ is used in our country is about 80 per cent and largely deal with family-type disputes where highly emotional and irate family members might find themselves in the custody of persons who others think should not have such custody and so forth. Only about 20 per cent of the cases relate to criminal situations.

Where is this urgency and high priority to have this Bill leapfrog over all other Government priorities in the Parliament today? Somebody should tell us.

I would not go into the legal workings of it except to say that in the United Kingdom the writ application and bearing on the citizen's comfort in the society, has been so fundamental that a few cases penalties have been placed on judges or judicial officers who do not comply, without good cause, in a situation where the writ is sought to be invoked by persons who think they are aggrieved. If a judge or a judicial officer does not comply with the letter and spirit as this writ evolves in order to ensure that liberties were not trampled upon by anyone, penalties were put in place for such a judge or judicial officer.

In the United States of America, where it is also a fundamental pillar of the system, reference is made to the fact that the waiver or the authority to interfere with this can only be properly done by the Congress in times of rebellion or invasion. So fundamental did they view this that even during the Civil War, when military officers conducting a military campaign against hostile forces sought to detain people in the South in 1865, the generals who did that had executive order of the President so that they created a hornets' nest, not only in the camp of the enemy but in their own camp because questions were asked as to wherein lies the authority. When the President intervened and said he gave executive authority to those generals to interfere with habeas corpus and detain, without reference to

habeas corpus, that became a major issue and the Congress had to intervene to clarify the situation and to protect those liberties that are held so dear.

Of course, here in Trinidad and Tobago the Attorney General got up one day, introduced a Bill for the amendment to the writ of habeas corpus, and in speaking about it he could not help, from time to time, but refer to what "I" wanted to do and not "we"—and I see my colleague from Barataria/San Juan smile because I am sure he was having some difficulty with the "I" and I noted the rapid correction to the "we", because one wonders who is the "I" and who are the "we".

This Attorney General did not come into this Parliament recently. I had the pleasure of serving with him in an earlier Parliament and he always invoked two tenets in his arguments; one, "consultation" and the other "comprehensive amendment to deal with all matters and not piecemeal tampering with laws". Those are two of the tenets on which he based all his arguments in the earlier Parliament when he sat in the seat in which my colleague, the Member for Diego Martin Central, now sits.

So, I would like to ask him: Why is he seeking to tamper with something that is enshrined in our Constitution under The Recognition and Protection of Fundamental Human Rights and Freedoms by seeking to amend—and I heard him say " tamper" in a dismissive way. I hope he is aware that this requires a three-fifths or two-thirds, or some similar, majority. So, he can dismiss it in the most derogatory way, but when I say "tamper", I mean " tamper".

Mr. Speaker, the question I wanted to ask was: Has this matter been referred to the Law Association of Trinidad and Tobago which is a body of professional lawyers who are charged with the responsibility of having an oversight in what we do here and elsewhere in the country? Have they been alerted to the fact that he is tampering with the writ of habeas corpus?

The Attorney General might say they are going to improve it, but I am not debating that. I would leave that to my colleagues. What I am saying is that since we are going to interfere with this fundamental right enshrined in Part I, section 4(a), of the Constitution, has the Attorney General seen it fit to indicate to the Law Association that he intends to do this and what are his reasons? Or, is it that he has taken the position that he can determine what is good for this country and, therefore, there is no need to refer it to anybody else? *[Interruption]* I would leave his relationship with his Cabinet colleagues to his colleagues, they would

sit here and see how he progresses because as he speaks about what "we" want to do I know that there are many decent people on that side who would have difficulty with being coupled in that "we".

Mr. Speaker, there is a point of view being advanced from the other side that they have brought an Attorney General who has spent a life exploiting loopholes in the law, therefore, he is the most qualified person, by his experience and behaviour, to plug those loopholes. Therefore, he is the person advanced as Attorney General. While that might suit their politics, it does not suit reasonable arguments. If that is the case why should we stop with the appointment of the Attorney General based on his experience with exploiting loopholes? We had a number of people in this country who listed child abuse as their highest priority; it is common-place in this country. Why do we not get a few of the notorious child abusers and put them to run our kindergarten?

10.50 a.m.

Insofar as we are concerned about the behaviour of some of the young female high school students who might be treating their lives in a frivolous manner and seeking to become what one might call ladies of the evening or the night, why do we not go down to Charlotte Street and get someone like “Gateway Elaine” to counsel them in the behaviour of young people? It is the same argument. Here he is seeking to tamper with one of our most fundamental freedoms and the argument is that our Attorney General has made a life of doing this, therefore, he should know how to handle it. Whatever he says goes. We should not be concerned about what the Law Commission, the Opposition or anybody else says.

I refer to this in the context of the lack of Government’s policy for anything and the climate in which this is being brought to Parliament. While we are having difficulty identifying the need and the urgency for this amendment, and the position on the Government’s priorities, we will have no difficulty in identifying with other issues which are of greater concern to the citizens.

Insofar as the Attorney General might have said to us, as he said before, that this is part of the Government’s package of legislation to treat with the operation of the courts, the criminal justice system and criminals, and if he was being straightforward and honest in wanting to keep the Government’s promise to honour its slogan, “if you do the crime, you do the time”, he would have had to go on to say that what concerns the citizens of this country is not a writ of habeas corpus, which, if applied, would allow criminals who are incarcerated to

go free; but the fact that those who have been tried, convicted, sentenced and have exhausted all their appeals to the very end to the Privy Council—which sets them free time after time—have been escaping the sentence which the court has dictated to be carried out. I refer specifically to criminals who have been convicted for the crime of murder, the sentence for which is death by hanging under our laws. We know for a fact that many of our criminals who have been found guilty of this offence, convicted and have had unlimited appeals available to them have been escaping their sentence.

That is of concern to the people of Trinidad and Tobago. A recent poll has shown that over 80 per cent of the national population believe that persons who find themselves in that situation must be exposed to the sentence of the court under the laws of our land.

Under the last administration we came to Parliament to get agreement so that criminals who have been convicted and used access to unlimited appeals should be denied that access so as to allow the state to carry out the sentence which has been duly passed and authorized by the court. That was the corrective action. Insofar as unlimited appeals are available on all kinds of grounds, one would be unable to have the sentence of the court carried out. It required an intervention by the Parliament to restrict unlimited appeals.

At that time, the position of the person who is the Attorney General today was that there was no way he and his Opposition were going to support any restriction to unlimited appeals by condemned murderers who have been using that avenue to escape their sentence. The last administration did not get the support of those on the other side. It was not that we were seeking to prevent criminals from appealing or not appealing in a way in which we were comfortable that they had an opportunity to have the matter reviewed over and over, but that there must be an end to the process, and at the end of the road if the criminal is still found guilty and no mercy has been set by the Mercy Committee, the sentence must be carried out. No support came from the Members on the other side. They were led in that argument of no support by the Member for Couva South who is the Attorney General today. He is here this morning and as his highest priority is seeking to cast himself in a new light. He is not concerned with bringing that kind of Bill to Parliament. If he were truly concerned about the working of the system and it being fair as he said, then he would have taken steps as we tried to do to see that justice is done. He opposed it then, and today he is concerned about the fact that

in our system it exists in theory that one can go to a judge for a writ of habeas corpus and proceed to another judge and another judge.

I want the Attorney General to give me one example in recent times or at any time where a criminal went to one judge for a writ or an advocate went before the court to seek a writ of habeas corpus and it was denied at one point, another point and another point until eventually way down the line, he found someone to grant the writ. I want the Attorney General to justify the need and urgency for this by telling us in this House the instance or instances where a criminal could have gone in theory from one judge to another resulting in a writ of habeas corpus being granted, or if in practice what has happened is that one goes for a writ of habeas corpus, the case is made and the writ has been granted. Is that the case?

As the Attorney General identified this theoretical position that one can go from one judge to another so he is seeking to block that loophole, I am asking if he cannot demonstrate to us how the present arrangement has been causing problems and criminals to escape their sentence and the judicial system not to function properly. If he can demonstrate that to us statistically, then he might be able to convince my colleagues and I that he has given the highest priority to something worthy of our attention this morning.

11.00 a.m.

I said earlier that the bulk of the matters in this country, which has been accessed under this writ of habeas corpus, has to do with family-type matters. One has to understand how the citizen sees the state. At another time in a different argument, the Attorney General would have put forward a most eloquent argument about the weight of the state against the individual and the need to have some situation where that overwhelming power of the state is not brought to bear against the individual in such a way that the individual is disadvantaged. That was his argument before. Today, he is talking about balance and even-handedness, equal for the state, and equal for the individual. He has now forgotten the arguments he made in this very House in earlier times about the power of the state when pitted against the lowly individual.

Insofar as this writ of habeas corpus can be involved in family matters where the liberties of loved ones could be the subject, one would be treating with highly emotional issues. One does not want to give the impression that it is a court process where one comes to the court and, if at one’s first try one receives a “No”, there endeth the matter. One can then be consumed by the emotion

involved in one's spouse being kidnapped by whomever, and this process having gone to this judge and that person not fully understanding one's plight, therefore, really wanting to go to someone else. Under the present system, a person who is so aggrieved and distressed can feel that he can go as far as he can and there is hope. If he does not get support in the first case, he can go to the second or third. He will then treat with his emotions within the context of that hope.

The Attorney General finds that the theoretical arrangement which permits such a person to go from one position to another is something which should now be curtailed in law; and he is drawing a distinction between an appeal process and the fact that if one goes before a second judge, one can raise one's argument as a fresh and fundamental issue.

I am saying that it is lack of understanding of how individuals see the state that causes him to advance that argument. People feel secure if they perceive security; not that security is there, they must perceive it. People feel that they have been dealt with fairly if they can perceive that fair play is there. We have that arrangement now enshrined in our Constitution and any person seeking to access it has no reason to query the state's power against the individual. The hon. Attorney General is seeking to put a law which will put in people's minds the thought that they are pitted against the state and the state is cutting them short, so they now have to enter an appeal process, about which they have not been told whether it is to be before a single judge or a panel of judges and what is involved. *[Interruption]*

Let him laugh at the law. The bottom line is that we have to see this in the context of how people view their liberty and how the people of this country see this Government. This is a Government which, in 125 days or thereabouts, has demonstrated in no uncertain terms, that it has a fixation with tampering and dismantling our fundamental rights and freedoms, with interfering with our traditional practices, and with treating in the most curt manner with what we have become accustomed to as fair play and justice.

In the very short space of time that this Government has taken office, it has raised serious concerns in this country as to its direction. This Government has all the makings and hallmarks of a fascist dictatorship, led by a little fascist dictator who has difficulty in saying "we", and more easily speaks of "I". It is in that context that I want to raise the appearance of this Bill on the Order Paper and the urgency of this need to tamper with the habeas corpus, and the drivel we hear this morning seeking to justify giving the highest priority to the need to interfere with

a fundamental right and freedom, which they are having difficulty in demonstrating to us is not working well and requires their attention and intervention at this stage.

Mr. Speaker, let me point out to you the trend that this Act follows. I would like to go back to the Constitution. I pointed out to you earlier that this matter has its origin in 4(a) of our enshrined fundamental rights and freedoms. If we go a little lower down to 4(e)**,** we will see that it says that one of those fundamental rights and freedoms is "the right to join political parties and express political views". That is a fundamental right guaranteed in the Constitution to every citizen of Trinidad and Tobago, but a Minister in this fascist government, who has no respect for that right, says publicly that he is rolling the heads of Chief Executive Officers because he perceives them to have a political persuasion with which he does not agree.

Mr. Speaker: I hate to disturb the Member in full flight, but I think "fascist" is an emotive word. I think that the Member can express himself in other words. I would prefer if he does not go so far.

Dr. K. Rowley: Am I to understand, Mr. Speaker, that the word "fascist" is unparliamentary?

Mr. Speaker: I would prefer if the Member does not use the word "fascist" in this context. *[Interruption]*

Dr. K. Rowley: I thought he was keeping a still tongue.

I am a little confused, Mr. Speaker, because I would not like to use unparliamentary language. I acknowledge and am grateful for your guidance, but I would like to say that my position on this matter is as I see and believe it. I take your guidance, however.

Mr. Speaker: If one accuses somebody of being something; if one makes imputations against a Member or, indeed, the Government, and those imputations are that they are fascist, it is a very serious allegation. I simply suggest that both sides would get on much better in the House if they refrained from such emotive words. *[Interruption]*

We are not, at this stage, in a debate. I have interrupted the Member in his flight simply because I was making a comment and was trying to prevent certain things. Having done that, the Member may continue.

Dr. K. Rowley: Firstly, Mr. Speaker, I crave your indulgence in requesting that I be given back some time.

11.10 a.m.

I am a little confused now, Mr. Speaker, because had I developed my argument I might have referred to some policy of the government and referred to it as being a communist policy, or, I might want to refer to the government as a liberal government or as a social democratic government. Is there a difficulty in that, or is it that there is something specifically wrong with the political interpretation of the word "fascism"?

Mr. Speaker: Hon. Member, the Speaker is not about to be asked questions so that we would continue this to-ing and fro-ing. I have simply made a comment concerning a part of your contribution and I have tried to give you some guidance on it. If you cannot accept it, you are free to continue.

Dr. K. Rowley: Mr. Speaker, I respect your guidance and would not continue to do anything to indicate that I have not accepted your valued judgment on this matter.

I would proceed to point out that this Government, in a short space of time, has demonstrated that it has a difficulty with maintaining the course that we have set as a country with respect to certain fundamental rights, freedoms and practices and so forth. *[Desk thumping]* Mr. Speaker, just in case you believe that I make this allegation frivolously, let me demonstrate why I feel justified, firstly to be concerned about the shot-gun attack on the writ of habeas corpus. I see this writ of habeas corpus not in isolation, but as part of a systematic approach to set new standards for the country.

If one is asked to list the achievements of this Government in 125 days, one of the first achievements or highlights has to be the obscene attack on two public servants by the Member for Tabaquite and Minister of Education, who, as a Minister of Government, knows full well—or I hope he knows—that he has no authority whatsoever, under any law or regulation to suspend public servants. His act as Minister of Education was to seek to send home public servants who are protected under the Public Service Commission; an institution under the Constitution of Trinidad and Tobago. That was cause for concern.

If any public servant, especially the permanent secretary, is in breach of any regulation and any action has to be taken, no one can argue with the Minister for

that. But to seek not to acknowledge the existence and the role of the Public Service Commission in the matter is what, I am saying, has caused me to raise concerns about how this Government sees our institutions. The Public Service Commission was put in our Constitution for a specific reason which did not seem to impact on the Minister of Education. That is one example.

Mr. Speaker, if you think that that is in isolation, let me add another link to the chain that seems to be built to drag us in a direction where we have not been going, as an independent country, since 1962. The other link in that chain was the unseemly attack, by no lesser person, than the Prime Minister of this country on the fundamental right recorded at section 4(k) of the Constitution. Section 4(k) of the Constitution speaks about freedom of the press. The Attorney General reminded us that Dr. Williams burned a copy of the *Guardian* in Woodford Square. He paid for it, went to Woodford Square and burned it. He took no action to prevent the *Guardian* from printing another copy nor from hiring Mr. "X" or Miss "Y" to edit another copy. *[Interruption]*

I am being told that my colleague from Diego Martin East was concerned about the security in his ministry and denied access to a member of the media. Mr. Speaker, I will tell you that my colleague from Diego Martin East and I are very close and on the day that happened—we do disagree on matters—we disagreed on that. I said to him—

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

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

Question put and agreed to.

Dr. K. Rowley: Mr. Speaker, I thank you and hon. Members for the extension.

I am being told that the basis for the conduct of the Prime Minister, who called on a corporate body to dismiss its hired employee, because he did not agree with what was being printed by the newspaper was something the then Minister Imbert did during his term of office and something that Dr. Williams did 27 years ago.

We are being told that when the Prime Minister sought to get other members of the media to write letters to their boss to dismiss one of their colleagues that that does not offend the freedom of association in section 4(j) of the Constitution.

Insofar as these members of the media felt that they were associating with their editor, to make a living in the process and to report the news, the Prime Minister asked: "Is Madeira still working there? If so, I cannot deal with you." If that is not a lack of appreciation for freedom of association, then tell me what is.

We have evidence of an intention to interfere with the freedom of the press, freedom of association, freedom to join or even support political parties; because we are told by the Minister that one of the reasons the CEO who—incidentally one of the CEOs is appointed by the Government of my colleague from Tobago East, he served under the NAR, he served under the PNM and he is now serving under this Government—*[Interruption]* We are making no defence with respect to the performance of any CEO, we are taking issue with the reason given that his political persuasion caused him to be the subject of indecent action.

When I say that this Government has a problem with decency and fair play, I do not want to hear anything from the Attorney General about equality in justice. Show me! Do not tell me!

When a Government Minister goes into a state enterprise, does not even announce his presence, but goes to subordinates to seek information from them and tells them: "You send me whatever information you have on your officers"; he then runs face to face with the officers and says: "Hello I am in your agency today, I am just visiting". Is that how a minister of government behaves?

11.20 a.m.

A Minister of Government goes to subordinates seeking to get them to undermine a particular officer and then accidentally clashes with the people who run the organization, and as far as one is concerned there is no protocol and no problem, one is just there to get some information. That is how they operate. Mr. Speaker, this Government has learnt nothing from their betters because when we came into office we met a chief executive officer of the Tourism Development Authority appointed by the Member for Tobago East and his Government, and a PNM Prime Minister acknowledging—

Mr. Speaker: I take it that the hon. Member is still on the Habeas Corpus (Amdt.) Bill.

Dr. Rowley: Thank you very much, Mr. Speaker. As I told you I do not see the habeas corpus writ in isolation, I see it as a part of a creeping set of actions of this Government which offend our fundamental rights and freedoms; our respect

for fairplay and natural justice and I am demonstrating to you why I am concerned about the fly-by-night arrangement that we are seeking to treat with here today. I am saying to you and I said it in the beginning, I am to be convinced that this found its way to the top of the Government's priority list by accident. I am saying to you to demonstrate what I am saying, that when we came into office we met a CEO of the Tourism Development Authority. Mr. Speaker, do you know the PNM Prime Minister was travelling abroad and he took the CEO as part of his party? Mr. Speaker, do you know how this Government handles a CEO in TIDCO, who is an employee of an international agency, which has done us the favour of loaning us that individual, and which has a contract ending in June? This Government seeks to humiliate the individual and to restrict his functioning and a Minister of Government explains that by saying, "that is the wrong person in office and what they really want is a business-oriented person, therefore the person in office is not someone suitable."

When the Government paints that kind of image for us it is the same kind of image they are painting for the world. In this country there is some kind of "banana republic" behaviour where if the Government does not like an editor you simply talk to the owner of the newspaper or, you decree that the person be fired. Then we are listed, with all those who have suffered the consequences, for not respecting its matters of fundamental rights, liberties and freedom like the writ of habeas corpus.

Mr. Speaker, I represent the People's National Movement, a political party which is a pillar in Trinidad and Tobago. My party has served this country in Government and in Opposition, and I am proud to represent the PNM. *[Desk thumping]* I am offended when the Prime Minister gets up in the Parliament, and without a shred of evidence, seeks to tell the country that the institution called the People's National Movement is seeking to overthrow his duly elected Government by violence. It is all part of the plot; it is all part of the plan to undermine—so the Government wants to undermine the press; the Government wants to undermine the permanent secretary; the Government wants to undermine the political organizations; the Government wants to undermine CEOs; what else? And at 11.25 this morning we are dealing with the Habeas Corpus (Amdt.) Bill.

11.30 a.m.

Mr. Speaker, in the context of that, I have a concern about this particular Attorney General who advises, because he has an attitude which I find quite

disturbing. And the attitude is not to confine himself to the portfolio that he has been given.

Permit me to read for you from the *Trinidad Express* of Thursday, March 21, 1996 an article which says: "Hayde threatens to sue senior cops" and it says:—

Mr. Speaker: Could the Member really explain for me how that is relevant to a Habeas Corpus Bill which means, "you must have the body"? *[Interruption]* It is not really proper, that while I am on my feet and trying to make a serious point, any Member, regardless of the position he holds in the House, should do that. It is not right and we are not fair to ourselves when we do it. I would ask the Member for San Fernando East to desist.

Dr. K. Rowley: Mr. Speaker, clearly the point that I am making is that I am concerned about the Government's priority and intention to interfere with the existing writ of habeas corpus arrangement because I do not trust the Government. The operations of this government cause concern to me as a representative of the people who elected me and that concern is not originating only out of the Habeas Corpus Act and its amendments as advanced by the Government, but I cannot but see it in other patterns of governmental actions and behaviour. That is why I am scared. I am scared because the Attorney General is literally running the Ministry of National Security and I came to that conclusion based on this report in the *Trinidad Express* which says—and if you permit me, Mr. Speaker, I will read it for you. It says:

> "Hayde was speaking after a meeting between the Attorney General and the Police Association. National Security Minister Joseph Theodore attended at the latter stages."

So, here is a matter within the Ministry of National Security, a matter concerning the police of Trinidad and Tobago. There is a portfolio to which that matter is assigned, but Mr. Hayde is meeting with the Attorney General.

Mr. Speaker: Hon. Member, I think that is a little outside the matter being discussed. I gave a ruling on that just now.

Dr. K. Rowley: Mr. Speaker, I am sure that I will not be able to convince you that I have a concern, but you see, Mr. Speaker, when we are treating with liberties, and those liberties are spelt out in law, and we are trying to make law to change what is spelt out and also to treat with the spirit of what is written and then it has to be administered by the Government of the day, whatever

Government it is, if I have a concern about the Government, Mr. Speaker, I humbly apologize if I cannot convince you. You see, I cannot but see this in the context of governmental action.

There are many countries which do not operate the writ of habeas corpus as we had it in Trinidad and Tobago today, and they paid dearly for it. Right here in our own hemisphere, we know that Papa Doc Duvalier did not materialize one night, Mr. Speaker, he was an elected official, and in his system, there was no practice of the writ of habeas corpus and we know what happened in Haiti. We know what happened in Germany, when under the Hitlerian arrangement, there was no writ of habeas corpus. We know what happened in Argentina and El Salvador where there was no writ of habeas corpus. In those arrangements, there were individuals who were power-hungry, who saw themselves as supreme and those who believed what was good for them was good for the people of their country. And we know the price those countries paid.

If in Trinidad and Tobago today, we have such individuals, even one of them and he finds him or herself in a position to administer the laws of this country without the protection of habeas corpus in the way that we had known it, I am saying it might work better when amended but right now, it is working good enough for me and I will be comfortable if this Attorney General leaves our fundamental rights and freedoms alone. That is all I am saying. *[Clapping and desk thumping]*

When the Prime Minister of this Cabinet gets up and tells the country that he has information about a possible violent overthrow of his Government and the Minister of National Security said he knew nothing about it, it is in that context that I raise the spectre of the Attorney General running the Ministry of National Security; and the Minister of National Security who is quite happy to sit in office while the Prime Minister and the Attorney General usurp his function; and they want to interfere with our fundamental rights and freedoms. *[Desk thumping]*

That Member has difficulty in understanding my relevance, but my relevance is rooted in the fact that this writ of habeas corpus and the operations of the officers of the state who will carry out the arrest and detention are officers under the Ministry of National Security. If the Minister of National Security is not prepared to guard his portfolio from predators, then it would be administered by the Attorney General and others, and therein lies the risk. *[Desk thumping]* If that is not relevant to anybody else in this Chamber, it is relevant to me and those who elected me; we are concerned, we are very concerned, Mr. Speaker. In this

country, what we are seeing here, is government by Attorney General. Look at the Order Paper! And my Friend from Tobago East knew what I was going to say so he left the Chamber.*[Laughter]* I know him, and I respect him, and I know that he is not happy with this, but he is keeping a still tongue and a wise head.

Hon. Member: And a big salary.

Dr. K. Rowley: This Government has demonstrated a prickliness, it has demonstrated that it is irritated and affronted by any criticism and that is why it started up with this self-labeling of national unity. That was the first charade, label yourself the Government of national unity and play the part.

Mr. Speaker, I do not want to tell you how scandalized I am that this item is what has attracted the Government's attention. I would have thought that if the Government were concerned about what concerns people, we would have been debating something else this morning. This Government and its Attorney General have put thousands of tenants at risk by having the law that protected them, lapse and as we stand here now, all those tenants are at risk and the legislation to give them protection is not being debated, but we are debating amendment to the writ of habeas corpus.

We came out of an election campaign a few months ago and so fundamental was this and other aspects of our fundamental rights and freedoms that they formed no part of any discussion in the election campaign, but the Government sees it to be so important that it takes priority over everything else. I am asking those on the other side, if it is so important to take priority over everything else, how come it was not even mentioned in the election campaign? How come? What was mentioned was criminal activity which was supposed to abate or cease if they ascented to office. But what we have now, is a new body of high tech criminals who are not only content to kill but they are now pegging you to the ground and cutting off your head under this administration. If that is something to do with Government—if we were in the Government, we would have been told it was our responsibility and our negligence that caused that. He must tell us how this Bill, this amendment will further a reduction in criminal activity.

We are talking about taking action for the people. What brought them into Government? Was it the issue of poverty? Yes, we have had poverty with us for a long time and poverty exists at an inordinately high level, but instead of bringing policies and programmes to address poverty, and create jobs we are talking about habeas corpus and insofar as the Government has done nothing to interfere with

jobs and reduce poverty—*[Member for Tobago East enters the Chamber]*—and I welcome back the Member for Tobago East. Instead of dealing with poverty, what we are getting is "close down this here", "close down that here", "shut down this there", "stop that there" and so forth which ended up in loss of opportunities for jobs and a further exacerbation of the poverty situation.

The education policy—yesterday was common entrance I think—an issue which is of great concern to the people of this country, not habeas corpus. The previous administration had done tremendous work and put before the country a policy of change to deal with this vexing issue of common entrance. This Government has said nothing about its position on that policy. They are just prepared to coast and instead of treating with serious policy issues and matters, to date, the Minister of Education has said nothing about this Government's policy and position on the matter in the pipeline of the adjustments, improvements and changes to the common entrance situation. What are we dealing with in Parliament? Amendment to the Habeas Corpus Act of 1841, something that served us from 1841 to now without any real problem is the top priority.

We are about to embark on a local government election some time soon. What does this Government stand for in local government? We do not know. Not a word about it. No policy. Is there any change, what is it? But we are talking about habeas corpus.

When they were in the Opposition, one could not say anything in this Parliament without getting a retort from one of them about the need for the support for the farmers of this country, that they would give increased subsidies. We were paying $17 million in rice subsidy. That was a pittance as far as they were concerned, we were wicked and discriminatory and so forth and if they got into Government, they would provide subsidies to rice farmers and cocoa farmers. They would provide loans, they would write off debts and all these things. These matters are not being addressed by this Government. What is being addressed by this Government, is an amendment to the writ of habeas corpus.

We were told, notwithstanding the comment of my colleague from Naparima that what we would get if he comes into office is a "Sici Yea" Prime Minister. We were told that they would embark upon banana for export. I want to ask my Friend from Princes Town what is happening with the programme to plant and export bananas that his colleagues spoke about so glibly when he was on this side? Are we to look forward to a Trinidad and Tobago banana economy? What is to happen with that? We were told that they would find markets for farmers and

they could grow whatever they wanted and it would be exported. I want to see this Government put into practice all that they were saying. Farmers could grow their produce and market it. We were told that they will make all kinds of things happen.

We are concerned about the economic situation. What concerns this country right now, is not the writ of habeas corpus, it is whether in fact, the currency in Trinidad and Tobago can be retained at an acceptable level. *[Desk thumping]*

11.40 a.m.

Insofar as we are concerned about the health and stability of our currency, the Government is not saying anything about the agricultural sector loan which is fundamental to accessing resources to ensure that there is an inflow of foreign exchange to maintain the parity of our currency. Not a word about that! There are, in the pipeline, divestment issues which are fundamental to the Government's 1996 budget and we are not hearing anything about them. There is also, in the pipeline, an agreement between the Tobago House of Assembly and the central government of Trinidad and Tobago and we are not hearing a word about it.

Mr. Robinson: Rejected by the electorate.

Dr. K. Rowley: I am glad to hear that it was rejected by the electorate. I am looking forward to the one that the electorate endorsed. If that had been brought here, we would not be discussing a Bill to amend the Habeas Corpus Act.

I am saying that the writ of habeas corpus is so low down on the list of priorities of the people of Trinidad and Tobago that it could only have been found as an item of priority by an Attorney General who seem to think that all one has to do in this country is play "manoma" in the courts and everything will be all right.

Hon. Member: I see Moonan is set up now.

Dr. K. Rowley: When would be the next lunch?

Mr. Speaker, I wish that the Government would address the problems I raised in the context of priority when one treats with the business of the people of Trinidad and Tobago. One simply cannot see the writ of habeas corpus as a priority. It begs the question: what does this Government see as fundamental to treating with the problems of the people of Trinidad and Tobago?

I humbly advance that it cannot be converting access to judges in a request for a habeas corpus mandate. It cannot be that. There must be other things which should attract the attention of a government that knows what it is doing. Clearly, this Government does not know what it is doing. It has in its ranks some of the most ill-informed, incompetent and frightened individuals who are prepared to simply walk in line behind an over ambitious Attorney General. That is what exists here today.

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

Dr. K. Rowley: Mr. Speaker, *[Inaudible]*

Mr. Speaker: If you could give me a guarantee that you would wind up in but a few minutes and that you would be relevant, you have two more minutes.

Dr. K. Rowley: Mr. Speaker, I thank you very much for granting me the opportunity to wind up. If I should make no reference to the mover of the Bill—

Mr. Speaker: I simply asked you to be relevant.

Dr. K. Rowley: Mr. Speaker, a disagreement on the importance of the matter is, in my book, not an irrelevance.

We would love to support the Government in any measure—

Mr. Robinson: Sincerely!

Dr. K. Rowley:—which seeks to address the problems of the people of Trinidad and Tobago.

If a bill is brought to this House to ensure that persons who have been tried and sentenced do not use the existing laws and loopholes to evade the sentence, we on this side would have no difficulty.

If today the Attorney General makes a similar somersault, to that which he has done with this Bill, on an issue which is of real concern to the people of Trinidad and Tobago, if he brings any such bill, he would have our support. But if it is just—to use his words—piecemeal, *ad hoc* tampering with our Constitution to amend the writ of habeas corpus, I humbly submit that this is not a priority for the people of Trinidad and Tobago. It is not a priority for any government of Trinidad and Tobago at this time and it simply demonstrates a confusion within the ranks of the Government that causes us serious concern.

Insofar as it has to do with this very fundamental issue of the exercise of liberty in the context of other unwarranted actions of the Government, which I have sought to itemize for you, Mr. Speaker, much to our discomfort, insofar as it is a part of a systematic approach by this Government, we have great difficulty in supporting this trend and the path of this Government so we ask them to think again.

The Minister of Public Utilities (Hon. Ganga Singh): Mr. Speaker, I rise in support of the Bill, "An Act to amend the Habeas Corpus Act, Chap. 8:01". After listening intently to the contribution of the hon. Member for Diego Martin West, it brought to mind a book recently written: *The Death of Common Sense.* Throughout his lengthy contribution, his lack of appreciation of the relevance of the Bill, his inability to come to terms with the fundamental tenets of the Bill and to give an appreciation of that to this honourable House brought an element of wasting of parliamentary time, a corruption of parliamentary time and giving rise to the fundamental pillar of the book, *The Death of Common Sense.*

It points to the kind of attachments that the hon. Member for Diego Martin West has for things of the old order, failing to recognize that the way the society is moving and having regard to what is happening in the world, if he remains tied to the old agenda, then he, too, would become an anachronism within the context of the politics of Trinidad and Tobago.

Mr. Manning: Absolutely meaningless.

Hon. G. Singh: Mr. Speaker, the hon. Member for San Fernando East understands meaninglessness when he listens to the contribution of the Member for Diego Martin West.

What is the purpose of this Bill? As indicated in the Explanatory Note, it provides that:

> "... only one application for a writ of habeas corpus may be made by or in respect of any person to a court or a judge unless a subsequent application can be supported by fresh evidence or is made upon different grounds."

This means that the right of natural justice is protected. A person has the opportunity to apply for a writ of habeas corpus.

Even at this point, this Bill seeks to do a balancing act between the right of the individual to apply for habeas corpus and the public interest in ensuring that the system of the administration of justice is not in any way clogged or abused.

So that with the system of administration of justice in that way, forum shopping can be prevented. But all the requirements of natural justice are fulfilled, as we shall see, unless a subsequent application can be supported by fresh evidence or is made upon different grounds. It means, Mr. Speaker, that if there is new evidence coming to light then a fresh application can be made and the right to apply for a writ of habeas corpus is not in any way precluded from the applicant. *[Interruption]*

11.50 a.m.

Mr. Speaker, further, the amendment seeks to provide for the right of appeal in both civil and criminal applications for such a writ and seeks, as the Explanatory Note indicates "to streamline the procedure upon application for such a Writ", so the right to appeal is enshrined. It is there . An indication of the extent and wide ambit of the writ of habeas corpus is found in the text of *"The Law of Habeas Corpus"* Second Edition, by the author R. J. Sharpe. Mr. Speaker, there are several instances. I will now read from that text.

Mr. Speaker, at page 32: *Modern Examples of Jurisdictional Review,* which is but one avenue the applicant can proceed in seeking to access a writ of habeas corpus:

> "The courts are quite willing to grant relief where an inferior tribunal has stepped outside the limits of its authority by misconstruing a statute or by failing to base its decision upon the proper considerations. The law of extradition provides many examples where relief has been awarded on this basis, as in the cases where the offence alleged is not extraditable or 'political' within the meaning of the statute, or where the committing magistrate has failed to follow the statutory procedures. Similarly, in the law of immigration, it is open to the applicant on habeas corpus to show that he or she is not a person subject to the statute or that the authorities failed to follow the requisite procedure.
>
> The modern practice is to permit the applicant to demonstrate jurisdictional error by affidavit."

Then the text goes on to indicate, through pages 33 and 34, the other areas in which one can seek to look at the question of the writ of habeas corpus from *Jurisdictional Review*. Another element which is available to an applicant seeking

habeas corpus is the *Review of Patent Error* at page 34 of the same text, Mr. Speaker.

> "The second branch of review which is available on habeas corpus is to give relief on the grounds of patent error...This may occur even where the error is not one which goes to jurisdiction. The principle marks a significant departure from the jurisdictional basis for review."

Dr. Lasse: What is the point?

Hon. G. Singh: Mr. Speaker, at page 35—

> "The whole purpose of habeas corpus is to determine whether or not the gaoler can produce legal authority for the detention. If the reason or document returned is erroneous in law or, in certain cases, in fact, the detention is not justified. The nature of the review differs from that had on certiorari in that the whole record of proceedings is not necessarily brought before the court and there is no power to quash. But the return, as in the case of the record on certiorari is subjected to a search for error on the face".

Hon. Member: So what?

Hon. G. Singh: Mr. Speaker, the fact of the matter is that the freedom of the individual, the personal liberty of the applicant, is preserved within this. The role of this amendment is merely to ensure that the process in the administration of justice is not clogged; the opportunities available; the provisos and requirements of natural justice are fulfilled and all the requirements are there, but what one finds now is that there is a balancing medium and this amendment seeks to ensure that the abuse which is taking place is prevented. Hon. Members talk about personal liberty. Personal liberty is protected because the writ of habeas corpus is not denied anyone in any way.

Mr. Speaker, it is part of our legal tradition and our constitutional learning, as indicated by the case of *Thornhill v. The Attorney General*, that this writ of habeas corpus is preserved in our law and this amendment in no way seeks to take that away, as the hon. Member for Diego Martin West seeks to imply from his contribution. *[Interruption]*

Dr. Rowley: Mr. Speaker, just for the record, and I thank the Member for giving way, at no time in my presentation did I indicate that the item before the House sought to take away the right for habeas corpus. I never said that.

Hon. G. Singh: I am very grateful for the clarification by the hon. Member for Diego Martin West.

Miss Nicholson: Keep "ponging" the man nuh.

Hon. G. Singh: Mr. Speaker, this Government is committed to the enshrined fundamental rights and freedoms. It is true that we are setting new standards for this country. *[Interruption]* With the performance of this Government with a mere four months in office. Because what we had, and the legacy of the previous administration, was a legacy of talk and no action; and when the hon. Member talks of new standards it is new standards of performance of the duties of the Government of Trinidad and Tobago. What we have done so far the hon. Member indicated in his contribution. He pointed to some achievements. We on this side have demonstrated that there is a nexus between what we say on the campaign and what we do in government. Our 1996 budget demonstrated that. We have lowered taxes, have ensured the protection of the poor through measures taken in my own ministry. *[Interruption]*

Mr. Hart: Bringing down the price of sardine, corned beef and curry.

Mr. **Speaker:** I wish to ask the Member for Caroni East to try to concentrate a bit on—

Hon. G. Singh: I am guided by the hon. Speaker, and I would not seek the irrelevancies of the Member for Diego Martin West. The Habeas Corpus (Amdt.) Bill is part of a whole package of legislation and when—the hon. Member for Diego Martin West talks about piecemeal amendment—all the legislation within the last few weeks is viewed within that context, it is clear that what we have is a package of legislation to deal with the issue of crime in this country, and the manner in which the criminal elements have proceeded to abuse the process of the courts.

When the hon. Member talks about a chain, it is the millstone of inaction of the former regime that is chaining their thoughts on this process. The hon. Member talks about fundamental rights and freedoms and it is the killing of Glen Ashby, when the Court of Appeal was holding its sitting, by the Opposition when it was in Government against all the principles of natural justice...

Mr. Imbert: Why did you not bring a Constitutional Motion?

Hon. G. Singh: Killing of Glen Ashby and that is a stain on the hands of the former Attorney General of that administration. *[Interruption]*

12.00 noon

Mr. Valley: Mr. Speaker, is the hon. Minister accusing the last government of murder?

Hon. G. Singh: Mr. Speaker, I am just stating the fact as it is, that Glen Ashby was hanged whilst the Court of Appeal was in session. That is a fact and learned jurists have commented on that issue.

It is that administration which sought to subvert the functioning of the Police Service Commission and police commissioner in the performance of his duties; and to subvert the role and function of public servants by using the National Training Board. It is those Members of the Opposition, when they were in government, that precluded a member of the press from interviewing a government minister for national security reasons.

Mr. Speaker, Members come with that kind of hypocrisy when it is clear, on the face of it, that this Bill seeks to ensure that the administration of justice is not delayed and to promote the administration of justice. It is indeed a debt of common sense if Members on the other side seek to bring any other interpretation to this Habeas Corpus (Amdt.) Bill.

Mr. Speaker, I therefore seek to commend this Bill to this honourable House.

Thank you.

Mr. Hedwige Bereaux *(La Brea):* Mr. Speaker, I rise to make a not too lengthy intervention in the debate on this Bill to amend the Habeas Corpus Act, Chap. 8:01 now before the House.

Mr. Speaker, before I get into the meat of my contribution, I want to thank the hon. Member for Caroni East for reading from that book on habeas corpus, but I am not so sure that he fully understood quite clearly what the debate is about. Nonetheless, I understand that the learned Attorney General indicated that this was a straightforward piece of legislation, but nothing is further from the truth.

This Bill to amend the Habeas Corpus Act is an important piece of legislation because it deals with an Act which is the very pillar and bedrock of freedom in civilized society, but the learned Attorney General has come around to calling all bills straightforward, short and simple. I was expecting him to say that this is a bill of 21 lines and 141 words because the legal luminary has come around to dealing with law in that fashion.

Mr. Speaker, it is a serious piece of legislation, notwithstanding the various statements which have been heard from hon. Members on both sides, and the exposition of the nature of the habeas corpus remedy—I crave your indulgence to deal with it in order to be able to properly develop the seriousness of the act which we are debating here today.

The habeas corpus remedy is an ancient common law remedy. As you know the writ is an order issued by a court or a judge directing one who holds another in his custody to produce the body of that person before the court for some specified purpose. This is really to determine whether or not the incarceration of that person is in accordance with the law. There had been other uses of the writ. We have in the criminal jurisdiction also habeas corpus, *ad testificandum* in order to bring a prisoner to testify; habeas corpus *ad respondendum* when you have a person who is already incarcerated and is required to face trial in respect of another matter.

The most important, however, is that used to correct violations of personal liberty by directing a judicial inquiry into the legality of the detention. This form of remedy originated and is still very hallowed in Anglo American legal systems. Yet even in some of the civil law countries so important and so successful has this remedy been in order to prevent the deprivation of liberty without due process that it has been adopted by the civil law countries.

As I said before, this is a common-law remedy. It is a remedy that existed even before statute. The actual origin of the remedy is shrouded in some uncertainty. In fact, even before the Magna Carta of 1215 there were writs doing the same job, seeking to bring persons imprisoned by inferior tribunals into the Kings Court. However, the modern history of the writ, as a device for the protection of personal liberty against official authority—and I repeat, official authority—dates back to the days of Henry II when efforts were made to employ it on behalf of persons—and this is interesting—imprisoned by the Privy Council—the very Privy Council that we go to today to get judgments as our final Court of Appeal, which is the judicial committee of the Privy Council. There were writs moving to bring persons in imprisoned, as a result of orders of the Privy Council to have their incarceration adjudicated upon.

Mr. Speaker, by the reign of Charles I, the writ was fully established as the appropriate process for curtailing illegal imprisonment by inferior courts. However, many of the procedures which we have today, as the learned Attorney General indicated, were incorporated in respect of criminal cases in the Habeas

Corpus Act of 1679 which authorized judges to issue the writ when the courts were on vacation and provided severe penalties for judges who refused to deal with matters concerning it. Therein we see the seriousness of this remedy.

12.10 p.m.

It is said that one may go with a writ of habeas corpus to a judge even if he is in his bathroom and he has to deal with it there. There is a penalty if he refuses to hear the affidavit. That is the history of the law. It goes back to the Habeas Corpus Act 1679 and to clause 39 of the Magna Carta which states *inter alia* that "no free man shall be imprisoned or disposed except by lawful judgment of his peers or the law of the land".

This writ of habeas corpus has been used as the underpinning of democracy in a number of countries. There was the Act of 1816 which dealt with civil cases. Those two Acts of 1679 and 1816 are incorporated in our Habeas Corpus Act 1841 Chap. 8:01. This is the Act we seek to amend today. Let us see what this Bill seeks to do. The explanatory note says:

> "The Bill seeks to amend the Habeas Corpus Act, (Chap. 8:01) by providing that only one application for a writ of habeas corpus may be made by or in respect of any person to a court or a judge unless a subsequent application . . ."

The law as it stands today permits a prisoner or somebody on the prisoner's behalf to swear to an affidavit and go before a judge given certain circumstances, and on some ground indicating that the person be brought before the judge to determine whether his incarceration is proper. It is possible that if one judge refuses to grant the wish or prayer of that affidavit he can go from judge to judge even on vacation, now that we have increased the number of judges, he can go to as many as 16 judges. This is a first instance.

One may say as the learned Attorney General said, that may be deemed an abuse of the process, but that is not the case. The case is that because of the numerous breaches of liberty of the subject, there was the imprisonment of a number of persons under those same systems. Criminals were imprisoned by petty officials, sheriffs such as in Robin Hood, and tax collectors, in a number of ways, and because of these breaches it was felt that there was need to balance the liberty of the subject against the right of the state. In order to do so, this particular remedy was allowed to be utilized in that manner.

There was no appeal except as was indicated in certain cases. This Bill says that after the affidavit is sworn and the evidence is given, one cannot go to another judge upon the same arguments, evidence and legal grounds. The learned Attorney General was very specific and also correct in saying that additional evidence is not merely additional to or different, but evidence which the prisoner or the person swearing the affidavit on behalf of the prisoner could not have put forward at the time of the application. If it were possible that the prisoner or the person swearing the affidavit on behalf of the prisoner could have put forward the arguments at the time of the first affidavit, and negligently or inadvertently did not put forward those arguments, he still cannot go to another judge.

This Act also gives the right of appeal in respect of the prisoner if the writ was not granted. However, the state can also appeal, whereas previously, the prisoner had the ability to go from judge to judge until he found a sympathetic one. If he got away—to use a common statement, "bush crack, man gone"—he would not be able to be incarcerated again, or if he applied for bail, he would not be brought back.

This Bill not only seeks to take away the right of the prisoner or the person improperly incarcerated from going from judge to judge, but also when he is released, to give the state the right to appeal. I will not deal with whether that should or should not be at this time.

The learned Attorney General recognized that he was treading on some dangerous ground so then he came with section 8 and said that an appeal under section 7 shall not affect the right of the person restrained to be discharged in pursuance of the order under appeal, unless an order under subsection (2) is enforced at the determination of the appeal to remain at large. He recognized that there is or likely to be a little unfairness. He said that even though a prisoner may have been freed by virtue of the writ of habeas corpus, the fact that the state has appealed would not cause him to be incarcerated further.

Additionally, he also stated in subsection (2) that notwithstanding subsection (1) in the case of an application for a writ of habeas corpus relating to the criminal cause or a matter, but for the decision of the court alone, the appellant would be liable to be detained. Immediately after that decision the respondent may give notice that he intends to appeal and the court may make an order providing for the detention of the appellant or for bail as the case may be. The learned Attorney General recognized that he was taking something away from the citizen.

Mr. Speaker: Hon. Members, the sitting of the House is suspended until 1.30 p.m.

12.21 p.m.: *Sitting suspended.*

1.34 p.m.: *Sitting resumed.*

Mr. Hedwige Bereaux: Mr. Speaker, please tell me how much more time I have.

Mr. Speaker: I have been advised that you have used 18 minutes of your time.

Mr. H. Bereaux: Before we took the lunch break, I was indicating that the remedy by writ of habeas corpus was a peculiar one; that it was very flexible and versatile, having regard to the fact that a person, or someone on his or her behalf, could approach the court on several occasions as long as there were judges that he or she had not yet approached.

I likened the writ of habeas corpus to the queen in a chess game—very versatile and fragile, but if one loses it one loses the game. So, too, if one loses that right of habeas corpus, in Trinidad and Tobago or any democratic society, one loses freedom of the individual.

I was saying that the hon. Attorney General, in bringing the additional amendment today, recognized that he was in fact taking away something from the citizen when the amendment provided for the right of the state to appeal.

I want to go over some of the situations in which the right to the writ of habeas corpus has been abridged. I recall that, in England, the right has been taken away from time to time. The first occasion we have of this in the United States—it was not the United States in those days, but the Colonies—was when King George III, after the Boston Tea Party, took away the right. The United States Constitution states that the right of habeas corpus shall not be suspended unless when, in cases of rebellion or invasion, the public safety may require it. In fact, Abraham Lincoln tried to take it and he ran foul of Chief Justice Taney in the case of Ex parte Merryman. Chief Justice Taney**,** indeed, vigorously contended that the power of suspension resided only in Congress.

I want to state the importance of the writ and how it is utilized, for the benefit of the population. Frequently a writ is requested on behalf of one in police custody to require the police to either charge the arrested person with an offence

or release him; it is sought to obtain release of the accused prior to trial, on the ground that the bail set is excessive; it is sought on the expiration of a sentence of imprisonment by one who is unlawfully detained after such expiration. This one may be of interest to the Attorney General. A proceeding in habeas corpus may be instituted to challenge the validity of a warrant of extradition. Was this intentional to limit the right of a well-known individual to receive a writ of habeas corpus? As I said before, the competing claims to the custody of a minor may be adjudicated. Even in the case of a person who has been detained in a mental hospital, he may get a writ of habeas corpus to show that he has recovered and is completely sane.

We saw that the law as it stood in England at the time was incorporated by Act No. 11 of 1841 which became the law of Trinidad and Tobago. The rights under the common law were also incorporated.

I noticed that when the Attorney General mentioned something about the Constitution of the Republic of Trinidad and Tobago, he studiously left out certain portions, or failed to mention them. Maybe this was because he did not think they were relevant, but there is a right to the writ of habeas corpus enshrined in the Constitution. I want to quote section 5 of the Constitution which says:

> "Except as is otherwise expressly provided in this Chapter and in section 54, no law may abrogate, abridge or infringe or authorize the abrogation, abridgment or infringement of any of the rights and freedoms hereinbefore recognized and declared."

1.40 p.m.

> "5(2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not—
>
> (c) deprive a person who has been arrested or detained—
>
> (iv) of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful;"

In the Constitution of the Republic of Trinidad and Tobago which is the supreme law of the land, the right to the writ of habeas corpus is enshrined. I go further, in 5(2)(h) it says:

> "deprive a person of the right to such procedural provisions as are necessary for the purpose of giving effect and protection to the aforesaid rights and freedoms."

Let us examine what was the nature of the remedy of habeas corpus when this Constitution became the law of Trinidad and Tobago in 1962. The nature of that remedy was that an imprisoned person could get a writ of habeas corpus, by affidavit or someone could get it on his behalf or he could get it by himself, and he could go to each court and to each judge until he had exhausted all of them. That is what he had in 1962. But of course he did not have a right of appeal, nor did the state have the right of appeal against him in the event that a judge had released him. The state did not have the right of appeal and he had the right to go from judge to judge with this same evidence. He had the right to exhaust the number of judges.

What does this Bill seek to do? This Bill seeks to remove the right for him to go from judge to judge until he has exhausted the number of judges. Insofar as the Bill removes from him the right to move from judge to judge, it is infringing the right which he had in 1962 under this Constitution. *[Interruption]* Mr. Speaker, I have become accustomed to hear, when the important points are raised in this House, the learned Attorney General scuff at them, only to return surreptitiously later to take the advice which he got freely.

The process by which the writ of habeas corpus is acquired, the ability to go from court to court, is inextricably bound to the right itself. If there is any diminution of the prisoner's ability, or his lawyer's on his behalf to exercise all those opportunities then that is, in fact, an abridgment, an infringement, and an abrogation of his right. Therefore, the Bill before this House seeks to abridge the right enshrined in the Constitution in respect of a citizen's ability to get the remedy of habeas corpus. I will go further, Mr. Speaker.

The point was made by the Member for Diego Martin West; I will read section 4 of the Constitution which states:

> "It is hereby recognised and declared that in Trinidad and Tobago there have existed and shall continue to exist, without discrimination by reason of race, origin, colour, religion or sex, the following fundamental human rights and freedoms, namely—

(a) the right of the individual to life, liberty, security of the person and enjoyment of property and the right not to be deprived thereof except by due process of law;"

Mr. Speaker, the Attorney General would say that he has not taken away the right of habeas corpus from anyone, that they have been given the right to appeal. They have been given the right to appeal but there are elements of the right to habeas corpus which this Bill seeks to remove. Once they have removed any element of it, unless they can bring it within the ambit of section 6 of the Constitution, this Bill would require a special majority. As I said, the right to liberty is protected by due process which gives the prisoner the right to go before a judge by affidavit.

1.50 p.m.

When that right is limited in any way and it is quite clear that there is an attempt to limit the right to go before a judge by saying that the only way one can go before another judge, if one has been refused the writ by one judge, is by production of additional or fresh evidence. Clause 6 says:

> "Notwithstanding any law to the contrary where an application for a writ of habeas corpus in a criminal or a civil matter has been made by or in respect of any person, no such application shall be made again by or in respect of that person on the same grounds, whether to the same court or judge or to any other court or judge, unless fresh evidence is adduced..."

Mr. Speaker, I want to remind the learned Attorney General when he said, "not merely additional evidence—additional to, or different, but evidence which he could not have put forward at the time of the application," that we are talking about somebody who is in jail, and it is going to be difficult to get additional or fresh evidence. Over and above that, this Bill in its presentation is flawed because it says in the Constitution that a Bill which seeks to abrogate, infringe or abridge any of the provisions of section 4 or 5 needs to be passed in a certain way.

Section 54 says:

> "Subject to the provision of this section, Parliament may alter any of the provisions of this Constitution."

In fact, that is what this Bill seeks to do. It continues:

> "...or (in so far as it forms part of the law of Trinidad and Tobago) any of the provisions of the Trinidad and Tobago Independence Act 1962.
>
> (2) In so far as it alters—(a) sections 4 to 14...
>
> a Bill or an Act under this section shall not be passed by Parliament unless at the final vote thereon in each House it is supported by the votes of not less than two-thirds of all the members of each House."

Mr. Speaker, sections 13 and 14 also have a relevance—section 13 of the Constitution says:

> "(1) An Act to which this section applies may expressly declare that it shall have effect even though inconsistent with sections 4 and 5 and, if any such Act does so declare, it shall have effect accordingly unless the Act is shown not to be reasonably justifiable in a society that has a proper respect for the rights and freedoms of the individual.
>
> (2) An Act to which this section applies is one the Bill for which has been passed by both Houses of Parliament and at the final vote thereon in each House has been supported by the votes of not less than three-fifths of all the members of that House."

This Bill itself must state that it is intended to be contrary to the relevant sections of the Constitution.

Somewhat anticipating what the learned Attorney General is likely to say, if I may be permitted; there is nothing in sections 4 and 5 which shall invalidate an existing law, an enactment that repeals and re-enacts an existing Act without alteration; an enactment that alters an existing law, but does not derogate from any fundamental right guaranteed by this chapter, in a manner in which or to an extent to which the existing law did not previously derogate from that right. I have shown that it derogates from the ability of the prisoner to come before a judge with the same evidence and then go before another judge and therefor it further derogates because it now gives the state—whereas as the law stands—a person who would have been released as a result of a writ of habeas corpus was not under threat to have the state appeal, we see now that that is what this Bill seeks to do and if that is what the Bill seeks to do, it is derogating from a right. No statement which tells me that it is still due process—it is due process with a

difference—I want to show some examples because I understand the difficulty in which my learned Friends opposite have now found themselves.

Let us say for instance, inherent in the right to life is that I have the right to consult a doctor and if one doctor cannot cure me I can go to another. If a law is passed which says yes, you could go to a doctor, but then if that doctor does not cure you, you will have to go to a specialist—Mr. Speaker, the Members are laughing, what I am saying is, if the law says you now have to go to a specialist and if you cannot go to a specialist then you have to remain sick—you have derogated from the right to life. This is simple common-sense and jurisprudence; it is not metaphysics or rocket science. Those persons who have not been schooled in jurisprudence tend to understand—Mr. Speaker, I recognize that the statement which I am making has eluded the Member for Oropouche, but I can well understand, he is in a realm to which he is not accustomed.

As I was saying take for instance the right to enjoyment of property, a right which says that if you are deprived of your property you are free to go to court—take it to the High Court then if you lose there you go to the Court of Appeal and in certain circumstances to the Privy Council; if you remove the right to go to the Privy Council you have derogated my right to enjoy property. I am saying the situation exists that in Trinidad and Tobago—I was looking at section 6 again just to ensure that the position is as stated do not—and section 6(3) says:

> "alters" in relation to an existing law, includes repealing that law and re-enacting it with modifications or making different provisions in place of it or modifying it;"

2.00 p.m.

Mr. Speaker, I have heard a number of Members on the other side appearing not to take this matter seriously, but I want to say that the right to habeas corpus is an essential pillar of the freedom of the individual, and hence, the main pillar in our democracy. Any attempt to abrogate it, or in any way to infringe or derogate from it, in fact strikes at the heart of our democratic process.

The Member for Diego Martin West made mention of statements in respect of persons who were alleged to be wanting to overthrow the Government. These have been charges made against politicians from time to time, charges that have been trumped up. The only secure method to ensure that the basic rights and freedoms—I remember the Member for Couva South—are not misused or abused

by the executive is to ensure that there is no derogation of the right to habeas corpus.

Additionally, if the hon. Attorney General and the Government have any information which they believe would cause—for good reason—us to want to alter the Habeas Corpus Act, or to interfere with the rights under the Constitution, they must tell us what it is, and why they want to do it. What are the serious reasons which have caused them to want to do it? They must consult with the Opposition and let us look at it and be able to face the problem head-on, and if necessary, after having convinced us—they could try that, they may be successful—they may then be able to receive our support, not in this back door sort of fashion, but in the proper way with a proper Bill addressing the problem.

What can happen is that this Bill, and the way it is couched here, I can see my learned Friends opposite believe they can pass it with a simple majority. They have brought the Bill in a way to pass it by a simple majority. We will definitely vote against it, because we will not vote to take part in a nullity.

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

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

Question put and agreed to.

Mr. H. Bereaux: Mr. Speaker, as I was saying, that if it is the Government continues on the path which it has improperly taken and tries, or purports to pass this Bill with a simple majority, all that will happen, is that they will pass the Bill and insofar as it adds to the right of habeas corpus, and I mean insofar as it gives the right to the prisoner to appeal, it will take effect. But, insofar as it removes his right to go from court to court it will be a nullity and those are the provisions of the Constitution.

I am saying, that the proper thing to do would be for the Members—the hon. Attorney General, the proper one—to choose to reply. They could then indicate one of the reasons for believing that this Bill is so urgent and tell us the mischief, and not just the procedural mischief. Tell us the mischief which it seeks to address and we are likely to consider it and make serious amendments, because there are certain words and provisions which must be put into this Bill before it can be passed and it takes effect.

Each time we oppose a measure brought by the hon. Attorney General and Member for Couva South, his echo and that of the hon. Member for Caroni East is about drug lords. Please, we will not be deterred. *[Interruption]* We, and this Member of Parliament, will not be deterred by any statement made about drug lords in order to cause us to do what we are certain is incorrect. I am certain that if the hon. Attorney General were to take the advice of proper counsel—you see the situation exists today where the job of Attorney General does not pay as much as in his previous practice, so he is unable to fax to London for advice.

As I pointed out before, Mr. Speaker, it is not a question of winning cases, but it is a question of proper jurisprudential analysis of a situation. On that ground, this Bill is definitely a Bill which requires a two-thirds majority and it must contain certain words as determined in the Constitution if it is to take proper effect.

2.10 p.m.

Mr. Speaker, regrettably, notwithstanding some of the reasons the Attorney General has for wanting to bring this Bill but which he has not yet made public, maybe, for fear of reprisal from his former clients—and I support him if that is what he wants to do—I am not calling anybody's name, I am not getting into that—or maybe to get rid of our future presidents; I do not know.

I am saying that the key is to address this question of habeas corpus based on proper legal assessment of the law and the Constitution.

Thank you.

The Minister of Legal Affairs (Hon. Kamla Persad-Bissessar): Mr. Speaker, may I take this opportunity to let the Member for La Brea know that we on this side take fundamental rights and freedoms very seriously.

Let me assure him that we on this side are committed to preserving the pillars of democracy, and, unlike his colleague from Diego Martin West who stated very clearly when he started off to speak, "I will begin by identifying my own area of specialty which is not law"—he made it very clear that it was not in the area of law—the Member for La Brea certainly is in the area of law.

I want to take the points that they have both made because both their contributions concentrated on what they perceived to be an attack on one of the pillars of democracy and that has to do with the application for a writ of habeas corpus. They have spent much time in this House seeking to try to persuade this

House, and others, that the Bill which is before the House to amend the Habeas Corpus Act is one which requires a special majority and that this Bill is attempting to abridge and abrogate fundamental rights.

Any cursory reading of section 4 which deals with fundamental human rights makes it very clear that the right that is protected is the right to liberty and the fact that the person should not be deprived of liberty without due process of law and so forth.

After listening to both Members on the other side, I am at a total loss to see, or to understand from what they have said, where any part of the Habeas Corpus (Amdt.) Bill deals with a deprivation of liberty. There is nothing in this Bill that deals with depriving a person of their liberty.

In fact, what the substantive Act—the Habeas Corpus Act—and the amendment seeks to do, is to deal with the procedure. It is an amendment with respect to procedural steps that will be taken to access a writ of habeas corpus.

The Member for Diego Martin West, as I said, had indicated that his specialty is not law but, with the greatest respect for both Members, this Bill, in my respectful view, in no way abridges, abrogates or attempts to abridge or abrogate any fundamental right as enshrined in the Constitution.

Mr. Speaker, it is so tragic—and indeed it could be hilarious—that we sit in this Parliament and hear those on the other side stand up to defend service commissions when everyone in this Parliament knows that it was the leader of the other side who attacked service commissions and said to get rid of them.

Mr. Manning:—Tobago East.

Mr. Robinson:—their usefulness.

Hon. K. Persad-Bissessar: Mr. Speaker, in my respectful view, that is the height of hypocrisy. That is an attack on independence and fundamental rights. It is very hypocritical for those Members to accuse this side of the House of attempting to deal with service commissions.

Mr. Sudama: He put the Speaker under house arrest.

Hon. K. Persad-Bissessar: The Member for Diego Martin West spoke about tampering with something that is enshrined in our Constitution under the recognition and protection of fundamental human rights and freedoms—and he said “tamper”—and that this requires a three-fifths majority. Throughout his

contribution, he attempted to paint this side of the House, and indeed he went so far as to say that this Government is a fascist government led by a fascist person. I take the greatest objection to that, and I am sure those on this side will totally agree that if there is any fascism, it is not from this side of the House, it has to come from another side.

Mr. Sudama: The Member for San Fernando East.

Hon. K. Persad-Bissessar: The Member for La Brea has indicated on several occasions that this amendment is seeking to give the individual the right to appeal. The applicant, has always had the right to appeal a decision in an application for habeas corpus. What the amendment seeks to do, is to give the state the right of appeal. The state did not have the right of appeal.

If one wants to understand the mischief, as he said, which the amendment is seeking to correct, let me remind him that one of the most famous cases in Trinidad and Tobago—the matter of the Jamaat Al Muslimeen—had to do with an application for habeas corpus.

In that matter, the applicants came to the High Court by way of an application for a writ of habeas corpus to have them released from custody. The High Court ruled that it had no jurisdiction in the matter and the applicants appealed to the Court of Appeal. They lost at the Court of Appeal level and they went to the Privy Council.

Hon. Member: Who was their lawyer?

Hon. K. Persad-Bissessar: The Privy Council determined that the High Court did in fact have the jurisdiction to hear and determine an application of habeas corpus in terms of those applicants. When the High Court heard the application for that writ of habeas corpus, it granted the release of the applicants. So at that time and up to now, the state has no right of appeal against a decision of a High Court judge. This is what this amendment seeks to do.

I am very surprised to hear the Member for Diego Martin West ask what is the importance of this matter when I am informed by the Attorney General that the previous Attorney General under the PNM's administration gave instructions to the Law Commission to prepare habeas corpus amendments because he recognized the mischief that was intended to be corrected. Again, I say, it is hypocritical to stand and say that one does not understand why this Bill is before the House.

Mr. Robinson: It is characteristic.

Hon. K. Persad-Bissessar: Mr. Speaker, the right of the state to appeal is what is new with respect to the amendment.

The Members have indicated that this particular piece of legislation is based on an 1841 Ordinance. It came for amendment only once before, in 1969 or 1979. So that because the law has been there from 1841—and it has been working well, as one of the hon. Members on the other side has said; with the greatest of respect, as I have already said, I do not agree that it has been working well, based on the experience in that particular case and others—does not necessarily mean that it is good. In fact, one of the difficulties with many of the laws in this country is their antiquity and they need to be revised and revamped, and that is what is happening with this Bill. An 1841 piece of legislation, what one can only call, as the Member for Tobago East reminds me, an anachronism in the law.

If we are serious about dealing with the administration of justice in this country, the civil justice system and the criminal justice system, we must go back to these pieces of legislation and bring them forward and update them. That is what we are doing. Then the other side says—and they have been doing it for the past month—that we on this side are dealing in itsy bitsy pieces of legislation.

2.20 p.m.

Mr. Speaker, I was so amazed this morning when I heard the hon. Member for La Brea get up in this House—you know I can only think that he has very little to do and, obviously, very little to say. He stood up in this House and his comment was: "This Bill has 41 lines and 129 words." Am I to understand that he sat down and counted every word in the Bill? *[Laughter]* Mr. Speaker, if I may remind the hon. Member, through you, that quality and substance does not depend on length. *[Much laughter]*

Mr. Manning: On what does it depend?

Mr. Robinson: On an abundance of skill.

Hon. K. Persad-Bissessar: It depends on an abundance of skill. So to tell us, Mr. Speaker, with respect to the Member, that the Bill is 149 words and so many lines—

Mr. Panday: He must have counted twice to be sure.

Hon. K. Persad-Bissessar: He had to be sure. It says nothing, with respect,—

Mr. Bereaux: Would the Member give way?

Hon. K. Persad-Bissessar:—for the substance of the thing. *[Laughter]* No, no, Mr. Speaker, through you, they will have their chance of reply.

Mr. Panday: He wants to divert you, go ahead.

Hon. K. Persad-Bissessar: So, Mr. Speaker, here we are with a complaint from the other side that this amendment is seeking to take away a person's ability to go from one doctor to the other, was the example, but really saying that one is not able to go from court to court to court. I want to make it very clear, Mr. Speaker, that the amendment does not take away the applicant's right to liberty. I have said it before and I want to repeat that, Mr. Speaker. The amendment allows any person, be it in a civil matter, as the Member for Diego Martin West has indicated, the application for habeas corpus is used in a wide range of civil matters as the Member for La Brea has said to deal with children, old people and insane people. It is also used by persons under criminal charges or in police custody who may not yet have been charged. It is used in a wide range of cases, civil and criminal, Mr. Speaker. What the amendment does is to say that one will not abuse the process of the court by bringing a multiplicity of applications; and this is where we come back to the question of dealing with delays and clogging of the administration of justice in this country.

Mr. Panday: That is right.

Hon. K. Persad-Bissessar: That is important because the amendment does not preclude any applicant, any individual, from coming to the courts. He must make his application. If it is that he fails, he has the right to appeal. If it is that he fails, he has another right which this amendment gives him. That right is to come back to the High Court, but one must bring fresh evidence. Why do you want to *[Interruption]* over and over. Why does one want to use the judicial system, a different judge adjudicating on the same issue, one after the other? What he said was 'shopping for a doctor who could cure you'. You know, the Members are asking, Mr. Speaker, what about if he has an incurable disease, and he is shopping for a doctor? Or he has "foot in mouth" disease.

Hon. Member: Just like what you have.

Mr. Sudama: Or he has the same disease like Bereaux.

Hon. K. Persad-Bissessar: Mr. Speaker, the amendment allows one to come back to a judge of the High Court to make his application with fresh evidence.

That is totally feasible, totally reasonable, Mr. Speaker. It is to save judicial time, which we understand is clogged and wasted.

Mr. Speaker, as indicated, the right to appeal, which is the other part of the amendment, can now be exercised by the state. Just recently, Mr. Speaker, there was a big furore in this country when certain sentences were passed that appeared to be unduly lenient. Many groups in the country came out in force against those sentences and they were saying the state should be given the right of appeal in matters where there is an unduly lenient sentence. Many on the other side supported that, Mr. Speaker. The public spoke about that and supported that. What is so wrong now, to give the state the right to appeal where no right is being lost? One is not going to be deprived of one's liberty.

Look at the second part of the amendment which allows, by clause 8, "Release on appeal", if you look at the marginal note there.

Mr. Valley: Marginal notes are not part of the Bill.

Hon. K. Persad-Bissessar: I am referring you to it so that you can find the clause that I am speaking of, sir. Release on appeal. Add the following section 8. That the purport of this section 8 here is that one is not going to take away his liberty. If one reads it carefully one will see that he will remain at large, regardless of the decision on appeal. If that was the decision of the court, subject to sub-section (2) of 8.

Mr. Hinds: Which interferes with that.

Hon. K. Persad-Bissessar: Mr. Speaker, I fully support this Bill. The mischief it is intended to deal with, the deficiency it is intended to cure is a real one; and I am saying that the other side, at least through their former Attorney General, was very aware of it and this is why he gave instructions for a Bill to amend the Habeas Corpus Act to be prepared. Unfortunately, he did not follow up with it and monitor what was happening. It took this administration, Mr. Speaker, to pick it up because this administration, as we said time and time again is very concerned to deal with the administration of justice in this country and improve the criminal and civil justice systems.

On the last note which is, again, back to itsy-bitsy pieces of legislation, Mr. Speaker, each of these Bills deals with some deficiency in the law. The ones we have had before and several on the Order Paper. Whilst they may seem very minor to those on the other side, with the greatest of respect, Mr. Speaker, for our criminal justice system, for our civil justice system and for the administration of

justice in this country, they are sorely needed. I commend this Bill to this House, Mr. Speaker, and I thank you very much. *[Desk thumping]*

Mr. Colm Imbert *(Diego Martin East)*: Mr. Speaker, the Members on the other side have sought to defend the fact that they have not brought this Bill in a manner to require a two-thirds, or special majority. They have sought to defend that error, for want of a better word, on their part by trying to make a case that this Bill before the House does not infringe the fundamental rights of persons under our Constitution.

But I noticed the Member for Siparia dealt with section 4 of the Constitution. I noticed that the Member for Caroni East made reference to Section 4 of the Constitution; and it is passing strange that the whole question of habeas corpus is referred to in section 5 of the Constitution. It is very interesting that the learned attorneys on the other side did not refer to the relevant section of the Constitution which is section 5 (2)(c)(iv) and I shall read for the benefit of the learned attorneys on the other side.

2.30 p.m.

Section 5 of the Constitution states:

> "Except as is otherwise expressly provided in this Chapter and in section 54, no law may abrogate, abridge or infringe or authorize the...of any of the rights and freedoms hereinbefore recognized and declared."

It goes on:

> "*(c)* deprive a person who has been arrested or detained—
>
> *(iv)* of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful;"

This is the crux of the matter. Section 5(2) indicates quite clearly that:

> "Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not—"

I go back to *(c)*:

> "deprive a person who has been arrested or detained—

> (iv) of the remedy by way of habeas corpus for the determination of the validity of his detention and for his release if the detention is not lawful."

This is the crux of the matter. At present a citizen of Trinidad and Tobago—any person for that matter—has a right under existing law to go from judge to judge seeking release under a writ of habeas corpus. The parent law is protected by a special majority of Parliament and this Bill before the House seeks to remove that present right of an applicant to go from judge to judge seeking release under a writ of habeas corpus. It is in the Explanatory Note of the Bill which states that:

> "The Bill seeks to amend the Habeas Corpus Act...by providing that only one application for a writ of habeas corpus may be made by or in respect of any person to a court or a judge..."

And it goes on about fresh evidence. At present a person can go from judge to judge seeking release from detention under a writ of habeas corpus. Therefore, I think the Members on the other side should consider whether by removing that right they are in fact, removing certain fundamental rights of persons in Trinidad and Tobago.

Mr. Speaker, I am simply asking them to consider it, but more importantly, under present law no appeal is possible if a person is released under a writ of habeas corpus. That is a right which a person has at present. This Bill, if passed and made into law, will remove the whole concept that if one is released on a writ of habeas corpus one cannot be re-arrested and detained for the same offence. That, in my opinion, is a fundamental right. At present, one has a fundamental right not to be re-arrested and/or re-detained if one is released under a writ of habeas corpus. This Bill, in my respectful view, seeks to remove those two existing elements of our law. I am simply asking the other side to consider these facts since they do not appear to have considered them at all.

This is why we on this side are saying that for the avoidance of doubt this Bill should be drafted to allow a special majority. We are not saying, as implied by the Member for Siparia, that we are opposed to this whole question of appeal on habeas corpus. We are not saying that. We are simply saying that if the Government wants to do that, to take away the right which a person has at present, not to be re-arrested once he is released on habeas corpus, then it should bring a bill that requires a special majority which we would look at and determine

whether it is consistent with a person's right to liberty as balanced by the right of a society engaged in the administration of justice and due process, and whether the requisite balance exists. If we on this side believe that there should be a provision where the state can appeal a writ of habeas corpus, then I am certain my colleagues on this side would have no objection to approving properly drafted legislation of that nature.

The Government has brought this Bill that introduces certain clauses and, in our view, they have not presented an adequate case to show why we should remove the right of the person to go from judge to judge. They have produced no evidence that this process has been abused, and the point made by my colleague, the Member for Diego Martin West, that a person may feel he did not receive proper redress from the first judge that he went to. A person may genuinely believe that and may wish to go to a second judge. Nobody is saying a person should go to 16 judges. I doubt that is the intention of this law.

If one looks at the origin of the whole concept of habeas corpus—which I would do shortly—the purpose of allowing a person to go from judge to judge is not to allow them to go to 16 judges. I know that there was amendment to the habeas corpus legislation in the United Kingdom recently, but, for example, if there are 300 or 3,000 judges in another country, the intention of such privilege cannot be to allow one to go shopping around until one finds a judge who would release them on a writ of habeas corpus. That is not the intention, but certainly, it is to allow a person at least one more bite of the cherry. If one feels that on the first occasion they have not received redress from the judge, one should be allowed to go for a second bite of the cherry.

This is my view of the intent of the present legislation. That is why that legislation is in there. No one is saying that we necessarily agree or disagree with the existing provision, but I am merely saying that my opinion of the existing law is that a person should be allowed at least more than one opportunity to go before a judge seeking release on a writ of habeas corpus. As my colleague, the Member for Diego Martin West, has quite correctly pointed out, this legislation deals with the concept of liberty. People in this country have protection from a number of things under the Constitution. One of the most important aspects of our constitutional rights is the right to freedom.

If legislation is amended in a particular way to restrict persons' right to liberty and personal freedom then it could lead to the opportunity for unscrupulous persons to abuse the legislation and deprive persons unjustifiably of their liberty.

This brings me now to the whole question of how habeas corpus arose. It came out of the English experience, Mr. Speaker—as a distinguished lawyer, you would know—and in its early origin it really was utilized by the king to compel his officers to exercise their functions properly. That was the origin of habeas corpus.

In the 17th century, members of the parliamentary opposition—and this is the crux of this matter in England—were imprisoned on command of the king and the only way they could seek release was by a writ of habeas corpus. It is from that experience of the imprisonment of members of the parliamentary opposition that led to the constitutional importance of the whole concept of that classic British guarantee of personal liberty.

I want Members to understand the origins of this Act. A monarch in England locked up members of the parliamentary opposition and they sought release through a writ of habeas corpus.

2.40 p.m.

Another famous example was in the reign of—

Mr. Valley: On a point of order. The Member is imputing improper motives to the Opposition. She is saying that in 1990 the Opposition locked up the Government.

Mr. Speaker: The Member on his feet is talking. Anybody else who is saying anything else is not really supposed to be saying it, and I do not always hear it. If indeed you are questioning a point of order on what the Member is saying, I will deal with that. The asides, I do not always hear.

Mr. C. Imbert: Another very pertinent example of the application for a writ of habeas corpus was during the reign of Charles I in Great Britain. Sir Thomas Darnel demanded his freedom on the ground of illegal detention. In this case the King's Bench held the fact that Darnel being held by the royal command was quite sufficient, as no cause of detention was expressed. It would be otherwise if an insufficient cause of commitment was expressed, or if it appeared that the Crown intended to persist in refusing to show cause and thus to inflict perpetual imprisonment. There was the whole question of the King in England imprisoning somebody and seeking to prolong the period of imprisonment for no good reason. This is how the writ of habeas corpus has arisen.

One is not saying that the whole question of appeals is irrelevant. I will come to that. I am very grateful that the Member for Siparia has raised what I would say is the most famous case of habeas corpus in Trinidad and Tobago. I will show how that case is relevant to this. Let me go back.

In the reign of Charles II in 1676 a citizen of London, Mr. Jenkes was arrested for delivering a speech at the Guildhall urging the summoning of a new Parliament—again, it is related to Parliament—and committed to prison by the Privy Council. The Justices refused him bail on the pretence that he had not been entered in the calendar. Lord Chancellor refused an application for habeas corpus because it was vacation and the Chief Justice of the King's Bench made so many difficulties that Jenkes lay several months in prison before being released on bail. You see how important this whole concept of habeas corpus is.

That case of Jenkes in 1676 excited popular sympathy in England and led to the first Habeas Corpus Act in 1679. Prior to that habeas corpus was a right in common law, but in 1679 in the United Kingdom the first Habeas Corpus Act was passed because at that time the Privy Council detained someone and gave all sorts of spurious reasons why the person should not be released. This particular Act applies only to persons imprisoned for supposedly criminal matters.

Its general effect is that a person who has been imprisoned for a criminal matter may apply to the court for a writ of habeas corpus and if he/she can show that there is any ground to show that the prisoner is wrongfully imprisoned, then the writ of habeas corpus is issued. The writ requires the person detaining the prisoner to bring him in person before the court, and inform the court of the grounds of his detention. Again, this is the origin of habeas corpus. If a person believes that he has been wrongfully arrested and there is no ground for the detention he/she can apply for a writ of habeas corpus which commands the authorities to bring the person and show cause why he/she should be detained continuously. If the crime was felony or treason, at that time the law would make provisions for a speedy trial. If it were misdemeanour it would allow release subject to bail.

I think it is necessary to give the Parliament some history on this matter because unfortunately, the Attorney General, the Member for Caroni East and the Member for Siparia have opted not to look at the history and origin of habeas corpus which started off as I said, with the arrest and unlawful detention of members of the opposition in the British Parliament.

Another aspect of the Habeas Corpus Act was that if a person did not make proper returns or did not deliver to a prisoner within six hours after demand a true copy of the warrant of commitment, the officers in question would have been fined. If public officers are negligent and do not provide information to the arrested person within six hours of his detention, they are subjected to serious fines. Again it is a very important aspect. It shows how the British jurisdiction has treated this matter. As you are aware, many of our laws have been taken from the British jurisdiction.

Improvements were made over time. A new Habeas Corpus Act was passed in 1816 which improved the Act of 1679. It provided for a writ of habeas corpus on matters where someone is detained even if there were no charge. That is another aspect. In the past, persons have been detained without any charges pressed against them. Again, when one goes into the literature some of the examples given are amazing. Listen to this! One woman was arrested in the spinning-house of the University of Cambridge for walking along with a member of the university. Can you imagine that? The remedy of habeas corpus had to be used to get her freedom. This whole question of personal liberty is very far reaching. In this particular case the court held that the Vice-Chancellor of Cambridge had no authority to imprison anyone for walking with a member of the university. It shows the development of the law and the necessity to ensure that persons' fundamental right to liberty is protected.

In addition, there is another case to deal with the slave trade. Again, it is very relevant. In that particular judgment dated 1827, Forbes v. Cochrane, it was held that slavery was illegal in England or in a British ship, so that even if a slave were enslaved in another country but brought on a British ship to British waters, the slave could have applied for a writ of habeas corpus to get his/her release. It shows how important this habeas corpus matter has been throughout history.

2.50 p.m.

I have shown you that a woman was arrested for simply walking hand-in-hand with someone from Cambridge University. She was locked up and deprived of her liberty by the Vice Chancellor. As I said, the Habeas Corpus Act in England allowed slaves to be released if brought to England on a slave ship, even if slavery was legal in the country from which the slaves came.

I think we must not take lightly this whole question of liberty and fundamental rights. As a Member of Parliament, I hope that no Member of Parliament is ever arrested on spurious charges at any time and denied his liberty

because the whole habeas corpus section of the Constitution has been abridged, abrogated or altered to deprive persons of existing rights.

The Member for Siparia made reference to the case involving the Jamaat al Muslimeen. I would say this is one of the more famous cases where persons were released because of a writ of habeas corpus. This case is particularly relevant—I am not saying relevant to particular individuals—because the individuals involved were released by the High Court based on a writ of habeas corpus. The judge found that there were no grounds for their detention because of the existence of a document—I think it was drafted by the Member for St. Augustine, or he had some hand in its drafting—an amnesty document which, in the opinion of the learned judge, was valid. Persons were released because the amnesty absolved them of all of their criminal actions in this particular case.

At that time, there was general consternation in the country because the citizenry was very upset that persons who had committed acts of treason, murder and other violent crimes could be released on what citizenry viewed to be a technicality. In our existing law, there is no appeal against a writ of habeas corpus. If the Member for Siparia had not jumped the gun, she would have understood that I am not saying that there should not be an appeal against a writ of habeas corpus. I will use this particular example to show how there was a wide opinion in this country that these persons had committed criminal actions and should not have been released. Unfortunately, under existing law, they were released because the judge in his learned view felt that the amnesty was valid.

He was not singular in that respect. Other honourable judges, as the case went up the ladder, also felt that the amnesty was valid, so I am not casting aspersions on any member of the judicial system. As a matter of fact, if my memory serves me correctly, two of three judges felt that it was valid and one felt that it was not. Again, two learned judges supported the view of the original judge of the High Court. It was only when the matter reached the Privy Council that it ruled that the amnesty was invalid because the persons who were granted the amnesty did not comply with all the terms and conditions and the basic principles and understanding of that document.

It is a very famous case and it is very relevant to this debate because many people were aggrieved and could not believe that these persons could get off on a legal technicality for what was clearly, in their opinion, illegal acts—treason, murder and other very, very serious criminal matters. Even the Member for

Couva South felt that the amnesty was invalid. If we had the right of appeal in the writ of habeas corpus, then perhaps the whole matter of the liberty of those persons would have taken a different turn.

Let me now refer to the *Guardian* dated August 3, 1990, to show the kind of feeling there was in the country at that time, how people felt about this whole matter and why when these persons were released on a writ of habeas corpus, there was such consternation and outrage in the country. I will now quote a very distinguished constitutional lawyer, the Member for Couva South, who I hope will not take offence at my calling him a distinguished constitutional lawyer. I know that he takes offence at my calling him a criminal lawyer.

"I was scared for my life—Ramesh Maharaj

> Attorney-at-Law Ramesh Lawrence Maharaj said yesterday he was scared for his life and those of his family when he was asked by the Jamaat Al Muslimeen to advise them on documents relating to the so-called resignation of Prime Minister A.N.R. Robinson and amnesty ... for what they did ...
>
> Maharaj who appeared for the Jamaat in a recent judicial review case, condemned the action of its leader to invade Parliament last Friday and attempt to overthrow the democratically-elected Government.
>
> When he heard on the radio that he must get in touch with Canon Knolly Clarke over 'negotiations' with Robinson and the hostages, Maharaj said he wanted no part of it."

This is why I say there was consternation in the country when these persons were released on a writ of habeas corpus.

> "'I knew very well that what they did was totally wrong. To make the Prime Minister sign a document saying that he had resigned and was willing to step down, would have been void in any court of law."

The Prime Minister was then the Member for Tobago East.

> "'The Prime Minister would have functioned under duress.
>
> No court would have agreed with the document to give amnesty to the Jamaat members. It was total madness. I could not be part of that.
>
> Maharaj said that the action of the Jamaat Al Muslimeen was unconstitutional and contrary to what he believed in."

3.00 p.m.

> "'I always used the law to fight my battles. I can't support a client in breaking the law,' the human rights activists told the *Guardian."*

Here we have one of our most distinguished constitutional lawyers expressing the view that the amnesty was totally void, invalid, madness and that no court would respect it. I am sure that he was among the members of the population who were shocked when the members of Jamaat Al Muslimeen were released on a writ of habeas corpus, and further shocked when it became obvious that there was no possibility of re-arresting the detainees. As a matter of fact the learned members of the Privy Council also made the point that they did not think that—because of the ambiguities in our law with regard to habeas corpus—the applicants could be re-arrested and detained. This is why I asked Members on the other side not to trivialize matters when they come into this Parliament.

The Member for Caroni East spoke about the hanging of Glen Ashby, the 1996 budget and new standards of performance being set by the UNC/NAR coalition, but he did not deal with the rights to liberty enshrined in the Constitution and the whole concept of habeas corpus as it exists in the present Habeas Corpus Act. As a matter of fact, his was a most superficial presentation, and as I said, he read section 4 and he did not read section 5. Section 4 deals with the rights of a person to liberty in general terms, but the specifics are in section 5(c)(iv) where it deals specifically with the whole question of a right of a person to be released using a successful writ of habeas corpus.

It is really a pity that when Members on the other side come to this Parliament, they are not prepared, they do not read the law—I would not be so bold to say that they do not understand the law—they do not understand the relevance of these important matters which they are bringing before this House.

The Member for Siparia also attempted to make a case that the Bill does not remove any of the rights of persons released on a writ of habeas corpus. I think for the benefit of the Members on the other side, it is time for me to go to the dictionary. I have to do this sometimes and I apologise, but it is necessary. Section 5(1) of the Constitution says:

> "Except as is otherwise expressly provided in this Chapter...no law may abrogate, abridge or infringe..."

Let me, for the benefit of hon. Members, explain the meaning of the words, abrogate, abridge and infringe, because it seems to me that they do not understand. According to the Concise Oxford Dictionary, the word "abridge" means to curtail, deprive; especially in the context of liberty. "Abrogate" means to repeal and infringe. The meaning of the word "infringe" is to encroach or trespass upon something or somebody's rights. Are the Members on the other side telling me that the Bill before this House does not encroach, infringe, abridge, abrogate, alter, change, amend, tamper, interfere, trespass, with the fundamental rights of persons enshrined in section 5(c)(iv) of the Constitution?

Let me go back to "alter", I do not need to go to the dictionary for that, because "alter" is defined in the Constitution itself; it simply means change and of course change in the context of removing existing fundamental rights. I would like Members on the other side to make a case here today that the removal of the existing right of the person to go from judge to judge is not an infringement or alteration of an existing right. They have taken it away. Could they tell me how it is not a change of a person's existing right?

At present, if a person is freed on a writ of habeas corpus he is free. No court can order his re-arrest and no person can lawfully order his re-detention. That is his existing right! When the Jamaat Al Muslimeen were freed on the writ of habeas corpus they had the right to remain free men in respect of those original charges, they could, of course, be charged for other offences. But it was their fundamental rights, having been released to remain free men and not be re-arrested and not detained on the same charges. I would like Members on the other side to make the case that this law does not take away that right.

They have a very flippant and cavalier approach to very serious matters. My hon. colleague from Diego Martin West spoke about some other matters, I will not repeat them, because in this presentation, I am dealing with the specifics of the legislation and the whole question of the rights of a person under the writ of habeas corpus. It is not good enough for the Member for Caroni East to come and talk about evolution of the law and that in different jurisdictions there have been amendments and changes, we do not dispute that. In an earlier part of my presentation I made the point that in English law there have been changes. Over the years laws have been continuously evolving with respect to the whole question of habeas corpus, and that is not good enough. They cannot make a broad brush statement about evolution of law and not deal with the specifics. In this particular legislation, Mr. Speaker, in my opinion, they may be tampering

with two fundamental rights, two remedies, that persons presently have under the law.

I do not think that the hon. Attorney General has thought this Bill through and I do not think he has given it sufficient weight. This is the same error that he has made with the Rent Restriction Act. I think he has pre-judged the Members on this side. We are not saying that we are against the state having a right of appeal. We are saying that if they want to take away people's rights, be very careful about it. The Member for Tobago East, in another forum, I think he made obtuse reference to persons tampering with the Constitution every Friday—correct me if I am wrong—Today is Friday, *[Laughter]* and I take objection to Members on the other side coming here every Friday and interfering with people's fundamental rights and tampering with the Constitution *[Desk thumping]*.

If Members on the other side want to change the Constitution there must be consultation. I can go into the *Hansard* and pick out reams of references from the hon. Member for Couva South and the hon. Member for Couva North about the need for consultation with respect to changes in the Constitution. As a matter of fact, in a previous environment they spoke about holding public meetings throughout the country and inviting interest groups to participate and make an input on whether certain aspects in the Constitution should be changed or not..

I am asking the Government to thread carefully, we on this side are not opposed to the state having an appeal but we want some time to look at these amendments being brought before this honourable House. We feel, that for the avoidance of doubt, this Bill should be redrafted and brought for a special majority. This question of a special majority is not something that should be left to the opinion of one individual, particularly the Member for Couva South who has already demonstrated his weaknesses when it comes to Bills requiring a special majority and so forth.

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

Motion made, That the speaking time of the hon. Member be extended by 30 minutes. *[Dr. K. Rowley]*

Question put and agreed to.

3.10 p.m.

Mr. C. Imbert: Mr. Speaker, I am afraid that based on past experience I am unwilling to take the opinion of the hon. Member for Couva South as gospel especially when it relates to matters of constitutional law. I am afraid I am unwilling, based on recent experience, to take the opinion of the Member for Couva South as being the correct one. Other distinguished lawyers expressed a contrary opinion, I am afraid I am going to consult and seek more than one opinion to determine whether the Member for Couva South is, in fact, correct—I am not taking his word for it any more, Mr. Speaker, after that rent restriction fiasco.

When we go back into the English law the whole question of whether an applicant could renew his application for the writ of habeas corpus before any number of judges has been tested in the British jurisprudence, there is no doubt about that. I ask the Member for Caroni East to do some proper academic research, do not come here and make glib statements and so forth. There are now special rules in the English jurisdiction of court which pertain to a person applying for a writ of habeas corpus on more than one occasion; a rule arising out of abuse and of persons seeking to get around the legal framework and so forth.

I am asking the Government to take a second look at this Bill. I believe it requires a special majority; I believe that they should be very careful about restricting the right of a person to go to only one court unless they bring fresh evidence for a writ of habeas corpus; I think they should be careful about it. The better way to go is to have special rules where a person may apply to more than one judge for a writ of habeas corpus. I do not think that we should just pass it on. That is simply my opinion. I am asking them to take another look at it. I believe that they are taking away a fundamental right because what they are in effect, saying when they take away the right to go from judge to judge unless fresh evidence is brought, is that the person who made the first determination was absolutely correct. If they are saying that unless one brings fresh evidence do not bother to go to another judge, then they are saying that the first judgment was absolutely correct. This whole question of personal liberty is so important that is why the ability of persons to go from judge to judge was brought in. The first judge may have erred in law, maybe the second one would confirm the first judge's opinion, but at least it gave the detained person another chance to achieve his personal liberty. I am asking the other side not to come with the sledge hammer to tamper with people's fundamental rights.

Therefore, I ask the Government to redraft this Bill, take out these offending clauses and ask this Parliament for a special majority. I can tell you that once it is properly drafted and it does not tamper with fundamental rights in an adverse way there will be no problem with Members on this side giving it proper consideration and supporting properly drafted legislation.

I thank you, Mr. Speaker.

Mr. Fitzgerald Hinds *(Laventille East/Morvant)*: Mr. Speaker, I had come properly prepared to enter into this rather important debate but during the course of some rather solid and useful contributions from the Members on this side, including the non-lawyer Member for Diego Martin West, I thought that enough was said and done to demonstrate that we on this side take seriously the business of habeas corpus and its implications for liberty and my intervention was rendered useless or unnecessary.

As the debate progressed, particularly in light of the comments made by a colleague and the Member for Siparia, I feel compelled to enter into this debate. I admit again, because of the rather useful and solid contributions that have been made by this side, I would probably be only re-enforcing some of the arguments but I suspect that it is entirely necessary.

In my very short tenure to date as a Member of this honourable House I have had the displeasure of seeing far too many short-cuts attempted in this House and I agree wholeheartedly with the Member for Diego Martin East when he expressed a few moments ago the view that it is very difficult if not impossible to take without question submissions made by the hon. Attorney General and Member for Couva South. I have seen enough to raise sufficient questions and concerns, there is a whole litany in my short period as a Member of this honourable House.

Mr. Speaker, the matter before us today does in fact, as has been often said in this debate from this side, bear seriously on the question of the liberty of persons in our society. That question of liberty is in fact, as has been said before, enshrined in our Constitution, the very first provision in section 4. More specifically, that liberty or the right to it without due process of law is dealt with in a provision in our Constitution in section 5, as has been drawn to our attention by the Member for Diego Martin East; so important is this question of the habeas corpus and the relief it brings.

In the United Kingdom, notwithstanding the existence of a statute governing its operation and regulation, the right to relief under the Habeas Corpus writ exists notwithstanding the legislation. That is to say, even if the legislation is repealed or in any way amended, alongside that from a historical and common law position, the right to habeas corpus exists nonetheless. That is to demonstrate the importance of this Writ. So important is it to us in Trinidad and Tobago that the father of our nation, and the framers of the Constitution enshrined this right into that very sacred document, and as such it cannot be treated with lightly.

The Member for Siparia told this honourable House that what is being addressed in this Bill is purely a question of procedure. Mr. Speaker, the lawyers amongst us would properly understand that oftentimes procedures are so intrinsically bound up with substantive rights that it is difficult to separate them and I suspect that this is clearly one such case.

3.20 p.m.

The Member for Siparia, and like her, as she speaks of me, I always enjoy her contributions and look forward to them with relish, but I was marginally disappointed today, to hear the hon. Member talk about a procedure as though it could be separated from the substantive right to liberty as enshrined in our Constitution. I submit to the hon. Member, and in fact, to every Member on that side that that is too simplistic an approach to take on this fundamental issue of liberty as enshrined in our Constitution. *[Desk thumping]*

I will not even take seriously the contribution of the Member for Caroni East—well it deserves courtesy in that as a Member of the House, one listens to it—but in terms of requiring some kind of analysis, I shall give it little attention. *[Laughter]*

Mr. Speaker, the procedure, as has been explained by the Member for Siparia, now permits the state a right of appeal in the matter of a writ of habeas corpus. Assuming, of course, that it was determined at first instance by a judge. Previously, the state had no right of appeal and now it does. This is another matter—talking about procedure—it was only during the course of this debate that another amendment was brought to our attention. This demonstrates the unpreparedness, fleetingness, haste, disregard and *ad hocism* of the Government. *[Desk thumping]* If this is all that this Government has to offer the people of Trinidad and Tobago, the people have greatly erred by offering support to the UNC party, and two seats in Tobago for the NAR party so that they can now come

together and impose themselves upon us. I feel sorry for Trinidad and Tobago. *[Clapping and desk thumping]*

Mr. Speaker, pending an appeal by the state—*[Interruption]* As a citizen of Trinidad and Tobago, I too, am sorry, but that burden will be relieved rather soon. *[Interruption]* This is a serious issue. During the debate on this important matter which amends and interferes with so fundamental a right—*[Interruption]*

Mr. Speaker: Hon. Members, I appeal to you to listen to the contribution of one of your brothers. Do him the courtesy of listening to him even if you do not agree with him. It is difficult for some of us to hear him. Please!

Mr. F. Hinds: I am particularly grateful to you, Mr. Speaker. Thank you. I can understand the outburst from the other side.

Let me read subsection (2). It says:

> "Notwithstanding subsection (1), in the case of an application for habeas corpus relating to a criminal cause or matter, where the appellant would, but for the decision of the court below, be liable to be detained, and immediately after that decision the respondent gives notice that he intends to appeal,..."

—and this is the crucial part, Mr. Speaker—

> "the court may make an order providing for the detention of the appellant, or directing that he shall not be released except on bail so long as any appeal under this Act is pending."

I ask again. If that does not interfere—though procedurally—with the substantive right to liberty under our Constitution, then what does, Mr. Speaker?

The Member for Siparia pointed out, perhaps correctly, that this amendment, or one similar to it would have been in the pipeline and would have come from our administration. There are two points to make on this. It could only have been similar. We never had a history of bringing such worthless, improperly thought out measures before this House. Whenever we came to this House—the history and the records will show—though in the face of vigorous opposition, we came with solid measures and plans that were properly thought out, and the Opposition voted against them over and over and over again.

The other point is merely an admission that this Government has found itself, after some 130 days in office, with precious little fresh thought to offer this

nation, so it goes raking up the ends of some bag that we would have left behind and they must be grateful to us for that opportunity, rather than criticize us. They must applaud and commend us, for, had it not been for our efforts, they would have been like the Member for Tobago East, remaining utterly silent with nothing precious to say. *[Interruption]*

Mr. Speaker, I heard the Member for Siparia make reference to a matter concerning the Jamaat al Muslimeen that was settled some time ago. I would not get into the details of the findings by the court and the result that was forthcoming from the Privy Council. Suffice it to say, that lawyers of repute and those who claim to be of repute, all who are paying attention to the developments in that case will correctly say that the matter of habeas corpus was not, and to this day, is still not properly resolved. There are still unresolved issues about habeas corpus practice or its application in Trinidad and Tobago.

The Member for La Brea in his contribution, did, and correctly so, speak about the number of words and lines in the proposed amendment. I think he was quite right. We have come to the stage—like I said at the beginning of my contribution—where we are almost accustomed to all kinds of crazy errors. The short history of this Government reveals a three clause Bill to amend the Municipal Corporations Act. They had to go with it and come again.

We have seen a terrible and serious *faux pas* with the Rent Restriction (Re-enactment and Validation) Act. They had to go with it and slip it under the table once again. *[Interruption]* We have seen all kinds of errors and shortcomings.

Only very recently—and we are dealing with the question of liberty and all with a view of dealing with crime—in this House, the Attorney General told this nation that crime, in 125 days, had decreased. Again, the nation must never believe. Today's *Daily Express* highlights statistics which show that there has been a 10 per cent increase. It was only short of saying that he uttered a total untruth—*[Interruption]* a terminological inexactitude. And this is the police reporting here, Mr. Speaker.

3.30 p.m.

Mr. Speaker, it is very difficult for any Member of this House to accept without question whatever comes from the hon. Attorney General. When the Member for La Brea takes time out to count every word and sentence in the Bill before this House, believe it, it is done for very good reasons. The question of trust and confidence is now sadly lacking in this very House and we must, on

behalf of the people of Trinidad and Tobago, as a solid Opposition providing critical support to the Government, who properly needs it, scrutinize carefully all that is brought before this House.

We are saying that, in principle, we agree to the measures. Anything that is done to improve the criminal justice system in this country, we would naturally lend our support. But at the same time, as Members of this House, we have an obligation to ensure that good law is passed for the good governance of Trinidad and Tobago. Notwithstanding good intentions, there is a proper procedure, Member for Siparia, and it must be observed.

We are bringing to the Government's attention, like we did in the debate on the Rent Restriction Motion, the Municipal Corporations Bill, and many others, the fact that the measures that they are proposing today bears directly on section 4 and, more specifically, section 5 of our Constitution. We plead with you, do not be so *ad hoc*, hasty, "take time to know her, it is not an overnight plan"; listen to the words of wisdom coming from this side of the House, we know and we are prepared to teach you; go again into your offices and chambers, have a look in particular at section 5 of our Constitution, take your time. Once you lift your heads out of those documents you would agree with every Member of this side that the measures that you are proposing impinge on section 5 of the Constitution. Do justice to your record, your party, to this House and to the people of Trinidad and Tobago; come back to us with a proper measure and we would consider it and possibly support it.

In fact, Mr. Speaker, prior to this measure there was an unfettered right, under the law, on the part of the citizen to go from judge to judge. If this Bill is passed it would be fettered because one must have fresh evidence—of course, it is now being abridged. The state is being given the right of appeal and, as I have indicated earlier, the court can keep the man in detention pending the outcome of the appeal. Does this not abrogate rights?

Mr. Speaker, with these rather few words, I commend and applaud the Members on this side for their useful contributions to this debate for the benefit of all of Trinidad and Tobago, and I urge the Government to rethink this Bill and come again and it may get our support.

Thank you.

Mr. Roger Boynes *(Toco/Manzanilla):* Mr. Speaker, please allow me to skip the stories and the poetries and the temptation to get into vague but nice rhetoric.

Allow me to plunge deeply into the proposed legislation that is before this august Chamber.

The Bill before us seeks to amend the Habeas Corpus Act, Chap. 8:01, by providing that only one application for a writ of habeas corpus may be made by or in respect to any person to a court or judge unless a subsequent application can be supported by fresh evidence or is made upon different grounds.

It also seeks to provide for the right of appeal in both civil and criminal applications for such a writ and seeks to "steamline"—I wish to emphasize this: "steamline"; I am seeing "steamline" in the Explanatory Note; I do not know if it is an error, and that it should be "streamline", but I am looking at it and taking the literal meaning of the word "steamline"—the procedure upon which such application may take place.

Mr. Speaker, section 4 of our Constitution, the supreme law of the land, recognizes and in fact protects the fundamental human rights and freedom of citizens of this blessed land. It states *inter alia* that it protects the rights of the individual to life and liberty.

If one looks at section 5 of the said Constitution, one would see where the liberty of the individual of this blessed land is protected and guarded. These sections enshrine, protect and jealously guard the right of the individual to liberty.

Mr. Speaker, for a period extending as far as our legal history, the writ of habeas corpus, has been regarded as one of the most important safeguards of the liberty of the individual.

If an individual is wrongfully deprived of his liberty by arrest or detention, it is not sufficient that he should be able to sue his jailers for damages under the ordinary civil law. Whether he is detained by order of an official or by a private individual, he may not be in a position to institute legal proceedings should his detention continue while the process of civil litigation takes its normal lengthy course.

Accordingly, the law provides in the writ of habeas corpus, a means by which a person detained without legal justification may secure prompt release. Understand that, Mr. Speaker! The person responsible for the detention is not thereby punished but the person imprisoned is set free and his fundamental human rights, as enshrined in the Constitution, are preserved and he may now

pursue such further remedies for compensation or punishment as may be available.

In understanding the significance of these amendments, one has to look at the historical backdrop which gives rise to similar legislation in England, and I am referring to the Administration of Justice Act 1960. At common law, no decision on habeas corpus could be questioned by way of appeal. An order of release was final in all respects and could never be questioned.

Where, however, the court refuses to grant a writ or refuses to make an order of release, a further or successive applications could be made on the same grounds, not requiring fresh evidence. The previous decision was not considered binding on the court or judge.

The law with respect to appeals, however, was partially altered by the Judicature Act of 1873 which gave the right of appeal in civil cases and it was held in the Hastings case in 1959, that the Judicature Act which fused divisional courts had in fact affected this right of successive appeals.

I am just giving the historical backdrop which would explain why the English Parliament felt a need to legislate on the same area that is before us here.

The Hastings case was one in which the Queen's Bench Division was faced with an application which had been rejected on the merits by differently constituted Queen's Bench divisional courts. The court held that the right to make successive applications was the right to go from court to court and not from judge to judge as the pre-1873 courts were fused.

3.40 p.m.

Mr. Speaker, there was a school of thought which believed that the right of successive appeals meant going from judge to judge and another school of thought which believed the right of having successive applications meant going from court to court. With the fusion of the pre-1873 position and the fact that the divisional courts were not fused, it meant that one was not going from court to court because it was one court. So on that premise, Mr. Speaker, in the Hastings decision, it was felt that since the courts were fused, there was no need for successive applications.

Mr. Speaker, against that background there was some uncertainty prevailing at the time, so Parliament in its wisdom sought to clear the air, as it were. Again, what was prevailing at the time that this particular Act was passed, the

Administration of Justice Act, 1960, was that there was a problem in England with mental patients. Parliament found that having dangerous psychopaths in the society at that material time was, in fact, a problem. As part of the Commons debate on the Bill, it was said by the Solicitor General that the Government had in mind when stopping these successive applications in cases under the Mental Health Act, that dangerous psychopaths might be improperly released. So, we have to understand the whole backdrop of the scenario that led to the passage of the similar type of legislation that is before us here. It is against that background.

What is prevailing here now? What is the mischief that we are looking to cure? Whereas I agree that the state should have a right of appeal, the fact is, should we be taking away the successive rights of an individual to apply to the court? Is that going to be compensated for by a right of the state to appeal? *[Interruption]*

Mr. Speaker, the prevailing situation here is that one has the right to apply from judge to judge. Whereas the purport and intent of this Bill is commendable, the manner in which it seeks to achieve its stated objective, unfortunately, is an abysmal failure. If I may digress for a moment, Mr. Speaker, section 2 (6) states, and I quote:

> "Notwithstanding any law to the contrary where an application for a writ of habeas corpus in a criminal or a civil matter has been made by or in respect of any person, no such application shall be made again by or in respect of that person on the same grounds, whether to the same court or judge or to any other court or judge, unless fresh evidence is adduced in support of the application."

Mr. Speaker, I ask the question, what does the learned Attorney General mean by "fresh evidence"? What is fresh evidence? This phrase is, perhaps, an unfortunate one. The presumption is that a further application could be based on a new legal argument, but what is not clear is whether "fresh evidence" includes evidence which has come to light subsequent to the original application, or whether it is evidence not previously used on the original application. What are the guidelines in determining what constitutes fresh evidence? Is it evidence that would show where the order itself was not properly arrived at, or must the evidence deal with the pointed issue on the habeas corpus?

Mr. Speaker, in the case of *Ex parte Schtraks* which is found at 1964 (1) Queen's Bench, page 191, that whole issue of fresh evidence was dealt with. *[Interruption]* I do not know whether the Member for Couva South had seen that

particular section of cases before he decided to 'fudge' or bring that particular section in England here before this honourable Chamber. But my submission is, Mr. Speaker, I have no problem with the hon. Member bringing legislation from abroad to be used here to assist our situation, but he should not bring the ills as well. He should do his homework and see where analysts and writers have spoken about fresh evidence and the fact that that phrase is vague and it has to be defined. What is fresh evidence? In that particular case, Mr. Speaker, it was held that—

> "fresh evidence might be admitted only to show the lack of jurisdiction in the committing magistrate's court, or that there was no evidence on which he might exercise his jurisdiction; the court was not entitled to receive the further evidence in so far as it went only to discredit the evidence of witnesses whose depositions were before the magistrate**."**

Mr. Speaker, what this section is saying is that it must go to the actual root, to the actual habeas corpus, and not evidence that could be adduced which would say that the witnesses were not telling the truth or they do not believe in the evidence given by the witnesses. These are certain guidelines that must be taken into consideration if putting forward this Bill. We have to define it clearly.

This judgment does not answer the fundamental question of what constitutes fresh evidence. Mr. Speaker, does it include evidence that has come to light subsequent to the original application, or is it merely evidence not used but available at the original application?

Mr. Speaker, we have no difficulty with the hon. Attorney General seeking to 'fudge' and copy proposed legislation wholesale from elsewhere, but when the hon. Member for Couva South imports such legislation, bedevilled as it is with its own inherent ambiguities and lack of clear and concise definitions, we on this side have a problem, *[Desk thumping]* Mr. Speaker, section 7 of the Bill, states:

> "An appeal shall lie in any proceedings upon application for a writ of habeas corpus, whether civil or criminal, against an order for the release of the person restrained..."

"Against an order". So one gets the impression that the right of appeal—whether it be by the state or the individual so restrained—only deals with on the conclusion of the order at the first instance stage.

3.50 p.m.

When the first application goes before the court it is either rejected or granted upon an appeal by the Attorney General, the prosecutor or the individual. That right of appeal is only given at that stage. I am asking a simple question: Does the applicant have any recourse where his initial *ex-parte* application for the writ has failed? That means it was not considered as yet by the first instance court. He was refused at that first instance court, but no provision is made in this section which gives the individual a right of appeal. What is he to do? His liberty is at stake here. The man who is coming back on the same grounds with the same evidence is not given a hearing. What about his rights?

If it is not possible to make another *ex-parte* application for want of fresh grounds or fresh evidence what is the applicant's position? He does not qualify for an appeal but yet he is deprived of the protection and historical safeguard for his fundamental human rights? That is taken out!

Mr. Speaker, distinguished legal writers have analyzed and commented extensively upon this particular shortcoming. Now, before the hon. Member for Couva South introduced the proposed piece of legislation identifying this need for it, proper research should have been done. He should have investigated the ambiguities of this particular amendment before bringing it to this honourable House for passage.

One wonders why the Member for Couva South did not pay heed to these extensive, analyses and comments by legal writers on these particular amendments. To an extent, it is just understood. One must not come here in a mad rush to satisfy the populace that one is working. One must not do so. One must come prepared, and ensure that if a section deals with the fundamental human rights of individuals it is properly dealt with. *[Desk thumping]*

I looked again at section 7 and I was very concerned. When looking at that particular section three points came to me. The first one is what would happen to an applicant who has been successful against the state and the Attorney General immediately after that decision is granted leave to appeal? What happens to the liberty of the individual while the appeal is pending? Should the court have the discretion to make an order providing for the further detention or directing that the individual should not be released except on bail?

I had a long discourse to go into with respect to this, but the hon. Member for Couva South, while the debate was in process, saw it fit to slip in the amendment. That very same Administration of Justice Act 1960, section 14, deals with the two

proposed amendments that were placed before the House initially, and section 15(4) deals with this amendment which they slipped in here now. If one is bringing legislation here which threatens the liberty of an individual in this nation, one is actually assaulting the liberty of the individual in this nation, and one did not put in another section; one did not see it fit to understand what happens to the individual while the appeal is taking place. Is the individual in limbo? We all know how long an appeal takes. So the individual must languish in jail until such time as his appeal is heard? This cannot be tolerated.

I am suggesting that when one initially comes to this honourable Chamber in search of getting the blessings of this honourable House and one is focusing on legislation that affects the individual's right to liberty, one must do one's homework first. *[Desk thumping]* What is this mad rush about? I am supporting efficiency, effectiveness and speed, but I am not prepared to tolerate slipshod type of behaviour in this Chamber. One has to get one's act together and properly so.

Mr. Speaker, I mentioned that the hon. Member did not copy the relevant section in time but he has now brought it for our kind consideration—and I am talking as though the section was not amended—but I am glad that he has brought the amendment. I see that under the proposed amendment such a power to grant bail or the power under that amended section, if one feels that one did not have time even when one brought the amended section here now to speak on it *[Interruption]* That is not so. It is people's fundamental human rights we are dealing with and we are prepared to give it anything once peoples' liberty is at stake here.

That amendment which they slipped in while the debate was in progress to grant further detention or to release the individual on bail pending the appeal, I want to find out what would be the criteria for the exercise of that discretion that would be granted under that particular amended section? What is the criteria?

4.00 p.m.

Would the applicant’s antecedents, the length of time of incarceration and the likelihood of absconding be taken into consideration? There must be guidelines as to the exercise of this discretion as contained in this proposed Bill. Legal writers have written on it. If we are taking it verbatim from England we cannot take the ills as well. We have to understand the ills which are involved and ensure that we take the best of them and work them to suit our unique environment for the best

of our people in Trinidad and Tobago. We cannot copy legislation blindly and without the proper research. We have to determine all these things.

This Bill is devoid of a well thought-out strategy for dealing with the ills it seeks to cure. I am not surprised because on the last occasion before this honourable House, the learned Member for Couva South announced to the nation that his private and personal statistics revealed that the crime rate was down, whereas today, in giving statistics the police indicated that there was a 10 per cent increase in serious crimes. When we come here and make statements in this honourable House they must be responsible and not with the intention to mislead the public. One has to do proper research before one comes to address the nation or you, Mr. Speaker. I am sure you would not tolerate that. I am calling on the Member to apologize to you, Mr. Speaker, the nation and the Minister of National Security. This type of wanton carelessness and cavalier approach is not suited to the business of this nation.

Clause 7 of this Bill seeks to cure the untenable situation where there was no right of appeal against an order for the release of the person restrained as well as against the refusal of such order. We have to understand that in our jurisdiction there is a right of appeal by the individual. However, this legislation seeks to give the state the right of appeal. I agree with that. By its very nature, it is an application which ought to be heard and dealt with expeditiously. Regardless of the fact that there is a right of appeal which is provided for the state, clause 7 states:

> "An appeal shall lie in any proceedings upon application for a writ of habeas corpus, whether civil or criminal, against an order for the release of the person restrained as well as against the refusal of such an order."

This particular amendment does not only deal with the state having a right of appeal, but also the individual. The point is that by its very nature it is an application which ought to be heard and dealt with expeditiously.

The explanatory note states:

> "It also seeks to provide for the right of appeal in both a civil and a criminal application for such a writ and seeks to steam-line the procedure upon application for such a writ."

I do not know if they mean "stream-line" or "steam-line". If it is that they are saying it seeks to steam-line, I hope they do not mean railroad. If it is that they

mean the whole purport and intent of the Bill is to ensure that these type of applications are dealt with expeditiously and it steam-lines, then I suggest to this honourable House that the provisions in this clause do not enable this right of appeal to be steam-lined in any way.

Where is the provision in this Bill for the fast-tracking of the appellate process which would ensure that the legislation is not self-defeating, in the case where a person who is in custody continues to languish? It is important to understand this. By the Member for Couva South not giving guidelines for the exercise of the discretion in determining whether or not someone is granted bail or if further detained, one would assume that at least provision for the fast-tracking of the appellate system would be in place.

We should not depend on the state of the courts docket to determine how quickly an appeal is set down or heard, while the liberty of the individual is at stake. From experience the Member for Caroni East would understand the length of time our appellate system takes at the moment. We on this side are prepared to work with them to ensure that there is fast-tracking of the system. *[Interruption]* We are dealing with a man's liberty and want to chance that on the fact that he could languish in prison! There should be specific legislation so that the mischief which the Bill seeks to cure will be dealt with fundamentally, so the applicant could get a quick remedy having regard to the fundamental rights at stake.

I submit that the demise of the successive application in the proposed Bill is not adequately compensated for by that appeal clause. As I mentioned earlier, the requisite safeguards in that particular section is lacking. What would happen is that an individual's fundamental right or the successive application would be taken away. They have not thought about putting the requisite safeguards in place with respect to the appeals. They do not even know what is the meaning of fresh evidence. Define fresh evidence! What about the person who has not been successful with an *ex-parte* application for a writ of habeas corpus?

4.10 p.m.

Mr. Speaker, we on this side believe in doing the people's work properly. We believe in a government that is characterized by fairness and reasonableness; a government which goes beyond labels; that does not distort or promise in haste to do things it knows it cannot do. We believe in a government strong enough to use

words like love and compassion, and smart enough to convert our noblest aspirations into reality. We believe in encouraging the talented and in doing the correct thing in the correct manner. In the process of evolution, we believe that the government of humans should elevate itself to a higher order. A government should be able to rise to the level where it can fill the gaps left by chance or a wisdom we do not fully understand. We believe that in a society as blessed as ours the Government ought to be able to help the people in their struggle; ought to be able to find work for all who can do so; room at the table, care for the elderly and infirmed, shelter for the homeless and hope for the destitute.

We believe in firm but fair law and order, not some rushed incomplete piece of legislation. We believe in providing for the people openness of government and the protection of their fundamental human rights. We believe in a single fundamental idea which describes, better than most textbooks or speeches that we have mentioned here, the idea of family mutuality, the sharing of benefits and burdens for the good of all, feeling one another's pain, sharing one another's blessings reasonably, honestly, fairly without respect to race, sex, geography or political affiliation. We believe that we must be the family of Trinidad and Tobago, recognizing that at the heart of the matter we are bound one to the other. We must realize that the problems of the teacher in Penal are ours; that the future of the child in Matelot is our future; that the struggle of the disabled man in Diego Martin to survive and to live decently is our struggle; that the hunger of the woman in Point is our hunger; that the failure to take proper care in protecting fundamental human rights is our failure. *[Interruption]*

Mr. Speaker: Hon. Members, for whatever it is worth, I once more appeal for calm while the Member speaks.

Mr. R. Boynes: Thank you very much, Mr. Speaker, for your intervention to put some sort of order in his honourable Chamber. We are dealing here with the liberty of the individual and that must be treated with respect. This is no joke or game. This is a serious matter.

We are here as a reasonable Opposition. We are not here to put stumbling blocks in the way of the Government. We are here as watchdogs to ensure that they do the correct thing. We are saying that this section infringes the fundamental human rights section of the Constitution. We are prepared to support the other side if they bring back this Bill redrafted within which all the ills which have been identified have been dealt, and with the proper procedure, so that a special majority will be obtained in this honourable Chamber. The correct thing

includes consulting the Law Association of Trinidad and Tobago and the Law Commission. This is a very important Bill and consultation is very, very important. Once the other side redrafts the Bill in such a manner that proper evidence is defined and limited and with the proper procedure so that the special majority could be recognized and dealt with, we are prepared to support this legislation. We propose that if the hon. Member for Couva South allows this Bill to go to a Committee of the House where we can adequately dissect it and arrive at a common position, that would be in the best interest of the people of this blessed nation.

Mr. Speaker, I thank you.

The Attorney General (Hon. Ramesh Lawrence Maharaj): Mr. Speaker, I have listened and tried to understand what the other side has been talking about. It is quite clear that they have decided to adopt a strategy to obstruct any legislation dealing with the drug trade and crime. *[Opposition Protest]*. Look at how simple this is!

Mr. Valley: Mr. Speaker, I am standing on a point of order under section 36(5). The Member is imputing improper motives to the Opposition. He is stating that the Opposition will obstruct any legislation which deals with drugs or crime.

Mr. Speaker: I am afraid that I did not quite catch that. Actually, I was just about to speak to the Member for Couva North. What point are you making?

Mr. Valley: Mr. Speaker, I am making a point of order under section 36(5). The Member imputed improper motives to the Opposition.

Mr. Speaker: I see. What exactly did he say?

Mr. Valley: He said that this Opposition would obstruct any legislation dealing with drugs or with crime.

Mr. Speaker. If that is what he said, I do not regard that as imputing improper motives. You are complaining because the Member for Couva South said that he believes that the Opposition would obstruct any legislation dealing with drugs or crime, and you say that it is imputing to you improper motives. I move that that is not improper.

Hon. R. L. Maharaj: Mr. Speaker, nothing in this Bill takes away the remedy of habeas corpus.

4.20 p.m.

As a matter of fact, anyone who wants to make an application can go to the High Court. He is entitled to have a lawyer, he is entitled to put forward his arguments, a judge would decide; if he is dissatisfied with the judge's decision he can go to the Court of Appeal as of right, his lawyer can argue his case, if he is dissatisfied with that he can apply for leave to go to the Privy Council and they would determine the matter. The state would have a similar right.

There is nothing in this Bill which takes away any right or takes away the remedy of habeas corpus. This Bill is trying to redress a situation where, for example, someone may be extradited for drugs and that person files an application for habeas corpus, if that matter goes before one judge and he dismisses it, the state would have no right of appeal and the person can abscond. That happened in Trinidad and Tobago where a person was on extradition proceedings, an application was made for habeas corpus and the state did not have the right of appeal and the state was prejudiced.

As a matter of fact what this legislation would do, even if persons challenge the legality of detention on the basis that an amnesty was valid; if that is decided against the state, the state would have an entitlement of appeal. Where one has legislation which would, in effect, protect the public interest and one has Members on the other side talking on irrelevant matters, one can now understand why this country is in such a mess with respect to the enforcement of criminal law in Trinidad and Tobago. *[Desk thumping]*.

When this administration took office what was quite clear to us was that we were confronted with a criminal procedure system which the last administration did nothing to improve. What happened, Mr. Speaker, is that the legislation which was passed to deal with crime was not implemented and the legislation which was passed to deal with the drug trade was not implemented.

This legislation is totally in order and I regret to say that this is not the time to talk about the other matters raised by Members on the other side as they are totally irrelevant.

Mr. Speaker, I beg to move.

PROCEDURAL MOTION

Hon. Ramesh Lawrence Maharaj: Mr. Speaker, may I respectfully move that the sitting be extended to 15 minutes or until we determine the Bill so that we would not have to break for tea and return.

Mr. Speaker: Hon. Members, Standing Orders 10(2) does, in fact, provide that I shall suspend the sitting at 4.30 p.m.

Mr. Manning: You can extend the time, Mr. Speaker.

Mr. Speaker: I know that I can extend it but I am politely asking Members of the House whether it is their will. Please allow me! Is it the will of the House that this be done?

Agreed to.

HABEAS CORPUS (AMDT.) BILL

Question put, That the Bill be read a second time.

The House divided *Ayes: 18* *Noes: 16*

AYES

Maharaj, Hon. R.L.

Panday, Hon. B.

Persad-Bissessar, Hon. K.

Robinson, Hon. A.N.R.

Humphrey, Hon. J.

Sudama, Hon. T.

Maraj, Hon. R.

Nicholson, Hon. P.

Rafeeq , Hon. Dr. H.

Khan, Dr. F.

Singh, Hon. G.

Nanan, Hon. Dr. A.

Partap, Hon. H.

Mohammed, Hon. Dr. R.

Singh, Hon. D.

Ramsaran, Hon. M.

Sharma, Mr. C.

Ali, R.

NOES

Valley, K.

Manning, P.

Rowley, Dr. K.

Draper, G.

Imbert, C.

Lasse, Dr. V.

Robinson-Regis, Mrs. C.

Narine, J.

Hart, E.

James, Mrs. E.

Griffith, Dr. R.

Bereaux, H.

Joseph, Mr. M.

Sinanan, Mr. B.

Hinds, Mr. F.

Williams, Mr. E.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee.

Clause 1 ordered to stand part of the Bill.

Clause 2

Question proposed, That clause 2 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I beg to propose an amendment to clause (2) as circulated:

8 Add the following new section 8:

"Release on appeal

8.(1) An appeal under section 7 shall not affect the right of the person restrained to be discharged in pursuance of the order under appeal and, unless an order under subsection (2) is in force at the determination of the appeal, to remain at large regardless of the decision on appeal.

(2) Notwithstanding subsection (1), in the case of an application for habeas corpus relating to a criminal cause or matter, where the appellant would, but for the decision of the court below, be liable to be detained, and immediately after that decision the respondent gives notice that he intends to appeal, the court may make an order providing for the detention of the appellant, or directing that he shall not be released except on bail so long as any appeal under this Act is pending."

Question put and agreed to.

Clause 2, as amended, ordered to stand part of the Bill.

4.30 p.m.

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

House resumed.

Bill reported with amendments.

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

The House divided *Ayes: 18* *Noes: 16*

AYES

Maharaj, Hon. R. L.

Panday, Hon. B.
Persad-Bissessar, Hon. K.
Robinson, Hon. A.N.R.
Humphrey, Hon. J.
Sudama, Hon. T.
Maraj, Hon. R.
Nicholson, Hon. P.
Rafeeq, Hon. Dr. H.
Khan, Dr. F.
Singh, Hon. G.
Nanan, Hon. Dr. A.
Partap, Hon. H.
Mohammed, Hon. Dr. R.
Singh, Hon. D.
Ramsaran, Hon. M.
Sharma, C.
Ali, R.

NOES
Valley, K.
Manning, P.
Rowley, Dr. K.
Draper, G.
Imbert, C.
Lasse, Dr. V.
Robinson-Regis, Mrs. C.
Narine, J.

Hart, E.

James, Mrs. E.

Griffith, Dr. R.

Bereaux, H.

Joseph, M.

Sinanan, B.

Hinds, F.

Williams, E.

Bill accordingly read the third time and passed.

ADJOURNMENT

The Attorney General (Hon. Ramesh Lawrence Maharaj): I beg to move that the House do now adjourn to Monday, April 01, 1996 at 10.00 a.m.

Mr. Speaker, may I announce that the House intends to sit on Monday, April 01, Tuesday April 02, Wednesday April 03, and Thursday April 04, from 10.00 a.m. The items on the Order Paper would be Bills Second Reading in the order in which they appear. *[Interruption]* We said we would work out a date.

Mr. Speaker: Hon. Members, leave has been granted to the Member for Arouca North to raise a matter on the Motion for the Adjournment. Is there any agreement with respect to that being deferred?

Assent indicated.

With the agreement of the House this matter then would be deferred to the next sitting on April 01, 1996.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 4.35 p.m.