HOUSE OF REPRESENTATIVES

Monday, June 13, 2005

The House met at 1.30 p.m.

PRAYERS

[MR. SPEAKER *in the Chair*]

LEAVE OF ABSENCE

Mr. Speaker: Hon. Members, I have received communication from the following Members requesting leave of absence from today's sitting of the House: Hon. Eudine Job-Davis (Tobago East); Mr. Kelvin Ramnath (Couva South); Hon. Eulalie James (Laventille West). The leave which the Members seek is granted.

PAPER LAID

The Freedom of Information (Exemption) (No. 2) Order, 2005. [*The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley)*]

ARRANGEMENT OF BUSINESS

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Mr. Speaker, I have to inform you that the Hon. Prime Minister wishes to make a statement. In the circumstances, I ask that this item be deferred to a later stage in the proceedings.

Mr. Speaker: Hon. Members, I have also received information from the Prime Minister, as stated by the hon. Member for Diego Martin Central, that he would like to make a statement. Do I have agreement that he can make that statement later on in the proceedings?

Agreed. [*Crosstalk*]

OFFENCES AGAINST THE PERSON (AMDT.) (HARASSMENT) BILL

Order for second reading read.

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

That a Bill to amend the Offences Against the Person Act, Chap. 11:08, be read a second time.

Mr. Speaker, the issue engaging the attention of this honourable House is the phenomenon of stalking and harassment. Allow me to give a brief background.

The past few decades have witnessed the evolution of stalking and harassment from obscure occurrences to recognizable and legitimate criminal offences in many other jurisdictions, such as the United Kingdom and New Zealand. Public outrage, bizarre incidents of celebrity stalking and escalation of stalking incidents, both within and outside the realm of domestic violence, media attention; and the inadequacy of the legal system to address the elements of these new offences, are some of the reasons for this legislation, being enacted in other jurisdictions.

It is now well known that stalking involves a person who may be unknown to the victim, shadowing the victim's life in some way. This conduct may take many forms. It could be persistent phone calls that may or may not be obscene; the constant sending of unwanted gifts; continuously walking past a person's home or actually following the victim. A consideration of most of the stalking cases on record reveals that there are three essential components present regardless of the type of conduct involved.

Firstly, stalking is characterized by its ongoing nature and the intransigence of the stalker—they tend to be very persistent—thus, stalking may involve the repetition of numerous incidents of the same nature, such as silent telephone calls or dialling the person's number, simply saying nothing and putting the receiver down; or it may involve a prolonged campaign of varying conduct, as occurred in a place called Barstow. The element of repetition has been said to be one of the defining characteristics of stalking, irrespective of the nature of the component acts. Stalking can be distressing and threatening to its victim because of its sheer, oppressive persistence.

The second essential characteristic of stalking is that the conduct involved is unwanted by the recipient, thus enforcing on another that which they should have the freedom to decline. As such, stalking is characterized by the obduracy of the stalker that deprives the victim of the autonomy to determine the parameters of his or her own interpersonal relationships. On the one hand the stalker or harasser tends to be very persistent and, secondly, the recipient is, for the most part, unwilling and reluctant. The final characteristic of stalking is that the repeated, unwanted conduct engenders a negative response in the recipient. The stalker deliberately or inadvertently causes tremendous fear, distress, anger

or some other adverse reaction, by engaging in the relentless pursuit of the victim.

While reference was made to other territories, this is a growing problem in Trinidad and Tobago. I have had several complaints from persons, both in private practice and since assuming public responsibility at the Ministry of National Security, and the story is always the same: the legislation that we now have in Trinidad and Tobago is simply inadequate to deal with these problems.

By analyzing stalking, in terms of its composite characteristics, it becomes clear that the "wrongness"—if I may say that—of stalking, lies not in the nature of the conduct itself, but also in the deployment of this conduct to enforce upon another that which he or she would wish to avoid. Whilst the nature of the conduct pursued by some stalkers is clearly unlawful, often that conduct can appear to be, prima facie, non-threatening. That might appear so to someone not affected by it, however, to the victim, its persistence means that it becomes very disturbing and very threatening. We are unaware of the existence of any official data relating to the general population, but it cannot be argued that for the female population stalking is not a real and present danger. It is real!

While the problem of stalking has earned a partial solution where it arises in the context of domestic violence or domestic relationships, it is clearly now time to expand this protection in the criminal law to the general population. If the victims—typically a spouse, a child, members of a household or more recently we did an amendment to include regular visitors of that household, so to speak—are persistently harassed, stalked and are the recipients of the unwanted attention of the stalker, the domestic violence legislation makes provisions for that, but the law does not cover persons citizens of that legislation.

Mr. Speaker, in 1999 the Law Reform Commission examined the ad hoc response of the law to this type of behaviour and found that both the criminal and civil law did not provide adequate remedies. So the opinion I have just expressed is not one coming from the Government or the Attorney General's Office, per se, but really the Law Reform Commission, that independent body whose mandate it is to look at the legal circumstances of Trinidad and Tobago and make recommendations for improvement, when and where necessary. The Law Commission found that the current laws were inadequate, as I have opined. Moreover, the civil law has been evolving in an unsatisfactory manner and has been unable to deal with the problem of harassment in a range of different contexts, outside the realm of domestic violence.

Quite apart from the Domestic Violence Act of 1999, the only form of harassment addressed by our criminal law is by means of telephone contact. In fact, Section 106 of the Summary Offences Act makes it an offence to use the telephone to convey messages which are grossly indecent, obscene or of a menacing character and imposes a fine of a mere $200 or one month imprisonment; clearly inadequate given today's circumstance and the increasing incidence of this type of offence.

As for the civil law, with the exception of the injunctive relief provided for in the Domestic Violence Act, injunctive relief is available only where a victim can show a cause of action that falls within the tort of nuisance. So if the person afflicted wants to bring an action and enjoy injunctive relief outside the realm of the domestic violence regime, he can only do so if he can demonstrate that the problem, the tort, constitutes a tort of nuisance or is likely to so do. It has been recognized that this is a very slow and more complex remedy that is clearly not appropriate for instances of emergency and where a quicker response would be necessary. Having regard to this clearly unsatisfactory state of the law, the Law Reform Commission recommended the creation of a new offence of harassment which would offer hybrid remedies, both civil and criminal, in the form of injunctive relief and criminal sanctions.

The Bill for your consideration today, hon. Members, embodies those recommendations of the Law Reform Commission which we, of course, accepted and we offer for your consideration and, hopefully, your acceptance to protect the women and in some cases the men in this society. [*Interruption*]

Mrs. Persad-Bissessar: Would you be kind enough to explain what remedies you speak of when you talk about hybrid criminal and civil remedies?

Mr. F. Hinds: I am grateful for your question; I am sure we will come to that.

Dr. Moonilal: Later in the proceedings. [*Laughter*]

Mr. F. Hinds: Increased incidents and awareness of stalking have led to a number of other jurisdictions responding with legislation against that type of conduct. The primary purpose of these enactments is to allow enforcement officials to intervene before the conduct results in physical injury to the victim; prospects, as I indicated earlier, that the victim is obviously always afraid of. The United Kingdom and New Zealand have made great strides in formulating comprehensive legislation to deal with all aspects of stalking and harassment.

The following is an example. The United Kingdom's Protection of Harassment Act of 1997 is very proactive, in our view, and creates two new criminal offences and the statutory tort of harassment. The Act also facilitates the imposition of criminal liability on a person who contravenes any of the orders made following civil or criminal proceedings. Members would do well to observe that these features have been incorporated into our proposed legislation for your consideration today. [*Interruption*]

Mrs. Persad-Bissessar: You have not included the civil tort of harassment.

Mr. F. Hinds: Mr. Speaker, New Zealand's Harassment Act goes further by defining the specific elements of the offence of harassment such as watching and loitering around the person's home business, or place of employment, pursuing, stopping or accosting a person, making contact by telephone, giving offensive material to a person or any conduct which causes a person to fear for his safety. In that respect, similar to the common assault that we are all familiar with in criminal law.

Whilst England and New Zealand have opted to enact separate legislation to address this increasing and burdensome issue, Canada and South Australia have chosen, as we have, to incorporate new provisions into existing criminal law. The proposed measure has been crafted with our peculiar societal values, mores and practices in mind; and is within the context of our very familiar legal system.

Mr. Speaker, a cursory perusal of the proposed measure would reveal that it does not speak to the issue of sexual harassment. While sexual offences are addressed in the Sexual Offences Act, sexual harassment is peculiar to the workplace and would be more appropriately addressed in labour law.

I now turn to the Offences Against the Person (Amdt.) (Harassment) Bill which, as I suggested earlier, seeks to amend the Offences Against the Person Act to make provision for the offence of harassment. There are only two very simple clauses in this Bill. I will begin with an explanation of the second. Clause 2 of this very simple Bill would insert six new sections into the principal Act: section 30A through 30F. The focus of the new offence is the wider notion of harassment which obviates the need to define stalking; instead, what the proposed section 30A does is to prohibit harassment, which is defined as a course of conduct that causes harassment to another and which the defendant knows or ought to reasonably know would amount to harassment. This definition forms the basis of the basic offence of harassment.

I know that there is an element of tautology in here, because in the very definition the very word "harassment" is mentioned, but I have already outlined some of the examples contemplated. As Members would very well understand, in terms of these kinds of offences, it is very difficult, notwithstanding past experiences, to anticipate all the possibilities of conduct that will give rise to offences in circumstances such as these and, of necessity, in my humble view, laws like these tend to be very vague; not that it is without some specificity, but the draft tends to be wide enough to take into account unforeseen examples of the conduct that we are trying to protect citizens of this country against.

It is clear that the definition contained in the proposed section 30A does reflect, however, the essential characteristics of stalking which I had earlier explained. The requirement of a course of conduct, which is defined in the proposed paragraph B, as conduct on, at least, two occasions, reflects the continuing and repeated nature of stalking. The second and third characteristics of stalking, that the conduct is unwanted and engenders an adverse reaction in the victim, are also reflected in the statutory definition of harassment. It is clear that the essential characteristics of stalking are encapsulated in the definition contained in our proposed 30A.

A course of conduct is defined as conduct on at least two occasions that may include speech. The wide definition does not require the incidents to be of the same nature; in other words, we envisage a situation where the stalker may change some of his approaches. He may go for telephone contact on one occasion; on another occasion he may stick an unwanted note into the handbag, desk or car of the victim. So we are anticipating that he may change his strategies, but the common characteristic here is that his conduct is unwanted by the victim and there is a measure of persistence, as I have already indicated.

The wide definition, I repeat, does not require the incidents, therefore, to be of the same nature. Stalkers habitually engage in a diverse range of behaviour during their pursuit of a victim and they change their strategy. You will consider, Members, that once the victim, for example, is the recipient of unwanted phone calls and the stalker or harasser says something or the phone goes down, as I explained, it is very likely that the victim may have their telephone number changed. As a result of that stoppage, blockage or impediment in the way of the persistent stalker, he or she would find another way to do the business; this is what is envisioned here. It is extremely unusual to involve only

a single type of behaviour; therefore, any limitation as to the nature of the conduct, would clearly limit the reach of the law and would not make good sense.

By requiring only two incidents as a basis for liability or culpability, the proposed measure establishes a means of intervention at an early stage. I know that some persons in the society, even hon. Members, may consider that if the persons do it twice, you are still not entirely certain, but we have to balance that sensible consideration against the very important concern about putting a stop to the unwanted conduct as early as possible, because as I have explained the behaviour of such an offender could be very frightening and threatening to our citizens, in particular, women and, more particularly, single parent families; they are probably going to suffer more than anyone else.

The offence carries a penalty of $2,000 and imprisonment for six months. The proposed section B creates a second more serious offence and the offence of causing fear of violence. This is similar to the offence of harassment in that it is based upon a course of conduct that must cause the victim to fear that violence would be used against him or her and would, therefore, attract a more onerous penalty depending on whether the charge is laid indictably or summarily. If on indictment, the offence carries a penalty of $10,000 and imprisonment for five years, clearly reflecting the more serious elements of it. It would be up to the State to decide whether it would go summarily or indictably as is the case in other aspects of our criminal law.

If the charge is laid summarily and the person is found guilty, the fine would be $5,000 and six months imprisonment. Of course, when legislation is laid out like this, it still gives the court all the discretion it traditionally has, to apply the sentence within these limits, as it might deem appropriate in the particular case.

Mr. Speaker, the proposed measure also provides civil law remedies in the form of injunctive and compensatory relief. The Member for Siparia raised the question of the civil aspect of what we were doing. I want to repeat that; having now won her full attention. The proposed measure provides the civil law remedies in the form of injunctive and compensatory relief. For the lawyer, that language is abundantly clear, but for the non-lawyer, let me say that an injunction is obviously an order of the court to stop the conduct and if the offender breaches the court's injunctive order, then sentences or a term of imprisonment, hopefully, would follow.

I say hopefully, because we have seen examples of the courts, not imposing the kinds of sentences that we would like to see; a matter that the Commissioner of Police complained bitterly about and I support his concern. For example, only last year in our attempt to deal with the serious crime problem that afflicts us in Trinidad and Tobago, we came to both Houses of Parliament and passed amendments to the Firearms Act and increased the sentences very significantly, in terms of the fines and the terms of the imprisonment that the courts could impose. Of course, I am not second-guessing the court or criticizing it; I am just saying that as a Member of this honourable House and a citizen with access, I was very disheartened to see in a particular case recently, where the court found a man guilty of possession of a firearm and 15 rounds of ammunition, and the man was put on a bond, to keep good behaviour for two years. It was astounding!

In fact, as late as last week, a youngster from a secondary school was found guilty of the possession of a firearm and some ammunition in the school and the court seemed to have given due consideration to all the options. The probation officer's report and all the things were done, and the court sent him to the YTC for three years. I hope that he would imbibe the training and discipline that the institution offers and that he would correct his erroneous ways, emerging as a better, cleaner and stronger citizen and not contribute to the trouble that faces us in Trinidad and Tobago.

For the non-lawyer, injunctive relief orders the persistent offender, to put an end to his disgraceful and clearly illegal conduct. It also provides compensatory relief, that is to say, where liability ensues, as far as the court in the civil realm is concerned, it is open to the court to order compensation by the offender for the benefit, obviously, of the victim. The proposed section 30D empowers the court under 30A or B, in addition to imposing criminal sanctions, as I had explained earlier, to make an order for protection and/or compensation where necessary. Where a summary court makes the order for compensation, the maximum award in the summary jurisdiction will be $15,000.

Mr. Speaker, there is one further matter that I wish to draw to the attention of this honourable House. The proposed section 30F permits a court to make an order under section 6 of the Mental Health Act. This provision allows the court to ascertain the psychological and mental state of the offender and the avenues open for treatment of recognized mental conditions of the person who is engaged in this unlawful act of stalking. From studies conducted in the United States it has been deduced that a significant percentage of stalkers suffer from some kind of recognized mental disorder. I am not a psychiatrist, but anyone

who engages in stalking, in my layman's view, suffers from some kind of disorder. In this case, we are talking about clearly recognizable mental disorders, upon which I would make no learned pronouncement.

There are many benefits to be derived from enactments of provisions to address the serious conduct of harassment or stalking; one of which is the convenience of a person being able to obtain both civil and criminal remedies from one court. This is beautiful. Progressive, is it not?

Mrs. Persad-Bissessar: I will tell you after you speak.

Mr. F. Hinds: I am keen to hear you, hon. Member.

It would be naïve to think that anti-stalking law would resolve the problem. I think that is quite common. I am sure that Members on the other side would say that we are passing another law; we are bringing amendments to existing laws and the issue is not the law, but about detection. I always say in response to that, even if you detected it and there was no law, you cannot do anything about it, so you need both.

We, as parliamentarians, are doing our part and as executives in the Attorney General's Office, in the Ministry of National Security and the independent institution of the Director of Public Prosecutions, we will do our part in those respects. As legislators we owe it to the citizens of Trinidad and Tobago to do what we are proposing today. So that argument is to be swiftly rejected and I hope I will hear none of it today. [*Crosstalk*] We are simply constructing the legal framework and we will pursue them and prosecute them once the laws are in place and we are properly able to do so.

The psychology of many stalkers may not be amenable to change and thus their behaviour may continue regardless of the punishment imposed on them. All we can do in those cases, and all I am sure the courts would do, is to tuck them safely away, so that they will no longer be of harm to the persons they have already harmed and, of course, in some ways protect them from themselves, because people react differently to the same situation. I do not know of any case in Trinidad and Tobago, but I am sure in human experience some victims of stalking may have reacted very violently and caused harm to the offender. So sometimes a term of imprisonment protects him even from himself.

I am sure Members on the other side would have understood clearly what I have just said, some having had certain experiences; but we will come to that at another time.

I have outlined for hon. Members the basic elements of the offence of stalking; the three characteristics that must exist in order to successfully prosecute someone for that kind of conduct. I have demonstrated that we have gone the very wonderful way of providing both criminal and civil sanctions in one court. I have demonstrated that we recognized the deficiency of the law and it is our attempt today by these proposed amendments to improve it, not for our benefit, but for the benefit of the citizens of Trinidad and Tobago.

With that very short presentation, I beg to move.

Question proposed.

Mr. Subhas Panday (*Princes Town*)**:** Mr. Speaker, as the Member for— [*Interruption*]

Mr. Speaker: Hon. Members, earlier in the proceedings we intimated that the Prime Minister would like to make a statement. With your indulgence, I will ask him to do so now.

SIPARIA EAST, SAN FRANCIQUE SOUTH (BY-ELECTION)

The Prime Minister and Minister of Finance (Hon. Patrick Manning): Mr. Speaker, I remind hon. Members of a vacancy that has arisen in the local government electoral district of Siparia East, San Francique South as a result of the death of Councillor Harripersad Ramkissoon on December 15, 2004.

I advise hon. Members that yesterday I advised His Excellency the President, that the by-election in this electoral district would be held on Monday, July 18, 2005, nomination day being Monday, June 27, 2005.

Thank you, Mr. Speaker.

Dr. Moonilal: It should have been the general election.

Mr. S. Panday: Mr. Speaker, I wonder if this is a part of the emergency package that the PNM said they were introducing to Parliament to deal with the serious level of the escalating crime situation in Trinidad and Tobago.

Mr. Singh: It is to deal with Rao.

OFFENCES AGAINST THE PERSON (AMDT.) (HARASSMENT) BILL

Mr. S. Panday: One would have thought this Government would have taken all steps to expedite that package of legislation. However, they came today with a Bill which was introduced since 2004, which was engaging the

attention of the Law Reform Commission since 1999. It merely goes to show that the PNM does not know its head from its foot; they do not know what they are doing; they operate by "vaps" and are pulling a stunt on the nation, as I said the last time. They are pulling a stunt on the society. Whenever there is an outcry against the increase in crime, they react sometimes very foolishly and in a very incompetent way.

Diego Martin had some killings recently. What did they do? "We are going to hang right away." This Government is so incompetent that it read the death warrant. Do you know what they did? In reading the death warrant, they made a big "pappy-show" about it. They alerted the nation, "We are going to hang on Monday morning." They measured and weighed him.

Mr. Singh: They asked him what meal he wanted.

Mr. S. Panday: Such a serious sentence and lo and behold, the man had not exhausted all his remedies. While the matter was pending, on its way to the Privy Council for the person to exhaust all his remedies, they read the death warrant.

Mr. Singh: They did it already, Glen Ashby.

Mr. S. Panday: That was really to mamaguy the population, to tell them that they were doing something and then shamelessly, no shame, when the action was brought for a stay of execution in the High Court, they said, "We searched the Registry and we did not see the notice filed." [*Laughter*] This Government has to be careful; nobody could trust you.

Mr. Singh: It was in a blind trust.

Mr. S. Panday: You are going to execute somebody and then you would say that you did not know the notice was filed? Everyone knows that when a notice is filed in the High Court or the Court of Appeal, it is stamped. Such an important document and you tell me that you have a so-called search clerk saying that he was doing a search and could not find it? Search and cross search? If you are searching and cross-searching and cannot find such a simple document, then where are you carrying this society? Anarchy and despotism! When the attorneys went to court, they received the stay. One wonders how competent is the Attorney General and the Government.

Dr. Moonilal: He should get his last meal.

Mr. S. Panday: Are they really incompetent or are they hoodwinking the population? However, brazen facedly he said, "You get away this time," as though it was a favour he did him, but in truth and in fact, that person was

exercising his rights. But they said, "We intend to hang." The rate this Government is going, merely to satisfy itself, one day it will hang an innocent person. It is clear that they would do that; all in the name of saying that they are attempting to deal with crime. When we come to the next Bill this afternoon, we will show you how they really do not know what they are doing.

This Bill before the House, the Member for Laventille East/Morvant in his highfalutin language and pseudo-English accent has really said little or nothing. This Bill was taken wholesale from another jurisdiction.

Mr. Valley: Ramesh!

Mr. S. Panday: They cannot do anything; you borrowed it from the English and maybe the New Zealand Bills. [*Interruption*] "Is Ramesh Bill?"

Mr. Valley: Yes.

Mr. S. Panday: If even the UNC had brought this Bill, it could have afforded the luxury to do so, because we had crime under control. [*Desk thumping*] Look at the statistics. When the UNC was in office, it went down to 99 and 97, so they could use this legislation to carry the country forward. Since the PNM has come into office, crime has escalated; so you do not have the luxury of bringing this Bill at this time.

They have created under Chap. 11:08 the offence of stalking which leads to harassment and also the more serious of causing harassment using fear and violence. This legislation does not define what harassment is and that is a dangerous thing. What the legislation really does is to give you what are the effects of that kind of stalking to create this harassment:

> "'harassment' of a person includes…"

Not a definition.

> "…alarming the person or causing the person distress by engaging in a course of conduct such as—
>
> (i) following, making visual recordings of, stopping or accosting the person;
>
> (ii) watching, loitering near or hindering or preventing access to or from the person's place of residence, workplace or any other place frequented by the person;"

So if it even means in a club or like Smokey and Bounty; something like that.

Dr. Moonilal: The pick-up point.

Mr. S. Panday: "Yeh, and yuh go there and yuh watching him" when sweet bread pass to collect the sweat bread; and you go there two or three times; one time you watch him; the second time you go and you watch him. "When he feel de third time you go ketch him taking it, he call de police for yuh."

Dr. Moonilal: Bribe and harassment.

Mr. S. Panday: So if this even is about visiting another place, like Smokey and Bounty to collect sweet bread, for you to watch a man collecting sweet bread, you could be charged. [*Crosstalk*]

Mr. Hinds: Smokey and Bunty.

Mr. S. Panday: Bunty. You collect sweat bread there also?

Dr. Moonilal: "What yuh does get there, milk cake?"

Mr. S. Panday: The clause continues:

> "(ii) entering property or interfering with property in the possession of the person;"

These are the acts that will give rise to harassment:

> "(iv) making contact with the person, whether by gesture, directly verbally, by telephone, computer, post or in any other way;
>
> (v) giving offensive material to the person, or leaving it where it will be found by, given to, or brought to the attention of, the person;"

In this legislation, although the Acts seem to be extending or going out of the ambit of the Domestic Violence Act, which deals with family relationships, the Bill says:

> "(vi) acting in any manner described in subparagraphs (i) to (v) towards someone with a familial or close personal relationship to the person;"

So although the Bill tries to open it out, it goes back into the hole.

The Bill has opened it so wide that to commit an offence under this piece of legislation, you do not only have to commit the actions in paragraph (i) to (v), but if it is alleged that you are watching or looking at somebody who has a relationship to the person who is the victim, you could be caught also; this is really opening it up to abuse. The Bill says:

"(vii) acting in any other way that could reasonably be expected to alarm or cause the person distress;"

It also says that you have completed the offence by performing the above actions on at least two occasions.

Mr. Speaker, as we said before, the Domestic Violence Act covers a situation where there exists a family relationship. This Bill appears to cover people outside the Domestic Violence Act. If one looks at Part II section IV of the Domestic Violence Act it says who are the persons that can avail themselves of its protection:

"(a) the spouse of the respondent;

(b) a member of the household of the spouse or respondent, either on his own behalf or on behalf of any other member of the household;

(c) a child—

(i) by consanguinity…of either the spouse or respondent;

(ii) of whom either the spouse or respondent is a guardian; or

(iii) who is or has been a member of the household of the spouse…

(iv) a dependant;

(v) sibling..."

This Bill intends to bring in persons who do not fall within that; for example, neighbours who have problems or, in most cases, persons who probably are jilted.

This offence of stalking does not form a part of our culture.

Mr. Singh: Good point! What is the difference between stalking and tracking?

Mr. S. Panday: Stalking is a phenomenon of large countries where you have big celebrities; where you find people wanting to be close to them and cannot be and they follow them all the time. Our culture is not that kind of activity. In Trinidad and Tobago, as the Member rightly said, there are no statistics available to us to indicate the extent of stalking in this country. As a matter of fact, due to the size of this country there is very little stalking. If somebody wants to do something, he or she would do it without stalking. We have merely borrowed legislation from foreign jurisdictions, implanted it with a

different culture, history and situation and saying, "We are going forward; it is modern legislation and we are modernizing the law." The metropolitan countries like Canada, the United States and the United Kingdom have this problem.

Mr. Speaker, in Trinidad and Tobago, how many persons do you know have gone to a person's workplace, or some stranger who the victim does not know goes to somebody's workplace and stalked him; waited there for when that person came in or went out. This society is so small, everybody knows one another; he would be quickly identified. This piece of legislation is really mamagism. In Trinidad and Tobago, the persons committing this stalking act are usually people who had some love relationship and were jilted, some personal relationship that went sour and they probably will harass and stalk.

This piece of legislation tries to deal with a situation where you pounce on the person before any serious act could take place. The persons who carry out that kind of conduct are not usually criminals, in the sense of being a criminal, but really someone who is emotionally hurt, emotionally disturbed, and nine out of 10 times, when he stalks the person, he really goes there to reconcile with the person and has no intention of conducting any criminal act on that person. Our culture in Trinidad and Tobago is not that of stalking.

One would have thought that the hon. Member would have bring another type of legislation which is suitable to our culture.

Mr. Manning: Brought.

Mr. S. Panday: That is sexual harassment legislation; sexual harassment is a part of our culture. [*Desk thumping*] The Member for Caroni East on the last occasion mentioned a sexual predator, a nominee of the PNM Government in the Estate Management Business Development Company in the State sector. I do not want to repeat but, Mr. Speaker, you remember him telling the secretary on more than one occasion, "I like how your breast looking," trying to touch her on her butt.

Mr. Hinds: Let us keep the debate at a sensible level. "Doh raise dat matter." [*Crosstalk*]

Mr. S. Panday: Why?

Mr. Hinds: I can talk about that, too.

Mr. S. Panday: What you have there is a person complaining. One would have thought since that is a part of the culture, as was enunciated by the Member for Caroni East on the last occasion, that kind of legislation would have been brought

to the Parliament first, not this stalking. This is the legislation we should have brought. [*Desk thumping*] If they bring that kind of legislation, then they would be protecting a large number of persons. [*Crosstalk*]

Dr. Moonilal: "Like you support Rao."

Mr. S. Panday: Then you say, "I am not bringing in this legislation, that better fits into the labour law." What prevents you from bringing this here now? That is a criminal act. That is not an industrial relations matter. Although what they might do is say, "If you want promotion, you have to do what I want with you." What prevents this Government from bringing that piece of legislation now? He cannot answer that, because they merely took mumbo-jumbo from New Zealand, Canada, United Kingdom and probably Australia, pieces of legislation, put them together and bring them to give us the impression that they are dealing with a serious problem in this country. We thought that what should have been brought into this legislation is not only harassment by stalking, but harassment per se, which includes sexual harassment.

Apart from that, you should have brought legislation that deals with harassment of public officials; not merely stalking them, but victimizing and discriminating against them to cause them pain, hardship, emotional stress and distress; that is a part of our culture. [*Desk thumping*] That is the legislation we expected any responsible government to come with. But no, copy other people's culture and impose it here. My friend reminded me that sexual harassment is the norm in the URP, CEPEP and the Civilian Conservation Corps. Do you see the number of young innocent persons we could have assisted if we had brought this legislation?

Coming back to my point of official harassment, a special offence, a special type of harassment, not by stalking, but by victimization and discrimination, it brings me to the lady, the Chief Executive Officer of the San Fernando City Council, Marlene Coudray. She has been hounded and harassed and there is no remedy for her under the criminal law legislation. Look how it started; the goodly lady had a piece of land, they wanted to abuse it and she stood up. Then the "jefe" himself said, "I will deal with you." [*Interruption*] As she sat and waited, "I will do for you." She wanted to find out what they could do. Can they stalk me? Could they inflict sexual harassment on me?

Mr. Imbert: "Why yuh do hush and sit down!"

Mr. S. Panday: Instead, what did they do? They inveigled the statutory authorities. [*Interruption*]

Mr. Manning: You are talking dotishness!

Mr. S. Panday: You tried to get her transferred to South. You victimized and tried to discriminate against her. Politicians are harassing public servants and we need a law to protect public servants from politicians like you; that is what we want. [*Desk thumping*] Marlene Coudray is strong and bright and she stood up. She went to the civil courts and made allegations.

What was strange about that matter was that with the allegations of victimization and discrimination made by Miss Marlene Coudray against the Member for San Fernando East, up to today he has not denied the discrimination and victimization against a public servant. Instead they settled the matter. We need legislation to protect people like that.

2.30 p.m.

Then we have the other person, Mr. Devant Maharaj, who is well qualified, and there was a vacancy in the National Lotteries Control Board which is controlled by the politicians, and he applied for that vacancy. Our information is that he went for an interview and came out first but instead of having promotion based on merit, he was victimized and discriminated against by this Government and another person who is less qualified—I heard from what people say—almost square, both in shape and size, and she was placed in a round hole.

Dr. Moonilal: Square peg in a round hole.

Mr. S. Panday: He had to go to the court under the civil jurisdiction to protect his rights. Why was this not brought under the criminal law where you talk about criminal and quasi civil matters? Why did you bring it under this Bill?

Mr. Speaker, the discrimination and the victimization was open and blatant. As a matter of fact, our information is that the person who was chosen was some family to a Member of this House. Further to that, you have heard certain Government high officials saying: "He wants promotion? He expects promotion? He is not a PNM, how he would get promotion?" They are using their political position and discriminating against public officials. That is a part of the culture. That is why vindictiveness and wickedness on the part of this Government put those people in that position.

You are saying the reason you are bringing this legislation today is because you want to give the people swift justice. You are trying to give people swift

justice who may not need it, but there are persons in the public service who need swift justice and you do not want to give them. [*Desk thumping*]

Mr. Speaker, the story does not end there. There is a gentleman at the Land and Surveys Department, Ganga Persad, and I am happy that it is going on like this, in that they in their own wicked and vindictive mind, do not care who they hit coming down the road, they do not care to which caste you belong, to which ethnic group you belong. It is PNM vindictiveness, they will murder you.

Hon. Imbert: That is equality. We do not care who it is.

Mr. S. Panday: He applied for the job, he was the most senior and competent person and again, the "jefe" prevented him from being promoted. Barcant is the gentleman's name.

It also happened in the prison service and there are many cases that fill the courts with that type of behaviour and we are not getting laws to protect them. But they are telling us today that they are bringing modern legislation that the First World countries have embraced, therefore we are taking the country forward. You see the hoax? You see the trickery? This is trickery on behalf of the PNM.

With this piece of legislation as it stands, one wonders how far towards Vision 2020 it will take us. I humbly submit very little, but there is a need for other types of legislation to be put in place such as what the UNC had enacted. [*Desk thumping*]

Mr. Speaker, as I said earlier, stalking is not a part of our culture. Take for example, it is said you want to prevent serious acts like kidnapping, one knows the history of kidnapping in Trinidad, and kidnappers do not stalk. They do their surveillance and they have their high technology which is more advanced than you and the police and they snatch you. That is why relatives of victims who are kidnapped cannot give any assistance to the authorities as to who the kidnapper may be.

For example, in the constituency of Princes Town where Vijay Persad was kidnapped at 8.30 in the evening, the father saw. They pulled the boy from the father's arms and ran, he saw them running and he could not identify them. We are saying that in this jurisdiction they are bringing legislation which does not befit our culture.

Mr. Speaker, they are saying that this piece of legislation is modern but, as I said, the UNC had passed progressive legislation. What is the PNM doing about it? Let us take for instance the Equal Opportunity Act, the UNC had passed that

legislation to prevent the same things which I speak about; discrimination and victimization. That is the kind of legislation that would have brought the people together as one nation because you cannot discriminate against me and if you try I have the law to protect me. What did the PNM do?

When questions were asked about the status of the Equal Opportunity Act, the mantra was that there are defects in it. It is a good piece of legislation, but there are defects in the Act and this Government, which is determined to carry the country backward and after three years in office, could not get the Law Reform Commission to look at the legislation and make the relevant amendments as it saw fit. That is the psyche and culture of the PNM. They want to discriminate, victimize, and divide all people.

Tell us today what prevented you from making the amendments in that piece of legislation so it could have come to the Parliament to carry the country forward? Instead, a Parliament which has the power to deal with the law, and if it sees a mistake or any defect in that law can rectify it by amending the Act, or repealing and replacing it, but instead of doing that they are so determined to carry out their victimization and discrimination, they rather go to the court and fight a case saying that the law is defective. What a shame on this Government! Taking taxpayers' money to fight cases when in truth and in fact, the Parliament could have dealt with it. Is that 2020 vision? Backward looking people like you?

Mr. Speaker, it is not only that. Look at the Freedom of Information Act which was to modernize the society and carry it forward so if beauraucracy was an obstacle in moving forward, there was an opportunity to question it and get answers which may affect you, but instead, since this Government has come into office at every turn it is reducing the scope of the Freedom of Information Act.

They shamelessly came on the last occasion and said you cannot get information from any authority—I think there are 176 of them—once there are investigations pending. So they set a trap against the people, put up a wall against democracy, and the moment you ask for information, they create an investigation and prevent you from getting the information. That is the aim behind it.

Mr. Speaker, making the Executive accountable to the people is democracy and it is only when there is democracy the country can go forward. It is not only that you vote, you put people to beat people and use violence to win election,

and tell your supporters to stay dumb for the next five years until you throw in some water tanks and they will vote for the Government. No, that is not democracy! Five-minute or two-minute democracy is not democracy.

When the United National Congress was in office, it was trying to create a situation where democracy was meaningful and where you could have exercised democracy during the five-year period. But this Government has put up obstacles throughout. In addition to that, we see where they are trying to reduce the scope of the Judicial Review Act, No. 60 of 2000. They want to remove section 5 which says if public interest legislation does not affect you directly—

Mr. Speaker: Hon. Member, I think you are anticipating a bill that is right around the corner. Perhaps you should stay away from that.

Mr. S. Panday: The point I am trying to make is that the PNM is carrying the country backward. It is trying to undermine the democracy. That is what it is doing.

Mr. Speaker, we ask the question: Since you are copying, why did you not look at the countries from which you took this legislation? Why did you not look to see whether they had similar problems to ours and copy that legislation also? Because in this country it is known that there are ethnic tensions which cannot be denied. Why did we not copy from the English legislation where it is an offence for anyone to make any statement to stir up racial hatred and cause distress to people? Why did we not bring that into our legislation? It is because you do not really have any intention of dealing with the problems of the society. You just take a little piece that suits you.

Mr. Speaker, they go further. I know some of you listen to the radio stations, they publish material and say things to start racial hatred in this country and there is legislation in the UK to deal with that; publishing or distributing any material stirring up racial hatred. Why do we not pass legislation to prevent people from trying to destroy the society? Or is it that you believe that by so doing it will be destroyed in such a way that you will be on top? That is the question we ask them.

Mr. Speaker, they went on in this Bill to speak about a quasi civil matter but it seems to me that they merely copied the Bill from the various jurisdictions and did not even look at our own legislation to see which parts could be taken out from our own legislation to make it relevant.

For example, when one looks at the Domestic Violence Act, one would see that some of the offences mentioned in this Bill are also mentioned in the Domestic Violence Act but the Domestic Violence Act contains more serious allegations, for example, it speaks of engaging in threatening conduct like this one; being on premises like this one; being in locality similar to this one; but it goes on to say at section 6(1)(v):

> " (v) taking possession of, damaging, converting or otherwise dealing with property that the applicant may have an interest in, or is reasonably used by the applicant, as the case may be;"

In the Domestic Violence Act, we have a practice which is working and what happens, although the offences are more serious than in this one, because it is merely harassment by stalking, later on, the harassment causes a fear because violence may be used against him.

Although the Domestic Violence Act gives quick justice, it puts the onus on the person to bring a private complaint and when that person does that, you get an immediate hearing because domestic violence takes precedence over all matters before the court. When the court listens to the matter very quickly and it believes that a domestic violence offence has occurred, it makes an Order restraining you—that is the part with the quasi civil thing—from performing a domestic violence act. It gives you a special time frame in which you have to obey this piece of legislation.

So it is not treating you as a real criminal, and the court then advises the person that if this Order is breached he will be brought back before the court by the police. An Order is lodged at the police station, and one is kept, and the moment that person comes back and you feel he has breached that Order, you call the police who arrests him and lays a criminal charge against him and when that is done, he has to face the court and he is either fined or sent to prison.

As a matter of fact, having returned to the type of offence which is more serious than the offence before this honourable House it says under Part V, section 20 of the Domestic Violence Act:

> "20. (1) Subject to subsection (2) a person against whom an Order has been made and who—
>
> (a) has had notice of the Order; and
>
> (b) contravenes any provision of the Order or fails to comply with any direction of the Court,
>
> commits an offence…"

And hear how the law at that time took care of everybody when the UNC Government was in office. The UNC indeed was a caring and progressive Government. [*Desk thumping*] You all are here first of all because of spiritual and moral values, and when you reached here, became immoral; and the second time, the election was stolen by violence, thuggery, and hoodlum.

Dr. Moonilal: And that is in the court record.

Mr. S. Panday: That is the record. The person who was there when the then Mayor for Chaguanas was being beaten is now a big CEPEP contractor.

As I was saying:

> "commits an offence and is liable—
>
> (i) on a first conviction to a fine not exceeding nine thousand dollars or imprisonment for a period not exceeding three months;"

It says however, if you commit the offence again:

> "(ii) on a second conviction to a fine not exceeding fifteen thousand dollars or imprisonment for a period not exceeding twenty-four months or both;
>
> (iii) on any subsequent conviction to a period of imprisonment not exceeding five years."

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

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

Question put and agreed to.

Mr. Hinds: Mr. Speaker, I beg to move that the speaking time of the hon. Member for Princes Town be extended—

Hon. Member: That was done already.

Dr. Moonilal: "What House you in?"

Mr. Hinds: Oh, it was done already? I am obliged.

Dr. Moonilal: What planet you are on?

Mr. Hinds: Mr. Speaker, so kind I am. So interested I am, Mr. Speaker—

Dr. Moonilal: And we are depending on you to solve crime.

Mr. S. Panday: Thank you, Mr. Speaker; that is characteristic of the PNM. They do not know where they are, and they do not know what they are doing.

Hon. Member: They will foil the kidnapper.

Mr. S. Panday: Mr. Speaker, the point I was making is that in this case when the offence is less serious than the offence under the Domestic Violence Act, what happens is that the police comes in right away and lays a criminal charge. That is a serious matter because the stalking is to prevent the committing of an offence, but in the Domestic Violence Act, the offence has already been committed when "yuh mash up de place". Even in that case, since you are not that kind of hard-line criminal as the Member for Laventille East/Morvant said, jilted persons, you do not try to make a criminal of him. The legislation should be drafted in such a way to create peace and harmony in the society, to cause it to go forward and not merely to make criminals.

Today he said he was hurt that we came to this Parliament and passed draconian laws with stiff penalties and the person got a month. Long ago in practising, every case was determined by its own merit and the theme of the court, especially the Court of Appeal, was that it did not want to make criminals. So this is what this domestic violence legislation was about; not to make criminals.

Mr. Speaker, this legislation under this Bill, the police steps in right away and when that is done, you are being charged under the criminal law. Your fingerprints are taken and if you are convicted there is a criminal record against you. Is this the type of legislation that you would take to damage a person's life? Do you know if you have a criminal record you cannot even get a taxi badge? You cannot get a job in the public service, and if you have a criminal record you cannot get a work in a big firm. You will be confined to CEPEP, URP and the Civilian Conservation Corps, you will be at the mercy of the PNM. So we should be careful when we are introducing legislation like this to see whether the situation in England from where you copied the law is the same as here.

Does it form a part of the person's criminal record? Or because of the nature of the offence like domestic violence, they would not fingerprint you and put it on your criminal record? These are the things you must find out before legislation like this is passed, because in this society, the moment you have a

criminal record, you cannot get into the public service or the police service and we must think very carefully before we pass these kinds of draconian legislation.

Mr. Speaker, we ask if any research was done. Have you researched the situation in Canada, New Zealand or England? The answer clearly is no. When one looks at the Offences Against the Person Act, Chap.11:08, which they attempted to amend, it says that these amendments are brought in under section 30 and they come under the criminal section which deals with assault, criminal acts like assaulting a person, saving a shipwrecked property, assaulting judicial officers, assault occasioning actual bodily harm, and serious offences, and placed in the legislation.

One would have thought that this particular type of legislation would have been brought under a separate Act so it would be identifiable because the way it is tucked into this piece of legislation it would easily go astray. If one looks at the legislation, Chap. 11:08, one would see this is a sore thumb and the same countries from which it is copied New Zealand and the UK have their own Act, and I think it is said that Canada slips in the criminal code, but when one looks at the criminal code, one would see it fits in that section of the criminal code very snugly.

What they have done here is stuck it in without any thought, because this piece of legislation is quasi civil in that it permits the person to be fined, imprisoned, and to receive compensation.

3.00 p.m.

You must ask the question: What thought has gone into this piece of legislation? I remember in 1999 when the hon. Member for Siparia was in government the United National Congress held a number of consultations throughout the country and alerted the population as to the legislation before the nation. It was based upon consultation with the people that the United National Congress brought the Domestic Violence Act of 1999. But listen to what they are telling us today. What they should have done was to have national consultation on this legislation. What he said was that it had been engaging the attention of the Law Commission since 1999 and hence it had been there for a long time. I humbly submit that this piece of legislation should have been brought in the public domain before it was brought here.

We are bringing this legislation to have quick action. One wonders whether persons could not have used the civil courts to obtain the same relief, because I

am certain you are aware that persons can obtain injunctions at the High Court preventing persons from harassing, molesting, interfering, assaulting, beating or in anyway interfering with them. Maybe if we go through that method, then the matter might be properly ventilated, and when it is properly ventilated, a more educated decision can be brought. The Member says that he wants to have quick action. All we have to do is that the Legal Aid Authority could grant emergency certificates and we could go to the court and obtain our relief.

Another thing we are doing here is giving the magistrate the power to give compensation. We know that the magistrate can give compensation, but compensation, as we know, is a one-and-all payment for any injury which you may suffer. So we ask the question: Is the magistrate a competent person to award adequate compensation? We should look at that. We ask the question: Have magistrates been trained to deal with the assessment of this kind of compensation? The answer is, no. But the High Court, we are certain, is highly qualified to deal with compensation. But in any event, a maximum compensation which could be awarded by the Magistrate's Court is $15,000. What about if the compensation is above that? That is why we are saying that maybe we should give people the option to use this piece of legislation or the common law legislation under tort and obtain the same relief.

Apart from the training of magistrates, with this piece of legislation and other pieces of legislation, what we are doing is further overburdening the Magistracy. We ask the question: Have we put into place mechanisms or a structure in the Magistracy to deal with this type of problem? We will wait and see. Also, this kind of offence is a highly specialized type of offence and it deals with people who have emotional stress and strain. Have we trained police officers to deal with these types of offences, or will we use the ordinary police officers?

These are the kinds of things that we would like the Member to answer when he is responding. Also, when one looks at the legislation, the defences, one sees under section 30C:

> "It is a defence for a person charged with an offence under section 30A or B to show that-
>
> (a) his course of conduct was pursued for the purpose of preventing or detecting crime."

That, I humbly submit, is an opening that will give the police an opportunity to abuse the situation.

I see in this legislation nothing in place to prevent official abuse; abuse by the police when they come to your place. As I said, they did not look at the Domestic Violence Act which has been passed a long time ago and that Act says that if you breach the domestic violence order or if one person calls the police station and says a domestic violence act is being committed, or attempted to be committed, the police may enter immediately onto the premises. However, it puts a safeguard. The police merely cannot run in there for any other purpose but that specific purpose on that specific occasion.

Why did we not put this in the legislation? Do we not know about it? Have we not read? These are the questions you ask. It says under section 23 of the Domestic Violence Act that:

> "Nothing in this section authorises the entry onto premises by a policeman, for the purpose of any search or the arrest of any person, otherwise than in connection with the conduct referred to in subsection (1)."

It really gives protection against official abuse. It continues:

> "(3) Where a police officer exercises a power of entry under subsection (1) he shall immediately submit a written report to the Commissioner of Police, through the Head of the Division where the incident occurred, such report to contain the following information:"

The police just cannot go in there and beat up people. It continues:

> "(a) the reasons for entering the premises without a warrant;"

There is protection in the law. That law was passed by the United National Congress government. It continues:

> "(b) the offence being committed or about to be committed; and
>
> (c) the manner in which the investigation was conducted and the measures taken to ensure the protection and safety of the person at risk."

We have in our legislation laws to prevent this. It goes further to make sure the police stays in line. It says:

> "(4) The report referred to in subsection (3) shall be submitted to the Director of Public Prosecutions by the Commissioner of Police within seven days of receiving the report."

So you have the police, if he belongs to that organization, you could say somebody is covering up for somebody, but after the report is made by the police and sent to the Commissioner of Police, he has to send it to the Director of Public Prosecutions, a supposedly independent institution, to review it. It says:

> "(5) Where a complaint is made against a police officer by a person resident in premises alleging that the officer's entry onto the premises under subsection (1) was unwarranted, the Police Complaints Authority shall investigate the complaint and submit a copy of its report to the Commissioner of Police."

So this opens the law; it opens protection wherein the person, who is being subjected to this abuse, does not have to go to the Police Complaints Authority, but it is automatic in the law. If, however, that police officer is found to have committed a breach, it says:

> "(6) Where the investigation of the Police Complaints Authority finds that the entry under subsection (1) was unwarranted, the Police Complaints Authority shall also submit the report to the Police Service Commission and such report may form the basis of disciplinary action against the police officer."

That is why we said in the beginning, you have imported legislation from a different cultural background. Maybe you copied it so fast that you did not think of what their situation is. Maybe they have no need to put that in this legislation. They probably have it otherwise, but what we did here, we merely copied and leave persons at risk. That is why, when we look at this legislation, we say they are merely mamaguying the population. I hope when the hon. Member is responding he would not merely say that we cannot prevent all abuse. But what we see in this legislation is that there is no protection to protect us against any abuse whatsoever.

Another part of our culture is violence in schools. We do not know what is the state of violence in schools in New Zealand or England, but we know in Trinidad and Tobago that there are a number of truant students who go to school with guns, who try to burn down the school and we know, as a matter of fact, that when the teacher calls the parents, the first thing the parents want to do, instead of scolding the children, is beat the teacher. We should have introduced into this legislation that in certain circumstances—not all—where we do not want the issue of a course of conduct—a course of conduct is for a jilted man,

but when you have a violent parent coming to a school and threatening and harassing the teacher, those threats and that harassment will, indeed, not only affect the teacher, but all the students who come under the jurisdiction of that teacher.

Hon. Member: Like Cudjoe.

Mr. S. Panday: Section 30B(1) of the Bill says:

> "A person who is accused of conduct which would constitute an offence under section 30A and which causes the other person to fear that violence will be used against him, and the person whose course of conduct is in question knows or ought to know that his conduct will cause the other person so to fear, commits an offence…"

When we speak about "course of conduct" and when one looks at the other section 30A.(1)(b) it says:

> "course of conduct' involves conduct of the kind referred to in paragraph (a) carried out on at least two occasions."

We say when a parent is so bold to go to a school and harass a teacher, we should not have a "course of conduct", we should say: "Your conduct", one time because our education system is the livewire of our society. We should not have a course of conduct where you are dealing with parents going to schools to harass teachers, but we should say merely: "Your conduct. Do it one time and we will deal with you." As I say, this legislation looks very beautiful on paper but when one puts it against our cultural background, one could see that it has very little relevance to us.

With these few words, I thank you very much, Mr. Speaker. [*Desk thumping*]

Mrs. Kamla Persad-Bissessar (*Siparia*)**:** Mr. Speaker, I congratulate my colleague from Princes Town for a very insightful and detailed contribution in the Parliament this afternoon. He has raised some very important issues. My colleague from Laventille East/Morvant, unfortunately, could not even read the script that was given to him. It was clear that he did not understand what he was reading, and because I had the opportunity to read what took place in the other place, what basically he was reiterating was the script given by his senior Minister. It was the identical script, but he could not answer the questions. So when I asked him about the hybrid criminal and civil offences, he told me he would describe that a little later on, and up to now I am still waiting to see what these hybrid offences are.

I want to agree with the Member for Princes Town and to go even further to say that this Bill is totally misconceived; it is fatally flawed; it should be withdrawn; you should look at it again and you should do the job that you set out to do. This Bill just does not do it at all. You should withdraw that Bill. In the first place you took this harassment offence and, really, the only thing you have here for harassment is one element: stalking. You did not call it stalking; you called it harassment, but you left out all the other things that deal with harassment. So it is really an anti-stalking Bill; it is not an anti-harassment Bill at all. That is the first thing.

You took it and placed it under an amendment to the Offences Against the Person Act and immediately you boxed yourself in to deal and to create offences that would fit into the general structure of something called the Offences Against the Person Act, when what you really needed to do was to create a separate piece of legislation—not an amendment to the Offences Against the Person Act—that would be dealing with anti-harassment and, of course, to deal with the whole offence of harassment.

The second point has to do with the fact that you started off in your contribution by saying that the law as it stands, whilst you may be able to get injunctive relief against persons acting in a manner described as the offence of harassment in the civil courts; you said that was a very slow and complex remedy and you said further that you could only ground your application in the High Court of injunctive relief in the tort of nuisance, it is because you boxed it into the Offences Against the Person Act. In this entire Bill nowhere did you create a tort of harassment. Whilst it is true you copied other people's legislation, within their legislation is contained the tort of harassment. So the person would have the option, if he wanted them to have the option to go to the civil courts, they could go, or they could use the civil jurisdiction to get the orders that could be made there.

So I am saying it is fatally flawed. You have told us we cannot access the civil courts. You admitted that and yet you have done nothing to correct what you called a slow and complex remedy which could only be grounded in the tort of nuisance. Why did you not do like the New Zealand and Canadian legislation and create a tort of harassment? In that way we could get true injunctive relief. You misled us when you said: "You could come and get quick justice". But there is no quick justice.

When someone is out there harassing and stalking you, you need the relief immediately. My friend, the Member for Princes Town, went into details about

how we dealt with that issue in the Domestic Violence Act. Mr. Speaker, I had the privilege of heading the task force that dealt with the reform of the domestic violence legislation and as the Member for Princes Town pointed out, we went throughout the length and breadth of the country and we did the consultations as to what should be included. At that time we wanted to include the anti-stalking clause within the Bill that we would have brought, but the PNM did not support us on it. Let us remember that. They did not support us. And they come instead, now, with this little piecemeal foolishness that has no teeth; that cannot give us quick justice, and ask us to support it, and we cannot.

Here it is he tells me I can get quick injunctive relief. I cannot get it in the civil courts because he has not created the civil tort of harassment. I must go under "nuisance", and as a good lawyer yourself you would understand, Mr. Speaker, to prove this under "nuisance", as he said, is very slow and torturous. If you give me a civil tort of harassment, I can go tomorrow morning, as you know, within 24 hours—within 10 hours—I can get an injunction to restrain the person who is allegedly stalking me. You tell me I can get it here and that is not true. You are misleading the Parliament, because if you look at clause 30D it says:

> "A Court sentencing a person convicted of an offence under sections 30A or 30B may, in addition, make an Order, in the prescribed form, for protection or compensation."

This is only when you are sentencing the person. So what happens if I am being harassed now and tomorrow, or the next day, or for the next week and next month I have to wait until sentence is being passed before a protection order can be granted? Where is the quick justice?

My colleague pointed out that you should have done what we did in the Domestic Violence Act. You should have provided for interim protection orders instantly, that if I am being stalked or harassed, or you are being stalked or harassed, you can go to the court immediately and get an order whilst the matter is pending—ex parte. But the only time you can get it is when you are passing sentence. Nonsense! By that time the person might have already killed me. It is true! It says a court sentencing a person convicted of an offence may also make an order for protection. Nowhere else is there any provision in this legislation for protection orders pending final determination of a matter.

So, Mr. Speaker, I am being harassed—let us not use me. Ordinary citizens out there are being harassed.

Mr. Yetming: Do not watch me.

Mrs. K. Persad-Bissessar: Mr. Yetming says do not look at him, so he is not being harassed at all.

Mr. B. Panday: He is a harasser, not a harassee.

Mrs. K. Persad-Bissessar: So here we are—harassment—someone is following you; he is making visual recording, stopping, accosting you, watching you; loitering near your premises; entering your property; interfering with your property; making contact with your person by gesture, by phone, the computer, all these things are going on and I have to wait until 432,000 cases in the Magistrates' Courts are dealt with in order to get a protection order. I am calling on the Government, if you are serious, you must put in a provision that would allow for interim protection orders pending the final determination of the matter.

The compensatory leave, my friend dealt with it already so I will not go into that, but I want to look at the offences themselves and I want to say that this endangers members of the media. The legislation places them in danger when they are doing their jobs. Let us look at what the offence is.

> "harassment' of a person includes alarming the person or causing the person distress by engaging in a course of conduct such as—
>
> (i) following, making visual recordings of,…"

Another part of it says:

> "(iv) making contact with the person,…"

Then when we go on to the later part of clause 30A(b), it says:

> "a 'course of conduct' involves conduct of the kind referred to in paragraph (a) carried out on at least two occasions."

So if a member of the press has been tipped off that there is a fellow by "Smokey and Bunty" collecting sweet bread and decides to follow the person allegedly receiving the sweetbread or to follow the person carrying the sweet bread—whichever it may be—and the member of the press does that on two consecutive Fridays—because I understand this used to take place on Fridays—does that then mean that they are guilty of the offence of harassment? Here it is, allegations are being made that there are PNM officials who are being investigated by the Drug Enforcement Agency—and I have asked the Government to tell us whether that is true or not—and a member of the press is tipped off and decides

to follow or decides to make two telephone calls to the alleged offender—the person engaged or the person being investigated—is that member of the press guilty of an offence? What is the defence that would be held out for members of the press who are carrying out their duties with respect to freedom of the press; freedom of expression?

This legislation is dangerous. There are some very serious investigative reporters—Camini Maharaj of the *Express* and Sasha Mohammed of the *Guardian.* They do the work; they come out with it, and you are out to get them; you have been threatening them with lawsuits, and so on. You want to stop a reporter from doing investigative journalism. What do you then do? So she calls the Member for Diego Martin East on two occasions to ask him about some $32 million in debt that he is owing to someone. Does the police then step in and say: "Listen, you are guilty of harassment?" What protection is there in the legislation for persons who are carrying out their duties as investigative reporters, or reporters generally?

A final point: Why is harassment only, in fact, two occasions? Can I not be harassed on one occasion? That is where your legislation is misconceived, because you are dealing with stalking, so stalking has to be repeated. Once a person harasses me, am I not entitled to some kind of remedy? So why do we have that it must be at least two? What is the difference between two and three? Why should it not be three? Why arbitrarily are you telling me it must be at least two occasions? Why can it not be one? I have been harassed; you have been harassed—

Mr. Imbert: I have never been harassed.

Mrs. K. Persad-Bissessar: You have never been because it is the PNM that is harassing all of us on this side. That harassment could take place on one occasion, but you have chosen two because you know that you are going really after stalking, and stalking means it must be repeated conduct on the part of the person. Tell me why two? What is the magic in the number two? Is there no magic in three or in four, in five, six or seven? Why two? Please explain that to us.

If you had created the civil tort of harassment you would have solved the difficulties pointed out by the Member for Princes Town where your compensation is going to be limited to $15,000 in the summary jurisdiction in the Magistrates' Court. But you have identified some of the things that compensation could be given for. Section 30E(1) states:

"(a) loss of earnings;

(b) medical expenses;

(c) moving and accommodation expenses; and

(d) reasonable legal costs."

The very nature of harassment and stalking—one of the greatest dangers in it that impacts upon the victim is the whole issue of the trauma and emotional distress that one would suffer from any form of harassment. Why is that not included here as one of the heads for compensation? You would tell me you have put an order for compensation which "may include", so it does not preclude it, but you specifically listed matters that are normally given anytime when you are assessing compensation for what you call, special damages. So loss of earnings is something that is special damages; medical expenses that are quantifiable because of your bills, and so on. Why then did you not deal with emotional distress? Is that not the worst for the victim out of harassment?

Mr. Hinds: That is in the common law.

Mrs. K. Persad-Bissessar: No, we are not going to the common law. You have listed specific heads. Do not tell me it is in the common law because you are now creating legislation so there will be no doubt. We are talking about compensation and you have given special heads of damage. I ask you to give within this, emotional distress. Let your drafters look at it. You do not have to turn it away at the first blush. Emotional distress trauma, to me, is one of the greatest impacts that harassment could have upon an individual.

With those words, I thank you for your time, Mr. Speaker. [*Desk thumping*]

Miss Gillian Lucky (*Pointe-a-Pierre*)**:** Mr. Speaker, I have listened very carefully to the contributions made by the Member of Parliament for Princes Town and also the Member for Parliament for Siparia and I must say, I, too, share some of the concerns as raised by these two Members.

I wish to begin by pointing out that when we are following legislation, as in this case, no doubt, the particular Bill that we are debating based primarily on the United Kingdom Protection from Harassment Act 1997, it is important when we are doing our local legislation that we get it right. Of course, we are very creative people and what the United Kingdom had to face in 1997 would not have been what we have to face here in Trinidad and Tobago in 2005, and that would be a very important reason for having certain changes in the Bill being

debated, changes in terms of its format and so, from that of the United Kingdom Act. There must be some reasons for the changes that we are proposing to the UK legislation.

Put simply, what the United Kingdom did in 1997 when faced with many of the problems that we now face in the criminal arena, more specifically the issues of harassment, including stalking—in the United Kingdom, the Protection from Harassment Act of 1997 was passed, but what was done in England was that they made a clear demarcation between acts which were just deemed to be acts of harassment and also a distinction between acts which put people in fear of violence.

What is noticeable in this particular Bill of which, no doubt, the Member for Laventille East/Morvant would be well aware, is that in our legislation we have sought to bring the two of them together. It is for that reason, I think, with the greatest respect—and I am subject to correction—that the Member of Parliament for Siparia correctly asked what was the magic in the number two, because in the definition of "course of conduct" in our Bill there is reference to that:

> "a 'course of conduct' involves conduct of the kind referred to in paragraph (a)…"

That is the description of all acts that include harassment:

> "carried out on at least two occasions".

The Member for Siparia correctly asked: What is the magic in two? What if the particular act has only been conducted on one occasion?

I am not sure whether the Member for Laventille East/Morvant is aware that in England the number two does arise in their legislation, but it arose in the English Protection from Harassment Act 1997 to distinguish acts of harassment from a second category of act, and those acts being acts which put people in fear of violence. It was in that more serious category, that is, acts which put people in fear of violence, that the number two arose in the English legislation in which they pointed out, well if there is a course of conduct on at least two occasions in which a person puts another in fear, then, of course, there are more serious penalties.

What we have done in this Bill—and I am saying that it ought not to be done the way we are proposing it—is that we have lumped everything together, and by doing that we are going to make the mistake of not having that level of

clarity that the United Kingdom legislation enjoys. It is one thing to stand in the Parliament and do as the Government does, which is to say: "Listen, we are bringing a lot of legislation and we are going to deal with crime and there will be a quick fix." That, without more, will not resolve the problems.

We heard the big hue and cry: "We are going to deal with crime; we are going to resume hangings", and lo and behold the State is confronted with constitutional action and stay of executions and, as was pointed out, you have those who are in favour of abolition clashing swords with those who are the crusaders of justice. If the State is going to embark on action and if you raise the awakening of the people that you are going to do something about crime, you owe it to the people to get it right. You make a mockery of the system when you have everybody with their hairs raised expecting action, expecting something to be done for crime, and lo and behold, the Government, after raising everybody's expectation, just proved that it is impotent, incompetent and we go back to stage one. Sometimes we even go back to way past where we began.

The point is, there is a problem with harassment in the country and there must be a good reason, and I am asking the hon. Member for Laventille East/Morvant to explain why, for example, in Trinidad and Tobago, we are defining what harassment is. I listened carefully to what the Members for Princes Town and Siparia said when they were making the point that there are so many other critical areas that are left out. That is the problem with definition. I know; I can read it for myself. It says:

"'harassment' of a person includes…"

And there are certain things that are included. But there is a great benefit in not specifying, and in the United Kingdom they have chosen not to specify, with good reason, I think, because the categories of harassment are not closed. In other words, bearing in mind we are in the computer age and beyond, there are certain types of harassment that will not be contemplated specifically in 2005, but when we pass the legislation in 2005, we must make sure that in years to come if there are other kinds of harassment, we will have legislation in place. That is very critical. So that is one point.

As I am on the point of harassment, there was an act of harassment that occurred in this honourable House and it was only when it was viewed on national television that the point really came across even more strongly than when it was done here in this honourable House on Friday. When we are dealing with crime it makes little or no sense to use as a tool any act of threats

to those on the other side who may have different political views. When the Member for San Fernando East was speaking on Friday, during his contribution he pointed his finger, with eyes that appeared to look menacingly on those on this side, saying—you see, when you read it from the *Hansard* it does not sound as bad as it looked; it was not as threatening as it really was; it did not appear as harassive when you read it. That is the beauty sometimes for some people when they read things. They sound better on paper and sometimes it is the gesture and the tone that is missing in the *Hansard*, in this case, that takes away the negative impact of what was done.

You see, there is a problem in this country right now. Because of the growing political divide, there is a feeling that there are persons, because they do not support the Government, the Government is out for them. I am not saying whether that is right or wrong, because it is wrong to go and persecute anyone, but I am saying that there is that feeling. So when the Member for San Fernando East stood up on Friday and pointed to everyone on this side and said—and I have the *Hansard* report:

> "Jail ain't nice. I hope is a lesson for all of you across there. Learn! Jail ain't nice."

He pointed one finger to the other side, three pointing at the Member for San Fernando East. To make matters worse—and I make no apology for saying this—[*Interruption*] I will tell you what is wrong, Member for Laventille East/Morvant. You see, when you are fighting crime, do not take things out of context and take one part of a sentence or phrase and leave out the rest. You know better than that. What is wrong with the statement is that one side was pointed out and the other side, a side that itself has to confront allegations of serious impropriety—I am not saying that the allegations are true, but I am saying that is what you are confronting. Be true about it! Be real about it! Those of you who have integrity on that side will know what I speak of. You confront it!

All I am saying is, send the warning to everybody; send it to both sides; send it to the country, but do not just single out one side. That only promotes the feeling of unfairness, discrimination and persecution that people are feeling in this country right now. And the buck stops here in the Parliament! The young people who look at the Parliament, the people out there who want to know that when laws are being passed they are not just being passed to persecute one group of persons. Because if we continue acting in this way, with the greatest respect to the Member for San Fernando East, it is just going to fuel the kinds of

problems that we are facing in this country with respect to discrimination, perceived or otherwise, because of a widening political divide.

Even looking at the definition of "harassment", one could actually include what was done by the Member for San Fernando East to be an act of harassment, because it was a case of making contact with persons by gesture, alarming the persons or causing such persons distress when such persons were not so deserving. And standing up and saying that people will be hanged and "jail ain't nice" and all that will happen, without more, that is not going to solve the problem. In the same way this piece of legislation is not going to solve the problem.

Right now the police stations are confronted with persons who have brought complaints and who want to make reports about acts of harassment. In the scheme of things because this Government has allowed crime to escalate out of control, we now have to prioritize crime even more than before. So when a police officer with limited resources has to make a determination as to what ought to be done, or whether to deploy resources for a murder, rape, kidnapping, as opposed to an act of harassment where somebody may come and say: "Look, I am getting calls" or "somebody is loitering outside the house and they are looking at me in a threatening way", police officers—and I feel very sorry for them—just cannot deal with what they have to deem as trivial matters.

I am not saying that harassment is trivial; I am saying because the police do not have the resources that are needed, those matters of harassment, as they stand now, are literally put aside, swept under the carpet, or the persons bringing the complaints are told: "Listen, go and see if you could patch up things with your neighbour", or "do not take it on", or "if it gets more serious, let us know." That is the reality of what is happening in the police stations because the police officers do not have the resources that are needed to deal with it.

It was the Member for Princes Town who made the point—and I want to agree with him wholeheartedly on that point—that unless you give the police the resources that they need and, more importantly, train them to receive these kinds of complaints, we are not going to get anywhere. The Government cannot try to appease the people of Trinidad and Tobago by passing law after law without scrutinizing it and, more importantly, addressing the fact that the law needs implementation.

There are many persons who have gone to police stations—it is not a case of harassment, but there are many victims of rape, for example, who, when they go

to make their reports—I am sure the Member for Laventille East/Morvant in his practice would have heard of this complaint also—the rape victims complain and say: "Do you know what? We feel as though we were the offenders; we feel as though we did something wrong", based on the kinds of questions that are asked of them. I am just saying that when you are entering into the arena of harassment, one has to understand that when people go with these complaints, those who are receiving the complaints must not trivialize them; must not make the persons feel as though: "Right, you came; you made a report; well, go and see what you could do for yourself." That is what has to be addressed when you are passing this kind of legislation.

It is very much like the copyright legislation in Trinidad and Tobago. How many police officers—and let us be honest about it—really have the expertise to deal with those kinds of complaints? There are many of them who would admit very readily that they do not have the level of expertise to make a determination on what is a pirated copy from what is a correct copy. They do not even know the section. They know we have an Act but which is the section?

I am just saying that these are things that the police have to make sure, whether it is through the office of the Director of Public Prosecutions or by having seminars and workshops with the police, that they are able to charge persons under the correct sections of the law, and when you are dealing with this kind of legislation which has specified what harassment is, the police are going to have to be trained in that regard. That is the problem with the police service. And the first thing the other side would jump up and say: "That is why we want to pass the Police Reform Bills".

But let the point be made, the Police Reform Bills will not solve the problem of crime in this country and, therefore, if there is any hope that there is going to be this special majority to pass it, understand that that is not going to happen, and do not hoodwink the country into believing that that is the one that would solve the problem when it is not going to solve it. That is something the Government has to confront. Get the legislation right.

For example, I looked at the legislation in the United Kingdom and there are really four points that I would like the hon. Member for Laventille East/Morvant to address. I have dealt with one already and that is: Why, in our legislation, did we seek to bring everything together? Because it has led to some problems. That is the first thing. Why can we not keep it the way the United Kingdom has it: Harassment on one side and then for more serious types of harassment for which you would want a higher degree of frequency—and in this case it is just

from one to two and, more so, the kind of evidence you would require and the penalties are more serious. We have those persons who do not just harass, but they put people in fear of violence.

The second point is that in the English legislation there is a specific defence that was placed for persons who put others in fear of violence. Because you must remember in the United Kingdom there is harassment and those who put people in fear of violence. This is the problem when we merged ours here in this Bill, because by merging it there is a particular defence that is not included. In other words, in the United Kingdom if a person puts another person in fear of violence, which is represented in our local Bill by section 30B, there is a defence that is stated in the United Kingdom that has been left out here and that is, if the pursuit of his course of conduct was reasonable for the protection of himself or another or for the protection of his or another's property.

In other words, that is not incorporated in our Bill. I know the Member for Laventille East/Morvant might be quick to point out that it is incorporated when one looks at what is in section 30C(c) which states:

> "in the particular circumstances, the pursuit of the course of conduct was reasonable."

I am just saying to the Member for Laventille East/Morvant that "defence" is also included in the United Kingdom, but when one is dealing with persons who are not merely harassing but the higher degree of harassment, you have to have that level of special defence.

So in the United Kingdom, they have what we have for those who are harassing, and then for those who put others in fear of violence they have included now, this specific defence, and I think that contemplation ought to be given to it. It does occur in section 4(3) of the United Kingdom Act and that is, of course, represented here in *Archbold* 2005, and I know that the Member for Laventille East/Morvant does have a copy of the *Archbold*.

Yet another point for contemplation or consideration by the other side deals with the variation of a protection order. In England, for example, if there is to be a variation amongst all the other parties to the order having that right, the prosecutor is also given that power or right in England, and I would just want the hon. Member for Laventille East/Morvant to give an explanation as to why the prosecutor was not included in our legislation as a person having the right to make a variation after, of course, applying to the court.

The reason is that in areas of harassment, more often than not, the victim would not want to come to the courtrooms. A victim, having come to the court and had the matter dealt with, maybe for some reason—if it is very serious—has left the jurisdiction and does not want to come back in a hurry, or it may not be easy to get in contact with the person, or does not want to interface with the other party in a courtroom, I think that consideration ought to be given, as has been done in England, for the prosecutor to have that power.

In England, with respect to the orders granted, the prosecutor, the defendant, or any other person mentioned in the order, may apply to the court to have the order varied or discharged. In section 30D(4) we have not included a prosecutor. I know in this case it is a protection order, whereas in the United Kingdom it is, in fact, a restraining order, but I am saying the purpose—sometimes it is through the prosecutor that one would want to have the variation made if it is on behalf of the victim, as opposed to bringing the victim before the court. I am saying they have done it in England; I am just asking if there was any reason it was not done in Trinidad and Tobago. It is just a question I am asking, if consideration could be given to it, or an explanation for that omission.

Finally, the English Act specifically makes a provision to take into account a person who aids, abets, counsels or procures the conduct, whether it be harassment or putting a person in fear of violence. That was done in section 7(3)(a) of the English legislation. I notice in our Bill we have not included a person who may aid, abet, procure or counsel the commission of the offence. If it is that the Member for Laventille East/Morvant, in giving his explanation—I do not want to preempt him—points out that based on the Interpretation Act; and you know the common law—persons, for example, who may conspire to do an offence are included, I am still saying that really to drive home the point—and it is a point that has been made already by the Member for Laventille East/Morvant—that even though something may exist elsewhere, in legislation coming before the House, sometimes just to send a message and to make it abundantly clear, there is inclusion of such matters.

I am asking the Member for Laventille East/Morvant in the first instance, to clarify where we would be relying to make criminally culpable, persons who aid, abet, counsel or procure, who commit, what is called the inchoate offences. Which piece of legislation are we relying on? Because I would be satisfied if we are relying on some piece of legislation that would allow it, then I am saying,

really, there is no need. But I notice that in England they have made special provision for those persons who are actually encouraging the commission of the offence.

It is with these few words—and just the areas of clarification that I have highlighted and the suggestions that have been made—that I wish to say, in conclusion, that I think we are moving in the right direction when we seek to make laws to deal with areas of criminal activity that had not been contemplated in the past. Clearly, the areas of stalking and harassment are important. But let us make sure, for example when persons complain about TSTT—because that is a regular complaint—where persons say they get crank calls and when such persons ask TSTT to give them a copy of the record, not of calls being made from their line, but from calls being received, there is a stumbling block and I am informed that in those instances of complaint that have come to my attention, they were told by TSTT that whereas they are entitled to get a detailed listing of all the calls that they have made, they are not entitled to get a detailed listing of all the calls that have come to them.

I am just saying that when we are dealing with things like telephone calls and harassment, and so, I think persons are, at least, entitled to know—before they even go to the police station they might want to know, well listen, it might be a case of just a tie-up in the line, or whatever it may be. I am just saying, make sure that all the departments and institutions that need to give the necessary information to the police are up and running so that when the police go out to start doing their investigation, they themselves are not confronted with any kind of bureaucracy, red tape or administrative bungling which would really mean the law having no teeth and unable to be implemented. The problem in this country with respect to this Government is that things are being done but the process of implementation is little or nothing. It is time to stop talking and call on the Government to act and act appropriately.

With these words, I thank you, Mr. Speaker. [*Desk thumping*]

The Minister of State in the Ministry of National Security and Minister of State in the Ministry of Trade and Industry (Hon. Fitzgerald Hinds): Mr. Speaker, I would like to begin my reply to the contributions made from the other side—and for which I thank Members profusely—by responding to some of the comments made by the Member for Pointe-a-Pierre. I listened particularly intently to the Member and took note of some of the issues she raised. Before

getting into the substance of the Bill, the Member raised this question of—[*Interruption*] I would not worry myself with that; let me concentrate on the Bill.

It was interesting to note that the Member for Pointe-a-Pierre—you see, now it is quite clear we have three political parties in this House: We have the PNM, the governing party; we have the UNC and now we have the independent UNC, of which the Member for Pointe-a-Pierre is obviously the leader and the Member for Barataria/San Juan the deputy political leader.

Hon. Member: Chairman and political leader.

Hon. F. Hinds: Chairman and political leader, yes. So it does not surprise me entirely that we would have had a divergence in view among the three parties in this democracy. I think it has to be applauded. Let me demonstrate one of the distinctions. The Member for Princes Town, in his very scanty, wild, unthinking contribution—which is quite typical; he is aspiring to be a good actor as well, but he needs a beard and he needs to look a little more like John Humphrey, like his elder brother—Honest John.

Anyway, the Member for Princes Town told us, very categorically, that this problem of stalking and harassment is unknown to the culture of Trinidad and Tobago; it does not exist. And this is a man who practises law. It would not surprise me, in fact, if he defended a stalker in the past, because they have a proclivity to speak untruths, you know. But he said it does not exist in our culture and I am just pointing out the distinction. The Member for Pointe-a-Pierre and the Member for Siparia, interestingly enough, expressed sentiments which told us it does exist and it is a problem. Maybe because the Member for Siparia and the Member for Pointe-a-Pierre, as women, understand the difficulty, but the Member for Princes Town said that it does not exist. I want to tell the Member for Princes Town that it does!

The Member for Pointe-a-Pierre suggested that we should not have specified the examples of harassment as we have in the proposed amendment. The Member for Princes Town, on the other hand, was saying that we should have defined it, specifically. So we have another divergence. When I made my opening comments I pointed out, as the Member for Pointe-a-Pierre alluded to in her contribution, that in these kinds of issues on these legal matters it is not sensible; it is unthinking, to establish a definition which is so tight and so closed that you cannot take into account unforeseen examples of conduct, that we want to capture; the kind of mischief that we are trying to resolve. It is for that reason—

and the Member for Pointe-a-Pierre was not here at the time of my contribution—that we gave examples in the Bill but left it open-ended so as to take into account the practice of harassment, of which stalking is but an example, without doing it so tight by way of a firm definition so that we will not capture conduct that we would like to protect women or persons in the society, and our visitors, against.

The Member for Pointe-a-Pierre distinguishes herself from the Member for Princes Town, in that she is a very good lawyer, so I am sure that the little explanation I have given would satisfy her tremendously while it may mean nothing to my friend from Princes Town, who is expected to continue to rant and rave in the wild way that he typically does, as he aspires to be an actor. The Member for Pointe-a-Pierre raised the issue of harassment in section 30A. I just want to complete that point by saying to the Member, to support what I have just said—section 30A(1) says:

"For the purpose of this section –

(a) 'harassment' of a person includes alarming the person or causing the person distress by engaging in a course of conduct such as—"

And we gave a number of examples. Let me just highlight a couple of them:

"(i) following, making visual recordings of…"

Because you could be in your backyard taking in the sun, enjoying nice tropical weather that exists in this part of the world and someone pops up over your fence, video-recording all your activity. That is quite harassing. That is why this provision comes in. It continues:

"stopping or accosting the person;"

(ii) watching, loitering near or hindering or preventing access to or from the person's place of residence, workplace or any other place frequented by the person;

(iii) Entering property or interfering with property..."

And that sort of thing.

Again, as it is common in criminal law. Look, we have "entering the property" here. That is a trespass, but at the same time we make provision for it here. So depending on the circumstances, the police can charge and the person can be convicted for the behaviour, depending on the facts, of course. So I am sure that would have satisfied the Member for Pointe-a-Pierre.

The Member for Pointe-a-Pierre went on to give us a bit of a mini thesis on the fact that the police service lacks resources, a complaint that we have heard, not only from the Member, but from members of the citizenry and, sadly, even from members of the police service. It is not new to us; we have heard that, and we just want to remind you that for the last three years, in terms of budgetary allocation, the Ministry of National Security, of which the police is a part, was allocated the second largest chunk of the national budget for the last three years. In the last budget, the Ministry of National Security was the recipient of $2.1 billion, second only to education, demonstrating therein, the priority concerns of this Government—education of the mind; discipline of the citizenry as the first step in dealing with the societal order and good governance, if you like, bearing in mind that governance does not stop with government.

We are all part of the governance of this country. And in case it escapes you, as Members of the Opposition, you are supposed to see yourselves as part of the governance of this country, by presenting yourselves here with dignity and good sense and contributing to the legislative development in this country. But you do not, so you contribute to the problem.

Mr. Singh: You do not plan to do the next Bill today, so you could talk like that.

Hon. F. Hinds: Yes, let me get on with it. I just said that and I just want to say very quickly as we proceed, that even if you send 10 police cars to police station "X", the fact that there are 10 cars does not necessarily mean that a member of the public who calls in, will have a police car to attend to him or her. That is, sadly, the truth. It has to do with management; it has to do with efficient use of whatever resources you have. I believe that with the current resources, with the current numbers, with the current training in Trinidad and Tobago, the police service has within it, the capacity to deal with this crime problem as is. I feel so. So that it is about how we use our resources, and so on. But these are matters that we are attending to, domestically, if I may say so, to improve the general efficiency of the police service. This is why you criticized us for employing the services of Prof. Mastrofski. This is precisely what his work is all about.

Let me continue. It is about improving the efficiency and the management of the police service and also to improve the police complaints issue, so that members of the public would have more faith and confidence in the police, as

indiscretion is addressed and there is improved police discipline. That is what it is all about. I just want to say to the Member for Pointe-a-Pierre, that is what the Police Bills—the management bills—are all about, but we will come to that later.

4.00 p.m.

The Member for Pointe-a-Pierre asked, specifically, as well: Where are the specific provisions in the Bill to deal with the inchoate offences as exist in the British law? Mr. Speaker, I can give an off-the-cuff answer because, really, those are principles that could be charged under, if you like, the common law for aiding and abetting and that sort of thing but the Member is saying, however, that these provisions should have been here specifically. It is a matter that I will seek some advice on and we will address it at the committee stage, if I consider that it is necessary. As I said, I take the point the Member raised. I do not think it is necessary but it is something that I will give closer consideration to at the committee stage when the Member develops the argument—if she does.

I now move on to the contribution of the Member for Siparia. Her contribution was short; not only short in length, but short in ideas. [*Laughter*]

Dr. Moonilal: Tell that to Dale Enoch in the morning when he cuts you off the programme.

Hon. F. Hinds: Dale "Unoch", you said?

Dr. Moonilal: Tell him that in the morning when you are harassing him.

Hon. F. Hinds: Do not harass me. Let me do my work and let me do it well.

The Member for Siparia pointed out upfront—nothing new to us—that they would not be supporting the Bill. That is not new; they have been behaving like that since they went to Opposition again. The country knows that! That was a waste of words. They support nothing that is good for Trinidad and Tobago!

More specifically, the Member for Siparia, in contradiction to the Member for Princes Town, who felt this legislation was not at all necessary, said that she felt it was necessary but that we should improve it. One of the recommendations she made had to do with clause 2, sub-clause 30D, the question of injunctive relief. The Member said to us that the injunctive relief available to the victim comes at the time of sentencing, that is to say, at the stage when the stalker is arrested, charged and found guilty or liable.

The Member made reference and compared that to the domestic violence legislation in which there are interim injunctions. Yes, a person can go to court and if the person is seeking an order to stop someone from doing something wrong under the domestic violence regime, the matter takes a long while to be resolved. Pending that, however, the person's counsel would represent to the court that he or she needs some interim protection and the court, under that law, is free to put in place interim injunctions before the final determination of the matter.

Not only that, Mr. Speaker, so acute was the question of the domestic violence—I will tell you why shortly—that we also put not only interim orders, but under the Domestic Order Act, the police are able to enter a man's property or someone's home without a warrant. With those two measures demonstrated, we recognize the urgency and pressing need—when I say "we", I mean "we" as a Parliament because amendments to that Bill were piloted by Members on the other side. It is because of the acute nature of the domestic violence and characteristic of the fact that the people involved, typically lived in the same household. That is the difference, Mr. Speaker. In this case, it does not contemplate persons who live in the same household and, therefore, we approached it differently. But that kind of intellectual subtlety will escape Members on that side. It will, and it has!

I am now taking the opportunity to tell them that, that, to our mind, was the unique difference why we treated the domestic violence legislation—which they proposed and we supported—in contradiction to what we are doing now. That is the difference! In the domestic violence legislation people are living in the same household. In fact, a man could be ejected, under that legislation, from his own house. I have had orders of that nature when I was in private practice. In this case, Mr. Speaker, that does not exist and for that reason we have drafted the legislation the way we have. As I have said, that is the essential difference and I need say no more.

The Member for Siparia raised this question in the normal UNC hype, which they did with a bill that I piloted here sometime ago; the Terrorism Bill. I remember it was done with the Kidnapping Bill as well. The Member for Siparia has become well known in this country as a very loud mouthed "brambler".

Mrs. Persad-Bissessar: That does not help your—

Hon. F. Hinds: I am so sorry. Let me say this! All the Member for Siparia does is raise a lot of unnecessary hype; baseless, useless hype.

Mrs. Persad-Bissessar: That does not help your—

Hon. F. Hinds: I know.

Mrs. Persad-Bissessar: I do not lie.

Hon. F. Hinds: But you are becoming more well known for that and for giving bad and poor legal advice, which is what led us to having three political parties in this House, to the country's benefit and to your detriment.

The Member for Siparia raised this Tinkerbell alarm about members of the media, as though the Member has any genuine concern for members of the media. She said that this Harassment Bill could affect members of the media, if they are going behind politicians or the PNM to get pictures. The members of the media, do their thing, in spite of everything else. Freedom of the press is written into our Constitution and we all, when I say "all", all governments of this country have respected it, some to a greater and some to a lesser extent. You know which category you fall into and the media know, too.

Mr. Speaker, this does not affect members of the media in that way. I will tell you why. A member of the media can be a stalker and a harasser, so they are not exempt from this legislation as citizens. To highlight them as members of the media doing their work is really a poor, weak, wicked, dangerous, diabolical, devious argument—typically UNC. [*Crosstalk*] Clause 2, new section 30C says quite expressly and plainly, every citizen can understand; you do not have to be a lawyer to understand this.

> "It is a defence for a person charged with an offence under section 30A to 30B to show that—
>
> (a) his course of conduct was pursued for the purpose of preventing or detecting crime;"

Mr. Speaker, once the person can show that, it is a defence.

> "(b) his course of conduct was pursued under any written or unwritten law or to comply with any condition or requirement imposed under any written or unwritten law; or

That, too, is a defence!

> "(c) in the particular circumstances, the pursuit of the course of conduct was reasonable."

Mr. Speaker, we have courts in this country. The way they present arguments, it

is as though when the police arrest someone and charge that person they bring the person to the political leader or the leadership of the PNM for sentencing. That is a fallacious argument! [*Desk thumping*] We have courts in this country! The courts follow the law! The courts assert their independence and follow law! That is part of all arrangements we live with! [*Desk thumping*] They have been fooling people, giving the impression that the PNM would lock them up. The PNM does not lock up anybody!

Hon Member: Eh heh! That is so?

Hon. F. Hinds: The PNM does not put anybody in jail! Some people volunteer to go to jail because they like it! When the jail gets a little too dicey, they jump out! That is their choice! Do you understand?

Mrs. Persad-Bissessar: No.

Hon. F. Hinds: You never would! You are beyond that! If a member of the media in the conduct of his or her work carries out his or her activities and then the police arrest that member, they would not bring him or her to the PNM for trial! They would take the person to the courts and lawyers would represent him or her. I hope it would not be a lawyer like the Member for Siparia, because another Member of this House felt the full brunt of her poor advice. The person goes to court and the lawyer point outs to the court what is a reasonable defence and what is reasonable conduct. So to talk about that, is really a waste of time and, quite frankly, it is a matter that does not deserve further attention.

The Member went on to tell us that we should have established a tort of harassment as other jurisdictions have. We did not do that yet the Member for Princes Town told us that we imported the foreign legislation lock, stock and barrel. [*Interruption*] I am just pointing out another difference in your positions. We did not do that. Let me tell you why we did not do it, Mr. Speaker. Nothing stops the victim, as we have indicated, from proceeding to court, civilly, for any other course of action that might be founded on the conduct, including nuisance.

It was not, in our view, necessary to establish a separate, new tort of harassment under law. The normal common law principles apply in terms of the normal torts that exist. This legislation will give them the criminal and the civil sanctions as we are now proposing, in addition to what already exists.

Mrs. Persad-Bissessar: You said it did not; you started off like that.

Hon. F. Hinds: We do not consider it to be necessary. [*Interruption*] Yes. The other question the Member for Siparia raised, quite mischievously, is: What

is the magic in the two occurrences? What we are saying is that if the stalker or the harasser engages in a certain kind of conduct and his victim recognizes it, the victim could go to the police and report the matter on the first occasion. Mr. Speaker, nothing stops her from doing that. As a matter of fact, that would be some evidential value later on. Nothing stops that! However, we are saying that you have to balance between….because one of the necessary elements of the offence that we are proposing, is that the conduct must be persistent.

If a man, for example, sends an unwanted, unwelcome postcard to a woman saying: "I love you and I want you real bad". She gets the letter and she is offended by it. We are saying that the conduct must be persistent. On one occasion it would not be demonstrably persistent. We had to balance between the need to demonstrate persistent misbehaviour, if I may call it that, and, on the other hand, the need to make an intervention early enough to prevent continued bad behaviour. [*Desk thumping*] Do you understand?

I cannot understand what is so difficult about that simplicity for the Member for Siparia to have difficulty to come to terms with. I think she is traumatized since they have lost the election. I think they are suffering from a great sense of loss. My friend from Diego Martin East calls it Post Elections Stress Trauma (PEST). They have this craving for political power. If that craving was for the benefit of the citizens of Trinidad and Tobago, we would have understood, but it is all for self-aggrandizement. That is the reason you find yourself in the difficulty in which you are! You stole yourself out of power and now you are vexed with the PNM! [*Laughter*] You could try to politicize your misconduct and your criminality how you want; we will not be deterred! We remain very calm and very sober and law-abiding. [*Desk thumping*] You could run up and down the country and say what you want! You can play Mahatma Gandhi! You could play Martin Luther King! "We ain't playing nutten". We just want to see the laws of Trinidad and Tobago work fairly for every citizen, including you! That is our faith in the Judiciary and the faith we hold in the Constitution, so you could jump high, you could jump low, the law will take its course for all of us, Member for Siparia! The only protection you have against the criminal law is to follow it closely and do not break it. I have nothing more to say. I will save the rest for the platform when the time comes.

I was in Jamaica this week on government business and I got the dispatches from our High Commission. Everyday they provided me with an update of what was happening home and, of course, I had access to the Internet myself. I heard my political leader and Prime Minister tell you and the country: "Jail ain't nice!" I know that! "Jail ain't nice!"

Hon. Member: I hope Eric knows that.

Hon. F. Hinds: He was absolutely right. I do not understand how the question of discrimination arises if the Prime Minister of this country tells the country, the young and the old; politicians and non-politicians that "Jail ain't nice". How does discrimination come in there? This is another one of your tricks, and when I say "you", I do not only mean the Member for Pointe-a-Pierre, I mean all of you. You make a political and a racial issue out of everything. But you can do what you want, people are discerning. We know your play! We know your tricks! We have the measure of you! We had six years of you! Mr. Speaker, if I may revert. I hope that the Member for Siparia better understands the reason for the two. There is nothing magical about it.

Mr. Speaker, let me for the benefit of Members of this honourable House, deal with another point that was made by the Member for Pointe-a-Pierre in relation to clause 2, sub-clause 30D(4). The Member pointed us to, and asked that we consider the inclusion of the prosecutor in this provision, which states as follows:

> "An application for the variation or discharge of a protection Order may be made in the prescribed form by the person against whom the Order is made or any other person included in the Order."

Here we have a situation where the court would have issued an order in respect of the harassment or bad behaviour. As the Member for Pointe-a-Pierre pointed out, the victim may have left Trinidad and Tobago. Of course, once the victim leaves Trinidad and Tobago two things apply. Firstly, the stalker or the harasser has no opportunity to stalk or harass that person in Trinidad and Tobago's jurisdiction again.

Secondly, if the person left the country, the stalker's attorney could approach the court—it is another court order—and ask for a variation in the terms. When such an application is made, the lawyer for the State, or if it were a civil matter, the lawyer for the victim listening to the application of the stalkers or the harassers could either support it, by not objecting or objecting. So I really do not think it is a particular problem.

I understand what the Member for Pointe-a-Pierre was saying. She said that in this provision in the United Kingdom, the name of the prosecutor is mentioned to give the prosecutor an opportunity to approach the court and say: I want the Order varied because the victim has now left the country or the victim no longer feels fear. In those circumstances, if the lawyer for the other side did

it, the prosecutor simply would not object. While I heard the Member, I do not think it poses any serious challenge and it can be left as is. That is my view and I am sure that the Member would be so persuaded.

Mr. Speaker, I have tried very sincerely to avoid the politicking around the seriousness of this Bill. I now conclude my reply having attended to the issues raised by the Member for Pointe-a-Pierre, and the issues that were raised, however maliciously, by the Member for Siparia. I really have to ignore the rantings of the Member for Princes Town. I have tried my best to respond to them as I should and I thi nk I have.

I conclude by saying, yes, we have a problem on this issue and we have to attend to it. I must also say that even if you had one case of stalking or harassment in Trinidad and Tobago that is too much. Therefore, to suggest not putting legislation in place because it is not widespread, which of course is not true, is really a non-argument.

In any event, the Member told us that the legislation was imported wholesale from abroad. We do not have to reinvent the wheel. As God said, nothing is new under the sun; all has been here since time began. In addition to that, if it has escaped you, crime is very global in its reach. We also have to treat with those problems in Trinidad when they arise.

Mr. Speaker, with those few words in response, I beg to move. [*Desk thumping*]

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee.

Clauses 1 and 2 ordered to stand part of the Bill.

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

House resumed.

Bill reported, without amendment, read the third time and passed.

Mr. Speaker: Hon. Members, it is now 24 minutes after four, if it is your desire to have an early tea we can do so.

Assent indicated.

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

4.24 p.m.: *Sitting suspended.*

5.00 p.m.: Sitting resumed

CORPORAL PUNISHMENT (OFFENDERS OVER EIGHTEEN) (AMDT.) BILL

Order for second reading read.

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

> That a Bill to amend the Corporal Punishment. (Offenders Over Eighteen) Act, Chap. 13:04, be now read a second time.

Mr. Speaker, the purpose of the Bill is to ensure that when the court has ordered that an offender be administered corporal punishment; put more simply, when the court orders that a convicted person be whipped as part of the sentence and the offender appeals the decision, the appeal would be against conviction and sentence and, ultimately, the offender loses the appeal, the sentence of the court in respect of the corporal punishment cannot be carried out for reasons that I will make clear shortly.

The purpose of this Bill is to ensure that when the court makes such an order that the sentence be carried out in spite of the time that has lapsed between the original sentence of the court and the date of the decision of the appellate court.

In 2000, the Miscellaneous Provisions (Children) Act, 2000 amended the Corporal Punishment (Offenders Over Eighteen) Act to increase the stipulated age from 16 years to 18 years so that title became the Corporal Punishment (Offenders Over Eighteen) Act.

The reason for this amendment is that the Children (Amdt.) Bill, 2000 provides that a young person is someone who is under the age of 18 years. Section 6 of the Corporal Punishment (Offenders Over Sixteen) Act, Chap. 13:04 provides as follows:

> "A sentence of flogging shall be carried out as soon as may be practicable and shall in no case be carried out after the expiration of six months from the passing of the sentence."

That is to say, the original sentence of the court.

Mr. Speaker, Act 10 of 1994 was amended to include the following provisions. The side note: "Sentence of whipping". Section 6 was amended as follows:

"(1) Subject to subsection (2) a sentence of whipping shall be carried out within one month of the passing of the sentence.

(2) Where a person who has been sentenced to be whipped appeals the decision of the Court, the sentence of whipping shall be suspended until the determination of the appeal."

Mr. Speaker, the 1994 amendment, which I have just read, therefore, although stipulating a specific time period within the whipping is to be done, and providing for the whipping to be suspended during the appeal process, did not address the six-month period following the imposition of the sentence after which period the punishment should not be carried out.

5.05 p.m.

The effect of this is that the sentence of the court can be avoided simply by the offender appealing the court's decision and sometimes, no doubt, this is done even though the offender and possibly his legal team, may find that there are no substantial grounds for appeal, it may very well be that they would file an appeal merely with the view of avoiding the court's sentence of whipping because of what the law suggests, that is to say, in no case it should be applied after six months from the original sentence. So really it is another example of persons using the law as they are entitled to do, manipulating the law as perhaps, they are entitled to do, to avoid the sanction of the court which is by extension, a sanction of the society which that person would have offended causing him or her to appear before the court and to be convicted in the first place. So there is a public interest, if I may say so, in this and the public has indicated time and time again its annoyance with the fact that the laws of Trinidad and Tobago are so easily manipulated to avoid the sanction of the society, through the court, from coming to bear.

Mr. Speaker, we are duty-bound, as parliamentarians who represent every single one of the citizens of this country and visitors who, by reason of the Representation of the People Act may be able in some circumstances to vote, and in any event as visitors, they must be protected by the laws of Trinidad and Tobago. We are duty-bound to let the law and cause the law to make sense. So that it could not be said that the law is an ass, as has been so commonly said in the past. So that simply filing an appeal, whether it has substance or merit or

not, merely to avoid the application of the whipping as ordered by the court, it is very easy to achieve given the current circumstances of the law. Therefore, this amendment proposed here today seeks to amend the Act by removing the time limit of six months for carrying out the punishment of flogging, so that the punishment can be imposed when the offender loses the appeal.

So it is a rather simple amendment, one that every citizen of Trinidad and Tobago and certainly every member present today, can very easily understand and we propose this for the consideration of the House.

I beg to move.

Question proposed.

Mr. Subhas Panday: (*Princes Town*)**:** Mr. Speaker, it seems to me that the Member was taken by surprise and that this Bill should have been moved by somebody else and he did not understand what he was reading, and to help him I will give him the genesis of the legislation.

Mr. Speaker, I feel so sorry for him because what has happened here is that policy was made on a public platform and having made policy on a public platform they came with this bungled piece of legislation.

It was in Pasea at a CEPEP and URP meeting that the Member for San Fernando East—I do not know if he was—[*Crosstalk*] or with the crowd that was before him.

Mr. Speaker: Member, you need to withdraw it.

Mr. S. Panday: I apologize to you. He said, "we are going to bring back the law." Mauvais languing, playing to the public, fooling the public, we will bring back corporal punishment, we will bring back flogging, and the hon. Member was in the Parliament in 1994 when the hon. Attorney General then, the Member for Ortoire/Mayaro, Mr. Keith Sobion, his Government had amended the law and I do not know what happened but they are playing to the public—we are going to deal with crime and laws which were on the statute books, they are amending the laws there. I really have to help my friend, the Member for Laventille East/Morvant.

Chapter 13:03 speaks about the Corporal Punishment (Offenders Over Eighteen) Act passed on 20 December 1941. It says:

> "This Act may be cited as Corporal Punishment (Offenders not over Sixteen) Act.

Any male offender not over the age of sixteen years may, subject to section 79 of the Children Act, be sentenced, in lieu of any other punishment, to be whipped. No person shall be sentenced to be whipped more than once for the same offence."

It went on to give the conditions of the whipping. Then it says in section 6 of that Act.

" (1) Notwithstanding any provision of the law to the contrary, a sentence of whipping shall be carried out as soon as may be practicable and, in cases in which an appeal lies from the conviction or sentence, without waiting for the expiration of the period allowed by law for lodging the appeal; but where notice of appeal is given forthwith on conviction, the sentence shall not be carried out pending the determination of the appeal unless the appeal lapses or is abandoned."

Then in section 6(2):

"No sentence of whipping shall be carried out after the expiration of one month from the passing of the sentence."

When one reads both sections together under the Corporal Punishment (Offenders Not Over Sixteen) Act, one sees that you could not whip a child after the expiration of one month. As the Member for Laventille East/Morvant indicated, all you had to do was to appeal and you would then walk free.

Chapter 13:04, Corporal Punishment (Offenders Over Sixteen) Act. We will see what Act 66 of 2000 did with it. It says:

"A male offender over the age of…"

After the amendment it will be eighteen—

"on being convicted before the High Court of any of the offences mentioned..."

in the Schedule, section 2.

…"may be ordered by the Court to be flogged in addition to any punishment to which he is liable."

The relevant part says:

"A sentence of flogging shall be carried out as soon as may be practicable and shall in no case be carried out after the expiration of six months from the passing of sentence."

So you are in the High Court as the hon. Member for Laventille East/ Morvant said, you know after six months from the date of the sentencing in the court of first instance, once that time passes you cannot be flogged, so as he says, one appeals. So that was 1953 legislation.

We had now Act No. 9 of 1994 and Act No.10 of 1994, so we are looking at the history of the legislation. Act No. 10 of 1994—this is for children—says:

> " 6. (1) Subject to subjection (2) a sentence of whipping shall be carried out within one month of the passing of the sentence.
>
> (2) Where a person who has been sentenced to be whipped appeals the decision… the sentence of the whipping shall be suspended until the termination of the appeal."

Act 09 spoke about an Act to amend Corporal Punishment (Offenders Over Sixteen) Act, Chap. 13:04. It basically repeats Act 09 of 1994 and this was done by the then hon. Attorney General, Mr. Keith Sobion the Member for Ortoire/Mayaro, and I remember that debate. This was the same argument that was raised then and the PNM Government said:

> "Section 6 of the Corporal Punishment (Offenders Over Sixteen) Act is repealed and replaced as follows:
>
> (i) Subject to subsection (2) a sentence of flogging shall be carried out within six months of the passing of the sentence.
>
> (2) Where a person has been sentenced to be flogged appeals the decision of the court, the sentence of flogging shall be suspended until the determination of the appeal."

So that means if there is no appeal you cannot be flogged within six months. If there is an appeal then section 9 does not hang by itself. Section 6 is subject to subsection (2). Section (1) is subject to subsection 6 (2) and subsection 6(2) says:

> "Where a person who has been sentenced to be flogged appeals the decision of the Court, the sentence of flogging shall be suspended until the determination of the appeal."

So the lacuna or the mischief which was in Act, Chap. 13.04 has been corrected by the 1994 Act. That is why I had to say they had to be whacky to say that we are bringing back the law, flogging is going to come back. It was never removed from the legislation because—let us go to Act 66 of 2000, an Act to amend

certain laws affecting children. Act 66 at Part IV section 6, says: Corporal Punishment (Offenders Not Over Sixteen) Act, Chap. 13:03. In this Part, Act means Corporal Punishment (Offenders Not Over Sixteen) Act. It says: "The Act is repealed." So the Act which deals with flogging for children or persons under 16 that Act was repealed, but the Act which deals with flogging of adults has never been repealed. The other amendment which Act 66 of 2000 made, says in section 2 of Act 13:04, the Act is amended by deleting the word "Sixteen" and substituting the word "Eighteen". So they have carried up the age where a person could be flogged and that is because of the Children Act. It says no one under the age of eighteen could be flogged but anybody above the age of eighteen could be flogged. Who are they trying to fool? It has to be themselves.

We may think that the law had a lacuna but it appears that the mischief that was created in the law was based upon the common law principles of sentencing, and the principles of sentencing had basically five objects and that came [*Interruption*] you are not right. As Prime Minister one would have expected you would have been brought up to date with the law. It says:

> "Retribution. This is in recognition that punishment is intended to reflect the denouncement by the society and legislature of the offence of the offender.
>
> Deterrence vis a vis political offenders. The offender must be punished appropriately to deter other like-minded offenders from engaging that form of deviant behaviour."

What you were thinking of I suspect.

> "Deterrence vis a vis the particular offender. Here, the purpose is to seek to ensure that the offender himself is deterred from future criminal conduct by the punishment inflicted on him."

This is important and it spoke about:

> "Preventative. This is aimed at preventing the particular offender from offending against the law by incarcerating him.
>
> Rehabilitation. The aim is to rehabilitate the offender so that he may reform his ways…"

When one reads this common law and when one reads the Act, one will see that they thought that the aim of sentencing especially punishment, should be

brought as close as possible to the conviction or to the date of the offence so that you would know what you were getting licks for, you would know why you were being punished. But when you extend it—[*Interruption*] you give a man chance in custody to rehabilitate and while in custody he changes his ways and he starts to move like your good self, a born again Christian, and he is moving on and then you come and whip him after he has changed his ways. That was the principle of law of sentencing.

Mr. Speaker, this Act to amend the Corporal Punishment (Offenders Over Eighteen) Act is amended in section 6 by deleting subsection (1). It says:

> "Subject to subsection (2), a sentence of flogging shall be carried out within six months of the passing of the sentence."

So they said they are taking that out. But that does not alter the price of coffee because this merely renumbered section 6(2) to 6(1). You have one clause in a Bill, why are you calling it clause 1? You usually have a number of clauses when you have one, two, three, four clauses. If you are taking out one, then you only have one clause remaining and the clause says:

> "Section 6 of the Corporal Punishment (Offenders Over Sixteen) Act is repealed and replaced as follows.
>
> Where a person who has been sentenced to be flogged appeals the decision… the sentence of flogging shall be suspended until the determination of the appeal."

That does not make sense. The law is there and what we really come here to do, is to give the public the impression we are doing something when in truth and in fact we are doing nothing. The law has not been repealed. We are doing nothing at all. [*Interruption*] Of course! It is cosmetic. Because it says subject to subsection (2) the sentence shall be carried out in six months. Suppose he does not appeal, what happens? Carry it out. So therefore, look the law is there. And suppose he appeals, what to do? Whenever the appeal is completed, carry it out. It is in the law here. Why? There is no need for that. That is to satisfy the mauvaise langue and the bravado that they went on the stage and try to make policy and that is why he is in a such tight position.

I would not go into the details of the merits of corporal punishment or not, but why is it you do not bring back corporal punishment for persons under 18? Whip them. Why it is you are waiting until the tree is bent and it gets so stiff you cannot straighten it that you are giving them licks? You are saying corporal

punishment for persons over 18 but none under 18. Why? And most of the criminals are in the secondary schools. They carry guns to school, they are fighting in school, and they are burning down schools. The question is, and I do not want to go into the details of the principles of pro and against corporal punishment.

Mr. Speaker, coming back to Chap. 13:04 it states what are the offences one can be flogged for:

> "(1) Any offence involving violence wherein the offender inflicted a wound with any firearm or sharp cutting or pointed instrument whatsoever or any bottle or glass, whether broken or otherwise, or any other weapon likely to do any grievous bodily harm."

It says:

> "(2) Robbery with violence, or with aggravation.
>
> (4) Rape.
>
> (5) Any attempt to commit the offences specified in paragraphs 3 and 4…"

Mr. Speaker, one would have thought that some research would have gone into this matter before one brought this piece of legislation because the Corporal Punishment (Over Sixteen) Act gives a schedule and states what offences you should be punished for. But look at the Summary Offences Act, Chap. 11:02. It says:

> "If any person is convicted under this Act of stealing or wilfully receiving, knowing the same to have been stolen, any horse, mare, gelding, colt or filly or any mule or ass or any bull, cow, ox,… the convicting Magistrate or Justice may, in addition to any other punishment, imposed by law for such offence and subject to the provisions of the Corporal Punishment Acts, sentence the offender to undergo corporal punishment."

It goes on as to say:

> "…Corporal Punishment Act means 'Corporal Punishment (Offenders Not Over Sixteen) Act and Corporal Punishment (Offenders Over Sixteen) Act respectively."

So one would have thought that this was an opportunity and an occasion that the law would have been brought up-to-date to deal with these anomalies and

lacuna in the law. There was no need for this piece of legislation; the situation remains the same and it does not change the price of cocoa.

Mr. Speaker, with these few words, I thank you.

The Minister of Works and Transport (Hon. Colm Imbert): Mr. Speaker, thank you for allowing me to make a very brief intervention. It would appear to me that the hon. Member for Princes Town can be well characterized by the description given to him by my hon. colleague from Arouca North, legal aid lawyer.

It is clear when one looks at the provisions of the law that the sentence of flogging shall be carried out within six months of passing of the sentence. The sentence referred to is the sentence of the court, not the appeal. So it is obvious that if the appeal process takes more than six months that is the end of that and that is why in real and practical terms, it has not been carried out. It is very, very clear. And the other point, if the situation is as the Member for Princes Town is attempting to persuade us, then perhaps, he can explain why flogging is not being carried out. Perhaps, he can tell us—the law is clear. It says that the sentence of flogging shall be carried out within six months of passing of the sentence and that sentence is the first sentence; not the appeal situation. But that is not relevant. The fact of the matter is that there are differences of opinion on this matter.

The Member for Laventille East/Morvant is clear in his mind that the six-month criterion prohibits the authorities from carrying out the sentence of flogging once six months have passed, absolute. That is the opinion of the Member for Laventille East/Morvant. It is my opinion as well and it appears to be the opinion of the penal authorities as well. That is my understanding. The others may have a different opinion but we are getting rid of all these different opinions by taking out the six months. We are removing it so that it no longer will be an issue with respect to the interpretation of the meaning of six months within this section of the legislation. Once "six months" is deleted from this section of the legislation, it is no longer relevant as to what the six months mean; whether it is six months after one's appeal is finished or whether the six months is suspended in time; if three months have run and you have another three months to do after to allow you to flog the person afterwards. We are getting rid of all that "ol' talk" and all of these nuances, and lacuna in the law which are only to make money for lawyers.

I could see the Member for Princes Town having argued this very point in this Parliament going into court and defending somebody and saying the "six

months" is absolute and it has nothing to do with the appeal court. You see how he is grinning, Mr. Speaker. I am sure he would exploit the uncertainty that exists in the current law. We are getting rid of the uncertainty so no longer is there going to be any debate about what it means. It will mean nothing because it will not be there.

Let us come to the other point the Member made, that the sentence should be carried out right away, and I guess this goes to the point of mental anguish, whether a prisoner should be in prison wondering when he is going to be flogged and the longer you take, you have the whole concept of mental anguish coming into play.

I am sure that once this provision is removed some distinguished legal luminaries will approach the courts to determine a time period within which you can flog somebody. Now that the time period is coming out in the same way you had the Pratt and Morgan decision with respect to the death penalty, and eventually over a period of time, the Privy Council said five years that whatever happens, you have five years to carry out the sentence of execution and after that commute to life imprisonment. That took a long time. That evolved over a period of time and eventually the Privy Council said five years.

I can see now if we remove the time limit for the carrying out of corporal punishment I am sure some human rights lawyers of which there are many in Trinidad and Tobago, will approach the courts and eventually approach the Privy Council to establish a time limit, whether it is three, five or ten years or whatever, because it is all within the realm of cruel and inhumane punishment. So that the five years was set because it is said to have a man on death row worrying about when he is going to be executed is cruel and inhumane punishment. I guess, using the same argument, to have a man in a cell worrying about when he is going to get the birch, could be, and may be in somebody's mind at some point, cruel and inhumane punishment. I am sure the court will determine that.

But the question about whether you should flog them immediately or whether they should be flogged over a period of time, I noticed the Member for Princes Town did not argue at all about flogging itself; about whether he supported—[*Interruption*] but did he argue about the concept of punishment, and if he agrees with the concept of corporal punishment as a method of inflicting punishment upon prisoners and convicted criminals in order to essentially make them feel pain, that is what corporal punishment is all about.

In all the literature that I have been able to pull on corporal punishment the definition is the deliberate infliction of pain as correction or punishment and since the Member for Princes Town is not arguing about corporal punishment per se, in other words he supports the concept, the infliction of pain as correction then the question of when you inflict the pain, whether you inflict it one month after you incarcerate the prisoner, or one, two, or ten years really, I do not think that is for us. I think that is for those fellows who are opposed to all forms of corporal punishment. Because execution is the most extreme form of corporal punishment. It is the most extreme form and really, I as a legislator—we are not taking corporal punishment off the books, we are not removing the death penalty as a form of punishment, and therefore, the question of when the prisoner should be flogged, I do not think that is for us in this Parliament. I think is for the law itself to evolve, and I think that is for persons far more eminent than we are to determine when a prisoner should be flogged and what would constitute cruel and inhumane punishment in certain circumstances.

5.35 p.m.

So, in summary, Mr. Speaker, the mere fact that the Member for Princes Town disagrees with the interpretation given by the Member for Laventille East/Morvant to the words "six months" and that he has raised arguments means that it is uncertain—at least as far as I am concerned. The purpose of this amendment is clear. It is to remove the uncertainty. That is one of the reasons. The other reason is to prevent persons from using procedural methods to avoid corporal punishment. The fact is that we are taking away all uncertainty and I do not buy the argument of the hon. Member that corporal punishment should be inflicted immediately.

There may even be need for recuperation. In the reading that I have picked up, in certain countries a doctor has to examine the person [*Interruption*] Let us leave Trinidad and Tobago alone for the time being. In developed countries such as Canada, the doctor has to examine the prisoner, make a finding that the prisoner is fit enough to receive corporal punishment, and then the flogging is authorized.

Suppose a man is sentenced to 24 strokes of the birch, he may be unable to take 24 strokes in a month or two months. It may take a period of time. He may only be able to take three strokes every three months. It may be cruel and inhumane to inflict 24 strokes on a prisoner immediately. There is no requirement in the law that all the strokes have to be administered at one point in time. Suppose they sentence a man to 50 strokes [*Interruption*] okay, twenty; but in our prison

system, Mr. Speaker, persons are given strokes over a period of time and the purpose is to allow the person to recuperate from the strokes.

I am sorry; I do not accept the arguments of the Member for Princes Town and I support this legislation.

Mrs. Kamla Persad-Bissessar (*Siparia*): Mr. Speaker, the Member for Diego Martin East referred to the Member for Princes Town as a legal aid lawyer. He endorsed the view that he was a legal aid lawyer. At least the Member for Princes Town is a lawyer and the Member for Diego East is nowhere near being a lawyer. He is reading things he does not understand, attempting to pontificate on matters for which he cannot understand the ordinary English language in the legislation.

Mr. Speaker, the Member for Laventille East/Morvant, on every occasion that he gets an opportunity, seeks to impugn my professional integrity and competence; not just in the last debate. He continues, every time he speaks, to demonstrate his professional incompetence. [*Interruption*]

My blood pressure is very fine, thanks to God. It is no accident that up to today, despite all the qualifications he holds, he still cannot become a full-fledged Minister in the Government of the PNM. That is no accident. In his own Ministry, as junior Minister, they so well know his incompetence that they will not even put him to act when his Minister is out. So, when he comes into this Parliament and we raise issues, his answer is not to deal with those issues, but to do name calling. I would like to say that no matter how many names he calls, no matter how many times he repeats those calls, it makes absolutely no difference to his incompetence and "dotishness". I will demonstrate that with what happened here this afternoon. [*Interruption*]

That is unparliamentary? When he talks, nothing is unparliamentary. Do not disturb me while I am on my legs. He can talk after and he can call all the names he wishes to call.

Mr. Speaker, this Bill is a simple bill. They are setting up the Prime Minister, you know. If he does not watch himself, not a single person in this country will be flogged after they pass this Bill. They are setting him up, Mr. Speaker, and I will tell you why. The Member explained that the reason this Bill was presented was that when a person filed an appeal, the flogging could not be carried out. If they saw that the time was running out, even if they had no grounds for an appeal, they would file an appeal to escape the flogging, so no flogging could take place. Nothing is further from the truth. The Member for Diego Martin East read it.

Let us read it. It is simple English. Clause 6(1) says that subject to subsection (2) a sentence of flogging shall be carried out within six months of the passing of sentence. Why on earth can you not carry out your sentence of flogging within the six months? What is the limited period of time for appeal? There is a limited period of time for appeal so that you could carry out your sentence of flogging. It says "subject to subsection (2)", so even if you want to file an appeal—the Member told us that you avoided the flogging; nothing is further from the truth. That six months is subject to subsection (2) which says:

> "Where a person has been sentenced to be flogged appeals the decision of the court, the sentence of flogging shall be suspended..."

It does not say avoided, it says suspended until the determination of the appeal. So whenever the appeal is done, you still have the right to flog that person, notwithstanding that the six months have expired. That is what the words "subject to subsection (2)" mean.

The Member for San Fernando East went on the platform and said he is bringing back corporal punishment, not remembering or not caring to know that we have this on our statute books. It is an existing law on the statute books. What they are doing here today, let us face it, has nothing to do with persons avoiding flogging because of appeals. What they are doing is bringing legislation to say they can flog a man from the first day to the end of his sentence. From one year to 15 years—any time—they can inflict the sentence of flogging. That is what they are doing. They are being dishonest or they really did not understand what "subject to subsection (2)" means. As long as the appeal is determined in favour of the State, they can flog the man after the appeal. Do not mislead us by saying that because they file an appeal, they escape the sentence of flogging—"subject to subsection (2)".

That is fine. They now want to take out the six-month time frame because what they want has nothing to do with appeals. Let us face it. They want to be able to flog a person at any point in time. That is what they want to do. This is where the Member for San Fernando East—

Mr. Manning: No!

Mrs. K. Persad-Bissessar: Then why do you not flog them in the six months?

Mr. Manning: Mr. Speaker, perhaps I would comment after the Member takes her seat. Perhaps I should enter the debate. [*Clapping*]

Mrs. K. Persad-Bissessar: Why are you clapping? Because he would not speak now so that I can answer him? He wants to speak after I have finished so that I cannot answer? That is what it is. If he has a query, let us know.

As the legislation is framed, the appeals do not avoid flogging. That is very clear because of the words "subject to subsection (2)". All it does is to suspend. I am saying that this is really what they are doing. Be honest and say it! They want to have in the law that they can flog a person any day from the passing of sentence until thenceforth, as long as that prison term is in effect. That is what they want to do when they remove the six-month time frame. This is where they run into grave danger. Therefore, the very thing they desire—to flog persons—will be lost. That is why I ask the Member for San Fernando East to be very careful that whoever drafted this is not setting him up.

Mr. Speaker, this law was on our statute books prior to the coming into force of the Constitution of the Republic of Trinidad and Tobago. Because of that, it is an existing law and it is saved as one. However, the law is very clear what an existing law is and what happens if you interfere, tamper with, amend, alter or modify an existing law.

Let us look at it! Do not let them get you carried away because from the day you pass this, you will not be able to flog a single person. You would end up in the Privy Council. Every one would be stayed in the same way. In their incompetence, they read the death warrant to someone with a pending appeal and you cannot hang him and you cannot hang the other one. In his own case in the Privy Council, the Government, the state lawyer, after taking instructions, gave an undertaking to the Privy Council that that person would not be hanged; that his sentence would be commuted to life imprisonment.

You have the Mercy Committee with him today. You have already made up your minds. Every one of those four have gone to the Mercy Committee today. Do you know what is going to happen? They are also going to be able to stop any execution. Because of their incompetence, those four are going to escape too because what you want to do is to hang.

You have called the Mercy Committee immediately upon announcing hanging; you call it thereafter at prior reason. You have already made up your mind that no Mercy Committee will give any reason. All those four will get off and Pitman will escape the hangman because of the incompetence of the Government.

In the way that they read the death warrant—while his appeal is pending, they measured the man, weighed him, asked him what he wanted for his last meal—what they have in effect done is that they have inflicted cruel and inhumane treatment. Do you know what is going to happen? He will get off at the Privy Council level or at the Court of Appeal level and he will escape. A convicted murderer they could have hanged, they would not be able to do it anymore because they could not wait. They were desperate and they acted unlawfully. So, we come back to this. This Act is saved under the existing law provision. Before we go there, let us look at the fundamental rights which cannot be interfered with. Let us look at section 4 of the Constitution:

> "It is hereby recognized 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 freedoms following fundamental human rights and freedoms…
>
> (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…"

So, you have had due process; you have taken away the defender's liberty; you have him in jail or wherever he may be. That is quite okay because you went through due process. Nothing is wrong with a prisoner being there.

Let us come to section 5. It says:

> "(1) 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 recognised and declared."
>
> (2) Without prejudice to subsection (1), but subject to this Chapter and to section 54, Parliament may not…
>
> (b) impose or authorise the imposition of cruel and unusual treatment or punishment."

Mr. Speaker, around the globe and in the international human rights courts, it is recognized and established that flogging and whipping is cruel and unusual treatment. We were able to do it because of the existing law savings clause, which gives us section 6, so we know it is cruel and unusual. We also know that unreasonable delay is cruel and unusual. They are removing the six months and

they are going to be able to delay until a period we cannot say. I will talk about that further because we have to deal with the question of retroactivity.

The existing law saves the fact that you can flog. It says:

"(1) Nothing in sections 4 and 5…"

which I read, about Parliament imposing cruel and unusual treatment—

"shall invalidate:

(a) an existing law;"

The law as it stands is that they can flog. Even though it abrogates the rights of the individual, it is saved under the existing law. The existing law:

"(b) an enactment that repeals and re-enacts an existing Act without alteration;"

is also saved. If they had repealed and reenacted this law without altering it with respect to fundamental rights, it would also be saved. Thirdly,

"(c) 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."

That is fine, you can do it with an existing law.

We come to section 6(2),

"Where an enactment repeals and re-enacts with modifications an existing law and is held to 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 then, subject to sections 13 and 54, the provisions of the existing law shall be substituted for such of the provisions of the enactment as are held to derogate from the fundamental right in a manner in which or to an extent to which the existing law did not previously derogate from that right."

What does all of that mean? It says that you can make the changes if you wish—and here where you are derogating rights, you have to go to section 54. Section 54 tells us that the Parliament may make laws for the peace, order and good governance of the country; but they must do it in accordance with procedure. While they are interfering with sections 4 and 5 of the Constitution, that procedure requires a special majority.

So, Mr. Prime Minister, I am saying that if you remove the six-month period, you will go into the dangerous zone of constitutional motions that will prevent you from flogging anyone. If you really want to flog these fellows and you have the six months for those who have not appealed, flog them. For those whose appeals have been determined, flog them if that was their sentence. Nothing here stops you.

The third issue I wish to raise is: What does it mean to remove the six months? Does it mean that we will flog retroactively, en masse, all the guys still in prison with a sentence of flogging? Is this intended to do that? If it is six months, you have six months henceforth to do the flogging, so it must be that you really want to go back and flog people who have been there. What purpose will that serve? You will not be able to do that because you will have cases where the fundamental rights have been abridged and they, too, will bring constitutional motions.

With due respect, while I make no pronouncements on flogging, it is my view—my colleague did not speak on the issue of flogging—it is not a party view—that brutality breeds brutality and violence breeds violence. It is barbaric. There is no way you can beat sense into a person's head, therefore, I do not personally agree with flogging. However, that is the law on the statute books and it is not my vote to take it off the statute books.

While it is on the statute books, if that is your intention, then you cannot take out that six-month period because you will end up not being able to flog lawfully—you might flog them, but you will be doing it unlawfully—or constitutionally, a single person in the country after you pass this Bill; in the same way that you unlawfully and unconstitutionally read the death warrant to Pitman on death row; in the same way that you are unlawfully and unconstitutionally going to the Mercy Committee for these four "fellas". Every one of them now has a course of action and now has a right to escape the hangman's noose because of the incompetence of the Government. Let it not happen with respect to the persons who are under sentence of flogging that because of the incompetence of the Government they too shall escape the sentence of flogging.

I thank you very much.

The Minister of State in the Ministry of National Security and Minister of State in the Ministry of Trade and Industry (Hon. Fitzgerald Hinds): Thank you very much, Mr. Speaker. The story is told about the woman who was

seeking the services of an attorney-at-law and who began her search at about 8 a.m. She went to Duke Street, St. Vincent Street, Abercromby Street; all where one would normally find lawyers' chambers. As she knocked on each door, she asked each person who would receive her specifically for the services of a one-hand lawyer. She went all day. At about 5.30 p.m. [*Interruption*] She did not want one like the Member for Princes Town, in any event.

At about 5.30 p.m., tired and drenched in perspiration, she knocked on what was the last door. A wise old Senior Counsel emerged and compassionately enquired of her why she was insisting on getting the services of a one-hand lawyer. She replied: "I have been dealing with lawyers all of my life and I have grown accustomed to hearing on the one hand you have this and on the other hand, you have that". She felt that if she got the services of a one-hand lawyer, she would get a straight answer.

That anecdote is really a reflection of what we have seen here today, except of course, that the Members on the other side cannot recognize a straight answer or solution to a problem, even when they see it.

I have listened to the Member for Siparia, as I always do, notwithstanding her tendency to give bad advice. It is a fact from which she cannot extricate herself. The absence of the Member for Fyzabad from this House today, is testimony to the bad advice.

Mr. S. Panday: It is due to the wickedness of the PNM!

Mrs. Persad-Bissessar: Spite and malice!

Hon. F. Hinds: I would not trouble us with that, Mr. Speaker. I want to deal with the matter before us, provided, of course, that I am not provoked.

Mrs. Persad-Bissessar: That is very easy to do.

Hon. F. Hinds: I am glad that you know.

Mr. Speaker: Order!

Hon. F. Hinds: Mr. Speaker, the Member for Siparia attempted to analyze issues of our Constitution and to express her position on the matter. I find that rather strange and it speaks to the indiscipline on the other side. But that is another matter. [*Interruption*]

Take your time. You had your time. You are hurry about everything. Some of you were so hurry to get rich, you ended up in trouble. Take your time! Let it happen naturally. You cannot get rich overnight. Understand that! [*Desk thumping*]

Mr. S. Panday: Who built your house?

Hon. F. Hinds: I do not have to answer that to any commission of enquiry or court. I do not have to play Martin Luther King and Mahatma Ghandi and corrupt these honourable gentlemen's good repute. [*Interruption*]

Mr. Speaker: Order!

Hon. F. Hinds: I do not have to do that. I would like to concentrate a little, but I probably need your protection.

We came to this honourable House with a very simple amendment to resolve a long-standing problem. The Member for Diego Martin East raised a point that is a commonsense one. Why is it that sentences have not been carried out for such a long period of time? Why were they, more specifically, not carried out in the six-year period between 1995 and 2001 when the very Member for Siparia spent 10 minutes as Attorney General?

They had their legal guru, a now expired former Member for Couva South. You see the deceptiveness and deception on that side, Mr. Speaker. The Member for Siparia was the Minister of Legal Affairs; not to mention her tenure in education and what she had done. She did irreparable damage to this country as a Minister of Education; but that is a matter for another occasion.

Mr. Valley: [*Inaudible*]

Hon. F. Hinds: That is a good question. Answer that! The Member answered the question of the Member for Diego Martin Central across the floor that she does not know. She really does not know. Let me tell her why it was not carried out.

First of all, I want to deal with a matter that the Members on the other side did not recognize. Chap. 13:03 is entitled Corporal Punishment (Offenders Not Over Sixteen). This was designed to deal with juveniles. The language here is not flogging; the language here is whipping. There is a difference between flogging and whipping recognized in the law.

In respect of juveniles, the law speaks to whipping and the normal cane is used—a long slender one. Traditionally, we used the birch, but because of the recognition of the issue of cruel and inhumane treatment or punishment, the birch was no longer used and is unlikely to be used; rather whipping in all cases. In fact, adults, not juveniles, have been whipped rather than flogged with the birch for that reason.

The Chap. 13:03 Act actually is an Act to regulate the imposition of carrying out of corporal punishment on offenders not over the age of 16—young men at the Youth Training Centre who, in the view of the court, deserved to be administered corporal punishment. That is one issue.

In that Chap. 13:03 Act, section 6(1), the side note says:

> "Sentence to be carried out without delay"
>
> Section 6(1) says:
>
> "Notwithstanding any provision of law to the contrary, a sentence of whipping shall be carried out as soon as may be practicable and in cases in which an appeal lies from the conviction or sentence, without waiting for the expiration of the period allowed by law for lodging the appeal, but when notice of appeal is given forthwith on conviction,…"

and this is the crucial part;

> "the sentence shall not be carried out pending the determination of the appeal unless the appeal lapses or is abandoned."

This applies, as I indicated, to juveniles. [*Interruption*]

> Just a moment. Section 6(2) says:
>
> "No sentence of whipping shall be carried out after the expiration of one month from the passing of the sentence."

That is what we are talking about with respect to juveniles. Hear the language. [*Interruption*] Just now! I am making a point. Take your time! [*Interruption*] You quoted it, I am dealing with it. [*Interruption*]

Mr. Speaker, I need your protection.

Mr. Speaker: Please, hon. Members, the Member is just winding up.

Hon. F. Hinds: Mr. Speaker, Chap. 13:04, an Act again made reference to in the course of this debate, is entitled Corporal Punishment (Offenders Over Sixteen) Act; "an Act relating to corporal punishment of offenders above the age of 16". Section 6 says:

> "A sentence of flogging shall be carried out as soon as may be practicable and shall in no case be carried out after the expiration of six months…"

as opposed to one month in the juvenile scenario,

"from the passing of the sentence."

and those last few words are instructive—a subtlety that may have escaped you again.

6.05 p.m.

It goes on to say, just for the benefit of Members:

"7. The instrument to be used for carrying out a sentence of flogging shall be the ordinary cat-o-nine tails and for carrying out a sentence of whipping, a rod of tamarind, birch or other switches or in either case such other instrument as the President may from time to time approve."

Mrs. Persad-Bissessar: You must test that wood carefully.

Hon. F. Hinds: Just for the benefit of Members; indeed in this jurisdiction, the Act in section 8, makes provision for the intervention of a medical officer. It says that the flogging should not be carried out in public and that it should be carried out in the presence of a medical officer. A medical practitioner, in any case may consider the offender to be physically unfit to be so administered and that sort of thing. The very provisions that the Member for Diego Martin East spoke about exist in our law, giving recognition—[*Interruption*] Yes, Sir it is here—to our respect—when I say "our", Trinidad and Tobago's respect—for these matters. It is expressed in the legislation.

Mr. S. Panday: Go to Act 94 now.

Hon. F. Hinds: Just now! Take your time.

Mr. Speaker, Act 10, 1994 amended the Corporal Punishment (Offenders not over Sixteen) Act, Chap. 13:03 and the amendment was a simple one. At clause 2, it says:

"Section 6 of the Corporal Punishment (Offenders Not Over Sixteen) Act is repealed and replaced as follows:

"6(1) Subject to subsection (2)…"

which is what the Member quoted,

"a sentence of flogging shall be carried out within six months of the passing of the sentence."

The judge passes sentence, it must be carried out within six months.

Mr. S. Panday: Subject to?

Hon. F. Hinds: Subsection (2) says: —[*Interruption*] Just now!

> "Where a person who has been sentenced to be flogged appeals the decision of the Court, the sentence of flogging shall be suspended until the determination of the appeal."

Let me say to the Member for Princes Town, in the event that he does not recall.

Mr. S. Panday: It is subject to section 6(2)!

Hon. F. Hinds: Just a moment. I said so. When a man appeals, as you ought to know, the Court of Appeal may uphold his appeal, or it may reject it. If the court upholds his appeal, he would win and he goes free.

Mr. S. Panday: Right.

Hon. F. Hinds: If the court does not, then the sentence that he was administered by the court of first instance, comes into effect. It is open to the Court of Appeal, as you well know, to increase or decrease the sentence as it sees fit. Do you agree? The Court of Appeal does that all the time. It is also open to the court—you are a lawyer, you ought to know that the Court of Appeal—[*Interruption*]

Mr. Speaker: Member for Princes Town!

Hon. F. Hinds: Has the power to cause the sentence to take effect from the day the appeal is heard, as well as it can say from the day that the sentence was passed. If the man is out on bail and the Court of Appeal says that it will give effect from the sentence, from the day the appeal was lodged or from the day the sentence was passed, the man enjoys a benefit.

Mr. Partap: What is your argument?

Hon. F. Hinds: Time would have already run and, therefore, the time he spends in prison is reduced, as well as the court might say the sentence must begin from the day the appeal was determined.

Mr. S. Panday: That is the norm.

Hon. F. Hinds: Normal. I only made that point to demonstrate to you what is meant by a suspended sentence. When the sentence of flogging is suspended, pending the determination of the appeal, once the appeal is heard and the sentence is affirmed; in other words the man loses the appeal— actually, in law the sentence takes effect from the day of the judgment at first instance; the

original day. That is the point. It is a simple point. I am troubled that I had to spend so much expensive parliamentary time to explain that, because that is precisely what they are saying is not the case.

Had they been better parliamentarians, more understanding and intellectually fluid, I would have sat a long time ago.

Dr. Moonilal: I doubt!

Hon. F. Hinds: Having traversed that rough ground and now that is out of the way I want to re-present the ideas that we had offered in the first place.

Dr. Moonilal: Repeat the sentence.

Hon. F. Hinds: The amendment before us is simply to remove the six-month outside time limit during which the sentence of flogging could be applied. It is as simple as that! As it now stands, as I said earlier, once the man files an appeal. The "fella" goes to trial, oftentimes he goes through the preliminary enquiry. He would have gotten a sense of the strength of the prosecution's case, because he would have heard the prosecution's evidence. He would have gone to the High Court. He would have had an opportunity to plead guilty at the start. He would not have done that; he would have gone through the entire trial process at the High Court. He would have heard the extent of the State's case. The jury would have heard his defence. They would have heard everything. They probably would have heard no-case submissions on the law; the jury would have deliberated, as they did in a matter in the United States and they would have found him, in this case, guilty and the judge would have applied a sentence, including flogging [*Interruption*] "Ent?"

The sentence takes effect from the day of the court's judgment. What happens now, because of the current law, it says no sentence of flogging could be applied outside of the expiration of six months. The guy having heard the State's case, knowing the weakness of his own, simply gets his lawyer, or he goes to the Appeals Registry and he files an appeal with one purpose in mind, and that is to avoid the sentence of flogging. He is in custody, and he is making the jail, and jail "eh" nice, but he does not want to be flogged, so the appeal protects him and once six months pass, even if he loses his appeal, there is no way that the State could carry out the court's sentence. That is the mischief that we are seeking to resolve; a simple amendment; we propose to remove that six-month time limit.

Mr. Speaker, with those words, I commend it to the House and I beg to move. [*Desk thumping*]

Mr. S. Panday: What about the effect of Act 94?

Mr. Speaker: Order!

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole House.

House in committee.

Clauses 1 and 2 ordered to stand part of the Bill.

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

House resumed.

Bill reported, without amendment, read the third time and passed.

ADJOURNMENT

The Minister of Trade and Industry and Minister in the Ministry of Finance (Hon. Kenneth Valley): Mr. Speaker, I beg to move that the House do now adjourn to Friday, June 17, 2005 at 1.30 p.m. I wish to inform my colleagues that on that day the Government plans to debate Bill No. 3 on today's Order Paper, a Bill to amend the Offences Against the Person Act, Chap. 11:08, (HIV), and then Bill No. 5 on today's Order Paper, a Bill to amend the Indictable Offences (Preliminary Enquiry) Act, Chap. 12:01.

Mr. Speaker, given time, we will then move to Bill No. 19 on the Order Paper, a Bill to amend the Supreme Court of Judicature Act, Chap. 4:01.

Question put and agreed to.

House adjourned accordingly.

Adjourned at 6.16 p.m.