

*Leave of Absence*

*Tuesday, February 26, 1991*

**SENATE**

*Tuesday, February 26, 1991*

The Senate met at 1.30 p.m.

**PRAYERS**

[MR. PRESIDENT *in the Chair*]

**LEAVE OF ABSENCE**

**Mr. President:** Hon. Senators, I have granted leave of absence from today's sitting of the Senate to Sen. Gerald Furness-Smith, who is out of the country.

**SPECIAL SELECT COMMITTEE (APPOINTMENT)**

**Mr. President:** I also wish to announce that I have appointed Sen. Fyard Hosein to replace former Sen. Horace Wilson as chairman and member of a Special Select Committee of the Senate appointed to consider and report on a private bill entitled "Faith Revival Ministries World Outreach and matters incidental thereto".

**PAPERS LAID**

1. Report of the Auditor General on the accounts of the National Insurance Board for the year ended June 30, 1988. [*Sen. Alloy Lequay*]
2. The National Insurance Board 1989—1990 Annual Report July 1989—June 1990. [*Sen. A. Lequay*]

**ORAL ANSWERS TO QUESTIONS**

*The following questions stood on the Order Paper in the name of Sen. Wade Mark:*

**Foreign Consultancy Firms**

3. Would the hon. Minister of Finance kindly state:
  - a. The number of foreign consultancy firms employed by the Government between the period January 1987 to December 1990?
  - b. The number of foreign consultancy firms earmarked for employment in 1991?
  - c. The specific purposes of their engagements?
  - d. The existing and projected costs of these firms to the taxpayers of Trinidad and Tobago; and

- e. Are the reports of these firms accessible or made available for public consumption?

**Sen. Alloy Lequay:** Mr. President, I understand that the hon. Minister is on his way—

**Mr. President:** So you would like to have it deferred at this stage.

**Sen. Lequay:** Yes.

**Mr. President:** If the Senator has no objection, when the Minister arrives, at a convenient time, we will proceed with question No. 3.

*Question put.*

*Assent indicated.*

#### **Industrial Court**

9. Could the Minister of Labour, Employment and Manpower Resources indicate what measures are being taken to address the urgent problems of staffing and chronic poor working conditions currently plaguing the Industrial Court and in the process impeding the course of justice?

#### **ILO Conventions**

10. Could the hon. Minister of Labour, Employment and Manpower Resources state how many International Labour Organization Conventions have been ratified by the Government since December 1986, and how many are earmarked for ratification by December 1991?

**Sen. Alloy Lequay:** Mr. President, I should like to indicate that the Minister of Labour, Employment and Manpower Resources has asked for a deferment of questions Nos. 9 and 10 for a period of two weeks.

I have indicated to Sen. Mark that there were a series of questions filed for the attention of the Minister of Labour, Employment and Manpower Resources and up to the last sitting I think he did answer a couple of them. He is not in a position to answer them now, because of the volume of work with the Regional Economic Conference in which labour has a very significant role. He has respectfully asked, with the kind agreement of Sen. Mark and the Senate, that these two questions be deferred for two weeks.

*Questions, by leave, deferred.*

**SANATAN VIDWAD VIDYALAYA (INC'N) BILL**

*Question put and agreed to,* That a bill to provide for the incorporation of the Sanatan Vidwad Vidyalaya and for matters incidental thereto, be now read the first time.

*Bill accordingly read the first time.*

#### ORAL ANSWERS TO QUESTIONS

##### Foreign Consultancy Firms

**Mr. President:** We have reached public business and we would normally now commence with the debate on the Domestic Violence Bill, but I see that the Minister of Finance is here. Are you in a position to reply to question No. 3?

**Mr. Wilson:** No, I am not, but I came to say so myself.

**Mr. President:** All right.

**The Minister of Finance (Hon. Selby Wilson):** Mr. President, I regret that I am not yet in a position to reply to question No. 3 and I assure the honourable Senate that it is not because we do not consider it important. The fact of the matter is that the answer does not reside only in my Ministry. It is a collection of information which is proving a little more difficult to put together in a meaningful manner. I have every desire of answering the question as completely as I can and, therefore, it is taking a little more time to get all the bits and pieces together.

*Question, by leave, deferred.*

**140 p.m.**

#### DOMESTIC VIOLENCE BILL

[FIFTH DAY]

*Order read for resuming adjourned debate on question [January 29, 1991]:*

That the bill be read a second time.

*Question again proposed.*

**Sen. Wade Mark:** Mr. President, the issue of domestic violence is a very serious one in Trinidad and Tobago and I dare say in many parts of the world. What I would want to capture as male aggression against the woman, finds vivid expression in the lyrics of one of Mighty Sparrow's famous calypsos which goes as follows:

"Every now and then cuff them down, they love you long and they love you strong, black up dey eyes, bruise up dey knees; then they will love you eternally.

**Mr. President:** Are you sure it is a composition by Sparrow and not another older calypsonian?

**Sen. Mark:** It could have been, Mr. President. In this context violence is not only an expression of control, but an instrument used to extract respect of love. These innocent lines reflect the profound machismo values, mores and norms which characterise man/woman relationships and which have been profoundly internalized and ideologically entrenched.

The socialization process has been enormous, and the social, psychological and economic costs, staggeringly high. Domestic violence is a formidable problem. Given its present magnitude and dimensions, it would require fundamental reforms to eradicate this ugly scourge in our society. Domestic violence against women knows no boundaries, ideologies, cultures, classes, races or ethnic groups. It runs the gamut of physical and psychological damage ranging from bruises, concussions, broken noses, teeth, ribs and limbs, to throat injuries, lacerations, stab wounds, burns, bites and even murders. This disgraceful social problem must be comprehensively addressed and arrested through concrete, short-term protective measures and long-term prevention strategies and policies.

Mr. President, interpersonal family violence can become, if it has not already become, a most dominant form of violence in our society. It is a criminal act, and as such, constitutes a flagrant violation of the basic human right of the individual to live one's life free from violence, or the threat of it. Whilst the bill is gender neutral, the main victims of violence in our society are the women, the children and the parents or grandparents—the aged.

Mr. President, there is an urgent need to focus, recognize and acknowledge the underlying causes of this evil. One of the underlying causes of this despicable, dreadful disease lies in the social and economic inequalities that exist between the sexes and was recognized by the United Nations, but which has not been acknowledged in this bill. Its root is ideological. Unless the structural conditions are addressed and the ideological constructs overhauled and changed, we would be merely engaging in a harvest of illusions; we would be merely shirking the real issue. Too many backward ideas about women continue to pervade, permeate and condition our socio-political, economic and cultural environment.

There has been little or no research on the magnitude and dimensions of domestic violence in Trinidad and Tobago. There exists large gaps in our knowledge of the enormity and effects of violence against women and children, particularly as it relates to development process in our country. The full potential of our women is not being effectively utilized inspite of their great strides in education and their enormous contribution to production, as well as the economic contributions to the household, community and nation. Women remain in a disadvantaged position in employment—and I will demonstrate how as I proceed, what I mean by this—education, health, government, despite the rhetoric to the contrary.

Mr. President, an analysis of the labour market and Government's apparatus would suffice. A cursory glance at the tables of the CSSP continuous sample survey, issued by the Central Statistical Office, reveals the following facts.

An examination of the labour force by occupation and industrial grouping on the basis of sex, reveal the following discrimination against our women, not by law—I want to make it abundantly clear, not by law—but by tradition and practice in our society.

Mr. President, I have some tables coming from the CSSP continuous sample survey issued by the Central Statistical Office. If we look closely at the tables focusing on occupation, we see the following.

In the area of professional, technical and related workers, it is evenly balanced. At the end of 1989, there were 21,200 women employed in that category, while we had about 19,100 men. When it comes to clerical and related services, the women and the men are also evenly or reasonably matched. Sales workers are also reasonably matched. But, Mr. President, when it comes to craftsmen, tradesmen and the production process, including workers in the mining and quarrying industry, what do we see? In that area, at the end of 1989, 70,800 men were employed in that occupation. At the end of 1989, 14,600 women were employed in that particular occupation.

When you go to workers in transport and communication, at the end of 1989, 24,100 males were employed; the females were 1,700. Workers in construction, at the end of 1989, 50,800; at the end of 1989—women, 7,300. What I am saying is that in the industrial groupings you find the same picture, where, as I said, not by law, but there is a tradition in this country that says women must not get involved, and no policy decisions have been taken to alter that discrimination.

In England there is the Sex Discrimination Act and Equal Pay Act. We do not have these things on our statute books as yet, but there are many women in Trinidad and Tobago who are discriminated against because of their sex. I am saying that we have to take practical measures in order to address this particular deficiency in our society.

**1.50 p.m.**

**Sen. Rampersad:** I thank the hon. Senator for giving way to a question. Could you tell this hon. Senate of any country in the world where employment in the quarrying and construction industries are equal in men to women?

**Sen. Mark:** I am not dealing with equality in terms of numbers; I am just pointing out to this Senate and to the country that a serious gap exists in our society that requires correction. I am not saying that in X country or Y country you would find equality in quarrying or mining, that is not the issue. I am dealing with principle and we have to deal with that as a society whether they are in power, we are in power or somebody else is in power. I am talking about potential for development in our country.

We also have to focus on what I see as another very disturbing trend. I understand it arises out of the international definition of the labour force and who is classified as being part of the labour force. Again, for some strange reason women seem to be out of the labour force when we talk about the percent rate. I am quoting from the *Central Statistical Office Bulletin, First Quarter 1990, January to March*. Under the heading Non-Institutional Population 15 years and over: at the end of the first quarter of 1990, 414,500 males 15 years and over were surveyed. Those who were classified as being part of the labour force were 311,700 out of 414,500. Those who were not classified as being part of the labour force amounted to 102,700.

As it relates to the females, the same survey out of 420,800: classified as being qualified to be part of the labour force—157,200; not classified to be part of the labour force—263,500. I do not know if these persons are housewives. I am saying that these are things we need to address because there is a gap that exists here. A total of 102,000 men are not in the labour force out of 414,500 and you have 263,500 women not in the labour force out of a total of 420,800. I am saying that the definition needs to be looked at in dealing with the whole question of planning and development.

In other words, I can pose the question, what are these 263,000 women doing?

**Hon. Senator:** They are housewives.

**Sen. Mark:** Housewives, housewives. Do you know that there is a big debate taking place in the world today that we should classify house work as paid work? That is a struggle that is being debated internationally, that it should be part of the whole GDP of a country. *[Interruption]* We have male chauvinists in abundance on our side.

**Sen. Rampersad:** Mr. President, the figures being given by the hon. Senator are fine but could he make the link between unemployment, discrimination against women and domestic violence?

**Sen. Mark:** I am coming to that.

If you look at the Government's apparatus, I am not dealing specifically with NAR, PNM—

**Dr. Rambachan:** Are you saying that UNC would never be there?

**Sen. Mark:** I am not saying so. I am saying that if one looks at the Parliament, the Cabinet, we have it right here in the Parliament with our good Sen. friend, Sen. Horne. At the Cabinet level, we have one; at the level of Permanent Secretaries in the Ministries, to what extent are women adequately represented? *[Interruption]* Of course, I take that from Sen. Bradshaw. How many women are on state boards in our country? How many women are on private sector boards as directors? I am saying that there is a difficulty and problem that we have to address. Why is it that women continue to be ideologically subordinated? How does this subordination and horrors of violence against women coincide? This is the point that Sen. Rampersad was trying to get at. Women are extremely intelligent human beings.

Approximately five years ago, a Trinidadian woman by the name of Dr. Sharon Ann Mc Nicholls was selected as the most outstanding woman of the entire Americas. This outstanding Trinidadian woman emerged as the youngest clinical psychologist in the world. She had completed an 11-year course in six years. The point I am making is that there is a perceived—*[Interruption]*

**Dr. Deosaran:** On a point of order and I really hate to do this. That information is not valid. It might be published but with due respect to the claim of the Senator, that particular report is not accurate.

**Sen. Mark:** I stand corrected. He should know better. But this was extracted from the newspapers and it is not at all times that we believe what we read. I

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quoted it, but if the hon. Senator could give me guidance when he is speaking I will be happy.

A conservative assessment of domestic violence against women and children would reveal—and we do not have any statistics on the matter—that domestic violence against women is on the increase. Violence against our women attacks their dignity as human beings and leaves them vulnerable and fearful. Violence against women is detrimental to their physical and mental health, in fact, their very survival. It is estimated—and this comes from a study that was conducted by two Guyanese university professors entitled *Domestic Violence and Marital Relationship in the Caribbean*. This is the only published report that we have on domestic violence in the entire region. They have estimated that in Trinidad and Tobago one out of every four women suffers from violence and abuse. In Guyana it is two out of every three. In fact, it is worse in Guyana.

Statistics from the Rape Crisis Centre reveal the following:—

**Dr. Rambachan:** Does the Senator have statistics for the Caribbean or only for Trinidad?

**Sen. Mark:** I am reading from the report. They only quoted for Trinidad and Guyana. They mentioned America and Canada but for the other territories, there is no information. We have to do a research. Maybe your Government could commission a study.

**2.00 p.m.**

Statistics from the Rape Crisis Centre reveal that during the period 1986 and 1990, the following categories of domestic violence were reported. That is a small operation. Wife battering—101 cases; incest 107 cases were reported; and family related problems—81. Out of a total of 517 cases between the period 1986 and 1990, 290 were violently related. This is a small example, coming from an operation that is very small on the dimensions and magnitude of violence against women in our society.

The UNDP Human Development Report adopted in 1990 states:

"Human development is a process of enlarging people's choices. The most critical of these wide ranging choices are to live a long and healthy life, to be educated and to have access to resources needed for a decent standard of living. Additional choices include political freedom, guaranteed human rights and personal self-respect. Development enables people to have these choices."



How does violence against women's lives affect their options? Critical to development for women must be increasing their self-confidence and their ability to participate in all aspects of society. Violence against women therefore, blocks their development goals; violence disrupts women's lives and denies them life options; it undermines women's confidence and sense of self-esteem at every level, physically and psychologically; it destroys women's health; denies their human rights and undermines their full participation in society. The socially constructed dependency of women on men also contributes to women's vulnerability to violence. This dependency is mainly economic and is as a result of various laws of discrimination.

Women's socio-economic and psychological dependency makes it difficult for them to escape situations of domestic violence. Violence against women affects the development process. It affects the well being of our children and our families. A study needs to be commissioned on the children of battered women, to analyze the stress and behavioural and emotional disorders. Violence against women is also destructive to family life and it affects the husband negatively. It results in the wife and children losing respect for the aggressor.

The reality is that violence against women deprives societies of the full participation of women in all aspects of development. How can our women engage freely in creative endeavours when they are burdened with the physical and psychological scars of violence? Many productive hours are lost, not to mention the cost of providing services to victims, legal: medical, social and financial.

Another area which would require some investigation is the extent to which violence to women contributes to the loss of highly skilled women in the development process and in the process exacerbated by the brain drain. Our society is totally ignorant and indeed, in the dark, as far as how domestic violence affects the nation's productivity. We are talking about the development. Like alcoholism or drug abuse, the effects of domestic violence spills over into the work place. It is now an established fact that domestic violence intensifies in times of economic stress and high levels of unemployment. Indeed, there is a close relationship between an increase in unemployment and an increase in the number of abused women. The existence of the evil scourges of alcoholism, drug abuse, unemployment, the rising cost of living contribute to and, indeed, promote domestic insecurity and contribute to wife-battering, child abuse and neglect of the aged.

Our children and senior citizens are being abused and abandoned. A number of our senior citizens die from sheer grief due to wanton neglect by their families and sometimes by the state. A society which condemns tens of thousands of its most able-bodied citizens to a life of poverty, hunger, unemployment, alienation and discrimination, is a society guilty of inflicting violence on its people. Economic violence is widespread in our society and will intensify. The removal of COLA, the suspension of merit increases and the suspension of the Industrial Court's award, are matters which are related to domestic violence and economic insecurity.

The major and most explosive problem confronting the Caribbean—the economic conference which is to begin on February, Wednesday 27, 1991 is going to be addressing that question. Professor Comptom Bourne has estimated that it is the most explosive issue affecting us in the Caribbean today. Unemployment ranges between 25 and 35 per cent in a number of countries in the Caribbean. Trinidad is about 20 or 21 per cent. This socio-economic malady has to be remedied. We in Trinidad and Tobago have to locate the relevant mechanism to safeguard the well-being and dignity of our people. YTEPP, YESS, are mere fig leaves. We need permanent, meaningful and productive employment for our citizens. The only detailed research study on domestic violence in the Caribbean, as I have mentioned, was published in 1989, entitled *Domestic Violence and Marital Relationships in the Caribbean—A Guyana's Case Study*. The authors, George Dans and Basmath Persad, arrived at some interesting findings.

**2.10 p.m.**

Mr. President, the study revealed, among other things, that two out of every three Guyanese women had been beaten at least once by their marital partners. Further, 44 per cent of the women were still being beaten. It comes from conditioning. Almost a third of the women who were beaten felt that the man had a right to beat them. That came out of the study.

**Sen. Rampersad:** That is their right.

**Sen. Mark:** Everybody has a right. People have a right to starve and to be unemployed too. In South Africa they also have a right to keep them out of the voting system.

**Dr. Hosein:** Thank you for giving way. I find myself in the position of Sen. Deosaran, merely to correct Sen. Mark that it is not true that there is only one

study. There has been a study on violence in Belize; non-governmental organizations in Trinidad and Tobago have undertaken such studies; CAFRA has undertaken such studies and have been reporting those studies just about two weeks ago, right here in Trinidad and Tobago and there has also been a study commissioned by a UN agency which was done in 1984. I think the Senator's research is not so good.

**Sen. Mark:** If I am wrong, I stand corrected, I am not arguing that point.

Mr. President, it was also revealed that fewer married women were beaten than those visiting, or in common-law relationships. The key point that needs to be grasped from this study is the need for the society—and in this instance, the Government—to properly diagnose the phenomenon before it could prescribe a cure. They need to study that particular matter in some detail. Hence my proposal to commission a national survey on domestic violence. Proper research data would enable the society to target strata and income groups particularly susceptible to domestic violence. Research and information are vital tools in hammering home to the people and policy makers, the magnitude of the problem and the policy options vital to address it.

A comprehensive, well integrated, co-ordinated and well thought out approach is absolutely necessary to address the issue at hand. In the absence of this approach the bill becomes merely symbolic. The offences outlined in the bill are not real; only the protection order is. The society must take a firm stand against domestic violence.

What the bill seeks to do is to alert the entire nation to the fact that domestic violence can no longer be tolerated and treated as a mere husband and wife affair, or simply as family business. Domestic violence must now become society's business. Women can no longer be regarded as private property by their husbands or spouses. They must no longer be treated as a bag of rice or a sack of flour or viewed as a steelpan merely to be beaten. The mere tabling of this bill is an acknowledgement by the state, to some extent, of the powerlessness of the women in the context of marital, common-law or visiting relationships, hence the need for protection.

As I understand it, the protection order does not confer any property rights on the abused victim at the expense of the aggressor. What it does is to deny the aggressor access to the home on a temporary basis. It is our view that a *de facto* spouse in the context of our culture cannot be limited by a time-frame. Human

beings are involved and in the instance of violence to the woman, access should be had to the victim of the criminal offence. There should be no time-frame to determine blows in a relationship.

Clause 25 of the bill reads:

"Where a police officer believes on reasonable grounds that—

- (a) a person has committed or is committing a domestic violence offence within the meaning of this Act; or
- (b) a person has committed or is committing an offence under section 18 of this Act,

he shall make an arrest without a warrant."

Mr. President, from my assessment there is need for some guidelines in this area. You see, we are living in a male-dominated society and if the police officer sees his partner involved in a violent act; if the police does not arrest the aggressor—although he shall; it is mandatory here that he shall—what recourse—Minister Hochoy Charles—what recourse does the victim have? Does civil liability come into the picture? Could the victim sue the police and the police service or the Commissioner of Police? I am saying that there needs to be some refinement and clarification in this particular area.

Whilst the legal framework is critical and vital, there is a crucial need for the establishment of the necessary support services. If we do not have resources, financial and otherwise, to give life to this piece of legislation, then it would just become another Act in our statute books. Resources are crucial to the success of this exercise. Therefore we need to establish the necessary support services and training in the short term. You see, there is need for an urgent formalized training programme for our judges, magistrates, prison officers, psychologists, psychiatrists, clergy, doctors, nurses, policemen, social workers, teachers and lawyers.

It is a comprehensive whole. We are approaching this thing in a holistic fashion and, therefore, we have to ensure that in a society that has been conditioned for centuries to view the woman as an inferior being—and we are now coming out of that culture but it is hard; old habits die hard—it therefore means to say that we have to be very particular with the training process involved. I think it was only Saturday in the *Trinidad Guardian*, the editorial was

forced to remark—a man who has become a habitual wife-beater goes before the court and he is reprimanded and discharged. I want to quote from the editorial:

"In reprimanding and discharging Leroy again, she was sending a message to wife beaters which was quite out of tune with the whole purpose of the Domestic Violence Bill and showed a surprising insensitivity to an alarming problem which the society is now attempting to effectively address."

**2.20 p.m.**

Now, Mr. President, I am saying that we have to embark on a serious training programme if this bill is to make sense and to become effective. If resources are not available because we know that the Government is strapped for cash in some instances, although for instance, it might be strapped one way and it is "ramajaying" on the other side. If resources are not available then there is need to prioritize.

The police and our magistrates should be given some training. Training should focus on understanding the entire issue of gender subordination and all other issues relevant and related to domestic violence. We also require some kind of professional counselling services which should become mandatory. I understand that there is a Juvenile Bureau Unit that has been established. It is understaffed but within the confines of its resources, I understand from Sen. Mahabir that staff are trying their best. I suggest that we establish a special family service unit within the police service to deal specifically with the enforcement of this Act. These officers should be well trained and the service should function on a 24-hour basis and not an eight-hour basis.

**Mr. President:** The speaking time of the hon. Senator has expired.

*Motion made,* That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. A. Lequay*]

*Question put and agreed to.*

**Sen. Mark:** Domestic violence must be recognized as a social problem, therefore the provision of basic skills and knowledge necessary to interview, or to engage in what I call, crisis intervention training and services are vital. Crisis intervention training must become part of the police training. This philosophy holds that rather than continually responding to domestic situations having high probability of serious violence and then doing little more than separating the parties involved, police officers should act affirmatively to ameliorate such

situations. In this case the police should provide psychological first aid and crisis intervention services. As far as is practically possible, an arrest should become almost as a last resort. The police should understand that they have to provide what I want to describe as provisional solutions to long range and complex problems. You see, the police would be charged with the responsibility of administering and implementing the law, therefore, in doing so you have to be very sensitive and I am saying that there is need for crisis intervention training in this regard.

We also require the organization of a national programme of education to sensitize the children, women and parents about their rights and how they could protect themselves from the risks of all forms of abuse. The establishment of a 24-hour domestic violence hot line that provides local information concerning domestic violence and alternatives to it should also be established because it is widespread in our country. So I would like the Minister to note that point.

There are some other related issues of concern such as the cost of the process. What is going to be the cost to the poor and the under-privileged victims, particularly those who are unemployed? I was told by a medical social worker that even when victims go to the hospital, merely to get a stamp to fill out a form they have to extract money from their pockets to buy the stamps for the victims. So the question about cost has to be addressed. I believe in this context it is important to enlarge the programme of public assistance.

**Dr. Hosein:** What stamp?

**Sen. Mark:** Some form that they have to fill out at the level of the medical social worker.

I am proposing that we have to enlarge the programme of public assistance to accommodate the class comprising single unemployed parents. We need to expand that. Financial support is needed to assist women in regaining their independence. The provision of day care centres would come under the Health and Safety Bill that the Minister of Industry, Enterprise and Tourism spoke about, because that is inherent in that bill, but that is a necessary adjunct to this particular exercise.

I do not want to whip a beaten horse, the family court. That has been established, people have argued for it. If we are not going to have a family court because we do not have one now, and the matters are being referred to the

magistrate's court, we have to focus, as I said, on additional training to deal with the harvest of new cases that are bound to arise when this bill becomes law.

In Puerto Rico just in 1989 a law similar to this one was passed and whereas they had few cases of domestic violence being reported, the average now is 1,000 per month. So once women are aware that there is a law existing to protect them they are going to utilize it, complemented with some education, as I said. It is a long run strategy of prevention. In the long run action must be taken to prevent the spread of domestic violence. In this regard, our society must seek to foster women's economic independence in an effort to reduce and prevent domestic violence.

Education, on the issue of social and economic inequality between the sexes, must become crucial in our curricula. Schools at all levels should stress equality between the sexes, that physical violence in the family is unacceptable and intolerable. We have to organize and promote a continuous media campaign on the issue of preventing domestic violence. Just as how we wanted to raise revenue when we introduced VAT, we must also pay attention to the issue of domestic violence. I am not saying that we have to spend the same amount of money, but that issue is critical. A philosophy of family life must evolve and become actively woven into the fabric of our socialization process and be taught in the schools from the earliest ages.

The problem of domestic violence is not insoluble and it can be beaten back. What is required are the following: We need clear national policies. You see sex discrimination, we have to pass legislation to deal with that. We need to create adequate institutions in our country because, in the absence of adequate institutions, you have a problem. That is the problem to which I think, Sen. Furness-Smith referred. We live in a small society, Mr. President, and if people do not have recourse to some kind of institutions, then sometimes they feel victimized and disadvantaged. Most importantly, we have to commit ourselves, that is the Government in conjunction with private institutions, but the state must play the leading role in this context. The state must provide the necessary resources in order to beat back that evil.

#### **2.40 p.m.**

Once these elements are in place, then the nation will be closer to the goal of achieving social and economic equality and justice for both sexes in our twin island republic state. Mr. President, the social equality of the sexes is critical and

vital to the development process in the context of a rapidly changing global, economic and technological scenario, as our nation prepares itself and its people for the great and sometimes daunting challenges as we tiptoe into the twenty-first century. Thank you very much.

**Sen. Dr. Ramesh Deosaran:** Mr. President, I also want to commend the Minister for bringing this bill, knowing quite well that he had walked into the bill on his assumption of office in the new Ministry, and as a patriot, he is willing to stand by what has been formulated so far. I say this because this is quite clearly not an easy bill to debate. It seeks to bring the state, the police, and the law into some areas which have not been so touched before.

What this bill seeks to do, Mr. President, is to construct a case to show the necessity for such legal intervention and, quite naturally, one would have to take a very close look at whether or not such a justification is necessary. I myself have chosen to speak at this time in the debate and allow the female Members of this Senate to let me hear what are these justifications, what reasoning they would bring forward to convince others to vote for this Domestic Violence Bill. I must say that one by one they have all impressed me, not only with their personal observations, but I must also say with a kind of reasoning that they are bringing forward for us to pay attention to the issue of domestic violence.

There is an issue, the issue of abuse of spouses, of children, and of dependants. Let me say from the onset that one is not naive or ignorant of the fact that there is a very crucial issue about violence in the home, but at the same time, Mr. President, I would like to express and discuss some of my misgivings about this bill, and in so doing, hope that as far as those specific clauses are concerned, I could stir some reconsideration in those directions.

Before I continue, may I take this opportunity to tell Sen. Mark that I was very reluctant to interrupt him at the time I did, but the claim he made is clearly not accurate. While one would allow such inaccuracies to pass in the daily press, I think one could not stand here and allow it to be entered into the record of *Hansard*. For that person mentioned might say that this Parliament affirmed such a claim, which is clearly inaccurate, about being the brightest person in America or the world.

This bill on domestic violence, in my view, should be guided by four major considerations:



- (1) the extent to which the state intends to punish or prohibit the offender in cases of domestic abuse or violence;
- (2) the extent to which the state wishes to intervene in family relationships;
- (3) the extent to which the state wishes to save the relationship in question; and
- (4) the extent to which the state is prepared to assist the victims of domestic violence.

Above all of this, we must understand that no matter how strongly we all feel about domestic violence, in fact about all violence, we are, in this bill, dealing with a special set of circumstances. We are dealing with people who are not strangers, neither are they merely friends; who are in fact joined together by either blood, affection, passion or compassion, and any legal intervention or legal solution to problems within such relationships ought to recognize its inherent limitations.

It is not always that the court can understand what happens in the family. It is not easy for a lawyer to express the family conflict through a legal vocabulary. There are too many deep feelings and hidden agendas, all of which cannot be easily or properly accommodated in the rules of a trial, be it a preliminary or a fuller hearing consequently. This is part of our special difficulties in dealing with some clauses of this bill.

Of course, Mr. President, as desirable as it may be to find solutions, the problems of family violence, of family conflicts, the fact is we, especially in the Parliament, must understand the difficulties in using the law as a solution. Further, whatever the deep emotions surrounding issues of family violence or conflicts, or even issues of race or drug trafficking, we as a Parliament should attempt to deal with such issues with balanced considerations, and also ensure that our legal solutions do not unnecessarily aggravate the very problems we are trying to solve or unwittingly create other undue hardships.

People in families have formed and worked out peculiar ways of dealing with each other in solving their problems, whether they be problems of poverty, of child rearing, or of strained affection. A family relationship, more specifically a man and woman living together, whether it be a legal union or not, is a very private affair. In fact, the Constitution guarantees the right of the individual to respect for his private and family life, and with very good reason. Such a right has become a very fundamental condition in a democratic society. Together with

the right to the enjoyment of property, this right to respect for family life is the foundation for keeping the clutches of the state from interfering with the rights citizens have to live according to their own choice. These rights, however, also impose a great deal of self-responsibility for family heads and family members to do what is right and fair to one another.

We, through this bill, are now dealing with harassing behaviour and domestic violence, ranging from what is called in the bill persistent following or watching a person, right up to actual physical blows. Surely, no reasonable person can stand by and not feel to do something about these things.

The bill, in addition, has duly linked the existing criminal law with incidents of family violence. Unwarranted physical violence should not be tolerated, whether it exists inside or outside the family. I say "unwarranted" because sometimes physical retaliation could be justified as a means of self-defence.

The questions therefore are these: How can a Parliament solve this problem of domestic violence? What kind of laws can we make to stop such violence, apart from punishing the offender? And in so doing, how can we ensure that the fundamental rights and freedoms of the persons involved are not unduly subverted.

The bill affects at least three basic rights:

- (1) depriving a person of the enjoyment of his property;
- (2) depriving a person or persons of their right to respect for their private and family life; and.
- (3) depriving a person of personal liberty without due process.

**2.45 p.m.**

Of course, as I said earlier, the bill does construct some conditions for the removal of such rights, especially in the case of a person committing physical violence. The bill seeks to create justification by argument, as well as by seeking a three-fifths majority, to remove these rights. That, at times, is permissible but it is not all that straightforward in this bill. For example, the burden of proof has been reduced. Then the person is not yet found guilty before the prohibition order of removal from property or home is put in place. Then, we are not yet quite convinced that the wide definition of "spouse" is valid enough to provide a basis for these rights to be so effected. Again, the question is this: Is the removal of

such rights justifiable, or are there better and more viable alternatives given the special circumstances of family union?

Mind you, Mr. President, the mentioning of these rights does not at all mean that I am unmindful of the horrors of the crime or the need to avoid domestic violence. What I am trying to deal with here is because of the nature of offence, and given the fact that there are other provisions in the bill, whether we do have enough safeguards before resorting to the deprivation of these fundamental rights, especially the ones pertaining to the right and enjoyment of property and the privacy of the individual for his family life.

I am therefore merely asking if the procedures proposed here could solve the problem effectively, and as well, whether we cannot seek other means without attacking the Constitution with such hasty vigour. Once you start fiddling with the Constitution in this way, you have to ask the question: When will it stop? Or are you going to always seek this recourse as a basis for easy solutions?

You see, this country has developed a peculiar syndrome and it manifests itself in different ways and on different occasions. Let the Government do this; let the Government do that and then let the law solve this for us. Even if there is an existing law and it does not work, the syndrome says, make another law and make it with great fanfare, building all kinds of expectations, such as we have had with the Anti Corruption Act and the Sexual Offences Act. Yet how much have you really heard about charges emanating from such pieces of legislation? This is all the more reason why, if we have the resources and if we can conceptualize the offence in such a way to use the law, yes, but, as well, to see that we do not attack the Constitution unnecessarily in the way that I am trying to explain.

In fact, it is no wonder that more than one Chief Justices of this country have said quite publicly that we are the most litigious people in the world. It is because we have the temptation, if not the easy tendency, to always run to the law and legislative procedures to solve broad fundamental social problems.

I am not unmindful of the fact that the law could facilitate solutions but democracy also means self-responsibility. It means that if domestic violence or spousal abuse is to be eradicated, then the women, in particular, should be economically independent and the man should have such a standard of conduct, such a sense of decency, that any recourse to abuse or violence would be considered primitive and demeaning to both partners. That is the ideal. That is the highest expectation.

What happens when in fact abuse and domestic violence exist? This is the question: In its preamble to the bill the Government says that the object of the bill is to strike a right balance between the need to preserve an existing marital or other spousal or parental relationship, on the one hand, and the need to protect these persons from violence, on the other.

Indeed the bill does seek to use the law to protect the persons in question from domestic violence, almost as it would with strangers or even friends. That is part of the issue. We are not dealing with strangers. We are dealing with people who have formed bonds in family and with certain of the prohibitions and procedures to be used by the police, it seems, at least for certain of the prohibition orders, that the candle might very well cost more than the funeral in the end.

By lumping a range of offences into one section, the bill seeks to punish, but at the expense of the relationship, the union. By having available the same range of prohibitions for widely differing offences, some much milder than others, the bill opens up several possible dangers. The bill does not seek a right balance in this respect and this to me is a fundamental area of concern in the entire bill. You have a list of offences ranging in degrees of severity, some being very mild on the face of it, some being very severe, but yet you put a similar range of penalties, leaving it to the discretion of the magistrate, at least in the first instance. I think the bill should have been tidied up more in this particular respect and the offences separated more discreetly from the consequent penalties, or the prohibitions, that is. Because in this way the bill loses its balance and it exposes dangerous possibilities with abused consequences.

Of particular concern is clause 5(1)(a) which seeks to prevent a respondent from being on premises in which a prescribed person (the complainant) resides or works. This provision is made whether or not the respondent (that is the person accused) is the owner of the home or the property. This, of course, is a violation of the constitutional right to property, as I said. In a way that may be unjustifiable.

In fact, Mr. President, given the circumstances as expressed in this bill, this provision seems unconstitutional, even if it happens to pass with a three-fifths majority. As section 13 of the Constitution would suggest, this particular provision does not seem justifiable in a society that has a proper respect for the rights and freedoms of the individual. Even if you pass this bill with a three-fifths majority, given the fundamental basis of our freedoms as attacked through this bill, in my humble and respectful view, this particular provision could be tested in

the court for violating our proper respect for the rights and freedoms of the individual by having recourse for section 13 of the Constitution. Speaking for myself, I would not wish to pass a law, except if I can get a further explanation from the Minister, which could possibly be thrown out for its plain unconstitutionality.

The situation is aggravated by other circumstances. For example, no distinction is properly made between a legal and a non-legal union, between the length of time the two people are living together. There is acceptance for legal and non-legal unions in the society but when it comes to the ownership of a home or a property, especially the length of time that these two people are living together in non-legal union, a question must arise, especially with the possibility of removing the rightful owner from this particular home or property.

**2.55 p.m.**

There are other considerations. What about the children? What about when the children are the man's and not the woman's, or *vice versa*? I do not think the bill, although it tends to do so, really strikes a balance. Where is the viable middle-ground in all of this? What about if the respondent is so poor, in this particular case a man who is so poor, that he has nowhere else to sleep? Are we going to make him an overnight vagrant in the cause of what seems to be justice? Surely, we need some compassion, even for this accused person, because remember, all these things are being put into operation, without the man having the right to properly defend, cross-examine the affidavits or whatever statements are made on oath, before the magistrate or as indicated in the specified order in the appendix. This prohibition order could go on for months. In one part of the bill it states:

"The prohibition order should be reviewed at any one time but not more than twelve months."

So in the end, it seems to me that the amount of time could add up finally to more than 12 months.

Again, you want to remove the person—and I say there might be some instances for justification—but given the other available provisions in the bill, this particular one does not yet seem to be necessary. There are other safeguards in the bill, and I will come to them later on, without having to seek recourse to this extremity.

What about if the respondent works on the same premises on which the complainant works? The bill seeks to remove the respondent also from his place of work. Are you going to stop him from working on the basis of a charge and through a prohibition order? Surely, this, in my respective view, is a bit too extreme a measure to take in the circumstances. Of course, there are other effective ways to stop domestic violence. May I repeat, Mr. Minister, through you, Mr. President, I understand the seriousness of the issue with which we are dealing, but I am also saying that there are other provisions in the bill that can be used to avoid violence or threats, making recourse to these constitutional extremities, unnecessary, at least for now.

In fact, I do not really want to get into the folklore of this society, but property is the cause of world wars. In fact, the very war now in the Middle East is a battle over property. I could understand property gained illicitly through, possibly drug trafficking, let the courts move in. We once had a debate in this Senate on such a matter. But where property is earned honestly—and it might be the only piece of property or possession that the particular person has—I think the looseness which surrounds the conditions for removal, needs, in my humble view, some reconsiderations.

If a person must be deprived of the enjoyment of his property, or if in effect it has to be taken away, then the due process of law should be applied and for very clear justification, for example, in the instance of property accrued through drug trafficking. Even in that particular bill, we found great difficulty in passing those conditions for the seizure of property. In this same Senate, at least some Senators raised a big hue and cry about seizing property under the conditions as stipulated therein, in what is now called the drug bill. So there is some great concern about people's property. If, as this bill does contain alternative measures to deal with domestic violence and the threat of such violence, it is my respectful view that we can wait and use those alternative measures rather than bring into the fore, right now, this kind of attack on our constitutional rights and freedoms.

Furthermore, if you have subclause 1(d) in clause 5 which states that you can "prohibit the respondent from engaging in conduct of an offensive or harassing nature towards prescribed person", you have a substantial prohibition there. Once you have that provision, it seems to me that the need for the earlier clauses, (a) (b) and (c), the need for them, in light of what I have said before, is diminished. If the respondent disobeys this order, that is the one arising from subclause 1(d) there are serious consequences.

Then you also have subclause (1) (i), in clause 5, in which the magistrate could specify the conditions under which the respondent may be on premises or a locality specified in the order. So you have a grasp on the situation. You can direct him as to his behaviour, at least in the first instance, seeking the prohibition order. So you really do not now need the full weight of removing a person from his or her property as part of a prohibition order. In saying so, let me repeat, we must also note that the burden of proof for such removal is lighter than it is in criminal trials.

The bill allows you, merely on the balance of probability what is called a civil standard, a much lighter standard of proof, in dealing with what you are defining as a criminal offence. That aggravates the concern when the constitutional right is simultaneously removed, apart from the things about the spouse or so on. Or is this perhaps, the growing disregard that people in this country have for property?

Mr. President, I want to make the point that we should not confuse the horrors of the crime with the procedures and prohibitions contained in this bill. It is because we are concerned with the horrors of the crime, that in my case, I am trying to seek whether we can have more effective and practical means of controlling the problem with which we seek to deal, rather than having something that looks all bold, brave and glamorous on paper, and yet produces several unexpected problems when the time for implementation comes.

### **3.05 p.m.**

In fact, the nature of the crime has been spelt out quite colourfully by Senators who have spoken before me. I remember Sen. Una Charles speaking about a man who got his head split in two and then Sen. Horne says: "That is to put some sense into it." Then Sen. Mark could not have been more colourful when he said: "broken teeth, busted throat." That does not really help the bill. We are convinced of the severity of the offence; we are all convinced about the prevalence of the offence although I will have a few things to say later on about the empirical basis for the legislation.

Describing the offence, be it threats or actual physical violence, is really not an issue. We are all convinced about that. It might surprise you to know that I was amongst the people who called for the legislation. That also is not the issue. But as I said earlier on, when you come to a parliament and take an oath to uphold the constitution of a country—this is the oath that Senators take, at least I try to remember mine—every time the Constitution is threatened, you have a duty, not a mere obligation, to ensure that the conditions for such a violation are

well spelt out and strongly justifiable. There must be no other recourse for dealing with the issue at hand. In this particular case, I submit with respect, that there are in the bill, several other provisions which deal with this matter.

I can, however, support clause 22 (1)(d). That is the kind of action we should support. It seeks to prevent the defendant from residing with a prescribed person if the defendant is under the influence of drugs or alcohol.

Then there is clause 5 (1)(e) which prohibits the respondent from contacting the prescribed person. This is an interesting one—"contacting the prescribed person". It means in effect the person charged should not contact the person who is offended or who claims to be offended. When I read that particular clause, one can understand the reason to avoid contact especially when the matter is in dispute. However, as I also said earlier on, these are peculiar circumstances. In the case of man or woman, people have been in love; they have formed attachments.

Then I recalled what the preamble to the bill and what the Minister quite properly said, "the bill seeks to strike a right balance." He also indicated that the bill seeks, as far as possible, to preserve the relationship. I can well appreciate and understand why he said so. In matters of this kind, spousal relationship, if there is a dispute, especially a dispute arising from the relatively mild offences such as following, watching or even threatening, especially for the first offenders, you should always leave some room, a window open in case one person wants to contact the other person as part of a deserving reconciliation.

Love sickness can sometimes be relieved only by contact. Such contact is not bound to be malicious at all times but bounded as it would be by such a prohibition, this lessens the chance of reconciliation and so any chance of saving the relationship may at times be permanently lost. Again, in my view, the bill loses the right balance.

Other people have made the point about counselling. I will not belabour it except to say there should be counselling facilities, given the nature of the situation. These people are not strangers and if the intention is to seek to preserve the relationship as far as possible, then you ought to accommodate counselling as far as is possible rather than bringing the law too quickly in the forefront. Perhaps, the respondent might be insane even when the prohibition order is being considered. This counselling is important especially in cases of verbal harassment or threats.



I would like to keep repeated offenders and severe physical violence separate from this discussion because as the bill rightly did, it brought into the family, the existing criminal law especially for those offences. But there is a range of offences in the bill as I indicated earlier, which confuses the solutions sought or the prohibition order sought.

Sen. Una Charles, again—I have the pleasure to refer to her—said that education is the most important factor in this bill. It is quite a commendable point except that the bill is very silent on this matter. Perhaps what she meant is education should be an important pillar to guide this bill. However, the bill is silent on this matter of either education, counselling or rehabilitation, except in the clause dealing with children where somebody has to take up the cause of the child—the probation officer, medical social worker or police.

Of course, this is the other side of the coin. We have to admit that it is a fact of life that some relationships, be they legal or non-legal, are not fit to continue because they are the source of great pain and continuing torture—these ought to end. There are other means available in law to terminate such relationships properly. People can be counselled to separate or get divorced if circumstances warrant such a result. We are not seeking to press people together in impossible ways but at the same time we should not construct laws that will preempt reconciliation in the light of the peculiar relationships we are speaking about. That is what I mean by having a right balance.

### **3.15 p.m.**

In fact, marriage is not made for everybody. This is a myth of life. I do not want to get into the history of marriage, but marriage is not really made for everybody. Some people are happier living by themselves. It is another fact of life. Some people enjoy it and they will be lost without it. Now when I say "it" I mean marriage. That is why the Constitution guarantees the right to privacy. If you allow some governments to start dealing with families in a way that some leaders of historical times have tried to do, it could produce serious problems. Marriage is not fit for everybody, or to put it the other way around, everybody is not fit for marriage and this is something we have to recognize. That is why it is one of the philosophies which must be considered in moving this bill. Do not pressure people superficially into one way or the other, because families, relationships of this kind, have very many peculiarities which, as I said earlier, the law, in its cold logic, cannot fully appreciate.

I have, of course, spoken about my own dissatisfaction in the way that spouse is defined. In addition, there is no definition as to how long a non-legal union should be, before these prohibitions are enforced. I find that a little unsettling and for obvious reasons. We live in a country and we know enough about community life and many times a piece of spite, or quest for revenge could be impetuously implemented against one or the other, especially when there is in the situation, as one Senator called, a numerosity of amorous relationships. You never know what the hidden agenda is, that is why my particular concern for preserving the property, or the home to its rightful owner. I need not elaborate, because I certainly do not want to diffuse concerns over the domestic violence issue which we are speaking about.

Of course, domestic violence will be everybody's business and in fact, we are trying to make it so, by bringing in, for example, the criminal law into offences within the family. But it should also be everybody's business to see that family unions are saved where possible; that all possible opportunities are available for reconciliation. However, in my respectful view, the spirit and letter of this bill makes attempts at reconciliation very difficult.

On this point, the bill seems too much in a hurry to solve a complicated problem. I suggest that what would have been better is to move this legislation on domestic violence in two stages. In the first stage, use prohibition orders, such as we have in clause 5(1)(d) where it states that we can stop the respondent from harassing or attacking the prescribed person.

**Mr. President:** The speaking time of the hon. Senator has expired.

*Motion made,* That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. L. Bradshaw*]

*Question put and agreed to.*

**Dr. Deosaran:** We can move such legislation on domestic violence, which by implication means family life, in two stages. In the first stage we can use a prohibition order, as we have had in 5(1)(d) where it states that you can stop the respondent from harassing or attacking the prescribed person. Only if we see such orders not working over a period of two years, for example, then we move into stage two of the legislation, that is, tackle the removal of certain constitutional rights. So the community will be better convinced and perhaps, parliamentarians, like myself, might be more easily convinced that there is a proper justification for affecting these constitutional guarantees.

It is not a question of trying to make the Constitution more important than a person's life. That kind of rhetoric is not the issue. We are not trying to put legality before humanity. If people want to use those very emotional appeals, that is not the issue. The rights to which I refer are too fundamental for family life to be so easily interfered with. May I repeat, especially when there are other provisions in the bill which can handle the matter sufficiently, at least in stage one, as I have proposed.

Of course, there is a lot of subjectivity in the reasons for granting the prohibition order. I do not want to get too deeply into it, but when you talk about watching and following a person too persistently, people in love do that a lot. I do not understand how you can establish a distinction between a person watching another one with hate and how you can establish that in court. It is a defence to love. So you will really have some scene in the magistrate court in the first instance, and later on it will be very entertaining, I could well imagine, given the profound oral traditions of which our country is famous for. My friend is not here, Sen. Mark who spoke about the calypso—these again, with the burden of proof, reduced.

Therefore if you look at it, if the state insists on moving so forcefully into people's homes and property, into family life, then surely it should take some of the responsibility, especially if the respondents are not always rich. In fact, if you want to run a class analysis on this matter, it is quite likely that many of the offenders will be poor, hard-pressed for resources. So the state, given its concern, as we all have in this matter, should share some of the responsibility for the victim. It can establish better guarantees of safety and security for the complainant's house, for example.

So I ask: Why could not the state provide a home of some kind, or a proper institution, at least temporarily, for the victims of domestic violence, with the cost to be shared between the state and the respondent in the magistrate's or judge's discretion?

**3.25 p.m.**

In fact-*[Interruption]*. Well I am putting it to you, I know you will handle it, I am trying to get you to clarify this serious issue.

Now some Senators have duly quoted relevant laws from several other places. We have heard about Australia, Canada, United States, England and so on but it is also useful for us to know that for example in Canada, the roles of the state and

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established voluntary organizations in looking after victims' rights are very well established. It is not merely a fight between one and the other person. If you have state intervention the state also realizes it has a responsibility for caring.

It is time we follow such example also, not only borrow the laws. In fact, the hon. Minister of Social Services in his presentation of the bill indicated that his Government plans to develop state support services, especially a family service, delivery system. So the concept is there but it is too far distant, it should be brought closer alongside this bill.

Now there is, of course clause 6 which allows the magistrate to take certain things into consideration before giving the prohibition order, which raises another issue. In fact, it is a very fundamental issue when you look at the capacity of judicial officers to determine matters of this kind. How well are our magistrates trained in the sociology of the family or in family law itself? It is too dangerous to allow some of these prohibitions to go into law and leave it entirely up to the magistrates' discretion.

In fact, we should know that in some countries in order to deal with such matters of domestic violence and drug trafficking, magistrates and lawyers have to take refresher courses because these are contemporary, complex, social problems and citing precedents and statutes is certainly not enough to determine the cases before them. In fact, I know of one such place, the Judicial College of the University of Nevada and it is time some of our magistrates and even judges do some refresher courses; after all, magistrates and judges have spousal problems too. They are also humans, least we forget.

You see, coming to the bottom line it follows that a parliament has to make laws that suit the wide public interest and I always sit up and think when you use in your opening prayer that such deliberations must be free from personal interests or unwholesome prejudices, because it means what we need is balance to keep the wide perspective in view while attending to the immediate cause.

In saying so, I recall some newspaper publications on this matter and I wonder if we should use these as the basis for legislation—in fact Sen. Mark pointed out some of them—but I believe we should be restrained in using some of these things. I refer in particular to one in the *Express* of Thursday, January 31, 1991 where it talks about the horrible truth about wife beating. If it is horrible, we are against it but listen to how it starts—

"Almost half the men in the region are likely to be wife beaters according to scary data from Guyana."

And then it quotes a professor who belongs to the department, which I have the honour to head. Now this puts me in a sort of awkward position.

You see, it is not quite true to say that almost half the men in the region are likely to be wife beaters. It is a little exaggerated. It is exaggerated, especially when the data comes from a Guyanese sample. The extrapolation is unduly provocative. I understand the message; it goes on but I will not bother to refer more extensively except to make the point that these exaggerations do not necessarily help legislation; that is why I rose quite reluctantly to gently correct my dear friend, Sen. Mark.

Another one; "33 per cent of our women are abused" *Express* of March 18, 1990. Nowhere in the article does it cite the evidence, reliably or authoritatively. It is the same thing with race, drugs; this big outburst in the press and sometimes they have poor parliamentarians hustling to make legislation framed on a very poor, shaky premise. Again, I would not bother to cite the other references, except to say that we have to be restrained and keep a perspective in mind when we are making legislation on such matters.

For example, some of the Senators are correct, the kind of data you need is not only the frequency of violence but the kind of persons in the homes and the degree of the violence, because the prohibition order should vary according to the degree of the offence. So it is not enough to say so many wife beaters; you need a little more detail in order to formulate legislation and we have had some, quite gratefully from institutions—the Rape Crisis Centre and the Halfway House—but certainly one expects the responsible Government to initiate a programme to collect more reliable statistics on this and other matters. I am tired saying so myself.

I want to ask the Minister in his reply whether he can tell us what report he was talking about when he said—and I have his transcript—on page 3: "Mr. President", he says, "the causes of violence in Trinidad and Tobago as stated in a report tend to support the above theory in the local situation". I would very much like to know what report he is talking about, if it is at all publicly available, perhaps it can be useful to some of us. Again on page 5 of his transcript he spoke about a committee appointed to examine the entire family services delivery system and the committee's mandate was so and so. I would be happy if he can identify the reports so that I can avail myself of them.

So, Mr. President, I have a note here on under-reporting and so on but I would leave that out and end. I am prepared to give support to this bill but I would like to see the Government and the Minister in particular, give some additional consideration to the clauses, which on the face of it, appear unduly oppressive and, in fact, against the spirit of the bill itself. It will also be nice if the Minister says something alongside this bill about the extent to which the state is prepared to assist victims of domestic violence, for after all, the major intention is not merely to punish but to protect and assist the victims or potential victims of abuse or violence and it is not always the case where the respondent may be in a position to offer such resources to the aggrieved person. Thank you.

**3.35 p.m.**

**Sen. Dr. Martin Sampath:** Mr. President, as I look around this august Chamber, I am satisfied that this nation is privileged to have in its service such a variety of talent. People from every walk of life are here. There are housewives, businessmen, lawyers, agricultural scientists, a doctor, people from every race, creed and class who themselves have tremendous experience in the home and who, if not themselves, but who must have relatives or friends who have been victims of domestic violence.

Later on in my presentation, I propose to give a few case histories about patients whom I have examined, the type of violence to which they were subjected and the aetiology of such violence. At this point, I should like to ask the messenger if he would kindly take this to you, Mr. President, so that with your permission it can be passed around to the Members of this Senate, so they would have an example of one of the cases to which I would refer later on in my presentation.

I believe that since antiquity, when women were regarded as chattel, there has been domestic violence. As a matter of fact, in reading the *Encyclopaedia Britannica*, I came across this little item. In 1790 Lord Stowell in a case of *Evans vs Evans* on the question of cruelty as a ground for divorce made a certain ruling which was accepted by the House of Lords in the case of *Russell vs Russell* in 1897. I will just read this ruling here as a definition.

"Conduct by a husband or wife of such a character as to have caused danger to the life, limb, or health, bodily or mental..."

and I stress—

"bodily or mental of the other spouse or as to give rise to a reasonable apprehension of such danger..."

The roots of this bill lie very much in the past and this has been a persistent state of affairs in family relationships. I think we all know that the reason there is this inequality of concept as to the two sexes is because, in caveman days the man was bigger in size. That has not continued. In these days of karate I think some women are very much more active, energetic and capable but still it was physical size which determined that man was superior to women. Of course, it is well known that a man's brain is larger than a woman's brain but seeing that only perhaps 50 per cent of the brain is at any time used even by men, I do not think that is any sort of evidence that man would be superior to women mentally. In these days where with education, which has not gone far enough, but which has tended toward equality between men and women, I believe it is generally accepted that there must be in every phase of endeavour, complete equality between men and women. It is something which we all accept in this hon. Senate.

Now speakers before me have dealt at length with what should be done during and after the act of violence has in fact occurred. The question of half-way houses has been given a considerable amount of attention, but in my presentation, I wish to go beyond that. I wish to go into the aetiology of violence, the whole question of families and the examples that are set to people who are in fact violent.

Now nothing that I am going to say here must be taken as justification for domestic violence. These are explanations of why it occurs but not justification. Domestic violence to my mind is completely unjustifiable and must be dealt with and prevented wherever it can be prevented. But this bill states unequivocally that this society will not tolerate domestic violence.

The second thing it does it will have a prophylactic effect. We have heard many figures of estimates that one in every two women is beaten, one in every two men is a wife beater, one in three, one in five, one in ten and so on. Whatever the figures, if this bill comes and is eventually published the first thing that is going to happen, is that any man who wants to beat his wife will think carefully and it may prevent him from beating his wife. So we can reduce domestic violence. It is a prophylactic measure. It is not only curative or puritive it is prophylactic. It is extremely important.

One of the Senators, on the other side, I believe it must be an aberration because she read an excellent essay to the House, with which I think we agree entirely, but she said that if certain things are not done, then the Minister is

wasting the time of the House and is trying to fool the House, or words to that effect. I think it is an aberration and I would forgive her for that.

I want to give an example. By way of example the question of malaria in the country. Before we had licked malaria as an epidemic in this country, and we have done it, a patient with malaria was told take your quinine and it would relieve the symptoms and it will kill off some parasites, sleep under a net, use a cockset and things of that sort. Would the Senator say that was a waste of time because we did not get to the root of the problem, which we have since done and actually killed off the anopheles in the country? So you see this bill is extremely important even though we know that the other things have to be done. This bill is performing a prophylactic role and it is also something which the society is stating unequivocally through us in this Senate.

A few definitions: the word "domestic" of course is derived from the word "*domus*" which means the home, and homes in primitive days used to be dome shaped so you see the connection.

As far as violence is concerned I believe that is spelt out on page 7 of the bill. It shows what conduct of such an offensive or harassing nature includes a major statement there of all the things that constitute violence. It is not just physical violence, it is other forms of violence. It is very well known that a tongue lashing is something that can be very, very violent indeed. Why do we have a home? Again, if you take an example from the birds in building their nest, it offers security for their young. The only valid sociological reason why two people get together either in marriage or living together is so that children will have a home, they will have a nest, a place where they can feel secure. This is one of the reasons two people get together. So that when there is domestic violence in the home it reflects on the children and this is one of the reasons a bill of this sort is so very important.

Another definition, sex: the word "sex" has been used very, very loosely and it has been used in Trinidad and Tobago, especially to mean sexual intercourse. That of course is completely wrong. Sex is something which denotes male or female and it is typical of the animal and plant kingdom. But the semanticists have been driven by this loose appellation "sex" meaning sexual intercourse, the semanticists have been driven into using the word "gender".

Now I shudder every time I hear the word gender used referring to male or female. Gender is something to do with grammar. You have a masculine and a



feminine gender. You do not have a masculine man and a feminine woman. You do not have those things. That is grammar. So when I use the word "sex" here I am going to refer to male and female and I am going to use the phrase "sexual intercourse" to mean sexual intercourse. There are many other things that are used. They say that so and so is seeing so and so and they mean sexual intercourse; sleeping with, derived from the French, I suppose, *coucher avec*, making love, and so on. I suppose they do all these things to get away from obscenity because they do not want to use the common Anglo-Saxon four letter word.

At this point it may be of interest to know that obscenity is really a class thing. It did not start in Trinidad and Tobago. It must have started with the conquest of Britain by the Romans. They used Roman words like copulation, coitus and so on and when they used the ordinary Anglo-Saxon word that was obscene. It is the same thing if you say excreta you can say it anywhere, you can say defecate you can say it anywhere but if you use the Anglo-Saxon word it is obscene. However, I do not propose to use any of those Anglo-Saxon words. I shall be as polite as possible.

### **3.45 p.m.**

While we are on the subject of loose language— and this is just by way of diversion, Mr. President—"La Romaine" is spelt without an "e" very commonly. They have converted the place where I live into a hermaphrodite. "La" is feminine, and "La Romaine" should be with an "e", meaning the Roman lady. And then we say "San Francique", "San" being Spanish and "Francique" is French. It should be San "Francikay", and so on.

And now the time has come for me to be very specific about some of the case histories that I have had. In my practice, I see approximately one case a week of domestic violence. There are seven doctors in Siparia. There are probably five hundred in private practice. So you can see how many cases actually come to the doctors. Those that do not come, of course, must be a similar amount. One case a week is 50 cases a year, so I could say I have seen about 2,000 cases of domestic violence in my own short lifetime.

The cases that I am going to present today are recent cases. I am presenting these cases because I had the opportunity of asking these victims: how did this happen? Apart from the physical examination: how did this happen? And they have been speaking to me. Some of these ladies that I examined, one at least was a girl that I delivered when she was born, so I knew her for her whole lifetime.

This girl of 25, she came in yesterday—I have only selected a few recent cases. She had been married for five years and has two children. She was slapped over the head, and it damaged one of the eyes, a very heavy slap damaging one of the eyes, so that in reading the chart, with that eye she could read three lines less than what she could read with the other eye. You all know about the visual chart. The eye was damaged, the retina was contused. Luckily, there was nothing more serious than that.

So I said to her, "Madam, tell me, why did he lash you?" She said, "Well, we had an argument, certain things happened," and she answered him back. Most of the cases of domestic violence that I have seen are cases where the wife is an intellectual superior of the husband, so that when there is an argument, she wins the argument and the husband resorts to violence. It is almost like what happens in the world; violence, war, being an extension of what cannot be done by other diplomatic means. This is what happens in the home.

And so in looking through these cases, there is a certain trend, a certain psychological thread that runs through them, and I shall come to that when I make the final analysis.

The other person I saw was 26 years old. She came to me on February 21, just last week. When she came in, her face was all swollen. The history was that she was cuffed by her husband. I said, "With one hand or both?" She said, "With both hands." He was using her as a punching bag. They had four children; the eldest was five, the youngest was one. This was about the twentieth time that she had been attacked, kicked and cuffed. So I examined her and I made notes and everything about it, and I have the notes here detailed: Tender, swollen scalp, diffused swelling all over the face, scratches, marks, she was throttled, she was very hoarse.

These ladies came to me in tears. I remembered, when I saw them, what Sen. Diana Mahabir-Wyatt said last time, that it is not only physical but mental. Here is someone who loves you whom you love and who beats you. The mental violence in these cases was perhaps even greater than the physical violence. So it is a terrible thing, this wife beating.

So what is the history here? These people are not married, they are living together, but as I say, they have four children. It just happened that she got pregnant for this chap and then they started living together. "Now, why did he beat you?" I asked. She said, "Well, he accused me of having a relationship with

the neighbour." In fact, I said, "What did he actually say? What were his actual words?" And she used a word which I had not heard for a long, long time. I will not mention the word here, but if you remember the artist painting a picture, the instrument he uses was the word that she used. And you see, the use of words is very, very important because the word he used suggested an affectionate relationship. Other words used for this act do not necessarily give that sort of relationship, but he accused her of doing this.

Now, this was very straightforward, but there are some people who suspect that there is infidelity. They suspect it and have no proof. And then when some little thing happens in the house, dropping a tea cup or maybe a sharp remark, the husband resorts to domestic violence, as it were, to take revenge for the suspected infidelity of his wife. Again, there is a thread running through that which I shall deal with a little later.

Now, the next case which I want to tell you about is about a person, and again this is a girl whom I knew since she was a child. I attended to her since she was going to school. I saw her one morning. She had sinusitis. I treated her with some antibiotics. I had my lunch at 1:00 o'clock. At 1:15 this girl came in with her face all swollen, a beautiful young girl. How old was she? Twenty-two. And I said to myself, "Look here, she is allergic to the antibiotics." That is the first thing that came to my mind. When I looked closely, I saw that there was a human bite mark on one side of the cheek; she had eight scratches on both sides of the face, another human bite mark on the back of the neck, scratch marks on the breast, and so on and so forth. So I said, "Well, girl, what happened?" She said, "Well, you know, the wife of the man that I am friendly with met me as I was going out and she did this to me." So she was in the position of being a deputy and the wife took revenge on her in that way. I do not know whether that qualifies for domestic violence, but I am just putting this out as a case of the sort of thing that can happen.

It is significant the sort of injuries you get when a man beats a woman and the sort you get when a woman beats another woman. You see the differences in the kind of injuries you get? This is, of course, by the way.

Now, the last case is the photograph that I passed around, and I wonder if you have all seen the photograph. Now, this was a girl of 20. She came to me and, in fact, her parents brought her to me, not the husband. By the way, in some cases the husband brings the wife along. The husband is penitent. They have done this thing on the spur of the moment so to speak and they are sorry. They regret. They

come to bring the wife and they tell me, "Look, so and so happened." It is the same story the wife gives and, "I am very, very sorry it happened. I lost my temper." In other cases, they have been drinking. And again, the thread that runs through I will come to a little later.

Now, this poor girl of 20—I do not want to describe all the things. I should have said that these injuries were caused with the flat side of a cutlass. And it is an interesting thing about the flat side of a cutlass. You know, it is called a "planass". I think most of you must know the name, "planasse". It is an interesting thing because in the old days when these contractors were putting up cocoa estates, and so on, they always carried a "puyant" in a case. Now, for the benefit of those recording, "puyant" is a corruption of "poignard", and the case is the scabbard in which it is kept. They kept that. And when they came home from work, they expected certain things, and if the house was untidy or the children were unkempt and the food was not on the table, well then, he "planassed" his wife. However, if he came home and found that she was in bed with somebody else, then he gave her the cutting edge.

People ask me, why do they not defend themselves when they are getting the flat side of the blade? Well, obviously if a man is wielding a cutlass on the flat side, he has you at his mercy. He is showing vindictiveness as well as mercy, because he could very well just turn this at a small angle and do irreparable damage to the person. So he is combining the two things: he is combining revenge, punishment with mercy.

You must remember this. It is an important psychological point which I think will not be lost on Dr. Deosaran. Now, what are some of the other reasons husbands beat their wives? There are several other reasons. One is the question of frustration at work. A man who is inclined to be violent, he is frustrated at work with his boss or his office, or even with his farm. He comes home, and the first thing he does is argue with his wife, any little thing, and he starts to beat her. She may be submissive. What does she do then? She starts to beat the children. Having beaten the children, the children now, they are smaller and take it. Who do the children go and beat? They beat one another or they beat the dog, and the dog, of course, beats the cat, and the cat beats the mouse, and the mouse beats the cheese. You all know the old rhyme about the farmer who takes a wife, but he beats the wife, and so it goes down the line. So you see domestic violence goes all down the line, and again this is the sort of thread that is running through.

Now, what is the thread that is running through all of these things? Each one of these tells me about the husband and the husband's family. Most of them tell me he did it while he was drunk, just like his father. His father used to get drunk and come home and beat the wife, and it goes back to the grandparents and so it goes on.

The pattern of behaviour that a man, or for that matter a woman, sees in her family is the kind of pattern which he is likely to repeat or to be repeated on her in her own family. This is something that we all have to understand.

Now, this is the aetiology of violence in the home. So that while it is important that we have bills of this sort, and it is important that we do something after the act has been committed, it is equally important—and I think Sen. Mark mentioned this—for education in selection for marriage.

My colleague, Sen. Felix Rampersad, whispered that to me just now and it is absolutely correct. People behave in the way that they have been taught by precept and example, perhaps. My younger sister told me yesterday when we were discussing this, she said, "You know, when I got married Ma told me, 'Now, look here, if you have any complaints to make, wait until your husband has eaten and then make the complaints'. And my sister said that what Ma told her that is what her mother told her. So that in my family we had this sort of understanding, you see; do not encourage a man to be violent because a hungry man is an angry one. So that ladies themselves must also understand this sort of thing that goes on, and even before they are married.

The reason we have domestic violence in a home is because couples before they get together, either in marriage or getting together, misunderstand what role is expected of the other person. They misunderstand the role they are expected to play. Many women come to me and say, "Doctor, if I had known he was like that, I never would have married him." They did not get the chance beforehand to know what role was expected of them. Many of them would never have entered into associations with that person if they only knew what the husbands or the wives expected of them. So you see that education in advance is extremely important, even before you select a spouse.

Now, what are some of the other reasons for violence? Misunderstanding could be physical. I have come across a good many cases of this. Let me tell you something that happened when I was a medical student in Leeds, in the year above me, there was a couple, a very loving couple. This was in 1945. The V2s,

the progenitor of the Scud, were still coming over Britain. I think the Minister probably remembers those days very well. At that time, you did not know whether you were going to be hit by one of these V2s, whether you would be alive the next day, and so in general terms, people were very generous with their affections.

**4.00 p.m.**

**Dr. Hosein:** I am sorry, I must correct the hon. Senator. I was not born in 1945.

**Dr. Sampath:** I thank you very much. Perhaps your obvious intellectual maturity has fooled me.

Even though people were very much freer with the demonstrations of their affections in those days, yet these two people—one was six feet, five inches and the beautiful young lady was four feet, eleven inches—were a very loving couple. We were very good friends and I travelled around with them a great deal. We went to sports meetings all over England and they invited me to their homes and I knew them intimately. I could never have hoped for a better match. It was a match made in heaven. They graduated a year before me and they got married.

At a medical reunion party a week after I saw this girl with somebody else so I said, "Tell me, where is John?" She said, "You know, we broke up." I said, "You all only got married last week so why did you all break up?" She told me the medical reasons. It was a case of disproportion. Maybe if they had known about this before they got married this would not have happened. They wasted six whole years in a country which is liberal in activity—people are broad minded—and yet they never knew that there was this sort of gross disproportion. It is a good thing it happened that way because I know of a case now of gross disproportion where this poor wife has three children. She has had to be delivered by caesarian section for each one of them and she has never uttered a word until she came to me in a very bad condition. It is important that people know about one another in almost every respect before they get married.

There is another case. In 1942, I belonged to a literary club in Port-of-Spain and there was this beautiful young girl who got engaged to a nice young man with a good job and she invited us all to her engagement party and a month after, the engagement was broken off. So I asked her, "What happened? He was such a nice young man." She said, "Well, you know, I could not be happy with him at all." I asked, "Why?" She said, "well, he brought a book for me to read and I could not

go along with all of it at all so I figured that I would not be happy with him." I asked, "What was the name of the book?" She said that it was Kharma something or the other. It was the "*Kama Sutra*". It is just that she would not go along with some of the activities that were described in the book which he wanted to engage in, so they broke off the engagement. I mentioned this because if they had gotten married and this was started, it certainly would have resulted in domestic violence.

Sometimes you have two people who are married and because of religious differences, which they did not think were held on to so very strongly, can result in at least domestic friction, if not violence. There is one person whom I know who was a Christian who got married to a girl who was a Muslim and he did not know how strongly she felt about her religion and he just could not stand this 40 days of abstinence, so they separated. They should have known that long before they got married. He should have known how strongly she felt about the observance of certain religious things.

Sometimes there is illness which is misinterpreted. As far as certain misinterpreted conditions are concerned, there is another couple who separated because whenever they had sexual relations he developed herpes genitalis, an irritation and a virus infection. So they had to separate for that medical reason. They could not have known this before they got married. But if he was not an intelligent person who understood what happened, he could have resorted to sexual violence and accused her of all sorts of things.

As a matter of fact, that did happen in a celebrated case. I do not think anyone knows about this as yet. You all in the Senate are probably the first to hear of it. In Naipaul's book, *The Return of Eva Peron and the Killings in Trinidad*—in Trinidad you remember Abdul Malick, when several persons were killed, one of those being Gail Ann Benson. After she was killed, Chadee took them to where he had buried some of Gail Ann Benson's belongings. In the police inventory, which I shall read from on page 91 of this edition of the book, the whole list is written:

"A brown leather sleeveless jacket, ladies pink brooch, tangy cream, scissors, one tin containing Flagyl tablets."

Flagyl tablets—Minister colleague knows exactly what I am going to say next. This is the advantage of having a medical training. Flagyl tablets were produced in those days in a tin which contained 21 tablets and were used for the

treatment for "trichomonas" which is a fairly mild and easily curable genital infection that ladies have and which they pass on to men.

Gail Ann Benson apparently was a woman whose virtue was not really of the highest standard and it is quite likely that she passed this along to some of the other members of the commune, and it is quite likely that she was killed simply because she had this almost innocuous genital infection which the others got and for which they thought was something serious and which they blamed her for.

It is extremely important for two people to understand, not only what is expected of them but to be educated as to some of these simple things which can cause friction in the home. What is the role of the media in all of this? As far as education is concerned, and as far as all the Senators who have spoken, I wonder if the meat can be extracted from what we are saying today so that the public could be educated as to what they should be educated about, so that we can prevent domestic violence in the home. Because the media is educating the people; telling them things that they ought to know so that they can prevent this sort of misunderstanding; telling them how two young persons should be taught about certain things; taught about what to expect to see if, in fact, they are compatible in every conceivable way—well, the word, conceivable there is a pun which works both ways.

There is another case that comes to mind, of a family who had been my patients for many years. The mother came to me and said, "You know so and so?" I said, "Yes, I remember her well; I knew when she was going to school; I treated her for measles and so on." She said, "Yes, that is the same one." She also said, "Well, you know, she got married but she comes to me complaining that her husband cannot do anything?" I said, "All right, bring him along and I will talk to the two of them."

Immediately, I suspected what it was because she was from a rich family, well educated and everything, and I had an idea that the husband was of a somewhat lower social stratum, less educated and so on. I examined him completely to see that he did not have diabetes and all the other things that can cause this kind of impotence. He was perfectly normal in every way but he was a very reserved person who felt, socially and otherwise, inferior to his wife. This was the reason why nothing could have happened. I explained everything to him and to her. I told her what sorts of things she could have done to make him feel at ease. One year after they brought the baby to see me and they said, "Doctor, here is our offspring."



So you see, it is important for education and I stress that to the members of the press. Things that we say here are important. You must collect the meat of them and give them to the public. The media is faulty in other ways too. People always say that you are criticizing the media. I myself am a journalist, from the age of 19 years, when I wrote articles on agriculture for the *Sunday Guardian*, every Sunday for about two or three years. I know what journalists like and what they like to do and what the pressures are on them. When you see some of these American films that come over here, in which, if the actor is not violent, he is no actor at all. He has to be a "Rambo". When he gets vex in the house, he has to mash up everything; slap his wife; kick the dog and so on. Those sorts of things are telling the people in this country how they should behave in certain circumstances.

We do not want that sort of thing in this country. We want films that will educate and tell people the sort of things that they ought to do and how they ought to behave. I would tell the media to do those two things: ban some of those tapes and some of those films that come over here and educate the people more.

Mr. President, I shall end as I started. I shall say that this bill by itself, as we all agree, will not solve the problem of domestic violence, but it is a step in the right direction because it will state the view of society: that we do not want domestic violence and in a large measure, it will prevent people from taking the first or second step. So that we do not have cases only with a burst eye but we will prevent that from escalating to people who are so badly and violently abused, like the picture which I showed all around.

Thank you very much, Mr. President.

**4.10 p.m.**

**Sen. Haji Ralph Khan:** Mr. President, I know that we have had many comments coming from various speakers. Many of the points which are relevant to the bill have been discussed in different terms. It is my personal conviction that if I do not express certain sentiments about this bill, that I shall be failing in my duty. With that in mind, however, I shall try to be as brief, concise, to the point and as pertinent as possible.

The bill before us, to all intents and purposes, seems to me, a most honourable one. If nothing else for the tremendous amount of work and dedication which apparently have gone into its preparation, and moreso, when one considers its

impact and the overriding effects which it would have upon the Constitution in many instances. Therefore, indeed, I wish to commend the bill to the Senate.

To underscore this point, I venture further to state that the burning issue of domestic violence, owing to the multifarious and varied forms, coupled with the rampancy with which it is practised all over the world, not only in internal family households and private backyards, but even in open public places, and at times in the full view of the public's eye, must now be regarded as a serious plague of universal significance and one that has undoubtedly achieved international proportions, I would go further to say that it is the result of a myriad of interconnecting and interlocking factors which include the economic, social, cultural and psychological fabrics and nature of the human society, characteristics of which we cannot and dare not lose sight.

Due to the complex and delicate nature of the problem related to domestic violence there has been, in my view, much apprehension to deal with it in the past, especially with respect to providing legal and other forms of protection for the countless victims of domestic violence.

This Government, therefore, as well as the hon. Minister of Social Development and Family Services, must be congratulated for their courage for introducing such a bill in an attempt to address the scourge of domestic violence, despite the fact that the investigations have already been carried out in the critical areas of child abuse and neglect in the years 1987 and 1989 by the committee appointed to examine the entire family services delivery system in Trinidad and Tobago and by the Caribbean Regional Conference on Child Abuse and Neglect respectively, with the latter having conducted a detailed analysis of the extent and scope of the problem and having proposed several laudable recommendations aimed at combatting the problem of child abuse, as well as outlining some very praiseworthy solutions that are fundamental to other dimensions of domestic violence, for example, wife and husband batterings, *etc.*

Notwithstanding this, however, speaking from a layman's point of view, this bill, to my mind, seems to have generated some very deep-rooted concerns if not a degree of fear and trepidation, due to several conspicuous inadequacies. A greater indepth and microscopic view from the socio-economic dimensions have clearly indicated that several salient and potent aspects of this bill have been overlooked. Although one may safely presume that this has not been deliberate, such oversight seriously compromises the intentions and objectives of this bill.

Bearing in mind, however, the constraints of time I shall attempt to elucidate on some of these areas as I continue with my contribution.

Just very recently, Mr. President, as a forerunner to this bill, when the Supreme Court of Judicature Bill was being debated in this august Chamber, a number of our hon. senatorial colleagues made very stirring references to the Judiciary in one way or another. Very vociferous appeals were made for the expeditious dispensation of justice in this country, a system which is acutely bogged down by many constraints ranging from physical, financial, economic and manpower resources just to name a few.

Therefore, in order to prevent and protect our children, loved ones and citizens from the devastating effects of domestic violence, it is fundamentally essential that we create a comprehensive framework containing, not only legislation, I wish to emphasize, Mr. President, but a framework which gives primary consideration to the concomitant support and service systems which would enable the law to operate both smoothly and efficiently. Since our resources, both physical and financial, do not allow for adequate provisions in these areas, it is, in my view, most prudent to build upon our existing voluntary, religious and social structures and organizations.

I wish once more to refer to the Family Services and Delivery System Report of 1987. That report outlines certain specific mechanisms relative to remedial, preventive, development and support levels. If we are to consider seriously the recommendations of this report, which I expect every sane and sober individual would do, then, the introduction of legislation without adequate community input and resources; professional skills and manpower and social institutions, the proposed bill would be nothing but a mere delusion of grandeur and would only help to make a complete and total mockery of a whole system of social justice in this country.

**4.20 p.m.**

I recall vividly in my maiden contribution in this august Chamber on November 27, 1990, that I commented strongly on the question of having laws passed in this House over several decades without having the required enforcement and auxiliary agencies to enforce and effect the them. Lest I may be misconstrued of opposing this bill I wish to crystalize the point and reiterate that without the concomitant support systems and services, the law by itself would mean absolutely nothing except that by empowering the magistrate's courts to

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grant protection orders, I am afraid that this Government would only be exacerbating the existing problem by including such cases under the umbrella of an already overburdened system.

Those of us who are all fully aware—our Senatorial colleagues on all sides as well as the majority of people who are present here—of the acute shortage that we experience in our magistrate's courts. Sometimes magistrates have to fill in for other magistrates and a court is not in operation at times because it is difficult to recruit the quality of staff that is desirable to have these courts function effectively. We are also aware of the backlog of cases which has been a serious and acute problem for many years. I shall not go into detailing statistical data because as you are aware, these things have cropped up time after time and will take up quite a bit of vital time.

If I were to make a few brief comments in another area—again I am referring to the auxiliary services which will be required to implement this bill when it is passed into law. If I were to make reference to the police service, you will find more or less exactly the same ingredients lacking, a shortage of staff at present that needs to be addressed. Here again, we are faced with the question of economic and financial resources to be able to address that problem.

To go a bit further on that, what has crossed my mind is that within recent times—and I think we here are all aware that the Police Second Division has had quite a bit of their own problems and I regard that as a serious matter. They themselves need some regulating. When we examine the bill as I go on a little further and see that we are empowering certain people to do certain things, we have to ask ourselves and ponder over, whether we have the qualities, qualifications or the necessary characteristics to perform the job efficiently. I want to make it very clear at this point that I am not casting any aspersions on the police service because in truth and in fact we have some very hardworking police officers comparable with the best in more sophisticated societies.

**Sen. H. Charles:** Could you say what problems the Police Second Division are experiencing?

**Sen. R. Khan:** Mr. President, I would like to answer the question but realizing that my programme is pretty compact and I might be robbed of time, I think I would bypass it.

**Sen. H. Charles:** On a point of order. If the Senator is making certain allegations against the Police Second Division and he cannot give evidence to substantiate them, I would ask him to withdraw his statement.

**Sen. R. Khan:** Mr. President, I would answer the question.

**Mr. President:** Are you going to withdraw it?

**Sen. R. Khan:** No. I just made the reference *en passant*, that they were having a problem amongst themselves, not to say that it is a problem created by the Minister or the Government. What I mentioned is that they were having some internal problems among themselves and that they need to be regulated in their own personal affairs. If they have to deal with the public affairs, then how much trust and confidence can we place in their hands?

**Sen. H. Charles:** Mr. President, I am actually on a point of order. If the Senator cannot give evidence to substantiate the point he made, he should withdraw the remark.

**Sen. R. Khan:** Mr. President, in my humble opinion that matter is *sub judice* and I will not comment on it further. It is in the hands of the court.

**Mr. President:** The Member made a statement, he has an opinion and he expressed it. If he is imputing improper motives or saying something that is entirely incorrect, it is a different matter. He has given you the reasons for saying what he said. He has to hold himself responsible for those statements.

**Sen. R. Khan:** Mr. President, I want the hon. Minister to appreciate the fact that I said after I mentioned the point *en passant* that in our police service, we have some of the best police officers and they are comparable with some of the best in the more developed societies in any part of the world. I do not know what he is trying to get at.

I shall move on and make some fleeting remarks on the prison service and the staff whose responsibility it is to deal with matters that are incidental to the bill we are debating. When one is incarcerated or if one is prosecuted, charged and becomes a victim of the bill when it is enacted into the law, all these agencies will then come into focus, into practice and into use. These are the rippling effects we have to look at in the chainwork of things.

I shall not delve too much into those factors because if I were to talk about the lack of accommodation, overcrowding and things like these, I may have to

answer other questions which may rob me of vital time. We have Golden Grove and Remand Yard.

**4.30 p.m.**

Mr. President, as I see it, and again I will use the term in layman's language, this bill defines domestic violence as an offence committed by the person against a person or persons, and falls in three distinct categories, which I describe as follows:

1. The spouse of a person.
2. If a child—a dependent of a person or of a spouse of that person.
3. The parent.

For the sake of an illustration, let us just deal with one of these three categories at random and see what we have. In the instant case, that I want to mention, I shall use the example of a parent, who, by virtue of marriage, has a spouse and children dependent upon him for support. If such a person was the sole breadwinner of the family, who owns a home with an existing mortgage bill of sale hanging over his head; a motor vehicle used especially for his domestic and family use, on which he also holds a mortgage bill of sale; that parent also has children attending college or university, as the case may be, and is also expected to saddle the responsibility of providing a livelihood for these family members, if perchance such a person were to become a victim of this bill due to wife-beating, for a fact, if this person is adequately satisfying all the needs of the family, and he were to be incarcerated for that act—

**4.35 p.m.:** *Sitting suspended.*

**5.00 p.m.:** *Sitting resumed*

**Sen. R. Khan:** Mr. President, I was saying if per chance such a person were to become the victim of this bill, due to wife-beating let us say, and this person who is—

**Dr. Hosein:** Mr. President, may I ask Sen. Khan to refrain from using the term "victim of the bill". I do not think that we are attempting here to pass a law to victimize anyone, unless he cares to clarify exactly what it is he is trying to say,

**Sen. R. Khan:** No problem there Mr. President. If this person to whom I am referring, adequately satisfies all the needs of the family, were to be incarcerated for such an act, can one really anticipate or imagine the misery into which the rest of that family will be plunged? What about a situation in which a person's spouse

has never been exposed to work in her lifetime or his lifetime, far less being able to work or being employable material? This obviously would spell automatic doom and disaster for the other members of such a family.

The offence which may be a first offence—and there is where I want to endorse one of Sen. Deosaran's remarks about the first offence—and could possibly also be his last offence, though the person's spontaneous action could have been induced, provoked or sparked off by certain very exasperating, extenuating domestic circumstances. It might be argued by the proponent of the bill—our Minister—that adequate provisions have been made for such cases. But again I repeat that the woefully inadequate financial resources which continue to pose a serious threat to most government programmes, I envisage that the effectiveness of the administration of the bill when it becomes law would almost be outside the realms of possibility and probability in any realistic way. Hence once more, my emphasis on the question of counselling. You have got to bear in mind as we go along our depleted financial situation, there is where I am convinced that counselling in different forms—which I will probably go into—can be of great assistance in a programme like this.

In the good old days which sometimes people refer to, as the good golden days which is mocked when you make reference to it at times—and I am not talking about an alien land or country, we had right in Trinidad, and Tobago to a lesser extent, what was popularly known then as the panchayat system, and that system is exactly about counselling but counselling of an entirely different nature.

The counselling included family members from both sides of the parties who are involved in the dispute—because we are trying the preventative measures instead of going to the law, the clergy also and if possible social workers—with the objective of reconciliation rather than prosecution, particularly in the case of married couples. That is why you will find as I go along emphasizing the question of accentuating our counselling programmes which can be done through social, religious, charitable and other organizations.

Under the provisions of this bill, when we empower magistrates to grant protection orders, have we really indeed asked ourselves the nagging questions—you see it crops up again—of the overburdened and the depleted services involved? Are we satisfied that we have developed a proper system of social services? You see, my accent is on social services, the auxiliary services, the counselling services and not so much on the law. That is not to say that the law must not be applied when it is really or absolutely necessary.

What the bill does, in my view, is to exemplify the legal aspects rather than the social aspects. Therefore, by empowering the magistrate's courts to grant protection orders, the Government is possibly indirectly but actually exacerbating the problem by including these cases of domestic violence under the umbrella of the already burdened magistrate's courts. This is clearly reflected in the backlog of cases to which I referred earlier and which have been pending in such courts for many years in certain instances.

In this way cases relating to domestic violence would naturally be added unto the existing backlog of cases before the courts, thus creating further injustice, whilst we seek to dispense justice. It is very important to note that because we are considering this bill with the objective of dispensing justice as expeditiously as possible that in the process we may end up rendering injustices.

**5.10 p.m.**

The main issue with the bill, therefore, is not whether the bill itself is good or not but whether the existing structure of the magistrate's court can adequately deal with this additional responsibility, this additional burden. Inevitably, such a situation would obviously impact upon the effectiveness of administering the provisions of the bill, so that potential victims can have easy access to the courts' protection.

I would like to make reference to child abuse for a moment, and whilst on the question of child abuse about which much has already been said, I wish to express my very grave concerns about a particular problem which we see growing in magnitude, daily, in this society. By that I refer to those children whom we see appearing on our television screens almost daily or week after week, either having been lost, not cared for or neglected. In my humble view, we have the law written in the statutes to take care of such a situation, subject to correction. What is the law doing about such a situation? Are we in power to apprehend the offenders under the existing law, or do we have the man-power resources or are we neglecting to address the problem? I do not know. I would like the answer. What we can conclude therefore, is that we have plummeted into a degenerate society.

When we look at what is happening with our children today, they are robbed of the opportunity to attend school whether purposely, or otherwise. What provisions do we have for such cases? How do you classify that, as educational genocide? Do we just look at what is happening everyday?



**Dr. Rambachan:** I thank the Sen. for giving way. On a point of clarification. In terms of educational genocide, and the deprivation of children, in terms of the education in schools, is he referring to teachers who are staying away from the schools?

**Sen. R. Khan:** My reference is to children being kept away from school for multifarious reasons. I said earlier on, that they are being robbed of their education and that is why I classified it as educational genocide. That is what I said before. Probably the hon. Minister did not get my comment clearly.

Therefore, this bill whilst it may provide some measure of protection for some by lawful means with the double standards in the hypocritical society in which we live, in many cases would indirectly preclude many or most of the unreported high society batterings, which in order to avoid the spectre of public embarrassment in open court, in the highly touted rumour-mongering society, would continue to go unreported, thus once more the desire and necessity of our Government to provide closed courts. Call it by whatever name, family court, courts *in camera* is hereby again recommended.

In my view it is unfortunate that many people of the rural and other undeveloped communities in this country, with the poorer and lower mentality due to the lack of knowledge and education and other reasons, among other factors, would be made to pay the penalty in most instances. The importance of a special family court cannot be over-emphasized in my opinion. We are well aware that recommendations have been made for the establishment of the county petty civil court with upgraded machinery to incorporate matters of this nature.

This, I concur, will therefore be consistent with the creation of an efficient judicial system and a start in the right direction. At least you can start now. In the establishment of a family court which had been previously recommended in the 1987 report and promised by our own Prime Minister, Mr. A.N.R. Robinson, in 1989, at the Caribbean Regional Social Policy Conference, it must be recognized that without the concomitant family service system this would be totally inadequate and meaningless. It must be emphasized that proper foster care also is essential during court cases. That is a matter of paramount importance. Various other arrangements are in the making for this contingency. Again the question arises for the need for counselling. So you see you cannot over-emphasize the paramount importance of counselling. If I am found to be repeating certain issues, it is just because I find it absolutely necessary because of their magnitude, the significance and the complexity, *et cetera* that I must do so. The need for

counselling during this time particularly, will be of paramount importance especially if the family as a unit is salvageable.

Again, thinking not of the law, not the court first, that must be the last resort for indeed, and I quote from the hon. Minister Emanuel Hosein's statement at the Caribbean Regional Counselling and Child Abuse and Neglect Conference. He was at that time Minister of Health in this Government:

"The family unit provides the first bond for the child; the bond through which the complex processes of personality development begins."

Thus are formed the qualities of self-esteem, self-reliance, independence and responsibility, qualities which are crucial to nation building. Furthermore, due to the emotional and psychological factors involved in handling cases of domestic violence, it is essential that magistrates be responsive to the needs of victims. The perpetuation and application of the law must be modified and adapted to the circumstances of the case.

**5.20 p.m.**

It is imperative, therefore, that both magistrates as well as all the auxilliary personnel involved in such a network should be exposed to training in the various social, emotional and psychological aspects of domestic violence which undoubtedly would assist not only in its detection—see, I am not going to the court alone—but also in the management of domestic violence, rather than waiting for the act to be committed and followed up with prosecution.

In this regard, the National Family Services Co-ordinating Council recommends that the Law Association of Trinidad and Tobago be asked to organize such training in the form of a series of workshops in the long term. Such training should be incorporated into the curricula of the Law School and the police training programme. It is of vital importance that extensive workshops be held in every geographic locality in order to enlighten the police as to the intentions and provisions of the bill, and as well, the nature and the extent of their empowerment under the bill.

Mr. President, I have mentioned previously about voluntary organizations, since I see them as being of paramountcy. I will continue to say that historically, social welfare services or social care has been mainly the domain of voluntary organizations, such as religious, philanthropic and charitable bodies in this country. However, due to the increased demands which are grossly inadequate and which have been established in piecemeal fashion to deal with the problem, it

has become rather imperative for such a bill to be introduced with the objective of assisting these organizations and to initiate further attempts to address the problem.

At present in Trinidad, the Halfway House for battered women and children, the Josephine Shaw Hostel of the Salvation Army and the Shri Krishna Home, all voluntary organizations, are deeply committed and doing a marvellous job in administering to the needs of these people. They all provide an excellent quality of voluntary services for victims of abuse and domestic violence. However, these organizations, and especially the Halfway House and the services which are dispensed by them, are being severely threatened owing to the paucity of funding from limited sources, and the unavailability of sufficient professional personnel to handle the escalating number of reported cases of domestic violence.

The Medical Social Work Department at the San Fernando General Hospital—some members may think, Mr. President, I always bring up San Fernando, but I have said it and I shall say it again, that I live in San Fernando, and whatever affects San Fernando positively or negatively, I shall comment upon—+although originally established to treat patients at the hospital, is only able to fulfil this original goal and obligation due to the ever increasing demands made on the services by the public.

Therefore, the inadequate facilities for children and mothers in need of care and protection, chronic over-crowding, where such services exist, the absence of foster care and family rehabilitation services which are absolutely necessary, the absence of island-wide psychological and therapeutic services, the prevalence of untrained staff, the existence of poor physical facilities, and inadequate funding will altogether conspire to undermine the effectiveness of the Domestic Violence Bill unless these areas are immediately addressed.

**Mr. President:** The speaking time of the hon. Senator has expired.

*Motion made,* That the hon. Senator's speaking time be extended by 15 minutes. [*Sen. R. Deosaran*]

*Question put and agreed to.*

**Sen. R. Khan:** Mr. President, in light of the preceding remarks, I wish to mention some of the imperatives that should be introduced by Government, concomitant with the introduction of this bill:

- (1) Increased financial and government assistance to these voluntary organizations;
- (2) An increase in professionally trained staff equipped to handle such related family matters;
- (3) An increase in the number of organizations by Government to be dispersed on a wider geographic basis, that is more on a community level, to effectively monitor the problem.

It has been mentioned by previous contributors that it is vitally important for education in such a programme to be introduced. In that context, I would also like to recommend education on such matters beginning from the very early stages, that is from the primary school level right up to the higher tertiary level, and also at the community level. The importance or the significance of such educational programmes would make people sensitive to the problems that exist in the country. The question of having these organizations spread out in different geographical locations, I believe, would assist in removing some of the load from the urban areas in which all the efforts are concentrated. In the rural communities, you have what is known as the *gayap* system, which has always helped in the past and I think that can help a lot.

- (4) Training for empowerment, that is, to enable or to train a certain number of people with the relevant skills in the area of domestic violence. That obviously, Mr. President, will take care of the social, psychological, medical, and other aspects that are necessary to make the programme a workable and effective one.
- (5) It is also necessary, in my opinion and in my view, that Government should encourage private sector and service oriented organizations to assist the state. The state can play a role here in getting these organizations to assist the state in the funding and the maintenance of such social services.
- (6) The development of a proper network of suitable, conveniently located places of safety—taking into consideration the various aspects of the bill—which must be dispersed in strategic areas of Trinidad and Tobago with a priority rating going to those areas where the prescribed offences are more commonplace and more rampant.

I had made reference to certain areas because of certain factors where the offence would be more predominant in certain areas. Therefore, in its planning and programming, the Government should also address the whole question of creating support systems which would not only enhance but also positively impact upon the legal framework which it is currently seeking to establish. Such systems need to be implemented expeditiously in order to physically and psychologically, as well, protect the victims of domestic violence, such as safe homes and foster care, both at the community and the national levels.

At the community level, persons will be provided with immediate help and advice during times of family crisis. At present, service organizations are not widely geographically dispersed, and consequently this results in the majority of cases going undetected, the victims having no homes of refuge.

Therefore, in light of this, Mr. President, there is a conspicuous absence of reliable statistics upon which we can depend and which will give an indication of a true and valid picture of domestic violence that exists today. Therefore, there is a dire need for all agencies in Trinidad and Tobago responsible for dispensing the various social services to become integrated into one accessible institution to serve the needs of families throughout the community.

By this approach, we shall be able to make maximum use of our scarce human and financial resources in responding to the family needs as a whole, rather than the provision of the fragmented services as are available at present. Indeed, the success of all developmental programmes will depend largely upon and will only be forthcoming if this process guarantees a system of decentralization and serves to encourage and to foster self-help and self-reliance.

I would like to touch upon one or two points raised by Sen. Deosaran in the few moments I have left. I shall not give the details, but I would like to say that I endorse his remarks more or less entirely. I can give you several instances where people would become victims if this bill were to be passed as it is.

You will find that there are many instances where the person might have reached retirement age and he has never had the luxury of owning more than one home as his own *bona fide* property, and because of some little tiff, some domestic issue—I will not say domestic violence, and I will relate an instance. I know of a married couple who are very close to me. They were living very comfortably and very happily, but because of the interference of the in-laws who always wanted the wife to have the controlling interest in everything and a

domineering role, many problems developed. They encouraged her to leave the matrimonial home and return to their home. They also encouraged her to report to the police that she was being threatened. Several other complaints were made. The police, because of the issues outlined by Sen. Deosaran, and the law not being in effect then, saved the person from incarceration.

They as much as broke into his home and cleared everything out. Because the man was a loving man and he cared for his family, his children, and he did not want them to be unprotected and to be living without a father's supervision, he endured many sacrifices. Today that family is reunited and the family has progressed tremendously, despite the fact that the male spouse was exposed to a series of violent acts. In the interest of raising his family properly, he endured all the persecution to which he was exposed.

**5.35 p.m.**

There are instances where you may find—and I am not casting aspersions on the police—that a woman may go to the police to make a report, whatever the circumstances are that emanate from this bill, and when she is looking for sympathy from someone, the police officer, in pretending to help—this has happened and I can quote you an instance if time permits me—makes his advances to the woman and he says that he is doing something on her behalf, very effectively, and he happens to have the man incarcerated, if possible, so that he has a clearance to deal with the woman.

Mr. President, I will go further to state that I know of someone, who used to be a friend of mine, who became an Assistant Commissioner. He locked up the man under the context of being a *Whe Whe* banker and he ended up with the man's wife, and they are living together. The man was in jail. He had no redress. He could not do anything because the man was a senior police officer in the district, so we have to address these matters. Time does not permit me to go into all the reasons behind it. I want to repeat that I endorse Sen. Deosaran's remarks that we should tread carefully, slowly and very cautiously with the bill.

I have said in advance, that I am not against the bill. We, on this side, are supporting the bill but we would like to see certain measures introduced to preclude these mal-happenings; to safeguard the same society which we are trying here to protect, so that in the process of so doing we do not create other problems while we are trying to solve problems.

Mr. President, before closing, I apologize very sincerely for being late for the resumption of the sitting.

Thank you very much.

**Sen. Kelvin Khan:** Mr. President, I agree with the need for the protection that this bill proposes to provide for the victims of domestic violence. I accept that there is need to deter and to punish those guilty of domestic violence. However, I do not believe that legislation will solve the problem of domestic violence. There is need to develop, in our society, values of morality and mutual respect. To achieve this will require the co-operation of the members of our society. There must be no bias; no preconceived prejudices; no desire to find fault; no presumption of blame.

My reason for joining this debate is my concern that so much of what I have read and heard, is one-sided and lacking in balance and this attitude will do nothing to improve the situation. The Minister has said that the bill is gender neutral. And it is. However, in everything that I have heard, it appears that there is a perception that this bill is designed to punish wife-beaters and to protect their victims. The bill states that:

"domestic violence offence" means a prescribed offence committed by a person against —

- (a) a spouse of the person;
- (b) a child or dependant of the person or of a spouse of the person; or
- (c) a parent."

It would appear that spouse is considered to be female. It appears that people do not realize that children, parents, the aged and the infirm, are also battered by women.

My problem is that it appears that the culprit has been identified and he must be punished. There appears to be nothing that can be used to plead for a mitigation of the proposed punishment. If this type of thinking is perpetuated, there would be no improvement in relationships which is the basis for creating a society in which domestic violence is minimal.

Mr. President, recently there was a regional meeting on Women, Violence and the Law, and one of the panellist was reported to have said:

"Men seem to have no idea that their behaviour is unacceptable and use it as a conversation item with friends over drinks."

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I do not socialize very much anymore but in the years when I did I have never heard any man carry on such a conversation. I would say that men who do, are sick and in need of the help of a psychiatrist.

Another person has said that:

"The bill made it clear that violence against women was a matter for criminal law and people who broke that law were indeed criminals. Can a community be secure if criminals continue to be at large?"

Then there was a recommendation that women forewarn their daughters that their chances of being beaten were 50/50 and teach them to keep their circle of friends and relatives intact since isolated women tended to be at greater risk.

I am interested to know what advice is recommended that women give to their sons; what advice should fathers give to their daughters; what advice should fathers give to their sons. There is a divisiveness that is perhaps part of our problem.

As I read this, I remembered a story which was very prevalent when I was a boy, and possibly still is. It is the story of a woman complaining to another woman that her daughter had been molested by this woman's son. The answer of the mother of the son was, "Look, I bring up my cocks, you know, and I turn them loose and it is you to look after your hens."

**Hon. Senator:** That is true.

**Sen. K. Khan:** Perhaps the problems of domestic violence have some beginning in that type of attitude—double standards—one set of values for our sons; another set of values for our daughters.

**5.45 p.m.**

The Minister has quoted some statistics.

"Statistics compiled by the Probation Division of my Ministry reveal that from January, 1984 to April 1988 there were 252 reported cases of wife beating in two counties and 273 in a third county."

Mr. President, there does not appear to be any reported cases of violence against males on any statistics. If there are, they have not been quoted. Are we so naive to believe that it does not exist? Is it possible that where the violence is physical, it is not reported because the man is ashamed that his peers may give him a lot of jokes, and, give him "tone" and say "you are mamapool?" Is that



possible? Is it also possible that it is not reported because the violence is more subtle and covert, but equally as traumatic? Sen. Baksh has said that aggression is a male trait and caring, a female trait. Sen. Una Charles described woman as loving and caring.

Mr. President, I heard broadcast recently on CNN, that there were well over 36,000 women in the United States forces in the Gulf. Apparently, the rules prevent them from taking part in any combat. It appears to many to be a source of annoyance. They are being discriminated against. Is it possible that they have a desire to kill, maim and to injure like their male counterparts? Are aggression and an unloving and uncaring attitude the only causes of domestic violence? Dr. Sampath added another one—intellectual superiority on the part of the woman. What of immorality, vulgarity, lewdness, promiscuity and adultery? Do they play any part in the breakdown of spousal relations? Are they activities in which any sex enjoys a monopoly? Has every deputy—and we have heard of deputies—been coerced or intimidated into having a relationship with somebody else's spouse? You see, Parliament can enact laws to protect and punish, but Parliament cannot instil in people a respect for each other, to have a sense of their own worth or to talk out their problems, rather than resort to violence. There is a need for us to develop a more moral and caring society. We can achieve this by good example, by mutual respect and co-operation rather than divisiveness.

I thank you.

**Sen. Amrika Tiwary:** Mr. President, I apologize for attempting to detain Members so late in the evening. I hope I would be excused if I try to address so many of the very important points raised by Members throughout this debate.

May I, first of all, refer to the contribution of Sen. Kelvin Khan and say that while many of us appreciate the sentiments he has expressed, I do not believe we are having a debate on the reasons for domestic violence. I may agree with all the things he has said. We are concerned in this bill, I hope, correctly, with providing redress for victims of domestic violence. I believe we got a bit sidetracked into believing, as Sen. Raji Ralph Khan said, that somebody had a little tiff and returned to her mother's house.

Mr. President, clause 4 of this bill sets out the circumstances in which an application may be made for a protection order before the magistrate. It states:

"Where, on an application made in accordance with this Act in respect of a person, the Court is satisfied, on the balance of probabilities, that—

- (a) the respondent has engaged in conduct that constitutes a domestic violence offence and unless the respondent is restrained, the respondent is likely to engage in further conduct that would constitute that or another domestic violence offence."

What is a domestic violence offence? In the definition section it states:

"'domestic violence offence' means a prescribed offence committed by a person against—

- (a) the spouse of the person;
- (b) a child or dependant of the person or of a spouse of the person; or
- (c) a parent;"

That is, if any person in the family setting—a spouse, a parent, a child a dependant who is mentally or physically retarded, is the victim of this kind of treatment, which I will spell out, that person whose child, spouse, dependant has been so treated, is entitled to come before the magistrate and ask for a protection order. So if we look at the definition of "prescribed offence", it means "(a) murder or attempted murder". If somebody has murdered somebody in the family environment. And "(b) manslaughter or attempted manslaughter." Then we talk about section, 15 to 26 of the Offences Against the Person Act.

Mr. President, perhaps it will come home to Members that we are not here dealing with trivial tiffs between spouses for all kinds of spurious reasons; we are talking about serious criminal offences, violent offences committed in the home environment and victims or potential victims must be protected. What this bill is seeking to do is to provide redress for victims of domestic violence. That is our primary consideration.

The Offences Against the Person Act, section 12 "Shooting or wounding with intent to do grievous bodily harm"; section 14, "Inflicting injury with or without a weapon", the penalty for that is five years imprisonment. The penalty for section 12 is 15 years imprisonment. I am just trying to emphasize to Members the gravity of the kind of offence which has to be committed or threatened before somebody can come before the magistrate and seek a protection order."

Section 16 under the Offences Against the Person Act deals with using drugs, *etc.*, with intent to commit an indictable offence." Section 15, which has been inserted, is a proposed amendment, which deals with attempting to choke, *etc.*, in

order to commit any indictable offence." The penalty is 15 years for section 16 the penalty is also 15 years.

Section 17 deals with administering poison, *etc.*, so as to endanger lives or inflict grievous bodily harm. Under the criminal law the penalty is 15 years in prison.

Section 21 deals with exposing children so that life is endangered. and the penalty is five years imprisonment.

Section 22 states that:

"Any person who unlawfully and maliciously, by the explosion of gunpowder or other explosive substance, burns, maims, disfigures, disables or does grievous bodily harm for life is liable to imprisonment ." fortify or for any term of years..."

Section 24 states that any attempt 24 to blow up a building...whether or not an explosion takes place and whether or not any bodily injury is effected is liable to imprisonment for life or for any term of years. We are talking about people burning their children in a rage or burning down their homes.

Section 26 deals with drivers of vehicles injuring persons by furious driving. It states:

"(1) Any person, having the charge of a vehicle, who, by wanton or furious driving, or other wilful misconduct, or by wilful neglect, does or causes to be done any bodily harm to any person whatsoever, is liable to imprisonment for four years."

Those are the offences, the nature of which, if that is the allegation, that a respondent has committed those offences and he is likely to do so again in relation to somebody in the home, you can come and get an order.

Then we have the offences under the Sexual Offences Act. Section 4 deals with rape; section 5 deals with sexual assault by a husband in certain circumstances; section 6 deals with sexual intercourse with a female under 14. We are talking about people in the home environment, domestic, the family, which is a very sacred institution that we are trying to promote. We want to protect victims from these offences.

**5.55 p.m.**

Section 7 deals with sexual intercourse with a female between 14 and 16 years of age, and section 8 deals with sexual intercourse with a male under 16 years old.

Section 9 deals with incest and states:

A person commits the offence of incest who, knowing that another person is by blood relationship, his or her parent, child, brother, sister, grandparent, grandchild, uncle, niece, aunt or nephew, as the case may be, has sexual intercourse with that person."

It gives the penalties.

Section 12 deals with sexual intercourse with an adopted minor. These are not mysterious offences; these are very real offences in our society.

Section 13 deals with buggery; section 15 deals with indecent assault; and section 16 deals with serious indecency.

Then there are offences under the Children Act. Section 3 covers punishment for cruelty to children and young persons. The penalty is two years in one case and six months in another case. Section 4 deals with suffocation of infants.

Section 6 deals with exposing children to risk of burning; section 7 deals with allowing children or young persons to be in brothels; and section 8 deals with causing, or encouraging, or favouring seduction or prostitution of young girls.

What I want to emphasize is that in order to invoke redress under clause 4, an applicant must satisfy the magistrate, albeit on a balance of probabilities, that the respondent has engaged in conduct which constitutes the domestic violence offence. All of these offences to which I have referred have been defined as domestic violence offences and there are circumstances in which a restraining order will be granted. Clause 4(b) also refers to where a person has threatened to engage in that conduct and unless he is restrained, he is likely to engage in conduct that will constitute that or another domestic violence offence.

Of course, we have also, as Sen. Furness-Smith pointed out, added in our subclause (c) an additional circumstance in which somebody may get a restraining order, that is, somebody in a domestic environment. Clause 4(c) provides that the applicant must satisfy the court that:

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"the respondent has engaged in conduct of such an offensive or harassing nature in respect of a spouse of the respondent, a parent or a child or dependant of the spouse or of the respondent that the spouse or the parent fears for his or her safety or for the safety of a child or dependant of the spouse or the respondent..."

before the court makes an order.

If we look back at what is "offensive or harassing", in the definition section, it is defined:

- (a) the persistent intimidation of a person by the use of abusive and threatening language;
- (b) the damaging of the property of a person;
- (c) the persistent following of a person from place to place;
- (d) depriving the person of the use of their personal property;
- (e) the watching or besetting of the house or other place where a person resides, works, carries on business or happens to be;
- (f) the wilful or reckless neglect of a child or dependant person."

I would have thought that this is where we are really embarking on unchartered waters. But we are reasonable people and we have some experience of life in this country and we normally read the newspapers and I recall, not so long ago, when a husband of some lady walked into Standard Distributors on Queen Street, after he had been following her from place to place, shot her at her work place and she died. I am sure many of you recall many more cases. We are not talking about lovesick fools and we are not talking about people paying court to other people. What we are talking about is sometimes cowardly; sometimes brutal, violent; sometimes senseless people who pursue objects of their love out of whatever obsession they have and ultimately inflict violence upon these people. I should also point out that in the report on the death penalty which was laid in this House very recently, almost 40 per cent of the murdered victims were girlfriends, spouses, common-law spouses, relatives and people in the home environment. This is our very recent report of September last year.

Domestic violence can have very, very serious consequences and what we have to do as a responsible Parliament is to recognize that brutality, or whatever you call it, in the home, is just as much a crime as any other crime of violence. There is no excuse for it; the law does not excuse it and the community ought not

to condone it. Very often this crime is hidden. It is only when it results in a murder or some very serious offence and the offender is prosecuted that one hears about it. This is why this bill is—

**Sen. Alexander:** On a point of explanation. Is it the intention of the bill that one of these offences has to be committed before a protection order is given?

**Sen. Tiwary:** I would venture to interpret the clause as I see it. I do not think that one has to say that it has to be committed but the clause clearly says that the court must be satisfied that the respondent has engaged in conduct that constitutes that offence; or he has threatened to engage in conduct that constitutes that offence; or that he has engaged in conduct of such an offence of a harassing nature. If such an offence was actually committed, the police would have been on the scene anyway and the criminal law would have taken its course but the bill is intended to cover all these instances.

I was really trying to emphasize the point that an applicant is not going to be whimsically allowed to come before the magistrate's court on any premise or any kind of spurious motive or malicious intent that says: "Aha, I want a protection order and exclude Mr. X from his home." I am only pointing out that the clause very clearly says what the applicant has to satisfy.

In addition, if you look at the last paragraph of clause 4, which says:

"the Court shall make an order restraining the respondent from engaging in that conduct or any conduct that would constitute any domestic violence offence and may impose one or more of the prohibitions or conditions specified in section 5."

Then the prohibitions are spelt out in clause 5.

Clause 6 says that in determining whether to impose one or more of the prohibitions, the court ought to have regard to several factors. The matters to be taken into account go from the need to protect the victim, the welfare of children, accommodation needs, hardships that may be caused to the respondent or to any other person as a result of the making of the order. The magistrate then is to make that decision and then he is also to consider income, assets, financial obligations of the respondent and of the spouse and any other matter.

### **6.05 p.m.**

So it is not a whimsical order. We must remember that magistrates hear about 80 per cent of all cases tried in this country. They are normally people with legal qualification of over seven years standing and many of them have had many more

years than that. They also have the power to impose penalties of imprisonment of up to 10 years, I believe. So that these are the people who deal with the public every day in that setting, who are being asked to make that adjudication.

You have an applicant who goes on oath and says, "I am afraid Mr. X or Mr. Y, or Miss X or Miss Y is going to do me some very serious injury; or he/she has been attacking my child; or my foster child; or he has abused my mother who is living in the home." The magistrate will hear that. If, of course, it is an emergency, the magistrate will consider the affidavit, or the document file, or the evidence which is given on oath. I believe in this particular case, clause 14(2) states:

"The Court shall not make an interim protection order unless the application is supported by oral evidence on oath given by the applicant or the spouse or by the person on whose behalf the application is made."

So that the person who is coming for the order must come before the magistrate and go into the box and give evidence on oath. The magistrate then, with his training and his qualifications, has to make that decision, because clause 4 states that the magistrate must be satisfied and the burden of proof is on a balance of probabilities.

I should also draw attention to what is the existing state of affairs, where people wish to seek redress by way of injunction coming into the High Court right now, which is a more involved procedure and can be more expensive. It normally applies in marital relationships. Either spouse can come to the High Court for an injunction. Even if a relationship of husband and wife does not apply, if they have any relationship, either party who says that his/her legal rights are infringed or affected, can come to the court and ask for assistance, by way of an injunction and the court, on the affidavit of the person coming for this order, can grant an order, *ex parte*, that is, in the absence of the respondent, excluding, as it does, a spouse—husband or wife—from the very matrimonial home, if he/she proves that there is some danger to him/her, or he/she has been molested, or is likely to be molested again.

That is granted every day. It is not considered a breach of anybody's right. There is a return date given when the respondent, against whom the order is made, will be allowed to come to court to give his side of the story, when the judge will then decide, "I will continue this injunction or, I will discharge it. I was wrong to grant it in the first place, because now having heard what he has

said, I do not think she should have got it in the first place, therefore I discharge it."

In a similar fashion, this bill, I believe, gives the opportunity to a respondent after a few days. It states that an interim protection order is for 14 days in the first instance, so that he or she can return to the court and give his/her version. As a result of this, the magistrate can then say, "Well I have discharged that order. Or, I think it is correct, I will continue it for up to 12 months."

While Sen. Kelvin Khan was referring to this question of gender neutral, I think that we have trivialized a lot of this domestic violence. If the fact is that more women are beaten up, or they are more visibly beaten, or more of them are now talking or coming out to seek redress, I am saying, it must be emphasized that the protection afforded under the bill must extend, or is intended to extend to any person in a family environment, who is a victim of domestic violence. It extends to men, husbands, sons, daughters, grandparents and to everybody, and I think we should not lose sight of that at all.

I can also say, with a little embarrassment, that on more than one occasion—I should say with no embarrassment—I have appeared for an abused husband and that it happens. It may not happen very often but they are entitled to the similar protection to which any other citizen is entitled. It is perhaps a reflection of the society in which we live, that one tends to trivialize wife-beating. It is like dealing with Leroy in last Saturday's *Guardian*. He was so outraged that his sister-in-law dared to stop him from beating up his own wife that he administered so many blows on her that she had to receive 22 stitches. Perhaps, it is a reflection of our attitude. He felt that he had a right to beat up his wife. If the newspaper report is correct, it was the second occasion he had beaten up his wife. He had been charged in January, and at carnival he was again before the court for beating up the same wife. He was so lucky, he appeared before the same magistrate who reprimanded and discharged him.

I am not going to go into what are the penalties. What I am saying is that it is a reflection of our standards. If it is that we are going to laugh at a man who is a victim of domestic violence, who is therefore intimidated from seeking redress which we are offering, it means that something is wrong with our prevailing standards. We need to change those. While I agree with many Members that there are many things one can do, we are not dealing with an ideal society. We have to provide redress for the society as we have it and this bill is not here to apportion



blame, as the case may be; it is to provide redress for victims of domestic violence.

I had intended to go through the various reports that dealt with the question of the community's attitude to domestic violence, but I will not take up so much time with that. However, I pay tribute to those crusaders in the media. Most of them happen to be female, who, especially over the last 15 months, have taken the trouble to research and write so many articles dealing with domestic violence; violence in the home, violence against women and violence against wives, *et cetera*.

I see Mr. Harvey from the *Guardian* here and I noted, when I went through the articles, that there was one lone article by a male reporter and it was his coverage of this very debate when the hon. Minister opened. We did have—I believe it is Debra Jean Baptiste, Kathleen Waterman of the *Express*; we had Debbie Jacob on Sunday, "that the law is putting a hand in husband and wife business"—numerous editorial columns in both newspapers, highlighting the instances of violence in the family setting, many of which resulted in murder over the past, I would say, year or so. If their hard work has not done enough to focus, or to cause this country to focus on this very terrible problem which we have, we really need to bring home to the citizens that violence is a crime. It is a criminal offence for which the criminal law provides its sanctions and when it takes place in a home environment, it is no less a crime.

This is not a partisan issue. I thought it was so unfortunate when Sen. Belmosa, talked about some kind of political mileage to be gained. If there was any bill that would not really have got any cheap political mileage, I would say it would be the provisions in this particular Domestic Violence Bill. I am also appreciative of the contributions of my female colleagues. I have already alluded to the Leader that I prefer to be considered as a Senator of this House and not be singled out that this debate is "women's business". I reject and resent that thinking. This bill is about people, about the citizens of this country and we all have a duty to perform. If Sen. Kelvin Khan was never involved in a conversation with his friends, when they laughed about how they gave their wife a hard time, or what they did to keep the children in place and so on, I must say he did less socializing than I did. I am not sure what society he was brought up in.

Regarding this retarded thinking of not meddling in husband and wife business, I believe about a year ago the new Commissioner of Police indicated

that he was setting up a special unit to deal with victims of domestic violence. I am sure it was a step in the right direction.

The crusade carried on by the newspapers long before this bill was laid in the House, together with the kind of public debate that this bill itself has generated, I hope, that we are all trying to, I say wipe off, really, our history books, wipe away from that slate that old adage "that man had a right to beat his wife". I wonder really, seriously, whether the prevailing social attitude would have been reversed if more victims, or more visible victims, were male, rather than female.

**6.15 p.m.**

However, this bill, really, is a very simple measure in many respects and I know Senators have had their fears. I am sure, and I am sort of urging them, to consider how best we can fashion this document we have here to cater for their fears, and at the same time provide redress for victims of violence, all within the confines of providing for a better society.

As I said, it is not anything new. Violence is a crime. The offences have been spelt out, even among summary offences. Where people are not related to each other; if I beat up somebody in the street, I am liable to the full force of the criminal law. But if I beat up somebody in my home, one finds that the process for me facing the criminal law is not as swift. It is because of so many factors. First of all, it takes place in a family environment; people are embarrassed; you do not wish to go and invoke the criminal law against somebody who may be a provider. If the provider is taken away, then there is no one to pay the rent, the children will have no food and they cannot go to school. Because of those reasons, people who are economically dependent upon other people in a home environment put up with this kind of treatment.

We are civilized people and the time has come when right-thinking people—and I venture to say that all of us are right-thinking people—must say, "This is wrong; it is a criminal offence and, therefore, this bill is really not concerned with punishing an offender as much as it is with providing protection for a victim."

What was passing strange is that Sen. Deosaran had such strong reservations about constitutional rights. He felt that an abused person should go to some place of safety; but the man who may be the abuser, he must not be put out of his home because his right to property is greater than the woman's right to have protection. I felt that was very odd for me.

**Dr. Deosaran:** I anticipated that argument and I laid it on the table in anticipation. She used the word "may"; and I am looking at the removal of that person on such tenuous circumstances. The case has not yet been established against the respondent and that makes a very fundamental difference.

**Sen. Tiwary:** I do not feel what the Senator has said alters my view. It is not for the magistrate to decide whether somebody is guilty of an offence according to the criminal law. Clause 4 says he must be satisfied that the abuser has engaged in conduct which constitutes that offence or he has threatened to engage in that conduct, and the magistrate has to decide if those circumstances are appropriate to grant an order.

I am not holding that against the Senator. I am just drawing a reference where we are here seeking to say, the circumstances warrant the exclusion of an alleged abuser from his or her home for a certain period pending the hearing of these matters. Because the actual criminal law—if any criminal charges are laid—will be taking its own course. We are not concerned here with bringing somebody before the very magistrate for the criminal offence. These are in the nature of *quasi*-civil offences, in that, just as if one came for an injunction in the High Court with an affidavit and said his safety is threatened, therefore he needs protection and the court will grant a protection order in the interim, in the same fashion a similar order will be obtained before the magistrate.

The reason this bill is fashioned in this form is that it is more expensive to come before the judge; people may not be able to afford it; the time it will take to prepare the relevant documents; bearing in mind that judges sit only in Port-of-Spain, San Fernando and Tobago. Whereas it is intended here that this will be a relatively simplified procedure whereby an applicant comes before the magistrates who are based normally in so many districts so there will be much more access to applicants; and without even the formalities of a lawyer assisting him or her to get an order there.

#### **BUSINESS OF THE SENATE**

**Sen. Alloy Lequay:** Mr. President, I beg to move that this Senate continue in session until the conclusion of Sen. Tiwary's contribution.

*Question put and agreed to.*

#### **DOMESTIC VIOLENCE BILL**

**Sen. Tiwary:** Mr. President, I think I should move on now to some of the other fears of Members. Sen. Furness-Smith was very strong about whether this protection should be extended to common-law spouses, but I wonder if Sen. Furness-Smith is living in the real world. We are not concerned here with morality or with who is committing adultery or not. When people live together, whether with the sanction of whichever church—and for Sen. Horne's edification, it is not only the Christian churches—people just live together—that provide counselling. We have people from all walks of life in this country. It is a fact of life that people live together for many reasons. Some of them have children, some do not. But Sen. Furness-Smith asked the question: How are you going to determine who is a *de facto* spouse?

If the magistrate is being asked to make a judgment, he must be satisfied that these offences are committed. I feel it is quite appropriate that this be left to the magistrate. If one were to attempt to say, "If you have been living with somebody for weekends for 10 years, you are not really a *de facto* spouse but if you are living in the same house with him for three months you are more a *de facto* spouse than another", I really feel that is not something that one should seek to define in the legislation.

As I said, we are not concerned with the morality of the question, we are concerned with providing redress for victims of domestic violence. Whether they commit adultery or not and whether it is a nail in the coffin of matrimony, I really feel that those remarks are unlike the learned Senator. I am sorry I am saying this when he is not here, but I did tell him privately that I know that people have a lot of respect for what he says. So, I said, "Will you please tread carefully?" And carefully, he did tread. So I hope that at the end of the day we can all be persuaded to support this Bill. But should people who have a relationship of husband and wife whether or not they bring up a family, be protected in this kind of situation? I submit, respectfully, that they should be.

Another point he touched on was the question of the Canberra model. Sen. Mahabir-Wyatt dealt with that and I endorse what she said. I say that we in the Caribbean, are in the forefront in many respects and we should not hesitate to draw on the experience of any country that can assist us and fashion that model to suit our own local circumstances. As Sen. Mahabir-Wyatt pointed out, Canberra is a smaller community and if it is intended that we should frame our legislation on everything that comes from the United Kingdom, I am of the view that in some instances there are other jurisdictions that may be more appropriate and

pertinent to our particular circumstances. As I say, if we can fashion it or even tread virgin territory, why not?

I should also point out that the relevant English Act of 1976 which is the Domestic Violence and Matrimonial Proceedings Act of 1976 of the United Kingdom, provides for matrimonial injunctions to be granted in the county court. We are here talking about protection orders in the magistrate's court. But since 1976, the United Kingdom legislation, which is 15 years old, provided in section 1 subsection (1), the power to grant restraining orders similar to the ones that are granted in our bill and subsection (2) of section 1 provides as follows:

- (2) "Subsection (1) above shall apply to a man and a woman who are living with each other in the same household as husband and wife as it applies to the parties to a marriage and any reference to the matrimonial home shall be construed accordingly."

So what we have is that since 1976 in the United Kingdom, their legislation clearly says that a *de facto* spouse is protected and can get an injunction excluding the other party from the matrimonial home.

#### **6.20 p.m.**

We must not really be afraid. Even though Australia is so far away and we are going to win the test series, although they have come here, we can also learn some other things from them.

In addition, I also wish to point out that while we are a smaller jurisdiction and many Members have talked about the need for support social services, I agree that is very desirable. For those of us who practise in the matrimonial courts every day, we are very mindful of this failure, this deficiency. I will say, of course, that when money was no problem, the persons who had the responsibility, did not take the steps to implement those measures, so that today we could have had full support services. That is no reason we should now say, sit down, take 10 years to do research and thereafter, maybe in the next two decades, we will come up with some kind of ideal bill. I am saying—and many Members have asked me privately: Why do we not just get on with this project?

Again, Sen Furness-Smith asked about a crippled aunt who is taken in for two or three months, whether that person becomes a dependant. Again, I am saying let us get back to the real world. He was looking for the most extreme of situations and I am sure that one needs to be careful in drafting and framing the law, but

again, as the magistrate is the one to make that decision, certainly, I would say let the magistrate be the one to decide who is or who is not a dependant.

I have already touched on what is offensive or harassing conduct. It may not have been spelt out in any particular place and I believe there was some reference to it in the Magistrate Courts Act of England—I cannot put my fingers on it just now—but we all know what we are talking about, because conduct of an offensive or harassing nature is spelt out in the definition section and I have already gone through each of them. Again, I would say it is up to the magistrate to decide who is or who is not a dependant.

Sen. Furness-Smith has said that insofar as clause 4 is concerned he will have no problem with (a) and (b), where the respondent has engaged in conduct that constitutes a domestic violence offence or he has threatened to engage in such conduct. He thought he would have reservations about somebody who is engaged in conduct of an offensive or harassing nature. I ask Members to draw on their own experiences in order to give support to this additional part of the clause, to say that one should provide for all kinds of likely instances, where persons in a family environment are likely to be victims of domestic violence. From what we know, I am respectfully submitting that in relation to the definition of "conduct of an offensive or harassing nature", one should leave it to the magistrate to determine whether he finds one's conduct is of such a nature that an order is warranted.

The point was raised as to whether there is a new jurisdiction. Well it clearly appears to be a new jurisdiction in that the magistrate is not being asked to find beyond all reasonable doubt that the respondent has or has not committed this domestic violence offence. What the clause is saying is that the court must be satisfied on the balance of probability, that the respondent has engaged in such conduct. That, of course, is the same burden of proof which applies now if one goes for an injunction in the High Court.

Sen. Furness-Smith, again, said that one could not come for maintenance under this very provision. There is legislation already on the statute books for that purpose. There is provision to go before the magistrate in a different jurisdiction for maintenance for whatever purpose. I do not believe it was the intention to clutter up this bill by making it a comprehensive code for dealing with all aspects of family matters. This bill is really intended to deal with domestic violence and this is what we have attempted to do. The hon. Minister and his experts have

drafted the bill in this direction and with the help of all Members I am sure they are going to get there.

I know we have all mentioned the question of additional work for magistrates. I endorse this and I know that it is an additional burden for magistrates. What I want to ask is: what are the alternatives? I do not believe a single Member has said that there is a real alternative. We have talked about these magic words "family court". What does "family court" mean? That you provide a building or you provide a judge or two judges? The concept of a family court, as I understood it, requires the setting up of a whole institution where one can eventually come before the presiding court to have all these matters determined, but it would be against a backdrop of all the various social services to which Senators Horne and Baksh have already referred. It is the ideal situation and I am sure we are going to get there some day.

What I am asking, and I am respectfully urging upon Members, is whether they would not prefer that we provide protection for victims right now? They have waited a long time for this kind of legislation and if we were to say that we do not have all the ideals in place, are we just putting off the date? Why do we not get on with it? Magistrates have their increasing work load every day. It does not mean that they do not do the best they can or that victims will not come before them. What we must bear in mind is that magistrates are spread throughout the country. The man-in-the-street, the average person, who needs that kind of protection has an opportunity to go before a magistrate in Mayaro or Toco or they can come to Port-of-Spain or go to San Fernando or Couva, as the case may be. Therefore, I would say, at this stage that if one were to say wait on the establishment of the family court, knowing full well there are no resources for that at this stage, we are just putting off taking a decision and pretending that we are dealing with it in a proper fashion.

One other question is: What are the powers of the police? Are we doing too much by permitting policemen to come into the home *et cetera*? I believe that hon. Members already know that the police have powers of arrest without a warrant and that section 104 of the Summary Courts Ordinance, which is now the Summary Courts Act provides that:

"Any person who is found committing any summary offence may be taken into custody, without warrant, by any constable, or may be apprehended by the owner of the property on or with respect to which any such offence is committed, or by his servant or any other person authorized by him, and shall

in the latter case be delivered as soon as possible into the custody of any constable to be dealt with according to law."

So what it says is for a very trivial offence and we start in the Summary Offences Act, I believe, with assault for which the penalty is \$400. So any policeman who sees you cuffing a man in the street or anywhere can just take you in and arrest you. Now the concern of hon. Members, which I understand, is whether you permit a policeman to come into your house freely. First of all, I believe the clause says he must be invited by an occupant. Clause 23, "police powers of entry":

"Where a police officer has been invited onto premises by a person apparently resident in the premises for the purpose of giving assistance to a person who has suffered, or is in imminent danger of suffering from a domestic violence offence or an offence under section 18, the police officer may, without a warrant, enter the premises for the purpose of giving that assistance."

I understand the fears of Members that it is likely to be abused. That is quite possible as with so many other instances. But let us look and see the context in which it is done, "where a police officer has been invited onto premises by a person apparently resident on the premises for the purpose of giving assistance..." Now we know of many cases where violence is taking place in the home and the neighbours do not dare interfere in case they become victims of that very violence. So they do not want to do anything. So they hear some child screaming night and day, and they call upon the police or whoever," Why do you not do something? "In many instances they say, We cannot interfere with husband and wife business; never mind who is screaming." So, do we consider that this clause here is appropriate to deal with those circumstances—"where a police officer has been invited onto premises by a person apparently resident there, for the purpose of giving assistance...."? Of course there are instances where one can go before the magistrate, as in clause 24, and, swear to information on oath, saying that—

"(a) there are reasonable grounds to suspect that a person on premises has suffered, or is in imminent danger of physical injury at the hands of another person and needs assistance... and

(b) a police officer has been refused permission..."

In those circumstances.

**6.35 p.m.**



Do we think where we are dealing in the context of violence in the home in a domestic setting that this is a clause which is likely to be so abused or of use to potential victims that one is prepared to give it support in order to get a constitutional majority? And when we are dealing with constitutional majority as well, Sen. Deosaran wanted to be very careful that when one is abrogating any of the rights under the Constitution, the circumstances he is saying are not, I believe, justifiable in a society that has respect for fundamental rights, and so on.

I would like to ask, who is in greater need? What society are we talking about? This is our society and this is our society where our people in a family environment are subject to abuse of a very serious nature; violent abuse. The Constitution under section 13 says that in instances, Parliament has the power provided the legislation is passed by the constitutional majority, the prescribed majority, to abrogate those rights here.

In the one case we are saying the right to his enjoyment of property, his or her? Of course, we are saying "his" because people think that in more cases it is the man who will be deprived of his property. If that is so, we have to consider not only the rights of the man to enjoy his property, but the right of the victim not to be subjected to violence, to be protected from that violence, even if it means depriving him of his property for a period of up to 12 months. I will say that in a society that has a proper respect for the rights of the citizens, it is an appropriate case in which one should exercise that right by abrogating and endorsing the appropriate majority. I should also point out that at present the police also have power to arrest without a warrant. This is under section 36 of—

**Dr. Hosein:** Could I ask a question? Is not that the position even now where courts are entitled by way of injunction, without that bill being considered by this House, as having the right to exclude a wife or husband, as the case may be, from the matrimonial home as a consequence of acts of domestic violence?

**Sen. Tiwary:** I am grateful to my friend. What I thought I was pointing out is that at present the police already exercise that jurisdiction, so that we are not asking the Parliament to do anything that has not been done already. It is already in existence.

**Dr. Deosaran:** Just one point. I am very sorry to disturb you while you are demolishing all the arguments. With respect to that kind of action, is there not an additional set of offences here? I am just asking for clarification.

**Sen. Tiwary:** In the High Court one does not have to establish a single offence. You do not have to prove that a single criminal offence has been threatened. All you can say is you came home one night and he was so awful to you, *et cetera*, he cuffed the fridge, or what have you, and that is sufficient.

**Dr. Deosaran:** The charge?

**Sen. Tiwary:** There is no charge. However, an injunction is only granted to support a legal right, and in order to establish that legal right in a husband and wife setting, normally one has to initiate the action by either filing for divorce or filing an application under the Married Persons Act. Section 12 of the Married Persons Act provides that where a party to a marriage has made a contribution to a property, that party can come to the court for a declaration that he or she is entitled to a contribution or share of the property. Invariably, in this male-oriented society, the men say, “you must trust me so put the property in my name.” I advise the clients, of course, to ask him to trust them in return.

So that one finds in the winter of their years when one talks about property settlements or who must leave or who must not leave—and one has to determine the rights in a family setting, any spouse who has contributed to the acquisition of any family assets, in particular the matrimonial home, can apply to the court for a declaration that he or she is entitled to whichever share.

Now, in order to bring an injunction or rather to get an injunction in the High Court, you must have some right which you say is to be adjudicated upon. Where there is a breakdown in a marriage, one files a petition for divorce, but before that is heard and you are threatened with violence, you can come to the High Court and get an injunction. You do not have to establish that somebody murdered you, *et cetera*. None of these offences has to be established. So even less is required of you when you go before a High Court judge right now for an injunction.

So when we are saying all these safeguards which are being put in place, I am saying that one wonders if any victim is really going to get a protection order where the burden is so heavily put upon the victim.

I was adverting to other powers of the police under sections 35 and 36 of the Police Service Act. Section 35 gives the general duties including preserving the peace, detecting crime, and so forth, apprehending and bringing before justices, persons found committing any offence rendering them liable to arrest without a

warrant, and so on. Section 36 (1) gives the circumstances in which police officers may arrest anybody without a warrant:

"(a) any person who is charged by any other person with committing an aggravated assault in any case in which such police officer has good reason to believe that such assault has been committed although not within his view, and that by reason of the recent commission of the offence a warrant could not have been obtained for the apprehension of the offender."

The policeman may arrest that alleged offender without a warrant. The police may also arrest any person who commits a breach of the peace in his presence.

What I am trying to emphasize to hon. Senators is that the bill really is not charting any new territory in respect of giving extra powers to the police, and I urge Senators to look at it in that light.

Insofar as the protection order is concerned, I wanted to emphasize that the order which is obtained in the absence of the respondent, where it is not practical to bring him before the court and one is in need of immediate redress, the order is only for 14 days. Within 14 days, that person has an opportunity to come before the magistrate, give his version, and the magistrate will consider and determine whether he should continue the order.

I am saying that it is for us as parliamentarians to consider. In the old days, of course, the woman, invariably with a string-band of very small children, fled into the street without slippers, without clothes, and so on. What are we concerned about now?

**Sen. Horne:** They are still doing that.

**Sen. Tiwary:** I see. Sen. Horne says that still happens.

In order to provide redress for victims of violence, and Sen. Mahabir-Wyatt pointed it out, it is more appropriate that the victim who often has many dependants is not also, in addition to being abused, then made a vagrant in the street. It is better that the alleged offender be excluded from what may be his own property for a short period of time while the law takes its course. So I will urge hon. Members to support that measure.

I wanted to emphasize in answer to Sen. Deosaran's point, that there is no finding of guilt. It is no question of finding anybody guilty at all. Nobody has been charged with any criminal offence here.

**Sen. Alexander:** A point of explanation here. In respect of what magisterial district will the application be made; where the person is living, or where the violence is committed? Where?

**Sen. Tiwary:** Mr. President, I will confess, to Sen. Alexander that the bill is not clear on that. Is it that it is to be left at large, that wherever in the country it is appropriate one can file such an application? Because it may be that the victim has to run from Port-of-Spain to Mayaro to get a little shelter before she can come before the courts to get some protection. So one should not be limited to any particular jurisdiction. I agree with the Senator, there is no reference to it and it is a matter that one should address.

I know that the clock is chiming and I have kept Members very long. I would urge finally that this is not a partisan matter. This is a matter that concerns the citizens of this country. The circumstances warrant action. No constructive or practical alternatives have been advanced, notwithstanding the very erudite contributions of Senators. I am sure that when we get together in committee stage, we will fashion a document that will do justice in the annals of the history of this country, and I therefore urge Senators to give their support to the second reading.

I thank you.

#### ADJOURNMENT

**Sen. Alloy Lequay:** Mr. President, before moving the adjournment, may I indicate that it is the intention of the Minister to take the bill through its remaining stages at the next sitting. This suggests a late sitting.

I beg to move that the House do now adjourn to Tuesday, March 5, 1991 at 1:30 p.m.

**Mr. President:** Hon. Senators, before putting the question, there are just two matters I would like to bring to the attention of Senators. First of all, shortly after we resumed following the suspension this afternoon, I received a note from the Leader of the Opposition, Sen. Persad, offering an apology not only to the Chair but to all Senators for the delay in resuming the debate. I am sure that everyone appreciates it and thanks him very much. I myself thought that the delay was extremely slight, it was not intentional, and the cause apparently was quite understandable.

The other matter is that I would like hon. Senators to know that Sen. Amrika Tiwary has been selected by the Executive Committee of the Trinidad and Tobago

*Adjournment*

*Tuesday, February 26, 1991*

Branch of the Commonwealth Parliamentary Association to attend a seminar on Parliamentary Practice and Procedure at Westminster early in March. She will be leaving shortly and will be away from us for a few weeks. We wish her *bon voyage*.

I know that the organizers look forward to participants not only learning, but contributing to the seminar and they will not be disappointed by her presence; they will be grateful for it.

*Question put and agreed to.*

*Senate adjourned accordingly.*

*Adjourned at 6:50 p.m.*