

SENATE*Monday, April 15, 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 to Sen. Robert Amar for the period April 3 to May 8, 1991; Sen. Kelvin Khan for the period April 8 to April 27, 1991; and Sen. Haji Ralph Khan and Sen. Michael Mansoor from today's sitting of the Senate.

SENATORS' APPOINTMENT

Mr. President: Hon. Senators, I have been advised by His Excellency the President that he has appointed Mr. Trevor Belmosa to be a temporary Senator during the absence from the Senate of Sen. Robert Amar with effect from April 4, 1991.

I have also been advised that His Excellency the President has appointed Mr. Wilton Fitzroy Paul to be a temporary Senator with effect from April 8, 1991 during the absence from Trinidad and Tobago of Sen. Kelvin Khan.

OATH OF ALLEGIANCE

The following Senators took and subscribed the oath of allegiance as required by law:

Trevor Belmosa and Wilton Fitzroy Paul.

PAPERS LAID

1. Report to Parliament by the Integrity Commission on its activities for the year 1990. [*Sen. Alloy Lequay*]
2. Report of the Auditor General on the accounts of the Trinidad and Tobago Electricity Commission for the year ended December 31, 1988. [*Sen. A. Lequay*].

ORAL ANSWERS TO QUESTIONS

**Foreclosure
(Homes)**

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

Could the Minister of Settlements and Public Utilities provide an up-to-date account on the number of homes that have been foreclosed by mortgage and trust companies in both the public and private sectors arising out of householders' inability to sustain their monthly mortgage instalments?

Sen. Alloy Lequay: Mr. President, we respectfully again seek an adjournment of this question. The hon. Minister is out of the country, and I am sure that Sen. Mark would prefer that the Minister herself to answer the question.

Question, by leave, deferred.

Caroni Racing Complex

19. *The following question stood on the Order Paper in the name of Sen. Robert Amar:*

Will the Minister of Industry, Enterprise and Tourism advise this House on the date for the commencement of construction of the Caroni Racing Complex?

Sen. Dr. Prakash Persad: Mr. President, Sen. Robert Amar is out of the country.

I apologize to the hon. Minister for having brought him here today.

Question, by leave, deferred.

DOMESTIC VIOLENCE BILL

[NINTH DAY]

The committee of the whole Senate resumed its deliberations on the bill.

[Chairman: Mr. Emmanuel Carter]

Mr. President: Hon. Senators, when the committee adjourned last week we had reached up to the end of Part II.

Clause 18 recommitted.

Dr. Hosein: Mr. Chairman, before we agree that we have completed Part II, in the light of the amount of discussions which went on in committee and out of an abundance of caution, we wish to ensure that clause 18 is tidied up by making the following amendment:

Insert before the word "conviction", the word "summary".

That is in the second to last line. So that it shall read, "on summary conviction".

Question put and agreed to.

Clause 18, as amended, ordered to stand part of the bill.

Clause 19.

Question proposed, That clause 19 stand part of the bill.

1.40 p.m.

Dr. Hosein: Mr. Chairman, we have now agreed to delete clause 19.

Question put and agreed to.

Clause 19 deleted.

Clause 20.

Question proposed, That clause 20 stand part of the bill.

Dr. Hosein: Mr. Chairman, similarly, we have agreed to delete clause 20.

Question put and agreed to.

Clause 20 deleted.

Clause 21.

Question proposed, That clause 21 stand part of the bill.

Dr. Hosein: We wish to propose the following amendments. First of all, we renumber as clause 19, which is consequential. Secondly, delete the words,

"Notwithstanding any other law where the Court is required to determine whether to grant bail in respect of an offence under this Act, the matters it shall take into account are"

and substitute with the words:

"Where the Court is required to determine whether to grant bail in respect of an offence under Section 18, the court shall take into account, *inter alia*."

The other amendment is that we delete subclauses (c) (d) and (f) and the word "and" at the end of subclause (e).

Sen. Warner: If you permit me some clarification, clause 21, "Notwithstanding any other law where the court is required..."

Mr. Chairman: From that word, "Notwithstanding" at the beginning of the existing clause 21 now renumbered 19, has been deleted.

"Notwithstanding any other law where the Court is required to determine whether to grant bail in respect of an offence under this Act, the matters it shall take into account are"

And we substitute the following:

"Where the Court is required to determine whether to grant bail in respect of an offence under Section 18, the Court shall take into account, *inter alia*:"

Then (c), (d) and (f) are deleted and (e) renumbered (c).

Sen. Warner: I think the question I want to ask is still relevant. "Where the Court is required to determine whether to grant bail in respect of an offence..." I am wondering whether this offence is classified or categorized like praedial larceny and other offences where, when an offence is committed, the defendant has to be taken before the court before bail can be granted.

Dr. Hosein: Mr. Chairman, may I help the hon. Senator? It is an offence under clause 18, and that clause specifically refers to a breach of a protection order. So it is only one offence we are referring to with this clause, that is, breach of a protection order, which is the only offence being created in the bill.

Question put and agreed to.

Clause 21 renumbered clause 19, as amended, ordered to stand part of the bill.

Clause 22.

Question proposed, That clause 22 stand part of the bill.

Dr. Hosein: Mr. Chairman, I beg to move that clause 22 should be renumbered clause 20. Secondly, that in subclause (1) delete the words "a domestic violence offence or with an offence under section 18, the Court may" and substitute the words: "an offence under section 18, the court in granting bail may"

Question, on amendment, put and agreed to.

Dr. Hosein: Mr. Chairman, in subclause (2) delete the dash at the end of the word and the lettering "(a)", so it will merely read "in subsection (1), has failed to comply with a condition of the recognisance". Delete and word "or" appearing after the word "recognisance" and delete paragraph (b) so it will be a continuous statement.

Mr. Chairman, I shall read it for the benefit of hon. Members. Subclause (2) will now read:

"Where a police officer believes on reasonable grounds that a person who has been admitted to bail subject to one or more of the conditions set out in subsection (1) and has failed to comply with a condition of the recognizance, the police officer may apprehend the person without a warrant."

Sen. Furness-Smith: Once the fellow is admitted to bail, on condition, and he does not fulfil, the police officer could pick him up. So what the effect of this would be, God knows.

1.50 p.m.

Dr. Hosein: Mr. Chairman, we have been through this point before and my response remains the same, that we feel that there are aspects of the role of the police which need to be stated specifically. We have taken the point that repetition of very, very basic principles of law are really unnecessary and we have made some deletions of clauses 19, 20 and one or two other areas. But we know that there is a specific problem of the police not understanding their role clearly. It is a matter of the record.

I think anyone who has practised in the courts or who has to represent clients who have been victims of these kinds of actions, know how the police act, or fail to act as the case may be. It is a question of habit on the part of the police and we have, insofar as we may err at all, chosen to err in favour of being very clear in the bill on what is the role of the police. We recognize the point that we may be restating certain existing law and we accept that, but we feel—I think it was Sen. Furness-Smith who used the word "handbook"—that we want to create a piece of legislation which can be a handbook of sorts, for everyone concerned. We feel that we would want to maintain this provision.

I hope all hon. Senators will see the point and go with us on this.

Sen. Furness-Smith: We have been on this bill for four weeks and if the Minister is insistent on causing confusion, then let us cause confusion. I just hope that the whole purpose of his exercise would not go through, because of the confusion which is going to arise, which I strongly fear.

Dr. Hosein: Mr. Chairman, the bottom line there is an expression of support, no matter how reluctant; I am extremely grateful to the hon. Senator.

Sen. Furness-Smith: I have already indicated that I support the bill in principle, but when one gets to the enactment of it, it would be found to be complete nonsense.

Dr. Hosein: Mr. Chairman, I fail to see, if Sen. Furness-Smith is arguing that it is a restatement of existing law, how having it restated here could possibly be a source of confusion.

Sen. Alexander: Simply because, Mr. Minister, it is quite unusual to have the same provision for the same set of circumstances in two different pieces of legislation. When that arises, there is a presumption that there is a difference between the two enactments.

Dr. Hosein: I do not think it is worth necessarily putting forward any other points, except to appeal to hon. Senators to lend their support to our amendment.

Question, on amendment, put and agreed to.

Question put and agreed to.

Clause 22 now renumbered clause 20, as amended, ordered to stand part of the bill.

Clause 23.

Question proposed, That clause 23 stand part of the bill.

Dr. Hosein: Clause 23 is deleted and substituted by the following. It has been circulated and I will read it out:

"Where a police officer has reasonable grounds to suspect that a person on premises 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 assistance."

Sen. Alexander: I have some problems with the word "assistance", in the context in which it is used. It is so vague that one does not know what it means.

What does it mean by, assistance? A police officer who has reasonable grounds to suspect that an offence which includes a domestic violence offence has been committed, has power to arrest that person without a warrant. So what is this “assistance” that the police officer is required to give where he has reasonable grounds to believe that a domestic violence offence has been committed?

Sen. Tiwary: The existing law is that a police officer has the power to arrest. In this case, bearing in mind that the offence is one of violence to a person, it is really not a restatement of the existing law but an attempt, really, to enable a police officer to enter premises there, without a warrant, not for the purpose of arresting somebody, but for the purpose of giving assistance.

Sen. Alexander: That is what I am saying. What does the “assistance” mean?

Sen. Tiwary: I agree it is not explicit, but if one looks at the rest of the clause, “Where a police officer has reasonable grounds to suspect that a person on premises has suffered, or is in imminent danger of suffering from” any of these offences, they are all offences dealing with violence to the person. The “assistance”, with the greatest respect, may take any form; taking that person to the doctor; preventing that person from being more viciously attacked; rendering whatever assistance that the circumstances warrant to the person who has suffered or who is in danger of suffering.

Sen. Alexander: Including, perhaps, beating up the person who is perpetrating the violence.

Sen. Tiwary: I do not accept that.

Sen. Alexander: Exactly, but that may be a form of assistance.

Sen. Tiwary: In any event, the police has the power to go where an offence is committed and he may arrest without a warrant. So he does not need any further power to enter there. Are you saying that there is no need to give the police power to render assistance to a victim of domestic violence in these circumstances, or are you saying that we should limit it? If so, what are you suggesting should be the words of limitation?

Sen. Alexander: In the first place, I think that one has to consider the two situations. One, the situation where there is reasonable grounds for suspecting that an offence has been committed. In that regard, the police officer has sufficient and legal power to render assistance to the victim, which is by arresting the perpetrator of the offence. You do not want more assistance than that.

Sen. Tiwary: Is the person to remain there unattended? We are talking about a domestic setting.

Sen. Alexander: With the greatest respect, if a police officer sees an act of violence had been committed and the victim is in need of medical attention, is it not usual for the police to send the people to the hospital? In point of fact, it is necessary in order for him to get his evidence. This is as I understand, the usual workings of the police.

2.00 p.m.

Sen. Tiwary: Therefore, I used the wrong word; "it is usual". Here there is a proposal that we include it in the law, that it is clearly stated—

"the Police therefore have an enabling power to go in there to give that assistance"

If Sen. Alexander is satisfied that the law as it stands—not that it is usual—but that the police have that power to do that now, well I accept that our proposed amendment is out of order. Bearing in mind that what we are dealing with is domestic violence in a home setting. You have agreed that the police have the power to enter and arrest. You have not said that they have the power to render assistance and that is what this clause is seeking to do.

Sen. Furness-Smith: This is most extraordinary to have—*[Interruption]* to be supported with usual keenness and enthusiasm by my friend Sen. Tiwary. It really is a little upsetting to find this sort of approach from the Government benches.

The powers of the police are very well established. They come from the common law and they have been incorporated in the Criminal Law Act, Chapter 10:04, which has been part of the laws of this land for donkey's years. Under it, an arrestable offence which, putting it broadly, is any serious offence for which somebody may be imprisoned for five years or more—that kind of offence into which category, I must say, every single one of the domestic violence offences falls, is subject to those police powers. So that, a policeman under section 3 (3) of the Criminal Law Act—

"Where an arrestable offence has been committed, any person may arrest without warrant anyone who is, or whom he, with reasonable cause, suspects to be, guilty of the offence."

Anybody, all of us, including the people in the house—the deprived persons and so forth—they may arrest the man.

"(4) Where a police officer, with reasonable cause, suspects that an arrestable offence has been committed, he may arrest without warrant anyone whom he, with reasonable cause, suspects to be guilty of the offence."

and

"(6) For the purposes of arresting a person under any power conferred by this section a police officer may enter (if need be, by force) and search any place where that person is or where the police officer, with reasonable cause, suspects him to be."

So that, if we are in a situation of domestic violence offences, the police have clear powers, and indeed duties, to act. You now want them not only to do arrests or to enter with force to arrest people where there has been a serious offence, but to enter with force in order to assist, and that is not satisfactory.

Sen. H. Charles: Mr. President, I want to assist Sen. Furness-Smith by just informing him and, I think, the honourable House that the Juvenile Bureau and Counselling Service Branch of the Police Service, which has recently been established, have in fact been doing that job but we do not have, as I said, the legal authority to do so. They have been assisting, and I want to give you some statistics. In 1990 alone, that branch of the Police Service, responded to about 1,130 cases involving domestic violence and has been rendering assistance not only arresting people but has been giving counselling services to people and we are expanding that service.

What we are saying now, is that this piece of legislation will give them due authority to move in and give the kind of counselling that is required.

Dr. Hosein: Mr. Chairman, if I may add, before Sen. Furness-Smith proceeds, we must keep in mind that not only is it a question of suspecting that a person has suffered from a domestic violence offence, but also includes imminent danger which means nothing has quite happened yet, which would qualify it to be an arrestable offence because you are making the point that once the police believes something has happened that is an offence.

Now, the point I am making is that if the police goes in solely—because you say he invokes his power in order to arrest and you do not specifically talk about rendering assistance, you may be going against a point that you and others have

argued throughout the debate on this matter—and that is the question of reconciliation. In other words, something is happening, the police become aware that something is going on, maybe blows have already passed *etc.*, they are now outside the door, they have reason to believe that more might take place. If we leave things as they are—the police can now only enter to arrest rather than merely stand there to ensure that the situation cools down, to maybe give assistance—and we agree, assistance is a broad thing. It may prove to be anything in the circumstances. God alone knows what assistance will prove to be in the end.

The point I am making is that this will favour reconciliation.

Sen. Furness-Smith: I am very grateful to the hon. Minister for explaining; and what he has explained highlights the particular dangers of this provision. I am sure, if he thinks about it, he will appreciate it. We are now going to let policemen into our homes, with force if necessary, not only where a serious offence has taken place or is reasonably expected to be about to take place, but generally in order to prevent things happening to battered wives, dependants and this and that, in all kinds of domestic situations.

Although I understand very clearly what the hon. Minister—who this afternoon is particularly concerned with these people: dependants, wives and battered women and so forth—is trying to achieve there, what we are asked to do is to withdraw one of these single and outstanding rights of citizens of this country. And it is particularly unfortunate—there are many policemen who do an excellent job, but we all know that this is not the very happiest time to be giving unprecedented powers to the police. Because when you say that they may come into my house in order to reconcile myself and my wife; or because they believe that there may be a fracas about to develop, that means that they can come into anybody's house at any time virtually; or apparently, in order to interfere and give what you say is assistance but which might, of course, consist of assisting by dropping a little evidence around; dropping a little white powder around and then they will be able to deal with us all—rolled straight in jail because we are harbouring drugs or something like that. It would not be used just for this. The hon. Minister really must not live in a cocoon. He must know what goes on.

2.10 p.m.

Sen. Tiwary: I was asking Sen. Furness-Smith, what right was he talking about that is going to be infringed. Just as he is saying the hon. Minister ought not to live in a cocoon, I am inviting Sen. Furness-Smith that he too should come into

the real world. What right is it that the hon. Senator is saying is being infringed here? You agree—I hope you do—that the statement of the law now gives the police the power to enter for the purpose of making an arrest.

Sen. Furness-Smith: That is why I read it out. The hon. Minister has spent five minutes explaining to us that he wants to expand it because he wants to be able to have the police in there in order to reconcile the parties because the police thinks something is coming up. Do I have to read the whole section again, Sen. Tiwary? The law is there. It is clear. It has been clear for many years and it is being suggested here that the citizens of this country have no rights in that matter. The answer is, they have rights in their own homes and to live quietly except as provided by the Criminal Law Act or other Acts relating to the police. Otherwise they can be quite sure when they go to sleep at night that they will not get a knock on the door from the police. We are all fortunate that we have had nothing like that here but we all know that in countries—up to a year or two ago—in Eastern Europe and God knows in how many places, that is not the kind of rights citizens have. I just do not want that infringed by one millimetre this afternoon. As far as I am concerned, this question is utterly vital and if the Minister insists on this, there is no way I could vote for this bill.

Sen. Belmosa: I would like to reiterate that in my maiden speech I made a suggestion that a welfare officer should accompany police officers in domestic violence disputes because you must have some checks and balances. The police are perceived as not being the appropriate agency to reconcile family disputes. For example, if there is a police officer who is going into a situation and his friend is the perpetrator in the case, who would check that individual? How would that be reconciled? Therefore, we must have some checks and balances. I support the spirit of the bill but we must have some checks and balances. As police brutality is becoming a major factor, especially when economic conditions are creating a lot of unemployment and, therefore, more violence, you must have some checks and balances. To give police unprecedented power to enter and then to reconcile is very difficult.

Sen. Rampersad: I would like to ask the hon. Senator a question because he speaks about a welfare officer and we can take this to the ridiculous end. What if the welfare officer is a brother, cousin or a friend of the perpetrator of the act? Are we not dancing the same tune in the same barrel?

Dr. Hosein: I am really a little taken aback at the height of the emotion invoked by Sen. Furness-Smith. I am really totally surprised. I thought that the Senator would have argued the matter more calmly. I do not want other Senators to become as worked up as he did. I find it passing strange that Sen. Furness-Smith—

Sen. Furness-Smith: As a matter of objection, I did not speak with emotion, I spoke with very strong conviction. It is not for the first time.

Dr. Hosein: I withdraw. Let me attempt then, to speak equally with conviction and hopefully convince all honourable Members, including Sen. Furness-Smith.

When you look at the first part, we are talking about an instance in which the police can enter. Sen. Furness-Smith has said it himself; they can enter, based on reasonable grounds if they suspect that a person is suffering or is in imminent danger of suffering, but they can only enter to arrest. I cannot see how this is, as Sen. Belmosa used the words, unprecedented powers. There are no unprecedented powers. In fact, we are permitting them to enter to do something less than arrest; so it cannot be any new additional power that is so frightening that it needs to frighten any hon. Senator here because we are saying—and Sen. Furness-Smith read it out himself—they can enter on these grounds to arrest.

What we are putting in their hands is the power to do less than arrest, that is merely to give the assistance, to allow a situation to cool down so that two people who are in a domestic situation are not going to find themselves on a criminal charge. So that the police may now enter, merely give assistance and not necessarily have to arrest.

Sen. Alexander: With the greatest respect, this is a very dangerous piece of legislation. “Assistance” is not defined. The Minister says it is less than arrest. What is less than arrest? What this says here, is that the police officer can go into the premises for the purpose of giving assistance and the assistance which he can give is open-ended. It is not defined. It is not limited and that is the danger about this. In other words, you are giving the police, in this instance, unlimited power over the residents in that house.

Dr. Hosein: I see the point Sen. Alexander is making and if we can give some thought to appropriately limiting what is meant by “assistance,” we would know clearly what the Senate is being asked to agree to. I think we can look at that very quickly because I agree it may be a little open-ended. I think once that is done it

would satisfy us on this side. Maybe we can find an appropriate wording or maybe Sen. Alexander may have some suggestions himself.

Sen. Alexander: This is a matter of policy, Mr. Minister.

Dr. Hosein: I agree with you that the word "assistance" may be a little loose, open-ended, *et cetera*, as you have described. I am saying my response to that would be, let us find appropriate language to so limit it that all honourable Senators would be satisfied with that point. I suggest that we go on and look at some wording in the interim and come back to this.

Sen. Furness-Smith: Could I just point out that the hon. Minister is saying that the police already have power but this proposed clause is not extending only to cases of domestic violence offences. It is also extending to offences under clause 18. Now it is possible for there to be an offence under clause 18, where there has not been any violence at all. I am not saying that necessarily an offence under clause 18 should not be made an arrestable offence, but personally I would not necessarily wish to see a policeman, able to just go in by force into a house because of the kind of situation we have been discussing, which is less than violence, but is harassing and so forth.

2:20 p.m.

The point I am trying to make is that as it stands at the moment, this is an extension of the common law powers of entry and arrest, and I really do not think this is the occasion to make such a change.

Sen. Tiwary: Mr. Chairman, we accepted the Minister's proposal, but perhaps having regard to what Sen. Alexander has said, maybe we could be allowed some time to consider an appropriate amendment to the word "assistance." If Sen. Alexander has a suggestion, perhaps we could ask our Government's advisors to look at it.

If, of course, they are totally against it in principle, that is a different matter. You have just said it is a matter of policy.

What we are really asking here is while the police have powers of arrest, the intention is to give the police the power to enter, not for the purpose of arresting, that is the law as it is, but for rendering assistance.

You have suggested, Sen. Alexander, that assistance may take any form. It was my original suggestion in my first answer to Sen. Furness-Smith that if you find the language "assistance" inappropriate, are you prepared to suggest an alternative?

Sen. Alexander: With the greatest respect, this is a matter for policy. I am prepared to look at any amendment, but I do not know if there will be any amendment which will meet the position.

Sen. Tiwary: May I then suggest that perhaps we could hold this matter and move on.

Sen. Persad: Mr. Chairman, before you pass, quickly, if the Minister could indicate, when you say "assistance," are you saying to prevent injury? And if you are saying to prevent injury, why do you not state so explicitly, "preventing injury or further injury to the person"?

Dr. Hosein: Yes. I do not know if Sen. Persad is a lawyer, but I see he was very quick of mind and came up with a good suggestion.

Sen. Persad: I speak English.

Dr. Hosein: Yes. I am merely expressing indirectly, my disappointment that Sen. Alexander did not do likewise.

Sen. Furness-Smith: Could I also ask the honourable Minister, as I have understood in these discussions, in and out of the House, whether the reason for this clause is because the police are visualized by those concerned with this bill as not being prepared to interfere in domestic disputes? That has been drummed into me for the last four weeks, as well as the fact, of course, that I know nothing about it.

We were told this afternoon by the honourable Minister in the Ministry of National Security that far from the case that the police are not prepared to go into people's homes for domestic violence matters, they do it every day, without authority in order to help children. Now what are the facts? It is for the Government to run this country and to give proper instructions to the police. One Minister tells us that the police will not take on a husband and wife situation and another Minister tells us that the police are quite prepared to break the law to go into a house and help children. Now, what are the police doing, in fact?

Sen. H. Charles: The words used were "reluctant to go in," not that they have not been assisting, but they have always been reluctant because of the outcome.

Sen. Furness-Smith: Well, I am sure the police are reluctant to break the law, but apparently they are prepared to break it.

Dr. Hosein: Maybe I could just say one thing in addition, and that is, as a non-lawyer, my understanding is that when one is making law and introducing new provisions, one must be very clear that there is some mischief about which one wants to correct. And what that mischief is, is well known.

I think that is what Sen. Hochoy Charles was referring to, in which the police find themselves responding—what happens out there in society is a very real thing—and they act as best as they can. Sen. Hochoy Charles attempted to make the point that in doing that, to correct an obvious mischief, maybe the extent of their authority is not clearly spelt out. This is what we are trying to do today. So that it is not that we are trying to insist on any extraordinary powers for the police but there is a very clear mischief that we all know about that takes place out there and that is why we feel there is a need for this provision. We recognize that, okay, there is the other side of the coin; when you give powers, in particular to the police, there is a potential for abuse.

So if now we are going to be clearer as to what that assistance will be, I want to again suggest that this is the way to go.

Sen. Alexander: Mr. Chairman, I want to say one thing. You know everybody has been talking about the reluctance of the police, and no one has adverted to the situation where a report is made of domestic violence, and upon the police interfering, the virtual complainant refuses to go to court. That is one of the reasons which causes the police to be reluctant, because they do not want to open themselves to actions for false imprisonment. That is one of the facts, and we have to take that into consideration as well.

Sen. U. Charles: Mr. President, Sen. Alexander has touched the most important point. This is why it is important now to see that this clause is passed in that frame of mind, because after two or three hours families would not want to go to court. So if the police can sit and reason with them and take the necessary action with them to carry them through just those few hours, it is important. So he has come back to the same point we are trying to see happen.

Sen. Alexander: Do the police have time to sit for three hours to discuss with the families?

Sen. U. Charles: They do. Some of them do.

Sen. H. Charles: We have a unit in the police department that does that.

Mr. Chairman: There is a proposal that we defer further consideration of clause 23 to be renumbered 21 and I wonder whether there are any other Senators who would like to express views on the subject.

Sen. Tiwary: Mr. Chairman, I wondered, before we moved on whether—I know you are inviting Members, so that, you the Government could have the benefit of all Members' views when they are considering what is the proposed amendment.

Mr. Chairman: Yes. An attempt will be made to redraft the clause to accommodate some of the suggestions made. If any other Senator has views on this particular clause, please express them now before we defer the clause.

Sen. Fr. Joseph: I want to be clear whether the assistance has to do with reconciliation in a peaceful way or other kinds of assistance. I would give you a practical example: There is this goodly gentleman who had a deputy put up in a house, and the dear lady also had a kind of liking for policemen. So this gentleman went and rant and raved about, you know, "I am paying the rent" kind of thing. "How could you have this relationship?" The goodly policeman came to render assistance and his assistance was to beat up the person who was paying the rent. What bothers me is what is called "imminent danger of physical injury."

If they have the right of arrest when it is a genuine case, when we talk about assistance, what kind of assistance are we giving? Is it to help reconcile? Is it to call in a priest or social worker? What really do we mean by the word "assistance"?

I think it is a matter that we all should be concerned about.

Sen. Alexander: Once he has the power and he goes in there and you interfere, you are interfering with him in the performance of his duty and he can do you anything.

Sen. Spence: My comment is a more general one. I think a very great danger that we run here and it is a point I made from the beginning, by having this discussion in a committee of the whole Senate, as opposed to a select committee, because it is a public discussion, we tend to take party political positions.

Now, I am very much afraid that we may be arriving at a conclusion, because of that fact, rather than because each of us individually is convinced that we should take a certain path. Even at this late stage, even for this single consideration, I suggest from my experience in sitting on select committees, they are not so bound

by party political positions. I think the issue is a very fundamental and delicate one and it would be better if we could sort it out in a detailed discussion of a select committee, rather than in an open discussion as we have been having. Because we are going to take party political decisions, we are going to vote party, and we may arrive at the wrong decision for all of us.

Sen. Belmosa: In terms of "assistance," I want to know, would the police officer be trained to counsel; or are you asking the police officers to be marriage counsellors? Are there any other support agencies which can actually do that type of work other than the police officers?

Dr. Hosein: Mr. Chairman, if I could just respond quickly to that point, I think I see what Sen. Belmosa is saying. I think that what he is saying is in response to the instance related by the Sen. Fr. Joseph, and I, too, can see a problem if the police start coming in to do counselling. They are not trained, and whether they then have to walk with a social worker, that makes it impractical.

One could merely restrict oneself to saying "to prevent injury," because really that is what you really want the police—if they have to give assistance and not necessarily arrest, what you really want them to do is to prevent injury, along the lines that Sen. Persad mentioned. Maybe we could agree to leave it simply as that, or there are one or two other formulations which say something along the lines of, "for the purpose of this Section, "assistance" means: (a) that the police shall issue a reprimand; or (b) a warning of possible arrest." I do not know what hon. Members would agree to.

My own view would be to merely say to prevent injury, because really that is at the heart of the matter and the heart of the bill.

Sen. Alexander: Mr. Minister, all sorts of things keep cropping up in my mind the more we discuss this. Once you give the police the power, it means he has the power, and it means that he can be obstructed in the use of that power, and you go on and on and on and on.

It does not seem to me that this concept is workable. Because we all know, particularly those of us who have practised in the courts, what happens when it is alleged that the police officer has been obstructed in his duty. We all know what happens.

Sen. Moonan: Mr. Chairman, my view at this stage and time is that we should refer this to a special select committee headed by a retired judge, with retired policemen, Commissioner of Police, and so on and get—

Mr. Chairman: I am afraid that is completely out of order. This bill is before the Senate. We will have to bring them as members of the Senate first before we could refer this—

Sen. Moonan: I am sorry, Sir. This is such an important bill that I think that we have to sometimes bend the law to protect the citizens.

Thank you very much.

Sen. Rampersad: Mr. Chairman, I just wish to say one thing on the question of "assistance." I find it rather difficult and unfortunate to believe that honourable Senators can define the term "assistance" in terms of domestic violence to mean a policeman going in to beat somebody or to beat a husband. It is inconceivable that one could define "assistance" to mean "beating somebody."

2.35 p.m.

Dr. Hosein: Mr. Chairman, what is happening here is that we are giving primacy to the issue of potential instances of abuse by the police or by anybody, which happens any way. In the most innocent of instances, you have abuse by all sorts of people in society and we are equating that to protecting 1,000 odd cases, where, if the police had gone in there and tried to provide protection for people—by all means we know what happens about abuse and even the simplest powers of the police can be abused in all sorts of ways—but we have to be careful what we give primacy to, in this instance.

I suggest to all Senators, that while we recognize that once you give additional powers you have one more instance that might be abused, then let us be ever cautious and define carefully what this power is. But I feel very strongly equally that we are talking about providing protection and assistance.

In 1990 there were nearly 1,100 instances and I just want to remind people of the statistics I gave during the course of the debate—30 to 40 per cent of people who are on death row are there for having killed somebody in the domestic situation. We are talking about death, not to mention all the instances of serious injury and abuse, many of them, more often than not, not reaching the attention of the court. I have worked in the Casualty Department at the hospital and I can tell you.

Sen. Paul: Mr. Chairman, I have the same opinion as Sen. Spence. I feel that within our ranks here the Government, the Opposition and the Independent Senators, we have enough legal material. We have choice of lawyers between Sen. Furness-Smith and Sen. Alexander. Put it to a Select Committee consisting mostly of lawyers.

Dr. Hosein: The Government is not accepting that view at this stage. We are close to the end. It is probably the last of the contentious matters and I think we have to resolve it by this afternoon. I think the discussion is going well and Senators really have to make up their minds. It is time to make up one's mind. We are talking about providing an opportunity for the police to play a role in providing assistance and protection to people who require it. We are ever mindful of what happens when the police do not provide it, and notwithstanding the difficulties created in court, we have seen the point about abuse. Let us find a mechanism, which we can find very easily, to minimize that, but we have got to make up our minds. A select committee, I am afraid, is not going to help us make up our minds. This Senate has got to decide.

Sen. Lequay: Mr. Chairman, does the Minister think the suggested amendment by Sen. Persad will assist in finalizing the matter? He has suggested to add, "to prevent injury or further injury."

Dr. Hosein: Yes, this is our inclination, on this side, along those lines.

Sen. Furness-Smith: Does the hon. Minister wish to extend that to mental injury as well as physical injury?

Dr. Hosein: I hope the Senator is not being facetious.

Sen. Furness-Smith: No, I am never facetious. But the problem immediately arises.

Sen. Spence: I do not really think there is any point in my speaking again. I was going to ask whether at this stage we can go to a select committee, but in view of the Minister's last statement, which I listened to with a great deal of sadness because it seems to me that he has not understood the point raised here.

Dr. Hosein: Mr. Chairman, I am afraid, we are discussing more than law here and it does not matter how eminent the lawyers—I think we already have very eminent lawyers here and we have had the benefit of their views in terms of the law, but we have to decide on a societal matter and I am afraid hon. Senators are not going to be able to chinks on this one. Senators are going to really have to take a view. I do not want to force a procedural point of view.

Sen. Spence: The view they must suggest must not be dictated by political consideration, and I was suggesting that if we had a different sort of discussion that is less likely to occur.

Sen. Sampath: Mr. Chairman, I have listened to my friend and colleague, Sen. Spence, repeat twice that in this sort of open committee we have partisan views responsible for the non-resolution of the matter. But if we are practical here, it is not partisan views that are causing the delay. The members of the Opposition are bringing forward certain very important legal points, which are, on the whole, extremely constructive. So you see, Mr. Chairman, his argument falls to the ground. There is nothing partisan here.

Clause 23, by leave, deferred.

Clause 24.

Question proposed, That clause 24 stand part of the bill.

Dr. Hosein: Mr. Chairman, I beg to move that clause 24 be renumbered as clause 22.

Sen. Persad: Mr. Chairman, before you move on, in subclause (d) I was wondering whether it is necessary for the word "repetition" to be there. I think it makes it a bit odd. I quote:

"subject to any conditions specified in the warrant, to take such action as is necessary to prevent the commission or repetition of an offence or a breach of the peace or to protect life or property."

The word "repetition" is very open-ended. Maybe we can look at that. You see, "repetition" means, for what period of time? For his life time, for the next 24 hours or what? I think what you meant was repetition of a small period of time. I do not mean to sound facetious, but should we break the man's hand or foot so he would not do it again forever?

Dr. Hosein: If we say "repetition of the offence".

Sen. Persad: That is more reasonable. I am not sure it is totally reasonable but I think the time period is important.

Dr. Hosein: You mean if 20 years later the fellow does it, he then finds himself liable to the—

Sen. Persad: Maybe the policeman might take it upon himself to damage the fellow in such a way that he cannot do it again. I think we must be careful.

Dr. Hosein: If we say, "repetition of the offence."

Sen. Persad: I would tend to go for that.

Dr. Hosein: I do not know if Sen. Persad would care to move it formally.

Sen. Persad: I would leave it to you.

Dr. Hosein: Mr. Chairman, I beg to move that in subclause (d), the word "an" be omitted and insert the word, "the" before the word "offence".

Question, on amendment, put and agreed to.

Clause 24, renumbered clause 22, as amended, ordered to stand part of the bill.

Clause 25.

Question proposed, That clause 25 stand part of the bill.

Dr. Hosein: Mr. Chairman, I beg to move the following amendments to clause 25:

- (a) First of all, that it be renumbered as clause 23.
- (b) That paragraph (a) be deleted.

It should now read:

"Where a police officer believes on reasonable grounds that a person has committed or is committing an offence under section 18 of this Act, he shall make an arrest without a warrant."

And remember clause 18 is "Breach of a protection order".

2.45 p.m.

Sen. Lequay: Mr. Chairman, could you read the clause as it now stands?

Dr. Hosein: It would now read:

"Where a police officer believes on reasonable grounds that—

- (b) a person has committed or is committing an offence under Section 18 of this Act,

he shall make an arrest without a warrant."

Remember, clause 18 is breach of a protection order. So we delete (a).

Sen. Baksh: Does not the police already have that power?

Dr. Hosein: It is a new offence. Remember, breach of a protection order is a new offence.

Sen. Alexander: The general powers of the police under the Police Service Act takes care—

Dr. Hosein: I will just ditto to the argument I have been making in terms of this point.

Sen. Mark: Mr. Chairman, when I was making my contribution I raised a question under this particular clause. Seeing that the police would be making a mandatory arrest, what if the police officer fails to arrest? In other words, what I am seeing here is that you are imposing more or less a new duty on the officer without the requisite penalty of disciplinary action accompanying same. For instance, I had the opportunity of looking at the Domestic Violence Prevention Act, which came into effect in the state of Washington in 1979 which imposed a new provision called mandatory arrest. What was very clear to me was, if the police fails to execute that arrest, then the citizen who is affected can invoke civil liability against the police agency and the Police Commissioner, as the case may be, and at the same time offer some protection to the police officer, knowing full well that once the arrest is fair and not malicious he would be protected from criminal action by the citizenry. But as it stands here, it is a policeman who shall make an arrest without a warrant. So it is mandatory.

I am saying in the context of Trinidad and Tobago, you know, Mr. Chairman, that police officers have a very bad track record in many instances, and what we have to deal with here—and we have to be very practical because a policeman could be with another person's wife or woman and in an instance where there is some kind of development or conflict between the parties, there is some kind of arrangement by the lady to invite the policeman or—I am talking about a protection order—some kind of development could take place where a breach of it could be invented, and the policeman enters to arrest. I am attempting to look at it from a hypothetical point of view to see whether you cannot have a situation where maliciousness could be invented and, therefore, what recourse would the citizen have in such an instance?

I have been looking at the Police Service Commission Regulations and under section 56 there are certain clear provisions, failing which the policeman could be guilty of an offence and is liable to summary dismissal. I am saying that there should be some provision here where the citizen could be assured that if the

policeman fails to make the arrest, because the logic to me is clear—we are talking about something called a cycle of violence and you are trying to impact on that, you are trying to break that cycle of domestic violence. If the policeman fails to arrest the person, what recourse, does the citizen have, the victim of that arrangement? I am still not too convinced in my mind that there is sufficient provision here to give the citizen the kind of assurance that the policeman has to do that, and if he fails to do that, what is my recourse in the circumstances. I would like to get some clarification from the Minister on this particular question because I am very worried about it.

Just before you clarify, Mr. Minister, in this same law to which I referred, the Domestic Violence Prevention Act, the provision of mandatory arrest is for the first four hours. In other words, a crime is committed or a protection order is breached, the policeman or police officer has the right to arrest that person within four hours. Take for instance for some strange reason the person escapes and hides somewhere else and that four-hour period passes, then discretion comes back into the picture. So you have discretionary and mandatory powers. I am saying within the context where it is mandatory, it is too open-ended and there is no provision to provide protection to the citizen in the event of failure to arrest.

Sen. Furness-Smith: I can sympathize with Sen. Mark's point of view. This is a case where the man in question has committed a breach of a court order. This is what we are talking about—clause 18—he has committed a breach of a court order or, of course, now, of an undertaking. What we are saying is that he could be arrested without a warrant. If it was a High Court matter, you would have to get an order for committing him for contempt—you would have to get an order and you would have to serve that on him and he would then have to be brought before the court and he would be subject to the jurisdiction of the court. I can see, therefore, there are some grounds for having such a person arrested, but such an offence may be quite without violence. If it was a question of domestic violence offences, then he ought to be arrested anyway. But the whole history of the matter may be just one of general harassment, abuse, threats and so forth, a lot of talk and confusion, and where the justice of it might be, one could not be sure. I am not sure that it is right in all cases to make such an offence what is virtually an arrestable offence, on a line with indictable offences, on a line with domestic violence offences, so that the police will have a duty to arrest the man on sight.

I just draw to your attention the provisions of the Police Service Act. Section 35 lays down duties of the police in these matters. It is just as well for us to remind ourselves, because of the discussion this afternoon:

- "(a) All police officers shall preserve the peace and detect crime and other infractions of the law;
- (b) Apprehend and bring before Justices persons found committing any offence rendering them liable to arrest without warrant..."

Now, an offence which renders you liable to arrest without a warrant is what we used to call the indictable offence; it is a serious offence.

"...or whom they may reasonably suspect of having committed such an offence.

2.55 p.m.

Dr. Hosein: We are talking here of this person breaching an order of the court. It is not only a question of repeating the offence, whatever is the offence, violent or otherwise, but this person is going further in breaching an order of the court. Would that not put it in a particular category that you would want it dealt with this way?

Sen. Furness-Smith: Yes, but what is worrying me is the case of the not so serious offence and we are introducing the policeman, and the wife might not want the man arrested.

Sen. Tiwary: If we change "shall" to "may" is that acceptable?

Sen. Furness-Smith: Yes, I would agree to that.

Sen. Tiwary: Would that suit all the objections? What about Sen. Mark?

Sen. Mark: No. I understand the logic of "shall". We are talking about domestic violence. This theory of the cycle of violence, you are seeking to break it and sometimes an arrest might be needed to break that cycle of violence.

Sen. Tiwary: On the other hand, it was just pointed out that a protection order may be obtained where the nature of the harassment may not amount to violence. So that if you say "shall", and make it mandatory, it means that the police must arrest where there is a breach of the order. Whereas if we change it to say, "the police may make an arrest", it depends on the nature of the order, what is being flouted or whatever is the alleged offence.

This is why I believe my learned colleagues would accept “may”. So in those circumstances it takes it out of the realm of making it mandatory for the police to arrest everytime somebody breaches a protection order.

Sen. Mark: I believe, for instance, the Washington experience—I just keep referring to it because I did some work on it—in 1979 when the Act came into force, it had the discretionary “may” and in 1984 because of the cycle of violence where policemen were not really arresting people, because of the discretion, the law-makers had to amend the Act to make it mandatory—that is Washington. The point I am making is that if you are talking about domestic violence and you allow discretion to be exercised, then in some instances you might have a situation where the violence will continue and the policeman may or may not arrest. So I am simply saying that my point on this issue, not so much deals with withdrawing “shall” and replacing it with “may”, but I was trying to say, this thing seems to be open-ended in the sense that, what recourse does the victim have in the event of aggression?

If the policeman is supposed to arrest and he fails to arrest, what are we saying in this bill to give the victim some recourse to justice? If we go to “may”, I am saying that, to my mind, we are watering down the thing to some extent and, therefore, it is a kind of discretionary something. So people could get “lick up” or beaten up and it is business as usual; the police may or may not arrest. I am saying that because of the nature of domestic violence, we want to ensure that if there is a breach, “shall” should be used. That is where I was coming from.

Sen. Furness-Smith: Could I just develop that a moment. I think the answer to Sen. Mark's point is that the police have a positive duty here in the Police Service Act, where they reasonably suspect a person of having committed an offence which renders them liable to arrest without a warrant. That means any domestic violence offence. They have got a duty to arrest. So that if he is infringing his undertaking by means of violence, they have got a duty to arrest him.

Sen. Mark: If the policeman fails to arrest, what recourse would the victim have of that aggression?

Dr. Hosein: I would like to ask Sen. Furness-Smith, whether the fact that it says, the police officer believes on reasonable grounds, that provides the opportunity for discretion. But once he is convinced—because I take Sen. Mark's point as well.

Sen. Furness-Smith: Personally, I think it would be better to make it “may” and it is a matter of Sen. Hochoy Charles educating his policemen to know when they should arrest and when they should not.

Sen. Mark: My viewpoint on this matter is that the bill is going to be watered down. You see, if you have violence taking place and there is a prohibition order in force and the person violates that, I am saying that person should be arrested. In other words, you arrest that person; he has violated. But if you come now and you say “may”, I mean we have to be serious about what is taking place in this society.

Sen. Tiwary: A breach of the protection order may not amount to physical violence, it may be talking, pursuing or whatever. Are you saying that in all circumstances once there is a breach of the order, a person should be arrested?

Sen. Mark: Maybe in this instance you may wish to define it.

Sen. Tiwary: This is why I thought the proposal was “may”.

Sen. Alexander: It seems to me that this provision is to meet situations where the breach of the order does not constitute a domestic violence offence. Where the breach of the order constitutes a domestic violence offence, then there is power for the police to arrest without warrant. This is only to meet the situation where the breach of the order does not constitute a domestic violence offence. Since a breach of the order can be effected in so many different ways, the best course, it seems to me, is to give the police a discretion depending on the gravity of the breach.

Dr. Hosein: Mr. Chairman, I am trying to respond to Sen. Mark's point, because I think what he is raising is the benefit we may enjoy of the experience in another jurisdiction on the very same point and I find it difficult to totally ignore him. He did point out that they came to that amendment after some experience in terms of how it worked, with “may”, having used “may” originally. I do not know whether Sen. Mark would be willing to allow the law to work with “may” and we see how it develops.

Mr. Chairman: If the committee would agree, I think the Minister and Sen. Furness-Smith would like to confer for about five minutes.

Dr. Hosein: Mr. Chairman, I think we have some agreement that we will stick with “shall”. Sen. Mark, I think we agreed that we should pursue “shall”, because we are really talking about—notwithstanding the question of breaking the cycle of violence you also have the additional principle of contempt of court. Because no matter how minor an order of the court may be, when you show disrespect for the

court, you see there is that additional point, above and beyond the point you were making as well.

Question put and agreed to.

Clause 25, renumbered clause 23, as amended, ordered to stand part of the bill.

Clause 26.

Question proposed, That clause 26 stand part of the bill.

Dr. Hosein: Mr. Chairman, we have a consequential amendment to what is now clause 26, where it says; "under section 25", should now become "section 23."

Sen. Furness-Smith: Mr. Chairman, clause 26 renumbered, now reads:

"Where a person is arrested under section 23 and a protection order or an interim protection order is not in force,..."

But the whole essence of clause 23 now, is that there was a protection order in force and it is being infringed. So what is the purpose of clause 26?

Dr. Hosein: We should say "is in force".

Sen. Furness-Smith: No. We do not need the clause at all.

Dr. Hosein: Mr. Chairman, we bow to Sen. Furness-Smith on the matter.

Sen. Furness-Smith: If you originally wanted it, you cannot want it now. I do not know whether there may be other reasons.

Sen. Alexander: Originally you had 25 (a), but you do not have 25 (a) now.

Dr. Hosein: Mr. Chairman, I wish to move that what is now clause 26, be deleted.

Question put and agreed to.

Clause 26 deleted.

Clause 27.

Dr. Hosein: I would like to propose that we renumber clause 27 to what should be now clause 24 and that we delete what is now subclause (1). So that what is now clause 27 (2), will become clause 24. So we remove the subclause numbering and it merely becomes clause 24: "Where a person has been charged..."

Mr. Chairman, let me help Sen. Mark here. All of subclause (1) is gone. The whole thing is gone.

Sen. Alexander: Subclause 27(2) will now be clause 24.

Sen. Furness-Smith: So you also want to delete (2).

Dr. Hosein: Yes.

Mr. Chairman: Hon. Senators, the question is that the existing clause 27 be renumbered clause 24 and in the renumbered clause 24, all of subclause (1) be deleted and the numbering at the beginning of clause 2 be also deleted.

Question put and agreed to.

Clause 27, now renumbered clause 24, as amended, ordered to stand part of the bill.

3.15 p.m.

Mr. Chairman: Do you have any further amendments?

Dr. Hosein: Mr. Chairman, we will now renumber appropriately clauses 28 to 31 as clauses 25 to 28.

Sen. Alexander: There is just one thing about the Commissioner of Police. Somebody in Roxborough will have to serve this thing on the Commissioner of Police?

Dr. Hosein: Sen. Alexander, are you proposing that we delete it?

Sen. Alexander: No, no. I am suggesting that it be made more convenient.

You may find a precedent under the Summary Courts Act with respect to applications for marches and public meetings and so on. I think there is precedent where you can serve the Commissioner of Police by serving the document at any police station or something like that.

Sen. Tiwary: I wonder whether Sen. Alexander recalls that where service is supposed to be effected on the Commissioner of Police, same is done by serving it on the most senior police officer.

Sen. Alexander: I would not like to say that, but I know under the application for marches and public meetings, I think there is some provision in that particular—

Sen. Tiwary: Is it Summary Courts?

Sen. Alexander: Either Summary Courts Act or Summary Offences Act, I do not now recall these things. It came just after the Public Order Bill.

Dr. Hosein: Maybe, I could suggest, we could go back to the one matter we had not finalized.

Question proposed,, That clauses 28, 29, 30 and 31 be renumbered as clauses 25, 26, 27 and 28 respectively.

Questioned put and agreed to

Clauses 28 to 31, renumbered clauses 25 to 29, ordered to stand part of the bill.

The Schedule ordered to stand part of the bill.

The Preamble ordered to stand part of the bill.

Clause 23 recommitted.

Dr. Hosein: Mr. Chairman, as I understand it, Sen. Persad's point is that we merely say—and I am going off the last two lines of the proposed amendment which is:

"...enter the premises for the purpose of giving assistance to prevent injury or further injury."

Sen. Furness-Smith: It is difficult to do that. Sure, you are assuming that there are circumstances where the miserable woman can do with some assistance from somebody and that we really need to have a policeman there giving this kind of assistance. But once we have let the policeman in, or once we have given grounds for him coming in, it is wide open and to amend the clause in that way merely enables him to say, "Well I came in to give assistance."

Dr. Hosein: Mr. Chairman, I do not want to appear to be suggesting that the point which Sen. Furness-Smith has made, is not correct in its simple form, that is, that if you give the police an opportunity to enter the home that might be abused. As a simple statement of fact, fine, we understand that. The point we are making on this side is that there is a need—because of what is happening there, to allow the police to come in to protect people. In other words, one has to balance the thing and we are saying that any powers of the police—what they have now, what they are getting under this bill, what they may get in other laws that may come to this Parliament from time to time, you can always speculate on the question of abuse.

What we are saying is that there is a definite mischief out there that is taking place. It is taking place to an extent—if we accept the figures given by Sen. Hochoy Charles—and that is what came to the attention of the police and we have got to do something about it. That is what the bill is about.

Sen. Furness-Smith: Maybe I misheard Sen. Hochoy Charles, but what I understood him to say was that the police were, in fact, going into homes to help juveniles, without any laws to support them. So that does not support the Minister's argument.

Dr. Hosein: I was merely quoting the numbers only.

Sen. Furness-Smith: The numbers of juvenile offences. I am sure there are many more domestic offences but that, I am afraid, to my mind, is irrelevant. Speaking for myself, although I fully sympathize with what the hon. Minister is trying to do, I do not think that in this day and age, at this moment in time we should in any way extend the power of the police and correspondingly, reduce the powers of the citizen with respect to the sanctity of their homes.

Dr. Hosein: Let me just respond to this point. The reason the police have not had this kind of power is because the laws of this land have never seriously tackled this problem. Presumably, had it done so at some point in the past, the police should have had powers to deal with it. The only reason we are giving the police what is suggested are “extra powers” here is because we are dealing, for the first time, with a problem which has not been dealt with before. If we are to deal with this problem you have to give the police these particular powers.

Sen. Horne: Mr. Chairman, what would be the position when a couple does not want the police to interfere at all? You have violence but you do not want the police to interfere at all.

Dr. Hosein: This is where, Sen. Horne, in our original draft, we had included the point about being invited. In fact, it is that very point why the original draft had “being invited”. So that at least one party had to have invited the person in. The way it was drafted however, may have given a third party—also resident—the power to invite. Out of an abundance of caution and in response to many of the points put forward in opposition to our original draft, we chose to draft it this way. In fact, I think it was Sen. Persad who made the point about unreasonable grounds and that was the way to go. But I take your point.

Sen. Horne. I have known of a situation of domestic violence being committed and the police knew both parties well. He went in and got beaten. Yes, he got thoroughly beaten by both parties. It happened on my street. The police came to me. I supplied the iodine and the bandage. Both parties beat him. I have my points about this. Some people do not want them.

3.25 p.m.

Dr. Hosein: You are absolutely right and you are right on the point about the reasons. I think it was Sen. Furness-Smith who also made the point about why the police are reluctant in the first place and that brings in a point which we are going to come to shortly, when we reach the Evidence (Amdt.) Bill which is the question of competence—

The reason for the attitude of the police is clear and historic, but it is this very same historic attitude that we now need to correct. This is why, as I have said many times, we have preferred to err inside our very clear instructions to the police because something is historic, it has happened; there are reasons why it happened; we know why it has become so and we need to go out there and specifically do things in the law.

Sen. Horne: Afterwards, I went to the couple to find out why the police was treated like that. The husband took the view that the policeman came in because he had some familiar affinity with his wife and the wife took the view that she also beat the policeman because she felt the husband brought the policeman there for a purpose. The man was badly beaten.

In my contribution I made note of the fact that many policemen do not want to go in because people make up and after they take the trouble to put everything through and the cases are called, the complaints are not there. I do not know if people really want the police in this business; perhaps some people do, but most people would not want the police in this; at least not to come at them.

Dr. Hosein: Can I persuade Sen. Furness-Smith, Sen. Alexander and others who may have a difficulty on this point “to give assistance to prevent injury or further injury” that we restrict it to the question of—he must have reasonable grounds to suspect—therefore since we are restricting it to injury, where he must have reasonable grounds to suspect, that it is a question of injury involved.

Sen. Furness-Smith: Is it physical injury that we are talking about? I remember the Minister's very strong words.

Dr. Hosein: I want to remind Sen. Furness-Smith that we were persuaded by his argument not to include the word “mental”. We just left it at “injury”. So whether I may in my own mind have “mental injury or not”, the point is that we are consistent in our language by using the word “injury”.

Sen. Persad: But “mental” is in the bill that we have passed. Is it not?

Dr. Hosein: If Sen. Furness-Smith would recall, we were persuaded not to use the words “mental injury”.

Sen. Alexander: If I recall, I think it is the other way around. I think you have “mental” and “physical” in the bill. We were trying to persuade you not to do that.

Dr. Hosein: If Sen. Alexander is suggesting here that we say, “to prevent physical injury”—

Sen. Alexander: No! No! No! That is not what I am suggesting. What I am suggesting is that the insertion of the words “to prevent injury” makes “assistance” even worse. How are you going to prevent injury? What acts will the police be competent to perform to amount to assistance? That is what I am on. To say, “to prevent injury” does not help it. You are legalizing certain acts of the police and you must say what are those acts you are legalizing.

Sen. Persad: Maybe Sen. Alexander can answer this. When you say that the police can arrest, do you specify that you shout, tell them “stand still, put your hands behind your back and I will put a handcuff on you?” Do you specify that he should cuff him down first and break both his arms? I think if he can answer that question maybe we can understand what he is saying. He should specify that because there is a possibility of abuse in that situation also and this is legalized. I think he is splitting hairs.

Sen. Alexander: With the greatest respect to Sen. Persad, the word “arrest” is a word of art which has been used in the common law for centuries and everybody knows what that means.

Dr. Hosein: Anybody who understands the English language should know what it means. It is to prevent injury.

Sen. Alexander: What I am saying, to help a person in preventing injury being wreaked on them by injuring the person who is wreaking the violence. That is all I am saying. I do not agree with that at all.

Dr. Hosein: Well, of course!

Sen. Alexander: I cannot agree with that at all! I cannot agree with any law which is enabling police to beat people.

Dr. Hosein: We are talking about a policeman now, not any average citizen, and he is empowered to provide assistance to prevent injury and Sen. Alexander is saying, it is now this terrible thing that if he grabs the man by his arm and the man attempts to twist, and it sprains the man's wrist, that this is the police now wreaking violence on some poor fellow. It is not. It is what I presume, reasonable action to prevent injury. If a policeman tells a man, "stand your ground, I perceive you to be wreaking violence on your spouse, stand your ground, do not do that" and the man rushes up to the woman nevertheless with a bottle in hand and the policeman has to hold him, it is disingenuous to describe that as wreaking violence on the fellow. Really, that is splitting hairs. It is disingenuous.

Sen. Alexander: That is just the point. What you want to give him is the power of arrest which he already has. When you say, "stand your ground" that is an arrest which he already has.

Sen. Furness-Smith: I think we have to be very clear on this. As Sen. Alexander was saying, the police powers have been settled for many years. What they can do is that they can arrest people; they charge people but they cannot generally interfere with people's lives. They are not allowed to do that.

They have specific statutory powers which are very, very important and what we are doing is making sure that those powers are not extended at the expense of the citizens. That is not a matter of splitting hairs. It is a question of the rights of citizens. When it comes to rights of citizens as against the police, that is an area where the citizens of this country are particularly sensitive, notwithstanding what anybody with political aspirations may say. That is a sensitive area and even though I am saying it, who of course know absolutely nothing about how the people of this country think although I have been living here for 40 years and I walk on the street and people come up to me and say things, I know nothing. That is utterly elementary.

I can understand what the hon. Minister is trying to do but I urge him, he has got a clear conflict here between his wishes to have the police in people's homes protecting against domestic violence and the other principle which is that the citizens of this country do not wish the police to come into their homes except as justified now by law. Very often, they do not want them in even then, because it is abused.

I strongly urge the hon. Minister to let the law be. He has done a great deal in this bill and he should not try to interfere with the law in those kinds of sensitive areas today. This is not the time and the place. All he will be doing is bringing sack cloth and ashes on his head when the powers of the police are abused in some little case, and everybody will say, “now look what you have done. You are letting the police in”.

So I strongly advise him to delete this clause and let the law as to police powers remain as it is, until perhaps someday we can look at the whole area of police powers and review it, massage it and decide what we all want different from what we have got.

Sen. Persad: Just as a matter of comment before I say what I want to say, if Sen. Furness-Smith by his admission after 40 years does not know anything, it certainly does not prevent him from talking. Nevertheless, may the good Senator enlighten me. In clause 22 (d) this objection should extend to that also, in which you say—the magistrate may issue a warrant authorizing a police officer subject to any conditions specified in the warrant, to take such actions as is necessary to prevent the commission or repetition Could he tell us what that means knowing that it authorizes the police officer to do so, and is it consistent with what he is saying?

3:35 p.m.

Sen. Tiwary: I am afraid I was not following you too carefully. But I believe where the difference is, where you go before a magistrate, the police officer or somebody has to make out a case before giving an order imposing any conditions, as opposed to giving the police what I believe Senators Alexander and Furness-Smith are saying, a blanket power, where they suspect some injuries taking place, that they can take that—it is a power which we are now proposing to give to the police, to go into people’s homes, you know, for the reasons expressed by Sen. Furness-Smith, the fears that the population may have, to give the police that fundamental power which they do not now have as opposed to a magistrate having heard facts or evidence based upon which he issues an order directing the police to do certain things.

Here, we are leaving it entirely in the police officer's judgment; so I am really just showing both sides of the coin.

Sen. Persad: For my own edification, are you saying it is all right if, under oath, a person gives evidence that some domestic violence is going to take place or is taking place, and to prevent further injury or whatever, to prevent a commission or repetition of the offence, that it is all right for the police officer to go and beat up the person?

Sen. Tiwary: We are not saying that. What we are saying is that it is not solely based upon the policeman's own judgment in his discretion to go into somebody's home and render assistance in whatever form.

I am trying to draw the distinction; it is the magistrate who is an independent person. He is making a decision based upon whatever evidence has been led before him, and it is not the policeman making that decision based upon his own knowledge. It is not himself authorizing himself. It is the magistrate authorizing the police officer to do something; whereas, the difference here which is being proposed is that the police officer is being given that right *ab initio* in his own judgment. Sen. Furness-Smith is pointing out the potential for abuse in a country like ours.

Sen. Persad: What I am saying is, there are two separate things. One is the power of entry. Now, the policeman believes he has reasonable grounds to enter. If he does so on unreasonable grounds, he is subject to law also, so you have that balance there, also.

The second thing is, how much force? And I think that is the point they are making. How much force is a policeman prepared to use in carrying out the actions for assistance or arrest?

What I am saying, they are two separate things. And if the magistrate is issuing a warrant, does he say that you should use reasonable violence or reasonable care in your arrest? Does he state so?

It is open to abuse, also. And in both cases you have the balance, if he goes in, in the first case without the magistrate's warrant, he is subject to the law if he abuses it also. So I am here to see a clear distinction.

Sen. Tiwary: He is subject to the law, but the distinction is where an order is issued not by a person who is not a police officer, but by a third person who is independent, who hears the facts and gives them the order. He does not authorize the policeman to be abusive or to breach the law, and the potential for abuse is always there.

What I believe Sen. Furness-Smith and Sen. Alexander are pointing out, is that where a policeman in his own discretion is given that power to determine whether or not to go into somebody's home, and the likelihood of it being abused where he is not answerable until at some later stage, as opposed to where he has to come before the magistrate who may then cross-examine him or any other parties who are represented there before an order is granted.

Sen. Mark: Just let me throw some light on this matter. In my contribution, I advanced the concept of crisis intervention. I think what is being advanced here is that domestic disputes are better resolved through social intervention rather than legal action.

The problem that we have is that the police are not sufficiently trained to deal with that issue. And I think that the fear—and it is not a fear that could be dismissed—that people might have is that in the absence of training—because police can intervene.

If they are trained to provide medical assistance, psychological support, as the case may be, if they can provide some kind of control and direction within the household where the domestic violence is taking place, but in the absence of the training, I think that the concern here is you are giving the police a kind of authority where they are not sufficiently trained; there are no checks and balances. The character of the police service is always in doubt and question, with no offence meant.

I think that what we are trying to zero in on here is social intervention as opposed to legal action. In that context, we have an absence of effective training for the policeman who are going to intervene in the situation. I think there is where the fear lies.

Sen. H. Charles: Mr. Chairman, I do not want the point that I made earlier to be missed, and that is, in 1990 alone, the police service—and we have a special unit with trained officers that deals with these matters—has dealt with 1,130 victims involving 862 calls or cases, and in not one instance have you had the police abusing the authority.

They have gone in by invitation or people have referred—either the Rape Crisis Centre or one of these groups—persons to the police and they have gone in and have dealt with these cases, and you have not had one instance of police abusing their power.

You have a unit trained to deal with counselling and all those sort of things. So I must say not all policemen or all police officials are trained. All of them are not trained. But we have a unit trained to deal with those matters right now, and we are expanding the role of the women police to deal with matters of this kind since this bill has come up.

Sen. Alexander: Well, with the greatest respect, it seems as though the powers that the police have at the moment are working very well.

Sen. H. Charles: No, they are not working well; that is the point we are making.

Sen. Alexander: They are working very well. Why do you want to give them the power?

Sen. H. Charles: Mr. Chairman, I made the point earlier, I think, in responding to Sen. Alexander himself. When we say that the police are very reluctant to deal with these matters, because at a particular stage, you fail to have—and I think you, Senator Horne made the point—the co-operation of the people involved in these matters.

Sen. Horne mentioned that a policeman was beaten up in a case because he was called in. There is no power, legislation which gives them that but they are called and they respond to those matters. Then what happens at the end of it? People do not co-operate any longer because there is no legal authority. What we are seeking to do by this legislation is to give them that legal authority that they can move in and deal with these matters when they are invited.

Sen. Fr. Joseph: Mr. Chairman, I am impressed at how well-trained the police are and, therefore, I side with the Minister. Let us put mental violence, as a specific—with respect to the kind of assistance from the police, because I can tell you from my experience that mental violence is a greater cause of concern than the physical violence.

And, therefore, if you are well-trained to handle, as he has said, these cases, from statistical data, I insist that we include not only physical but mental violence.

Sen. H. Charles: And approve the clause?

Sen. Fr. Joseph: Yes.

Sen. Rampersad: Mr. Chairman, I want to answer two queries raised by Sen. Mark and Sen. Persad.

Sen. Mark introduced the concept of social intervention as against legal action. What I want to say is, Mr. Chairman, that this concept is today flawed. Because if that concept was right and is working right, we would not have had to come to Parliament to introduce the Domestic Violence Bill.

Secondly, to answer Sen. Persad's point about policemen and violence, Mr. Chairman, what I want to say is that I am made to understand that there is a convention which says that policemen must use force only as necessary in any situation.

Sen. Spence: It just occurred to me that Minister Charles' comments were really suggesting that we should give these powers, if we are going to give them at all—and I am not convinced that we should—only to his special unit.

Because what he is pointing out is that this specially trained unit is particularly competent to carry out these functions; so it seems to me if the Government is pushing this point, I do not say that I agree with it, it should consider whether it wants to limit the powers it is giving only to a specially trained unit. It seems to me he has given a very powerful argument for doing that.

Sen. H. Charles: You see, Mr. Chairman, we must understand that the police service has specialized units. When we say the "police" here—for example, you have the fraud squad, you have the narcotics squad, you have the traffic unit. So when we say the "police" here, in the police administration itself, work of this nature of domestic violence should be given to a special unit throughout the country. You do not put that in the legislation. You do not have traffic unit or fraud squad legislation.

Dr. Hosein: May I ask a question here, Mr. Chairman, through you, again, out of some ignorance? It is being suggested here that, well, if in the light of what Sen. Charles is saying and this is happening anyway and it is working well, why do you need this? But then, is that not merely leaving the police exposed at the moment? I mean, to say that in practice it is happening and we have got to tackle the issue of ensuring that they are empowered to do this kind of thing. While the police have been trained, *et cetera*, and they are intervening and, in practice, everything has gone well, one cannot use that point to say, "Do not give them the proper empowerment under the law."

Sen. Alexander: I act on the presumption that they are acting within the parameters of their powers.

I would not presume that, in fact, they are acting in excess of their powers. If they were acting in excess of their powers, I am sure there would have been at least one complaint. But since there have been on complaints, the inference is, the inference must be, that they have been acting within their powers.

3.50 p.m.

Dr. Hosein: The matter may be unclear, and I know that suits the lawyers.

Sen. Alexander: I am very sorry, Mr. Chairman, but this business about giving assistance being undefined—

Dr. Hosein: I think what we are trying to do, Mr. Chairman, is to be very clear.

Sen. Alexander:—that is opening up a Pandora's Box, giving the police unlimited, undefined powers to go into people's homes on suspicion, a matter which I am afraid, I find very difficult to agree with.

Sen. Mark: Mr. Chairman, it is clear to me that the Juvenile Bureau which Sen. Hochoy Charles spoke about, from my information, is understaffed and it works eight hours per day. Domestic violence takes place every minute of the day so you need a 24-hour arrangement. You see, in the absence of a bureau that is operating on a 24-hour basis and where there are personnel from that bureau in every police station—because they are trained people, you need to have them in every police station—right now with all the good efforts that are being made, you are now seeking to bring this thing into being, it is in its embryonic stages of development, therefore, the police force would have to intervene. I think the question here is that not the entire police force is being subjected to that kind of special training, and I think that is where, for instance, you have some concern. You have a specialized unit that is dealing with that matter now. Could Sen. Hochoy Charles tell us how many policemen are now assigned to the Juvenile Bureau Division? Do they work 24 hours per day? Or do they work 8 hours per day?

Sen. H. Charles: They work 24 hours per day. There are 10 persons assigned to the Juvenile Bureau.

Sen. Mark: Do you think that you have the manpower in place, given the training that is taking place, to deal with this question? Or do you see that the other police officers, who are not trained, would have to get involved in the action and, therefore, that is where the fear could come in, because they are not trained and they are going to intervene?

Sen. Sampath: Mr. Chairman, perhaps Sen. Hochoy Charles would permit me to add something to what he has just said. The fact that this can be incorporated in a bill will formalize the thinking that assistance of this sort can be rendered and will also stimulate the expansion of this sort of bureau. While I am speaking, perhaps I should take the opportunity to clarify some of the thoughts of Sen. Furness-Smith and Sen. Alexander. As it stands at the moment I know they are afraid that the police will abuse their privilege in entering a house. But surely, both of them must know that even when the police has a warrant to enter a house they are abusing the privileges there.

Sen. Alexander particularly will know that. He drafted a suit on my behalf when the police, on a warrant, searched my house ostensibly to look for arms and ammunition, and they did many other things. He will remember this because he actually filed the suit. The fact is, they did settle out of court, so his suit was extremely valuable.

What is the point? We know that the police will do this but there is recourse if they abuse their powers. So I do not see why they are making so much out of the fact that this empowers the police to enter a house.

Sen. Alexander: Sen. Sampath, that is the very point I am making. It was because the police powers are defined and limited they are responsible for doing anything outside of their powers. That is where the powers are defined and limited. "Assistance" is a word which is not defined, and it is without limitation. That is the point.

Dr. Hosein: Mr. Chairman, we have indeed accepted that point. I think we are beyond that and we are trying to so define it. What we need now is, in fact, assistance from Sen. Alexander to help us to define it. We have one formulation but I am still unclear as to whether it is reasonable and sufficiently confined to suit Sen. Alexander's objection, which we perceive.

We are saying that what we want people to get is protection from violence. We know that we do not want the police to go into anybody's house for unlimited

reasons. I do not think it is beyond us to find wording that sufficiently limits the discretion of the police to enter into a home in a way that I think satisfies us. There is a mischief taking place in the society which requires that the police come in to help people who are suffering from violence, rather than let the violence continue and then come in and merely arrest. I think there is a need for that. Let us put our minds together and find the appropriate formulation. I do not think anybody is opposing the view which Sen. Alexander has just expressed. Mr. Chairman, maybe five minutes in private might help us.

Sen. Spence: Mr. Chairman, if the committee will agree, will it not be more appropriate to take the tea break now?

Mr. Chairman: No, no, no, we will finish this and the Evidence Bill before 4.30 p.m.

The Minister is willing to get assistance from anyone so willing to construct the clause in such a way that it will satisfy everybody. An engineer has gone to help construct the clause.

4.00 p.m.: *Committee suspended.*

4.07 p.m.: *Committee resumed.*

Dr. Hosein: Mr. Chairman, we have held discussions and in light of all the views expressed, we think we have to be cautious in the matter. We would not want to proceed on the matter of this importance without total support. There are merits in all the arguments. As well, we feel we have been well supported in many of the things that are really important. We feel that we would agree that we delete, what is now clause 23. Of course, it will mean that all subsequent clauses would have to be renumbered.

Question put and agreed to.

Clause 23, renumbered clause 21, deleted.

Mr. Chairman: Hon. Senators, I beg to move that the renumbered clauses 22 to 28 be renumbered clauses 21 to 27 respectively.

Question put and agreed to.

Clauses 22 to 28, renumbered clauses 21 to 27, as amended, ordered to stand part of the bill.

Dr. Hosein: Mr. Chairman, the only matter outstanding is the one on Commissioner of Police where, in what would be the new 24, we wish to suggest where we have Commissioner of Police, to substitute, "A police officer not below the rank of sergeant in the district of the court in which the order was made."

Sen. Dr. Sampath: Mr. Chairman, are there any police stations where the highest officer is a corporal? I believe I know one or two. I want to be sure that there are no districts where this is the case.

Sen. Moonan: If the sergeant is off for two weeks and a constable carries on, what happens? Sometimes he is acting but the rank is not changed.

Dr. Hosein: If he is acting in the position, he has the authority of that position, although his substantive post may be the lower one.

Sen. Moonan: Sometimes a sergeant is sick and no one is put to act in his place, what happens then?

Dr. Hosein: The district to which reference is made is what is called a magisterial district, which is a fairly large area. That may happen in a substation somewhere. When we talk about in a district, we are talking about a magisterial district which is a rather large area in which it is unlikely that the senior person will be less than a sergeant.

Sen. Moonan: I am trying to say that we must not have any loopholes.

Sen. Furness-Smith: There is a point that if a problem does arise in a particular magistrate's court, the magistrate does—

Sen. H. Charles: The ranking person is a sergeant and even if he is on leave, the post is sergeant. So there is no question of any corporal.

Mr. Chairman: The question is that the clause now renumbered as clause 24 be amended by substituting the following for paragraph (c) of subclause (2) which would now read: "A police officer not below the rank of sergeant in the district of the court in which the order was made."

Question, on amendment, put and agreed to.

Renumbered clause 24, as amended, ordered to stand part of the bill.

Mr. Chairman: Before putting the question for the report, there are a few consequential references that would have to be corrected in the Forms in the Schedule.

On page 25, Form 5, the reference to 28 now becomes 24, and the same thing on page 26, Form 6 reference to section 28 should now read section 24.

Dr. Hosein: Mr. Chairman, before you actually re-convene, I just want to go on record as saying—speaking for myself personally, and I think for all Members of the Government—that we have been extremely grateful to all hon. Members for their contributions in this matter. I think we were all motivated by a desire to support the intention of this legislation. We on this side—and I dare say I speak for the entire Senate—were most appreciative of the fact that the contributions were all meant to improve this bill. I assure hon. Senators that we took all the contributions in that spirit. I think we have been able to agree on just about all the points, no matter how contentious they proved to be in the beginning. I compliment all hon. Senators.

I thank you.

4.15 p.m.

Question put and agreed to, That the bill, as amended, be reported to the Senate.

Senate resumed.

Bill reported, with amendment.

Question put, that the bill be now read the third time and passed.

The Senate divided: Ayes 26

AYES

Atwell, Hon. H.

Basdeo, Hon. Dr. S.

Rambachan, Hon. Dr. S.

Charles, Hon. H

Lequay, A

Weekes, G.

Broomes, H

Tiwary, Miss A.

Hosein, F.
Charles, Mrs. U
Bhagan, N.
Rampersad, F.
Sampath, Dr. M.
Warner, C.
Persad, Dr. P.
Mark, W.
Baksh, Miss S.
Belmosa, T.
Moonan, M.
Horne, Miss L.
Bahadoorsingh, Dr. K.
Furness-Smith, G.
Alexander, A.
Joseph, Fr. W.
Spence, Prof. J.
Paul, W.

Dr. R. Deosaran abstained.

Questioned agreed to.

Bill accordingly read the third time and passed.

EVIDENCE (AMDT.) BILL

Order for second reading read.

The Minister of Social Development and Family Services (Dr. The Hon. Emanuel Hosein): Mr. President, I beg to move, that a bill to amend the Evidence Act, Chapter 7:02, be now read a second time.

This amendment is really consequential upon the passage of the Domestic Violence Bill which has just been agreed to by the Senate. The intention here is to

make competent—what the lawyers tell me is the appropriate term—a spouse to give evidence in a matter that comes before the court under the Domestic Violence Bill. This is merely consequential and I think the logic of this provision is clear.

A lot has been said on the question of whether spouses ought to be made compellable. While I know that this matter is not a part of the bill, I am merely taking in front on this matter because there is a view, which has been expressed during the debate on the other bill, that one of the reasons the police, in particular, hesitate in intervening in domestic matters is because subsequent to their intervention, and matters going to court, the parties who may have been in contention in the domestic situation, make up—to use the common term—and they no longer are willing to come to court to pursue the matter.

Mr. President, I just want to make two points on that. One is, we believe people should be given the opportunity to make up. A lot has been said about reconciliation and we have supported and indeed introduced measures into the Domestic Violence Bill that indeed provide as much opportunity as possible for reconciliation. After all, we are dealing with a domestic situation. All parties in a domestic situation in the end have to continue to live together or may themselves prefer a situation where in fact, they continue to live together rather than to break the domestic situation.

Point two is the concept in law of making a legally married spouse compellable under the law. This is one which I think carries a certain level of import with it and we would not wish to go that far. I therefore wish to commend the particular amendment to the House which permits that a spouse is competent, that is, able to go to court without consent of the spouse to give evidence but that person must be compellable. This would be the effect of the amendment. I beg to move. Thank you.

Question proposed.

Sen. Dr. Prakash Persad: I have two points to make on this. The first one might be of less import but nevertheless, I would do so.

Mr. President, in this bill we have introduced the concept of *de facto* spouses and we have given them certain legal status. I want to point out to this honourable House that it would seem—if I can draw an analogy—that *de facto* spouses are given authority without responsibility. For whilst a married spouse, if I can use the word “married,” is under law, presently, made competent or compellable in a case against a spouse, a *de facto* spouse cannot do so. Therefore, it seems to me that

what we are doing here is putting married spouses at a distinct disadvantage, not only in this bill but in other bills. I urge the Minister to urge the Attorney General to act quickly and urgently on this matter because we can have serious, unpleasant consequences. It may be conceived that the Government might be encouraging *de facto* relationships. I am sure that is not the intent.

4.25 p.m.

The other point I want to make, and I go against what the Minister has said because I have moved an amendment that the spouse in this case should be made a compellable witness. I will give a rationale for doing so and may be if I may quote from the United Kingdom Police and Criminal Evidence Act 1984 which states that:

- "(i) The problem should be seen as one of balancing the desirability that all available and relevant evidence should be before the court against the objection on social grounds to disturbing marital harmony; and
- (ii) The harshness of compelling one's spouse to give evidence against another."

When we bear in mind the fact that domestic violence can lead to criminal violence, and it causes serious bodily injury and in many of these cases, especially where a minor is involved or in cases of sexual offences against a minor, it is virtually impossible to prosecute if a spouse does not give evidence, I would think that this is a compelling reason to amend the Evidence Act to make sure that the spouse is made compellable under the Offences Against the Person Act, under the various sections that the Minister is proposing. If we do not make this amendment I feel that the bill would not have the desired effect. This is even moreso, bearing in mind the amendment moved by Sen. Alexander in that, for the first instance in some case an undertaking is given, so what we have is that in cases which we may term as minor the person is given a chance to avoid criminal action.

Bearing these facts in mind, I strongly urge the House to consider my amendment that the witness also be made compellable.

Thank you.

The Minister of Social Development and Family Services (Dr. The Hon. Emanuel Hosein): Thank you very much, Mr. President and I thank Sen. Persad for his contribution.

I respond to his first point by saying that the inconsistency is there and the point must be conceded that we now have a situation in which, because *de facto* spouse is defined rather broadly in the Domestic Violence Bill, for such *de facto* spouses are compellable, to quote Sen. Persad, put legally married spouses at a bit of a disadvantage. It is a point that the situation would be slightly inconsistent; whether one perceives it as an advantage or a disadvantage is another matter.

The situation here is not that this slight inconsistency is not perceived for what it is. It is that it has been a rather fundamental principle in law that a wife or husband is not compellable in law or competent prior to this, for the purposes of this Act and to do so, we believe, requires a rather substantial examination of that principle albeit under the question of the Evidence Act.

While we are into the Evidence Act today, we are doing so because it is consequential to the passing of the Domestic Violence Bill. I am grateful to Sen. Persad for what I perceive him to be saying, that he would be willing to accept a situation were his views on this matter, be referred for further examination by the Attorney General in terms of a future amendment to the Evidence Act. If I read him correctly, I am grateful to him for taking that view rather than necessarily pursuing his point to the bitter end, the merit of which I think we perceive. So I do not want to appear to be disputing him at this stage, but nevertheless, once more, I commend the bill to the House and seek the support of all Members

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

Senate in committee.

Clause 1 ordered to stand part of the bill.

Clause 2.

Sen. Persad: Mr. Chairman, I withdraw my amendment.

Dr. Hosein: I beg to move that clause 2 be amended by deleting all words after "amended" and substituting the words "by inserting in the First Schedule before the reference to the Offences Against The Person Act the following:

"The Domestic Violence Act, 1991 Section 18."

Question proposed.

Question put and agreed to.

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

Question put and agreed to, That the bill, as amended, be reported to the Senate.

Senate resumed.

Bill reported, with amendment; read the third time and passed.

ORDER OF BUSINESS

Sen. Alloy Lequay: In moving the adjournment permit me to make a few quick announcements. Firstly, I think we need to look at the Select Committee situation more closely on another occasion. This is to take the point made by Sen. Prof. Spence. Obviously, today it was too late a stage to attempt to do that.

At the next sitting, I propose to move the suspension of Standing Order 24. It would be Private Members' Day and again, we would have to postpone it to give preference to Government's Business.

I advise Members that at the next sitting the Minister proposes to move, as you would see circulated in a note this afternoon, that the Finance Bill be taken through all its stages in accordance with Standing Order 48 (2) and this implies a late sitting of the Senate on the next occasion.

Allow me to take the opportunity to wish all Members a happy holiday tomorrow and to all our Muslim friends here and in the wider community we wish them *Eid Mubarak*.

Mr. President: Before putting the question, I too would like to join in extending greetings and best wishes to the Members of the Muslim community on the occasion of the observance of the festival of *Eid Ul Fitr*.

Motion made and question proposed, That the Senate do now adjourn to Tuesday, April 23, 1991 at 1.30 p.m. [Sen. A. Lequay]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 4.38 p.m.