THE

PARLIAMENTARY DEBATES

OFFICIAL REPORT

IN THE FOURTH SESSION OF THE FIFTH PARLIAMENT OF THE REPUBLIC OF TRINIDAD AND TOBAGO WHICH OPENED ON NOVEMBER 27, 1995

SESSION 1999—2000 **VOLUME 18**

SENATE

Wednesday, December 01, 1999

The Senate met at 1.30 p.m.

PRAYERS

[MR. PRESIDENT *in the Chair]*

LEAVE OF ABSENCE

Mr. President: Hon. Senators, leave of absence from today's sitting has been granted to Sen. The Hon. Brian Kuei Tung.

SENATOR'S APPOINTMENT

Mr. President: Hon. Senators, I have received the following communication from His Excellency the President of the Republic of Trinidad and Tobago:

"THE CONSTITUTION OF THE REPUBLIC OF TRINIDAD AND TOBAGO

By His Excellency ARTHUR N. R. ROBINSON, T.C., O.C.C., S.C., President and Commander-in-Chief of the Republic of Trinidad and Tobago.

\s\ Arthur N. R. Robinson
President.

TO: DR GEORGE DHANNY

WHEREAS Senator Brian Kuei Tung is incapable of performing his functions as a Senator by reason of illness.

NOW, THEREFORE, I, ARTHUR N. R. ROBINSON, President as aforesaid, acting in accordance with the advice of the Prime Minister, in exercise of the

power vested in me by section 44 of the Constitution of the Republic of Trinidad and Tobago, do hereby appoint you, GEORGE DANNY, to be temporarily a member of the Senate, with immediate effect and continuing during the period of illness of the said Senator Brian Kuei Tung.

Given under my Hand and the Seal of the President of the Republic of Trinidad and Tobago at the Office of the President, St. Ann's, this 1st day of December, 1999."

OATH OF ALLEGIANCE

Sen. Dr. George Dhanny took and subscribed the Oath of Allegiance as required by law.

PAPERS LAID

1. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Airports Authority of Trinidad and Tobago for the year ended December 31, 1996. *[The Minister of Public Administration (Sen. The Hon. Wade Mark)]*

2. Report of the Auditor General of the Republic of Trinidad and Tobago on the Financial Statements of the Airports Authority of Trinidad and Tobago for the year ended December 31, 1997. *[Hon. W. Mark]*

MINIMUM WAGES (AMDT.) BILL

Bill to amend the Minimum Wages Act, Chap. 88:04 *[The Minister of Labour and Co-operatives];* read the first time.

Motion made, That the next stage be taken at the next sitting of the Senate. [*Hon. W. Mark*]

Question put and agreed to.

ARRANGEMENT OF BUSINESS

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, I beg to move that we proceed with "Bills Second Reading" instead of "Motions".

Agreed to.

ENVIRONMENTAL MANAGEMENT (AMDT.) (NO. 2) BILL

[THIRD DAY]

Order read for resuming adjourned debate on question [November 16, 1999]:

That the Bill be now read a second time.

Question again proposed.

Sen. Mahadeo Jagmohan: Mr. President, it is a privilege and an honour to have the opportunity to speak on this matter before us, the Environmental Management (Amdt.) (No. 2) Bill. A great deal of debate took place and, therefore, those who have already spoken or who have discussed this matter, maybe, some of their enthusiasm has waned at this time, but not mine, Sir. This is a subject I am interested in and I wish to talk about it.

Every honourable Senator who read the daily newspapers yesterday and today would have observed a number of pertinent issues on environmental matters raised around the world. But what is of extreme importance to us, apart from the actual amendment of the Bill, which some would regard as a legal matter only, is that the word "environment" is so broad, it encompasses such a great deal that one could never finish speaking on this subject.

With your permission, Sir, I just want to refer to CNN's early *Morning Edition*, yesterday morning when a massive demonstration was planned in the state of Seattle in the United States of America. It was expected that 50,000 or more people would have attended.

The reason for this demonstration and objection was that the World Trade Organization (WTO), according to the news, was meeting in Seattle, USA, and the people were saying that big business was making progress. From my point of view that is a good thing; big business must make progress, so we all benefit. The view was, however, that the small man was suffering because the World Trade Organization, *per se*, was not showing enough concern for the environment in the entire world. That was the theme. In one of today's newspapers, there is a photograph with information showing the picture of a woman bleeding because she was battered, beaten, or bruised by whoever, because she was part of the demonstration.

1.40 p.m.

Mr. President, with your kind permission, I have a view, Sir, on the amendment. I want to refer to clause 6(1) which has the provision that two attorneys, according to this amendment, be recommended to the President for appointment by the Judicial and Legal Service Commission. The Bill is saying that they must have not less than 10 years' standing. In Trinidad and Tobago we know that any attorney who takes his or her business seriously—the practice of law—and practises for 10 years, would be a very senior person. That person would be either elevated to Senior Counsel, or would have his or her own firm or whatever and be very senior. I am seeing some difficulty in recruiting two

attorneys with that kind of service or, if the money is right, then no one would hesitate to fall in line.

I know, Sir, that the study of law is a tedious thing. It is a difficult profession if one wants to take it in. I myself commenced studying law about 40 years ago by the correspondence route from the Wolsey Hall College of Oxford, and when I reached a certain stage I dropped out. It was too difficult; I could not make it without the help of a tutor. So I have some idea that if one studies the legal profession, whether in the United Kingdom or here in Trinidad or wherever else, and after acquiring the Bachelor of Laws Degree, working for the legal education certificate and practising for five years he or she would make competent anything: magistrate, judge or anything. So my thinking is that this period of time should be lowered. I am glad that the Attorney General is here. If even he does not hear me, he would read the *Hansard* and give consideration to this point.

On the same page 2, at the end of clause 7(2), all I see here is:

> "There shall be paid to the lay assessors, such salaries and allowances as may be determined by the President."

This is not in keeping with the way the Bill is structured in other areas, in the amendment. My view is that it should read: "There shall be paid to the lay assessors such salaries and allowances as may be determined by the President upon the recommendation of the Judicial and Legal Service Commission."

I am hardly aware that His Excellency the President goes through the tedious exercise of making a study for compensation, for attorneys or any other learned person, and then comes up with his decision—notwithstanding the fact that he will seek advice or enter consultation with anybody in the country, for that matter. There should be an extension to clause (2) to say that "the salary or allowances should be determined by the President upon the recommendation of the Judicial and Legal Service Commission". I humbly submit this to the Government.

Mr. President, the other point, which I wish to make at this time, is that, in the parent Act, section 3 has a provision that empowers the Minister to appoint a managing director to this commission or board. This piece of amendment is almost unprecedented in Trinidad and Tobago; such positions are regarded as staff members of any board or commission. We of the People's National Movement strongly hold the view that this person should be appointed by the board, because that person would be an employee of the state with that particular board or commission and would be supervised by the board. Therefore, we feel that the original provision should be maintained.

The original Act provided for two legal persons and four others with specialties in four different disciplines. The amendment does not say so; it says "four lay assessors". Somebody must explain what is a lay assessor or what a lay assessor will do. This is not coming through clearly and we should stick with that original provision so long as there are persons with sound judgment and training, as evidenced by experience or qualification. They can certainly work with this board in this regard

We are making the point, Sir, about the appointment of the managing director, because if the minister appoints the managing director, to whom will the managing director look? To whom would he owe this allegiance? Perhaps, we have a good Minister of the Environment now who will not politically interfere. It is hardly likely that he would interfere. It is hardly likely that he would interfere with that kind of operation. Suppose, in the future, we get a minister who has problems with being independent, and leaves the managing director to himself to do his work? These are changes I recommend in the amendment.

I know that the Government has a particular way of doing its business, all governments do. I know that they have thought this Bill out in many ways and have come up with this, so a question of saving face might be involved and the Government might be reluctant to change. But according to our learned friend here, Sen. Dr. St. Cyr, who mentioned yesterday that discussions and decisions on this Bill should go above bi-partisan or partisan politics and that we should look at this Bill in the light of thinking about the welfare of the whole of Trinidad and Tobago, I think that not only Trinidad and Tobago, but we have so many thousands of visitors coming to this country, and they would be concerned about the environment and how it operates. I will soon come to the question of enlightening the Senate in certain regards. Perhaps I am overemphasizing the point, I do not doubt that, but the Government should seriously consider this.

Mr. President, just look at it, this Bill was enacted by the last government not long ago and, today, the current Government, regardless of any other consideration, has done some work on it. So you see how the last government and this Government are in concurrence regarding the environment. They have commonality of purpose, they have agreed to bring this amendment to further strengthen the original Act to make Trinidad and Tobago a better place for all of us and those to come after us. It is my sincere hope that consideration will be given to some of these points I am making.

No one could overemphasize the point. Yesterday, the distinguished Independent Senator, Sen. Dr. E. Mc Kenzie, made the point. I merely wish to repeat the question of a proposal that is there, either a final proposal or whatever it is, to set up some kind of plant in Tobago and to import into Tobago garbage or waste matter from whatever source it is obtained. The PNM, particularly its distinguished leader, my leader, the honourable Mr. Patrick Manning, is not at all in favour of dumping garbage in Tobago. Such a beautiful place should not be desecrated at all. Rethink this, whoever has to rethink it. It would be dangerous to the health of all the residents and even visitors to Tobago. I say this with the clear understanding, Sir, that since we are all stakeholders, regarding the environment, we all should give consideration and rethink this proposal coming up in Tobago. The hon. Minister and the hon. Attorney General can all assist.

Mr. President, with regard to the environment in Trinidad and Tobago: the word "environment", like I said before, is such a broad term that one can never grasp a few points or some thinking and say "this is the environment". The environment in the Parliament is such a beautiful one—so many learned, enlightened and distinguished people in here—but if we go to Woodford Square or the Savannah it would be another environment. According to Hindu belief, the Supreme Being would be here and there equally; that is the environment as well.

Getting to some local issues, Mr. President, in Trinidad and Tobago there are small, middle sized, and large farms. Small farms pollute the environment; middle sized farms pollute and large farms go to town with regard to polluting the atmosphere. There are laws in place to deal with that, but it seems as though the *modus operandi* of people dealing in the environment has changed. Do public health inspectors check everything with respect to their duties and responsibilities backed up by their training and experience? I have doubts about this.

One such example is, there used to be a machinery in Trinidad, as recent as a few years ago, on the byways, highways, squares, open ground and private places that if animals should die and their carcasses remain, rotting there for a while, somebody would see them, particularly public health inspectors or employees of the different county councils and regional corporations, and somebody would be informed. Machinery would then be put in place to dispose of the carcasses of dead animals from the small roads, big roads, byways and highways.

It does not seem as though this takes place anymore, particularly in the country districts, like south of the Caroni River to Icacos and maybe to Mayaro and Moruga. It does not seem that this matter is receiving anybody's attention.

1.55 p.m.

I was told recently—in another matter, with you permission, Mr. President, I am merely mentioning it in passing—that school supervisors are no longer required to visit elementary schools as often as they used to in the past. Well, they are supervisors, they supervise schools. I am told—and I wish that someone had misled me—that school supervisors request the principals to visit the education offices instead. I do not know where that came from but this is the position.

This matter was so important, that the recognized majority union for daily-paid workers—who deal with the sanitation and cleanliness of public places, public buildings, roadways, byways, drains, canals, rivers and beachfronts—has put in a clause in the industrial agreement that, apart from the daily wage, there is a special allowance for sanitation workers who deal with the disposal of carcasses of dead animals found in public places or any such thing. When the workers deal with those matters, they look forward to being paid the allowance and they are indeed paid. Something is happening; implementation is a difficulty now.

It is happening in a number of public vegetable and provision and meat markets across the country. What I am saying is first-hand information. Particularly the item fish, the moment the hours of sale are finished and either there is no sale or the fish seems to be getting unwholesome for human consumption, the vendor or the owner of the goods simply walks out the market and leaves the stuff there. This present Government has now curtailed overtime work in public places such as the vegetable and provision markets. For days, this rotting and unpleasant smell and condition remains. One wonders what else happens. I do not want to create unpleasantness in the Senate. I can give a graphic explanation if I want to, but I will refrain from it, Mr. President.

In a number of public facilities that we the taxpayers provide and indeed every single citizen in the country pays tax, there is some difficulty. We talk about environment but we should talk about and give consideration to the major question that affects the greater number of people. In the public conveniences in Port of Spain, San Fernando, Point Fortin and La Brea—well, it is a little better in Point Fortin—but in some of the smaller towns, the minimum requirement to have an effective washroom or public facility for the small man is in a very terrible state. The basic cleaning materials are no longer provided. Soap, detergent and tissue paper cannot be seen in a number of public places. Cleaning of public places and conveniences is an extremely difficult exercise.

If public places do not get the attention they used to get, or should have gotten, whose fault is it? It is the fault of so many. The people who work in those public places—people are walking out because of alleged threats of asbestos from buildings. I do not think here has any asbestos threats but professional people, teachers, are walking out.

I often wonder where there is a shortage of water and there is the non-existence of basic facilities for civil servants in a number of places, how they manage. They do not walk out, they do not complain; they are continuing to work but that does not mean that is tacit encouragement. It means that they are taking it as long as they can take it but they will rebel sometime soon.

Sen. Mark: Are you trying to prompt and encourage them?

Sen. M. Jagmohan: Mr. President, I cannot call names here, but, from what we have been hearing, the present structure of the Environmental Management Authority (EMA)—and if amendments come, perhaps, there would be an upward movement in certain regards.

I have learnt quite a few things from Sen. Prof. J. Kenny from the number of lectures he gave us here and the amount of writing he did that had exposure in the daily press. Professionals and technical people, under the jurisdiction of the Environmental Management Authority (EMA) are adequately compensated in terms of monetary compensation. If that kind of quantum is paid to personnel of the EMA, then they have to work hard or should be working hard, but we have a little problem. On the basis of certain provisions of the Constitution of Trinidad and Tobago, when people get appointed through a certain medium, they take upon themselves to react in certain ways and that is difficult.

Mr. President, with respect to a number of fast food outlets in Trinidad and Tobago, most of them should be complimented for a very high standard of hygiene on the compound and the sanitation in and around the compound. The entire environment, in some of those places, is very good, congenial, encouraging and quite supportive of the needs of customers and so forth. I have come across certain fast food outlets in Trinidad and Tobago where there is a substantial measure of neglect. I think the customer clientele is so large and those outlets are so successful that they treat as secondary, the provision of certain basic amenities for customers. Who will look after this, the Ministry of Health or the Environmental Management Authority?

As my friend, the hon. Minister of the Environment is sitting right in front of me, I have no way of knowing this, but I imagine some of his technocrats are present in the Chamber. Mr. President, I merely wish to submit to the Minister,

action could be taken before this day is finished. Maybe he can call somebody and somebody will instruct another body and action could take place to remedy such a situation: to alleviate the unpleasantness that exists in certain places. It would be so bad for me to identify those places, so I would not attempt to do that.

Only recently—I could imagine that the Minister of Works and Transport was at his wits end to find out how the press learnt so much about—particularly, the electronic media—the terrible condition of a work station, vehicles and equipment in the Ministry of Works and Transport in an area in the East; how rickety and dilapidated those vehicles looked and the kind of smoke they were emitting from the exhaust, it was even affecting those who drove but something more was wrong with those vehicles. The electronic media made a good case for the complainants. They showed us some red cloth that they are using as seat belts to tie themselves when they drive. They also showed us chairs with no legs where they eat lunch.

I am sure if the Minister knew about this he would have it corrected—they say nothing like toilet facilities exist in the Ministry of Works and Transport compound in Arima.

2.05 p.m.

That being so, Mr. President, I touch on another point. Not too long ago, senior personnel and staff regarded the disposition of garbage in all other places other than those designated so to do as illegal dumping, and they call those places mini dumps and much was done to remedy the situation to get rid of those mini dumps. Trucks were hired, in addition to permanent staff to deal with these problems, but it does not seem that the machinery is in place to deal with this.

One just has to drive along several roads, get off the highways a little and you would see the worst kind of mini dumps one can ever see. One just has to attempt to pass not far from the cremation grounds in Caroni and if they close their eyes, or they cannot see, the smell would educate them as to what exists in the environment and I say that the Environmental Management Authority has much more work to do than to bring an amendment at this stage, but maybe the new Minister of the Environment will soon decide on this matter.

Mr. President, much is not done now in some of our large health institutions with respect to protecting staff, particularly low paid staff. There are certain kinds of dealings and garbage bins and other waste generated from the operating theatre and the maternity wards in the hospital. In the past, workers were given face masks, gloves and a certain kind of protective clothing to wear, but I personally

have received many of these complaints within recent times that the basic requirements are not there anymore and workers are now required to deal with these matters.

I suggest that the Ministry of Health and the Ministry of Local Government have much work to do in providing protective clothing and gear for sweepers, sanitation workers and other categories of staff who deal with disposal of waste. There are incinerators on the compound in the large hospitals and they have to move the stuff from the wards to the incinerator. They must drive through the corridors, move their stuff through the corridors, get on the lift, get to the ground floor and wheel it through to the incinerator which is at the back of the institution and one has to be sensitive enough to notice what is happening. You would want to know why a man has no protective mask and why he is bare-handed and not wearing tall boots but his own shoes, and does not have protective clothing like a coverall to deal with these matters. Somebody must investigate this instantly. We need to do this.

Sen. Mark: Mr. President, on a matter of clarification, I am wondering if the Senator could not indicate to us whether that was not the intention of the Occupational Safety and Health Act which his party voted against.

Sen. M. Jagmohan: Mr. President, I am not obliged to provide any answer, but I have not seen a Health and Safety Act, and I have not studied the matter and my distinguished and learned leader spoke on that Bill which is now history. What I know, Sir, is that the People's National Movement has been engaging in discussions on that matter with a view to taking certain action and that is on-going. My distinguished political leader, the hon. Mr. Patrick Manning is dealing with that matter actively at the moment.

There is another provision and this comes on the heels of my submission just a few minutes ago. All daily-paid workers in the city of Port of Spain, the city of San Fernando, the boroughs of Point Fortin, Arima and Chaguanas, the collective agreement for them and all other regional corporations has a certain provision that workers who are exposed to certain dangers, particularly sanitation workers, barbergreen workers and other workers—and many of the Ministers opposite have read these collective agreements and they know there is that provision—must have their annual check ups and it includes those who work in the dumping grounds. They must also have their chest X-rays done and the blood tests taken annually. Years now some people have not seen a doctor or been given a medical check up. That is a violation, Mr. President—

Mr. President: Senator, you really have not been addressing the Bill before us. You are perhaps speaking about matters that are contained in the original Bill and I expect that you would revert to the matter rather than be on the periphery of it.

Sen. M. Jagmohan: Sir, I am grateful for your guidance. I will take your advice into serious account. *[Laughter]*

Daily in Trinidad, people at all levels in all sections of the media make out a case with respect to the environment and I have no doubt, Mr. President, that the Government of the day whether they are weak or strong, or whether they have a clear mandate to govern is another matter. I am not dealing with that. I just make a peripheral note of that. I wish to state that we do not mind the Government bringing this amendment at this time, but we do mind the nature of the amendments and how it will impact. I merely wish to refer to some of the weak areas in the amendment and urge the Government in all sincerity that we should forget about Government and Opposition, Independent and politics for a few seconds and think about having a Bill so structured that the Minister will have control in a sense, so that the environment would be protected and cared for.

Thank you very much.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. President, I join this debate in order to give to this honourable Senate some of my views with respect to some of the legal issues which have been raised, especially in relation to the constitutional issues with respect to the Bill.

In order to do that, it would be important for us to go back to 1995 when the Act was passed for us to see what occurred. In 1995 the then government introduced this Bill which then became an Act and the concept was that this commission would be one comprising legal and non-legal persons and persons who have expertise in this field and for that tribunal to be a superior court of record.

Under the Act, it stated that those persons would be appointed by the President, so the Act was giving to the executive the power to appoint judges who would be exercising judicial power and would not be giving them terms and conditions in which there could be a guarantee as to a time-frame, or what is their period of service and as to their salaries and conditions being fixed by the Salaries Review Commission. That was a problem in the Bill and I do not want to go too

much into that period. Suffice it to say that this was pointed out to the then administration by the then Opposition, but the then government took the view that this could have been done.

As a matter of fact, I think I should say that the Law Commission pointed this out to the then administration and, in particular, to Dr. Shafeek Sultan Khan who was the advisor to the Ministry of Planning and Development at that time in February 1995.

There is a letter from the Chairman of the Law Commission which I have in my possession—

Sen. Daly: Read it.

Hon. R. L. Maharaj: I think I—all right.

"I refer to your fax request of February 3, 1995 requesting our comments on proposed amendments to the Environmental Management Bill, 1994. I also refer to my letter addressed to the Honourable Minister dated January 10, 1995 in which I intimated my concern about Part VIII of the Bill which seeks to establish an Environmental Commission and to vest it with the jurisdiction of the High Court. I also informed him that I had requested two officers of this department to examine the Bill in greater detail particularly Part VIII.

The following comments are offered.

Clause 81 seeks to establish the Environmental Commission, to prescribe its jurisdiction, and to invest it with the same power as the High Court to enforce its own orders and judgments and to punish contempts – powers already wielded by the High Court which is established by the Constitution (sec. 99). The jurisdiction of the Commission is set out in clause 81(5). An examination of the sub-clause indicates that the jurisdiction of the Commission is predominantly that of an appeal tribunal with certain first instance functions.

But, not without a great deal of significance is clause 81(3) which declares that the Commission shall be a superior court of record, as do sections 100 and 101 of the Constitution provide in respect of the High Court and the Court of Appeal respectively. Clause 82(2) seeks to prescribe the same qualifications of ten years' standing for the Chairman and Deputy Chairman as is required of a judge. Clause 83(3) also prescribes a condition similar to a condition which is attached to the terms and conditions of a judge's appointment.

Section 99 of the Constitution establishes the Supreme Court of Trinidad and Tobago to comprise the High Court and the Court of Appeal, both courts of superior record, while section 104(1) provides for the method of appointing the judges of both courts, except the Chief Justice."

2.20 p.m.

"While nothing prevents Parliament from establishing a new court as was indicated in my letter referred to above, nevertheless care must be taken to ensure that if such a court is to be of similar or equal jurisdiction of the High Court, the appointment of the persons to sit in the new court must conform with the requirements of Part I of Chapter 7 of the Constitution.

The question which arises and which presents some difficulty is whether any of the provisions of the Bill are ultra vires the Constitution. While the Legislature is within its competence to provide for the establishment of a superior court of record, it may not provide for the appointment of the judges of that court outside of the relevant provisions of the Constitution by an act of Parliament that has not received the prescribed majority."

Mr. President, then he quoted Lord Diplock in that famous case of *Hinds v The Queen.*

"Whether the jurisdiction vested in the Environmental Commission is wide enough to constitute so significant a part of the jurisdiction as to be characteristic of a Supreme Court so as to fall within the constitutional prohibition…is according to Lord Diplock 'a question of degree'.

While the legislation seems to drift towards the creation of a court of superior record, the body created has the characteristics of an inferior tribunal. In order to clarify a certain ambivalence concerning the constitutionality and status of the Commission, there are a number of options, which can be considered:-

(a) If, as a matter of policy it is preferred that the Commission be a superior court of record, clause 82 should be amended so as to ensure that the appointment of at least the legally qualified members conforms with that of members of a superior court viz appointment by the Judicial and Legal Service Commission;

In addition, the provisions relating to contempt…would need to be deleted as they would amount to trite law once the Commission is clearly a superior court of record.

It must be borne in mind that there could be no judicial review of a decision of the Commission if it were to be a superior court of record.

(b) Alternatively-

as the Commission is exercising judicial functions albeit in a severely circumscribed environment, it is arguable, that in substance it is an inferior tribunal which is a creation of statute and whose powers are prescribed."

He goes on again, Chairman Justice Guya Persaud.

Mr. President, I just saw this letter a few minutes ago. I was not aware of this letter. I just got it from the Minister of the Environment. The Government had to get this Act going and, therefore, without a special majority, without the support of the Opposition, we cannot get it going in the way it was envisaged. So what we decided to do—and even when the Bill came here, in spite of everything we still tried to get it going—was to look at the Bill and to see the parts in which the commission would be exercising power, and to be able as best as we can to put it within a framework in which it would be regarded as being constitutional.

That explains why, in the Bill, the legally qualified persons had to be appointed by the Judicial and Legal Service Commission and the term of office would be for three years. So there will be fixed security of tenure for three years, and the terms and conditions to be fixed by the Salaries Review Commission. That is why, in respect of all the sections in 82, in which the President—and what it means there is the Cabinet—can appoint, discipline, terminate *et cetera,* it has to be the Judicial and Legal Service Commission.

Mr. President, we could not get a superior court of record because we will have to delete that clause. In substance, it is not a superior court of record, in substance it would not have the power to punish for contempt. What we have decided to do, in looking at the Bill again, and in reading the case of *Hinds v The Queen,* that case of Hinds had to do with the Gun Court in Jamaica, in which the Jamaican Government decided to set up a gun court. One of the things that it tried to do was to give to magistrates the exercising powers which a Judge had and try to give to the Chief Justice the power of fixing the judges to do the particular cases.

It was held that law was unconstitutional because it was trying to give to a body powers which it did not have before, and powers which before the Constitution came into force, were exercised by the Supreme Court in substance.

So the power under this Bill is, strictly speaking, the environmental jurisdiction which is a new jurisdiction. In other words, if we take away this law, the High Court would not have the power to do what is mentioned in this Bill or in substance what is mentioned here. The authority would have the power to tell a company that you must take this step, and you must take that step and you must not do that and the commission would enforce that order. So that is not a jurisdiction which the High Court had before and, therefore, we cannot be accused of taking away a substantial jurisdiction from the High Court and giving it to the commission.

Mr. President, what we have also decided to do, in order to be doubly sure, is that we have decided to put an appeal from the commission to the Court of Appeal on both facts and law. So that if someone is dissatisfied—either the state or the individual—the Supreme Court of Judicature which consists of both the High Court and the Court of Appeal would intervene, and as long as the amount is of a certain amount, under the Constitution, a person would be entitled to appeal even from the Court of Appeal to the Judicial Committee of the Privy Council.

Mr. President, we had to do that because if we did not do that there could be challenges to the law. That is why we have had these amendments, in order to remove the President from having the jurisdiction to appoint these commissioners, to deal with the question of discipline and to deal with the question of termination. The President, in the circumstances of the 1995 Act, means the Cabinet, and that would mean that the Executive would be employing, in effect, officers to do judicial work which amounts to serious interference with the independence of the Judiciary which I do not want. As a matter of fact, I do not want to be too political this afternoon.

Mr. President, this shows that in 1995 that is what they wanted. Under this Bill, the then Cabinet would have had the power to appoint persons to do judicial work. So I take the point, I think Members here were quite justified in being concerned about these measures. It is not an easy matter to resolve. I want to confess to you that it has not been an easy matter, and it is probably still not an easy matter to resolve. It is a matter in which another government passed this law, in spite of the fact, they were told that they needed a special majority. It was pointed out in the Parliament and we took the position—I remember this debate very clearly—that this needed a different kind of majority. The Act has been there. We have been trying to implement it and we would not get the support of the Opposition to go along with what we want to do to fix the Bill.

Sen. Mohammed: You mentioned just now that you would not get the support of the Opposition. If it is that we indicate to you that we are indeed prepared to give the support in order to have the appropriate majority to enact the present amendment with the commission, in the original form as envisaged in 1995 Act, would you consider reverting to that original position?

2.30 p.m.

Hon. R. L. Maharaj: Mr. President, we do not have any problem with that but we were told here that even if we give the guarantee here, there could be no guarantee that the Opposition will support it in the House. Here it is we have a situation—I would like the Senator to get up and say that she could commit the Opposition Leader in the House to supporting the Bill. [*Desk thumping*]

So therefore, Mr. President, the attitude we have adopted is that it is better to get a quarter of a loaf than not get any at all. In the meantime, I am prepared to give the Senator one more week to come back and make the announcement. [*Desk thumping*] I will interrupt my submission and I will—[*Interruption*] No. If she cannot give the commitment to us here—[*Interruption*]

Sen. Mohammed: Thank you very much, hon. Attorney General. As we indicated during the course of the debate on these amendments and, indeed, outside of the Chamber, in terms of the requirement for that special majority to get this legislation right because at the end of the day we all want to see the Environmental Management Authority operating in the way it was envisaged, we want it to be a functional body with a commission that will operate as it was really envisaged at the time the Bill was passed and we want to give it support in terms of getting it right. I can speak for this Senate.

Hon. R. L. Maharaj: Mr. President, it will not take us long to redraft this Bill in the same form. We can have it done for next week and [*Desk thumping*] we will want the Senator to get up and give the undertaking that in both Houses the Opposition will support it, then we will go ahead with it. So, Mr. President, I would respectfully ask for the debate on this matter to be deferred to next week Tuesday.

Sen. Prof. Spence: Could I just ask as a matter of explanation of the Attorney General, would that apply to making sure that the original Bill was passed with a special majority so that the difficulty in the original Bill will also be corrected at the same time?

Hon. R. L. Maharaj: Yes. As a matter of fact, Mr. President, I want to make it quite clear, I will have the Chief Parliamentary Counsel's Department do the original Bill as a Bill because the House has the power to go through all the stages on one day, and the original Bill will be done on the basis of a specified majority. With the support of the Opposition we can take it the next day in the House of Representatives and get it passed also. [*Desk thumping*]

Sen. Mohammed: Can I also ask if you will take on board our other concern, which was the appointment of the managing director and the chief executive officer, because that was a very—[*Interruption*]—to leave it as it is in the original Bill, that the board appoint—[*Interruption*]

Hon. R. L. Maharaj: I am giving you the assurance we are leaving it as it is. We are bringing your Bill to the Parliament in order to have your support in Opposition.

Sen. Mohammed: It is our Bill.

Mr. President: Hon. Senators, do I have your consent that further consideration of the Bill be postponed to next week Tuesday, December 7, 1999?

Assent indicated.

Debate, by leave, deferred.

SEXUAL OFFENCES (AMDT.) (NO. 2) BILL

Order for second reading read.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. President, I beg to move,

That a Bill to amend the Sexual Offences Act, 1986 be now read a second time. [*Interruption*]

Mr. President, it seems as though the Opposition does not want me to deal with the Sexual Offences Bill. It may be that the Independents will have a different view on this matter, that we should deal with the Sexual Offences Bill. [*Laughter*] Mr. President, I am in a very accommodating mood this afternoon. It seems as though, having regard to the Environmental Bill and we being environmentally friendly, the Opposition would prefer me to deal with the Maintenance Orders (Facilities for Enforcement) Bill because I think that was what they came prepared to do first.

MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) BILL

Order for second reading read.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. President, I beg to move,

> That a Bill to consolidate and revise the law and to make new provisions to facilitate the enforcement of maintenance orders abroad, be now read a second time.

Mr. President, the Bill before us is an attempt to put in place machinery, and it can be considered international machinery, to enforce orders made for maintenance. The ease with which persons may now move from country to country has led to a serious worldwide problem whereby migrating fathers have left dependent wives, mothers and children to fend for themselves. The problem has, no doubt, been increased by the phenomenal growth in the means and availability of transportation and communication between states. There is now a demand for states to enact laws to provide for the international enforcement of maintenance orders so as to enable the economic needs of women and children with limited resources to be met by enforcing financial obligations against a husband or father who uses his absence from the family as an opportunity to evade his responsibilities towards them.

The need for a legislative scheme to address this situation first arose in 1920 when, against the background of the war, the United Kingdom found that many women and children, both in the mother country and in its colonies, were left destitute and saw the necessity to introduce legislation which would allow for the reciprocal enforcement of maintenance orders between the United Kingdom and other Commonwealth countries. The United Kingdom, therefore, developed a scheme which was designed to facilitate the enforcement of these orders and introduce legislation in the form of the Maintenance Orders Enforcement Act of 1920. From that time onwards the majority of judicial systems in the Commonwealth, including all the Caribbean countries, received and operated this Act.

Since then, many conventions and different legislative models on this subject have evolved and the vast majority of Commonwealth nations, including the United Kingdom, have improved on their laws. In Trinidad and Tobago, however, the basic 1920 legislative scheme remained and still remains in operation. That statute is the basis for the enforcement of orders in a world which has become globalized and in which we have had the reduction of travelling distances and the

improvement in communication but we have this 1920 Act which only applies to the Commonwealth.

Therefore, there will be a situation in which, for example, many husbands would have gone to the United States of America but we do not have a scheme to enforce maintenance orders. However, there is a scheme in Trinidad and Tobago to enforce maintenance orders for husbands who would go to Australia or New Zealand and very few Trinidadians go to those parts of the world. As the hon. Sen. Dr. Mc Kenzie would recall, when we were in New Zealand we scarcely saw any Trinidadians there. So there has been an urgent need for our law to be updated and revised in the light of these international developments.

Although the United Kingdom introduced legislation in 1920, it was not until 1956 that the United Nations addressed this subject and, arising out of its study, there emerged the United Nations Convention on the Recovery Abroad of Maintenance. The United Kingdom, Trinidad and Tobago, Barbados and 40 other states became signatories to this 1956 Convention. Mr. President, there was also in 1973 the Hague Convention which most of the European nations signed and the latest development is that there is a 1968 New Zealand model in relation to the enforcement of maintenance orders. So, all in all, there have been developments internationally but Trinidad and Tobago has lagged behind. These conventions, Mr. President, loudly proclaim the universal message, which is that the enforcement of maintenance orders must be effective in order to protect the rights of women and children.

This model promoted by the United Nations is a vast improvement on the United Kingdom scheme of 1920 as it provides for a more direct and simple machinery and allows a claimant to invoke the assistance of the state in enabling him or her to have his or her claims adjudicated upon in the jurisdiction in which the payor resides. In response to its obligations under the United Nations Convention, the United Kingdom in 1972 enacted new and improved legislation on this subject. Remember, we must take note that although the United Kingdom enacted new legislation, our 1920 legislation remained the same and in 1972 the United Kingdom Parliament would not have had the authority to legislate for the people of Trinidad and Tobago.

This 1972 Maintenance Orders Reciprocal Enforcement Act is still in force today and, in that country, it has been following a more improved procedure where other countries have followed; for example, Canada, New Zealand, Australia and several others. In the Caribbean, only Barbados has taken up the

steps to implement this new model Bill, the model on the basis of which we now have the present Bill before the Parliament. The Bill here, Mr. President, closely resembles both the United Kingdom and the Barbados legislation. The 1972 United Kingdom Act was designed as a model for the Commonwealth and is an expanded and improved version of the 1920 Act. It is wider in scope and gives effect to the United Nations Convention.

In 1978, at a working meeting for the Caribbean law ministers held in St. Kitts, it was agreed that all Caribbean countries should review the 1920 legislation and adopt the expanded and improved version enforced in the United Kingdom since 1972.

2.45 p.m.

No one would believe that since 1978—I have found it very difficult to understand some of these matters. I am not putting blame on anybody, but I cannot understand, on an important issue like this, that since 1978 a decision was taken, and most of the countries in Caricom, including Trinidad and Tobago, have not gone this route.

It is against this background that this Bill is before this House which is really in keeping with the international trend and obligations. May I say, Mr. President, that for the completion of the record, I got my Ministry to give us a little chronology of this Bill and from the chronology, it shows that in 1980, Caricom model legislation was prepared and circulated to law Ministers.

In February of 1992, the Law Commission prepared a draft bill for the consideration of the then Attorney General and the Minister of Legal Affairs, but the Bill was not proceeded with. Then, under the new administration, the Law Commission was requested to do a bill and the bill was updated in light of the experiences and trends in other countries and that is how we have this Bill here today.

The present statute is archaic and is limited in its effect in that it is applicable only in respect of maintenance orders made against any person residing in England or another Commonwealth country. To date, the provisions of the Trinidad and Tobago Act have only been extended to Guyana, Grenada, St. Vincent, St. Lucia, the Leeward Islands, Barbados, Jamaica, New South Wales, Bahamas, the Australian Commonwealth, Guernsey, Queensland, The Isle of Man, Western Australia, Victoria, Tasmania and, recently in 1998, the Province of New Brunswick. So these are the countries in which a reciprocal order can be enforced.

This is hopelessly out of date and these reciprocal arrangements have, no doubt, been entered into in a very haphazard way. It is obvious that the reciprocal orders have not followed the main movement of our people. Whilst there is full regional reciprocity, there is surprisingly little with other jurisdictions to which there has been substantial migration and, as I asked just now, the question can be asked: How many of the men from Trinidad and Tobago migrate, for example, to Queensland, Western Australia and Tasmania to avoid maintenance obligations?

In addition, the present legislation is very narrow in that there is no provision for the enforcement of lump sum payments; arrears are not recoverable and the Act is silent on the power of the court which is registering to vary, modify or discharge the order. So it is a very antiquated piece of legislation and it really is totally unsuitable to our times.

Moreover, the 1920s model deals, unsatisfactorily, with the problem of provisional orders and is inapplicable to non-Commonwealth countries. It is, therefore, now impossible to designate the United States of America or any other non-Commonwealth country as a reciprocating country. The present Bill addresses all these concerns and makes it possible for non-Commonwealth countries to be brought within a scheme of reciprocal enforcement.

The aim of this Bill is if husbands want to run, they can run but they cannot hide. What is going to happen is that just as, for example, in the area of intellectual property, or in the area of the enforcement of orders in respect of confiscation of assets, in respect of drugs or drug trafficking and money laundering, there is now this international legal framework to enforce these orders. You are going to have a similar kind of legal framework in respect of maintenance orders.

The proposed Bill means that in the enforcement of a maintenance order in a foreign jurisdiction, it recognizes that it has always been proven to be difficult because it calls, not only for the necessary administrative machinery and personnel, but also for the transmission of documents and for the collection of payments. The proposed law is intended to facilitate the enforcement of maintenance orders made by a court of law in Trinidad and Tobago as between parties living in different countries and, by the same token, offer enforcement facilities for maintenance orders made by the courts of other jurisdictions. In so doing, the proceedings must be split between two countries.

It is almost impossible, Mr. President, under the present legislation, and extremely expensive for the ordinary citizen who has been granted a maintenance order by our courts, to have that order enforced in another jurisdiction. This new

law has been devised in such a way so that the state can facilitate that exercise by putting in place the necessary machinery which would enable court personnel to enforce its order in other jurisdictions whilst, at the same time, offer enforcement facilities for maintenance orders made by courts of other jurisdictions.

What we are going to have is a government-to-government sort of arrangement which, in respect of orders made in another country, the Government would assist in the enforcement of that order and in respect of orders made here or there to be enforced in that country, the government there would assist in the enforcement of the orders.

It is to be noted that a recent trend within the Commonwealth has been for the requirement of reciprocity to be dispensed with in respect of orders coming from Commonwealth countries. In 1963, in New Zealand and Western Samoa, there was legislation in the form of a Destitute Persons (Amdt.) Act to allow for this, but it is the feeling now that reciprocity should not dominate the extension of schemes as it severely restricts its operations and creates obstacles for citizens wishing to have their orders registered in other jurisdictions.

The problem of not having reciprocity, however, is that if you do not have reciprocity, you may not get the co-operation of the state in order to enforce the orders. There are instances, I am told, where a person may have obtained a maintenance order, but the person's pay resides in another country which is not a designated reciprocating state, or is not a Commonwealth country. In such a situation, no steps can be taken to have that order enforced.

In 1980, as I said at a meeting of the Commonwealth Law Ministers held in Barbados, it was suggested that there should be new legislation in the region.

Mr. President, if I can just go through the Bill before us, in Part I, which is the Preliminary, it has the definitions, but I think it is very important for us to see the definition of "court" on page 2:

> "'court' includes any tribunal or person having power to make, register, confirm, enforce, vary or revoke a maintenance order;"

So, it means any tribunal which may have that order. It goes on:

> "'maintenance order' or 'order' means an order (whether final or provisional)…"

which, therefore, is a wider meaning than we have in the old Act—

"…for the payment of a lump sum or the periodical payment of money towards the maintenance of any person being a person whom the person liable to make payments under the order is, according to the law applied in the place where the order was made, liable to maintain;

'proper officer' means in the case of the High Court, the Registrar of the Supreme Court and in the case of the Magistrate's Court, the Clerk of the Peace…"

This definition becomes very important when we go into the Bill because we can see how the court can get involved in the matter. Then there is:

"'provisional order' means—

(a) an order made by a court in Trinidad and Tobago which has no effect unless or until confirmed by a court in a reciprocating state; or

(b) an order made by a court in a reciprocating state which has no effect unless and until confirmed by a court in Trinidad and Tobago, having power under this Act to confirm it;

'reciprocating state' means any state designated a reciprocating state under section 29;"

and we would see that is where the President would be able to designate the state, the registering court and the registered order. On page 4:

"'responsible authority' in relation to a reciprocating state, means any person who in that state has functions similar to those of the Attorney General under this Act.

(2) Where a reference is to assets located in or to a person proceeding to or residing within the jurisdiction of a court, such reference shall be construed in relation to a court of summary jurisdiction as a reference to the Magisterial district in which the court sits."

So, it will cover orders, whether made by the High Court, or orders made by the Magistrates' Court or a lower court.

In Part II of the Bill, it makes it quite clear that the section applies to any maintenance order not being a provisional order, made either before or after the commencement of this Bill by a court in Trinidad and Tobago. This legal framework would even enforce orders made before the Bill has come into operation. Clause 4(2) states:

"Where he is satisfied that the payer under a maintenance order is proceeding to, residing in or has assets in a reciprocating state, the proper officer of the court in which the maintenance order was made, may of his own motion or on the application, in the prescribed form, of the payee under the order, forward to the Attorney General for transmission to the responsible authority in the reciprocating state—

(a) a request, in the prescribed form…

(b) a certified copy of the order;

(c) a statement relating to the whereabouts of the payer or his assets; and

(d) all other related documents.

(3) The Attorney General shall transmit the request for registration to the responsible authority in the reciprocating state if he is satisfied that the statement relating to the whereabouts of the payer gives sufficient information to justify transmission of the request.

(4) Subject to section 8, nothing in the section shall affect the jurisdiction of a court in Trinidad and Tobago to enforce, vary or revoke an order to which this section applies."

So that gives an idea that what happens is that the court would be able to make an order; it is transmitted to the Executive; in this case, transmitted to the Attorney General for transmission to the responsible authority in the reciprocating state. When it gets there, it is registered and enforced.

In clause 5, it says:

"(1) Where an application is made to a court in Trinidad and Tobago for a maintenance order against any person who is proved to be proceeding to, residing in or have assets in a reciprocating state and the application is one in which the court would have jurisdiction to make a maintenance order if that person were resident in Trinidad and Tobago and a summons to appear before the court to answer the application had been duly served upon him, the court shall have jurisdiction to hear the application and may make an order, but any order so made shall be provisional, only.

(2) A provisional order made under this section shall have no effect unless and until confirmed by a competent court in the reciprocating state and shall upon confirmation be treated for all purposes as if the court in

Trinidad and Tobago which made the order had made it in the form in which it was confirmed."

So that the order, after it is confirmed, would be an order which can be enforced in that particular country. It would have all the effects of an order, either a confirmed order in Trinidad and Tobago or a confirmed order in the other country, and would be able to be enforced.

"(3) Where a court in Trinidad and Tobago makes a provisional order under this section, the proper officer of the court shall send to the Attorney General for transmission to the responsible authority in the reciprocating state—

(a) a request for confirmation…"

et cetera, and the same process.

"Subject to section 8, an order which has been made under this section and which has been confirmed, may be enforced, varied or revoked accordingly by a court in Trinidad and Tobago."

That is subclause (4).

Under clause 6, which deals with further proceedings in respect of provisional orders made in Trinidad and Tobago and that deals with the question where a provisional order has been made under clause 5 and it is confirmed, the court in Trinidad and Tobago which made the order, shall consider that evidence. Subclause (2) states:

"Where it appears to the court in Trinidad and Tobago, having considered the evidence, that the provisional order ought not to have been made, it shall give to the person on whose application the order was made an opportunity to consider the evidence, to make representations with respect to it and to adduce further evidence and, after considering all of the evidence and any representations made by that person, it may revoke the provisional order and may make a fresh provisional order."

3.00 p.m.

At clause 7, Mr. President, the provisional orders would cease to have effect upon remarriage. I think that would follow.

Part III of the Bill, Variation and Revocation of Orders made in Trinidad and Tobago and Registered or Confirmed Abroad, says:

"(1) Where—

(a) a maintenance order has been made by a court in Trinidad and Tobago and has been transmitted to a reciprocating state for registration and enforcement; or

(b) a provision order made in Trinidad and Tobago has been confirmed by a court in a reciprocating state,

a court in Trinidad and Tobago may, by a provisional order, vary or revoke that order.

(2) Where the court in Trinidad and Tobago proposes to vary an order by increasing the rate of payments under the order, then, unless…"

It shall be provisional only, and clause 3 says;

" (3) Where a court in Trinidad and Tobago makes a provisional order under this section, the proper officer of the court shall send, to the Attorney General for transmission to the responsible authority in the reciprocating state where the order was registered or confirmed—"

Clause 9 deals with variation and revocation of orders made in Trinidad and Tobago by a court in a reciprocating state.

Clause 10 deals with the effect of variation or revocation. It says:

"Where a court in Trinidad and Tobago or a court in a reciprocating state varies an order, whether or not such order is a provisional order that has been confirmed, the order shall, as from the date on which the order was made, have effect as varied, and where the order was a provisional order, as if the order had been made in the form in which it was confirmed."

The important aspect, Mr. President, to notice is that the individual is not alone in this process in that it would need the support of state machinery on both sides to make this thing work. But, since there is an obligation on states to ensure that orders made for maintenance are honoured, because it has very great effects on the whole social development in a country, states are obliged to have this facility.

Mr. President, Part IV of the Act deals with registration and confirmation in Trinidad and Tobago of orders made abroad. What that section does is apply to a maintenance order made against a person by a court in a reciprocating state before the commencement of the Act and includes a provisional order. The Act provides

for setting aside of the registration of orders, confirmation by Trinidad and Tobago of the provisional orders which are made.

Clause 14 deals with the enforcement of orders registered in Trinidad and Tobago. It says:

> "(1) An order registered in a court in Trinidad and Tobago shall be enforced in Trinidad and Tobago as if it had been made by the court in which it is registered and as if that court had jurisdiction to make it, and proceedings for or with respect to the enforcement of any such order may be taken accordingly."

So, let us say that one has a wife in the United States of America and the order was made by a court in America and was then confirmed in Trinidad and Tobago, as long as that is registered, that American order would have the same effect as if it was made by a court in Trinidad and Tobago, as if the whole case was decided by the court in Trinidad and Tobago.

Under the present set up, as we all know, the person can go to court in America, have a case, get a judgment, and if the husband slips away and comes to Trinidad and Tobago, the person then has to get the order served. If it is served, there is no way in which the person can enforce it, because one might have to do the whole case over again and the wife would probably have to come to Trinidad and Tobago to give evidence. It is a way in which it is providing justice to wives and children, in particular.

Sen. Prof. Spence: Mr. President, since the hon. Attorney General mentioned the United States, could he say whether that would be one of the reciprocating countries? Have they signed the convention and will they have the relevant legislation?

Hon. R. L. Maharaj: I assume that the United States will be one of the countries as far as Trinidad and Tobago is concerned. I do not know whether they have signed the convention, but even if they have not signed the convention, it is not a reason why they cannot be a reciprocating state. As we know, there are many countries that have not signed some of the drug conventions but they can still enter a bilateral arrangement.

It would seem to me that since the United States and Trinidad and Tobago have this close relationship and, as a matter of fact, are trading partners and partners in investment, and since a lot of our people live in the United States, that is one of the countries we will have as part of the arrangement.

Sen. Prof. Spence: So you will pursue that?

Hon. R. L. Maharaj: Yes.

Sen. Dr. Mc Kenzie: May I ask the Attorney General whether this service will be a free public service to the applicant?

Hon. R. L. Maharaj: It would appear that the state would have to provide that service in that it would be the responsibility of the state that when it gets the document to send to the court, the court will have to register it. So, it will really be a process in which, even if the person is not represented, that order will be there. Under our law, in matters relating to children, in any event the state can always be called in, even to act in any capacity to assist the court. In respect of that matter, I should say that one would think that even if for some reason there is to be any hearing in a court, the Legal Aid and Advice Act could provide legal aid for those purposes. I take the point that even if it meant an amendment to the Legal Aid and Advice Act, we will have to amend it to cover this kind of case.

The United States of America, if I may say again in answer to Sen. Prof. Spence, would be a country that Trinidad and Tobago would have to have discussions with so that we can be reciprocating countries in respect of that.

Part V of the Bill deals with variation and revocation of orders made abroad and confirmed in Trinidad and Tobago, and Part VI deals with the cancellation of registration and transfers of orders made abroad and registered in Trinidad and Tobago.

Mr. President, one of the things that I have never been able to find an answer for in this matter is, what happens if a country which has many Trinidadians and Tobagonians does not want to be a reciprocating state? It would seem to me that in that kind of situation, we would be at a disadvantage, because the whole concept is based on some form of reciprocity. It may be that one of the things that this Bill can do, is that if there is such a situation, then the Government will have to decide that it will have to provide some relief for people in those countries if the country does not want to be a reciprocating state.

I am told that if one has the legal framework, it is easy at times to get agreement and, at the present time, we do not have that legal framework. I say this because I recognize that there is a grey area which is that where there is a country which does not want to reciprocate, one can still have the injustice being done.

Mr. President, I beg to move. *[Desk thumping]*

Question proposed.

Sen. Nafeesa Mohammed: Mr. President, we on this side, being the responsible Opposition party that we are, are always prepared to support legislation that will redound to the benefit of all the citizens of Trinidad and Tobago, as long as it comes in the proper form and there are no stings in the tail. Happily, this particular Bill before us seems to pose no major threat to the concerns we have been expressing time and time again whenever the hon. Attorney General brings his many bills to Parliament.

I think that in the opening remarks of the hon. Attorney General, by his own admission, he has, in fact, identified some of the problems that are associated with legislation of his type. Before I get into those details, I think that at the beginning of his presentation he gave us a little background information to this legislation and, indeed, the Act that we have on our statute books is a 1921 Act: the Maintenance Order Enforcement Act of 1921.

In fact, Mr. President, just for the record, if I may just read a very brief extract of the *Hansard* report from that time when that Act was being enacted. The date is March 4, 1921, and the then Attorney General, in presenting that Bill said:

> "The origin of this Bill was a resolution of the Imperial Conference of 1911, the object of which was to secure justice and protection for wives who are deserted by their husbands."

It goes on:

> "The outcome of that resolution was the passing of the Imperial Act of 1920 which provides for the enforcement of orders in England and Ireland of maintenance orders made in the colonies."

At that time, with our island being part of the empire, similar legislation was, in fact, enacted in Trinidad and Tobago and, indeed, when we look at the 1921 Act, we would see that in the Schedule of that Act, it actually stipulates the countries; those parts of the empire that would have been party to this kind of legislation involving the enforcement of maintenance orders.

As the hon. Attorney General correctly pointed out, this kind of legislation is assuming greater significance nowadays because of the fact that we now have greater mobility throughout the world. We know for a fact that over the years, people have been travelling from country to country. Many of our own citizens have migrated. Indeed, it is a pity, because we should have had some statistics relating to the number of Trinidadians who now reside, be it in the United States of America or in Canada. It would have been very useful to shed some light in terms of the seriousness of the issues that are involved.

When a party to a marriage, a spouse or a partner, migrates and abandons his family, there are very real problems that arise for that family to sustain itself in terms of a mother who may be unemployed and children to provide for. It does indeed create real difficulties and hardships. When it comes to legislation to provide for maintenance of families, we on this side have no difficulty in supporting improvements in the law as it relates to these issues and, as was pointed out, given the age of the 1921 Act that currently exists on our statute books, this is an attempt to modernize the law.

3.15 p.m.

Mr. President, we have to ask some very important questions as we seek to replace the old Act and introduce this new machinery that is set out in the Bill before us today. If we look at the Explanatory Note to this Bill, it says here that:

> "This Bill has been drafted in response to the demand by Commonwealth Law Ministers for the international enforcement of maintenance obligations.
>
> To achieve this objective, the Bill seeks to repeal 1920 legislation on the subject, namely the Maintenance Orders (Enforcement) Act, Chap. 45:53 and to make fresh provision for the enforcement (both locally and abroad) of maintenance orders and provisional orders by nationals and nationals of other states.
>
> The Bill is modeled after CARICOM model legislation and similar legislation in the United Kingdom and is divided into seven parts."

Now, Mr. President, we have heard that in the United Kingdom, I think it was in 1972, that they did, in fact, amend their legislation. I think it is called the Maintenance Orders Reciprocal Enforcement Act of 1972. It seems that, to a large extent, the Bill that is before us, is, in fact, based on that 1972 English legislation.

Mr. President, I have in my possession a copy of the 1980 Meeting of Commonwealth Law Ministers, the model legislation that was recommended at that time. I started to make a comparison of the provisions of the Bill before us today and the actual model legislation that the Attorney General spoke about. Mr. President, the problem that exists with this kind of machinery and, indeed, the whole question of the enforcement of maintenance orders, are problems that, over the years in our own jurisdiction, many of us can relate to in terms of the hardships that are encountered, first of all, in obtaining a maintenance order and, apart from obtaining the order, actually enforcing the order. We have some real

practical difficulties that we need to grapple with. One would have thought that in updating our laws, we would have looked at some more ways and means that could have made our system, as it exists today, more effective and more efficient in terms of the ability to obtain orders and indeed, enforce them.

Mr. President, if we just look at the situation as it exists in the Magistrates' Court, for example. Because maintenance nowadays is not confined to women alone, it is a family situation one is dealing with, and depending on who is working or who is unemployed, a party to a marriage or relationship is entitled to apply for maintenance. There are several factors that would guide a court in determining how much maintenance should be paid to the applicant. In making these very simple applications alone in the Magistrates' Court, any person in this country who qualifies for maintenance can go to a Magistrates' Court and have a summons issued with respect to that particular application for maintenance.

Now, when the matter comes up in court, we know the hardships that are involved, because a matter may be called once or twice, sometimes it may be called 20 or 30 times. Sometimes you need an order that a probation officer would look into the circumstances to determine the situation as it exists but, to get a probation officer's report, because of the shortage of probation officers that exists at present, that in itself is a major problem. By the time you get the report, a number of adjournments could be involved.

Eventually, when you get to the stage where you are actually ventilating your case before the magistrate, it entails having to adduce evidence as to the income of the parties, the needs of the parties, how long the parties have been involved, the age of the parties and any of the factors that are set out in the legislation involving maintenance applications. So, by the time you reach the stage of actually getting an award or order for maintenance in the court—and I am talking just about the Magistrates' Court—then you have a another hurdle to overcome.

You have the order, and then the next step is to actually enforce the order. If a person does not comply with the order, there is a whole set of new procedures again that have to be gone through in order to have that enforcement aspect.

In order to pursue an application with some means in the High Court, invariably, you would have to have an attorney to represent you. That is why the question that was asked by Sen. Dr. Mc Kenzie during the presentation of this Bill is a very, very pertinent question. Who is going to foot the bill for this machinery? The hon. Attorney General indicated that the state would do so. Now, I can see

the state being involved in certain respects in terms of when you get the orders transmitted, having to transmit it to the Registrar, but when it comes to actually knowing what the procedures are and what the machinery is, invariably you have to have a lawyer to advise you on this. The Attorney General said that if it is necessary the Legal Aid Act could be amended to provide for legal aid in these kinds of applications; we would welcome that.

A couple months ago a new Legal Aid Act was debated in this Chamber and passed and I am very curious to know to what extent that legislation is being enforced; and to what extent people are in a better position to access legal aid and to what extent is the system really functioning? Because that is what it boils down to. To get legal aid in the first place, we know there are problems, it takes time.

It is all well and good to come here and give the impression that this is such good legislation and it will do so much, but when you look at the practical realities associated with these types of applications, you would see that it is not going to be a bed of roses and this is not going to make any major dent on the situation as it exists now in terms of the hardships that people experience in obtaining maintenance from their spouse or partner. I am talking about day-to-day realities involving thousands of citizens of Trinidad and Tobago. There are very mundane problems that are associated with the process. We would have liked to see some decisive measures being put in place so you would have the confidence that at the end of the day the machinery they are talking about is machinery that would work.

You see, Mr. President, I raise this in the context of for example, an Act that was passed some years ago, the Attachment of Earnings Act. I am not too sure about the year of that Act, but that is a piece of legislation that would permit the enforcement of orders for financial relief in matrimonial matters. Even that procedure, if you were to ask any practitioner involved in family law matters, they would tell you about the hardships and difficulties that are experienced in applying for an attachment of earnings order. It is a very cumbersome procedure. It is not working as it was envisaged in the first place.

In fact, my information is that, in order to have a person’s earnings attached by virtue of a court order in terms of financial relief for the party to marriage, that application under the Attachment of Earnings Act actually goes to a judge who requires your client to come into the chambers to sign some documents and thereafter, notification is sent to the employer of the defendant in the proceedings from whom you are seeking the financial relief, and that, in itself is a system that

does not always work. Because invariably, you would require the employer to come to the courts to give evidence about the quantum of the salary or earnings of the individual. How many employers are taking the time off to come and co-operate with the authorities and give this kind of evidence? In fact, I am informed that people who are self-employed and people with private businesses in particular, get away. That is a gaping loophole that exists in the system. So you have real hurdles and problems even in pursuing your orders through that mechanism.

You know, Mr. President, a suggestion that we would like to make is perhaps, the Government, through the hon. Attorney General can consider the establishment of some agency. I think in a place like Canada, for example, they have a special bureau that is set up whereby in matters of this type, an order that has been made by a court locally or an order that is received from abroad, from a foreign court, if it comes through the Attorney General or whomsoever the designated person is, then perhaps you can have that order sent to the bureau and let the bureau take charge of the investigations and the enforcement of that particular order. It will entail having to equip that kind of agency with the appropriate machinery to carry out its functions, but in that way, you know there will be a one-stop shop where these things will, in fact, be processed.

When we look at the Bill before us here, we would see that although it talks about machinery, it is very vague. It says at the back, I think clause 32, that:

> "The Rules Committee established by the Supreme Court…may, subject to negative resolution of Parliament, make rules of court prescribing—
>
> (a) any matter of procedure…"

And what have you.

As it stands now, our rules of the Supreme Court, I think in one of our orders there are provisions for the enforcement of judgments from abroad. The thing is that, in this particular case, this new mechanism would entail having to have new rules in place and it really does not give you that confidence that this mechanism would, in fact, go in any significant way in terms of having actual enforcement of orders, whether they are made locally or abroad. Because the realities are, as it stands today, that we have so many real problems with respect to the enforcement of our own orders that are made here, far less to have to be able to send an order abroad or to receive an order from abroad to have it work here. I think it was Prof. Spence who raised the question of whether the United States is a signatory to the convention. I, myself, in looking at the legislation, wondered to what extent this

legislation would have been applicable, and if it would have been applicable only in Commonwealth countries or whether it is for all countries in the world. As the Attorney General pointed out, based on the United Nations Convention, it would be the signatories to that particular convention, moreso, that would arise.

Mr. President, even in that kind of scenario you are dealing with countries with very different legal systems and you really have to wonder about the system or the mechanisms that will be put in place. If you get an order from France or from Holland: What is going to happen? You are dealing with foreign languages, unless the Attorney General—*[Interruption]* I think there is a provision for an order in a foreign language. Very well. So there is some provision there. But in any event, the question of how you get the order and then, how the order is transmitted and how you are able to go and actually access the money or to have that order enforced is a bit worrisome.

I know in England there is something called a shuttlecock procedure that is employed and it would seem that this Bill embraces that English procedure, whereby a person would not have to go to another part of the country or in another jurisdiction to give evidence in the matter, because these things will require evidence to be taken and evidence to be used in order to determine the situation with the order.

3.30 p.m.

We are very concerned about the practical implementation of this kind of legislation. We are also very concerned about the fact that as things stand in our country, even with the existing legislation that we have, there are some major problems that are being encountered in our day-to-day practice; in our court system; in our legal system especially when it comes to family law matters. There are some real hurdles that we need to tackle and, particularly, when it comes to the enforcement of orders, we know it is almost a nightmare for litigants, who, after going through the lengthy processes at the courts—I merely outlined the processes in the Magistrates' Court but in the High Court it is far worse. Here, you are dealing with higher costs and the procedures are even more stringent than what prevails in the Magistrates' Court.

So there are very real difficulties that are envisaged and, at the end of the day, we would be prepared to support the updating of the 1920 Act and the legislation, but, certainly, we are of the view that this is just yet another one of the Attorney General's public relations gimmicks in terms of bringing more bills to the Parliament and giving the impression that they are doing so much when, in truth

and in fact, this Bill would make no real impact on the real problems involved with maintenance applications and the enforcement of maintenance orders.

Mr. President, I thank you.

Sen. Diana Mahabir-Wyatt: Mr. President, I commend the Attorney General for bringing this Bill before us. It is, again, part of the social legislation which we needed for a long time and are finally getting. I share his astonishment that with all the United Nations Conventions dealing with social issues that have been ratified by countries in the Commonwealth Caribbean and the Commonwealth, generally, they have not gone ahead and done anything to implement them. It is absolutely appalling, and it is gratifying to see that, finally, Trinidad and Tobago is getting around to passing legislation to implement some of the important aspects of international social conventions that we have ratified.

In respect of this one, I have a couple of questions. I endorse everything that Sen. Mohammed has said about the attachment of earnings in relation to Trinidad and Tobago. The Act she was referring to was passed in 1988 and in this honourable Senate we had an amendment in 1995 which means that those who parent children—I am trying not to be gender specific—and cease to maintain them, can have their earnings garnisheed at source. In other words, the parent who has to look after the children can have the non-maintaining parent's income garnisheed at source. In other words, one can go to the employer and ask the employer to garnishee. But the number of parents who claimed that they have no jobs; who set themselves up as being self-employed or, work for someone who is quite willing to go along with the scam and say, "no, they are not employed" or, place their property in the name of other people in their family so that they can avoid maintenance and claim to be indigent, it is really shocking.

I wish there was some way that the Attorney General could think of to take care of this problem, because it is a serious one. Sometimes God takes care of it and the person in whose name they put their property in order to get away from maintaining their own children, absconds with the property and does not allow them to have access to it. There is a kind of poetic, dramatic justice to that. I think God is a dramatist, but it does not happen often enough. What really happens is that there are many, many children who are not being maintained by one or other of their parents in spite of the fact that we have an Attachment of Earnings Maintenance Order.

When it comes to this one that we have before us today which is really in relation to international obligations, Sen. Mohammed has pointed out some very real problems, one of those being the United States of America, which I do not think has ratified that particular convention. And while the Attorney General has pointed it out that does not stop the reciprocal arrangement from going on with certain states in certain areas, it certainly makes it much more difficult.

There is, however, something that I am hoping the Attorney General can help me with. The recognition of our social responsibilities has changed somewhat. There was a time—perhaps when a number of us here were young—when the maintenance of taking care of dependants; whether they were elderly people; whether they were children; whether they were family; was a matter of moral and ethical responsibility.

We have gone through a period recently in our history when people have abrogated those responsibilities, and it has been a very short period. It has been about 30 years since people have been going away and leaving their children—except for the period when people went off to Panama to work on the Canal. After that period was over, it has been only in the last 30 years we have had a substantive social movement of people leaving this country and leaving behind their children and their family obligations. This can often include dependant parents and siblings, particularly those who are handicapped in one way or another.

In this particular Bill, in the definition of "maintenance order"—I hope the Attorney General, in his winding up, can help me with this—it just speaks of "an order for the payment of a lump sum or the periodical payment of money towards the maintenance of any person, being a person whom a person liable to make payments under the order is, according to the law" and so forth, liable to maintain. My understanding of the law—and I did sit for a long time looking at Chap. 45, I believe it was, and the several laws that preceded it—is that the maintenance order can be made, not just in relation to a spouse but also in relation to the maintenance of the children. It seems to me that in all its wisdom, Caricom, Barbados and whoever else this law has been based on, have forgotten this.

If I could refer you, for example, to clause 7:

> "Where a court has made a provisional order under section 5 consisting of or including a provision for periodical payments by a party."

This is the one where the person receiving the maintenance gets remarried, and the order ceases. But if the maintenance order was in respect of the children of the

marriage, why should the payments cease? Maintenance orders, under this Bill, are not limited to maintenance of the spouse. Very often those maintenance orders are for the spouse and children. Even if a woman is remarried—you will know this although it is not said, it just says "spouse"—it could be that the man remarries and it could be that the woman—which is happening more and more these days—is the maintaining party and the order should be made against the female spouse for maintenance in certain conditions. If the male spouse remarries does that mean that the female spouse no longer has the obligation to send him maintenance payments? Under this, yes it does. However, if one spouse—and I am not being gender specific here—is looking after the children, and the other spouse is sending through a maintenance order for those dependant children, why should those payments cease when the recipient spouse gets remarried? I do not care what gender you are or what is your marital status, you should have a responsibility to maintain your children. This seems to indicate to me that remarriage means that—*[Interruption]*

Sen. Dr. Mc Kenzie: Mr. President, I just wanted to clarify whether I am understanding it differently, that in case of a spouse and a child there are two orders, and if one spouse remarries then that order ceases, but the order for the children should continue. I am not interpreting it to mean that there is one order for both spouse and children. Probably the Attorney General could clear that up, again, in his winding up.

3.40 p.m.

Sen. D. Mahabir-Wyatt: Thank you, Sen. Dr. Mc Kenzie. This is what I am asking, because it does not specify, and there are occasions where you get a maintenance order in respect of the family: the spouse, the children and it could be, in some instances, a dependant parent that the spouse is taking care of. This does not cover it. I am not even thinking just about children although, primarily, I am thinking about children, but there can be maintenance orders also for, for example, a retarded sister or brother, or elderly parents that need to be maintained. This is why I am referring to the philosophy, the concept of maintenance, which has changed since 1920.

Whereas now all over the word, particularly in the Commonwealth, starting from the United Kingdom, the social responsibilities of people towards members of their families have moved from saying, "let the government take care of them in institutions", to saying "this must go back into the family. You must be responsible for your elderly parents, or sisters and brothers." They are trying to

put back the responsibility for our family members on adult citizens. Very often adult citizens try to get away from this responsibility by saying, "I cannot take it any more, I am leaving, I am going to live in Brooklyn or Tanzania or wherever," where they also pick up another family and forget about the ones they have left behind.

Although clause 7 does say:

> "…the provision whereof in so far as it relates to the party in whose favour it was made shall cease to have effect on the remarriage of that party…"

I want to make sure that this is not going to extend to the children or the elderly parents of those adults.

Also, if I could refer the Attorney General to clause 9, "Variation and revocation of orders". This is a slightly different point, but it brings in the same concept. In subsection (2) where it talks about varying provisional orders it says:

> "For the purpose of determining whether a provisional order may be confirmed under this section, the court shall proceed as if an application for the variation or revocation of the order had been made to it."

I am wondering whether it could not be recommended that we should put in words to the effect—Mr. Attorney General I am referring to clause 9(2) where the court has to proceed as though the application is an original application, which you referred to in your opening remarks, but I think that we should ask the court to take into account the needs of the dependant minors and/or other members of the family—"dependent upon the party upon which the order was made".

In Part IV I had a comment in relation to clause 11(4), and this was really just a request, that if there was any way that something could be built in to prevent the spouse, against whom the order is attempting to be made, from evading the responsibilities by registering their assets under another name or person. I do not know if this is possible. I assume that, in some way, that kind of fraudulent evasion may probably be able to be taken up under fraud, but it is something I would like to see, if not in this Bill certainly when other social legislation comes up.

I had another question, just a couple more points that I wanted to bring up. In clause 22(1), I wonder if the Attorney General could explain, as I am sure he could, because simply, in my lay reading of this Bill, I am not quite sure what in the context this clause means. I can understand it in a large country like the United Kingdom, from which I think this legislation may have come, but it says:

> "Where the proper officer of a registering court is of the opinion that the payer under a registered order is residing or has assets within the jurisdiction of another court in Trinidad and Tobago…"

What does this mean in a Trinidad and Tobago context? I can understand it in the Canadian context where you are moving from one province to another. I do not think that in our country Tobago has separate courts, or that the Tobago courts are of a different jurisdiction. I am not sure, perhaps I am misinterpreting this, but I am wondering what this means in a non-federal state, in a unitary state where all the courts come under the jurisdiction of—well, I am assuming that it is the Attorney General and his Ministry.

There is one very small comment which I wish to bring to the drafters' attention and that is there is no Part VII. There is a Part VI and Part VIII and we skipped from Part VI to Part VIII. I was really hoping that we would put in a Part VII there to deal with the absconding parties who register all their assets in somebody else's name so that they can avoid having to pay any kind of maintenance at all. I am realistic enough to realize that I am not going to get everything that I ask for. [*Crosstalk*] There is no Part VII, it has vanished. There is a Part VI and Part VIII. Hopefully that would take care of absconding non-maintenance—people who do not maintain.

If we are going to consider a Part VII, Mr. Attorney—I do not want to push my luck here—but I would request that we do consider the question of maintenance of children and other dependant members of the family who, over a period of time, have been dependent on the person against whom the order is being made. I think that we have recognized this question of dependency in the question of the Domestic Violence Act. We have recognized it in drafts of other legislation and I think the Minister of Culture and Gender Affairs could, perhaps, back me up out of her experience in social work that the concept and philosophy of dealing with social obligations is very much in the hands of the family and we have to recognize our family obligations.

I am sorry that we cannot leave it up to our moral values or ethics, as we could have done in the past, and we have to legislate for this but I think it is important that if this is the correct place where we should legislate then we should put that in.

Thank you, Mr. President.

Sen. Dr. Eastlyn Mc Kenzie: Thank you, Mr. President, I want to be very brief. Let me begin by congratulating the hon. Attorney General for bringing this

Bill to the Parliament. What a pity that we cannot have a Bill to legislate for social and psychological maintenance, and it is only in this area.

I would like to ask the Attorney General whether we have any records or statistics to show from using the 1920/1921 legislation, whether we ever had a request for this type of activity in this country, and whether we also have requested that in the Commonwealth countries which the 1920 Act covers? I would like to know this.

I think that we need to look at the Bill from both sides of the fence, because we tend to think of our requests here to another country and not looking at probably people from St. Vincent and those smaller islands where spouses crowd to Trinidad and Tobago and leave those dependants in those smaller islands. I think we need to look at that. This brings me to the point: what happens in the case where we have an order—I am looking at it that we are receiving orders from St. Vincent, Grenada and so forth, spouses have left and come to live here and have left children behind—we probably do not have an address, we just have a name or a fictitious address? What is our tracking down record? Do we try to track down such people?

Do we say, "Let us go to the National Insurance Board to see whether we have a person by that name who is registered anywhere, working anywhere". Could we say okay, we have not found the person, could we put something in the daily newspapers to ask, "Anybody knowing the whereabouts of this person?" What can we do? Do we really make an effort or do we put our hands down and say, "person cannot be found, end of story." We can look at this.

Mr. President, I think that we have taken care of the delays in the court by the arrears clause that is in the Bill and I think that this is very good, that even though the courts might be long in determining the case, the arrears clause could take care of that to say, "this was here since January and although we are settling it in June you must pay from January."

A problem that I have is, when I look at the records of the courts in receiving and paying out maintenance money in our local courts, I am disturbed. We find that spouses, mostly fathers, would go in and pay the maintenance for their children, the money is paid, I do not know what the process is, whether the money is deposited into some fund and the mother goes for the money and they say that we do not have any money, come back; and it takes a long time.

It is as if you are being punished, although the father has paid in the money for that child or those children. You really catch trouble to get the money.

[*Laughter*] I did not want to say what you really catch, Sir. [*Laughter*] I am saying that the Bill could punish the people who are to receive the money even more than trying to get the money. I think we need to have a smooth process in place whereby as spouses pay in the money those who go to receive could get their money forthwith. I am very peeved by the delay.

Mr. President, many of the people who are the culprits reside in the United States of America or Canada, but they are there illegally, so they cannot even say where they are and you cannot find them. I think the Bill is very good because the fear of knowing that you can send an order to where they are, track down and deport them, will make them comply.

I want to appeal to the Government to put this on the internet: "All you delinquent parents out there, we are tracking you down!" So they will make a little secret deal and say, "Look, before they find me and deport me, and I am here illegally, let me send back meh little thing privately and fix up the business." [*Desk thumping*] Rather than they send and say, "Aha, I track you down Wade Mark!" [*Laughter*] "I know where you are!" And he says, I am here illegally—I do not mean it literally, the Senator is my friend, I am just calling a name. I am just trying to illustrate what I mean—[*Interruption*]—that if you say this, and they know that this Bill is passed and wherever they are they can be found.

Some friend would know where you are. Some friend might squeal on you and you might say, "Yuh see that, before they have to send for me, I would send your money for you lady for the children, " or "I will send your money for you and we can work this out privately and secretly." We want money, we do not want any barrels. So I think that it is a good Bill and with the little suggestions we can tidy it up and make it really workable.

I want to commend the Attorney General and the Government.

Thank you.

3.55 p.m.

Sen. Martin Daly: Mr. President, this is one of those afternoons of productive activity that is characteristic of the Senate as an institution, regardless of the personalities that sit here.

In the last fortnight we have had a multi-partisan—if I can put it like that—or tri-partisan approach to a matter concerning the environment; to a matter concerning the mechanics of tourism incentives; and now to the hoary old

problem of maintenance. We have just had one of those characteristically brilliant suggestions from an Independent Senator, regardless of name, to put the offenders on the internet and gain the simple leverage of illegal immigration. It is a wonderful suggestion.

Since "Carlos.com" was such a successful assignment of a website—what is it called name or location? Anyway, I have been trying to think of how best to put into some kind of acronym form, the suggestion that we might track maintenance dodgers on the internet. I have not come up with one yet.

It is very important to understand that the reason we have these afternoons is because the Senate produces what I would call objective pressure to get things right. That objective pressure is put in a politically, much cooler atmosphere. On two successive occasions of debate this afternoon, we have had the Leader of Opposition Business taking a robustly bi-partisan approach to two of the matters. I will return to that in due course. Just let me say, in passing, that I hope that our co-operation on the Tourism Bill is not—as I fear it may be—going to be imperilled by the insistence on sectoral interests.

Some matters have come to my attention in the course of the afternoon that—let me put it this way—leave some room for my colleagues and I to fear that all the work we have done on the Tourism Bill may be imperilled by subjective pressure from the sectoral interests. Hopefully a word to the wise and that will be the end of that; that poor Dr. Nanan would be allowed to do his business by reference to his Cabinet Notes and nothing else.

I think it is particularly important when we have this bi-partisan approach to identify with the courage and political risk taken by, in this case, the Leader of Opposition Business in the Senate. I think, far from goading her, we should applaud her statement that her party would support progressive legislation if it is properly brought to the Parliament. She really has achieved the same status today—I hope this does not sound like an epitaph—as those who were teargassed in Seattle yesterday. That is taking a form of political risk.

The reason I mentioned the application of sectoral interests to the Tourism Bill is because the World Trade Organization is a perfect example of a dictatorship: dealing only with sectoral commercial interests. We certainly do not want to follow the World Trade Organization's example in anything which we do.

My other concern in relation to the World Trade Organization is, I hope Minister Assam is safe and has not been gassed, for two reasons, really. I would not want anything to interfere with his manner of speech and he is going to need a

very clear head when he returns to attend those meetings that his Prime Minister is arranging, with racing interests.

The purpose of these few remarks, Mr. President, is to put the work we do in its broader context and to remind us how much we can achieve when we approach legislation as colleagues in this section of the Parliament and where some of us are prepared to take risks, wherever we sit. Leadership really does not come out of taking a supine position. Nothing good comes out of taking a supine position as long as you take it objectively.

Mr. President, against that background, I am happy to say I support this legislation as the speakers before me. But I am not going to lose the opportunity to remind the Government and the Opposition once more, the bi-partisanship has been so all pervasive over the last fortnight that I am going to put in another plea for the Salaries Review Commission Report.

Once more we are passing a piece of legislation in which the magistrates would play a pivotal role. To be loading up the magistrates with more difficult and complicated work, really, is a proper occasion to remind the Government and the Opposition that the question of the Salaries Review Commission is outstanding in a standoff of their own making, and it directly affects the poor magistrates who have to administer large portions of this legislation. I have not had many dissenting voices, other than that of Sen. Shabazz, on my approach to the Salaries Review Commission.

If it becomes necessary to take it in a two-step approach, then the Opposition and the Government, in the spirit that is prevailing, should really get together and agree to implement the report, leaving out the political offices. There really is no justification for keeping the magistrates in a parlous state because people are worried about what might be said if they arrange their own salaries. Maybe we could do it in a two-phased approach.

I make these remarks, not only to put the legislation in its broader context, but to say how refreshing it is that we have been able to do some good work over the last fortnight, and I hope that my warnings about the Tourism Bill will be taken seriously by those in charge, so that we can end this period of co-operation on a positive note.

Thank you, Mr. President.

4.05 p.m.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawerence Maharaj): Mr. President, I think that some of the points which have been raised are points which I would prefer to return to next week. For example, the point on the attachment of earnings and the question of the additional Part VII is something I would like to explore and I think I will not be doing justice to Sen. Mahabir-Wyatt's contribution and also to Sen. Dr. Mc Kenzie's contribution in matters relating to the Bill if I deal with the committee stage this afternoon.

May I say that I concede that the old problem regarding the enforcement of maintenance orders poses a serious problem in Trinidad and Tobago over a period of time. As a result of this injustice, many people suffer—children, wives. Several efforts have been made to solve this problem and it has not been solved. It may be that as the Government is coming with a package of family law legislation—two pieces have been introduced in the other place and by Friday, five other pieces of legislation would be introduced to deal with the elderly, the socially displaced, children authority, and to implement some aspects of the Convention on the Right of the Child and several others—the whole package of family legislation. Maybe, I would undertake that next week I would have a meeting with the Ministry of Social Development to see what we can come up with so that I could announce to this honourable Senate something to make it easier for the enforcement of maintenance orders.

Mr. President, I can tell you that the enforcement of maintenance orders is not only a problem in Trinidad and Tobago. As a matter of fact, quite recently in the United Kingdom, Prime Minister Blair mentioned it and it was a part of the Queen's speech. It is a problem with which the British government has been grappling and I know other governments have been grappling with it also. They have announced in the United Kingdom that there is a Bill in which husbands and persons who do not pay maintenance orders for children would lose state benefits. There is going to be a Bill before the British Parliament. So if there is an order made against parents and they do not pay maintenance orders, they can lose their state entitlements or whatever their state benefits are. It shows how serious this matter has become, because parents must recognize their responsibility in paying maintenance and when the court makes the order and the parents still do not pay when they have the ability to pay, it is a serious matter because it can wreck the lives of children, it can destroy their lives, it in effect, murders them in various forms, so it is a very serious matter.

What I would ask for, if the Senate agrees, is that I would continue my contribution on the next occasion and come with some amendments because the point Sen. Mahabir-Wyatt raised relating to clause 7, I must confess that I understood it to mean that it can be orders, two separate orders, but you can have a combined order and, therefore, we have to be very careful that it is framed in such a way that it would mean if there is a remarriage, it would not affect the Children's Order and similarly, if an order is made against the husband and he remarries, it should not mean that the order comes to an end.

So there are a few things we need to look at and I would prefer to look at it in the environment in which I would be able to think a little more, and not be rushed. So if I may respectfully ask that we defer further debate on this matter and start my contribution on the Sexual Offences Bill, a second time.

Mr. President: Is the Senate agreeable to defer further consideration of this Bill until the next sitting?

Assent indicated.

Debate, by leave, deferred.

SEXUAL OFFENCES (AMDT.) (NO. 2) BILL

Order for second reading read.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. President, I beg to move,

That a Bill to amend the Sexual Offences Act, 1986 be now read a second time.

Mr. President, this Bill is one which, if enacted, will introduce revolutionary changes to the law relating to sexual offences. I think Members of this honourable Senate are aware that sexual violence against women and young girls in Trinidad and Tobago is a major problem and it has really affected family life. There have been many instances of deviant sexual behaviour including rape, unlawful sexual intercourse and incest, and considerable concern about this alarming situation has been articulated by private citizens, religious bodies and non-governmental organizations and they are totally justified.

The citizens of Trinidad and Tobago would expect that the law should offer as much protection as possible to the sexual integrity and personal autonomy of all members of our national community, and particularly women and young girls who are the victims in the majority of sexual offences. It is, however, important to

note the limitations on the protective role of the criminal law. No reform of the criminal law could eradicate criminal conduct.

What the law does, however, is it provides a mechanism for the punishment of wrongdoers and the criminal law performs a vital role in the community by making significant moral denunciations of unacceptable conduct. It does so in declaring certain types of matters to be criminal and in this case, certain types of sexual behaviour to be criminal and, therefore, in that context the law plays a very crucial part in development, maintenance and establishment of community attitudes and expectations.

Mr. President, the Bill which is before us, came about as a result of instructions which I gave as Attorney General for the Law Commission to look at rape and sexual offences in Trinidad and Tobago. It is my view that the law with respect to sexual offences has also lagged behind and we would recall that in 1986 when the Sexual Offences Bill was passed, it was reforming legislation which was in existence from 1861 which was known then as the Offences Against the Person Act and in 1986, when that bill was published and that law was being discussed, there were several matters which the community at that time considered that it was not right to have in Trinidad and Tobago.

Mr. President, this Bill would remove spousal immunity. What do I mean by that? Under the existing law of rape, and I will read the definition of section 4(1) of the Sexual Offences Act, 1986 which says:

"4.(1) A male person commits the offence of rape when he has sexual intercourse with a female person who is not his wife either—

(a) without her consent where he knows that she does not consent to the intercourse or he is reckless as to whether she consents to it; or

(b) with her consent where the consent—

(i) is extorted by threats or fear of bodily harm to her or to another; or

(ii) is obtained by personating her husband; or

(iii) is obtained by false and fraudulent representations as to the nature of the act.

The present law is inadequately and narrowly defined. It is archaic, outdated and, therefore, we have to change it, and this Bill is an attempt to do so. By virtue of the words "not his wife" in the definition, Mr. President, a husband does not commit rape if during the marriage no matter what degree of estrangement exists, he forces his wife to have intercourse with him without her consent.

Mr. President, the classic statement of this spousal immunity was stated by Hale in 1736. The common law rule states that intercourse against the wife's will is excluded from the law of rape by virtue of the fiction of deemed concept. Consequently, a husband cannot be convicted of raping his wife and section 4(1), Mr. President, merely reproduces what the English common law position has been.

Mr. President, throughout the Commonwealth there has been increasing dissatisfaction with regard to what I call spousal immunity. It is felt that this immunity of husband is archaic, unjust and unequal in the treatment of the sexes. The exception is artificial in that it suggests that a husband has proprietary rights to his wife as a sexual object.

The Law Reform Commission of Canada in 1978 said that spousal immunity reflected an outlook no longer in vogue. In most common law jurisdictions, the common law position has been eroded either by reform of statute law or judicial decisions. The marital rape exemptions have been removed completely in countries like Victoria, New South Wales, Western Australia, Queensland and Tasmania. In New South Wales, there is the Crimes Act. In Canada, spousal immunity was abolished in 1982 by the Criminal Law (Amdt.) Act. As far as my research goes, it still exists in the United Kingdom.

What this Bill attempts to do is make the offence gender neutral, if I may use that expression and, therefore, clause 4 of the Bill repeals the existing section 4 of the 1986 Act and in effect it creates a new definition of rape. It says:

"4. (1) Subject to subsection (2), a person…commits the offence of rape when he has sexual intercourse with another person ('the complainant')

(a) without the consent of the complainant where he knows that the complainant does not consent to the intercourse or he is reckless as to whether the complainant consents; or

(b) with the consent of the complainant where the consent—

(i) is extorted by threat or fear of bodily harm to the complainant or to another;

(ii) is obtained by personating someone else;

(iii) is obtained by false or fraudulent representations as to the nature of the intercourse; or

(iv) is obtained unlawfully detaining the complainant."

Mr. President, the new clause 4(2) says:

> "A person who commits the offence of rape is liable on conviction to imprisonment for life…"

Imprisonment for life means life, it is defined as being during the natural life of the person.

> "(2) A person who commits the offence of rape is liable on conviction to imprisonment for life and any other punishment which may be imposed by law, except that if—
>
> (a) the complainant is under the age of twelve years;
>
> (b) the offence is committed by two or more persons acting in concert or with the assistance or in the presence, of a third person;
>
> (c) the offence is committed in particularly heinous circumstances;
>
> (d) the complainant was pregnant at the time of the offence; or
>
> (e) the accused has previously been convicted of the offence of rape,
>
> (3) The Court may order who is convicted of an offence under this Act, to pay to the complainant adequate compensation which shall be a charge on the property of the person so convicted."

So in addition to imprisonment, and in addition to a repeat offender, the court on convicting a person can order compensation.

Mr. President, what this clause also does is abolish the presumption of incapacity of males under 14 years to commit the offence of rape. Under the Act that we have, under section 4(3) of the Sexual Offences Act of 1986 it says:

> "A male person under the age of fourteen years is deemed incapable of committing the offence of rape."

4.20 p.m.

Mr. President, the conclusive presumption that boys under the age of 14 years are incapable of committing the offence of rape has been proven in several parts of the world, including Trinidad and Tobago to be wrong. This section is unrealistic. For example, we see that in our social milieu, our children are maturing early and we see that there has been sexual abuse by children who are under the age of 14. The Law Commission recommends the abolition of this rule

of physical incapacity, as it is certainly no longer true that males under 14 are necessarily incapable of the full sexual act.

Sexual intercourse is defined in section 25 of the Sexual Offences Act 1986, which states that sexual intercourse:

> "shall be deemed complete upon the proof of penetration only."

Even the slightest penetration is sufficient and it is not necessary to prove the completion of the act by the emission of seed. The retention, therefore, of the presumption of physical incapacity by males under the age of 14 is, therefore, anomalous and out of step with the law of other Commonwealth jurisdictions. For example, in New Zealand the Crimes Act of 1961 abolished the presumption in the following terms and I quote:

> "…there shall be no presumption of law that any person is by reason of his age incapable of intercourse."

The presumption of incapacity was also abolished in South Australia by virtue of the Criminal Law Consolidation Amendment Act of 1976. The English Sexual Offences Act of 1993, abolished the presumption of incapacity in the following terms and I quote:

> "The presumption of criminal law that a boy under the age of 14 is incapable of sexual intercourse (whether natural or unnatural) is hereby abolished."

Mr. President, in addition to imprisonment and to strokes with a cat-o-nine tails and to compensation, I can refer Members to the end of the Bill where one would see under clause 34E:

> "Where a person is convicted of an offence under the sections to which this section applies,"

And one would see it applies to section 4 and the other sections.

> "the Court shall require that the person be medically examined.
>
> (2) Where upon such examination it is found that the person examined is suffering from the Human Immune Deficiency Virus, (hereinafter referred to as "HIV") or any other communicable disease, information to that effect shall be given promptly to the virtual complainant and the person examined.
>
> (3) Subject to subsection (2) the information shall be confidential.

(4) Where it is found upon examination that the complainant has contracted HIV or any other communicable disease the court, upon application by the complainant and upon being satisfied on a balance of probabilities that the complainant contracted the disease as a result of the offence, may order the defendant to pay the complainant compensation in addition to any amount ordered under section 3(5)."

So that you also have under these reforms, the court ordering the medical examination of the accused, the person who is convicted, and also the question, that in the case where there is a communicable disease or AIDS, that you have the question that the information is to be given to the complainant and the right to further compensation.

Mr. President, the other aspect of the Bill, and a very important aspect is that we had to consider either extending the definition of "rape" or making provision for a new offence which will cover a situation in which there would be grievous sexual assault. Clause 5 of the Bill says:

"Subject to subsection (2), a person ('the accused') commits the offence of grievous sexual assault when he commits the act on another person…without the consent of the complainant…with the consent of the complainant where…extorted by threat or fear of bodily harm…"

Subsections (2) to (5) of section 4 apply, *mutatis mutandis*, to the offence of grievous sexual assault as it does to the offence of rape."

Mr. President, "grievous sexual assault," which is this new offence, as defined in the definition section means:

"(a) the penetration of the vagina or anus of the complainant by a body part other than the penis of the accused or third person as the case may be;

(b) the penetration of the vagina or anus of the complainant by an object manipulated by the accused or third person, as the case may be, except when such penetration is accomplished for medically recognized treatment;

(c) the placing of the penis of the accused or third person, as the case may be, into the mouth of the complainant; or

(d) the placing of the mouth of the accused or third person as the case may be, onto or into the vagina of the complainant; or"

Mr. President, at present the law confines rape to penetration and no other form of sexual assault constitutes rape in law. Accordingly, the penetration of any of the orifices of the body other than the vagina by the penis cannot constitute rape under existing law, nor can penetration of any parts including the vagina by objects such as sticks or bottles constitute rape. There have been several cases in Trinidad and Tobago in which these acts have been done to persons. Where such acts take place, as a result of the force or the threat of force, other forms of criminal offence will be committed but not rape.

Mr. President, the present definition of rape is limited to nonconsensual sexual intercourse. Under section 25, as I said, it is not necessary to prove the completion of the intercourse by the emission of seed. No other form of sexual assault constitutes rape in law. Therefore, the existing law ignores the seriousness of other forms of sexual violations, such as forced, anal and oral sex apart from penile penetration. In so doing, it implies that one form of sexual violation is more serious than another.

It is important that the gravity of forced sexual penetration, through the use of objects is fully recognized, and that the protection afforded to the victims of rape should be extended to the victims of such sexual acts. These acts are as unpleasant and injurious as the vaginal penetration and also deserve being dealt with on the same basis. The important consideration is the nature of the act itself. Victims are frightened, humiliated and degraded by the sexual penetration, whatever its precise form.

Mr. President, the law must be able to deal with these matters and the Law Commission, after a study done in other countries has shown that other countries have decided to deal with it. Some countries have dealt with it long ago and we are now trying to deal with it. So, that is another change in this Bill, in that it creates a new offence.

4.30 p.m.

Mr. President, one of the other things which this Bill does is increases the punishment in respect of repeat offenders. One would see that from clause 6 to clause 16 there has been an increasing of the punishment. I do not want to skip clause 12. Clause 12 states:

> "A police officer may take into custody, without warrant, a person who has committed, or who the police officer has reason to believe has committed an offence under section 6, 7, 8, 9, 10, 11 or 12.'"

This is a provision which I think exists in the Criminal Law Act and, I am told, also exists in the Children's Act. I have found out that the reason for putting this here is for it to be quite easy for the police to know what their powers are. I have been told that it does not change the law in any respect, it merely reemphasizes what the law is.

At present, rape trials and cases in respect of rape matters are heard *in camera* so, therefore, one does not have a situation where the evidence is published. In the giving of evidence we have a situation where the complainant would have to attend court and would have to testify. Sometime ago we had passed a law in respect of children pertaining to the use of video recording in evidence. What clause 17 does is make that Act apply to these kinds of proceedings so that complainants, victims, would be able to give evidence on video and it can be considered as evidence in chief.

Mr. President, what clause 18 does, is it imposes mandatory reporting of suspected offences which have been committed. Clause 18 says:

"(1) Any person who—

(a) is the parent or guardian of a minor;

(b) has the actual custody, charge or control of a minor;

(c) has the temporary custody, care, charge or control of a minor for a special purpose, as his attendant, employer or teacher, or in any other capacity; or

(d) is a medical practitioner, or a registered nurse or midwife, and has performed a medical examination in respect of a minor,

and who has reasonable grounds for believing that a sexual offence has been committed in respect of that minor, shall report the grounds for his belief to a police officer as soon as reasonably practicable.

(2) Any person who without reasonable excuse fails to comply with the requirement of subsection (1), is guilty of an offence and is liable on summary conviction to a fine of fifteen thousand dollars or to imprisonment for a term of seven years or to both such fine and imprisonment."

Mr. President, what has been found is that there have been many cases of abuse, sexual offences, which are not reported. The intention of this provision is to make it compulsory to report the matters to the police.

In respect of clause 19 of the Bill, which amends section 32 of the Act, there is a lacuna in the existing law. Under section 32 it is not right to publish the names of the complainant but the section is drafted in such a way that one cannot publish the name of the complainant or the victim after the person is charged. So that, between the incident occurring and the person being charged, there have been instances where the press and the media have published the names of the persons. What clause 19 attempts to do is to fill that gap by saying:

> "Before or after a person is accused of a complaint, no matter likely to lead members of the public to identify a person as the complainant in relation to that accusation shall either be published…"

What clause 19 also does is, it removes the restriction of the media to publish the name of the accused.

Sen. Daly: What if he is wrongly accused?

Hon. R. L. Maharaj: As a matter of fact, in the case of rape the accused person had a special treatment in that if someone is charged for murder, that person's photograph and name are published. If someone is charged for obscene language, that person's photograph and name can be published. For some reason, however, they made a special exception for a person charged for rape. We are of the view that this exception should be removed. If the person is charged and is wrongfully accused, that person will be acquitted like anybody else, but the press should not be restricted from publishing the name of the accused person.

Mr. President, the Bill also abolishes this old rule of recent complaints. Part III of the Bill deals with the notification requirements for sex offenders and this is a new aspect of the Bill. It gives the power to the court, as part of the sentence, to order persons who have been convicted for sexual offences to report to the police. It puts a notification requirement for sex offenders. This is a novel proposition in the Bill and the purpose of this is really to have machinery in place where the police can know and follow closely the movements of some of these persons who have been convicted. It is part and parcel of the sentence of the court and, therefore, it will only apply to matters which occurr after the Bill has come into operation. So therefore, on page 17, Mr. President, the part applying to persons who have been released from prison prior to the commencement of the Act would not apply. [*Interruption*]

Sorry, I did not know the tea break was—[*Interruption*]

Mr. President: I wanted to give you an opportunity to complete your presentation before the tea break, but I do not know how long you would be. The sitting is now suspended until 5.15 p.m. for tea.

4.39 p.m.: *Sitting suspended.*

5.18 p.m.: *Sitting resumed.*

Hon. R. L. Maharaj: Mr. President, when we broke for tea, I was on Part III of the Bill which deals with the notification requirements for sex offenders. Therefore, the court, if the person has been convicted, or even if the person's sentence has been commuted—and there could be a situation where someone is convicted, but even though the person is convicted, as we know, under the provisions of the Constitution, the President, on the recommendations of the Minister of National Security, and who considers Mercy Committee matters, can have a sentence commuted. That has happened with respect to death sentences, so it can happen with respect to any offence, even the person who has been convicted but has not been dealt with for the offence, that is to say, assuming the person has been put on a bond by the court.

There is a table. What we have done is followed other countries' legislature in having a table and we have sought to use the United Kingdom model. One sees that if the person is sentenced to life imprisonment, or his sentence has been commuted, or if the person has been sentenced to a term of 10 years or more, there have been indefinite periods for monitoring and for reporting.

I should mention that in respect of clause 34E(6), it says:

> "This Part also applies to persons who have been released from prison prior to its commencement."

I would be applying for a deletion of that part because the Bill cannot deal with matters which occurred before. They will have to deal with sentences which have been passed after.

What this Bill really does, is to take into consideration the representations made by the national community to have the law looked at again. I should say that there have been other recommendations which have been made, which we did not decide to go with. As a matter of fact, there were certain calls from the national community to have even capital punishment for rape; there have been calls to have castration in respect of rape.

So that this Bill, really, is a compromise in relation to what we have been asked to do, but we have done it after the Law Commission had discussions. I am told that the Law Commission did have discussions with organizations and with members of the public.

I should mention one aspect of it, that in respect of rape offences or sexual offences, there have always been problems with inconsistency in sentencing and we have, and when I say we, this administration has tried to redress some of those matters by giving the state, for example, a right to appeal where there was no right before, and we are looking at some other provisions to try to give further rights of appeal.

I have been having discussions with the Director of Public Prosecutions and the Law Commission, and within the next month, I would get some report as to what recommendations they may want to make. But, one of the matters about which I feel very strongly is that there should be some form of sentencing guidelines by which the court will operate. One of the matters which I am considering at the present time is whether we, in Trinidad and Tobago, should not have a sentencing commission.

What is a sentencing commission? It is a commission which will collect and analyse sentencing data; disseminate sentencing data to judges and others involved in the criminal justice system; develop sentencing guidelines and ranges of sentences for specific offences and categories of offences; review sentencing guidelines and ranges of sentences developed; make recommendations to Parliament regarding the revision of maximum penalties to structure particular offences and what sort of categories of offences as to degrees of seriousness; revise and conduct seminars and workshops for judges in sentencing and other aspects of the criminal justice system; and publish a quarterly bulletin summarizing leading sentencing decisions.

I am considering whether such a commission should be established with those functions and whether the membership of the commission should not consist of the Chief Justice as *ex-officio* chairman and six other members appointed by the President, after consultation with the Prime Minister, the Leader of the Opposition and such persons and organizations representing the interest of women, children, senior citizens and victims of crime as he thinks fit, and such other persons or organizations interested in the criminal justice process as he thinks fit, and to have on the commission, members of the public and members of the Judiciary. So that a commission would be able to look at these things and advise.

Other countries have gone that route. I do not know whether it will work in Trinidad and Tobago but it is something which I am considering because I think it was only yesterday, in one of the editorials, there was the question of the inconsistency in sentencing. It is a very difficult job for a judge to do at times because sentencing is supposed to be one of the most difficult aspects of judicial work and I think, perhaps, the time has come for assistance and guidelines to be given in respect of these matters.

Mr. President, this Bill is one which would go a long way in redressing some of the injustice which is being perpetrated on women and young girls. The attempt is to provide a stronger legal framework in order that protection will be afforded to women and young girls. May I say that the data which I have collected—and I would just like to close by saying that we have got some statistics which seem to show that 80 per cent of the forced sexual behaviour is carried out by persons known to the victims, and that is very alarming.

The factor which creates the greatest degree of panic in our society is the fact that the other 20 per cent is carried out through the use of physical violence by a perpetrator or perpetrators unknown to the victim in circumstances which are blatantly violent, brutal and often life-threatening. That is what has been found by the Ministry of Culture and Gender Affairs.

I have some statistics from the police which I think I should put in the record of the Parliament. It shows that there have been, in 1999, a reduction, so far, of sexual offences. It may be that the mere publication that we were coming with this Bill has done that. I do not know. [*Laughter*]

For example, in 1997, there were 226 rapes; in 1998, 276; in 1999, 189. Attempted rape—in 1997, five; in 1998, 13; in 1999, two. Incest—in 1997, 42; 1998, 82; 1999, 41. Sex with female under 14—1997, 135; 1998, 101; and 1999 thus far, 74. Sex with female 14 to 16—1997, 100; 1998, 59; 1999, 63. Sex with adopted minor—1997, two; 1998, 39; 1999, one. Sex with mentally subnormal—1997, zero; 1998, two; 1999, zero. Sex with male under 16—1997, four; 1998, zero; 1999, zero. Total—1997, 514; 1998, 572; 1999, so far, 370.

I beg to move that a Bill to amend the Sexual Offences Act, 1986 be now read a second time.

Question proposed.

Sen. Diana Mahabir-Wyatt: Mr. President, the Bill before us is a Bill to amend the Sexual Offences Act, 1986, and I can remember 1986 very clearly. I

can remember when this Act was passed and I can remember the desperation and feelings of despair that women in this country felt when they battled so hard over sections 4 and 5 of the 1986 Act, and lost the battle.

5.30 p.m.

In the years since then, while it may be true, as the Attorney General has just told us, that there has been a reduction in the number of sexual offences over this past year, I think we must all be very much aware that the nature and the severity of these offences has become absolutely horrific.

There have been times when I have really despaired over the way in which women and children, particularly girl children, in this country have been treated by their fellow human beings and by the institutions that govern this country, and really almost given up the battle. I want to thank the Attorney General for teaching me something. That is, do not give up. That if one waits long enough and fights hard enough and sticks to one's position, there is always hope that sooner or later some of the wrongs that we have to live with are going to be made right.

I am very grateful to be here in this Chamber. I do not care how long it takes. This is not one of the times when I am going to fight about how we should be home before midnight. I do not care how long it takes. The fact that this Bill has come before this Chamber in the form which it has, is a matter for which I am extremely grateful. I will always be grateful that I was able to be part of this debate, and be in this Chamber while it came to the Senate.

There are a number of things about this Bill that I want to commend. Once again, I would like to repeat what I said earlier today that I think it is an enormous pity in the history of our civilization and our lives that we cannot leave the regulation of our lives to our moral values and ethical values; that we need to have legislation to govern things like these. Experience has taught us in a very bitter way, however, that we need to have legislation to cover these things.

With respect to the Bill we have before us, I have some questions I need to ask. There are some parts of the Bill with which I am not sure I am happy, but by and large, I am really overjoyed that it is here. I have some questions that bother me from a principled point of view, and the first of these is on page 2 where we are looking at the term "imprisonment for life". I am not a bloodthirsty avenger, and I am not asking for capital punishment or castration in public. *[Laughter]* When we get to "imprisonment for life", I have a problem because the definition says:

> "'imprisonment for life', in relation to a person found guilty of an offence under this Act means imprisonment for the remainder of the natural life of that person;"

I am wondering if the Attorney General can help me with this, because I know that life imprisonment has been variously interpreted in various constituencies to mean 10 years, 12 years, or 15 years. When it says "natural life", is there a guideline? I am all for what the Attorney General has said for the setting up of a sentencing commission and for guidelines and I have so argued. I am not going to go over my arguments for the last 10 years about women being given heavier sentences than men for similar crimes, especially when it comes to domestic violence. I just agree, entirely, that this should be done, but when it comes to imprisonment for the remainder of the "natural life", does this mean until one dies of natural causes?

Mr. Maharaj: It does not have to be natural causes. *[Laughter]* Mr. President, quite seriously, what has happened is that under the present system, if someone gets life imprisonment, there is the administrative practice which has evolved over the years, that because of the rules and good behaviour, there are instances where the person, after 15 or 20 years, can be released. There have been approaches to certain administrative machinery to try to alter that, but in any event, what happens is that there is a system in which the matter is reviewed by the Mercy Committee every four years, but it can be reviewed even before that four years.

The person's case can be reviewed, and the Mercy Committee has the power and the President still has the power, but it is to try to resolve to a great extent the situation where they just put "life imprisonment" which can be thought to be 15 or 20 years. Although it says "during the natural life", it does not prevent the state mechanism which exists now from releasing the person before life, but it will go through the mechanisms, bearing in mind that I had indicated on another occasion that the whole question of the penal policy of the Government is being looked at, because one would want to also change the system of imprisonment and the question of parole. Where it says so, it does not necessarily mean that if the person is sentenced for life, the person would necessarily spend his whole life in prison, but there would be persons who can spend their whole life in prison.

Sen. D. Mahabir-Wyatt: Thank you. Mr. President, that was very clear. I will tell you why I brought it up as a problem. That is because magistrates, I think, have a hesitation to give a penalty which could mean that somebody stays in jail for the rest of his or her life until he or she is dead, for a crime of sexual abuse. Where it is rape which is violent and leads to murder, yes, that person will. In this Bill, we have a new clause 4(a) which I think is great, and I am glad is there, but "grievous sexual assault" and "rape" both now draw the penalty of

imprisonment for life, and I am worried that the magistrate will not impose this sentence because he or she feels it is too severe.

Mr. Maharaj: The clause does say that the person is liable on conviction to "life imprisonment", so it does give the court that discretion. It can be less, because in any event, we would have a problem constitutionally if we put that it is a mandatory life imprisonment, because it has been held that the Parliament cannot take away the discretion of the courts in imposing sentences. Parliament can put minimum requirements but it cannot say that the person would have to have life imprisonment. If we have to do that, it may be that we have to get a special majority for that.

Sen. D. Mahabir-Wyatt: Thank you, Mr. President. Once again, I am relieved by that, and I feel a lot easier about that clause in the Bill. I would also like to point out, simply because I think it is important to mark the spot, that the gender terminology has been removed from the definition of "rape" and now it refers to "a person" and "a person". I think it is important, because I do think that it is possible for a woman to be guilty of rape as well as a man. I know that there are certain jurisdictions where one can argue it is not possible, but I think that the worldwide evidence has made it quite clear that this is possible. So, the "person to person" is a much better approach to that particular clause of the Bill.

There are many things about the Bill which I found commendable. As I said, I am very pleased about clause 4(a). I have no objection to the increasing of the penalties, by and large, and I think that as the crimes become more severe and more brutal in nature, the sentences should also reflect greater strength.

There are a few things, though, with which I have problems. In clause 12A of the amending Bill, new clause 12A, I wonder if the hon. Attorney General would not consider changing the words "A police officer may take into custody, without warrant". Could that not read "A police officer may arrest"? Taking into custody means all kinds of things.

I know that people have had some problems with this clause, but as the Attorney General has pointed out—and I have circulated to my colleagues in Parliament—section 3(6) of the Criminal Law Act already gives police officers this power. I just want to make the point because there are so many people in this country who are still concerned that a police officer has the power to enter without a warrant and to make an arrest in a matter of domestic violence and/or sexual offence where he knows this is taking place.

The police have had this power since 1979, and the fact that the public is not aware of it, to me, is testimony of the fact that they have not abused it. If it had been abused, there would have been an outcry, including from me, and the Coalition Against Domestic Violence, the Rape Crisis Centre, and all the other groups that deal with this. The fact that nobody even noticed it was there, is, to me, testimony of the fact that it has not been abused. I know of instances where it has, but they are very few. Compared to the number of instances where it has worked, these have not been anywhere near the numerical mass that they need commenting on. So, I have no problem with this at all, particularly as will be noticed that it refers to instances where a child or young person is being sexually abused.

I would like to make a point here, again, simply to mark the spot. At clause 7 there is a revision of section 7(1) of the existing Act which reads:

> "Where a male person has sexual intercourse with a female person who is not his wife with her consent and who has attained the age of fourteen years but has not yet attained the age of sixteen years he is guilty of an offence, and is liable on conviction to imprisonment for five years."

It is an offence that has been, since 1986, punishable by life imprisonment for a male to have sexual intercourse with a female who is under 14 years of age and is not his wife, and it is no defence that she consented. Maxi taxi driver or not, student or not, if she consents or not, it does not make any difference. This leads us to the anomaly which exists in the society that a 13-year-old girl is absolutely incapable of consenting effectively to sexual intercourse and yet, 12- and 13-year-old girls can consent to marriage, therefore, to a life of sexual intercourse in that context.

To me, this points out more than ever the need to look once again at our marriage ordinances in relation to what age is a woman when she reaches the age of adulthood. Throughout the world, it is regarded as being 18 years of age. I think we need to look at this, not in relation to the Sexual Offences Act, but once we have this, we cannot have a law for one thing in one place and another law for another. I know the Minister of Gender Affairs has been looking at this, but I think the minimum age for marriage really needs revision.

5.45 p.m.

In section 13, this is the section which, in the existing Act, deals with "buggery". Mr. President, I have circulated an amendment on this and I will explain why.

Section 13(1) of the parent Act reads:

"A person who commits buggery is guilty of an offence and is liable on conviction to imprisonment—

(a) if committed by an adult on a minor, for life;"

I have no problem with that. There have been some instances where children have been, at a very young age, handicapped for life as a result of muscle destruction as a result of buggery at a young age. The section continues:

"(b) if committed by an adult on another adult, for ten years;

(c) if committed by a minor, for five years;"

In relation to subclause (c), the Attorney General mentioned earlier "bringing Trinidad and Tobago into the real world by accepting the majority of evidence which has arisen throughout the world" and he referred specifically to the Commonwealth, which recognizes that boys under 14 can be guilty of rape. We have had instances in this country where boys under the age of 14 and minors under the age of 18 have raped younger children with considerable damage to them: psychologically, emotionally and physically, to the point where there have been children who have been handicapped by muscle damage indefinitely.

When it comes to an adult and another adult, though, I would like to recommend that this be removed, consistent with what is happening in the laws throughout the Commonwealth, and be replaced by another section which would be 13(a), I suppose, to read:

"An adult person who commits buggery on another adult person is guilty of grievous sexual assault where the act is committed in circumstances which would constitute a grievous sexual assault under section 4(a)."

Which would make it consistent with clause 4(a) of the Bill and would provide penalties where this is without the person's consent and in all the other "obtained by false or fraudulent representation"—sorry, wrong page. Clause 4(1) reads:

"(a) Without the consent of the complainant where he knows that the complainant does not consent to the act or he is reckless as to whether the complainant consents; or

(b) with the consent of the complainant where the consent—

(i) is extorted by threat or fear of bodily harm..."

This would draw the same penalty of life imprisonment or imprisonment for the rest of your natural life as rape or other forms of grievous sexual assault, quite apart from changing sexual mores, which I think is pretty well accepted.

I mean, throughout the Commonwealth, attitudes toward sexual activities have changed. What consenting adults do in private have been pretty well removed from criminal penalties. There have been instances—and I do not want to get too graphic here, but we do not have any children here under the age of 18—when a woman has recently had a child, if she had an episiotomy, or with various other intimate female problems where, in fact, anal sex is—if the people happen to enjoy that kind of sexual activity—actually recommended, rather than normal vaginal sex because that would be too painful and damaging. I know that this has been actually recommended medically for people with that kind of disorder.

I can remember, as long ago as when I was having children, and this is many, many years ago. Where it is consensual, I would hate to think that married couples consenting to sexual activity to which they happen to have no objection, would be regarded as criminals and sentenced to 25 years in jail. I do not think that this is a matter which is unknown. It is well known in joke and fable and locker room stories and "women's only" picong jokes, and I think it is time we stop being hypocritical about this kind of thing and remove consensual adult sexual behaviour in private from penalties in the law, because I think to leave them in is simply hypocritical.

The next clause with which I had a question—perhaps the Attorney General is covering it by what he said in terms of other procedures which are coming up, but I was a little worried about clause 16. Let me just put it in broad terms. It really is not clause 16; it is somewhere after there:

"Where a case goes to court in relation to sexual offences…"

Can I have some kind of reassurance that under the procedures in the court, the victim's previous sexual life will not be regarded as something which can be brought up in evidence to support the allegation that she either consented or deserved it? I know that these kinds of allegations have been made. I thought that they had been removed from our Act, because I know this is not allowed in other jurisdictions in the Commonwealth. It does not seem to me that under section—I think it was the section with taking to court. I had it marked down here right after "section 16 as amended", but I just lost my place for a moment and I do not want to keep everybody back, but I am sure the Attorney General probably knows it off by heart—that that should not be allowed to be brought up in defence of an act.

I had one other question on clause 31, but the Attorney General has answered it. That third question had to do with the tables for notification requirements. I could not figure out why, in the first section, that if it is "imprisonment for life" you can have a sentence commuted, but I now understand that.

I am just left with one problem and, this again, I suppose, is in the form of a question. I am a bit hesitant to bring this up but I feel, in all conscience, that I have to because I know that sexual offenders, particularly where they are offences against juveniles, tend to have a high degree of recidivism. Therefore, the notification provisions, I think, are justified. I was just a little worried about the mandatory medical examination of the accused. I was not sure whether this was consistent with the constitutional guarantees of privacy. Because if somebody has already served their sentence and got out, would this abrogate, in any way, their right to privacy? I do not know.

Mr. Maharaj: If I could explain. It is not after they serve sentence for the medical examination. Upon conviction the person would be ordered to be examined. The purpose of that is for the victim to know whether she has anything to worry about and whether actions can be taken.

Sen. D. Mahabir-Wyatt: Thank you. Mr. President, once again the Attorney General has allayed my fears. I really commend this Bill to everybody in the Senate and hope that we can pass it.

Thank you.

Sen. Rev. Barbara Gray-Burke: Mr. President, I am very happy that this Sexual Offences (Amdt.) (No. 2) Bill has been brought to this Senate.

Clause 7 would increase the penalty for sexual intercourse with a female from the age of 14 years. So the penalty will not be five years for first offenders, but 12 years in jail. Mr. President, this country really needs stiffer penalties.

I have a street children programme. There is a particular case of a Down's Syndrome child. Her stepfather raped her. The teacher at the school discovered the crime and took her to the police station. When the mother of the child learned of the incident, she began bawling, crying, shouting at the top of her voice. Under that excitement, she dropped down and died. So this child is without a mother. Mr. President, if this Bill were in effect already, the court would have made an order to compensate this child: this woman was a hypertension case. So this is a timely Bill.

This morning when I was about to leave I was explaining this Bill to women, single mothers in a training programme; the joy they had, happiness. Women, mothers, daughters and sisters congratulate this Bill, commend this Bill. Mr. President, do you know that in South Africa a woman is raped every 17 seconds? This Bill is long overdue. Too much advantage is being taken of women by criminals and animals parading as men. Good men do not rape women, Mr. President! *[Desk thumping]* Good men love, care for and adore women! *[Desk thumping]*

Mr. President, another clause I would like to draw to the Senate's attention is clause 18, which would repeal the existing section 31 of the Act to abolish the common law rules. Because mothers are with men, either they are too much in love, or they are afraid of these men. Their child or children would come and lodge a complaint against the father or stepfather, but this child's mother would act—sometimes, she would put the child out, and say she has other children to feed, but this clause now would make it mandatory, because she could be charged. This is why I like this clause of the Bill.

Some teachers, neighbours were afraid at times to make certain interventions—I "break house" already and "take out" raped children, whether by taking the child to the doctor or to the police—because the parent had to agree. The child is getting raped, incest is being committed, but they are telling you the law did not permit for you to take the child to the doctor—because I was confronted with this. I am talking about my own personal experience. I am extremely happy with this clause.

Mr. President, for years children "ketching hell", real hell in this country by father, stepfather, uncle, cousin, the little boys are being buggered and no redress. Just so on the Beetham there; they are putting out the children. Even in the courts, the definition of the new expression would be spelt out so the magistrate has no excuse.

These offenders must be brought to court and justice must take its course. In these times, rape is becoming too prevalent. When these men commit rape to adults, children or whoever, these people remain traumatized for life. In my home I have eight girls suffering from this sordid ordeal.

6.00 p.m.

Mr. President, I want to tell you that I am living by the doctor and the counsellors, trying to bring these girls back into the society. Sometimes one would not talk to anybody, but only talk to herself. Four of these girls were brought to me by the police. One lost her case, the laws of this country, because

she would not explain to the court. I had to come to Parliament so I could not attend court with her. It was a High Court matter. She was too ashamed to speak; she did not have mutual support, so the judge threw out the matter. This is the court we have.

Sometimes people are not sympathetic with these young 12- or 13-year-old children. Sometimes these men threaten the children with knives; they tell them that they would kill them and their parents. So this Bill will help to assist, whether the police, lawyers or jurors, to make a decision which will benefit the victims of rape.

A family court will crown everything; that will be the case of the day because they would not be so ashamed watching other people or whatever, because they will have their own courts. Mr. President, God is just, this is why bills of this nature are coming to this Parliament now. When this Bill is assented to, greater joy will be to this country. I think that I am extremely happier than Sen. Mahabir-Wyatt, because of the problem that I experienced with these children in my home, with some not communicating at all and some communicating. Their lives are being shattered.

Thank you Mr. Ramesh Maharaj. Mr. President, thanks to this honourable Senate.

ADJOURNMENT

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, before moving to have this honourable Senate adjourned, may I take this opportunity to remind fellow Senators of the Bills that we are going to be addressing at our next setting on Tuesday, 7 December, 1999. As the hon. Attorney General indicated earlier, we are going to bring back the original Environmental Management (No. 2) Bill and it would go through all its stages on Tuesday.

We will then proceed with the Maintenance Orders (Facilities for Enforcement) Bill debate that was adjourned, as you recall. We have the Tourism Development Bill that is before us as well. We also have the Sexual Offences (Amdt.) (No. 2) Bill, that is going to be continued.

Mr. President, I wish to serve notice on Senators so that they will have a diary of bills and they can start to take some time off to begin looking at them in advance, because I do not want anyone to accuse me of springing surprises.

I would also like to inform fellow Senators that we intend to proceed after these four Bills, that are virtually at the committee level of the Parliament, with An Act for the purpose of establishing the National Museum and Art Gallery. So I

want them to start preparing themselves for that one, also for the Motor Vehicles and Road Traffic (Amdt.) Bill. There are three Bills similar in nature, that is, Bills Nos. 10, 11 and 12. We will like fellow Senators to take note of those Bills so that, for instance, everyone would know that we have a lot of homework to do between now and next Tuesday and Wednesday.

Mr. President, I beg to move that this Senate do now adjourn to Tuesday, 7 December, 1999, at 10.00 a.m.

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 6.05 p.m.