

Leave of Absence

Tuesday, December 07, 1999

SENATE

Tuesday, December 07, 1999

The Senate met at 10.03 a.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. Finbar Gangar for the period December 3—11, 1999.

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: MR. DAVE COWIE

WHEREAS Senator Finbar K. Gangar is incapable of performing his functions as a Senator by reason of his absence from Trinidad and Tobago:

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, DAVE COWIE, to be temporarily a member of the Senate, with effect from 7th December, 1999 and continuing during the absence from Trinidad and Tobago of the said Senator Finbar K. Gangar.

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 2nd day of December, 1999.”

Joint Select Committee

Tuesday, December 07, 1999

**JOINT SELECT COMMITTEE
(APPOINTMENT OF)**

Mr. President: Hon. Senators, I have received the following communication from the Speaker of the House of Representatives:

“December 6, 1999.

Sen. the Hon. Ganace Ramdial
President of the Senate
Parliament
The Red House
Abercromby Street
Port of Spain.
Honourable President,

Joint Select Committee

At a sitting of the House of Representatives held on Friday December 3, 1999, the House passed the following resolution:

‘Be it Resolved that a Joint Select Committee be established to consider and report on the Bill entitled ‘An Act respecting human reproductive technologies and commercial transactions relating to human reproduction’;

And be it further resolved that the following six members of the House of Representatives be appointed to serve with an equal number from the Senate on this Joint Select Committee:

Mr. Hamza Rafeeq
Dr. Fuad Khan
Mr. Chandresh Sharma
Mr. Razack Ali
Mrs. Camille Robinson-Regis
Mr. Roger Boynes.

This decision of the House is forwarded for the attention of the Senate.

Yours sincerely

Hon. Hector McClean, MP

Speaker of the House of Representatives.”

**UNITED ISLAMIC ORGANIZATION (INC'N) BILL
SPECIAL SELECT COMMITTEE
(RE-APPOINTMENT OF)**

Mr. President: Hon. Senators, in accordance with the recommendations contained in the report of the Special Select Committee which was appointed in the 1998/1999 session, to consider and report on a private Bill entitled an Act for the Incorporation of the United Islamic Organization of Trinidad and Tobago and for matters incidental thereto, and which was agreed to by the Senate, I have re-appointed the following Senators to consider and report on the Bill:

Mrs. Vimala Tota-Maharaj

Mr. Nathaniel Moore

Mr. Mahadeo Jagmohan

Dr. Eric St. Cyr.

OATH OF ALLEGIANCE

Sen. Dave Cowie took and subscribed the Oath of Allegiance as required by law.

PAPER LAID

Third and Fourth Periodic Report of the Republic of Trinidad and Tobago—International Covenant on Civil and Political Rights. [*The Minister of Public Administration (Sen. The Hon. Wade Mark)*]

ORAL ANSWER TO QUESTION

**Environmental Police
(Pilot Scheme)**

4. Sen. Prof. Julian Kenny asked the Minister of Energy and Energy Industries:
- (A) Could the Minister inform the Senate of:
- i the number of Environmental Police Officers appointed to the pilot scheme on the control of littering and vehicle emissions;
 - ii. the cost of the pilot scheme for the period July 1st to September 30th, 1999;
 - iii. the total number of tickets handed down or charges laid during that period for breaches of the Litter Act and the Visible Vapours Rule of the Motor Vehicle and Road Traffic Act;

iv. the total value of tickets handed down or fines ordered by the courts in respect of (ii) and (iii) above.

(B) Could the Minister also state the number of Government or State Agency Vehicles ticketed for breaches of the Visible Vapours Rule of the Motor Vehicle and Road Traffic Act?

The Minister of the Environment (Dr. The Hon. Reeza Mohammed): Mr. President, 20 environmental officers have been appointed to the pilot scheme for the control of littering and vehicle emissions. I do not know if Sen. Prof. Kenny wants me to give a breakdown of the names of the officers. [*Interruption*]

The cost of the pilot scheme for the period July 01—September 30, 1999 was \$242,072. A breakdown of this cost is as follows:

Salaries	\$196,836
Rent	\$30,000
Public Awareness	\$15,236.

The total number of tickets handed down or charges laid on a monthly basis during the period July 01—September 30, 1999, for breaches of the Litter Act and the Visible Vapours Rule of the Motor Vehicles and Road Traffic Act is, as follows:

Month/Year	Smoke Emission	Other Offences	Litter	Total
July 1999	145	7		152
August 1999	259		2	261
September 1999	234		90	324

The total value of tickets handed down or fines ordered by the courts for the period July 01—September 1999 is \$330,370. The breakdown is as follows: Number of persons arrested for the period—20; value of fines by the court in respect of those arrested—\$9,150; fines paid for smoke emission—\$21,120; projected fines if tickets are not paid—\$300,000 maximum fine.

Mr. President, 19 vehicles owned by the Government and state agencies were ticketed for breaches of the Visible Vapours Rule of the Motor Vehicles and Road Traffic Act and the details are as follows:

Oral Answer to Question

Tuesday, December 07, 1999

Telephone Services of Trinidad and Tobago	5
Public Transport Service Corporation	10
Ministry of Works and Transport	1
Prime Minister's Office	3

Thank you.

Sen. Prof. Kenny: Mr. President, I have a supplemental question to the hon. Minister of the Environment. There are probably about 250,000 vehicles on the road, and those of us who use the roads on a daily basis see a very high proportion of vehicles emitting black smoke, including recently registered PBFs and PBGs sometimes. Can the Minister of the Environment give us some projection as to the time when this problem will be brought under control bearing in mind that the pilot survey was only a matter of a comparatively small number of vehicles? Can he give the approximate time, six months, six years, 60 years?

Dr. The Hon. R. Mohammed: Prof. Kenny, within the concept of a time frame, we are looking at mid-2000. However, I would just like to point out that I have been advised, and we are looking at this presently, that the setting value of the dieselene sold in this country compared to the setting value of the dieselene used in foreign countries, leaves a little to be desired.

As a consequence, I have given a mandate to the board of the Environmental Management Authority to look into that question of the setting value of the dieselene that is sold locally.

Thank you.

10.15 a.m.

ARRANGEMENT OF BUSINESS

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, I beg to move that item 13, on the Order Paper be deferred to a later stage in the proceedings.

I also seek leave of the Senate to deal with Bills Second Reading under "Private Business" before proceeding with "Government Business".

Agreed to.

Emergency Mutual Aid Scheme Bill

Tuesday, December 07, 1999

**TRINIDAD AND TOBAGO EMERGENCY MUTUAL
AID SCHEME (INC'N) BILL**

Question put and agreed to, That a Bill for the incorporation of the Trinidad and Tobago Emergency Mutual Aid Scheme and for matters incidental thereto, be now read a second time.

Bill accordingly read a second time.

Bill referred to a special select committee of the Senate chosen by the President as follows: Mr. Nizam Baksh (Chairman); Sen. Rev. Barbara Gray-Burke (Member), Sen. Cynthia Alfred (Member).

PROCEDURAL MOTION

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, in terms of the order of "Government Business," and in the absence of the Environmental Management Authority Bill being tabled, we would like to proceed to Bill No. 2 which is the debate on the Maintenance Orders (Facilities for Enforcement) Bill, and thereafter proceed to the Sexual Offences Bill and after lunch we would do the Environmental Management Authority Bill.

Mr. President, I serve notice as I had indicated earlier that the Environmental Management Authority Bill will be tabled later on in the proceedings.

Question put and agreed to.

MAINTENANCE ORDERS (FACILITIES FOR ENFORCEMENT) BILL

[Second Day]

Order read for resuming adjourned debate on question [December 01, 1999]:

That the Bill be now read a second time.

Question again proposed.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. President, when this debate was adjourned on the last occasion, I indicated that I would have liked to have some time to look into some of the matters which were raised by the Senators. I have been able to do so and if I can deal with some of the matters with respect to the matter raised by Sen. Mohammed about the enforcement of the Legal Aid and Advice (Amdt.) Bill which was: to what extent is the Legal Aid and Advice (Amdt.) Act being enforced with respect to persons applying for legal aid regarding maintenance matters.

Mr. President, when the Legal Aid and Advice (Amdt.) Act, 1999 was passed, although it extends to applications for legal aid to proceedings for and in relation to, *inter alia*, the attachment of earnings, the amendment has not yet been proclaimed and so it is not in force. Why it was not proclaimed is that funds are being identified in order to give effect to the Act and I have only just spoken to the Minister of Finance and funds are expected to be identified.

Mr. President, the other point which was raised is the practical application of the existing legislation, and some of the points raised with respect to that were some of the problems which now exist with respect to maintenance matters. Some of the problems have been identified by Sen. Mahabir-Wyatt, Sen. Dr. Mc Kenzie, and Sen. Mohammed which include the enforcement in the absence of proof of whereabouts of the person.

When the maintenance order is made, the defendant is supposed to comply with the order. If the order is not complied with there are certain steps that can be taken to enforce the payment of that order, which can even include simple imprisonment and restraining on the goods of the person. If the person cannot be located, then that is a problem and what normally happens is that the complainant assists the marshal or the bailiff in trying to find that person. There may be strong arguments now for an agency outside the court to be able to assist in finding these persons and probably be willing to put the information there so the court can react.

One of the things we are considering doing in the light of the major reforms in the children's law and the family law is to have a sort of enforcement and implementation unit—because as honourable Senators would know, in the other place we have brought major bills to deal with some of these reforms—and we were thinking of having some agency which would assist in the implementation and enforcement.

Under the present system, however, I am told that after the Family Law (Guardianship of Minors, Domicile and Maintenance) Act was passed in 1981, which deals with the power of the Magistrates' Court and the High Court to make maintenance orders, that the court appoints collection officers who are administered by the court and the moneys are paid into court by a defendant. Since His Worship, Mr. Beard was the Chief Magistrate, he introduced a system whereby those moneys are placed in a separate account and there is a time frame for the complainants to collect that money before it goes to the Treasury.

Maintenance Orders Bill
[HON. R. L. MAHARAJ]

Tuesday, December 07, 1999

I think a delay can occur when the money goes to the Treasury because there are many procedures to be used, but I am told there is a period of about three months—I may be wrong in this—and in some cases I am told there is a period of six months for the information coming, but whether it is three months or six months, I am told that there is a period of time within which the complainant has to collect this money from the court. There is a practice for complainants to allow this money to accumulate and then go to collect it and when they go to collect it, there is a problem. I have been assured that in the Magistrates' Court if it is a period within the time that they can collect it from this special account, there is no problem, it is given immediately.

As a matter of fact, I spoke to a chief magistrate who recently left the magistracy and he was able to give me a full account of all the procedures that have been in place. He indicated that there used to be a problem with this matter, but His Worship, Mr. Beard, had put a scheme together and since then there have been problems, but the problems which arise would be when the persons in whose favour the order has been made allow the moneys to remain there for a period of time. It is a special account they have for this purpose.

Mr. President, there is also the question of evasion by persons of the system of attachment of earnings. I think hon. Senators would remember that in 1988 the Attachment of Earnings Act was passed and it established a system of attaching earnings as a means of enforcing maintenance orders either made in the High Court, or in the Magistrates' Court. An Attachment of Earnings Order operates as a direction to an employer to make deductions from the debtor's earnings or to pay the amounts deducted directly to the person to whom the payment is required to be made under the order. Both the debtor and the employer have statutory obligations to inform the court of any change in the employment status of the debtor. The issue of the enforcement of these orders really cannot be determined by legislation, it has to be determined by administration, and it would seem to me that the more one looks at this question, the more one would come to the conclusion that the administrative structure must be changed in order to have some special central agency or authority which would be responsible and dedicated for the purpose of enforcing these orders, locating persons, and assisting complainants. As it stands now, even though there have been improvements in the administrative structure, the complainant is left by herself most of the time to battle with the bureaucracy and administrative structure. Therefore, what is needed, in my view, and which I am working towards, is to

have some agency dedicated whose functions and duties would be to see that assistance is given in locating and enforcing.

Mr. President, having said that, one must recognize that this is not a problem which has come overnight. It is one which has been there and accumulated, and it is not an easy one to solve, but it can be solved with commitment and a sense of purpose to do it. All I can say is that we on this side of the Senate have recognized this problem and would attempt to find means whereby it can be solved.

The question of the establishment of an enforcement agency or bureau or whatever we want to call it, or whatever the function may be, is a good suggestion and one we would take on board, but it is something with which we cannot deal in this particular legislation. There is also the situation in that although you have the Attachment of Earnings Act, 1988—which was amended in 1995—for the income of the persons to be garnisheed at source, there are still problems because the implementation of the Act poses a problem in that persons can hide their income and, therefore, such an agency can assist the victim or complainant in trying to find out about the assets of these persons.

Other countries have these similar problems. As a matter of fact, this is a major problem in the United Kingdom, as I said on the last occasion; the government has decided to take very drastic measures to deal with it.

So by the time the family law and the package of the children's legislation come to this place we should be able to have a scheme in place so that we can discuss how to deal with these matters.

10.30 a.m.

The Bill is however progressive, in that, apart from the matters which I had mentioned on the last occasion of extending the number of countries which an applicant can use to enforce these orders, and to get orders, it allows the applicant to trace the assets held outside the jurisdiction because the order follows the individual. Therefore, if the individual has assets in country "B" or country "C" it would mean that those assets can be attached and taken in relation to the matter. So it is a matter which is a problem in the enforcement of maintenance orders, and it is a matter which we would be committed to resolve.

Maintenance Orders Bill
[HON. R. L. MAHARAJ]

Tuesday, December 07, 1999

Mr. President, there are some other matters which have been raised and which have to deal with the amendment to clause 7. This point was raised by Sen. Mahabir-Wyatt. The hon. Senator questioned the cessation of a maintenance order in respect of a child and the cessation of maintenance orders in respect of other dependant relatives. I agree and propose at the committee stage to amend that section to delete clause 7 and substitute the following new clause:

“‘Other dependant’ means such other person as the person liable to make payments under a maintenance order or order is liable to maintain;

‘minor’ means any person under the age of eighteen years.”

I will also amend the section to take into account that the order would not necessarily cease to have effect on the remarriage of any party, but it would:

“...cease to have effect on the remarriage of the party in whose favour it was made, except in relation to any arrears due under the order on the date of the remarriage, and such order or provision thereof shall not be capable of being revived.”

In respect of the children, the orders would remain in force unless the court orders otherwise.

Sen. Mahabir-Wyatt: And dependants?

Hon. R. L. Maharaj: When I say children, I mean children and dependants. So that if an order has been made in favour of a person and that person remarries, then in respect of that person, the order would come to an end. In respect of children and dependants the orders would remain in force unless the court orders otherwise because there can be an application at the court and depending on the circumstances. So it would be an automatic continuance for the children and dependants unless the court intervenes.

In respect of clause 9(2), I think the point which was made here is that this section should be amended to take into account the needs of the dependant, minors and other members of the family. I have looked at the section and, probably at the committee stage we can look at it again. It seems as though the provisions are wide enough to take into account the variation of an order for any reason. If we look at it again and we feel that it still needs amending, I will be quite open to consider it.

In respect of clause 22, the point is a legitimate one and I think that Sen. Mahabir-Wyatt has legal qualifications. *[Laughter]* That section should really be

deleted because it applies to a different kind of jurisdiction, so that we will look at it when we come to the committee stage. Part VII of the Bill was a drafting error in that there has not been a Part VII, so that we will make some changes.

Mr. President, Sen. Dr. Mc Kenzie enquired whether these provisions or the provisions of the old law have been used from time to time. They have been used but very sparingly because of the cumbersome system and the inadequate measures. This new law would widen the question of what kind of orders can be applied for and can be enforced. What I have found out however, is that there is a problem of delays in the Magistrates' Court in hearing maintenance matters and that has produced a grave problem. Those problems have been existing for some time and there needs to be really, a restructuring or re-organization of the Magistrates' Court and its procedures. All that I can say—because one has to be very careful especially these days, so that one does not appear even to be interfering in the independence of the Judiciary—is that when I became Attorney General, I recognized that these are grave problems.

Mr. President, we have approved a Judicial Sector Reform Project which includes having some proposals for reform of the Magistrates' Court and its procedures. I have taken the position that I was awaiting the Judiciary to give us what they have proposed for the Magistrates' Court and we have not received them as yet. But there is the problem of delays in the Magistrates' Court and there are many reasons for this and it is not a problem which has come overnight. I think that I would be failing in my duty if I did not say that there is the need for reform.

I have received some maintenance statistics in five of the magisterial districts to show how it operates. In Point Fortin, in the year 1998, there were 261 applications made; 160 applications were granted which meant that 160 applications were dealt with; 252 applications were made, 140 applications were granted—no it would not mean how many were made but how many were granted—I did not get how many were not granted. I could not get it in the short space of time. In Sangre Grande, in the year 1998, 155 applications were made; 123 were granted and 32 were dismissed which is a very good record. In 1999, so far 123 applications were made and 98 have been granted. In Chaguanas, in 1999, so far, there have been 700 applications made. We do not know as yet how many were granted. In Port of Spain, 1399 applications have been made and the figures I have show that 279 interim orders and 46 final orders were made. In 1999, 1555 applications were made; 361 interim orders and 16 final orders were made.

Maintenance Orders Bill

Tuesday, December 07, 1999

[HON. R. L. MAHARAJ]

What I have done was to get some idea of the statistics as to how many were made, how many were granted and how many were pending because all these are matters which would have to be studied in order to determine what is happening. Certainly, in Port of Spain, there seems to be a major problem. From these statistics one would see that many applications were made for maintenance and some ways and means should be found, in order to make life easy for persons who are in that kind of situation.

Mr. President, the Magistrates' Courts deal with 90 per cent of litigation in the country and what happens is that there are too many postponements. Even the whole system, for example, a Magistrate spends probably half-day going through the whole list, and it may be that what should happen is that an administrative decision should be made somewhere that there should be one Magistrate to deal only with adjournments, and when Magistrates go in at 9 o'clock it should be probably just to deal with cases and they should sit mornings and afternoons. Having said that, I know that the Magistrates have a very difficult task to perform and it involves also a lot of other considerations.

Mr. President, all in all it is a very forward thinking Bill which would provide relief. It may not solve all the problems but it would certainly put in place a better legal framework in order to provide relief for persons who have to get maintenance orders; persons who would have to follow; persons who are responsible for making payments for these orders and these orders can be enforced in countries other than Trinidad and Tobago, other than in the Caribbean and other than in the Commonwealth.

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. [*Desk thumping*]

Question put and agreed.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate.

10.40 a.m.

Senate in Committee.

Mr. Chairman: Hon. Members, this is a Bill that contains 34 clauses in seven Parts. I would like to have your permission to deal with the Bill by Parts and where there are clauses in any Part that need to be amended, we would deal with that separately. Do I have your consent?

Assent indicated.

Mr. Chairman: Thank you very much.

Clauses 1 to 6 ordered to stand part of the Bill.

Clause 7.

Question proposed, That clause 7 stand part of the Bill.

Mr. Chairman: There is a proposed amendment by the hon. Attorney General.

Mr. Maharaj: Mr. Chairman, I propose that clause 7 of the Bill be amended as follows:

Delete clause 7 and substitute the following new clause:

Provisional orders to
cease to have effect
upon re-marriage
except in relation to a
child or other
dependant

7. (1) In this section—

“other dependant” means such other person as the person liable to make payments under a maintenance order or order is liable to maintain;

“minor” means any person under the age of eighteen years.

(2) Where a court has made a provisional order under section 5 consisting of or including a provision for periodic payments by a husband or wife and the order has been confirmed by a court in a reciprocating state, then, if after the making of the order, the marriage of the parties to the proceedings in which the order was made is dissolved or annulled but the order continues in force, the order, or as the case may be, the provision thereof in so far as it relates to the husband or wife, shall cease to have effect on the remarriage of the party in whose favour the order was made, except in relation to any arrears due under the order on the date of the remarriage, and such order or provision thereof shall not be capable of being revived.

(3) Notwithstanding subsection (2), where such periodical payments are made towards the maintenance of a minor or other dependant, such payments shall continue in respect of any period after the remarriage of the party in whose favour the order was made.

It takes into account the criticism of clause 7 made by Sen. Mahabir-Wyatt. In the proposed clause 7(2), it says:

“Where a court has made a provisional order under section 5 consisting of or including a provision for periodic payments by a husband or wife and the order has been confirmed by a court in a reciprocating state, then, if after the making of the order, the marriage of the parties to the proceedings in which the order was made is dissolved or annulled but the order continues in force, the order, or as the case may be, the provision thereof in so far as it relates to the husband or wife, shall cease to have effect on the remarriage of the party in whose favour the order was made, except in relation to any arrears due under the order on the date of the remarriage, and such order or provision thereof shall not be capable of being revived.”

Sen. Mahabir-Wyatt: Mr. Chairman, I am wondering whether we need the words, “and the order has been confirmed by a court in a reciprocating state”. Does this not mean that if the order has not been confirmed by any reciprocating state, that this whole thing will not be effective? Why do we need those words?

If a husband or wife is making periodic payments and they remarry, surely the cessation of those payments should not be dependent on it being confirmed by a court in another country. Obviously, it would be if a court in another country did reciprocate, it would also cease, but surely it should not be dependent on that. Because if it is dependent on that, it means that people here, once they are remarried, will still have to be paying maintenance orders after they have remarried. Does it not?

Mr. Maharaj: Let us try to see how this applies. If an order is to be made, let us say a person is leaving the country—a husband is leaving the country—and a court in Trinidad and Tobago makes an order, the order is provisional until it is confirmed in the other state. It is not enforceable unless it is confirmed in the other state.

Sen. Mahabir-Wyatt: Okay. That is one point.

Mr. Maharaj: So that when it is confirmed in the other state, it is enforceable. It is in relation to that kind of order, this Bill would apply.

Sen. Mahabir-Wyatt: But do we not need it in relation to orders in Trinidad as well as—

Mr. Maharaj: And for example, if the order is made in the United States of America, it is provisional; when it is confirmed in Trinidad and Tobago, it becomes enforceable.

Sen. Mahabir-Wyatt: I understand what my problem is. I accept that entirely. I just want to make sure the person does not leave the country; if they stay in this country, that the same provisions will apply. In other words, these are maintenance orders, but not everybody leaves the country to get away from their obligations.

Mr. Maharaj: No.

Sen. Mahabir-Wyatt: If they stay here and they do not leave the country, should not the same thing apply? In other words, that the order should cease to have effect on the remarriage.

Mr. Maharaj: No, if they remain in the country, then the Family Law Act would apply.

Sen. Mahabir-Wyatt: Okay. Does the Family Law Act, in fact, take this into consideration. Because it was one of my concerns. Does the Family Law Act specify that on the remarriage, the payment to the spouse ceases but the payment to the dependants and minor children of the marriage continue?

Mr. Maharaj: I must confess I have not looked at that.

Sen. Mahabir-Wyatt: I do not know either. I wonder if we could have one of our experts check that.

Mr. Maharaj: I could check that, and I wish to assure you if it is not like that, we have no problem later on in having it changed.

Sen. Mahabir-Wyatt: I know that is coming up. In this case, this is okay.

Mr. Maharaj: But this is only for that kind of situation.

Sen. Mahabir-Wyatt: Just one minor point here, Mr. Chairman, through you. In the amendment, it says:

“minor” means any person under the age of eighteen years.

Maintenance Orders Bill
[SEN. MAHABIR-WYATT]

Tuesday, December 07, 1999

Do you want to specify that any person under the age of eighteen years was a dependant of the respondent? Is it necessary? Because it comes in under subclause (3). It says:

“Notwithstanding subsection (2), where such periodical payments are made towards the maintenance of a minor or other dependant...”

Do we have to specify that the dependant is a dependant minor?

Mr. Maharaj: So that—

“‘minor’ means any person under the age of eighteen years and dependant upon the person liable to maintain.”

Sen. Mahabir-Wyatt: Liable to make payments. Yes.

Mr. Maharaj: “...and dependant upon the person liable to maintain.”

Sen. Mahabir-Wyatt: That is fine.

Mr. Maharaj: Thank you very much, Sen. Mahabir-Wyatt.

If I may add Senator, through you, Mr. Chairman, subclause (3) says:

“Notwithstanding subsection (2), where such periodical payments are made towards the maintenance of a minor or other dependant, the court may require such payments to continue to be made in respect...”

I think that is the old one. There was another amendment which—I just want to make sure you have the right one before you. The correct one says:

“Notwithstanding subsection (2), where such periodical payments are made towards the maintenance of a minor or other dependant, such payments shall continue in respect of any period after the remarriage of the party in whose favour the order was made.”

Sen. Mahabir-Wyatt: Okay. So we remove the words, “the court may require”?

Mr. Maharaj: Yes.

Sen. Mahabir-Wyatt: Thank you. Such payments shall continue?

Mr. Maharaj: Yes. I am sorry. May I explain? The original amendment to clause 7(3), when it was drafted by the Chief Parliamentary Counsel’s Department, would have meant that it would not have continued and I gave

instructions to amend it so that the proper subclause is what is contained. I will read it for the record.

“Notwithstanding subsection (2), where such periodical payments are made towards the maintenance of a minor or other dependant, such payments shall continue in respect of any period after the remarriage of the party in whose favour the order was made.”

So, the remarriage would not automatically affect the order made in favour of a minor or other dependant.

Sen. Mahabir-Wyatt: Okay. That is fine.

Mr. Chairman: Have we all got copies of the amendment to subclause (3), the new one just circulated?

Sen. Mahabir-Wyatt: Mr. Chairman, I have one small problem with this. With the new amendment, and that is normally, I think, under family law, the payments in respect of a minor would cease when the minor got to be 18; not that I, particularly, want this to happen, but I think this is what the law is. The way this is worded, for example, for dependant parents, the payments would continue, and rightly so. It does not indicate that the payments would cease upon the majority of the minor. Can you just reassure me that this is what this means?

Mr. Maharaj: The order, which would be made by the court, would have to be an order, which would never be an order to continue until after age 18.

Mr. Chairman: Just before I put the question, I want to ensure that we have “minor” clarified.

“minor” means any person under the age of eighteen years and dependant upon the person liable to maintain.

Is that correct?

Mr. Maharaj: Yes.

Question put and agreed to.

Clause 7, as amended, ordered to stand part of the Bill.

Clause 8 ordered to stand part of the Bill

Clauses 9.

Question proposed, That clauses 9 stand part of the Bill.

Sen. Mahabir-Wyatt: Mr. Chairman, under clause 9(2), I had suggested that these words be added:

Maintenance Orders Bill
[SEN. MAHABIR-WYATT]

Tuesday, December 07, 1999

...taking into account the needs of the dependant minors and other dependants.

Where 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 do not know if these words are necessary but my point was that when it is proceeding:

“...as if an application for the variation or the revocation of the order had been made to it.”

Would it be an assumption that it would take into account the needs of the dependants and minors? It is not always so, and I just wanted to be sure that insofar as the confirmation is concerned—because we do have many families who have transported elderly people across borders—I just wanted to make sure that their needs would be taken care of as well.

Mr. Maharaj: This law does not change the existing law with respect to what a court may consider, or has to consider, in respect of a child, and it also does not change the law which is in another jurisdiction. What this does, really, is purely for the purpose of the enforcement of the provision from somewhere else, or for another country to enforce ours, or for us to enforce theirs. So that if you are applying for confirmation, all the principles which apply to the family law and to the benefit of the child and the needs, *et cetera*, would have been done.

10.55 a.m.

Sen. Mahabir-Wyatt: I am just asking the Attorney General, once again, to make sure that those provisions for dependants and minors are included under family law. The reason I say this is because society has changed a lot since that family law was passed.

Mr. Maharaj: That is 1981.

Sen. Mahabir-Wyatt: And in the last 20 years, we have had so many people emigrate for the purposes of employment and bring their elderly parents, and so forth. So, I want to make sure that we will have it covered in our law here to reflect the social changes.

Mr. Maharaj: What I would do, Mr. Chairman, and what I wish to assure the hon. Senator is that in the light of what I am doing with the family law, I will also put that on the agenda so that we could look at it again to see whether they would comply with our modern day needs.

Question put and agreed to.

Clauses 9 ordered to stand part of the Bill.

Clauses 10 to 21 ordered to stand part of the Bill.

Clause 22.

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

Mr. Maharaj: Mr. Chairman, I propose that clause 22 be deleted in response to the error that was pointed out by Sen. Mahabir-Wyatt and that it be renumbered subsequently. It really applies to other kinds of jurisdictions and not Trinidad and Tobago.

Sen. Mahabir-Wyatt: Sorry to be such a nit-picker, Mr. Chairman, but in subclause (3) here:

“The proper officer of a court required by the provisions of this Part to send to the Attorney General or to the proper officer of another court...”

I do not think there is another court in Trinidad, so it would probably be just to the Attorney General. I am getting my law degree next week, Mr. Chairman. *[Laughter]* It should be: “The proper officer of a court required by the provisions of this Part to send to the Attorney General” and remove the words “or to the proper officer of another court”. It would just be the Attorney General, because this one is referring to another jurisdiction in Trinidad and Tobago.

Mr. Maharaj: So, we are deleting “or to the proper officer of another court”?

Question put and agreed to.

Clause 22, as amended, ordered to stand part of the Bill.

Clauses 23 to 34 ordered to stand part of the Bill.

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

Senate resumed.

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

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

[Second Day]

Order read for resuming adjourned debate on question [December 1, 1999]:

That the Bill be now read a second time.

Question again proposed.

Mr. President: Apart from the Attorney General, two other Members made contributions. I do not know whether anybody else wants to make a contribution.

Sen. Prof. Julian Kenny: Mr. President, I have a few brief comments to make on the Bill. Generally, I support tightening up of definitions, but I get the impression that this Bill is essentially about strengthening the penalties, and there is one particular part of it which I find very difficult to support.

Behaviour in human society—the problem of deviant behaviour—has attracted the attention of many people. I would like to read a little quotation from an essay entitled *Crimes and Punishments*. This essay was written in 1764 in Milan, and the author of this is Cesare Beccaria. He made the observation that:

“The Countries most noted for the severity of punishments are always those in which the most bloody and inhuman actions are committed...”

Then he goes on to say:

“for the hand of the assassin and the hand of the legislator are directed by the same spirit of ferocity.”

I mention this because there is one part of the Bill which I find impossible to support. I am dealing with clause 4(2)(e):

“the accused has previously been convicted of the offence of rape,

he shall, in addition, be liable to twenty strokes with the cat-o-nine tails.”

Mr. President, this sort of thing has gone out. There is nothing to be gained by beating a serial rapist who is going to spend the rest of his life in prison anyway. This, to me, is a reflection of one of the problems of our society where we feel that the solution to the problem is beat the child, beat the criminal, beat the rapist. Hit him with 20 lashes of a cat-o-nine tails. This thing is archaic! It belongs to the past, the period that Beccaria was talking about. So, I find it very difficult to support this part of it.

11.10 a.m.

There are some other concerns also, not so much with the actual Bill but, with my obtaining some understanding of some of the implications for people who do not meet the norms of behaviour.

Mr. President, again, I am going to indulge in a little comment on animal behaviour. Anyone walking or driving around the savannah will have noticed parrots in flight. The parrots always travel in pairs because their behaviour is such that they mate for life; they are bonded for life. Pair bonding is well known in a wide range of animals. Next time you see the parrots flying you will see a big flock of 20—30 birds, they are always in pairs. Swans pair bond.

We are primate animals and we belong to the same group as the great apes. There are apes which behave in this way where they pair bond for life, that is, they mate and they live for the rest of their lives. I am thinking, in particular, of the orangutan, the semang ape and the gibbon. These are all animals in which their behaviour is genetically determined.

Looking at society, behaviour of the human species is more closely related to the chimpanzee. In chimpanzee society the roles of males and females are quite different. Their behaviour is genetically determined, and every male chimpanzee wants to mate with every possible female chimpanzee that he can find. In fact, they get into fights over this, as occurs in human society. This is the genetically determined behaviour of the chimpanzee. Our closest relative, genetically is, believe it or not, the chimpanzee. It follows that if we look at ourselves and our society, a lot of our behaviour closely parallels genetic behaviour. We, of course, in this society, do not live like chimpanzees. Society civilizes. We can nurture people from youth/childhood up to adult. We can put certain sanctions on behaviour and we can regulate the way in which individuals perform and behave in the society. This Bill, in fact, looks at deviant behaviour: deviant from the norm which we expect.

There is no doubt that there are individuals in society who may be able to recognize the difference between right and wrong, but because of their genetic make up, it is possible for them to behave in a way in which society does not accept. I am talking about individuals who develop or grow in an environment where they may be overcrowded, there may be domestic or physical violence of one kind or another, and they grow up into the society and because of their genetic make up they are forced, genetically, into certain kinds of behaviour.

Sexual Offences (Amdt.) Bill
[SEN. PROF. KENNY]

Tuesday, December 07, 1999

There are also individuals who are, clearly, not able to recognize the difference between right and wrong. The courts have a way of dealing with this. It is basically a question of sanity and insanity. The dividing line is not always that clear. There are also individuals who—while they may have the human form—may be developed in such a way, they may be defective in their genetics. I am not talking about the ordinary individual, who may have been born into an environment in which the person might have a predisposition to a certain kind of errant behaviour. I am talking about serious genetic disorders. There are cases, worldwide, of serial rapists. This is quite common in European and North American societies. Curiously, it is not common in very primitive societies which have their own ways of dealing with this.

My concern with the Bill is that, while I go along with the clarification of the definitions, I sense the main theme of the Bill is: “We want to make it. We want to punish people.” Our prison system—I have not actually been inside of it, but I have spoken to a person who was responsible for studies, some years ago, on the prison conditions. There is no doubt that when you take somebody and put that person into the system which we as a society operate—while we have to punish, it is punishment of an extreme form of violence.

If one goes into the history of penal reform, there are celebrated cases in Australia where people were sentenced in Norfolk Island when there was a rebellion there. Those who were hanged were absolutely praising the Lord that they were out of misery. The rest of them had to stay and suffer it. Here you had sentences of being chained to a rock in Sydney Harbour—20 feet of chain—that was one’s sentence.

Are we going in the right direction by putting away the rapists for life? Is there absolutely no hope? Is there so clear a division between somebody who has made an awful error and someone who is actually a disordered personality? We have to protect society against aberrant behaviour, but can we just do it in one category, put everyone in and if a person is so disordered that he repeats it, then you put him in permanently and then beat him with an instrument? What is the beating going to achieve?

This morning in the *Newsday*, I saw a most remarkable story coming out of Jamaica which confirms what I read to you from Beccaria. This is that one legislator in Jamaica was actually proposing that rapists be made to enjoy a vasectomy, which is one of the most remarkable statements I have seen coming from a legislator. This is the reason I brought this little quotation because

legislators think they can solve a problem by violence. My concern with this Bill is, it is essentially increasing the potential for violence by the state on those who have disordered personalities.

I would like to see the state tell us how to deal with these disordered personalities. How you rehabilitate, protect the society or give some hope to the individuals who have, clearly, a wide range of behaviours starting from three or four young men on a robbery spree and they decide oh well, they can break the bottle. I ask the question because if one is facing this kind of thing, might it not encourage the odd—maybe not the odd but—many people who are committing sexual offences to say: “Listen they are not going to catch me, kill she.” This is the thing that bothers me; are we becoming more and more violent as a society?

Mr. President, we were told that the law of the land is execution for murder. We have gone through a brief period when we executed 10 people. Execution or capital punishment is supposedly a deterrent to murderers. Mr. President, I do not want to repeat that. It occurs everywhere over the most trivial things: a pen or a bet. It happened recently in Maraval Valley; we do not know the circumstances of the robbery. My concern is that the more violent we become as legislators, in terms of how we deal with the problem, the more violent the society becomes.

Thank you, Mr. President.

11.20 a.m.

Sen. Muhummad Shabazz: Mr. President, any Bill that deals with sexual offenders would and must be applauded by members of this honourable party on this side.

The Bill is important at this time, when we see what is happening in our society, the type of problems women face, the type of problems children face, we find it is important. It is important when we look at the type of sexual crimes that are committed and the type of abuse that takes place in our society. Definitely, we cannot feel proud as to what is happening now in this society.

We feel that this Bill should have been here a long time ago, remembering and taking into consideration the policies of this Government and its wishes that those who do the crime must do the time. When we look at the type of crimes committed against our children, sisters, mothers, it must be important to deal with it at this point. Really, we expected a Bill of this nature to be brought to this Senate a long time ago. As a matter of fact, we thought it would have been brought to this Senate when this Government came into office. We wondered why they left it for when they are leaving office. *[Desk thumping]*

Sexual Offences (Amdt.) Bill
[SEN. SHABAZZ]

Tuesday, December 07, 1999

Mr. President, what does this Bill seek to do? It says, one, it is going to increase penalties—that I will deal with—and two, it would help to deter people who want to commit sexual offences. It is also defining clearly what a sexual offence is and we are aware that a number of women's groups have been clamouring, and rightfully so, so that they will find some way—they will be respected by men and not be treated as inferior or as property. We on this side agree with them.

As we have seen recently, Mr. President, when we take up the newspapers, and in today's *Trinidad Guardian* we see "Justice Lucky rules too many women jurors". You see, there must be some balance in what we do. Here we are reading where 50 female jurors to one male had been on a panel—[*Interruption*] Yes, and also to deal with, possibly, an incest crime or a sexual crime—where in truth and in fact, if the imbalance is so bad, the cards will seem to be stacked against people. Maybe we should have no objection, but maybe we need to treat people very fairly when we are dealing with criminal offences, especially criminal offences of this nature.

Not only that, we understand that at this point in time a man or woman could go to a station and say "I have been raped or so and so interfered with me", and probably, without a deep investigation, a warrant could be put out for this person. We have known of a case where a man just went to a station to check something and he was told there was a warrant out for him, somebody made a complaint against him and the police issued a warrant and he was arrested. He spent the whole weekend—it was a holiday weekend—in the police station.

We want to ask in cases like these that there are going to be proper investigations, especially when you are going to arrest people for crimes of a sexual nature, because what it does, somehow, is put a kind of blot, a stain on the name of the person who is accused of committing any sexual crime. Most times, whether he wins, yes or no, people still look at him as a rapist or child molester or something like that. We are asking that it be balanced and not be in a sexist way where the thing turns and it goes completely and totally against men. We are asking that we deal with this in a very serious way, but also in a very efficient and professional way.

When we look through the Bill, what do we see? We are seeing here that with regard to the identity of a victim, either before or after a person is charged with a sexual offence, what they are asking is that the person be identified. The Attorney General made a case that in murder cases it is done. Really, we may not be

objecting to that on this side. Let the person be known, but we are asking that if you are going to let the person be known, let the person be known after you have done proper investigations and you know that this is really the proper way that you are going. Again, it is something that could tarnish somebody's name for a very long time. So we need to be careful with that.

We look at the Bill and at certain things here. Now, the way the society is going, I could safely say that although we talk about rape—and I want to commend them on this definition for “sexual”—women too could commit sexual assault. When I look at clause 3, which says:

“(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;”

I think that ought to be complimented, in the sense that the way the world is going and the way women are, some of them are really looking to become—they say—equal, but some are going above the border, and we have a lot of that happening; women interfering with women. We know it is happening in the society. Women are taking charge so much, that at this point in time, they are not even waiting to be challenged or approached, but are taking things upon themselves. It could happen where an older woman could interfere with a younger male and we must look into it. So I take that into consideration and I find that this ought to be complimented.

Clause 3 continues:

“(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...”

That too is important.

“...except when such penetration is accomplished for medically recognised treatment;”

I am not sure why that was put in. Because I feel if it was for a medical reason, the person would not go reporting, but I feel the Attorney General will deal with that when he has to sum up. It goes on:

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

Again, that imbalance against the male that I am speaking about, I would have preferred to see “the placing of the penis or vagina of the accused or third person, as the case may be, into the mouth of the complainant”. I feel that “or vagina” should really be placed inside there. It continues:

Sexual Offences (Amdt.) Bill
[SEN. SHABAZZ]

Tuesday, December 07, 1999

“(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;”

Somehow this keeps assuming that males—and I think our society assumes that males are the only people who commit sexual offences. The Bill has taken some measure to include females into it and that measure should really be as broad as it should be and we should get that type of equality in this Bill too.

We look at the punishment. Yes, the punishment should be increased, but here we are seeing imprisonment for life. I want to say a little on this. The question of the cat-o-nine tails, there is an argument in our society whether people should be punished by force, whether people should be beaten, it is happening even in the schools, among children, whether we should beat our children, or whether we should not. There are arguments on both sides.

I would just like to make this point. I have four children, I have never beaten any and I will never beat any, but I got a lot of licks when I was growing up. I felt that my father’s philosophy of “spare the rod and spoil the child” was indeed a good one. So I felt licks made me better, even though there were times I got licks that really was not fair and really was not good, but I knew that my parents did it with a good heart. So I felt that indeed, it has made me a better person. So even though I am not going to be beating, I feel that when a person could abuse a female, especially the way it is done, they come into your home, they will rape your daughter in front of you, they will still shoot you in your foot, and when they go away, they want kid’s gloves attitude towards them. If the cat-o-nine tails is passed, really, I have no objection to it.

I have objection to a rapist being given life imprisonment, meaning for the rest of his natural life. I think that is very unfair. Because even when we are taking people into prison and we use these harsh measures against them, we need to have some kind of way in which we will rehabilitate them. We need to still treat them as humans.

Sometimes, it is one of the things for which I look at the Attorney General. I must always make mention of this. You see, I always see the Attorney General in the light of a human rights person too. Sometimes, when I see how harsh, how draconian his measures are, I tend to think: how could he have changed so much? Why has he changed so much? Is it only for political reasons?

How can you send a man to prison for the rest of his natural life—say 40 years? Maybe if you want to change the definition from life imprisonment, which

is 15—20 years, to say 40 years. A man aged 20 raped somebody: you are going to tell me this man is 80 years old and you still have him locked up in a jail? You are not caring at all. I think the Attorney General is heartless. I feel he is a heartless man to send a man to prison until he is 95 years of age. So if this man lives to be 117 years old, you are going to have your oldest citizen in jail for the whole of his natural life. Give him 40 years.

We know that at 60 or 65, Mr. President, even though you may really enjoy a relationship, I do not think you could rape at that age. *[Laughter]* I see the hon. Minister of Finance smiling, but I do not think so. Maybe 60 or 70, well give him 50 years, but still give the man the opportunity to come back out here, because if he raped at 30, I feel 40 years is a long time. Maybe he could be violent. A man could be violent for the rest of his life. You could have a violent 90-year-old, but I do not feel you could have a 90-year-old rapist. I ask the Attorney General to really look at this again, to have a little heart. Think!

Sen. Dr. Mc Kenzie: Mr. President, I would just like to ask the hon. Senator whether he is 60 and has the experience *[Laughter]* or whether he knows whether 60-year-old people could rape or not?

Sen. M. Shabazz: Mr. President, I do not know if I should answer that. I could tell the hon. Senator that I am not yet 60, I am 50, but I am getting fast to the point that she has just asked about, Sir. *[Laughter]* The point is, I do not know what will happen at 60 or at 70, but at 50 there is a difference, I feel that we should really look at that. I ask the hon. Attorney General to look at it seriously.

Mr. President, there are other things in the Bill that we should look at. Now, rape and these sexual offences, what I really do not like about them is that they really interfere with the minds of the young people in a way that is really very bad. I have done a certain kind of study and looked at it throughout my life and most of the people I have seen in my community or on the streets like the prostitutes and the women who do things to abuse their children, most of them, Sir, had been abused in some way early in their lives. So that, in truth and in fact, I have no objection to dealing hard with the person who is a rapist or child abuser.

As a matter of fact, I would like to say that there are five types of people that I really stay away from. One is a man who says that he does not believe in God; I detest this man. The second is the man who commits incest, a man who interferes with his own children. I do not like him because I feel that he is really not a nice person to be around. I think he is a dread man. Last week we looked at the man who does not maintain his children, he is a person you need to look at. The sexual

Sexual Offences (Amdt.) Bill
[SEN. SHABAZZ]

Tuesday, December 07, 1999

offender is a sad person in society; he is the fourth person. The fifth person, and I say this with regard to people's sexual orientation, the homosexual male. I have nothing against him, that is his business, but I do not like to associate with him because by liming with him, I get a certain kind of tarnishing too, that I really do not like. So, I try to stay away from these people. I have met homosexual people who are brilliant, who are intelligent, who contribute to the society, but because of the association and the type of name you get with them, I think I need to be careful, so I just stay away from them. The other four, I dislike them: the man who does not believe in God; commits incest; the man who does not take care of his children; and the sexual offenders. We need to look at that.

We see in the Bill too, Mr. President, that clause 4 says:

“(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;”

I agree with that. Having looked at that though, I would like to ask this Government to look at the issue, and I think Sen. Mahabir-Wyatt made the point. The point has been made from time to time on these Benches that we need to look at what happens with persons who are 14 years old and allowed to marry. If you are going to have a Bill that is going to be against people 14 years, and persons who are 14 and 16 years old cannot give consent, then in a marriage, we need to look at that. I wonder: why you are giving them permission?

A Bill was brought here recently, the Orisa Marriage Bill, where they were permitted to marry at age 14. If you are so serious about sexual offences against minors and you consider these people to be minors, we need to look at it when you give them permission to be married. We really need to look at that.

11.35 a.m.

Again, we see in the Bill where they talk about compensation for victims of rape; some sort of redress for people. If we are going to compensate victims of rape, what happens when a man goes to court and he wins his case, and we find that the allegation brought against him really was not done with proper motives? How are we going to deal with that? What type of redress would we give the person? Or are we going to give that person any type of redress? It is something that we need to look at, Mr. President.

Clause 18 of the Bill, which amends section 31(1) says:

“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,...

Well that person would know that this person has been interfered with, but they are saying that if this person—I continue to quote:

“... 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.”

Who is accountable? A parent. How will they determine if this person knew in order to charge the person? How are they going to find out? Is it by the child saying I told it to my mother? Normally, when one goes in to cases such as these, one finds, most of the times, that when there are minors getting proof is not so easy; that is, speaking about the history or based on the type of records that we have. The quote continues:

- (3) No report made to a police officer under the provisions of subsection (1) shall, if such report was made in good faith for the purpose of complying with those provisions, subject the person who made the report to any action...”

I just want to be clear on how they are going to determine that. How are they going to determine that the person who came did not do it in good faith?

The clause may be well intended, but we need to look at it again; rewrite it if need be. But I ask: How easily will it be to determine that somebody knew or that there was reasonable grounds for them to believe? I am again looking at clause 4 of the Bill where they talk about a person committing a sexual offence. It reads:

Sexual Offences (Amdt.) Bill
[SEN. SHABAZZ]

Tuesday, December 07, 1999

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

Mr. President, does this mean that one would go to the person and ask him or her for a certain type of intercourse and have a different kind with him or her? I would really like the Attorney General to explain it a little better so that I can get a clearer picture.

Mr. President, there is concern in the clause of a question of the male/female, husband/wife relationship and what could happen under the Sexual Offences Act. I think where a husband and wife are concerned, we need to be very clear—when looking at accusations of wives coming about husbands and husbands about wives—of what the situation is; that there was really separation; that there was really divorce and we need to be extremely clear as to how we deal with it.

As a matter of fact, the husbands and wives provision should be put into this Bill in probably a special or in a different kind of way. That is the recommendation I make and that we on this side would agree to—that it should be done in a different kind of a way, because we need to be always careful when we are dealing with husbands and wives, particularly those who still have some type of relationship.

Mr. President, I will make the point again, that rape is a psychological thing; it has a bad effect on people and we support the punishment and so forth. There are certain things in the Bill that we need to look at. As a matter of fact, really and truly on this side we feel that the Bill could, again, go into some—before we pass this Bill because it is an important one—sort of a committee, sit and look at it; work it out with everybody here; give it some sort of study so that we would come up with the correct thing.

We on this side think that the clause concerning mandatory blood testing for HIV is very important. Maybe it is necessary for all the people who commit sexual offences. Having said that, we ask this Government, in light of what is happening in Trinidad and Tobago with HIV and AIDS, to do something about the situation; to find some way to deal with this AIDS situation; get proper medicine at the hospitals and a number of other things like that, because AIDS is really spreading throughout this country in a kind of a way and that is really very sad.

Mr. President, I want to raise two things here. We need to have the infrastructure where rape is concerned. One of the problems that we have always had is the type of people—I think that sexual offence is of such a nature that there

must be a particular type of police dealing with this. There must be trained police officers to deal with rape; to handle people, because one hears the type of stories coming out of police stations. I used to be a policeman, so I know the type of stories coming out of stations; the way they will question you; the way people would make a joke about it in the station. I hope that those times are long past but we need special people to deal with rape and all sexual offences. We need women and men in there, but they need special training.

One of the things that always comes before this honourable Senate—moreso since I have been here—is that this Government talks so much about training people when they bring Bills and about putting the infrastructure in place but somehow it never seems to happen. We are asking that, as far as rape is concerned, it be done.

Yesterday, while I was thinking about this Sexual Offences Bill and the importance of policemen on the street—I would like to put that to the Attorney General—I went into a store and saw a regular policeman—when we need police in the street—doing an extra duty in a store in Chaguanas. I was surprised. I would not even mention the name of the store because I do not even think that it has anything to do with the store owner, because he wants protection. I think it has to do with the policemen in the area. At this time where our policemen are needed, and needed moreso on the street, I feel a policeman should not be in Pennywise in Chaguanas doing an extra duty. I honestly feel so.

I would like to tell that to the Attorney General so that he would look at it, because all the time people are calling police stations and they are saying that there are no policemen. They cannot send somebody right then and at times they do not have any policemen to send because there are only about one or two policemen. At 3.45 p.m., to see a policeman doing an extra duty in uniform in a store, I think is a sad indictment on what is happening with the police in this country.

I think the Minister of National Security should really take note. Now the policeman has to work, and it is to make an extra dollar, but I think that we have to look at that, moreso, with the coming of Christmas and the type of crimes being committed in this country. We really need our policemen to be in the stations doing the work; protecting and serving the nation, and not doing extra duty at this point in time.

11.45 a.m.

I will also like to say my last two points before closing up. One is, as Senators I understand that we work very hard and we have to come here twice a week. I

Sexual Offences (Amdt.) Bill
[SEN. SHABAZZ]

Tuesday, December 07, 1999

ask your permission, Mr. President, because I would really like to say this to my dear friend Sen. Martin Daly, I want to tell him emphatically—because we understand that all of us need more money and I understand his claim, I know that he too, having worked so very hard, brought the point up because he too may need more money—but it is not the People's National Movement's duty to accept that Report as far as the Salaries Review Commission is concerned. The Senator said that he did it for us, but it is their duty, Sir, and we ask them to perform their duty. When it was our term to perform our duty we did it before and we will do it again.

When they come to this Senate with Bills that need a special majority they try to pass them with a simple majority. For this one, the salaries only need a simple majority and they do not need us to help them pass it. Do your work, just as you do your work with all other things and pass the Report if need be. Do not bring us into it, we want to be no part of it.

Mr. President, having said all of that, I think in truth and in fact, we asked for the Bill to go to a committee but in principle we support it. My only concern in supporting Bills brought by the Attorney General is that I have one fear—and I always have a fear when a Bill like this is brought here. Seeing how he changes his position sometimes—this honourable Attorney General who brought this Bill to go against rapists and sexual offenders—next year when he is not in government I may see him defending one of the biggest rapists in this country. He may be in order, and he will then say that it is his duty to do that and he has now changed position.

He may then say the reason he is defending the rapist is because he is innocent until proven guilty. But I am asking that when he is out of government he should have the same vigilance with which he brings this Bill, with the same feeling that rapists should be dealt with in a certain kind of way, and that he would not change face next year and start to defend the rapist or the man who is not paying his maintenance, and defending him with such strength that he will go free and run all over our land. Then he will again go back and boast, "I am doing it because I am the best lawyer in the land."

Thank you, Mr. President.

Mr. President: Please Senators, in making your contribution do not try to personalize it to the extent that the Senator has made it.

Sen. Martin Daly: Thank you, Mr. President. I am tempted to say that I hope the sound advice which you gave Sen. Shabazz about not personalizing criticism,

reaches a wider audience. [*Laughter*] In fact, it would have been best if you had given it a “p.m.” rather than “a.m.”, but so be it.

First of all, Mr. President, may I say that I did not raise a point of order on it, but I will like to assure Sen. Shabazz that I have nothing to gain from the Salaries Review Commission’s recommendations. He kept talking about money for me, but I have no doubt that it was an innocent error. We have much more serious business to discuss today.

This Sexual Offences (Amdt.) Bill raises very serious issues about crime, punishment and the state of our society. Sometimes, I am in a more moderate mood than others, and I have been saying consistently since my time here, which I think began in February 1991, that every piece of legislation we pass has to actually mean something, that is, it must be technically sound, capable of enforcement and it must reflect the conditions of our particular society. I have some very grave anxieties about what we are doing here, Mr. President, because I think it lacks a certain amount of balance. It is sending a certain type of message that we need to consider very carefully.

It is perfectly obvious from the contributions of the Senators who preceded me that in this particular case we are not only discussing the state of our society and environment, but we are actually dealing with serious scientific issues such as genetics in relation to this particular type of offence. That has already been made clear in the preceding contributions. Before I get to the particular provisions of the Bill, I want to suggest that passing legislation in a reactive fashion at a time of prevalence is never a very good thing. I appreciate that domestic violence and sexual offences are very prevalent but I am not sure passing legislation at that time, the main purpose of which is simply to increase punishment, is really to even begin to solve the problem.

While you are doubling and trebling these penalties, you are increasing, for example, sexual assault from 15 to 20 years, I just do not think, on common sense grounds, that is going to make any difference. I think 15 months, from what is reported in our jails, is a problem, far less 15 years. A major thrust of this Bill is to deal with crime by increasing the penalties and I do not accept—I try to stay away from jargon and the politicians talk all the time about holistic, but I prefer the words “wide” and “narrow”. I do not like jargon. I do not think that you are going to solve the problem of the prevalence of crime of any type simply by increasing the sentences. I think that is one measure which has to come as part of a much wider approach. It is a very, very narrow approach.

Sexual Offences (Amdt.) Bill
[SEN. DALY]

Tuesday, December 07, 1999

The danger in this particular Bill is that we are interfering with certain things—what I consider safeguards—that exist in the peculiar context of sexual offences. To my mind, I heard it said—it may have been privately and not yet in the debate—“Well, if you disclose the identity of a man accused of murder, what is wrong with disclosing the identify of a person accused of rape?” I have heard certain analogies being made to murder.

I would like to suggest that many of these offences take place—because of the conditions under which people live one might not want to say privacy, but it certainly takes place in the semi-privacy of a home, either the home of both parties or the home of the victim. By definition, they are committed, in many cases, in semi-privacy. I am going to come to murder, because we have to keep our balance.

I do not think that murder that is committed in the course of robbing a bank for example, or in the elimination of a state witness could be considered to be taking place in semi-privacy. In fact, the entourage is sometimes so loud and so visible that it is designed to tell other witnesses not to come forward, so the analogy of murder is very inexact unless, of course, we are looking at murder that is committed in a domestic violence context. I think that we have to bear in mind that this is a type of crime which people hide to commit more than most and on many occasions it is committed in the semi-privacy of the home, either of the victim or elsewhere, so we need to be careful.

We also need to understand, in my view, that this is an offence which really relies very heavily on the personal identification of the perpetrator, unless we have DNA and these sophisticated things which I do not believe we have in full operation here as yet. What I mean by that is, you can have all the physical, objective and scientific evidence of the commission of one of these crimes, but in many of them the link is solely and exclusively, personal identification of the offender, unless you can eliminate or corroborate, whatever term you wish to use, you wish to have some scientific link to the offender. I think it is a pretty grievous thing in an offence that is frequently committed in the semi-private environment and on which there is excessive reliance on personal identification, to change the law about the publication of the name.

I personally have a difficulty with that, and I am trying to explain why. I have done my best to show why the analogy with murder is inexact. It is very difficult to accuse someone of murder in order to have revenge or to gain leverage. That is almost impossible unless the police take part in some kind of frame-up.

I try to live in the real world, Mr. President, and I do not think that anyone here—it may not be convenient to do it as openly as I might—would dispute that there are many examples of both parties in a relationship using various things for leverage, often in anger, frustration does not matter. Let us take a less emotive example: in the bad old days of exchange control how many times did spouses tip off the police that the other partner—I am trying to be politically correct—was leaving Trinidad with money and the police could catch him or her at the airport? We know that was done for leverage and revenge many times. I am saying that this identification provision is open to that kind of abuse, where you have to rely many times on personal identification.

If we were operating in an environment in which our forensic investigation facilities were up to speed and if the state of the police service was better than it is, then I would not be making this point. But I am seriously concerned about the analogy with murder for the reasons which I gave. You cannot use murder as a set-up, at least, I do not know how you would do so unless you have a much wider conspiracy in which the police are involved. I have very strong reservations about this identity business.

I also have very strong reservations about the value of increasing a penalty from 15 to 20 years. I want to have a kind week this week, Mr. President, not because I give two hoots about whom I offend, but because this is such a sensitive subject. That is the only reason I am being kind. I stick to issues. I really do not know what is the value of increasing a penalty from 15 to 20 years. The downside of that is that you are sending a signal to the outside world, that of ferocity; and not ferocity—I am very ferocious when it comes to punishment.

I am not an abolitionist, I believe in a little ferocity in our legislators, but the signal we are sending, somehow, is that from the time you are investigated for the commission of a sexual offence, you must be guilty and you must get plenty jail. That leads to certain over-zealousness, in my view. I think that we need to be careful about that.

12.00 noon

So, I am totally against the changing of the law on the identification for the reasons that I have given. It can be used as a set-up or for leverage and I have tried to explain why the thing with murder is inaccurate. If we as a body want to increase it from 15 to 20 years, I think it is a valueless act. It is not going to make me vote against a clause, but I am just trying to show the signal that we are sending. I do not completely buy into this argument about if the rulers are violent

Sexual Offences (Amdt.) Bill
[SEN. DALY]

Tuesday, December 07, 1999

then that creates more violence. I do not completely believe in that. What I mean by ferocity really is valueless acts, sending a signal that somehow certain types of people are being targeted. I have a problem with that and I will come to what I consider to be the useful parts of the Bill, which I completely support.

Now, Mr. President, I have had much anxiety over this question of authorizing police officers to make arrests without warrants and I want to raise it again for our consideration. We had this issue, and it is an issue, when we debated the Domestic Violence Act and, with many misgivings, many of us conceded the point. Unfortunately, our view was not shared in the other place and so we ended up without those provisions. Some of my colleagues spoke in very drastic tones about the absence of those provisions. I do not find it quite so simple. The reason I do not find it quite so simple, Mr. President—and this is why it is so important to make an assessment of our society when we are passing laws like this that are so draconian—the reason I have so much anxiety about it is that—how shall I put it neutrally—the state of discipline in our police service is a problem. There is no question about it.

In fact, the state of discipline in all our protective services is a problem so that if, for example—I mean sometimes I am in distinguished company in my views—an ambulance man was sleeping and you have to suspend him, I really do not see why he should be suspended on full pay. I said repeatedly, give him his hearing and everything should be over in 48 hours one way or the other. I have repeatedly said also that I am not against the service commission structure but I do not believe that, for organizations like the police service, it is appropriate in its present form. However, I really do not want to take on Sen. Shabazz today about bipartisanship, but it is absolutely the case that we need to have a tighter and more efficient disciplinary structure in relation to the police service.

It is a different matter when we come to consider civil bodies like the public service and so forth. Different considerations may or may not play there. So we really have to be very calm, Mr. President, and consider carefully who is the object. This exception or permission that we are giving to arrest without a warrant, who is to be the recipient of this concession? I ask rhetorically, are we 100 per cent or are we 60 per cent—Are we more than 50 per cent satisfied? That is a better way of putting it. Are we more than 50 per cent satisfied that our police service, with its present disciplinary problem, is an appropriate recipient for those very wide powers? That is the way you have to approach it, not that women have wanted you to have this power since 1986 or going back whenever. That is not the argument.

As carefully as I have researched it, in relation to some of these offences, they are not arrestable offences so we are extending the power. It is a mixed bag. Some are arrestable offences where they already have the power, but some may not be. So I am raising this issue. I will probably make the same concession, when the time comes, as I made in the Domestic Violence Bill, but we cannot make our judgments about these things without a wider assessment of the society in which we operate. My position will remain. However worthy the cause, before I extend the powers of any policeman I would like to examine whether the police are the appropriate recipients of these extended powers.

I put it no higher than that because I would probably make the same concession. The fact that people want it is only part of the argument, because our job as legislators, and particularly those of us who sit on these benches, is to approach things with balance. The fact that people want it or the fact that a crime is prevalent is not necessarily a good reason for giving it, because it can be abused by the various agents of the state.

So, Mr. President, I have some misgivings about this business of arrest without warrant. As best as I can understand it, most of them, are they arrestable offences already? I am not satisfied they all are. It is not that simple. The reason it is not that simple, and there are people here who can research the point much better than I can, is this—I just checked the Interpretation Act again. It is by no means clear that a provision that an offence which carries a penalty of five years or more is necessarily an arrestable offence.

When one reads the provisions of the Interpretation Act carefully, which seem to suggest that there are minimum and maximum and certain discretions, particularly if they are combined with a fine, I am not satisfied that is a sufficiently clear benchmark. I raise these matters so that they can be corrected. It is not a field with which I am overly familiar. So that is something else, Mr. President, that I think we need to debate very carefully and not simply justify it on the basis that the crime is prevalent, or a large and very important group in society want it. I am not satisfied that those are the only touchstones. We have to be satisfied that the recipients of the powers will use them, in the majority of cases, wisely and we have to consider what are the various safeguards.

Now likewise, Mr. President—and my view about balance—I am trying to take a balanced view of this problem, not because I do not think it is abhorrent. Let me make another general proposition. If we continue to have a large number of people living in a disadvantaged, I prefer to say uncivilized, environment, I do not think we can build enough jails and give them enough years or give them

Sexual Offences (Amdt.) Bill
[SEN. DALY]

Tuesday, December 07, 1999

enough strokes because, as Sen. Prof. Kenny has tried to explain, of the relevance of nurture and the environment into what people become.

So if we are going to continue to have, particularly in the urban areas, ridiculously high birth rates, we cannot agree on that, with inadequate housing, no water much of the time, “plenty licks”—and I got plenty licks too but I am going to explain. We are saying many loose and superficial things about licks and this business about violence breeding violence to which we will come back. So if there are people growing up in a system where—my favourite hobby-horse. Let us take many an average child in this society. Let us see for whom we are building this jail and for whom we are designing the cat-o’-nine-tails and for whom we are increasing the penalty from 15 to 20 years and I do not want to hear anything, Mr. President, about violence breeding violence.

In an appropriate case I do not mind if the sentence is 20 strokes but we have a long way to go in a careful, rational argument before we get to that point. So now, let us consider the position of many average children in this society. They have to get to school for 8.00 in the morning. They have to get up at 3.30 a.m. or 4.00 a.m. So, first of all, they lack eight hours’ sleep. Let us be commonsensical. Any of us, even if it is not what we colloquially describe as a hard night, no, but if we are overtired or lack sleep, we become bad-tempered and react in an irrational way.

So, first of all, they lack a number of hours of sleep, assuming that their sleeping conditions are such that they can sleep properly anyway. Then they have to walk to the standpipe to get water and tote it back home before they leave for school, and may have to do other chores before they leave for school. Then, in many cases, they have to walk to school or, at any rate, wait on public transport. Other dangers await them on the public transport, about which we are talking very loosely all the time, then they get to the school which itself may be in a deplorable and uncivilized condition.

So they leave one area of their life lacking the basic elements of civilization—I see one of my colleagues looking very depressed, obviously my description is very accurate—to go to the school environment which lacks the basic elements of civilization. Now, I am not a bleeding heart, far from it, but those are the social conditions that produce crime and, therefore, we cannot simply say, “Crime is prevalent, let go the cat, increase the jail”, because we are skipping over all the sensitive parts of the problem. I cannot, apparently, get certain people who do not listen to what I say to understand that this has nothing to do with being

disenchanted with this or that political party. These are social conditions that, I am 55 years old, I have observed in Trinidad almost from the age of reason.

When I went to secondary school I met for the first time in my life, because we did not need a train in town, we went on “P. two” or bikes, people who travelled by train to school. People who travelled by train to school were like a subculture in the whole country. All the train boys, whether they went to Queen’s Royal College or St Mary’s College, were of a particular culture. So those of us who used bicycles or travelled on foot met those who travelled by train and our subcultures interacted. Now there is no train, a huge mistake, and we would not go into who made that mistake, and we replaced it by the maxi-taxi and the Priority Bus Route and all these kinds of things.

Do you know, Mr. President, in some of the most sophisticated cities in the world, Strasbourg being the latest, that they are bringing back trams and trains because they recognize that transportation by an ordinary motor vehicle is a total failure? Why do you think we have road rage? I suffer from road rage. If you live in the west and you leave Port of Spain after 4.30 p.m., you have the same torment going home in the evening, particularly if you are living in Petit Valley, as you do in the morning. So now, your whole working day is circumscribed by what time you have to get up to beat the traffic. Who is studying the traffic and what we are going to do about it? No one.

If we are going to discuss crime and punishment, we have to discuss whether we have the basic amenities of civilized living before we start dropping the “cat” and jail on people. Once we have those in place and people are deviant or they do not appreciate the opportunities, then, “plenty cat, plenty jail” but we are missing the point every time we debate these sensitive issues. We have not examined the basic amenities of the society. We have not examined the culture in which we live. We have not examined the total failure of successive leadership to teach people the ordinary things about civilized behaviour.

I know it is very unfashionable, Mr. President, and I do not—[*Interruption*]—me, any amount of—in fact, if people are not upset with me, I am upset. So let me say what I think on this whole question of the failure of successive leaderships, not only political leadership. There is absolutely no doubt in my mind, and I know that Sen. Dr. St. Cyr is a great proponent of this, that we have a crisis existing among urban males. Now, that is not to say that recognizing that fact justifies beating women or any other forms of violence. I have no doubt, I do not wish to be misunderstood about this, that we have altered the basic rules of gender relationships in society by promoting the equality of women—and promoting the

Sexual Offences (Amdt.) Bill
[SEN. DALY]

Tuesday, December 07, 1999

equality of women is a very good thing. The point about it is, it has changed the role of men in the society, and it is regrettable and I deplore the fact that many men react with violence.

At what stage are we going to recognize that we have a leadership obligation? Whether it is in the churches, whether it is in politics, we have to deal with this issue, not by saying that the absolutely wonderful things we have done to promote equality of women is wrong, but that you have altered something basic, you have changed a basic cog in the wheel and you have to adjust all the other cogs. So if we start by saying that, we must look at this Bill as a worthy Bill because women are being brutalized. They want it, I agree, that is one consideration, but it is not the only consideration.

12.15 p.m.

As a legislator, at the risk of repetition, while I am not an abolitionist, I am not a bleeding heart, and I believe in stiff punishment, I simply cannot accept in the cultural reality of Trinidad and Tobago that we are doing anything significant if we deal with crime simply by having stronger punishment. That comes at the end, it is the last building block in the wall as far as I am concerned and we have a gaping hole—if you think of it as a wall which you are establishing brick by brick—in the middle. We are not doing the research, we are not dealing with the sociological issues, we are not dealing with the behavioural issues, we are not dealing with the scientific issues and we are not dealing with the basic amenities of life and I have a difficulty with that. So I have to take what I consider a balanced and realistic view of this Bill.

I certainly think that the provision for assault to be committed by a cohabitant, is a useful thing to have. I certainly support the new offence of grievous sexual assault, I certainly support the use of video recorded statements for children insofar as we are extending the powers of the police to some offences that are not arrestable. I would concede to the need to do it because the offences are so prevalent and the victims are so defenseless. So that is useful.

Insofar as we are bringing in this new rule about making it mandatory for specified persons to report, that is very laudable. There is much in this Bill that is very good and I commend the Government for bringing it and I support the Bill insofar as it is doing those new things, and I am leaving imprisonment for life for last.

I am asking my colleagues to consider carefully the other parts of the Bill to deal with what seems to me to be somewhat—not in every case—pointless

increases in the penalty and if we have a growing problem of incest in this country, I think we must attack the causes. The punishment is the last building block in this wall and we have to deal with it and we are not dealing with it, we are not even doing the research. We do not have the vaguest idea of why these things are, how they are, and why people are responding to this new stimuli. Everything that changes in the world produces a reaction.

Ten years ago we never heard about carpal tunnel syndrome and repetitive strain injury because there was not a widespread use of computers and other machinery that was repetitive and the first time people started complaining about these to the employers, they said you fake it. Then, of course, it became a syndrome which we can associate to some change in life and I use that as a practical example of how very dynamic life is. I do not want to be misunderstood on this occasion, this is a very sensitive subject.

Before I come to imprisonment for natural life, I would like to summarize what I am saying because I do not want to be misunderstood. It is a laudable act for the Government to bring a Sexual Offences Bill that updates the legislation and provides for new situations and things that experience has taught us, such as extending it to a cohabitant, video recorded evidence for children, and things of that nature. That is perfectly laudable. I do not, however, want to be a party to legislation that makes what I consider pointless increases in the penalties and send the wrong signal that by increasing punishment, we are addressing the underlying social conditions that produce these types of crimes. I am very strong on that and I do not care whom it offends.

I use the term mamaguy legislation because we rush outside and say: "Boy, we have done something for the constituency of women, we have increased these offences." And then what? Nobody is going to get any jail, let alone increase jail. Why? Because we either do not have the forensic methods, or we have forensic persons on contract who disappear to far parts of the world and then 200 cases are going to fall down. Let us get real. All this has to do with implementation. Let us get real.

We are in grave danger of fooling ourselves and what is worse is we are in grave danger of fooling the population when we say we are attacking the question of crime and violence because we pass a law, but is the law effective? Does it address the underlying social conditions? Do we have the practical machinery with which to implement it? That is my difficulty, and at the risk of repetition, Mr. President, we must address the sociological, the anthropological issues; we must have the research to find out why things are happening; we must find out

Sexual Offences (Amdt.) Bill
[SEN. DALY]

Tuesday, December 07, 1999

which of the things we are lacking in basic civilization that will bring the greatest reward quickly. The Minister of Finance shares my view—I am sure he would not mind my saying it—about the state of our schools and what needs to be done. It is not about apportioning blame.

The whole idea of concrete is a problem in this country and I will stay away from the savannah for a change, but whoever told anybody that the type of school that we build, which is a concrete block with some hollow clay bricks and doors that are supposed to catch cross ventilation, no proper yard in which to pitch marbles, no greenery or shade of any kind whether the toilets work or not; who says that is the way schools should be built?

While I am the last one to commend anything foreign, take a drive down to the West and take a look at the international school there. Look at its basic construction, look at the colours they have used. Psychologists tell you that blue is a restful colour. We paint our schools cream with a red roof, and red is supposed to make people angry. Look at that school, look at its basic construction, observe its fire escape and observe its budding garden, and if you do not think, Mr. President—I say rhetorically—that is a better environment in which to go to school instead of those cream, concrete blocks in which the ventilation is doors and hollow clay blocks, then Mr. President, we really do not understand what keeps people on the right level of sanity. It is very important not to continue to repeat the mistake that by passing a law we cure everything. I do not say that by way of criticizing the Government, I think it is a mindset we all have.

We not only have to get the school toilets to work, we have to return the school to one of its principal functions which is sometimes additional parent, sometimes substitute parent and until we return the school—in fact, Sen. Dr. St. Cyr said it in the budget debate—a school could be held under a tree and some of Socrates' best lessons were given walking about in the public parks. So we have to get away from this obsession that construction is the answer to everything. It is a mindset from which we have to come away.

Mr. President, because I drive to the country frequently, I have vivid mental pictures of the things about which I speak. I can talk about Kernaham Village—if you want an actual example—which is a village I pass frequently, and how people live there, and how there is a particular—I am very graphic about these things, I do not make them up, I live here—bridge which I am happy to say is now much less of a torture to cross, thanks to the energies of the Minister of Works and Transport. There is a particular bridge where there are two or three children, two

of those boys are so good looking they could be film stars, they are young Omar Shariffs; and how are they spending their recreation time? Jumping in front the car with a hand of crab tie up or with “coki-yea” broom.

Now, their counterparts, Mr. President, who are living in more fortunate circumstances are taking their free time playing nintendo to increase their knowledge of explosives and other equally ridiculous activities. Where is the ordinary civilizing activity left? My thesis is if you wish to level these things you do not have to be a socialist, you have to provide a school environment which reduces everybody to a common denominator—not the lowest common denominator, but to a common denominator—and on this occasion I make no apologies for repeating my message in as many different ways in which I can put it across.

Punishment is the last brick in the wall and if we leave this Chamber today, I want everybody to go home and be sad about the fact that we are dealing with jail and the cat-o'-nine-tails and not dealing with the underlying social issues. Everything in Trinidad has to be concrete. Why? What is wrong with grass? Never mind what we have done elsewhere because that is a debate, as I say, where there might be some merit in taking a portion of the savannah, but generally, what is wrong with grass and trees?

I do not want to identify a particular school that I pass on the highway in the Tunapuna area. It is beautifully painted, but that is a perfect example of a new school on the left hand side with cream—I have forgotten what is the colour of the roof—and when I look in there, all I see is concrete except when they are having social functions on weekends in which case they erect a stage and a tent, and of course, you also have to have a tent for the dignitaries which really annoys me, but anyway, unless they erect a stage and a tent in the yard when they are having their bazaar or other cultural activities around the time of religious festivities—

I wish to make it very plain that I have no criticism whatsoever of the Government bringing this Sexual Offences Bill, all I wish to say is those parts of the Bill that introduce new offences and penalties to meet changed social conditions are totally laudable, but I am not sure that we are going to do anything other than might be political egotism by increasing sentences from 14 years to 50 years.

Last, but by no means least, can I come to the words “liable to imprisonment for natural life.” I had the benefit, as I always do, of a very open and candid

Sexual Offences (Amdt.) Bill
[SEN. DALY]

Tuesday, December 07, 1999

conversation with the Attorney General about this provision and I recognize that it is as liable to and, therefore, it appears to be preserving the discretion of the judge if I understand it correctly. I need an explanation from his technical people and first of all I have the same problem. We locking them up now until they are 117 years old. What is that telling people about how we are doing things? So we do away with the whole idea that people could be rehabilitated or they can be shown the error of their ways however long it takes. Do we write off the work of people like my distinguished colleagues on either side of me? Do we write off their work in persuading people when they get a good dose of punishment to rehabilitate themselves? Is that what we are saying?

Mr. Maharaj: I am very thankful to the hon. Senator for giving way. On the last occasion we explained that it does not do that because the person is sentenced to imprisonment for life but it does not take away whatever rehabilitation effects there are and it does not take away the operation of the Constitution with respect to the right of the Mercy Committee, the Minister of National Security and the President. The fact of the matter is, it does not take away those benefits, and I just thought I should make that clear.

Sen. M. Daly: I am very grateful to the Attorney General, and I understand that, but I am not sure that he will portray with that kind of candid accuracy on the platforms outside. I am not sure his colleagues are going to do that. They will say; “Look man we locking up, we making sure life means life now.” He will be cautious about what he says and that is my concern, the signal or the subliminal message that is contained. I fully appreciate that and I am glad he has restated it, but the thing is, and what I do not understand, and if the Attorney General laughs at me I do not mind because he knows that this is a field in which I travel somewhat uncertainly. As far as I know, the law was amended in 1985, and we now have 69(A) of the Interpretation Act which gives the court the power to declare the term of life imprisonment. I do not know whether that was not proclaimed, or if it is ineffective in some way and I would just like to read it quickly. So before we start talking about life—we may be doing something unnecessary, I simply do not know.

12.30 p.m.

Oddly enough, that provision was introduced in one of the drug bills, the Narcotics Drugs and Psychotropic Substances Control, that is why I had a little trouble finding it but at the very end, it provides for the amendment of certain enactments. One of the things that it provides for is a new 69(A) in the Interpretation Act, under the part of the Act that deals with penalties:

“Where punishment of imprisonment for life is provided for a criminal offence by any written law, the Court on sentencing any person convicted of that criminal offence to imprisonment for life may, notwithstanding anything contained in any other law...”

This is the relevant part—

“declare at the same time a period before the expiration of which in its view that person shall not be released.”

Mr. President, is that section part of our law? Is it ever used? I am not aware from reading the media that it is ever used. If that section is part of our law and it is valid, then I think that is sufficient to deal with these circumstances of aggravated rape, where if the judge is satisfied that these circumstances are existing, then he could use 69(A) and say, “You should be sentenced for life and you should not be released until 40 years or forty-five years is up.”

If it is necessary to train our judges in sentencing, then I have no problem with that. It just would not come out of a dialogue—I hate the jargon word—with all the different participants in the system. So I want to be satisfied that 69(A) is not sufficient to deal with some of these things that we are legislating for here now, which seems to me, to make a classical reference, is piling Pelion on Ossa. It is among many of my accomplishments since I did Greek and Latin under Father Graf. I had many accomplishments. *[Laughter][Desk thumping]* One of them is that I did Greek and Latin under Father Graf and we learned about Sycylla and Charibdis and piling Pelion on Ossa. If piling Pelion on Ossa is not recognizable to some of the more politically minded members of the Government, either look it up or I will lend them a book from my extensive library in which they can look it up. So we may be piling Pelion on Ossa, if we go and alter the law to provide for imprisonment for natural life when we have a perfectly valid provision under section 69(A).

Mr. President, if the judges are not using it—I say in the best sense—they must be made to. *[Interruption]* I am going to deal with that. I am not saying that they must be made to by the clash of arms and by the clash of 40-dollar words issuing from this or that legal personage. It must be made to be used by dialogue; they must be persuaded in precisely the same way that the Government is now seeking to persuade certain Senators to support the Tourism Bill—I do not think that they are beating them up—they are talking to them. That is how you make people do things. You talk to them so that you can make the judges be more alert about their sentencing by talking to them. Some people’s powers of persuasion are greater, especially, if they do not use Latin and 40-dollar words.

Sexual Offences (Amdt.) Bill
[SEN. DALY]

Tuesday, December 07, 1999

Mr. President, anyway, I am trying to make a politically neutral contribution on what I consider a very sensitive subject, and how we use the sentencing powers is our problem. All over the world the judges have seminars and are trained on how to use their sentencing powers. So, I know that it is that time for the break. I think I have banged this drum about underlying social conditions and the overuse of concrete and 40-dollar words to solve our problems as much as I can and I thank you. [*Desk thumping*]

12.36 p.m.: *Sitting suspended.*

1.46 p.m.: *Sitting resumed.*

Sen. Dr. Eastlyn Mc Kenzie: Mr. President, I too am happy that there is a response by the Government to cries from the people because I think that this Bill has been brought in response to cries from the society, especially the women's groups and organizations, about the types of inconsistencies and leniency we see in the punishment as meted out by the courts to offenders. However, Mr. President, I wonder, as some before me have done, whether we are really doing the thing in a holistic manner or whether we are making it so piecemeal that in some sections we see progress and in others we do not see progress.

Mr. President, I refer a little to the contribution made by Sen. Prof. Julian Kenny about the genetic link. I remember 12 years ago in Washington, DC, there was a link and, in fact, some research had shown where there was a genetic link in this whole question of homosexuality. When they published the report one saw traces where one member of the family was so inclined and down the road it was found that a nephew was also so inclined, and so they came to the conclusion that there was some sort of genetic link. I also would like to support Sen. Prof. Julian Kenny in his mention of the types of behavioural patterns one may see that may not be natural, they may be inbuilt in people, coming again from this genetic link.

I remember very precisely there was once a case in Tobago where a man was brought before the courts on, probably, a second or third occasion being convicted of rape. When he was sentenced he begged, I think it was the judge, to do something with him medically. How he said it in our local language probably all of us here may not understand, but in effect what he was saying to the presiding judge was, "Do something or send me somewhere where they will make me impotent". In his words he said, "Mr. Judge, I beg you, send me and let them 'kill mih nature'". That is how, in local language in Tobago, people refer to it.

Sir, I think there is some merit in what Sen. Prof. Julian Kenny has said that we do not just look at the act but we look at the underlying causes that may bring on this type of behaviour. I also—I do not know—feel a sort of pity for the hon. Minister of National Security because it seems as though every time we make a mistake in the society, whether from the sociological point of view, cultural, economical or whatever, and it results in some sort of deviant behaviour, we lump the people on the lap of the hon. Minister of National Security.

I come to the conclusion that, here we are sending to jail people who have committed rape and, as far as I hear—I do not know, we do not have any ex-convicts here but probably the Minister of National Security could tell the Attorney General whether this is true—they are raping in jail too. So I do not understand, if this is what you are sending them to punish them against and they are raping in jail, I do not know what we are doing. We probably have the wrong medicine for the disease. So, Mr. President, I urge that we listen to what Sen. Daly has said and we look at some of the underlying causes and see what could be done.

When I look at the Bill I would like to make three comments. I do not agree that we should have one punishment for every act of rape. I think that we should look at the nature of the case and the age of the person. If you put a 19-year-old in jail for rape for life we are saying, “You are condemned, you are going to live with this type of tendency for the rest of your life, therefore there is no sort of opportunity for you to change, to be different, to understand differently your circumstance and everything”. We are also saying to that person, “That is it for you”, and we have closed the door on him.

I say, Mr. President, that regardless of the facts, at times many of the women’s organizations, if a judge gives a rapist 10 years, we quarrel, if they give them 20 years we quarrel, and if they say, “I see a chance of your being rehabilitated, I will put you on a bond, send you for counselling and so forth”, we still quarrel. So I think that we must look at this thing on a case-by-case basis and not go the way that I perceive the Attorney General wants to go, saying that there are going to be sentencing seminars and people would learn and probably if you come there, rape, that is it, life, 20 strokes, close the door. I do not agree with that.

When I look again at the Bill where it talks about identifying people and giving them life and publishing their names, I think we are going to end up with more people being raped and killed than being raped alone. I do not know which is worse but I think that we need to look at that.

Sexual Offences (Amdt.) Bill
[SEN. DR. MC KENZIE]

Tuesday, December 07, 1999

Finally, Mr. President, we heard the Attorney General explaining but I think that we should have some sort of sentence, according to what I heard Sen. Daly read, whereby the offender is not released before a certain time. In other words, I would advocate that we have something like a parole system where, according to how the person rehabilitates, behaves, what have you, after a minimum number of years that person should be eligible for parole. I support the fact that we want to take measures to stiffen the penalties, in the hope that this will deter people who make it a duty or a sort of mission to go about raping people and exercising that sort of power that we feel is behind raping, and ensure that the type of punishment we give fits the crime but, at the same time, we do not make it so harsh and, probably, unrealistic that we cause people to resort to a worse type of punishment other than rape.

So, Mr. President, I support the Bill, I support the measures, I support the intent. Let us hope that we can put together a whole programme, starting from the schools, the churches and the communities. Let us go back to our community development, our village organizations and our young people's organizations and see what we could do to better the social and cultural lives of our people so that this type of deviant behaviour would not be as prevalent or at least we could minimize it as much as is humanly possible. Thank you very much, Mr. President. [*Desk thumping*]

Sen. Nafeesa Mohammed: [*Desk thumping*] Mr. President, I am very happy indeed to be participating in such an important debate that seeks to bring about some changes in our laws as they relate to sexual offences in our country. We have heard several Senators express their views on this Bill and I wish to indicate that, our position on this side has been and will continue to be that we are prepared to support any legislation that seeks to deal with the very high incidence of violence in our society, so long as the legislation is brought in a proper form and so long as it has appropriate safeguards so that it will redound to the benefit of all the citizens of our country.

However, Mr. President, when we look at the Bill before us today, we find ourselves in a somewhat difficult position because this Bill which seeks to amend the Sexual Offences Act of 1986 raises some very complex matters. These are matters that involve some very delicate issues. Whilst the intent of the Bill seems good on the face of it, as we peruse the contents we have some concerns that we need to put on the record. In fact, our position with respect to this particular Bill is that we feel that there is need for much more consultation from the wider public in respect of some of the amendments that are being proposed here.

So serious are the issues, Mr. President, that we are even going further to suggest that perhaps this Bill should be referred to a special select committee of the Senate so that we can facilitate further discussions on the provisions, and we can have more consultations with some of the other groups in the society that have been or are concerned about the proposed amendments. At the end of the day we would be able to scrutinize this legislation in a way that we will be able to come back here to this Chamber and pass a Bill that would really, really be good law, that is, law that will be fair and balanced and in the interest of the society at large.

Mr. President, when the hon. Attorney General presented this Bill, he used the expression that this was a revolutionary piece of legislation and I have a somewhat different view on this because the real revolution took place in 1986 when the Sexual Offences Act was enacted after being passed in both Houses of Parliament. That was indeed a very significant enactment because the Sexual Offences Act of 1986 is the Act that codifies and it updated then, the laws that needed to be updated in relation to sexual offences. That Act is No. 27 of 1986 and it brought together all the various offences such as incest, buggery, bestiality, indecent assault, serious indecency and it sets out what the various offences are.

2.00 p.m.

At that time, when the debate was taking place, it was very instructive to note that the bone of contention was the issue of the introduction of the concept of marital rape. That was a very controversial issue and, if I may say so, I think it continues to be a bone of contention. It is an issue that is a very sensitive one. It is a very contentious issue and that is one of the reasons we feel there is need for further consultation with a view to seeing if, perhaps, we can allay some of the fears and concerns being expressed and beef up the amendments being proposed, so that appropriate mechanisms and safeguards will be put in place to ensure that people will not be taken advantage of.

Mr. President, when you look at clause 4(1) of the Bill before us, it says that:

“Subject to subsection (2) a person (‘the accused’) commits the offence of rape when he has sexual intercourse with another person...”

Now, I have looked through this Bill and I have looked at the 1986 Sexual Offences Act, and it is not clear what is the meaning of “another person”. I am hoping that the hon. Attorney General will be able to shed some light on it. As it stands, I take it that it is being construed to include even a husband and wife situation. This is the context in which I think the hon. Attorney General indicated

Sexual Offences (Amdt.) Bill
[SEN. MOHAMMED]

Tuesday, December 07, 1999

that the spousal immunity that was provided for in the 1986 Act is actually being lifted. I am assuming that is the context in which spousal immunity is being removed.

Mr. President, we recognize that the question of rape is a very serious matter in our society, as indeed in all other parts of the world and, certainly, as a female Member of Parliament, I am always very glad and eager to support any measure that will bring about greater protection of women in our society.

I myself had been a victim of crime involving my motor vehicle, which is a very trivial thing compared to the offence of rape. As a woman in society, you recognize how very exposed you are, especially with the very high level of violence that exists at so many levels of our society. It is a matter of very, very serious concern to all of us. We must be concerned about it and, certainly, we would like to see greater protection being afforded.

But it is not always that the passing of laws, the mere fact of bringing a bill to Parliament and passing it, would deal with the problems we are looking at and with which we are dealing. Because, we have had the experience, not too long ago, when the Domestic Violence Act was updated and passed in Parliament, and notwithstanding all the public hype about new domestic violence legislation, what we continue to see on a daily basis in our newspaper reports and so forth, is the growing and worsening crime situation with so many murders continuing to take place; moreso, within the context of domestic violence situations.

Just last week, a woman contacted me, a lady who had been the victim of domestic violence, who had sought the help of the police, and who, after seeking the help of the police, went to the courts, was able to apply for and, in fact, obtained a restraining order. Having obtained that restraining order, she found herself in a predicament that just a day or two after the restraining order was obtained, ordering that her husband remain outside of the matrimonial home, he came to the home on a Sunday evening threatening to do harm to herself and her children.

Sure enough, the lady considered going to the police, but there was an even greater fear that if she went to the police and even if he was brought up under the Domestic Violence Act for being in breach of the court order and he was imprisoned, that imprisonment would have been just for a period of time and her greatest fear was: What would happen when he came out of jail?

You feel a sense of helplessness because it was just a matter of weeks ago that we went through the motions of debating the Domestic Violence (Amdt.) Bill. Yet you realize that there are so many other things in the society that need to be put in place. There are so many other matters that need to be addressed, areas in which the government of the day, whichever party is in government, can assist in terms of ensuring that the infrastructure is there.

For example, my advice to the lady was that in light of the situation, there was need for some third party to intervene with a view to trying to mediate to get help for this person. The husband refused to seek professional help because he did not feel he had a problem but, clearly, he has a big problem.

This is why so many families are in crisis because when you look at the reports and see how murders are being committed with wives and children being murdered, husbands committing suicide and so forth, it is a vicious circle. My suggestion to her was, perhaps, if some help could have been obtained by getting a counsellor or a trained person to actually go and visit the husband wherever he was, to try to talk him into seeking further help in order to defuse the situation. I have not heard from her since, but it is a very serious situation and it is occurring on a daily basis in so many parts of the country.

When we seek to bring legislation to this Parliament to deal with issues like these, it seems, from looking at this Bill, that the intent or the main thrust of the Bill is to cater for the stiffening of penalties which must have been as a result of the cries coming out of the society that women feel there is need to increase the penalties, in order to deter those who may be tempted to commit the crime. But we have heard much about that issue and the question about punishment to fit the crime. There are arguments for and against and, basically, our position is that this legislation alone is not going to tackle the very serious problems existing.

In this Bill which, now, as the Attorney General himself pointed out, is removing the whole concept of spousal immunity, it means, therefore, that if this is enacted in its present form, a husband can be found guilty of raping his wife and *vice versa*. I understand there can be a situation where a man can be raped by a woman. I am still trying to figure that one out, but I am sure for other more experienced Members in the Parliament, that would not be an issue at all.

The fact of the matter is that by introducing the concept of marital rape, it is necessary to ensure that there is balance in what is being done or what is being attempted, and to ensure that there are safeguards in it as well. Because when you are dealing with the relationship between a husband and a wife, you are dealing

Sexual Offences (Amdt.) Bill
[SEN. MOHAMMED]

Tuesday, December 07, 1999

with a very sacred relationship. We all accept the fact that marriage is an institution in society. Marriage is, in fact, a sacred institution and there is need to do a balancing act because, on the one hand, you want to protect the sanctity of marriage; on the other hand, if a marriage has brutality in it, certainly, you want to ensure that there is some protection that can be afforded in those circumstances.

It is already in the laws of Trinidad and Tobago that you do have redress in terms of the criminal laws. You have laws relating to assault and battery and wounding, and now you have the domestic violence legislation and the issue really boils down to whether it is necessary, still—I use the word “still”—to remove this spousal immunity from the laws that exist at present.

We recognize the need to update the laws to keep up with the times and we recognize there are problems; we understand the problems, but we are concerned about the flip side of the coin as well. We have to be, Mr. President.

I came across a handbook that I acquired sometime ago. It is called *Matrimonial Education in Islam*. Just for the record, I would like to read a very brief paragraph from this particular book. It is published by Ahmad H. Sakr from Lebanon and it makes reference to a verse in the *Holy Qur'an*. I am referring to it because we know that the *Holy Qur'an* was revealed some 1,400 years ago and I am sure this is applicable in all other religions as we know them to be.

It says, in dealing with the relationship between husband and wife and what is considered to be lawful sex relations—because the book outlines a host of things in terms of what is deemed to be lawful, what is proper and so forth. At page 50, reference is made to chapter 2 verse 223 of the *Holy Qur'an* which says:

“Your wives are as a tilth unto you; so approach your tilth when or how you will; but do some good act for your souls before hand; and fear God, and know that you are to meet Him (in the Hereafter), and give (these) good tidings to those who believe.”

Now, this verse touches on some important aspects of sexual relations because it makes reference to the time, place and manners that are involved in sexual relations, and there is an interpretation of it that has been given by a scholar of Islam:

“Abdullah Yusuf Ali in his translation and commentary says in his footnote 248:

The word Hirth is a comprehensive word referring to manner, time or place. The most delicate matters are here referred to in the most discreet and yet

helpful terms. In sex morality, manner, time and place are all important. The highest standards are set by social laws, by our own refined instinct of mutual consideration, and above all, by the light shed by the highest teachers from the wisdom which they receive from the Maker, Who loves purity and cleanliness in all things."

I simply referred to that verse because it is a form of natural law and it is a guide for all of mankind.

2.15 p.m.

When we are dealing with issues contained in this Bill, like rape, incest and buggery, they are all very pertinent to the discussions that we are having, because there are other verses in the *Qur'an* that deal with the whole concept of incest as well, and they tell us with what relations within a family we are prohibited from having sexual relations. Indeed, when we look at our laws that we have inherited from the British legal system, we will see that some of these concepts are still very much applicable in our legal system today.

Mr. President, whilst we are talking about the issue of rape as between a husband and wife, I mentioned earlier that there is need to do a kind of balancing act, because here, one is dealing with that very sacred relationship. Let us look at the reality as it exists in Trinidad and Tobago and let us see if this kind of legislation would really deal with some of the problems as they exist.

In our country today, we know that alcoholism is one of the bigger problem in the society. It is not confined to rural areas only. In so many homes and families in our country, there are people, children and wives who are suffering because of the fact that the head of the home is always drunk and comes home in a very drunken state and behaves in a very disorderly way because he cannot contain his liquor. The reality is that much of the brutality that we hear about in terms of a marital context, very often it can emanate from these kinds of social issues and social diseases that are so prevalent. That is why I agree with the hon. Senators who have made the point that there are social issues in the society that need to be tackled if we want to talk about dealing with the question of rape and protecting the victims.

In the case of a person who comes home drunk and he is behaving in a violent way, I wish the hon. Attorney General or some member of the Government could have provided us with some statistics to tell us about the incidence of rape within the marriage. We would see that very often, a man who is in that drunken stupor may force himself onto a woman. We are talking about rape and we know that

Sexual Offences (Amdt.) Bill
[SEN. MOHAMMED]

Tuesday, December 07, 1999

rape connotes unlawful sexual intercourse or sexual intercourse without the consent of the other party. With respect to a person in that drunken stupor who forces himself onto a woman—and it is so prevalent—the question is, how does one establish that there has been that unlawful sexual intercourse to cry rape?

We have the other side of the coin being that in some situations, if a woman is perturbed in her marriage that perhaps her husband may be involved with somebody else or that some problems are existing, she could easily cry rape too. It is a case where the thing is open to abuse, where there can be situations where people can be set up; moreso, men can be set up. This is why, Mr. President, we on this side are saying that in looking at this legislation as it is in the present form, there is need to do a balancing act. I empathize and sympathize with the many women and groups who are calling for something drastic to be done to deal with this high incidence of violence in our society and in our homes, but whilst we want to have measures put in place to deal with it, we want to ensure that there is balance and fairness in what is being done.

From my little discussions with some people since the Bill was presented last week, I am not too sure that there had been such widespread consultations with respect to this Bill. I understand that a couple of groups were, in fact, consulted and some of the NGOs had been involved in the discussions, but there are many other groups that ought to be part and parcel of discussions on legislation like this.

I make particular reference to a group like the Inter-Religious Organization (IRO). The Inter-Religious Organization is an important organization that should be brought into the discussions because we are dealing with issues relevant to our society; issues with very strong cultural and religious connotations. We need to have much more discussion to see how we can find ways and means. If it is that they feel the laws need tightening up, let us sit and discuss it. We are prepared to sit with fellow Senators to see if we can arrive at some consensus so that at the end of the day, this kind of legislation will be workable legislation and it will be fair and balanced.

Mr. President, we have said it time and time again that passing laws for the sake of passing laws and going on the hustings and saying that one has brought legislation to have persons committed for the rest of their natural lives in the event of rape is just political hype that the Government is seeking to get out of such a very serious problem in our society. This Bill in its form, as we look at it, we will see it is more like a public relations exercise that is designed simply as a response to give the impression that they care so much about the women in our society that

they are trying to stiffen and impose more penalties to protect women. Passing laws alone will not deal with the issue. We have to get much deeper than that. There are real societal issues that need to be tackled. We need to get to the root of the problem and we need to do a balancing act in terms of the legislation.

Mr. President, when we look at the very same clause 4 in this Bill, subclause (2) says:

“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.”

Last week, I think the hon. Attorney General himself sought to differentiate between life imprisonment and imprisonment for life. I believe it was said that life imprisonment very often connotes a certain number of years—it can be 15 or 20 years maximum—whereas, imprisonment for life, according to the definition section of this Bill, will now mean imprisonment for the natural life of that person.

My colleague, Sen. Shabazz, sought to highlight the gravity of that widening of the term or the stiffening of the penalty by referring to imprisonment for the remainder of the natural life. Whatever his age comparisons may be, they were said, I am sure, for graphic purposes in order to illustrate the point. On the one hand, they are talking about life imprisonment; changing it from life imprisonment to imprisonment for life. In the 1986 Act, I think the penalty was already stipulated for rape that it would be life imprisonment.

With respect to the issue about the strokes, we have heard some discussions about that, and that raises the whole issue of corporal punishment which is an issue I am sure that other Senators would want to get into. At this point, I would prefer not to get into it, but one clause that is of concern to me is clause 4(3) which says:

“The Court may order a person 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.”

Mr. President, I have to wonder about this clause, because a person who is found guilty of rape—and I am sure that there are many such persons who, even after a first-time offence, commit the offence again, very often. I am being subjective here. I wish we could have got some empirical data from the Government on it.

Sexual Offences (Amdt.) Bill
[SEN. MOHAMMED]

Tuesday, December 07, 1999

The question of the means of such a person is an issue. If one is talking compensation, a man who holds down a woman somewhere in an alley on some dark street corner, in terms of getting compensation from that person, one would have to establish that this person has some means—that he has some property—and if one is dealing with a hardcore criminal who has committed rape, it is somewhat ludicrous in terms of expecting in a realistic way that one would be able to actually get compensation from that person.

Who knows! It may turn out that maybe the state may have to be the agency to provide some compensation for the victims, because we know that the victims of rape suffer tremendously; they can be ostracized. It is a very delicate situation. While we welcome the idea of compensation, it sounds good, but looking at it in the present form in this Bill, one will see that it is meaningless and, if anything, it is just designed to score cheap political points, if I may say so.

They are saying that they will pay to the complainant adequate compensation. Look at how it is even more ludicrous. In this Bill, it says here that one of the penalties will be imprisonment for life. So, the judge has the discretion to imprison for life; someone found guilty of rape, he is going to be put behind bars for the rest of his natural life and here it is they are going to say that they could order compensation too? How is the victim going to benefit from that? It is ridiculous!

I am not saying that the idea of compensation is a bad idea, but clearly, it is a meaningless provision in this form in this particular clause, because with respect to the question of paying to the complainant adequate compensation, what mechanisms exist for determining this kind of compensation? Is there some limit as to the amount of compensation? It shall be a charge on the property of the person so convicted. So, if the person has no property, crapaud smoke the victim's pipe, in any event. *[Laughter]*

Mr. President, we are seeing the public relations thrust in this Bill. It is a real "PR" exercise. They want to say that they are stiffening penalties and dealing with rape. The fact of the matter is that in our statute books, one would find laws that already exist. The 1986 Act, in particular, has some of these measures.

Let us look, for example, at clause 5. They are boasting that they are now introducing a new offence called grievous sexual assault. If we look at the 1986 Act, we will see that there is already an offence called "serious indecency", and many of the types of behaviour that are now being described as grievous sexual assault are already catered for in the 1986 Act.

The only good thing I see about this clause is, perhaps, the fact that it has such a very detailed description of what a grievous sexual assault is. If anything, it sounds more sensational, because in the definition section it says what grievous sexual assault means. It means:

“The penetration of the vagina or anus of the complainant by a body part other than the penis of the accused or third person...”

I suppose it is taking into account the advances in technology and exposure that people have nowadays, but the fact of the matter is that in the 1986 Act, when we look at it, we will see that there is an offence called “serious indecency” that would have, in any event, catered for this kind of behaviour.

In the case of grievous sexual assault, we noticed that they have sought to introduce the same penalty as the offence of rape. So be it. Mr. President, in other words, what I am saying is that clause 5 is just a case of being more descriptive.

When we go on to the other provisions of this Bill, there is clause 6 which seeks to amend section 5 of the 1986 Sexual Offences Act. This has caused some confusion in my mind, and I would be very happy, indeed, if the hon. Attorney General would try to clarify the matter.

2.30 p.m.

We know that when the 1986 Act was being passed, the question of marital spouse was not included in the Act: that was the controversial section 4. As a compromise position, the Government then introduced a limited form of marital rape in section 5 whereby it provided that in the event of a *decree nisi* of divorce, or in the event of judicial separation or some separation agreement, an offence known as sexual assault by a husband was established with section 5 of the 1986 Act. That is provided for in section 5, there is a subsection that defines the penalty as being imprisonment for 15 years.

Here it is the Attorney General has come to the Parliament to boast about how the Government has introduced new laws; it is a revolutionary piece of legislation and that it is going to stiffen the penalties for people who commit rape and they are removing the spousal immunity and also they are stiffening the penalties by providing for imprisonment for the rest of one’s natural life, 20 strokes with the cat-o’-nine tails and compensation for the victim. Yet the Government is leaving section 5 as it is; where the penalty is far less than what exists in section 4. To me—if you are talking about amending and so forth—it is a bit confusing. There is need to harmonize these two provisions. The Government needs to bring it in line, rationalize it.

Sexual Offences (Amdt.) Bill
[SEN. MOHAMMED]

Tuesday, December 07, 1999

Clause 6 of the Bill, Mr. President, is a bit bothersome. In other words, if the Government is retaining section 5 as it exists in the 1986 Act, it is restricted to certain circumstances and the penalty there is less. But, on the other hand, the Government is talking about opening up, removing or lifting the spousal immunity and tightening the penalties with clause 4. There is a dichotomy somewhere there that needs to be sorted out.

Mr. President, as we go down in the other clauses of this Bill, for example, section 7(1) of the 1986 Act is being amended. Section 7(1) deals with sexual intercourse with females between 14—16 years old.

Clause 8 deals with an amendment to section 9(2)(b) of the 1986 Act: that section deals with incest. It is referring to committing incest with respect to a person under 14 years, and what have you. You find that several of these provisions that are being amended now are provisions in the 1986 Act that contained an age limit. This is yet another reason I believe there is a need to have further dialogue with other interest groups and individuals in the society as it relates to these amendments. This whole question about the age limit in these kinds of matters—family law matters—has been a somewhat contentious issue. Recently we read where the Government was planning to amend the marriage laws of the country. I do not know what is the present status of those deliberations.

I remember reading that there are differences of opinion from the Hindu and Muslim communities about changing the age limit for certain purposes. I know, for example—I can speak about the Islamic position—there is talk about the age of maturity, as opposed to specifying age 12, 14 or 16. With these proposed amendments, the Government needs more than ever to involve an organization such as the Inter-Religious Organization so that there can be some consensus on how these amendments should be brought, because of the fact that we live in a diverse society. Whilst we recognize the problems, we need to ensure that we take on board the views of as many people as possible, so that at the end of the day we would have legislation that will really be workable.

With respect to clause 12—the new section 12(8) that is being inserted into the legislation—I agree with all that Sen. Daly has said in terms of raising concerns about this power of arrest. I know there has been a strong argument that that power of arrest exists in any event, in terms of police officers being able to arrest without a warrant. When the Domestic Violence Bill was being debated, we had expressed our concerns then and again, it is a question of wanting some kind of safeguard.

I remember when, for example, the Copyright legislation was being debated and even from 1985 when the first Copyright Act had come into being, that Act would have allowed persons to enter into other people's property and seize goods and what have you. One of the safeguards that was included in dealing with this power of arrest, was to stipulate that it should be a police officer above a certain rank, perhaps the rank of an inspector, or whatever. That is a matter that we need to look at because there are concerns about it. Again, the whole debate and discussion about people likely to be "set up" and what have you.

I know that there already exist certain provisions in relation to the Children's Act. Mr. President, given the problems that are existing in our society today—this morning on television there was a discussion which took place with a former Minister of National Security on the whole question of the problems within the police service and some of the matters with which we are all familiar. I am not here knocking or attempting to knock our policemen. We have very hard-working, committed people who work as police officers, particularly, with respect to domestic violence situations. I know for a fact that with the community policing unit, there has been a tremendous amount of improvement and a lot of work being done by our police officers.

The reality is that there are some problems that continue to exist. We, being in the Opposition, are here to be a check and balance to ensure that people's rights are protected. We do not want to have a situation where that kind of power can be abused. All we are saying is, perhaps, let us look at it and see how we can have some appropriate safeguards. This is why I am making out a case that a Bill of such importance should, in fact, be referred to a special committee so we can have further discussions, and dialogue, consultations and see if we can improve it as it exists now and be able to grapple with some of the problems.

Mr. President, as we move on to other clauses in this Bill—there is clause 17 that seeks to insert a new section 29(A) that will provide for the admissibility of video recorded evidence and what have you. This new clause 29(A) refers to an Act that was passed in 1996: an amendment to the Administration of Justice Act. My concern with this is—it sounds good and it looks good. I am sure it will be and can be good. It can be a useful provision.

Let us look at our courts as they exist now. Do we have these facilities in place as yet in our courtrooms, where one can have video recordings and so forth? I know when some of the big cases were taking place in the United States of America we were bombarded with the reports. It was very topical and people were impressed by the kind of sophisticated technology and the systems that exist

Sexual Offences (Amdt.) Bill
[SEN. MOHAMMED]

Tuesday, December 07, 1999

in the United States of America. But this is Trinidad and Tobago. Our courts, magistrates and judges are suffering for basic amenities. Do we have systems in place?—[*Interruption*] I know it has been going on. It has been existing for some time and there are so many more basic things that are lacking to improve the administration of justice, but we will discuss and debate that on other occasions, I am sure. I am merely raising the issue of the practical aspects of a provision like this in these times in our courtrooms. Do we have systems in place that will cater for the use of video recorded evidence? If we do, I would be very happy to know that they exist. As far as I am aware—it has been taking some time for a simple computerization exercise to take place, far less to have these sophisticated facilities. One day, hopefully, we will get there.

2.40 p.m.

Mr. President, as we move on, clause 18 deals with the mandatory reporting of suspected abuse of minors. This particular clause seems to be an okay clause, but clearly, with these issues we need to educate people, educate the public on how we deal with those problems. They are very important, we need to sensitize people to the issues.

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

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

Question put and agreed to.

Sen. N. Mohammed: Thank you very much, Mr. President. I thank my colleagues for extending my time.

Mr. President, clause 19 of the Bill is seeking to amend section 32 of the Act. Section 32 of the Act is certainly a very significant section. In fact, when the debate was taking place at that time in 1986, I think it was pointed out that it was because of a section like that—what is now section 32 of the Sexual Offences Act of 1986—it was necessary to pass this legislation with a special majority, because you were dealing with the rights of individuals. That particular section deals with the anonymity of the complainant and the accused. In clause 19, this Bill is seeking to remove the accused from that.

We have heard Sen. Daly make some references to that particular amendment and there are some inherent dangers lurking in it. I mean, yes, okay, you are charged, but you may not necessarily be convicted. This is the concern, about people being set up, and we have to express these concerns because there is another side of the coin that we need to look at as well and we need to strike a

balance. So that this clause 19, by seeking to amend section 32 of the Act, we believe that is a very serious matter. We live in a small society.

More than that, this question of a special majority is certainly an issue that needs to be looked at in terms of this proposed legislation. I say this because when you look at the 1986 Sexual Offences Act, you would see that Act was, in fact, passed with a special majority. It is a very serious issue and all the more reason we need to examine the situation carefully.

Mr. President, Part III of the Bill seems to be an interesting introduction, it seems to be a good thing being introduced to provide for the notification requirements for sex offenders. This is where, I suppose, the police would be able to keep tabs on the whereabouts of persons who have been charged and convicted. It sets out in 34C the method of notification. We see no real difficulties with that on the face of it.

Then there is a clause 34E which refers to the mandatory medical examination of the accused. Now, it sounds good, in these times of HIV and these dreaded diseases that we have in our society, that an accused person can now be required to submit to some medical examination. It sounds good, but again, if you look at 34E(4), it is a kind of laughable situation:

“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 to the complainant compensation in addition to any amount ordered under section 3(5).”

If you are found with AIDS, Mr. President, that is it, your days are numbered, that is your life you are dealing with. How are you going to compensate somebody for that? It is interesting to know that you can get some compensation, perhaps to help with your medical bills. I say it is laughable for the simple reason that a person who may have committed rape and who was found to have AIDS at the time and who is spreading this disease now in this way, the question again goes back to the means of this particular individual and whether he would be in a position to pay any compensation at all. My colleague is now saying that it may well be a case of murder. If the accused person was found to have AIDS, and inflicted a victim with AIDS, that is it. Money cannot pay for life!

I know the hon. Attorney General has a tendency for taking things totally out of context and going on the hustings and making general broad statements that

Sexual Offences (Amdt.) Bill
[SEN. MOHAMMED]

Tuesday, December 07, 1999

“we wanted to enact legislation to stiffen the penalties for people who commit rape, but the Opposition obstructed us”. Mr. President, the records and the history of this country will show that the greatest obstructionists in the Parliament of Trinidad and Tobago were the United National Congress when they were in opposition. When they come now to try their same tactics and want to take the credit and put blame on us for everything, we will continue to be a responsible Opposition. [*Desk thumping*]

We are here to be a check and balance in our society, to ensure that the nefarious—may I withdraw that word, Mr. President. In nearly all the Bills that are being brought to this Parliament by the hon. Attorney General, one would always find that element of some draconian measure being introduced. It is dangerous and it is our responsibility and our duty to continue to point out to the population that there are areas to be concerned about.

It is not that we do not wish to support the legislation. What we are saying is that we will be prepared to support legislation that is good, that is fair, that is balanced and has the appropriate checks and balances. I am sure it is just a matter of time.

General elections will be within a year. We will hear them going all over the country and boasting about this and that and blaming the Opposition. If the rain falls too much and there is flooding in central Trinidad they want to blame the PNM for it; that is how they operate, but the population, the people of Trinidad and Tobago are much smarter than that. There is a saying that you can fool the people some of the time, but you cannot fool the people all of the time.

Mr. President, as I indicated before, we have some concerns. So far, the feedback that we have been getting is that people have been taken by surprise with this Bill. There is need to facilitate further discussions on it, especially when you have a situation where the 1986 Act was passed with a special majority, because we are dealing with very serious matters. There is the question of whether you need a special majority; because you are interfering with section 32 and the question of a special majority is an issue that needs to be addressed. More than that, we believe that there is need to look at some of the measures here with a view to discussing the matter and seeing if there are mechanisms that we can put in place to be some kind of safeguard or checks and balances, because at the end of the day it is a balancing act we need for this.

This Bill is clearly a public relations exercise to give the impression to the women’s movement in this country that this Government cares about women.

Their track record is there for all to know and see about their treatment of women in this country. It is a pathetic record. At the end of the day, we want to know that whatever legislation is passed, it is workable, and it will redound to the benefit of all.

Mr. President, it is a fact that men in our society today are being marginalized. One of the Senators raised the issue. It is not just about rape. You see, whilst the women's movement has gained momentum and we have been working hard to get improved conditions and equal rights, at the same time, men in our society are being left behind. Perhaps what is needed are programmes and activities that will certainly allow our men to get in tune with the changes and keep up with the times. Our men are feeling the wrath of this; they are talking about this. I do not think any of the men's groups—there is a group called “men against violence”—have been consulted and perhaps there is need for more of these groups in our society. So at the end of the day, we would be able to improve our society.

You know, Mr. President, we need to go back to some basics. The problems that exist are problems that go to the root of the society and legislation alone will not change it, legislation alone will not tackle the problems. Family life is the most important aspect of life and if we want to tackle some of these problems we have to go back to our family units to try to improve the situation, improve the conditions of our young children, our parents, and if we have stronger homes and we have our children going to schools and they are getting good training at the schools, in the next generation, we would certainly have a better society. We have to think ahead. We are just days away from the next century—I do not want to use the word millennium—but we want to see improvements in the quality, the standards, the value system of people.

We do not want to know that violence is being treated with more violence. It is almost like barbarism. We admit that there are problems in the society. There is a high incidence of violence, our women are being attacked, but we need to go back to some basics and not to continue to deal with it on an academic level or just simply by bringing Bills and more Bills and talking about how many Bills you pass, when the real problems are not being grappled with at the core of our society. We need to sensitize people.

I raised the problem of alcoholism in our society. Mr. President, it is amazing. If anybody would take a drive through, let us say, a certain part of central Trinidad—I remember a very large geographic area in our country that constitutes the constituency of Caroni East. I am always amazed at the fact that when you drive around there the only form of entertainment that exists in such a

Sexual Offences (Amdt.) Bill
[SEN. MOHAMMED]

Tuesday, December 07, 1999

huge area is a rum shop at nearly every corner. This is a reality that we have to live with. In so many of our communities, in many families, on a daily basis and on weekends, the father comes home in a very drunken state. That is how you have some of these domestic violence situations. We need to get into that problem. Our NGOs and various interest groups and the Government too, need to focus on programmes that will help to sensitize people and educate people and provide for rehabilitation. In this kind of legislation you are talking about buggery and whatever other offences, the people who commit these acts are people who probably need some kind of help. You need some kind of psychological help; some kind of counselling and these are the areas we need to be looking at.

We need to be doing a lot more in our communities to help people, to help families that are in trouble, to help families that are in crisis. That is what a Government can assist with. It can work together in partnership with the NGOs and help with whatever limited state resources that may exist to design programmes and activities in our communities that will help people who have these problems.

So Mr. President, the long and short of it is that the Bill in its present form seems to be just another public relations exercise. We would like to see some more meaningful discussions take place with a view to beefing up this Bill so that at the end of the day we can all be proud of the Bill that is eventually passed, if passed.

Thank you very much, Mr. President. [*Desk thumping*]

Sen. Rev. Daniel Teelucksingh: Mr. President, I do not want to repeat too much of what has been said already, but we all seem to identify with the rationale, the intention of the Bill and that is to deal with a scourge, to deal with a problem that is here. Nevertheless, I feel that this is a Bill of terror. This is a Bill of terror to the sexual offender and, maybe, why not? Because, I mean, the word “barbarous” has been used. Our punishment seems to be barbarous, but then it seems to match a kind of barbarism that is there with us today. This is making it so very difficult for us who would like to act as belonging to a responsible and civilized society.

2.55 p.m.

When one looks at this legislation, why do you think it is a bill of terror? The clause that deals with imprisonment for life means for the remainder of the natural life of the offender. I am glad Sen. Daly made reference to a certain law but as far

as I remember—and I know the rank and file in this country would remember—in the case of capital offences, life imprisonment really means about 15 years. This is how we are accustomed interpreting this. A fellow would go to jail for committing a serious crime and approximately after 15 years he is out.

Now, this, I feel in looking at the Bill, is the first time possibly in Trinidad and Tobago we have this kind of legislation which defines life imprisonment as meaning the remainder of the natural life of the offender. This is what makes this Bill so serious. I do not know if we are ready for that. I do not believe that even a clause like this, is attached to capital offences in this country. I doubt it very much. Then there are 20 strokes with the cat-o'-nine tails; prison terms increased from 10 to 25 years from the 1986 Act, and compensation to the victims. This is a Bill of maximum retribution. I do not think you could add more. I would prefer that instead of imprisonment for life for these sexual offences, the remainder of a person's natural life should have had fixed period of time as a guide to magistrates and judges so that we will not have unequal sentencing. We can fix a period of time rather than to have someone spend the rest of his entire life behind bars. Much has been said about that.

I just want to add two concerns. I think there is urgent need—not only as the Bill is talking retribution and possibly the deterrent aspect of punishment—to deal with preventative measures. I believe that education is very, very important at an early age for boys to learn to have a greater respect for girls. This education must begin in the home and also in the schools; fathers, sons and brothers, the menfolk of this nation need to respect the girls and the womenfolk. We need that! We need to teach them. We could be so vicious and aggressive towards women even at a very early age. I do not know what we can do, but the harassment and the molestation of girls on the city streets; they must go to work. If even they work anywhere on Frederick Street or High Street in San Fernando they cannot park their cars right on the compound where they are working; but they have to walk. Our girls and women are not safe there. They are harassed by school boys and men; they are molested on the streets; in the shopping malls. Can we outlaw this? Can we control this? Streets and shopping malls are not safe for our girls today, and this means that we are losing respect for them.

Mr. President, as far as sexual offences are concerned I want to congratulate and support the Director of Telecommunications for his recent decision to be very serious with cable television companies, and place a ban on the porn channels. Those adult programmes with their indecent and obscene shows, certainly, are subversive to morality.

Sexual Offences (Amdt.) Bill
[SEN. REV. TEELUCKSINGH]

Tuesday, December 07, 1999

On Sunday December 05, 1999, there was a poll by the Ansa McAl Psychological Research Centre at the University of the West Indies and they received comments from the public who agreed that rape is associated with those porn shows. People are saying this; people believe that there is a link between pornographic movies and the influence on persons who may not be so well balanced and may be tempted to commit these crimes addressed in the legislation before us.

Mr. President, two previous speakers mentioned the proposed section 34(E) in the Bill which makes reference to medical examination of those persons accused of sexual offences, particularly, to determine whether there was any transmission of disease, and references were made to HIV. It is very good for us. I have waited a long time to hear from the Government but it is very good to hear finally from the Government, through this Bill this afternoon, about its concern for the dreaded AIDS virus which is the new plague that threatens our society, our region and our Caribbean neighbours and, possibly, the world.

I want to remind the Government that sexual offenders are not the only carriers. I say this because our region is among the top three countries in the region where the disease is so prevalent. Two speakers made reference to this and I want to ask the Government a question. That very controversial issue must be dealt with—the selection of Trinidad and Tobago as a centre for HIV vaccine trials. Along with Haiti and Brazil, Trinidad and Tobago is selected as a trial site because of the high incidence of AIDS in this country.

I just want to close—this is something that has bothered me. I have waited so long and we are not hearing the Government responding as far as the appointment of the Ethics Committee is concerned, to consider the pros and cons of vaccine trials in Trinidad and Tobago. There is no official response as yet, but only a very disturbing tension between two major organizations dealing with the treatment of AIDS patients: one is the Caribbean Medical Centre (CMC) and the other is the Medical Research Centre (MRC).

I suggest that Government must intervene in the vaccine battle and harness all resources available in search of a national policy on AIDS prevention; AIDS control; and the treatment of AIDS victims. It is absolutely essential and this should be given priority by the Government. Mr. President, I really hope that during committee stage there will be amendments to this Bill. We all identify with the concerns but the punishment prescribed in the Bill, somehow or the other, needs serious modification.

I thank you very much, Sir.

Sen. Dr. Eric St. Cyr: Mr. President, I join the debate on this very, very serious piece of legislation before us. Perhaps I should say that there are four things which worry me about the Bill and I want to make, in turn, comments on each of them. The first is the removal of spousal immunity.

The second is the unduly harsh penalties being prescribed and let me say, from the beginning, that normally I would be horrified that there is on the statute books now, the provision for corporal punishment with the cat-o'-nine-tails, but it seems that at this stage to be putting that on the statute books is really indicative of a decline in the civilization.

3.05 p.m.

In my third point I want to say something about the removal of the presumption that a boy of 14 years or under is incapable of committing rape. The fourth thing I want to make some comments on is the logical consequence of this Bill, and on that I want to say up front that it would seem that the logical consequence of this Bill would be to drive men into homosexuality, and so make the proposed amendment by Sen. Mahabir-Wyatt to decriminalize buggery inevitable, but this is an abomination that I could never contemplate agreeing to.

I am bothered by this Bill because it seems to attack the very civilization in which we live. In the natural, electricity comes in positive and negative charges and if we simply join those two wires we get an explosion. Similarly, in the human population we come in male and female, and just as we have to manage how we link up the negative and positive electrical wires to get power and light, so too we have to deal with the relationship between male and female in society in an informed and responsible way.

My first point, Sir, is that we need to develop very healthy attitudes in the society towards sex and sexual relations. The norm from which we would start is the individual and here we want to recognize that the initiative in sexual activity is, I think, predominantly in the male. Perhaps, if it were not so designed the human race might come to an end, so we have to just accept that there is naturally, in the hormonal make up of the male, a sex drive that is natural.

As with all natural things, they have to be managed and our understanding of what would comprise a healthy attitude towards sex is that the family would take responsibility for the management of sexual relationships. In the family, the male protects, procreates and manages the succession of marriages for the children to follow. In a smoothly functioning society such as this, the incidence of sexual deviance should be at a minimum and not as appears in a society such as ours to be anybody doing anything anyhow anytime.

We want to be careful, Sir, that we also put, in historical context, the Caribbean society. Let me refer to a case reported recently in the press of an 18-year-old man sentenced to five years' imprisonment for raping a 12-year-old girl when he was 16. I said, "Well, this is a very horrible crime deserving of some serious treatment, but I wonder what would be gained." How would it advance the cause to put that 18-year-old boy in prison for five years? Much as I think the thing must be treated with the utmost seriousness and punishment applied, I would think that such punishment should have less of a retribution and more of a restitution aspect to what is being done. In my view, certainly, we are likely to do more harm than good to that 18-year-old.

I am not minimizing for any moment the seriousness of the violation to the 12-year-old girl. I fully support the stance that sex must be by consent, I am not deviating from that point at all. But I am saying that we must put the whole matter in context and bring wisdom with proper analysis to bear on what the problem is.

Let me refer to a report in one of the weekend newspapers; the report of a statement by someone I like to refer to as a person with tremendous sociological insight where the issue at hand was the way males in the society patterned their lives. I think the reference was to the lifestyle of males. The person with tremendous insight and empirical and research background was referring to alcohol consumption among males, the use of guns, the use of speedy motor cars, drugs and the unhealthy way that they react to stress. I said, "Well, here is a good start to analyzing the problem and really now seeking to deal with this problem." Because it seems to me that we were not addressing the consequences but we were going to step back and attempt to deal with the causes. So that we do not, if I may make reference, deal directly with the floods on the plains; what we do is try to deal with the watersheds. Similarly, we do not simply catch the rapists, jail them and beat them, or beat them and jail them, but we attempt to deal with the circumstances which impel the male in that direction.

We have been going through a tremendous sex revolution in the last 25 years or so and I believe that this has to be the context in which this matter has to be placed. I think in 1976 in our income tax legislation we made a change from recognizing the household as the unit which accounted for income and recognized the individual as the person accounting. In 1991, we brought in the Domestic Violence Act and the evidence suggests that domestic violence increased since we went in that direction. So I would like to stand back from the problem and really ask, what is our conception of the nature of this problem?

In this draft Bill, the removal of what is referred to as “spousal immunity” worries me no end. I think marriage is a covenant but it is also a contract, and while I could agree that if there is an estrangement between the spouses and that estrangement has been taken into the legal arena, that there should be restraint; outside of that, I could not support the notion of spousal immunity. It will, in my view, give credence to what is called “sex bargaining” which undermines, fundamentally, the relationship between spouses and, I dare say, gives a very much stronger whip-hand to the wife in those relationships.

I know I may sound chauvinist, but in contrast to the distinguished sociologist who thought that masculinity should be whittled down so that men would become more like women to balance the trend of women becoming more like men, so that we may meet somewhere in the middle, I take masculinity as a natural dimension of the human person. I could not support a Bill which removed this fundamental premise of spousal immunity, and that is my first point.

My second point, Sir, refers to the removal of the presumption that a male 14 years old and under is incapable of committing rape. Perhaps, what we need to do there is change the age, in other words lower it rather than remove it. I do believe that there is still a concept of innocence which has to lie somewhere between age 0 to probably age 14. What we should try to do is find out where the line should be drawn given the fact that the evidence suggests that young males under 14 years do, in fact, commit acts of rape.

3.20 p.m.

The Bill, as a whole, comes over as excessively punitive. I am almost reminded of the promise that the merciful will obtain mercy, and I believe we all need some mercy sometimes. I do not subscribe to the view that if you punish people hard enough, that achieves anything and I do not think it changes anything, and I do not know it really solves any problem. I would not go to the opposite extreme and prescribe no punishment under any circumstance, but certainly, this Bill comes over as excessively punitive and in my view, it should be toned down.

Arguing along the lines Sen. Daly argued, I really do not see what is to be gained by changing a sentence from 15 years to 20 years. I do agree that to change from 10 years to 25 years and to lifetime makes a difference, but then that would depend on your decision to move in that direction. I do not see that as adding to the solution. All I see it is doing is saying that we absolutely abhor what is happening and we are going the whole hog. In that case, perhaps we can do even better by prescribing so many strokes each year until the person dies or some such thing.

Sexual Offences (Amdt.) Bill
[SEN. DR. ST. CYR]

Tuesday, December 07, 1999

The point I am after is, this is really a cruel Bill, and it suggests cruelty. I am not saying that the crimes are not heinous, but I do not know that dealing with it in this way really is a solution and so I could not possibly, at this stage, give my assent to that part of the Bill which prescribes 20 strokes with the cat-o'-nine-tails and so the proposed amendment of Sen. Prof. Spence would have my support. I am concerned that this is likely to make our problems worse. What I think is going to happen is we really are going to intensify the antagonism between the sexes in the society. I am suggesting that both men and women receive signals of a wider perspective and behave according to those signals and certainly, what this Bill indicates, is that the powers that be are absolutely against the male in the society and I do not think that sending such a message is good governance and certainly, what I would prefer to see is that we start addressing the problem from the other end, the preventative end.

I know I quite surprise one or two of the women Members of the Senate when I argue that the focus in the solution of the problem of violence to women should be attention to men. I mean, after all, if it is the men who are beating up the women and you want that stopped, it does not make sense to catch and imprison all the men. I do not know who is going to catch the last set, probably by then we will not have any more male policemen to catch the male offenders, so it does not make sense. We would have to build more jails now that we are putting them in for life. Have we really measured this thing? I do not know.

I will end at this time by saying that firstly, I am not at all happy with this Bill and, secondly, I think we must attack this problem from the end of prevention and not only from the perspective of applying penalties.

Thank you very much.

Sen. Carlene Belmontes: Mr. President, this is a Bill that is of serious concern to me, you can even say it is something about which I feel quite passionately. I believe that rape is definitely a serious crime in Trinidad and Tobago and we have a situation where younger and younger children and even teenagers are being exposed to this sort of crime at an earlier age. I say this using the reference of the kindergarten teacher who was raped before her class recently. I found that to be highly appalling that something like this could happen in the view of three-year-olds to five-year-olds.

Statistics which I have gotten from the Rape Crisis Centre show in 1998: cases of child sexual abuse, 74; rape, 75 cases; attempted rape, 3; domestic violence, 36; buggery, 3 and these are just cases that they have counselled which

were referred to them by the police. Out of that you find that the highest age group from among these statistics is the 16—25 age group with the second highest being the 0—15 age group. So we see that the incidents of rape and sexual crimes happen more commonly among our young people and young women, which to me is of great concern.

I believe that the crime of rape or any sexual violent crime is more a psychological one than one of criminal intent or violence because the victim has to live with this crime over and over in her head. She is not going to forget that so. The man may be put in jail for 20 years, or as they say, for the rest of his natural life, but she still has to live with the fear of thinking, is it going to happen again? When this person comes out what is he going to do to me? She has to keep looking over her shoulder. She is afraid to venture out on her own and I think that is more psychologically damaging than the actual crime which was perpetrated on her.

Coming to the Bill, as my other colleague said, we are willing to go with any form of legislation that comes in the right form. I have no problem against the increase of the imprisonment time which has been increased from 15 to 20 years and from 5 years to 12 years, and 10 years to life and so on. I have no problem with that, because as I said, I find this crime to be very serious, but I do have a problem with the fact of life imprisonment to being the rest of your natural life. It serves absolutely no purpose to put someone who is 20 years away for the rest of his natural life for, let us say 50 years, or until he dies without getting any form of rehabilitation.

I am also concerned with clause 12A of this Bill which deals with the power of arrest. The clause says:

“12A. 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.”

Mr. President, I honestly would like the Attorney General to clarify how a police officer is going to determine whether a person has truly committed this crime and if it is not a set up. I was wondering if a person who says a police officer is with the wife of someone and this wife cries rape, how do you justify the police officer really and truly investigating this crime to find out if the person was really raped or if he is just saying, “well, it good for him, now I have her for myself.” I have concerns with clause 12A, and the power of arrest without a warrant.

Sexual Offences (Amdt.) Bill
[SEN. BELMONTES]

Tuesday, December 07, 1999

I also have a problem with police officers where it comes to how they treat victims of rape when they go to report the crime. I know of an incident where a young lady 17 years of age was raped. She went to report the crime to the police but they practically laughed at her. I would not say some of the questions she was asked, but this young lady broke down in tears and was ready to confess that it was her fault she was raped because of the way she was treated in the police station.

I reiterate the point that if we are going to have policemen dealing with rape victims when they go to report a crime then there should be trained policemen to deal with that and not just any policeman or policewoman to whom she reports the crime. There is a situation where the victims would then feel they are the perpetrators and it was their fault and probably if they did not pass a certain place, if they did not wear certain clothes, if they did not walk a certain way, perhaps if they did not even climb a ladder to do something, this would not have happened. I really think that we need to look at the way police officers handle victims reporting a crime of rape or any other sexual offence. [*Desk thumping*] I do not want to be repetitive, but clause 4—as my colleague, Sen. Mohammed said—which deals with rape says:

“4(1) Subject to subsection (2), a person (‘the accused’) commits the offence of rape when he has sexual intercourse with another person (‘the complainant’)—”

I too would like the hon. Attorney General to explain the meaning of the words “another person”. Does this include the person’s wife now? In the original Bill of 1986 clause 4 defines rape as:

“A male person commits the offence of rape when he has sexual intercourse with a female person who is not his wife.”

So, Mr. Attorney General, I would like you to clarify for me, if in the new definition of rape “another person” includes the wife of the person.

3.35 p.m.

Mr. President, going to clause 18 that deals with the “mandatory reporting of suspected abuse of minors”, I do not have a problem with that clause. Actually, I am in agreement with that clause but personally, I find that the penalty is a little too harsh. Section 18(2) says:

“Any person who without reasonable excuse fails to comply with the requirements 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.”

I really think seven years or as stated in the Bill both \$15,000 plus seven years is a little too harsh for someone who does not report suspected abuse of a minor. There are many circumstances in which someone would be afraid to report this kind of matter for violation to themselves and their families. We live in Trinidad and Tobago and we see it all the time. So I think seven years is a little too harsh a sentence for that crime.

Mr. President, if we look at clause 34 that deals with notification, this is something I welcome in the new Sexual Offences Bill. We find that in most cases, first time offenders go on to become repeated offenders after they are released. From talking to persons who deal with counselling of rape victims and with this sort of problem, they found that most men when they are released after 10 or 15 years for committing rape go on to rape someone else. As far as I understand it, with this notification, this person would have to report to the police in his area and give his name and where he is, so that they can keep track of where he is and what he is doing. So I am in total agreement with this method of notification.

Clause 22 is another clause that concerns me, especially living here in Trinidad and Tobago and seeing what goes on. Clause 22 in the original Bill deals with the suppression of brothels. If we are being realistic inside this Parliament and in Trinidad and Tobago, we would face the fact that there are brothels operating right here in Trinidad and Tobago, under the eye of the police who know about it and do nothing most of the time.

There is a classical example of one in San Fernando that the police frequent quite often, and encourage people to go, because they are probably getting paid on the side, no one does anything and they turn a blind eye. This place is located in a residential area. In fact, there is a kindergarten two doors down the road from this brothel and the police and everyone else know about it and yet they let it continue. It continues to operate and no one seems to be bothered by this.

Mr. President, I just want to go to the Domestic Violence Bill and there is something that I have noticed. Since this Bill was passed there has been an increase in the amount of crimes that have taken place connected with domestic violence. [*Desk thumping*] In fact, nearly every week we have another case that shows the same thing. Restraining orders seem to have been doing nothing to stop

Sexual Offences (Amdt.) Bill
[SEN. BELMONTES]

Tuesday, December 07, 1999

this crime. I am of the opinion, that no matter how much legislation we introduce to deal with sexual offences and domestic violence, once it is not properly put in place and enforced these crimes would continue to happen. [*Desk thumping*]. We can say increase the fine and jail term but it is not deterring men in this country or even women from committing the crime. It is still going on and on. People are getting restraining orders and they are still being killed the same time they get the order or the next day. So if we are serious about this matter and increasing the penalties for doing the crime, then we have to make sure that it is properly enforced.

Mr. President, I would suggest what I think could start as a solution to rape and sexual offences. Just this weekend my six-year-old niece educated me on sexual practices in this world. I was shocked by some of the things she told me that were taught to her by children in her school, to the point where, I think that I will have to go to the teacher and tell her what is going on. The person who has told her all this wealth of knowledge told her also do not tell her parents and do not tell an adult. Why? They are being exposed to it probably at home, on the television, in society and on our streets and this is what they are growing up to know. So I am saying, that if we start educating children and young persons on matters relating to sexual abuse, sexual crimes, rape or even sexual relationships, maybe we can start to curb some of the violence that we are seeing happening in Trinidad and Tobago.

Mr. President, if we start with ourselves from the home, probably even in schools and with the churches, maybe for the next generation we could have fewer types of these crimes. I am not saying that it is going to stop completely but this is where we have to start. We have to face reality that in the society in which we live the age of sexual awareness is getting younger and younger. Gone are the days when we had sexually innocent children at 12 and 13 years. Now we have them from 5 and 6 years old and they could explain to us exactly what is going on and they know all the meanings of everything, things that an adult would not even think of talking to them about.

I think that if we are talking to our children on these matters we need to talk to them honestly and not try to hide some of the facts. I could tell you that some of the things that you will be hiding from them, they would hear outside and they might hear it in a raw form that they would want to go and experiment and practise. This is not what we want for our young people.

Mr. President, we also have to watch how we, as adults and role models conduct ourselves in the presence of our children and in front of our young

people. [*Desk thumping*] The whole lifestyle of some parents or people who consider themselves parents and call themselves parents—I am of the opinion that having a child does not make you a parent. That makes you a mother or a father. That does not make you a parent. So the whole lifestyle of parents has to change. They have to be more aware of what they do and say in front of their children. They are at an impressionable age where they pick up everything and are guided by us adults whom they look to for guidance and knowledge and they expect us to know better.

As I said, if we can start with implementing this Bill and passing it, it does not make sense if we do not live it. We can pass this Bill, put it in the books and say we have a Bill dealing with that, but unless they are guided by us, this makes no sense.

3.45 p.m.

In closing, I say one thing. I think we should teach our children, our young people, even our young adults, to respect themselves first, have a greater sense of self-esteem and respect each other, not just men respecting women or fathers respecting their daughters but *vice-versa*. We are talking total respect for each other because, as the old adage says, “Do unto others as you would like done unto you”. I am sure that half of the things that are being done to women in society, the men who are perpetrating the crime would not like that to be done unto them. So I say, respect each other, respect your parents, respect each other’s bodies, and that is the only way we can begin to curb this problem. Thank you, Mr. President. [*Desk thumping*]

Sen. Prof. John Spence: Mr. President, like all the folk here—I would not say most—I am horrified and bewildered and amazed at the increase in violence, sexual offences and rape. I find it very difficult to understand how, as a society, we have come to this path where the number of incidents we read of in the press just seems to increase. So I certainly, you know, am in support of measures that would address this issue and one of them must be legislation.

I think that we need, however, to understand that rape is not only a sexual crime. It really is an expression of violence and I think we have to put that particular offence into the context of the general violence in the society. I am convinced that the violence aspect of this sexual crime is the predominant aspect that needs to be considered. I agree with much of what my Independent colleagues have said. I particularly support the concepts that Sen. Prof. Kenny has put forward. In fact, I find that he has said for me very much what I would like to

Sexual Offences (Amdt.) Bill
[SEN. PROF. SPENCE]

Tuesday, December 07, 1999

have said, only that he said it better than I would have said it, so I am certainly in support of the approach that he has put forward.

The violence in our society, I believe, is increased, perpetuated and added to by the violent images that we see on our television screens. Sen. Rev. Teelucksingh has referred to the pornographic aspect of our television but I think equally important, I would even venture to say perhaps more important, is the violence because the violence is portrayed today. Whereas the pornographic channel might have been confined to perhaps late evening and perhaps not be generally available, the violence on all the other programmes is available to many young viewers throughout the day and the story that is constantly told is, if you have a disagreement you react with violence.

That is the lesson that we would learn 10, 20 times a day and I really think that is an issue that we must tackle. In my mind it is a much more important issue for the person in charge of telecommunications to be addressing his mind to and, indeed, the powers that be. It is this constant violence and it is increasing. I mean, imagine that now in Trinidad and Tobago we have women boxing. I mean, I abhor normal boxing between men but why have we got to now go one step further and we have women battering at each other here? What has happened to us as a society? We just have become violent, violent, violent. That is what we look at.

I mean, the most horrific programme, I think, on the television is the wrestling. Now, adults may know that it is all a put-up job and it is really a thing that is set up by the various participants, but the children do not know that. Clearly, the people who look at it, if we look at the audience in these wrestling matches, it is obvious that they are enjoying the spectacle of people beating up each other. I just cannot understand it, Mr. President. But I think that if, as a society, we add to the violence—and I consider that the clause which is trying to introduce for this offence punishment by cat-o'-nine-tails, is adding to the violence. We are saying, yes, when you do not like something that is going on, when you think it is bad—we may be right in thinking that it is bad but there are criminals who think that they are right in what they are doing. There are people who feel that they are punishing somebody who has done them wrong by raping them. So why should we be putting it on the statute books?

Mr. President, I have never been able to understand how any country that has a large portion of its population whose ancestors were slaves can agree that this provision should stay on our statute books. From childhood I have never been able to understand how we can still have on our statute books, as an independent

country that has gone through the history that we have gone through, cat-o'-nine-tails. But to think that we are introducing it in new legislation, I agree entirely with Sen. Dr. St. Cyr and I certainly cannot vote for any legislation that has that provision in it. I would think that—I am going to perhaps be a bit out of order here—there are at least seven persons on the Government Benches who, to my way of thinking could not, should not vote for cat-o'-nine-tails because they must have had in their ancestry persons who were slaves in recent history. So certainly, I object to that provision. I am persuaded by Sen. Daly's analysis of the various clauses of the Bill from the legal point of view. I hope that he would move some amendments.

So, to conclude my brief contribution, Mr. President, I agree that things are bad when it comes to rape and sexual offences. I agree that we need to do something about it. I agree with those persons who have said that it is much more than just legislation but I agree that the legislation is part of it and we must do something. I cannot accept that we should put on our statute books something which can only add to the concept that society has, as a whole, that we have now in our country, that violence, violence, violence must be the order of the day and that state violence be a part of it. Thank you, Mr. President. [*Desk thumping*]

Sen. Cynthia Alfred: [*Desk thumping*] Thank you, Mr. President, for allowing me the opportunity of making my contribution on this very important and delicate Bill. Mr. President, I had no idea that so many men in this country followed the proceedings of Parliament as I discovered over the past few days. I have simply been bombarded by men who have taken strong objections to some of the contents of this Bill. I was not even aware that they used to read the contents of some of these Bills.

However, I believe there has been enough talk about this Sexual Offences (Amdt.) Bill to get the men in our society, very many of them, very scared and very jumpy, because they are wondering what is going to happen to men in the society of Trinidad and Tobago. I say to this Government that if it wants to broadcast to the world that it is incapable of managing the people over whom it has governance, this piece of legislation is perhaps the best way of doing it.

We cannot, Mr. President, in spite of all the circumstances that may exist—and we know they exist and I will talk about them in a minute—no government should at the same time bring the sort of legislation that is telling the rest of the world, “We cannot manage and therefore we are going to increase penalties for certain offences and we are going to build more jails and we are going to throw

Sexual Offences (Amdt.) Bill
[SEN. ALFRED]

Tuesday, December 07, 1999

men into jails and that is how we are going to deal with the crime and this is how we are going to deal with the problems in the country”.

There are ways and means of governing your country and I want to make now specific reference to the actual Bill. I do not see that increasing the penalties, in most of these instances, is going to make any appreciable difference. What it is going to do, in many instances, is increase the incidence of crime and increase the incidence of rape. If a man feels that he has no hope, then he has nothing to live for and he will be punished excessively for a crime that he has committed, then he will say to himself, “Why do I not then go to the furthest extreme, that is, why do I not, after rape, just kill her and done? Because if they are going to put me in jail for the rest of my natural life then I might as well go the whole hog”, so to speak.

So, Mr. President, we have to balance—I think the operative word here is balance—this legislation. We have to take into consideration that we are talking about people. We are talking about men and women. We are talking about men and women whom God created in His own image and whom he put on earth so that they could live in harmony. Even God recognized that man would not always live in harmony but he gave man a brain to think and to be able to work out solutions to all problems. What is put here, I am afraid, are not really solutions. They may be a deterrent and I am not so convinced, in fact, that they are. To a certain extent they may deter one or two persons. I tell you, Mr. President, the way to go here in this legislation is dialogue, family, but I will get to that.

We had been talking earlier of how people think about, say, incest and I want to give you two examples. There is one particular case where it is alleged that a father who had many daughters said that all of his daughters had to be initiated, with respect to sex, by him. Now, I am not talking about an uneducated man. I am talking about a man who had a very high position in society but obviously there was something wrong with him. Now, I am not saying that there should not be punishment, Mr. President, do not get me wrong. I think that people have to be punished for crimes that they commit but I am looking at the thinking here and I want to believe, as has been said earlier, that we have to go back into genetics, we have to go back into the family.

There is another instance, Mr. President, and this is where a stepfather was making advances to his stepdaughter. When she reported the incident to her mother the response was, “So why all the fuss? After all, is somebody you know. It is not as if it was a stranger”. This is a mother talking to her daughter, referring to her husband and the child’s stepfather. So, Mr. President, you have all shades of thinking, about this whole question of sex and sexual abuse and so forth.

4.00 p.m.

The men who commit incest—the fathers, the uncles, the brothers—I have one bit of advice for them. The day they start to get these wayward thoughts towards their offspring or towards their close relatives, let them head for a doctor, because they have to recognize that something is wrong in their thinking. They have to bear one thing in mind, that it is not the child who is going to end up in jail; it is he, the man, who is going to end in jail if he commits any one of these offences.

Mr. President, when I read of sexual abuse of two and three-year olds, I ask myself: If any of those children had belonged to me, what would have been my reaction? So, the men have to be careful that they confine their sexual activities to persons who would be at one with them, and not whatever sexual thoughts they may have that are, obviously, not in keeping with what is good and proper. Let them find a doctor who, in turn, will send them on to somebody who will be able to help them, because two wrongs do not make a right. Whatever the reasons may be for their thinking or acting in that way, obviously, there is something wrong and if they persist, then they will be punished.

There is another example, Mr. President. When I was at Bishop's High School, many years ago, one young lady was reputed to have been raped. Do you know what the principal did? In those days, we had the lower forms in one building and the upper forms in another. I must say that the principal was not from this country, and he invited all the students, from Form 1 right up to Form 5—I do not remember if we had Form 6 in those days—to gather in the hall. What did he tell them? He brought the girl on stage and said, “Yes. This young lady was raped!”

In those days, if I could have done something to him, I would have done it. The upshot of it was that the young lady eventually had to leave school because everybody was pointing towards her and saying she was raped and, of course, as was mentioned by my colleague here, Sen. Belmontes, after a time the female begins to think that she is the one who is responsible.

Having said that, I want to add a word for the female. We know that God made man and He made woman, and the man is the one who hunts or who pursues; the woman is the one, perhaps, who lures. But, we also have women who tease. They tease the men and, sometimes, after they make their mischief and the man reacts in a certain way, the woman screams rape.

Sexual Offences (Amdt.) Bill
[SEN. ALFRED]

Tuesday, December 07, 1999

I could never agree with this question of a man raping his wife and getting whatever punishment. I will tell you why. Who is to determine that, in fact, it is rape? Who is to determine that that woman—and I am a woman myself, but we have to look at both sides—has not “set up” her husband? She may have been, over months or years, thinking of all kinds of ways to get rid of him and then we bring this Bill in, and she says, “Good. Now, I will fix him.” So, she lures him. She dresses herself and she entices him and then when the time shall have come, she starts to fight. She screams rape but the poor man is totally at sea, but she says, “You have raped me!” The evidence may prove that, in fact, she got bruises, *et cetera*, that she herself might have brought on because of what she planned.

Therefore, women also have to be careful that they do not entice men into situations where men are going to commit an act for which, perhaps, they will be sorry for the rest of their lives, but it is the man who will end up in jail. [*Desk thumping*]

I wanted to emphasize that point. In the whole of this Bill, we see nothing where the woman will end in jail. Where we talk about male or female, that is different. In most of these offences, this is what you might call a woman's Bill, but we have to be realistic and fair, and we cannot have women using their wiles to entice the men and then the man goes to jail and the woman says, “Good, I have got rid of him.” We have to look at both sides of the coin.

At the same time, the man must understand that he must know where to draw the line. Women perhaps like to be pursued, or even persuaded although men have to be careful with the persuasion because they may persuade and they may say one thing and then when they get the woman, something else may happen.

Women do not like to be molested; they do not like to be harassed. The men have to know when to draw the line. When the woman says no, let it be no. Do not act foolishly, as some of them do and say, “You know when you say no, you mean yes.” How can you mean yes when you say no? Of course, there is the question of body language. We may say, “No.” But, in fact, we are saying, “Yes.” Therefore, Mr. President, the women have to be careful but the men must not allow their physical instincts to overcome their mental because they are the ones who will go to jail.

Now, Mr. President, I want to say something to the young people. It is an established fact that very young people know, perhaps more than we would like them to know, about sex acts and so forth. That is the way of the world. This may sound paradoxical, but I want to urge young women not to use their innocence as a challenge to men.

We know, especially in the secondary schools—some of us go there and talk to the young people—that many of these girls use their innocence as a challenge to the men. When they do and the man takes advantage, then of course, they cry rape. So I want the young girls to know, yes you are innocent; that is good. Keep it that way but do not use your innocence as a challenge to the men, because it is the very innocence which is a challenge to the man in the first place. So a girl does not have to flaunt it; she ought to be glad that she has it, but do not challenge the men.

We have very forward young ladies—forward in the sense of making advances to men—and the men cannot afford to make the mistake or to say that they thought the girl was over 16, or they thought she was over 14. If they know the girl is going to school, she is a school child. If you are not sure whether the girl is going to school—she may not have on school clothes—leave her alone. Because, in the final analysis, it is the man who is going to take the punishment.

I want to mention something about the method of notification. I agree with it in principle, but I want the Government, perhaps the Attorney General, to look at this point. Now, I know in the community in which I live, there are certain persons who go to jail, periodically, for stealing. Every time they come out of jail, other people go and steal and the blame is put on them. I want, therefore, in this whole question of method of notification, for extreme care to be taken when a rape is committed and you know that a certain man is the person who usually commits rape. He is out of jail and somebody else goes and commits rape and he is “set up”. It can happen. It happens in the case of, as I said, larceny and, therefore, that can happen. I hope that in the execution of this whole thing that extreme caution is brought to bear.

Mr. President, in almost every contribution I make, I talk about dialogue. I believe that when people talk, you can solve so many problems. I believe that we have to go back to social values and go back to the family. We have to go back to the tactics we are going to use and I mean there, dialogue, to solve the problems before they reach the stage of rape, or of the aggravated kinds of rape, or whatever.

Just last night, I was looking at the show, *Walker Texas Ranger*. What happened, there was a young lady and her two brothers, she was caught and they were trying to help the brothers so they would not get themselves into further trouble. The police badgered her for maybe hours as to where the brothers were and she said she was not going to say. But, Walker said, “Let me try”, and he sat and just looked at her for a few minutes and her nerve broke. She said, “What is

Sexual Offences (Amdt.) Bill
[SEN. ALFRED]

Tuesday, December 07, 1999

it? I am not going to say.” And he spoke to her nice and softly and he got through. The other police officers said, “But we spent hours trying to get it out of her.” It was the approach.

Therefore, I would advise everyone when it comes to matters of this type, the approach is important. When I talk about approach now, I am talking about the family. God made man and woman and their children to live in harmony, to live beautifully together, but if we go through with this legislation in its present form, half the men would be in jail; the other half would be so afraid to put any sort of question to any woman that they would stay by themselves. I am sure all of us know the story of Lesbos. We do not want Trinidad and Tobago to be called the second Lesbos. Therefore, Mr. President, approach is very important.

Let us go back to the family unit. Let this Government and succeeding governments spend some more money, invest in the social services in this country. There is no point building schools, building churches, building offices, building all these places if, in the long run, there will be nobody to put in them. Everything, in my humble opinion, starts with the family. Let us go back to the family; let us have counselling. Spend money. You have to spend money for the things you want.

You are not going to pull psychologists and psychiatrists out of the air, therefore, you have to get them in the first place. You have to pay them and I am associating myself with this whole thing because I believe in the preservation of our society. I do not like to see—as all of us do not—every day I pick up the newspapers, or I listen to the television or radio, somebody is killed, somebody in a fit of violence or whatever. That is not going to work, so let us go back to the family unit; let us use words; let us have dialogue; let us talk one with another.

When you have a family—mother, father, children—they should sit and talk with one another. In our day when we were children, there was no television, of course; there was no radio. Radio came years afterwards. So, in those days, the family unit was much closer. In the night, it would be mother, father, or mother, stepfather, children. Everybody would sit and talk. They would tell nancy stories and all sorts of things, but we have the electronic media; we have just about everything one can think of and, therefore, dialogue in the family has gone to a very low ebb.

Let us start back with the family; let the social services get involved. We have to think of the culture of the people. We are Trinidadians and Tobagonians. This is our country. How are we just going to say: Man commits rape; put him in jail

for the rest of his life. Man does this; put him in jail for 15 or 20 years. It is our husbands, brothers and cousins about whom we are talking.

4.15 p.m.

Let me end, Mr. President, by reiterating that I am not against punishment for crimes committed, but let us look from the beginning and not from the end. Let us start from where the crime might have started in the very early stages within the family. It is what comes out of the family that goes into the community, and what goes into the community goes into the rest of the world. Therefore, let us put methods in place. Let us place some value on our social services, on our social values. Let us get the family, once again, to be a true family.

Let us have dialogue in the family and let us bring in people who can help the families so that out of the families, instead of having rapists and men who are committing all sorts of sexual offences, let us have the men in our society who would love and respect their women, and the women in our society who will give due regard and love and respect to their men. Let the young people recognize that they, too, have to respect their elders and let all of us listen to everybody else so that we can bring solutions, Mr. President, to a problem like this. For it is, indeed, a problem.

I thank you, Mr. President, and I will ask—because of the seriousness of this piece of legislation, I, too, would like to add my voice to those of my colleagues—that this Bill be taken to a committee and that people sit down and look at it and come up with the best solutions for the people of Trinidad and Tobago. [*Desk thumping*]

Sen. Prof. Kenneth Ramchand: Mr. President, I want to express support in principle for the Bill to amend the Sexual Offences Act. I am glad to see the law tightening its penal policy against the penile behaviour of the lawless. [*Laughter*] Although that may well be the problem with some of the tone of the Bill—the punishments are very severe and they have a perfume of vindictiveness and revenge, but I cannot bring myself to oppose them outright.

I would like to say that the present legislation is a mere straw in the wind, hardly likely to make a difference to the gathering storm that we are driving blindly into. Mr. President, sexual violence against women and children is only a symptom of a very large set of societal problems. We live in a culture of violence. We breathe an atmosphere rank with sexuality, and often, the violence and the sexuality are packaged together on screen, in the talk of the deejays, on the television shows, on the worldwide web, in the lush magazines and in the picture

Sexual Offences (Amdt.) Bill
[SEN. PROF. RAMCHAND]

Tuesday, December 07, 1999

books. All kinds of things: “wining,” chutney, blockos. They are turning us on. Everybody is getting hot, hot, hot! Everybody is feeling hot, hot, hot!

That is the kind of atmosphere that we are living in, and we have to bear that kind of thing in mind when we look at the sexual crimes that are being committed. I am not saying that is an excuse; because one is feeling hot, one does not have to rape. One could seduce. Mr. President, we are living in a culture of violence, we are living in an atmosphere of sexuality and we are living at a time when all kinds of values are under pressure and undergoing change. It is a period of flux.

We have had all kinds of technologies for contraception coming up, allowing women to liberate the act of sex from the act of reproduction. We have all kinds of freedoms now being given to women to do as they please, to go wherever they want. So, Mr. President, this is a new kind of situation which leads to all kinds of aberrant behaviour.

Of course, rape—forcing oneself upon another person, any kind of forcible entry—is wrong. So, I am not saying that the circumstances in which we live justify rape. I am just saying that if one is trying to deal with sexual offences against women and children and all one is coming with is a set of legislation about how to punish the offenders, I have to join almost every other speaker by saying that it is necessary to go to the causes and the sources, so that our legislation and their actions as a people, as a government, have to be preventive action. We have to get there before the floods burst.

Mr. President, the young people with whom I play padder tennis—just to illustrate the kind of moral confusion in which we live—are amazed that someone like me can hold what they regard as an old-fashioned view that the highest form of sex is when the sexual act is free to be the act of love, an act of pleasure or lust, and an act of reproduction all at one and the same time. When I tell them that is the highest form of the sexual act they say, “You are archaic. The body is a pleasure machine. You have to learn to separate the act of pleasure from the act of reproduction. The greatest liberation of the 20th Century is human beings’ ability to separate the two.” So I am really ancient. I still believe that the highest form of sex is when the three are connected; when one has the possibility of all three in the sexual act, but there are many people who believe, as these young fellas keep telling me, “Doc, the body is a pleasure machine”. *[Laughter]*

Mr. President, we have to take into account all these kinds of changes. We have to develop social and economic policies to deal with them. To come to the question of violence—because I say that the sexuality in our time is associated a

lot of the times with violence—there is a great deal of violence in the society and it has many causes. Sometimes the violence is an indication of wrongs and injustices in our social arrangements. Sometimes the violence is something stimulated by the cinema screen, by the computer monitor or by the television set. Sometimes it is something that is made attractive or fashionable because it is accompanied by certain seductive items.

It is made acceptable because we have a steady diet from the media wearing us down into feeling that violence is the done thing, as it were. We have ghoulish headlines reporting crimes. One turns to the sports pages for relief and what does one see? “Windies A hit back!” “McEnroe whips Connors again!” “Bovell smashes another T&T record!” “Latapy's Hibs mauled!”. “Licks like peas in Siparia!” “Bone crusher batters Guyana champ!” *[Laughter]* Mr. President, I am turning away from the front page which would tell me how three fellas raped an 82-year-old woman and a man chopped off his wife’s head—I do not want to see that. I turn from that to the sports page and that is what I am seeing.

We have to deal with the very large problem of violence in our society. I do not know why these short, mild, mammary looking fellas with glasses have to write about sports in the newspapers in the way they do. They must be compensating for something. *[Laughter]* Mr. President, looking at the severity of this legislation, we have to defend against the charge that we are meeting violence with violence. Meeting violence with violence sometimes produces results. The first time my little son bit me, I bit him back. He never bit me again. *[Laughter]* If he had butted me, I would have butted him back too! *[Laughter]*

While there are times when one can meet violence with violence and there are times that meeting violence with violence produces results, that does not mean that the results could not have been achieved by other means. *[Desk thumping]* That is one of the lessons of the Mahatma who, I dare say, is like Nelson Mandela, guru and spiritual ancestor of all of us.

I would have been among the protestors at Seattle, and I hope that some of our citizens would catch the spirit and link up with the anti-capitalist movement and join up with the citizens protesting against the horrors of globalization, but if I had been among the protestors and I saw that we were about to become violent, I would have pirouetted in my dhoti and soca-cranked my spinning wheel to remind them that violence is not the way. “We are making a peaceful protest about something that we feel is denaturing us and denaturing our society. Why should we prove that we have been denatured?”

Sexual Offences (Amdt.) Bill
[SEN. PROF. RAMCHAND]

Tuesday, December 07, 1999

Mr. President, responsible societies will condemn and regret violence, whether by the state or anybody else, but what a responsible society tries to do is address the evils that triggered them. So, that is the prelude in which I am saying that my support in principle for the legislation is support for something that is not likely to do very much good. I welcome the legislation knowing full well that until we embark upon a long and close study—and be prepared to take action—of the sources and causes of violence and of our warped sexuality, and address those causes, if we do not try to understand the nature of human sexuality and if we do not allow ourselves to address philosophically the consequences of all the technological advances we are making—and which we are following in a “follow-fashion” way—Mr. President, all we would hope for is just mild alleviation of the diseases that fall upon us.

The sexual violence being perpetrated by men upon women and children is, perhaps, the most significant category of violence in our society. I leave aside, for a different kind of debate, the question of disappointed expectations, mental rape and so forth, the ways in which we can damage people mentally, just as badly as we have damaged them physically through rape. I leave that aside for the time being.

I think it would be generally agreed that the sexual violence being perpetrated by men upon women and children is the most significant and, perhaps, the most horrendous category of violence, and it leads people to think of all kinds of punishments. Some people say death, some people say jail for life, some people say castration, although I do not think that castration would be a sufficient punishment for men who commit grievous sexual assault. Moreover, since there is no evidence that castration kills the sexual instinct, castration would really constitute cruel and unusual treatment. I do not think that castration is on at all.

4.30 p.m.

Mr. President, the kind of violence that we are talking about is carried out by the physically stronger upon the physically weaker. A weak person has never been able to rape a stronger person. It is the stronger taking advantage of the weaker. The kind of violence we are talking about is the most traumatizing kind of violence in civilized societies. I could well imagine in primitive societies, a primitive man walking around with his club and he sees a nice woman, knocks her on the head, does his thing, walks off and she gets up—no problem. They are living at the level of the animals.

In civilized societies the act of sex cannot be separated from acts of mind; if people violate you sexually they are violating you mentally and psychologically as well. This is not a cock in the yard jumping on a hen, and saying: “This is the lifestyle, this is how we move.” This is something that is a violation of a profound nature.

Mr. President, I would like all our children—male and female—to be trained in some form of martial arts from primary school days so that none of these advantageous and cowardly offenders can be sure that there is easy prey out there. [Interruption] It is not violence, it is defensive. I know if I had young children, I would make that a priority. I would prefer that they should learn how to high-fall somebody who is attacking them than pass the Common Entrance Examination or—the same khaki pants—Secondary School Entrance Examination. Training in self-defence is more likely to be effective than any legislation we can devise. You have to give the weaker some kind of equipment to deal with the stronger.

Mr. President, these crimes do take place. I know that if somebody close to me became a victim of such a crime, I would have very revengeful feelings. I would think: “I would cut him, I would cut it off, I would kill him, I would hang him, I would shoot him, I would beat him.” That is what I would want to do.

When the state comes along and says: “I am relieving you of the burden and guilt of taking revenge; I am going to make the consequences of this man’s action not revenge but punishment,” I can see the value of allowing the law to take time and follow due process. Remember, I would be hasty. As soon as I hear that this man did it and he did it down by that grocery, I would be running by the grocery and the first man I see there I might kill. So, I let the law take its time and follow due process and make sure that the right person is punished.

Mr. President, given the situation in which we live, given that these kinds of crimes occur, given that we all want to see some kind of punishment or revenge, I have to be sympathetic to legislation that brings the grosser offenders to book. But I feel bound to tone down the euphoria by pointing out that the harsher penalties being proposed would not necessarily deter the sick, sadistic, warped, evil, desperate and the cowardly. Can any kind of bleeding heart liberal dare to argue that someone who rapes a baby or an old lady wearing pampers can be cured or rehabilitated? If the offenders are hardened criminals who know what they are doing or if they are sick and incurable or out of control, the first requirement is that society should be protected from them. If they do what they do under the influence of some drug to which they are addicted, if they do what they do because they live in a supercharged sexual atmosphere, we still have to be

Sexual Offences (Amdt.) Bill
[SEN. PROF. RAMCHAND]

Tuesday, December 07, 1999

protected from them. That is why, I do not care why they do it, if they do it, I have to say I am glad, jail them for life.

But it is not the end of the problem, Mr. President, that is only the beginning of the problem. What do you do with people when you just bung them in jail for life? You have penned them away where they are not doing harm to the rest of the society but you are creating a cancer. Still, I have to say that I support putting them away and protecting society from them.

Mr. President, let me insist that this action that I am supporting is a totally defensive action. It has nothing to redeem or commend it except the fact that you are protecting the rest of society from these people. There has to be some kind of follow-up, there may be some kind of dialogue, cure or rehabilitation. Something has to be done with these people. I hope that, in time, the Government would indicate that—since there is going to be a lot more people in the jails for this kind of thing—there is some sort of plan for dealing with people like this.

That is my general position on the Bill. I think I would need about 10 more minutes. I do not want to pre-empt your prerogative, Sir.

Mr. President: Continue please.

Sen. Prof. K. Ramchand: I have some particular comments on the legislation. They are reflected in some of the amendments I have proposed. The first of these and the most important—I would not talk about all of them here because I can bring them up at the committee stage—in my opinion is clause 4(2) where I am proposing that after the word “complainant” we should delete the words “where he knows that the complainant does not consent to the act.” What this piece of legislation—[*Interruption*]

Mr. President: Senator, it might be better to deal with that at the committee stage where other Members would be able to participate.

Sen. Prof. K. Ramchand: I was just saying that the question of consent in rape cases is a very serious and tricky question. I would not like to see legislation which allows lawyers or even accused to play games with the question of consent.

I think that the legislation seems to recognize that although 95 per cent of the sexual violence being perpetrated is being perpetrated on women and children, it recognizes that that violence can be carried out on men as well. I have made some amendments that clean it up to make it that way.

On the question of compensation, I want to say that perhaps this Bill's emphasis on punishment and retribution could be balanced by a stronger compulsion concerning compensation; that if somebody carries out this crime the courts should not just have a discretion to make him pay compensation, he shall pay—not he may—compensation.

4.40 p.m.

On the question of notification, Mr. President, I have an instance of where a young girl was raped by four students in a school on the Divali holiday. I reported this matter to a Minister of Government. I reported this matter to the press. I did my best to get the matter investigated. The press told me that what they found out was that this young girl had a reputation already because she had been a victim of sexual abuse by her stepfather, so it was not that this was some young girl who was raped and maybe she looked for it and they are not going there. When I checked up on the school, I found that the girl had been quietly transferred from that school to another school.

The principal of that school knew that it had happened, it had been reported to him by three members of his staff, who also reported to me. Mr. President, the principal covered it up and then arranged for the transfer of the girl. That principal should be in jail. I do not want to support anything which says, when you know about it you should do it as soon as reasonably practicable. You report it forthwith. So Mr. President, on the question of notification, I would like to see some kind of tightening up on the legislation and I welcome the punishments being proposed for failure to notify.

Mr. President, I have one more very disturbing issue. I am really concerned about people who know they have HIV and who enter into relationships with other people—not even rape relationships—knowing that they have it and they do not tell the other person. If you have been told by a doctor that you have HIV, if you go and rape a person, I do not think that the country should just be told he has to pay compensation. I feel the country should know that this was attempted murder. I would like to see the legislation saying that if it can be proved by medical evidence and you knew beforehand, before you committed the offence, that you had HIV, then you would be charged with attempted murder, and if the person dies while you are in jail, we drag you out of the jail and then charge you with murder. I do not know if the law would permit that, but I would certainly like to see some amendment in the legislation.

Sexual Offences (Amdt.) Bill
[SEN. PROF. RAMCHAND]

Tuesday, December 07, 1999

So, Mr. President, to summarize very quickly, I offer limited support for the Bill, because it is a very limited measure. I wish we could take a more comprehensive view of the whole question of violence and sexuality and the breakdown of morals and that our legislation should be framed within that kind of research and knowledge. Since these crimes are going on, as a very temporary, as a stop-gap measure, as something that sends a warning out and to protect citizens from these beasts, I would support certain aspects of the legislation.

Thank you.

Mr. President: Hon. Senators, at this time, the sitting would have been suspended for tea. However, the Leader of Government Business has advised me that after consultations with Senators Nafeesa Mohammed and Prof. Spence, it was agreed that continuation of this debate may take place through all its stages to a final conclusion of this Bill this afternoon. Of course, all that was agreed to would have had to have the consent of the Chair. I have given my consent. So we shall continue with the debate, conclude it, adjourn for the day and then you will have your refreshments.

The Attorney General and Minister of Legal Affairs (Hon. Ramesh Lawrence Maharaj): Mr. President, when I presented this Bill, I expressly recognized that the criminal law alone cannot deal with the prevention of criminal conduct. This is not a Bill to deal with penal reform. The Government has made it quite clear that those matters are being looked at and, in a short while, there would be measures coming to reform the prison system and the whole rehabilitative process. This Government has taken steps in that direction in certain areas.

What this Bill is about is recognizing that the existing legal framework is not sufficient to deal with the criminal behaviour that is happening and is occurring against women, young girls, wives and mothers, even boys and men. In an ideal society, an idealist can say that we can do this study, we can do that study, we can have this committee, we can have that committee, and we will pass Bills. Since June 24, 1999 hon. Senators had this Bill. The session lapsed. It came back on the Order Paper on October 7, 1999.

While we talk and while we try to politicize it—and it is very unfortunate that the Opposition has tried to politicize this Bill and tried to say that this has to do with the platform, that you will go and say life imprisonment, they have tried to politicize it—I would just like to read some of the things that are happening in our society. On January 29, 1999, “19 women raped for the year” and they gave

statistics. In the *Newsday*, page 4, January 29, 1999, “five weeping schoolgirls identify alleged serial rapist”. January 1, 1999 “rape society: 50 per cent of victims know attackers”. November 25, 1998, *Newsday*, “teens raped by five masked men”. November 6, 1998, “family of rape victim: abused mother, daughter deal with new assault on girl, 10”. The mother had to say—when one reads this one sees—how difficult it is, how cruel it is. September 11, 1998, page 7—we had the Opposition’s submission that compensation is laughable in a matter like this—“Dad on \$1.4 million bail for rape”, and a proprietor who was granted \$600,000. So there are rich people who also commit rape, not only poor people.

So, according to some of these idealists, what we should do, because some poor people commit rape and are convicted for rape, is not pass any law to strengthen the rights of the victims. That is what they are saying. I find it unthinkable that legislators who have come on a matter like this would come to this honourable Senate and come with these ridiculous suggestions.

Mr. President, I feel very strongly about this, and I will tell you why. I have always maintained that rape is worse than murder. When, as Attorney General, I asked the Law Commission to look into it to see whether the death penalty could be given for rape, the Law Commission recommended that in the light of circumstances in Trinidad and Tobago, because of the difficulties in implementing the death penalty, we should not go that route. I went along. As a lawyer in private practice, I defended and I prosecuted cases in which there was rape. I was privileged to get the facts as to the trauma, the torture, and the cruelty that the victims suffer. Therefore, I cannot understand, forgive me, Mr. President, how it could be thought in 1999, when you see what is happening in this society, that anybody can say, with the greatest respect, that this is a cruel Bill. You must have balances. You want to have a committee to look at this. Mr. President, what is happening here, we are blinding ourselves to the truth. We have narrow political considerations.

This is a matter in which anyone who looks at this Bill asks, what does it do? One, it makes the definition of rape, gender neutral; two, it is very sensational to say, when the facts are not there, that this would put everybody who is convicted for rape in jail for life, when that is not the truth. The Bill expressly says the person would be liable for life imprisonment. It was explained that all this does is give the court the power to order life imprisonment and life imprisonment would mean for the natural life, but it does not take away the right of the Mercy Committee, the Minister of National Security, his Excellency the President to

Sexual Offences (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, December 07, 1999

commute the sentence at any time. Yes, the Interpretation Act gives the power to a judge under section 69 to impose a minimum sentence instead of life.

Mr. President, let us think this thing through. Assuming that the state is lucky and a man who is charged for rape goes before the court within two years. What the judge has before him are the facts from the time he is charged and probably his previous life history as to what term of imprisonment he should get. The judge would not know the future, would not know how this person would rehabilitate or would adjust, so he is given the power to order a term of imprisonment—life—but to order that the person would spend a minimum time.

What this Bill does is give a judge the power to order life, life meaning natural life, but for the state to have a machinery, if the person behaved well, to be able to release him at any time, because the judge would not be able to know how this person is adjusting to rehabilitation. As we know, and we have the facts, we have had editorial after editorial, I do not want to quote the cases here, but you have members of the Judiciary who have given sentences about which the public have had outcries. We do not have a system in Trinidad and Tobago in which the judges are oriented on sentencing or there is a uniformity of sentencing. So we have to live with what we have.

What do we have? How are the rights of the accused person, the person who is convicted, prejudiced? How unfair is it if, one, the judge has the power to order a minimum—life, but a minimum; two, the judge has the power to order the life imprisonment and the state has the machinery to commute that if the person is adjusting to any rehabilitation? Mr. President, how does that prejudice or violate? How is it unfair to rights of an accused person?

Bearing in mind that these are matters in which a person does not have to be sick to commit. A person is not a born rapist. When you look at matters, it is people who know each other who are doing it, according to the statistics in Trinidad and Tobago. These are clearly cases in which people have disrespect, they feel they can do it, they can get away with it, that the women would not want to go to the police, would not want to report it, the courts would be soft on them, and the state would be soft on them.

So, there comes a time in a society in which you decide where you are going. Do you want to be soft on those people? If you want to be soft on them, let us vote against the Bill. Do you want to send a signal to rapists and potential rapists that if they commit these offences and they are convicted that they would face the full measure of the law?

4.55 p.m.

Mr. President, there are certain societies—and I am not saying that we should do it—which have chemical castration. In California in the United States of America—is that society uncivilized because of that? There are certain countries with the death penalty for rape. Here in Trinidad and Tobago, we read about this; we see what is happening and we know it. As we sit or stand here, we are aware that the people who are committing rape know that they would get away, and if they get convicted the law would be easy on them because they spend 14 years in jail and they go home. They know that! Even if the judge says “life” or “25 years” they could spend 14 years and go home. When they go home, after the 14 years, they could do it again.

One of the things that this Bill does—very few Senators talked about it—is set up a machinery for the police reporting; for offenders to be monitored; it deals with repeat offenders; it deals with situations in which the court would have the power to order medical examination of the accused, and for the victim to know whether she contracted AIDS so that she could take steps to arrest the situation, and here the Opposition gets up and says, that is laughable! Mr. President, I have never been so surprised in my life about an Opposition which says that it is committed to helping the Government to arrest these problems. Mr. President, I cannot help but say I now understand why under the PNM, some of these things were left undone. [*Desk thumping*] They get up in the Parliament and talk about all the problems—as if all these problems descended overnight, and there were people sitting in offices doing nothing! Files were there for years and they did nothing about it, but they come and “gallery” and say this is cruel and inhumane.

Mr. President, I would ask hon. Senators to understand that we must not live in a bubble. There are horrendous acts of violence being committed upon females in our country. It is probably justifiable to see that for years, criminals have the women in our country under siege; women are afraid; they feel threatened. Just yesterday, a young lady who works in my office came and told me that a few nights ago her friend was on her way home after working late at another office, and just as she left Centre City Mall a car stopped at a traffic light, and three men with a gun stopped the car, came into it and raped the woman. She decided not to go to the police and her whole life has been transformed.

Just the other day there was a woman who was on her way to work at 4.30 to 5.00 o'clock in the morning when the men bounced her car, she then came out of her car and was taken into their car and was driven to Wallerfield where she was raped. Yes, you can say put more police on the road; you can say all sorts of

Sexual Offences (Amdt.) Bill

Tuesday, December 07, 1999

[HON. R. L. MAHARAJ]

things, but the fact of the matter is that those things are in addition to what we are doing here. I do not think any Member of this honourable Senate can say that the Ministry of Social Development and the Ministry of Women's Affairs are not doing anything about other measures. This Bill is not about that; this Bill is to strengthen the legal machinery. That is what this Bill is about.

I had planned to say many things in reply but I would probably leave it for the committee stage. Every clause of this Bill shows that it should be passed. This Government is very open to any suggestion, so we would consider it, but going to a select committee is out of the question. We would be negligent if we do that. It seems to me that people are prepared to use political nervousness in order to obstruct legislation. I want to deal with this a bit. I have not seen any amendment proposed by the Opposition. Did they have a caucus? Did they study this before we decided to debate it? Or, they came just out of the blue saying that they want to go to committee? Mr. President, that is irresponsible conduct by the Opposition.

The Independent Senators have made some proposals. I have discussed some of them with my technical people and at the committee stage we can deal with it. If ever there was a crying need for legislators to act in a matter, it is for this matter. I make no apologies for this Bill if it is considered to be ferocious. Laws, at times, have to be ferocious because we are not living in a society of yesteryear, and if anyone of them thinks that you could deal with drugs, drug trafficking and money laundering and not be ferocious and have legislation which would be soft, well, they have a lesson to learn. If they think that they can deal with rapists and potential rapists in this society; be soft on them and not provide machinery to deal harshly with them, well, they have a lesson to learn.

Mr. President, as far as I am concerned, I am very privileged to be able to pilot this Bill and I do not intend to compromise on the policy in this Bill in respect of the major matters. I feel very strongly about the Bill and I would ask legislators to vote for the Bill.

Thank you very much, Mr. President.

Question put and agreed to.

Bill accordingly read a second time.

Bill committed to a committee of the whole Senate..

5.05 p.m.

Senate in committee.

Clauses 1 to 3 ordered to stand part of the Bill.

Clause 4.

Question proposed, That clause 4 stand part of the Bill. [*Crosstalk*]

Mr. Chairman: There are two proposed amendments, one by Sen. Prof. Spence and a few by Sen. Prof. Ramchand. Have Senators received a copy of Sen. Prof. Ramchand's proposed amendments?

Sen. Mahabir-Wyatt: Yes, Mr. Chairman, but they are wrongly numbered so it is very confusing.

Mr. Chairman: Sen. Prof. Spence's proposed amendment deals with deletion of the last phrase in clause 4(2) which states:

"He shall in addition be liable to 20 strokes with the cat-o'-nine tails."

Sen. Mohammed: Mr. Chairman, before proceeding with clause 4(2) is it possible that I could raise a concern about clause 4(1)?

Mr. Chairman: Yes.

Sen. Mohammed: The question was not answered in the winding up, the issue of the meaning of "another person". I do not know if the hon. Attorney General could give any consideration to clarifying that. [*Interruption*] In clause 4(1) the fourth line where it says "when he has sexual intercourse with another person".

Mr. Maharaj: Mr. Chairman, if I may explain this provision. It was introduced on a basis and it is subject to the safeguards. It was going to be gender neutral. Under the existing law there can only be rape of a woman. As you know, buggery, even if there is consent, is an offence, going in line with other countries that I mentioned, and having regard to the definition in section 25 of what the Act includes, both natural and unnatural acts. With this amendment you can have rape of a man, which would mean that the punishment would be different. In effect, if there is buggery there is a lower punishment and if there is rape of a man without consent, therefore, it is a different kind of punishment.

Sen. Mohammed: I have raised it in the context of the spousal immunity issue and I wanted some clarification.

Mr. Maharaj: It does not alter the common law rule about a husband and wife. I have been assured that the principle of the law is if you have to abolish the rule you have to expressly abolish it. I would feel to expressly abolish it—If I were going to abolish the common law rule I would have to expressly abolish it.

In order to satisfy you, I would have no problem putting in three or four words which would be—because I did have a discussion—

Sen. Mohammed: Would you wish to reiterate the common law rule that you spoke about?

Mr. Maharaj: Under the common law rule a husband cannot rape his wife and under the existing Act there are provisions, in other words, if the persons are living together and so forth. What this was doing was, in effect, keeping those safeguards, because—

Sen. Mohammed: Subsection (2) refers to subsection (2) in the Bill, not in the Act. In my initial reading I thought it was in the Act but it seems to be in the Bill.

Sen. Mahabir-Wyatt: Mr. Chairman, surely the term following “another person” where it says that the complainant is sufficient to describe who the other person is, are we not forgetting that rape does not just take place with body parts, it can also take place with a gun, flashlight or various other implements, to be graphic, and men can also be raped as well as women. Therefore, it is important to leave this the way it is, because the whole point of being gender neutral was to accept the fact, unfortunately, in this day and age, that men are also raped as well as women. Women can rape men using blunt instruments. In fact, there have been some celebrated cases in Australia in which this has happened. [*Interruption*] I still strongly feel that this should stay the way it is and not be changed.

Sen. Daly: What are the four words? [*Crosstalk*]

Sen. Alfred: If you are going to make it gender neutral under clause 4(1), this is just a suggestion, it should read:

“Subject to subsection (2) a person commits the offence of rape when that person...”

Rather than the word “he”, so we are conflicting, and then in (a) you do the same thing put in “that person”.

Mr. Maharaj: I do not think you have a situation where a woman can rape a man under the offence of rape, that would fall under grievous sexual assault which is the same punishment for rape. Under the definition of rape the difficulty we have is that you had to take the different legislation—for example, the way some other countries have done it was to break it down into about four acts. What we have done is limit it. I do not know which model we are following, I cannot remember but, the fact of the matter is, to cover situations in which you could have a woman doing unnatural acts to a man and forcing him to have intercourse and things like that, would be covered under grievous assault.

Sen. Prof. Spence: Why is it not covered under rape? Why can a woman not rape a man?

Mr. Maharaj: It has the same effect in punishment but it has a different name, because it would be difficult to define the different things in one section. It is a technical thing which I could not resolve by having it in one section.

Sen. Mohammed: Quite apart from the issue of making it gender neutral, I am wondering if this is the provision that removed the spousal immunity with respect to the offence.

Mr. Maharaj: There is a common law rule of a husband not being able to rape his wife. Under the existing law in clause 5 we have, in effect, preserved that rule. Section 5 of the Act is not amended by this Bill.

Sen. Daly: Mr. Chairman, I am at a loss.

Sen. Prof. Ramchand: Are we dealing here with law or sexual knowledge? I think a woman can rape a man and have sex with him in the conventional way. She can drug him and then stimulate him, it does not have to be grievous.

Sen. Shabazz: So a woman cannot rape another woman?

Mr. Maharaj: Mr. Chairman, many of the contributions were made as to if a husband and wife are living together and there is no divorce. Many contributions were made saying that a person could come home one night *et cetera* and it was easy to manufacture and so forth. When we were doing the 1986 Act those concerns were raised and what has been done is that the safeguards under section 5 have been kept.

Sen. Mohammed: For estranged purposes you have divorce proceedings, the immunity is removed in those exceptional circumstances, but in your presentation you spoke about removing the immunity for spousal rape. My concern is whether the words “another person” are the words that bring about that effect.

Mr. Maharaj: I meant immunity subject to what the safeguards are. 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 *et cetera*. What do you want there?

Sen. Mohammed: I just wish that the words “another person” could be clarified; whether it can be defined in a specific way or it includes a husband or wife, because it creates a conflict with section 5 in the Act as well.

Sen. Daly: Mr. Chairman, can I find out—I hate to be always so simple—is it or is it not the intention to have a charge of rape capable of being laid by one spouse against the other? I do not understand. Is that the intention or not?

Sen. Mahabir-Wyatt: That was supposed to be the intention.

5.20 p.m.

Sen. Mohammed: You are removing the immunity against spousal rape?

Mr. Maharaj: It can, subject to the safeguard.

Sen. Daly: What is the safeguard? I do not understand.

Mr. Maharaj: It is in section 5 which says:

- 5(1) A husband commits the offence of sexual assault when he has sexual intercourse with his wife without her consent by force or fear—
- (a) where there is in existence in relation to them—
 - (i) a decree nisi of divorce;
 - (ii) a degree of judicial separation;”

And so forth. So if the person is living together with his wife and there are none of these things, you would not be able to have rape, because we are not abolishing the common law principle which is, that a husband cannot be convicted of rape.

Sen. Daly: I am not expressing a view on merit, I want to know what I am doing. In the old Bill you had the words “who is not his spouse or cohabitant” well you had to change it.

Mr. Maharaj: The old Bill—

Sen. Daly: Had the words “who is not his wife”. Forget all this thing about gender neutral. If you have the words “who is not a spouse” or whatever—

Sen. Mahabir-Wyatt: Mr. Chairman, the whole purpose of this Bill, the whole argument that all the groups have had and all the contributions that have been made since 1986 is to make sure that a provision is in here which provides that a wife can bring a charge of rape against her husband. This is what the whole argument has been for the last 14 years. Are you telling me that the draftsman has now overturned that argument and all of a sudden, this afternoon everything that this Bill was supposed to be bringing to this Senate has now been changed? This is what the argument was all about.

For 14 years, women's groups and other civil rights organizations have been trying to bring this Bill in line with what exists in the United Kingdom, Canada, the United States of America, Australia and New Zealand to provide that these charges can be made, and I am almost certain—I would like to look at the *Hansard*—that in the opening statement in relation to this, you referred to that. That is what this was all about. How, all of a sudden could the draftsman change this? This was the policy on which this Bill was brought here, which is why Sen. Mohammed is objecting to it for her own reasons.

Mr. Maharaj: What has happened is that there is a common law rule which we will probably expressly have to state in order to be able to get it in the policy which was—obviously the policy which the non-governmental organizations, the people who were consulted—that the common law rule should be abolished.

Sen. Mahabir-Wyatt: I thought that is what this was doing. How else do you abolish a common law rule other than by the Parliament of a country passing legislation which repeals it? That is what this was supposed to be all about. I do not care if I am here until next week.

Mr. Maharaj: Could we return to this clause? I will find a way to do it.

Mr. Chairman: We will revert to the clause and deal with all the issues then.

Sen. Mahabir-Wyatt: All issues of the clause?

Mr. Chairman: No. Clause 4(1).

Sen. Daly: Will we be dealing with clause 4(2)?

Mr. Chairman: Yes. We will move on to clause 4(2), Sen. Prof. Spence's amendment. I shall also point out that Sen. Ramchand has proposed an amendment under clause 4(2), but I think that is clause 4(1)(a).

Sen. Prof. Ramchand: It is beginning after the word "complainant". We delete the words "where he knows that the complainant does not consent to the intercourse". And the argument is—

Mr. Chairman: No. We are not going into it just yet. I was pointing out that it is not clause 4(2), it is clause 4(1)(a). We are dealing with Sen. Prof. Spence's proposed amendment.

Sen. Prof. Spence: Mr. Chairman, I am aware of the fact that existing legislation allows the cat-o'-nine-tails, but I cannot be a party to a legislation with it.

Mr. Maharaj: Mr. Chairman, may I just explain to Sen. Prof. Spence, under the Corporal Punishment Ordinance, the court has the power to order corporal

Sexual Offences (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, December 07, 1999

punishment, cat-o'-nine-tails on a person convicted of rape. What we were trying to do and what this Bill does, it would be very unequal that a person who is convicted of rape under the existing law can have the cat-o'-nine-tails, or the court has the power as in relation to grievous sexual assault which is the new offence, which can be a more aggravated offence and the court would not have the power to do that. So that accounts for having to amend the law to have it clear.

I understand what Sen. Prof. Spence is saying, he is saying that he is against it in principle because he is against corporal punishment for the reasons he had given.

Sen. Prof. Spence: Mr. Chairman, had I been aware of that circumstance, I would have drafted another amendment to the original Act. I do not have the time to do it now, so I think the only way to proceed is to take this amendment, and vote on it.

Sen. Mahabir-Wyatt: Mr. Chairman, I have the original Act and it does not say anything about cat-o'-nine-tails.

Mr. Maharaj: The original Act?

Sen. Mahabir-Wyatt: The Sexual Offences Act.

Mr. Maharaj: No, the Corporal Punishment Act. There is a special Act known as the Corporal Punishment Act, Chap. 13:04, it gives the High Court the power to order flogging in a list of offences in a Schedule.

Sen. Prof. Spence: What year is that?

Mr. Maharaj: It is in the 1980 revised law, but I can get the year for it. Obviously it was passed years ago.

Sen. Prof. Spence: So it is in colonial time.

Mr. Maharaj: It must have been.

Sen. Prof. Spence: Mr. Chairman, my problem is, had I been aware of that, I would have drafted another amendment seeking to alter that. Even if that is so, even if it is a matter of equity, I cannot vote to extend.

Sen. Daly: Mr. Chairman, I am getting more confused. Are we on grievous sexual assault? I thought we were still on clause 4.

Mr. Chairman: We are on clause 4(2)(a).

Sen. Daly: That is what I thought, so why are we talking about inequity? I will tell you what my problem is with this section. It is doing it piecemeal, and getting tied up in the argument with the men and the women is not helping me.

First of all, I think Sen. Mohammed raised it and I am not clear what is the answer. What is meant by the opening words of clause 4(1) "Subject to subsection (2)". I do not know what that means. What is that reference to, the words "Subject to subsection (2)"?

Mr. Maharaj: Subject to subsection (2), there are additional circumstances in which the person can be ordered to get additional punishment and clause 4(1) says:

"Subject to subsection (2), a person ('the accused') commits the offence of rape when he has sexual intercourse..."

- (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...
 - (c) the offence is committed in particularly heinous circumstances;"

Then in those circumstances the person can be ordered cat-o'-nine-tails in addition to compensation.

Sen. Daly: What I do not understand is why are we not leaving the existing punishment for rape that is not aggravating and then putting the imprisonment for natural life as the additional punishment if you committed it in aggravated circumstances and leave the rest as it is.

Are we going to run into the problem that if you now prescribe strokes it is not an existing law and would have its arguments about cruel and unusual punishment and spend money going to the Privy Council? Flogging now is safe because it is an existing law. This new flogging will be subject to all kinds of arguments. Why do we not simply keep imprisonment for life as the punishment for rape, and imprisonment for natural life as the punishment for aggravated rape? Then we will get over all the difficulty, because I am not sure we can now impose strokes in circumstances that were not available before, having regard to all the arguments.

Mr. Maharaj: We have looked at that and we can, because the Hinds case has made it quite clear that the court in its jurisdiction can do that. I can tell Sen.

Sexual Offences (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, December 07, 1999

Daly that we looked at that, and it is in that context that we believe that if the rape was one that fell under section 4 and there were additional circumstances, although with the existing powers the court has for rape, it can also inflict corporal punishment, but if you have the additional factors as mentioned in clause 4(2) the court will have in relation to the grievous sexual assault, the power to—

Sen. Daly: In any case, whether I am right about that, why do we not have a differentiation of “imprisonment for life for rape” and “imprisonment for natural life” for aggravated rape?

Sen. Mahabir-Wyatt: Mr. Chairman, I would like to pick up this same point and go back to a point Sen. Daly made and suggest that in clause 4(2) instead of having “A person who commits the offence of rape is liable on conviction to imprisonment for life” you can have the words “liable on conviction to imprisonment for a minimum sentence of 25 years and any other punishment which may be imposed by law” which is what you just pointed out. And instead of “20 strokes with the cat-o’-nine-tails” to avoid Sen. Daly’s point, we put the words “imprisonment for life for 50 years” there.

Sen. Daly: I would like to see that. I do not accept the Government’s policy, but nevertheless, if we are going to draft it correctly why do we not put the words:

“imprisonment for life in relation to a person found guilty of an offence under section 4(2) of this Act.”

What I am trying to do is have a graduated scale. For rape you get imprisonment for life and for aggravated rape, you get imprisonment for natural life. I do not understand why we are having the same penalty when it is not aggravated. It just does not make sense. Keep the existing punishments for rape.

Mr. Maharaj: You are saying life imprisonment, and if it is aggravated in the circumstances mentioned, life imprisonment there would mean that the court would have the power of natural life.

Sen. Daly: We do not interfere with the existing range of punishments for rape whatever they are, you simply add on to the tariff, the words “imprisonment for natural life in case of aggravated rape”.

Mr. Maharaj: Mr. Chairman, the policy of the Bill is that in some of the matters like in clause 9, there is an increase in the punishment for 25 years, so if rape, being the most serious offence, you may have to—

Sen. Mahabir-Wyatt: Can you not do something in relation to section 69 about a minimum sentence?

Mr. Maharaj: Could we not put for rape 40 years or so, and for the aggravated circumstances, put the words “for natural life”? And the court will still have the power to put the minimum, but it will not be proportionate if you just leave it as it is.

Sen. Mahabir-Wyatt: *[Inaudible]*

Mr. Maharaj: Under section 69 of the Interpretation Act, if you put the words “life imprisonment” the court can grant a minimum of 25 years.

Sen. Mahabir-Wyatt: If you say 40 years, does it not mean that the court can impose an imprisonment up to 40 years?

Mr. Maharaj: Under section 69(A) it states: “Where punishment of imprisonment for life is provided for a criminal offence under any written law, the court on sentencing any person convicted of that criminal offence to imprisonment for life may, notwithstanding anything contained in any other law, declare at the same time a period before the expiration of which in its view that person shall not be released.”

5.35 p.m.

Sen. Daly: If we put 40 years would that mean it is 40 years?

Mr. Maharaj: No.

Sen. Daly: Or does that mean that is the maximum?

Mr. Maharaj: That is the maximum but why are legislators not prepared to go for the cat-o’-nine-tails?

Sen. Daly: I attempted to say Sen. Diana Mahabir-Wyatt.

Mr. Maharaj: Well then what we can do is, that in any event the court would have—if we go with what Sen. Daly said that could be natural life. I am going to get it drafted.

Sen. Shabazz: Mr. Chairman, just as “life imprisonment” there is a kind of specification about what it is, “natural life” should have something like that. Just as for “life imprisonment” you know that you are doing between 15 to 25 years, “natural life” should have some sort of “understanding” as to what the time or the period would be and it should not be for natural life until death.

Mr. Maharaj: Mr. Chairman, I think that we will get drafted what we just read and we will take into account what you have said. *[Interruption]*. When we come back with the amendment could we deal with that? I am trying to see whether I can get it drafted.

Sen. Mohammed: In dealing with a male person committing the offence of rape except with a wife or whoever it is, section 4(2) says:

“A person who commits the offence of rape is liable on conviction to imprisonment for life.”

Mr. Maharaj: Section 4(2)?

Sen. Mohammed: Yes, in the Act of 1986. It is just some clarification that I need here. So the Act talks about “imprisonment for life.”

Mr. Maharaj: But section 4 is repealed.

Sen. Mohammed: Right, you are repealing it and in so doing in subclause 4(2), you are using the same expression “imprisonment for life” but meaning “natural life.” A differentiation was made in the meaning earlier where it was supposed to have meant “life imprisonment”.

Mr. Maharaj: In the discussions just now?

Sen. Mohammed: And during the debate on that there was a difference between “life imprisonment” which means that it can be commuted up to 15 or 25 years or however many.

Mr. Maharaj: In either case whether it is “life imprisonment” or “imprisonment for natural life” the Constitution still operates and it could be commuted.

Sen. Mohammed: I thought that by introducing a definition now, on the interpretation of “imprisonment for life...”

Mr. Maharaj: That is exactly what the draftpersons are working on now to see how we will accommodate this section.

Mr. Chairman: Before proceeding to drafting clause 4, perhaps we could look at Sen. Prof. Ramchand’s proposed amendments 4(1)(a) and 4(3).

Sen. Daly: May I ask a question?

Mr. Chairman: Sure.

Sen. Daly: We really have to be serious about what we are doing. In subclause 2(d) does that mean that you do not have to know the person is pregnant? Is the intention to mean, “the complainant was pregnant”? Would it not be the intention that if they know the person is pregnant or is it intended whether they know or not they are getting natural life? Whether they know or not? How could it be aggravated if I do not know? I am not saying rape is a good thing but we are going crazy here. So you target somebody here—rape is very serious do not get me wrong.

Mr. Maharaj: We want to take steps to prevent people from taking action which could violate people. So what do you do? You ask the lady, are you pregnant?

Sen. Daly: I will not treat with that in that way. If it is something aggravated.
[Interruption]

Mr. Chairman: Do you want to respond to that?

Mr. Maharaj: I do not know how to respond to Sen. Daly. I mean, these are things in which if a person commits an act he sometimes takes the responsibility for all the consequences that he can do.

Sen. Daly: I just wanted to know whether that was the intention.
[Interruption] Sorry Sir, I would not say it. It has been clarified for me.

Mr. Maharaj: The law of sexual offences as it is, puts a situation where you commit an act and if the person is under twelve years, you do not have to know that the person is under twelve years. *[Interruption]* I have noted that but can I mention that I have a way—remember we were dealing with section 4(1) so that we can get rid of this section.

Mr. Chairman: Sen. Prof. Ramchand’s proposed amendments, so that when you deal with what you are going to take into consideration whatever might be agreed on his proposed amendments. Sen. Prof. Ramchand.

Sen. Prof. Ramchand: At the top of page seven. I am just asking whether he knows “that the complainant does not consent to the intercourse” whether that does not leave it open for all kinds of arguments about “I did not know”, whereas “without the consent of the complainant” is clear enough and where he knows “that the complainant does not consent” to the intercourse leaves a loophole for the accused to argue that he did not know. That is working in favour of the accused.

Mr. Maharaj: Is “without the consent of the complainant where he knows that the complainant does not consent...or is reckless as to whether the complainant consents.” We have taken it from what the existing principles of consent and recklessness involve. So it is either “without the consent of the complainant where he knows that the complainant does not consent...” or he does not care whether the person consents or not “he is reckless as to whether the complainant consents;”

Sen. Prof. Ramchand: I know the way you stressed it, it is not giving an opening but if I were to say, “without the consent of the complainant where he knows that the complainant does not...” I can do it “without the consent of the complainant” and argue that I did not know that he did not consent.

Mr. Maharaj: That will not hold any water because if you are reckless as to whether the person consents or not it would be covered by that recklessness. There used to be the law in which you had to know that the person was consenting and then the law was developed to say, “that even if you do not know and you are reckless as to whether the person is consenting or not”. In all the legislation dealing with rape you will find it in this way because that is how it is done. Either you do not know the person consents or you are reckless and you do not consider whether the person consents or not. So it will cover any situation. I assure you of that.

5.45 p.m.

Sen. Prof. Ramchand: The second amendment I had there was just to delete the word, “he”, to make it clear that we were, as they say, gender neutral, in the fourth line. So it would read:

“...or is reckless...”

But if you are not eliminating the first “he”, we have to say:

“...where the accused knows that the complainant does not consent or is reckless...”

So since we are not taking the amendment that says:

“...where he knows that the complainant does not consent...”

I would have to modify it and say:

“After ‘where’, delete ‘he’ and replace it with ‘where the accused knows’.”

So the second line would read:

“...where the accused knows...”

Then in the fourth line, delete the word, “he” so it would read:

“...or is reckless...”

Mr. Maharaj: You do not want to leave that as it is because still in the Interpretation Act we have “‘he’ means”. So you want to put it as what, “he” or “a person”? “The accused”?

Sen. Mahabir-Wyatt: We can say:

“...where the accused knows that the complainant is not...”

Let us be gender neutral if we are going to be gender neutral.

Mr. Maharaj: You see, that is how the Bill—*[Interruption]*

Sen. Mahabir-Wyatt: The accused might be a she.

Sen. Prof. Ramchand: If you are taking pride and come with a gender neutral—*[Interruption]*

Mr. Maharaj: If it is drafted with “she” throughout with that interpretation, it is going to cause me some difficulties.

Sen. Mahabir-Wyatt: I do not think it comes in anywhere else, does it? “He” does not come in anywhere else. “He” only comes at clause 4(1) and clause 4(1)(a).

Mr. Maharaj: You see, in all the Act, where it says, “he is reckless” as to whether clause 5—all the laws are drafted in that manner.

Sen. Mahabir-Wyatt: Clause 5 must have it because clause 5 is gender specific. But I think that Sen. Prof. Ramchand’s point would refer again to clause 4(1)(a).

Mr. Maharaj: Well, could you not, Sen. Mahabir-Wyatt, leave that as is and I will probably pass a general law saying something like “where it has ‘he’ it means ‘she’”? But to go through this with—*[Interruption]*

Sen. Mahabir-Wyatt: I do not feel very strongly about it because it—*[Interruption]*

Mr. Maharaj: What I wanted to do was resolve the problem we had with clause 4 which, when we started—I do not know, as soon as we are finished—*[Interruption]*

Mr. Chairman: In light of what the Attorney General has just said, Senator, are you withdrawing your amendment to clause 4(1)(a), (1) and (2)?

Mr. Maharaj: I do not know. You would have to ask Sen. Prof. Ramchand that.

Sen. Prof. Ramchand: Yes, Mr. Chairman. If he was not the Attorney General, I would have continued, [*Laughter*] but he is the Attorney General.

Amendment withdrawn.

Mr. Chairman: You have a proposed amendment on clause 4(3), Sen. Prof. Ramchand?

Sen. Prof. Ramchand: Yes, Mr. Chairman. There I am just saying that—it is on page 8 where it says:

“The Court may order a person who is convicted of an offence ...to pay to the complainant...”

I would like the compensation to be not at the discretion of the court. It should be that the person must be liable, the court shall order. If he has nothing, well, they cannot get anything. I think it is better to hit the man on his property than to hit him with the cat-o'-nine-tails.

Mr. Maharaj: Sen. Daly would know that you may have consequences for that because you have to give the court that discretion.

Sen. Prof. Ramchand: Okay, I will withdraw it.

Mr. Chairman: So the proposed amendment to clause 4(3) is withdrawn.

Amendment withdrawn.

Sen. Daly: I am still very miserable about the aggravated section.

Mr. Chairman: So all of clause 4 is going to be redrafted and we shall revert to it later on?

Mr. Maharaj: Can we deal with it now?

Mr. Chairman: Oh, the drafting is completed?

Mr. Maharaj: Yes, I believe it is.

Sen. Dr. Mc Kenzie: Mr. Chairman, I would like to ask the Attorney General whether the clause dealing with the cat-o'-nine-tails, the fact that he has been deemed liable, if that gives the judge an option as with life imprisonment?

Mr. Maharaj: Yes, it is an option, it is discretion, but having regard to what I am going to propose, under the existing law the judge has that option.

Sen. Mohammed: Mr. Chairman, I know that the issue deals with clause 4 as amended but there is one other issue I wish to raise regarding clause 4(3). I do not know if perhaps he—*[Interruption]*

Mr. Maharaj: Sorry?

Sen. Mohammed: There is an issue I would have liked to raise with respect to clause 4(3).

Mr. Chairman: Yes, go ahead.

Sen. Mohammed: Now, in this clause you have provided that a court may order a person who is convicted to pay adequate compensation. On the issue of compensation, is it not a fact or would not the Criminal Procedure Act be applicable in terms of this issue of compensation? Because, looking at this Act, it already has a section that deals with compensation to persons who are defrauded or injured or whatever.

Mr. Maharaj: This Act will express the same as the Compensation Act.

Sen. Mohammed: All right, is there going to be any kind of quantum stipulated or—because this Act stipulates an amount which I am assuming has been amended since—*[Interruption]*

Mr. Maharaj: In the Criminal Procedure Act?

Sen. Mohammed: The Criminal Procedure Act. In this it has 400 and something—*[Interruption]*

Mr. Maharaj: No, but this is giving the court high powers and that is how it is done in other jurisdictions. It is law that we have followed.

Sen. Mohammed: So, therefore, we are changing this, the Criminal Procedure Act?

Mr. Maharaj: We are not changing that. What we are saying is, in respect of rape cases the court would have unlimited jurisdiction in awarding compensation in a criminal matter.

Sen. Mohammed: Because section 53 of the Criminal Procedure Act—*[Interruption]* Okay.

Mr. Maharaj: Mr. Chairman, in relation to the point with respect to a person who commits the offence, and that is clause 4(2), to try and resolve this matter, because the draftsperson had indicated to me that we were not amending clause 5, but it would seem to me that in order to give effect to what the Bill had intended to do, and what I had indicated and articulated on the floor of the House, we would delete clause 5(1) of the Act so that “a person” would therefore mean that a person—by deleting those restrictions, it would cover the situation.

Sen. Mahabir-Wyatt: Mr. Chairman, if you do that you are going to have to change clause 6 of the amending Act because removing section 5(1) of the existing Act which I have before me, that is where a husband commits the offence of sexual assault, in instances where the marriage has already broken down and legal action has been taken, that is now sexual assault, which is not rape. The point was that clause 4 stays the way it is, because that is rape. Sexual assault is a lesser crime and it is much—*[Interruption]* Oh, I see the point. It should be a greater crime rather than a lesser crime.

Sen. Mohammed: Exactly.

Sen. Daly: I am getting really frightened, Mr. Chairman. If the intention is to permit a charge of rape to be brought by one spouse, you know, to have one spouse as a complainant in a rape case against another, then, clearly—I did not want to be the one to hand it up—you will have to abolish clause 5. This means we had no business to put in a definition of “cohabitant” in the first place, and I knew that all along. I just did not want to hand it up.

The point is, if you take that as a policy decision, then the question of whether they are officially separated and so forth is irrelevant. Those are factors that would go to lack of consent. You would say, “Well, how could she have consented if you have a separation agreement or you have a *decree nisi*”? Those are common sense—those are things that will go to the issue of consent. So if you are going to make that policy step you do not need clause 5 at all. I mean, I am sorry to help with this because I do not agree with it but, I mean, if we are going to do it we must not “mamaguy” people. We must do it properly.

I am very, very distressed about the aggravated section where the punishment for rape and the punishment for aggravated rape are the same. I have never come across a situation where a more grievous offence carries the same penalty as a less grievous offence. I am very unhappy about the provision dealing with pregnancy unless you guarded it in some way about it resulting in a miscarriage or, I do not know. I mean, I really—anyway, lawyers will make plenty money because I do

not know how—as was pointed out to me in a private conversation, how do you know when the pregnancy starts and all of that? I just think it is absolutely unbelievable to be doing it in this kind of haphazard way.

Mr. Maharaj: We will look again at clause 4.

Sen. Mohammed: I am looking at section 4(c). It may not be necessary because of the provisions in the Criminal Procedure Act. Perhaps you may want to increase the amount stipulated there but they also have provision for judgments to be entered. It is a judgment debt. So all the enforcement procedures are even wider than being a mere charge on a property in terms of compensation.

Mr. Maharaj: Mr. Chairman, I would take the advice of my technical people to give them some more time in respect of clause 4, but can we proceed with the other clauses?

Sen. Daly: Mr. Chairman, I would like to support Sen. Mohammed. If the provision is already in section 4, we do not need to repeat this here. I have complained before, we are not doing public relations documents, we are doing legislation and I think section 54 covers it. So I think the whole of clause 4 needs to be looked at. So that if the policy is, you are going to have rape and aggravated rape, they should carry different penalties. I think that these categories of what constitutes aggravated rape need to be looked at from the point of view of the knowledge of the accused, at least in relation to pregnancy. I am not even sure that I understand what is “particularly heinous circumstances”. I am glad to hear that clause 4 is going to be looked at.

Mr. Maharaj: Well, I am very surprised that Sen. Daly would not know what heinous circumstances are in a Bill like this. I am very surprised because—
[*Interruption*]

Sen. Daly: I have just never seen the expression.

Mr. Chairman: Shall we revisit clause 4 later on?

Mr. Maharaj: All right.

Clause 4, by leave, deferred.
Clause 5.

Question proposed, That clause 5 stand part of the Bill.

Mr. Chairman: We will proceed to clause 5. There is a proposed amendment by Sen. Prof. Ramchand.

Sen. Prof. Ramchand: Mr. Chairman, I think that the next 3 proposals I made are now withdrawn.

Mr. Chairman: This would be clause 5?

Sen. Prof. Ramchand: Yes.

Mr. Chairman: Clause 4A. (1)(a)?

Sen. Prof. Ramchand: Yes. I think those two.

Mr. Chairman: All relating to clause 5?

Sen. Prof. Ramchand: Yes.

Mr. Chairman: Withdrawn?

Sen. Prof. Ramchand: Yes. No, not 18.

Mr. Chairman: No, I said all relating to clause 5?

Sen. Prof. Ramchand: Yes.

Amendments withdrawn.

Mr. Chairman: We shall proceed to clauses 5 and 6.

Sen. Mahabir-Wyatt: Clause 6 depends on what we were doing with clauses 4 and 5 of the existing Act. So I think that if we are going to put “husband” and “cohabitant” in, obviously what we want to do is delete—*[Interruption]* Well, we have to decide whether this is a greater crime and I think Sen. Daly’s—*[Interruption]*

Mr. Chairman: Clauses 5 and 6 are affected by whatever is done to 4?

Sen. Mahabir-Wyatt: That is right.

Mr. Chairman: All right, well in the interest of time we will revisit clauses 4, 5 and 6.

Sen. Daly: I am suggesting, if we are going to have “spouse”, then the presence of a *decree nisi* and a separation agreement are just evidence of the lack of consent. I mean, this is—*[Interruption]*

Clauses 5 and 6 by leave, deferred.

Clauses 7 to 9 ordered to stand part of the Bill.

6.00 p.m.

Clause 10.

Question proposed, That clause 10 stand part of the Bill.

Sen. Mohammed: Mr. Chairman, clause 10 deals with clause 11(1) of the Act and section 11(1) deals with “Sexual intercourse with minor employee”. I think this is sexual harassment you are dealing with.

Mr. Maharaj: Section 11(1) says:

“An adult who has sexual intercourse with a minor who—

- (a) is in the adult’s employment; or
- (b) is in respect of any employment or work...or
- (c) receives his or her wages...

is guilty of an offence and is liable on conviction...”

For the present time, it is 10 years and we want to take it to 25 years. Sexual harassment has such a wide connotation in American law so I do not want to use it. There is a minor.

Sen. Mohammed: Okay. Well, I am wondering in the first place, a minor being in the employ of somebody, that is—

Mr. Maharaj: But you have—

Sen. Mohammed: Situations. Now, at whom is it targeted? I mean, what about those situations where a person is being intimidated, or threatened, with loss of his or her job and so forth?

Mr. Maharaj: If a minor is employed and the employer had sexual intercourse with the person, that is what it is intended to deal with.

Sen. Mahabir-Wyatt: But you can have situations, for example, with apprentices, people under the age of 18, or 17, or 16, where they are employed on holidays, or vacation, or various training things and an adult who is in charge of them has sexual intercourse, which is quite different from sexual harassment. It is far more serious. All these provisions that are, in fact, referred to in sections 6 to 12, deal with minors. They are all with people who are legally defined as “children”.

Mr. Maharaj: That is a different kind of situation. Sexual harassment could mean even if you did not have sex and it is a different kind of situation.

Sen. Mahabir-Wyatt: Yes. I would be quite happy to bring in the legislation for sexual harassment but I do not think that we are quite prepared for that at this stage.

Mr. Maharaj: It is a different kind of thing.

Question put and agreed to.

Clause 10 ordered to stand part of the Bill.

Clauses 11 and 12 ordered to stand part of the Bill.

Clause 13.

Question proposed, That clause 13 stand part of the Bill.

Mr. Chairman: There is a proposed amendment by Sen. Mahabir-Wyatt.

Sen. Mahabir-Wyatt: Mr. Chairman, I did explain during the debate why it is I wanted this section deleted and substituted by the words:

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 mean that the penalty would be much steeper, rather than the 25 years it is here. I wanted the offence of buggery to be removed and made grievous sexual assault where it was non-consensual.

Mr. Maharaj: Where it was non-consensual?

Sen. Mahabir-Wyatt: Where it is not consensual because this is the point. Where it is now, if it is consensual, it is against the law. I am arguing that it is only where it is non-consensual that it should be against the law and where there should be a greater penalty than what is existing in the law at the present time.

Mr. Maharaj: I want to understand this clearly. This amendment is not to say that buggery with consent is not an offence.

Sen. Mahabir-Wyatt: That is what it would say, yes. What I am arguing is if it is consensual, it should not be against the law and I think it is highly hypocritical to argue that buggery that is consensual should be against the law.

Mr. Maharaj: Mr. Chairman, Sen. Mahabir-Wyatt knows that I am always very accommodating and I try my best, but it would be very difficult for me to accede to that because it is something that will have to go to the whole country on a particular issue. The whole criminal law in relation to that is based upon having sex with the same sex.

Sen. Mahabir-Wyatt: Where, in the body of law, does it say that same sex intercourse, buggery, is against the law? Is this not the law?

Mr. Maharaj: Yes. But, what I am saying—

Sen. Mahabir-Wyatt: Is it anywhere else in the law apart from here?

Mr. Maharaj: No. But what I am saying, Mr. Chairman, is that this is the law, but also there have been other laws over a period of time in Trinidad and Tobago in which it is recognized that if a male has sexual intercourse with a male, that is an offence. Whether there is consent or not, that is an offence but that is rooted, because civil law is rooted in spiritual law, and I think that on a measure like that for Government to change, it would have to go on a full-scale consultation with the national community. The churches would have to get involved with that.

Hon. Senator: You are sure right.

Sen. Mohammed: That is what we are saying.

Sen. Prof. Spence: Mr. Chairman, while I recognize what the Attorney General is saying, I find it passing strange that Trinidad and Tobago should talk about globalization and, at the same time, not want to go the way globalization is going. [*Laughter*]

Sen. Mahabir-Wyatt: Mr. Chairman, I would like to have a division on this one.

Sen. Prof. Ramchand: Mr. Chairman, I was just commenting, how come the Attorney General is against same sex and he is not against same book.

Mr. Maharaj: Sorry.

Sen. Prof. Ramchand: How come he is against same sex and he is not against same book.

Sen. Shabazz: Mr. Chairman, I take the point that the thing must be rooted in some kind of spiritual thing because all of us who come in here, swear by one of the good books and we have to follow that, too, in making our laws. That must be considered because every Senator here takes an oath based on one of the good books.

Sen. Mahabir-Wyatt: My argument, when I brought it up in the debate, was that buggery is not just a homosexual act, it is also a heterosexual act which does take place in certain circumstances and this is no news to anybody. Every stag party you go to; every prenuptial engagement party you go to, people are joking about it, because this is a well-known and much used form of sexual intercourse between male and female. What this is doing is making that illegal and I do not think that is right.

Sexual Offences (Amdt.) Bill
[SEN. MAHABIR-WYATT]

Tuesday, December 07, 1999

It is also something which is quite common in married relations. If you happen to like that kind of sex and you are married to somebody who likes that, I mean, who am I to say that I should interfere with people's consensual preferences. This will make those preferences no longer illegal. I think it is hypocritical to make that sort of thing illegal. I am still asking for a division.

Mr. Maharaj: Mr. Chairman, if I may. I know Sen. Mahabir-Wyatt's concern about these matters and probably, at times, the country should look at other areas and look at our laws again. There is no doubt that sometime in Trinidad and Tobago in the future, this question may have to be discussed, but I just wanted the Senator to know that I do not think this is the right time.

Because if one looks at the United Kingdom, for example, one sees that it has done this and, quite recently, it has introduced laws that even with consenting children, it is no longer a criminal offence.

Laws send a signal as to what moral values you are going to have and also sanctions. I do not think that at this time in our society, that kind of law would, in effect, send the right kind of moral values. So that, I would respectfully ask the Senator, through you, Mr. Chairman, to avoid having us vote on this and leave this for another day.

Sen. Shabazz: Mr. Chairman—

Mr. Chairman: Let us hear Sen. Mahabir-Wyatt.

Sen. Mahabir-Wyatt: We can vote by acclamation. I mean, obviously, the majority is against this and I would just like to have that said.

Sen. Daly: No. I do not think that is the reason. I think that we should not vote on this without having discussed it in all the implications with the people. I might not agree with you, but I do not think that we should be free to make fundamental changes.

Sen. Mahabir-Wyatt: Fair enough. We can vote—

Sen. Daly: And I have been consulted about it, so let us have it by activation.

Sen. Shabazz: I just want to make the point that when we talk about globalization, that we have some things positive to contribute, too, and we must not talk on that level and feel that we have to accept because of some bigger country. We must sit here and feel that we have a contribution to make, not only to Trinidad and Tobago, but to the world and there must be something that must

be meaningful to us and that we must stand by. It does not have to be this matter but stand by, when we are making contributions and passing laws for the rest of the world.

Mr. Chairman: Any other contributions on this? I put it to the vote. Hon. Members, the question is that clause 13 be amended as follows:

Delete and substitute the following:

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).

Question, on amendment, put and negatived.

Clause 13 ordered to stand part of the Bill.

Clause 14.

Question proposed, That clause 14 stand part of the Bill.

Sen. Mohammed: Mr. Chairman, with respect to clause 14 which is seeking to amend section 14 of the Act, which deals with bestiality, we are seeking to increase the penalty from 10 to 15 years. Is it possible that you can have a provision that would also call for some kind of help for a person engaged in such acts? I mean, I know we are talking about sexual preferences, but somebody who is committing an act, clearly, is a person who needs help.

Mr. Maharaj: Mr. Chairman, can the hon. Senator suggest what do we put in a Bill for a court to order what help? [*Crosstalk*]

Sen. Mohammed: But the person himself may behave like an animal.

Mr. Maharaj: Sen. Daly wanted to find out whether Sen. Mohammed is recommending help for the animal or for the human being.

Sen. Alfred: I want to ask a question in relation to the manner it is phrased. It says at section 14(2):

“In this section ‘bestiality’ means sexual intercourse per anum or per vaginam by a male or female person with an animal.”

That is amended to say:

“or an animal with a female person”.

Sexual Offences (Amdt.) Bill
[SEN. ALFRED]

Tuesday, December 07, 1999

The question is: If in the part before, you put male first, why did you put “animal” before “female”? My contention is that the animal cannot really think, so it is the female who has to initiate the move. I think, perhaps, it should be “female with an animal”.

Mr. Maharaj: I do not have any problem with that. Mr. Chairman, by agreeing, I want to make it quite clear that I am not too sure as to the mechanics, who initiates what. [*Laughter*]

Mr. Chairman: Senator, let me get your proposed amendment so I would know what to insert here.

6.15 p.m.

Mr. Maharaj: I am not too sure, Mr. Chairman. By agreeing, I want to make it quite clear that I am not too sure as to the mechanics of who initiated first. [*Laughter*]

Sen. Alfred: Mr. Chairman, the new section 14(2) says:

“In this section “bestiality” means sexual intercourse per anum or per vaginam by a male with an animal or an animal with a female person.”

I am suggesting an amendment to that removing “or an animal with a female person” and putting “or a female person with an animal.

Question put and agreed to.

Clause 14, as amended, ordered to stand part of the Bill.

Mr. Chairman: I am reverting to the Senate, hon. Senators, for a procedural motion.

Senate resumed.

PROCEDURAL MOTION

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, in accordance with Standing Order 9(8), I beg to move that the Senate continue to sit until the conclusion of the matter now before the Senate. I would like to propose at this time, with your leave and the leave of the Senate, that we take a little break at this time and come back in half an hour.

Question put and agreed to.

Procedural Motion

Tuesday, December 07, 1999

Mr. President: Hon. Senators, we shall break for tea for half an hour and resume at 6.50 p.m.

6:19 p.m.: *Sitting suspended.*

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

6.55 p.m.: *Committee resumed.*

Clauses 15 to 17 ordered to stand part of the Bill.

Clause 18.

Question proposed, That clause 18 stand part of the Bill.

Sen. Prof. Ramchand: Mr. Chairman, the proposed amendment to clause 18 is that it makes it a little stricter than “as soon as reasonably practicable” I propose “forthwith”. Any person without reasonable excuse could delay the process. This amendment is to not allow people to fail to report and have easy excuse for not reporting.

Mr. Maharaj: Mr. Chairman, I can understand the anxiety of the hon. Senator to put matters in the Bill which would make it mandatory for persons to report immediately and forthwith. The problem always when you are legislating, there may be exceptional cases which would not permit someone to go forthwith. Therefore, the way matters like these are dealt with, is to insert in the legislation words that would give the court a discretion to determine whether it was reasonable or not. It is in that context, in clause 18, the person would have to report the matter as soon as is reasonably practicable.

In respect of clause 18(2):

“Any person who, with reasonable excuse fails to comply...”

It is in that context. If you put it forthwith it means that there could be situations where there are very good reasons for even delaying a day or two. I think the intention of this is to make it mandatory—because a lot of the sexual offences now are not reported—and to put some sort of sanctions so that people would be able to report.

Sen. Prof. Ramchand: I am not fighting you. It does seem a little stricter if the legislation says “forthwith” and if one had good reasons for not going forthwith well—why legislate for the exception rather than for—It is okay, Mr. Chairman, I withdraw that.

Mr. Maharaj: Thank you.

Amendment withdrawn.

Question put and agreed to.

Clause 18 ordered to stand part of the Bill.

Clause 19.

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

Sen. Mohammed: Mr. Chairman, we have expressed some concerns about this. If this clause is amending section 32 of the Act, when one looks at section 32 of the Act it affects people's rights. This puts a ban on the publication of the name of the accused or the complainant in a case that is going on. Hon. Attorney General, I am asking the question of whether—in light of the fact that you are seeking to amend this section in the Act—you needed to do it, like in the 1986 Act, with a special majority?

7.05 p.m.

Mr. Maharaj: Before a person is charged for an offence—let me put it this way—under the existing law, the press is prohibited from publishing the name of the accused. What we are doing is removing that restriction, so I do not think there could be any argument that you need a specified majority for that. We are also introducing a measure that if it is before a person is charged, the press should not be able to print the person's name. Am I correct? Because what happens is that after the person is—before or after a person is accused of an offence.

Sen. Mohammed: The ban with respect to the complainant remains?

Mr. Maharaj: No. The definition—before or after the person—

Sen. Mahabir-Wyatt: Before somebody is accused, his or her name should not go in the papers, whether he or she is the victim or the accused. I mean, you should not print somebody's name before that person has been charged.

Mr. Maharaj: Let me see if I could explain. As the law stands now, it says that after a person is accused of an offence there should be no publication which should lead members of the public to identify the person who is the complainant or the person who is the accused. Okay? What this is saying is that it should be either before or after the person is charged. Because what happens is that before the person is charged, let us say, for example, the incident occurs tonight and the person is not charged tonight, but the person will probably be charged tomorrow, you have had instances where the media identified the victim.

Sen. Mohammed: So it is a ban on publication that you are dealing with. Is that not their right to privacy, the right to freedom of the press and all these things?

Mr. Maharaj: Yes, but if you look at the section, we already have the ban on publication as the existing law.

Sen. Mohammed: And you are extending it to before the offence.

Mr. Maharaj: We are saying before or after the person is charged, but the fact of the matter is that the ban is not to publish so that the complainant will be identified.

Sen. Mohammed: Now, freedom of the press is a constitutional right guaranteed under section 14.

Mr. Maharaj: Yes, but the ban is all there.

Sen. Mohammed: The ban is there and it is being extended.

Mr. Maharaj: No. The ban is there not to publish the name of the complainant.

Sen. Mohammed: Not just after, but before as well.

Mr. Maharaj: They are just regulating when the ban is there. I have considered it and I do not think I need a specified majority.

Sen. Mohammed: You might have to argue it in court.

Mr. Maharaj: Maybe. I am glad I probably did not, otherwise I may not be able to get it. Let me put it to you this way: under the existing practice, even before the Constitution came into force, it would have been wrong that before a person is charged for the press to really print the name of a complainant or victim in some matters; there were settled practices. What happened, why this two-thirds majority was really required, we were really trying to prohibit the press from printing the photograph of the accused. *[Interruption]* Yes, it says so, but what I am telling you is that in respect of a complainant or victim, it may have been wrong, it may have been a criminal libel for someone to print the name of the victim before. So, the actual vice in this for you to require the specified majority was not being able to print the accused person's name.

Sen. Mohammed: Now you are saying you can print, even before, the name of the complainant, the complainant remains; it is the name of the accused that is coming up.

Mr. Maharaj: I am saying you cannot print the name of the complainant. That is what it says, before or after a person is accused of an offence under this Act. “No matter likely to lead the members of public to identify a person as the complainant in relation to that accusation shall either be published in Trinidad and Tobago...” and we took out “accused”.

Sen. Mohammed: You took out “accused” and you have added “before”, but “complainant” remains.

Mr. Maharaj: I do not understand what you are saying.

Sen. Cuffy Dowlat: But is the complainant not being further protected? Because you are saying at the expense of the accused, so the complainant is now being further protected.

Sen. Prof. Spence: [*Inaudible*] You are removing the freedom of the press, something that they had before.

Mr. Maharaj: The point I am making is that the press was prevented from printing the name of the—let us forget the accused for the time being—complainant. The intention of the Act was for the complainant not to be identified. What has happened is that there has been a loophole in that the press has been printing even before the person is charged. So the vice was not to print the name of the complainant, that is what the original Bill addressed.

What this Bill is saying, apart from deleting the accused and giving the right of the press to print the accused, is that before the accused is charged, you cannot print. What I am saying is that there are two things: one, even before the Constitution came into force, I am not convinced that there was the entitlement of the press to print the name of a complainant in a rape matter before the person goes to court; secondly, in respect of this matter the original Act actually caused the prohibition, and this was merely a loophole, so I do not think that we need a specified majority.

Sen. Mohammed: We are extending the prohibition to before and after and in those circumstances, therefore, you needed that safeguard. The other point was that, whilst you are removing the accused, the prohibition against the complainant remains for both before and after.

Mr. Maharaj: The prohibition against the complainant will remain either before or after, but in these measures you would always have differences of views, and I suppose if people feel that—

Sen. Dr. St. Cyr: Mr. Chairman, the substantive change is that we are allowing the name of the accused to be published, but would there not be greater protection for the complainant if neither name was published?

Mr. Maharaj: I do not understand that. Could you explain it for me?

Sen. Dr. St. Cyr: In a rape case there are two persons, if you are concerned to protect the complainant's identity, that complainant is better protected if neither name is published.

Sen. Prof. Spence: Take the case of husband and wife, which you have now, in this new clause, identified. There can only be one spouse. If you have identified the husband in this case, you have also identified the wife.

Mr. Maharaj: But you say the husband is charged for rape, it does not say the husband is charged for raping his wife. The press would only be able to print that the husband is charged for rape.

Sen. Mahabir-Wyatt: What about an incest case?

Sen. Dr. St. Cyr: In that stage, it could not be the husband, it would be that a man is charged for rape.

Mr. Maharaj: It would be the man who is charged for rape.

Sen. Dr. St. Cyr: But if you say the husband is charged for rape—

Mr. Maharaj: Well, when I say that, it would be that the person is charged, and it could even say a person is charged who is—and if they want to print they could print something, as long as they do not identify that the victim is the wife.

In the case of incest, it does not necessarily mean his daughter; it could mean other relationships. I think the policy of this is that we have had difficulties to justify. Because, in relation to the submissions which have been made on this matter to justify legally how it is that a person who is charged for rape has the special privilege of his or her name not being published by the newspapers, when it is done for persons who are charged for other offences.

Now, in relation to the points that Sen. Daly made, I did not respond to it at the time on the floor of the Senate. In all matters you have identity, and in some of the matters where you do not have an eyewitness, you have circumstantial evidence and the question of identify being an issue. So that, to say that rape is a special kind of case in which a person could make an allegation, it could be any case. It could be a murder case. Someone can make an allegation and, if the police think that you are a credible witness, the police would take the risk if it believes it

Sexual Offences (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, December 07, 1999

can support a civil claim thereafter, and prosecute. The fact of the matter is that if we do not go this route, we will be saying that we recognize that there should be this exception for persons charged for rape.

Sen. Dr. St. Cyr: A question and a comment. Suppose now the person accused of rape has been found guilty, is the person's name publishable at that time?

Mr. Maharaj: After he is found guilty.

Sen. Dr. St. Cyr: All right. I think this is what the request was, that we should probably leave it that way.

Mr. Maharaj: Why should we leave it that way and leave the law the other way with respect to other persons? For example, if somebody were charged for obscene language—which is probably one of the most trivial of offences—the press would be entitled to print the person's name and photograph. As a matter of fact, if one looks on the side of the media and if the matter really has to be litigated to the highest, a state would have grave difficulties justifying, on the basis of equality of treatment, that the media would be able to print the name of a person accused of obscene language, but cannot print the name of a person accused of rape.

As a matter of fact, this matter reached the court and I do not even think it has been completed, it takes such a long time to be determined at one level and the matter has not gone forward. If one looks at this, the Constitution of Trinidad and Tobago guarantees equality of treatment. Here it is that the press is saying they are entitled to have the freedom of the press. What answer could a state give, on a quite rational basis, that we are not granting you that equality because the person is charged for rape? What plausible answer could a state give to that?

Sen. Dr. St. Cyr: My understanding is that in the case of rape, more than in the case of other allegations, the matter could be a set-up.

Mr. Maharaj: All right. So the answer would be that in any other case it could be a set-up, as you know, in any case—in a murder case, a drug case. For example, it is said that one of the easiest cases for the police or somebody to set you up on is a drug case. You hear the expression, “plant marijuana”, or “plant something on you”. So, how could a state, rationally, justify saying that you could publish those matters in which you could be set up, but you cannot publish an accused person in a case of rape when he also could be set up, and be vindicated. It is recognized that vindication and a not guilty verdict are a public vindication to

a great extent of whatever wrongs have been done. If the accused person was wrongfully prosecuted, or if, for some reason, there was no basis for the prosecution, he is entitled, in law, to get damages, to get orders, to get vindication in the court and, under the Constitution of Trinidad and Tobago, apart from a civil claim, he can file other claims; so that, it really is not unfair to an accused. One of the systems that we have is that in relation to these matters you have to have a general system, there would be errors, but no system is infallible.

7.20 p.m.

Sen. Shabazz: Mr. Chairman, one of the things with rape is how you could be stigmatized as a person involved in a sexual offence. It is probably different if we understand the social nature of our country. It is completely different from all or most other things. A person involved in drugs; a person involved in murder; a person involved in an obscene language matter, does not get that same kind of stigma as somebody who is accused of rape, particularly, when it is with a young person. This is why people are asking that if you are going to bring the question of exposing the person, we should only be exposing that person when the person has been found guilty of the offence, rather than when the person is accused.

As a matter of fact in our society, with drugs and so forth, one could be a hero in a drug case or many other cases, but that is never really the case with rape and sexual offences.

Mr. Maharaj: I am not too sure about that. In our minds, whatever views we have with respect to that, it is probably we are not misled as to the effect of this. As a matter of fact, I am not too sure that in Trinidad and Tobago, if a person is charged for rape, that it necessarily means that the person would be stigmatized. It may be that the person—with his photograph—would be regarded in the village or in the community in a better way. As a matter of fact, we have seen on the international scene even people of high standing being accused of sexual misconduct.

Sen. Shabazz: Even here too, Sir.

Mr. Maharaj: Okay. The fact of the matter is that there would be different views. What I am saying, as an Attorney General, is how can the state justifiably defend the allegation that the media is treated unequally and the state is acting unequally in respect of giving more favours and rights to a person who is accused of rape?

Sen. Shabazz: Mr. President, based on the uncertainty (*Inaudible*). Now you have brought a case as far as the media and equality which is the ideal case to

Sexual Offences (Amdt.) Bill
[SEN. SHABAZZ]

Tuesday, December 07, 1999

publish the man's name. The case that I am bringing is the case that a number of people have been arguing, why are they saying not to publish the name. I agree that if I look at it from your angle, I will say publish the name. But I think all people are asking you to do is look at it from the other angle and give it thought and you must start. Because if you could tell me on an international basis some people may become heroes, really and truly one living in this society could hardly claim any case, maybe bar one, where one could become a hero. Outside of that, it hardly ever happens.

Mr. Maharaj: Mr. Chairman, just for the record. I said one would be uncertain as to the perception. What I am certain about is that legally I do not think the state could justify putting the media in a different category in respect of reporting rape matters.

Sen. Shabazz: Mr. Chairman, my final point is that it has been so, and the media has never complained.

Mr. Maharaj: The media has complained. There is a case before the courts.

Sen. Shabazz: Which case?

Mr. Maharaj: This has been challenged and the case is still pending—never determined.

Sen. Shabazz: Why not wait until the determination?

Mr. Maharaj: No. Why?

Sen. Prof. Spence: Mr. Chairman, is there an amendment before us? If not, could we move on?

Question put and agreed to.

Clause 19 ordered to stand part of the Bill.

Clause 20.

Question proposed. That clause 20 stand part of the Bill.

Mr. Chairman: Hon. Senators, there is a proposed amendment by Sen. Prof. Ramchand.

Mr. Maharaj: Mr. Chairman, just before Prof. Ramchand moves his amendment, I had mentioned on the floor of the Senate that I would be proposing to delete 34(E)(6) on page 17: "This part also applies to persons who have been released from prison prior to its commencement." This must have been an error

because there cannot be retroactive effect, so I would be deleting clause (6). I just thought that I should let the Senator know before he makes his contribution on any other matter.

Sen. Prof. Ramchand: Mr. Chairman, there are two amendments, the first one has already been explained. I wanted to have “shall” rather than “may”. I just want to repeat that my intention was not to impugn the wisdom of the court or to take away from the jurisdiction of the court, but only to post a warning to prospective offenders that, if convicted, they could lose their car; their house; or their property. I still feel that that way of penalizing them, through their property possessions, might be a more effective thing than putting them in jail. But I withdraw it, because it has been withdrawn previously in the other place.

The second one about HIV I think is self-evident. I am not really committed to the form of words. I am only drawing attention [*Inaudible*].

Mr. Maharaj: Mr. Chairman, I can mention that I did have a conversation with Sen. Prof. Ramchand and as I understand it, under the existing law, a person who has caused HIV in these circumstances to be communicated to another person through sexual intercourse which has resulted in the person’s death, under the existing law, there can be a prosecution for manslaughter. Having said that, however, I think the time has come for the law in respect of HIV, and its impact on the criminal law, to be looked at. The Law Commission, some time ago, did a working paper which was released to the population for comments. One of the things which has come out of the working paper was the whole question of protection to victims of rape. What we are doing at the Law Commission is that we are looking at the way other countries have dealt with it, because it seems to me that it should really be murder, if a person knows that he has the AIDS virus and he is having sexual intercourse with persons. So I can give Prof. Ramchand that assurance that we are going to come with something shortly in relation to those matters.

Sen. Prof. Ramchand: Given that assurance, I withdraw.

Amendment withdrawn.

Question put and agreed to.

Clause 20 ordered to stand part of the Bill.

Mr. Chairman: Hon. Senators, shall we revisit clauses (4), (5) and (6)? Since we already took a vote on that, do I have the leave of the Senate to revisit?

Mr. Maharaj: Unless we do clause (4) first and then we come back to clause (3) so that people would understand what we are doing?

Mr. Chairman: Which one are we doing? Is it clause (3)? Just let me get leave of the House to revisit clause (3). Is it okay?

Assent indicated.

Clause 3 recommitted.

Question again proposed, That clause 3 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, in the light of what has been discussed at the committee stage and the proposal that we, sort of, categorize what is life imprisonment for ordinary rape, for the expression rape, and in respect of grievous sexual assault—because the penalty for matters which fall under grievous sexual assault at the present time is not even life imprisonment, it is just gross indecency and in respect of aggravated rape they would have imprisonment for natural life, together with the other options.

730 p.m.

In that context we could not say that in clause 3 “life imprisonment” means imprisonment for the natural life, so that we would have to deal with it in the other clauses. I am asking to delete the definition of “imprisonment for life” in clause 3 and we would explain what it means in the other clauses.

Question put and agreed to.

Clause 3, as amended, ordered to stand part of the Bill.

Clause 4 reintroduced

Question proposed, That clause 4 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, I move that clause 4 in line 17 of subclause (2) of the Bill be amended in terms of the circulated draft. If I may explain the amendments first and then we can discuss. In line 17 of subclause (2) delete the words “in addition be liable” and substitute the words—[*Interruption*—I think that there are two documents.

Mr. Chairman: Which one are you talking about?

Mr. Maharaj: The cyclo-style one, it is on page 3, at the bottom of the page, second to last line.

Sen. Mahabir-Wyatt: Can you read it?

Mr. Maharaj: Yes, I am going to read it just now. I would read the whole phrase. It would read, “he shall be liable for imprisonment for the remainder of his natural life and he shall in addition be liable to 20 strokes with the cat-o’-nine-tails.

Sen. Mahabir-Wyatt: Is that necessary, Mr. Chairman, because it already says in subclause (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...”

Would that not mean whatever corporal punishment is already allowed? Why do you need to repeat it at the end?

Mr. Maharaj: If it was just ordinary rape it would be covered by the Corporal Punishment Act, but the new offence is not covered by that Act.

Sen. Prof. Spence: Mr. Chairman, I have a great difficulty because most of us on this side assumed that the corporal punishment was removed. Indeed, Sen. Daly has left because he assumed that that point was already taken. Now we find that it is not so. I really am very distressed by this. When we broke for tea, our understanding was that the whole clause would be reworded to remove the corporal punishment.

Mr. Maharaj: It could not be that because, I said that one would try, but I am not repealing the corporal punishment law.

Sen. Prof. Spence: If I had known that I would have insisted, at the time it was being taken, that my amendment be taken. The amendment should have been taken then and the other changes made subsequently. In any case, Mr. Chairman, we can do nothing about it now, except that I should once more insist that my amendment be taken.

Mr. Maharaj: Mr. Chairman, I am very sorry if there was a misunderstanding, but I could not really undertake not to have corporal punishment at all because that would have meant repealing another Act on which, just as the other issue, there would have been national discussion. I could not have corporal punishment for rape and for aggravated rape not have corporal punishment.

Sen. Prof. Spence: Well, Mr. Chairman, I still ask that my amendment be put.

Mr. Chairman: Hon. Senators, I shall now put Sen. Prof. Spence's proposed amendment to the vote, that is, at clause 4(2)(e) delete the last phrase "he shall in addition be liable to 20 strokes with the cat-o'-nine-tails".

Question put.

The committee divided: Ayes 4 Noes 17

AYES

Spence, Prof. J.

Mahabir-Wyatt, Mrs. D.

Teelucksingh Rev. D.

St. Cyr, Dr. E.

NOES

Mark, Hon. W.

Theodore, Brig the Hon. J.

Baksh, Hon. S.

Phillips Dr. The Hon. D.

Gillette, Hon. L.

Tota-Maharaj, Mrs. V.

Cuffy Dowlat, Miss C.

Hamel-Smith, P.

Baksh, N.

John, S.

Gray-Burke, Rev. B.

Moore, N.

Williams, Mrs. A.

Cowie, D.

Mc Kenzie, Dr. E.

Marshall, P.

Ramchand, Prof. K.

The following Senators abstained: N. Mohammed, M. Shabazz, C. Alfred, C. Belmontes.

Question on amendment [Sen. Prof. Spence], put and negatived.

Mr. Maharaj: Mr. Chairman, I beg to move that in respect of (b) in paragraph (d) that we insert after the word “offence”, “and the accused knew that the complainant was pregnant”. It would read that the accused knew that the complainant was pregnant after the word “offence”. So the complainant was pregnant at the time of the offence and the accused knew that; this is to take into account what Sen. Daly wanted. [*Interruption*] [*Crosstalk*]

Mr. Chairman, the amendment to 4(c) ought to read:

“in subclause (4) insert after the word ‘court’ the words “or body”. The section would then read:

“The provisions of subsection (3) shall not deprive the complainant of the right to claim compensation in any other Court or body.”

Then I go to (d):

“Insert after subclause (4) the following new subclauses:

‘this section applies to a husband in relation to the commission of the offence of rape on his wife.’”

Sen. Alfred: Mr. Chairman, I am taking this to mean that you are talking here about aggravated rape. You are saying that this section applies to a husband in relation to the commission of the offence of rape.

Mr. Maharaj: It applies to rape and aggravated rape in this section; subsection (4) deals with both.

Sen. Alfred: I just want to get something straight. What you are saying is that he would go to prison for the remainder of his natural life?

Mr. Maharaj: I did not say that he should go to prison, I said that he would be liable.

Sen. Alfred: I just wanted it clarified. I understand perfectly what it says, but I certainly do not agree.

Mr. Maharaj: Rape is life and aggravated rape is natural life.

Sen. Alfred: We are talking about “insert after subclause (4)” and if you go back to subclause (2) we are talking here about aggravated rape. So to bring that

Sexual Offences (Amdt.) Bill
[SEN. ALFRED]

Tuesday, December 07, 1999

in, we are talking about aggravated rape and that the husband is liable to go to jail for the rest of his natural life.

Mr. Maharaj: When we deleted the definition of life imprisonment—at the beginning of the Bill life imprisonment would have its normal meaning as it has now. “Liable to imprisonment for the remainder of his natural life” as we have been doing in (4) would apply to aggravated rape, if I may use that expression.

Sen. Alfred: I understand that but what is implied here is that a husband rapes his wife and he is liable to go to jail for the rest of his natural life. Who is to prove that he really raped his wife?

Mr. Maharaj: No, I am not saying that! I am not understanding you. It does not say that, it says that if a person is convicted of rape, the court can send him to jail for life.

Sen. Alfred: For the remainder of his natural life.

Mr. Maharaj: Where are you seeing that? [*Crosstalk*]

Sen. Alfred: I am talking about the new clause 5, “insert after subclause (4) the following new subclauses”, and you have a new subclause which is (5) and it says “This section applies to a husband in relation to the commission of the offence of rape on his wife”. What I am saying here—I do not know if I am making myself clear—the provisions under clause 4(2) state:

“A person who commits the offence of rape is liable on conviction to imprisonment for life and any other punishment...except that if—

- (a) the complainant is under the age of twelve years;
- (d) the complainant was pregnant at the time...”

And so forth, which leads me to believe that is aggravated rape. Is that not so?

Mr. Maharaj: Yes.

Sen. Alfred: If you bring in this subclause (5) here which is saying that this applies to a husband in relation to the commission of the offence of rape on his wife, that is talking about aggravated rape.

Mr. Maharaj: This new subclause (5) is saying that clause 4 applies to a husband in relation to the commission of the offence of rape on his wife. That subclause makes it clear that the offence of rape and aggravated rape applies to husbands raping their wives.

7.45 p.m.

We deleted what imprisonment for life meant at the beginning of the Act, so that imprisonment for life does not generally now mean a natural life. So that for rape it remains life imprisonment because that is the punishment for rape, but for aggravated rape as we go back to clause 4—be liable to imprisonment for the remainder of his natural life.

Sen. Alfred: Okay.

Sen. Mohammed: This subclause (5)—

Mr. Maharaj: Which subclause, we have not reached subclause (5) yet.

Sen. Mohammed: In 4(d) what we are looking at: “This section applies to a husband in relation to the commission of the offence of rape on his wife.” This section can be construed very broadly to mean the whole of clause 4. It is clause 4 with which you are dealing.

Mr. Maharaj: Which it does.

Sen. Mohammed: Which it does, and in that new clause 4 you have brought in an amendment whilst you have deleted the designation of imprisonment for life. In line 17 of subclause (2), you have now substituted the words “be liable to imprisonment for the remainder of his natural life.”

Mr. Maharaj: All that subclause (5) does is to say that this particular subclause applies to husband and wife. The express subclause deals with the punishment. Subclause 4(2)(e) deals with the punishment for aggravated rape.

Sen. Mohammed: And therefore, it applies to husband and wife too.

Mr. Maharaj: Yes. And for rape, which is the one before, it deals with the person being liable to life imprisonment which is the ordinary life imprisonment.

Sen. Dr. St. Cyr: Mr. Chairman, during the presentation of the Bill, the Attorney General did tell us that spousal immunity has been removed by these amendments and during the committee stage, the Attorney General told us that the common law provisions which did not allow a spouse to be charged with rape was not removed.

Could we be absolutely sure of what we are doing? Are we by this new subclause (5) removing that common law provision?

Mr. Maharaj: In fairness to the Senator, it is correct that there were some difficulties earlier on in the proceedings, in that having regard to what was stated

Sexual Offences (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, December 07, 1999

in clause 5 of the Bill I was advised that it did not cover that kind of situation, but the policy of the Bill—

Sen. Dr. St. Cyr: Which kind of situation?

Mr. Maharaj: It did not cover the situation where possibly a husband could have been prosecuted for rape subject to certain circumstances. I did say that, but the policy of the Bill was, as articulated on the floor of the House, that a husband could be prosecuted for rape.

At the committee stage, the technical persons, who are helping me, indicated that having regard to what was in the Bill, and the fact that the common law rule was not expressly abolished, it did not cover that kind of situation and it is as a result of what occurred, we wanted to make it quite clear that that was the policy contained in the Bill. So the policy in the Bill is that a husband could be prosecuted for rape and for aggravated rape.

Sen. Dr. St. Cyr: I am almost about to ask, Mr. Chairman, are we sure we know what we are doing? Because I am very, very concerned.

Mr. Maharaj: Mr. Chairman, on the floor of the House, I indicated what countries have had to grapple with this problem, and there were many countries that had to make this decision and the question is, maybe later on we may want to return and say exactly how it is working, but the fact of the matter is that the Law Commission was given this assignment and they had consultation, as Sen. Mahabir-Wyatt has said, and it was felt that this law should be changed and that is the policy as articulated in the law.

Sen. Mohammed: Hon. Attorney General, what would be of tremendous help is if, perhaps, we could have access to some of the kinds of legislation that you have looked at, those comparisons that you are talking about with other jurisdictions.

Mr. Maharaj: In my presentation I mentioned the countries.

Sen. Mohammed: It would have been very interesting to look at the way they have formulated their legislation.

Mr. Maharaj: I think the Law Commission would have looked at that.

Sen. Mohammed: It would have helped, that is one of the reasons I—

Mr. Maharaj: It would have helped, but I would have also thought that if the Opposition were serious about this, it had this Bill for sufficient time, it could

have asked me, but I do not know if you want me to produce all the authorities here and you look at it. I do not know what you want me to do.

Sen. Mohammed: This is one of the reasons we were saying this Bill needed careful scrutiny.

Sen. Dr. St. Cyr: Mr. Chairman, we are striking a fundamental blow at the institution of marriage and I just want us to be sure that we are not drifting without careful thought into this. That is my concern.

Mr. Maharaj: Mr. Chairman, anywhere governments have attempted to do this, they have faced opposition from the traditional view and the traditional view is that marriage implies that a woman is property and that—I am not saying that is what Sen. Dr. St. Cyr says. I am saying what countries have had to face from a traditional view. That is one of the reasons which have prevented governments from changing the law. As a matter of fact, in my presentation I showed how this was a rationale and the question which arises is that marriage does not mean that a husband is entitled to forcibly have sex with his wife.

Sen. Dr. St. Cyr: I believe what we should do to make sure that we have the proper legal protection is to draw up a fully stated marriage contract which will then spell out the terms in the contract of marriage which we are signing to, when we engage in that contract, and outside of having that written, we seem to be leaving lots of things unspecified and we are likely to run into problems such as this one.

Mr. Maharaj: Am I hearing correctly that a contract could possibly have a situation where the parties agree that the husband would be able to forcibly have sex with the woman and that would be permitted? A contract would sanction that?

Sen. Dr. St. Cyr: If the contract states that is one of his rights, that is what we would write into it.

Mr. Maharaj: His rights?

Sen. Dr. St. Cyr: I thought contracts had rights and obligations. Not that somebody could rape somebody, but you could define an activity which you call rape. I think, Mr. Chairman, that we are doing something about which we are not clear.

Mr. Maharaj: Mr. Chairman, I wonder if Sen. Dr. St. Cyr does not look at it in this way. It may be that husbands, knowing that they cannot forcibly have sex

Sexual Offences (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, December 07, 1999

with their wives, would behave differently, they would respect women more and ensure that they would not want to be raped in the same way that a woman would not want to be raped. And maybe, it would do the society good and strengthen the institution of marriage instead of undermining and subverting it.

Sen. Shabazz: Mr. Chairman, the proposal is that where a man could be charged for raping his wife, they must be in some legal battle, separation, or divorce proceedings and it should not be in a normal, harmonious relationship. I do not think we should get into that. I am saying that it should not be written into law.

Sen. Prof. Spence: Mr. Chairman, I have to agree with the principle behind this particular provision in the law, but I hope that the Government will take the same view when it comes to parents forcing twelve-year-olds to get married, because in my book, that is equally immoral and indefensible from the point of view of the society. I am just hoping that they will take the same view when it comes to marriage.

Mr. Maharaj: I have taken strong note of what the Senator has said.

Sen. Dr. Mc Kenzie: Mr. Chairman, I have listened and I just want to share an experience I have had in my time as an Education Extension Officer. There was this situation of husband and wife, married people living together, and then the husband finds a deputy. When the AIDS came in, the wife said; "No problem, stay with "yuh" deputy and I sleeping by "meh self." And the husband says; "I staying with "meh" deputy, but I married to you and whenever I am ready for you, you suppose to submit to me." And a big fight ensued, and he said; "Tonight, tonight, yes tonight."

I cannot understand this and I have known of several cases where the man has children outside while he has children with his wife. She is scared of the AIDS virus and she says you shop somewhere else and I am not shopping, I staying home. He says: "You cannot tell me no when I say yes." I am listening, but I have had persons who actually complain and they are not separated, they are living in the same house, they have their children at home and he has his children outside. They have children within the marriage, during the time of the marriage. They are not in court, they are not separated or anything, but she is saying you do not intend to live a faithful life, there are so many diseases out there, therefore, I am not carrying you to court, I am not divorcing you, I am not leaving you, but I am not going to have any sexual relations with you. He is saying she must, and this is where the fight comes in.

Sen. Shabazz: I agree with what the Senator is saying. [*Inaudible*] When she found out that the man was involved because we have it written in the law, she says, “all right, I am going to report rape” and reports a rape just to get him to stay away from her. Not only that, in reporting the rape, he is entitled to imprisonment for the rest of his natural life. She could take that position: “I do not want you interfere with me”. The safest way, just as we took the position with restraining orders and all these other matters, she says, “Listen, you rape me.” She goes to the station and reports that. What happens after that?

8.00 p.m.

Sen. Dr. Mc Kenzie: Mr. Chairman that happens all the time. You could do it with anybody. I could jump up tomorrow and say: “Oh God, look he rape meh, look he rape meh.” What I am saying, there is a process of law to prove it.

Mr. Maharaj: That is the point. As a matter of fact, in responding, I will take up on what Sen. Dr. Mc Kenzie has said. It is not that as soon as you go to the police and you say “rape” a person is charged. In order to establish rape you should have a medical examination; signs of violence; signs of injury; to see there was spermatozoa or whatever there is and supporting circumstantial evidence from the injury from all those things.

Mr. Chairman, in rape cases, you have to prove beyond a reasonable doubt; so the police would know that. It is not that every report to the police—but it happens in every case.

Sen. Mahabir-Wyatt: Mr. Chairman, since other people have been allowed latitude, I do not want to make this debate any longer, but could I just do what Sen. Dr. Mc. Kenzie has done and tell you why I am so adamant about this? There was a case that hit the newspapers a few years ago, in which a woman was married to a man. She went into the hospital to have a child. She had the child and in the course of having the child she had to have stitches, an episiotomy. None of you gentlemen have ever had to go through that. I can assure you that it is an extremely uncomfortable place to have stitches. She was sent home the following day and her husband insisted on having sex with her. He took a knife and cut the stitches and had sex with her and she was taken back to the hospital, of course, bleeding.

Mr. Chairman, she could not take action against him because he was her what? He was her “husband”. He had raped that woman and split her stitches in order to do it, and she was told that she could not take any legal action against him because he was her husband. Unless we change the law in the way it has been

Sexual Offences (Amdt.) Bill
[SEN. MAHABIR-WYATT]

Tuesday, December 07, 1999

suggested that sort of atrocity could go on, and that to me, is not sanctity in marriage.

Mr. Chairman: In light of all these discussions I will put clause 5 to the vote.

Mr. Maharaj: No, put clause 4.

Mr. Chairman: I am just putting clause 4(b).

Sen. Prof. Ramchand: Then what we are really saying is this section would also apply to a husband. Is that what it really means? Do you understand the also?

Mr. Maharaj: I understand that in normal grammar it would be so, but in drafting it does not count. *[Interruption][Laughter]* The other sections speak for themselves.

Sen. Prof. Spence: Before we take the vote, could I ask with respect to clause 5 which refers to “grievous sexual assault” that it is not the same for a wife and her husband?

Mr. Chairman: Sorry?

Sen. Prof. Spence: This clause applies to a husband in relation to committing an offence of “grievous sexual assault” on his wife, what about the wife on her husband? Is it not applicable when the wife does it?

Mr. Maharaj: We are going to another clause.

Sen. Prof. Spence: Sorry, I thought you said clause 5. I thought you were taking clause 5.

Mr. Chairman: Clause 4 is to be amended as follows at (D):

“Insert after subclause (4), the following new subclauses:

‘(5) this section applies to a husband in relation to the commission of the offence of rape on his wife.’”

Question proposed.

Mr. Chairman: I cannot pronounce it yet because we have the whole clause to deal with. Mr. Attorney General, D(6).

Mr. Maharaj: Mr. Chairman, this is to just make it clear that it also applies to the question of a common law relationship in relation to the meaning of “cohabitant” under the Cohabitational Relationships Act.

Mr. Chairman: I am changing this slightly. Clause 4 is to be amended as follows:

- “(A) Delete lines seventeen (17) and eighteen (18) and substitute as follows:
 ‘He shall be liable to imprisonment for the remainder of his natural life and he shall in addition be liable to 20 strokes with the cat-o’-nine-tails.’”

That is it?

- “(B) In paragraph (d) insert after the word “offence” the words “and the accused knew that the complainant was pregnant”.
- (C) In subclause (4), insert after the word “Court” the words “or body”.
- (D) Insert after subclause (4), the following new subclauses:
 ‘(5) this section applies to a husband in relation to the commission of the offence of rape on his wife.
 (6) in subsection (5) “husband” or “wife” includes a cohabitant within the meaning of the Cohabitational Relationships Act, 1998”

Question put and agreed to.

Clause 4, as amended, ordered to stand part of the Bill.

Clause 5 reintroduced.

Question proposed, That clause 5 stand part of the Bill.

Mr. Maharaj: Apart from the renumbering, the substance of this amendment also applies to a cohabitational relationship. I also take the point of Sen. Prof. Spence, that “this section applies to a husband in relation to the commission of the offence of grievous sexual assault on his wife” that it will also apply to a wife. So I will have to say: “this section applies to a husband or wife in relation to the commission of the offence of grievous sexual assault on his or her spouse” or “his wife or her husband.” Only Sen. Mahabir-Wyatt could get this drafting. So this section applies to “a husband or wife in relation to the commission of the offence

Sexual Offences (Amdt.) Bill
[HON. R. L. MAHARAJ]

Tuesday, December 07, 1999

of grievous sexual assault on his wife or her husband” and “in subsection (3) “husband” or “wife” includes a cohabitant within the meaning of the Cohabital Relationships Act, 1998”.

Mr. Chairman: Clause 5 is amended as follows:

- “(a) In subclause (2), delete the word “(5)” and substitute the word “(4)”
- (b) Insert after subclause (2), the following new subclauses:
 - ‘(3) this section applies to a husband or wife in relation to the commission of the offence of grievous sexual assault on his wife or her husband.
 - (4) In subsection (3) “husband” or “wife” includes a cohabitant within the meaning of the Cohabital Relationships Act, 1998.’

Question put and agreed to.

Clause 5, as amended, ordered to stand part of the Bill.

8.10 p.m.

Clause 6 reintroduced.

Question proposed, That clause 6 stand part of the Bill.

Mr. Maharaj: Mr. Chairman, in light of what was made clear, that the husband can be held liable for rape, and also in respect of gross indecent assault—it should be section 5. *[Interruption]* Well, then, we will have to make a consequential change where we amended clause 5(2).

Mr. Chairman: The amendment is that the present clause 6 is being replaced by a new clause 6, which repeals section 5 of the Act.

Sen. Mohammed: Well, then, does it mean that the numbers in the Act—*[Interruption]*

Mr. Maharaj: No, it does not affect it. What happens is, the new Act will be done and when they are revising it, then they will put it under—*[Interruption]*

Mr. Chairman: So the amendment is as follows:

“Delete clause 6 and substitute therefor the following new clause:

Section 5 6. Section 5 of the Act is hereby repealed.
repealed.”

Sexual Offences (Amdt.) Bill

Tuesday, December 07, 1999

Question put and agreed to.

Clause 6, as amended, ordered to stand part of the Bill.

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

Senate resumed.

Bill reported, with amendments, read the third time and passed.

RAMADAN GREETINGS

Sen. Nafeesa Mohammed: I thank my colleague for giving way before we take the adjournment of the Senate. Mr. President, we have had a long day and, in light of the discussions based on the types of behaviour we have been discussing for the entire day, one of the ways that this kind of conduct can be stemmed or controlled is by way of restraint. At this point in time, Mr. President, I have asked to say a few words simply because I think it was yesterday the new moon that would signify the start of the holy month of Ramadan would have been born and, once sighted in our part of the world, the holy month of Ramadan is likely to commence either tomorrow or Thursday.

I merely wish to take this opportunity to wish all my colleagues and the Muslim community of Trinidad and Tobago on behalf of the People's National Movement a very holy and rewarding month of Ramadan. Thank you.

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, I would like to reciprocate in light of what my hon. colleague said, to the Muslim community.

Mr. President: Hon. Members, I also wish Members of the Senate and their families, the national community of Trinidad and Tobago in general and the Muslim community in particular a happy month of Ramadan.

ARRANGEMENT OF BUSINESS

The Minister of Public Administration (Sen. The Hon. Wade Mark): Mr. President, I would like to indicate here, Sir, that earlier in the proceedings I sought the support of the Senate and did get leave to move that Item 13 on our agenda be deferred to a later stage in the proceedings. I wish to inform the Senate that the Bill has been circulated but we have discovered some deficiencies that we are seeking to have corrected. We intend to recirculate another Bill on Friday to all Senators. That Environmental Management Bill will be taken in full at the next sitting of the Senate on Tuesday, not Wednesday.

Arrangement of Business
[HON. W. MARK]

Tuesday, December 07, 1999

Mr. President, let me indicate also to my colleagues that we are going to be proceeding with the following Bills on Wednesday, December 8, 1999. We will be dealing with the Bill—I am not seeing the actual agenda here—focussing on the museum and art gallery. It is in the name of the Minister of Culture and Gender Affairs. We will then proceed to the DNA Bill. That is in the name of the Minister of National Security. Then we are also going to have the Minister of Labour and Co-operatives introduce for second reading the Minimum Wages (Amdt.) Bill and those are the Bills that we want to proceed with. I am also trying to get Minister Assam to be here tomorrow to deal with the motion that we have on the Order Paper.

So, we could start off with the motion and proceed to the National Museum and Art Gallery Bill, followed later by dealing with the DNA Bill and finally the Minimum Wages (Amdt.) Bill.

Agreed to.

Motion made and question proposed, That the Senate do now adjourn to Wednesday, December 8, 1999 at 1.30 p.m. [*Hon. W. Mark*]

Question put and agreed to.

Senate adjourned accordingly.

Adjourned at 8.20 p.m.