



Senate Debate

THE SEXUAL OFFENCES (AMENDMENT) (No. 3) BILL, 2021

Senator the Honourable Donna Cox

Minister of Social Development and Family Services

January 11, 2022

Madam President, allow me to extend best wishes and the abundance of God's blessings upon you and everyone in this august Chamber.

It augurs well for us, Madam President that the first piece of legislation before the house this year is to protect the most vulnerable amongst us, including our women and our children. It is a new year Madam President, and we on this side have come with renewed resolve to do what we have been called to do: to serve the best interests of those who are unable to defend themselves, to be the voices for the voiceless, and to represent the collective conscience of our nation.

Madam President, there were many people in this society who breathed a deep sigh of relief when this Government outlawed underage marriages, thereby offering a measure of protection to our young girls who in many cases were being forced to marry men who were more than twice their ages. Similar praises resounded from some women's groups and Associations when profound amendments to the Domestic Violence Act were successfully piloted through this Chamber and the other place.

The passage of the Electronic Monitoring Act, which gave women and their children an added layer of protection against potential harm, was the icing on the cake for many, as now victims of domestic violence could be forewarned as to the possibility of their attacker being in close proximity to them. In fact, as stated in a media briefing on November 5th 2021 by the manager of the Victim and Witness Support Unit, there were 669 domestic violence reports by women in 2021, which was an increase of 2020's figure of 649. Furthermore, the reported number of Rapes, Incest and Other Sexual Offences increased from 661

in 2020 to 842 in 2021 according to statistics obtained from the Crime and Problem Analysis Branch of the TTPS. I want to once again categorically state that one case of violence against a woman is one too many.

These amendments to the Domestic Violence Act, Children's Act and the passage of the Electronic Monitoring Act, are evidence enough of a Government committed to protecting the most vulnerable amongst us, to doing right by the thousands of victims who previously had no legislative recourse for their suffering, living often in a perpetual victimhood, unable to embrace the possibility of new life opportunities, as their attackers often remained too close for comfort.

Madam President, the sacredness of life, honoured in every religious tradition represented in this Chamber, grounds our belief in the ultimate meaning and value of our women and children. Indeed, this sanctity of life compels us to be a voice of conscience. When we fail to protect women and children, we betray their trust in us, deny our humanity, risk our future and abandon these beliefs which we have long held sacred.

It is for this reason that I encourage all members of this chamber to give their unequivocal support to the amendments being proposed here today. The Amendments have been drafted to deal with current realities, with scenarios in mind that were thought impossible 10 to 15 years ago, but which have now become commonplace. These Amendments bring us in line with legislation enacted in the United Kingdom in 2019 and Singapore in 2020 and are consistent both with the Sustainable Development Goals (SDGs) articulated by the United

Nations, and the Vision 2030 National Development Strategy of this Government.

The Sustainable Development Goals Targets 5.2 and 5.3 call for the elimination of all forms of violence against women and “the elimination of all harmful practices such as child, early and forced marriage, and female genital mutilation” respectively. These proposed Amendments Madam President, are aligned to Goal 6 of Vision 2030, which speaks specifically to the protection and support of the family.

Madam President, not unlike the rest of the world, our institutions and communities make regular use of the Internet and the associated information and communication technology (ICTs) that are now part of our everyday lives. Social media platforms like Facebook, WhatsApp, Twitter, Instagram, and the plethora of other channels are often used to communicate and to showcase events, projects, and gatherings online. This positive and creative use of the Internet cannot obscure the threat posed by the misuse of this medium and related technologies to harm women and children.

And when we examine the threats, particularly those contemplated in Section 22 B and C, they are perpetrated in large measure by persons in whom victims invested copious amounts of trust, to whom victims dared to share their most vulnerable selves, only to have that trust betrayed for selfish gain. Reports from our women and girls suggest that this is an all too common occurrence, but without legislative backing, many victims suffer in silence.

Madam President, the success of the #MeToo Movement, for example, which focuses on the experiences of sexual violence survivors, is largely due to the fact that sexual harassment, sexual assault, and sexual exploitation, in their many forms, impact people every day. By sharing their own experiences, the Movement's proponents highlight just how common sexual exploitation has become, affecting all strata of every society.

Clause Four of this Bill, Madam President, seeks to amend Section 2 of the Parent Act by inserting definitions of the following:

- a. computer data storage medium;
- b. computer system;
- c. device;
- d. internet service provider;
- e. intimate image;
- f. law enforcement officer;
- g. private act;
- h. private parts;
- i. sexual act;
- j. share; and
- k. visual recording.

At first glimpse, it would appear that such granular detail is unnecessary. But Madam President, it is absolutely imperative that these definitions be included in the legislation, so as to remove any doubt, and empower the enforcers of the legislation with absolute certainty about the legality of their actions. We are of the view, Madam President, that by clearly defining these terms and enshrining them into law, there will be no room for doubt, on anyone's part, regarding the various elements of the offence. In this way, it will facilitate a more efficient interpretation of the Law, and thus make enforcement more practical.

Section 22A, Madam President, is what we would refer to as the “Peeping Tom” Section. This Amendment seeks to criminalise a practice which many, in the past, have deemed normal behaviour for some men. You may recall the song by Super P, “Everybody Peepin”. While this song hilariously expounds on the behaviour we colloquially call “maccoing”, the fact remains that some people in society have now evolved to taking photos or recording videos of others in a state of undress. Most smartphones now come equipped with high-resolution cameras that enable photos and videos to be captured from a distance with astonishing clarity and can be wielded as a weapon in voyeurism. Consequently, many live with the fear that these recorded videos and images can be taken and posted online or disseminated to others without their knowledge.

However, Madam President, voyeurism is not new to Trinidad and Tobago. There are many stories of schoolboy pranks of what we now know as “upskirting” where mirrors are placed on shoes to view under the skirts worn by their female colleagues; or mirrors being placed in strategic locations in bathrooms so that others can get a first-hand view of persons in their nakedness. Such practices often preclude later assaults when some of these boys grow up. According to some psychiatric studies published by the American Psychiatric Association, 20% of people involved in voyeurism will go on to commit more serious sexual assault offences. In November 2016, the regional #LifeInLeggings movement saw countless women recounting harrowing daily experiences of sexual harassment and assault, which included occurrences of such “peeping tom” behaviour on Facebook.

This new section, 22A, would establish, amongst other things, that a person commits the offence of voyeurism if he knowingly observes another person

doing a private act without their consent, to obtain sexual gratification for himself or someone else, or to cause humiliation or distress to another person. Specifically, in situations where the other person would have a reasonable expectation of privacy.

As tiny, hidden cameras have become more readily available, crimes of voyeurism have become easier to commit. Such acts have been known to occur in public transportation, bathrooms and dressing rooms, in schools and workplaces, with the targets being primarily women and children. It was reported in the Trinidad and Tobago Newsday on January 13th 2018 that 300 employees of a state enterprise based in Point Lisas walked off the job when one of their colleagues discovered three cameras hidden in electrical wiring in a room used by female employees to change. This discovery highlights the very real and pervasive threat to privacy in our society, which remains unpunished in the absence of the necessary legislation to prosecute the offender.

This new inclusion of Section 22A is in line with the United Kingdom's Voyeurism (Offences) Act, 2019. The Act in the United Kingdom came into force to amend the Sexual Offences Act, 2003 where two (2) new offences were inserted at section 67A, criminalising certain acts of voyeurism. The Act adds clear and explicit protection against the offence.

Guyana also has the Sexual Offences Act, Act No. 7 of 2010. This Act has similar provisions protecting vulnerable adults and children against sexual offences, including the offence of voyeurism.

Madam President, the criminalisation of voyeurism in this Sexual Offences (Amendment) (No.3) Bill, 2021 (Trinidad and Tobago) is very important to the

Ministry of Social Development and Family Services, which has the responsibility of overseeing the protection of the already vulnerable in society, such as the elderly, those who are underprivileged, exploited and abused and persons with disabilities.

Victims of voyeurism often speak not only of their humiliation, but more so of the violation of their private spaces, or spaces in which they believed they were safe. Cognizant of this, the Ministry applauds the Attorney General and his staff, for this bold step in making voyeurism a criminal offence, as it will certainly help improve the social protection of women and children. Madam President, the days of the Peeping Toms are numbered.

In a Protecting Ourselves blogspot article entitled “Protect Yourself from Voyeurism” dated April 5, 2017¹, the author stated, that, in Trinidad and Tobago there were no laws that criminalise voyeurism and urged persons to protect themselves against same.

The author recounted an occurrence of voyeurism at a popular bar in Woodbrook where a “peeping tom” was lurking around and taking photographs of women whilst they were using the bathroom. The person was caught and handed over to the Police but was not charged, as the Sexual Offences Act at that time, did not encapsulate voyeurism. Therefore, this proposed amendment would ensure that women who find themselves in these situations can finally get some redress and justice.

¹ [PROTECTING OURSELVES: PROTECT YOURSELF AGAINST VOYEURISM.. \(protectourselves1.blogspot.com\)](https://protectourselves1.blogspot.com)

Madam President, the second and more substantial Amendments are contained in the new **Sections 22 B and C**, or the **Revenge Porn** section.

I believe everyone in this Chamber grew up hearing the old adage “hell hath no fury like a woman scorned,” and many have used this to describe a woman’s behaviour after she was jilted by her lover. But Madam President, the author of that phrase never contemplated the Trinbagonian man of the Digital Age, nor men of the world in general. Madam President, and this is neither to trivialise its occurrence nor condone it, but the instances of women engaging in revenge porn are few and far between.

Revenge porn is generally defined as revealing sexually explicit images or videos of a person on the internet or any other social media platform, typically by a former sexual partner, without their consent and in order to cause him/her distress or embarrassment. It is for this precise reason that through this move to criminalize revenge porn, the Government has demonstrated yet again, that the protection of women is of paramount importance, and no stone will be left unturned in this process.

Section 22B, Madam President, creates the offence of taking and sharing, or threatening to share, intimate images without consent, while Section 22C deals principally with the sharing of intimate photographs. This new Section 22B provides for five (5) categories of offences:

- a. where an intimate image is taken and shared without consent;
- b. where an intimate image is taken and shared for the purpose of humiliating or causing distress to a person;

- c. where an intimate image is taken and shared for the purpose of obtaining sexual gratification;
- d. where there are threats to share an intimate image; or
- e. where a person knowingly alters an image of a person to make it appear that the image of the depicted person is an intimate one.

Madam President, whilst it may not be common practice among the baby boomer generation of the 1960s' and 70s', it appears that it is now the norm for couples to share intimate images and videos with each other during the course of their relationship, in an activity known as "sexting". In some circumstances though, when the relationship ends on a bad note, these images and/or videos are disseminated to others in a practice termed "revenge porn". The proposed section 22(B) therefore covers revenge porn and makes it an offence.

In essence, this new offence seeks to criminalise revenge porn, where one of the parties to the relationship, sometimes for revenge or to humiliate the other party may circulate the intimate images on social media platforms. Women in these situations often feel betrayed, sad, depressed, ridiculed and could suffer great reputational risk. As such, this proposed amendment is critical in protecting women who find themselves in these vulnerable situations.

Madam President, under the current legislation, a person finding themselves in this predicament only has recourse through a civil action suit, wherein they would seek damages and other reliefs for breach of confidence, harassment or defamation. This Chamber would undoubtedly recall the famous case of 2015 that was adjudicated upon by High Court Justice Frank Seepersad.

The Court heard evidence that the parties were engaged in an intimate relationship and during the course of the relationship, several photographs were taken by them. Some of these photographs depicted the Claimant nude and two (2) of the photographs show her intimately engaged with the Defendant. After their relationship ended, some of the photos were allegedly shown to other persons. The Claimant testified that she took nude photos of herself and sent same via WhatsApp to the Defendant's phone for his private use when he was out of the country. She stated that she had concerns over the future of their relationship and ended it. She claimed that the purpose of the subsequent disclosure of the images was to embarrass and shame her.

In his judgement, the learned Justice lamented that ***“while it may appear that an individual’s sexual exploits should be afforded some protection on account of privacy, the law in the jurisdiction has however not developed so as to recognise any such right”***.

Justice Seepersad went on to state that: ***“The law has to be dynamic and has to develop in such a way to ensure that it remains relevant and it must be recognised that there is an obligation of conscience which requires that videos, photographs and/or recordings that capture private intimate relations, should be clothed with a quality of confidentiality.***

Online conversations and the dissemination of information over the internet initiate an open ended forum. The internet is a comprehensive and cohesive database and there is really no anonymity in relation to the use of same. Photographs uploaded unto the internet can be retrieved forever. The impact upon an individual’s privacy is tremendous and the absence of clear and cohesive legislation to protect our citizens’ privacy and to punish those who

violate the rights of others, can cause us to descend into a bottomless pit of anarchy.”

Madam President, fast forward to today. The exercise in which we are engaged is to ensure that as a society we do not “descend into a bottomless pit of anarchy,” and that the law retains its dynamism and relevance to the current realities of the 21st Century.

Section 22D, Madam President, provides for monetary compensation to be paid by the perpetrator to the victim, separate and apart from a fine and term of imprisonment. In the case alluded to earlier, Justice Seepersad ordered the Defendant to pay the Claimant the sum of \$150,000.00 inclusive of an award for aggravated damages;

He also granted a perpetual injunction so as to restrain and/or prohibit the Defendant, his servants and/or agents from disseminating, uploading, posting and/or publishing nude and/or sexually explicit photographs of the Claimant and/or photographs that depict her performing any sexual act whether by way of the internet, cellular phone or any other form of social media or by any other means whatsoever.

Madam President, the intent of Section 22D is to accomplish in the Criminal domain, precisely what the learned Judge ordered in the Civil domain. Section 22D demands both compensation to the victim and destruction of the photographs and videos by the defendant. Madam President, we on this side believe that the inclusion of this amendment is a critical pillar of this new legislation as it will deter perpetrators from sharing, publishing, disseminating, uploading, and posting sexual images of persons without their consent.

Whilst the amendments to which I have already alluded are profound both in their substance and in their potential impact, the inclusion of a new Clause 6 in this amended legislation is proof positive of this Government's declared intention that no child should be left behind.

Clause 6 of this new Bill sets out consequential amendments to the Children's Act, Chap.46:01 to insert a new Part VIII A, which would provide for the offence of voyeurism in relation to children. The provisions of this new Part will be similar to the proposed sections 22A, 22B, 22C and 22D of the Sexual Offences Act.

Madam President, this proposed amendment is also of paramount importance, and receives the Ministry's full endorsement, especially as it recognises the absolute need to protect our nation's children from predators. This is important because there appears to be a very casual practice of sharing inappropriate images and videos of children on social media platforms. This amendment should make society more aware that the innocence of children ought to be protected and not exploited. The proposed offences make it difficult for an adult to claim innocence or lack of knowledge if he/she willingly shares inappropriate images and/or videos of children.

CONCLUSION

The Ministry of Social Development and Family Services stands ready to continue providing the necessary psychosocial support to persons in need and victims of sexual offences, through its National Family Services Division. The Ministry will continue to collaborate and network with the relevant stakeholders to ensure that once this legislation is passed, it will be the catalyst for reducing

the number and frequency of offences identified in this Bill. The Ministry will redouble its efforts to advocate for the protection of the rights of our society's vulnerable persons, and we believe that this Bill, once passed and enacted into law, will be one of the keys through which their rights will be protected.

Madam President, the case for strengthening the current Sexual Offences Act has been clearly made by the Attorney General in his presentation. Voyeurism or "peeping tom" behaviour and revenge porn cannot be tolerated in the modern society we are trying to build. I urge all my colleagues therefore to lend their support to this Bill, so that when there are no more tomorrows in our lives, we can say, with truth, pride, and no regrets that we left Trinidad and Tobago, a better place than we met it, and that the privilege of our time here, was not in vain. Martin Luther King Jr. said "Our lives begin to end the day we become silent about things that matter". Madam President, the amendments to this Bill matter. I thank you.