



SIXTH NATIONAL ASSEMBLY

PARLIAMENTARY

DEBATES

(HANSARD)

FIRST SESSION

THURSDAY 14 DECEMBER 2017

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MAURITIUS

Sixth National Assembly

FIRST SESSION

Debate No. 31 of 2017

Sitting of Thursday 14 December 2017

The Assembly met in the Assembly House, Port Louis at 3.00 p.m.

The National Anthem was played

(Madam Speaker in the Chair)

PAPERS LAID

The Ag. Prime Minister (Mr I. Collendavelloo): Madam Speaker, the Papers have been laid on the Table.

A. **Prime Minister's Office**

Certificate of Urgency in respect of the Landlord and Tenant (Amendment) Bill (No. XXIV of 2017). (In Original)

B. **Ministry of Business, Enterprise and Cooperatives**

The Annual Report 2012 of the Small and Medium Enterprises Development Authority (SMEDA).

PRIVATE MEMBERS' MOTION
CONSTITUTION – PRIME MINISTER'S TENURE LIMIT, ANTI-DEFECTION
PROVISIONS, ETC.

Order read for resuming adjourned debate on the following Motion of the hon. First Member for Savanne and Black River (Mr A. Ganoo) -

“This House resolves that, in the context of the celebrations of the 25th anniversary of the Mauritian Republic and the attainment of 50 years of independence, the Constitution of the Republic of Mauritius be enacted by the sovereign Parliament of the country and should also consider the introduction therein of the following new provisions –

- (a) limitation of the tenure of the Prime Minister;*
- (b) anti-defection provisions to deter the practice of crossing the floor;*
- (c) gender quota for fairer representation of women in the National Assembly;*
- (d) review of the powers of the Electoral Boundary Commission with regard to the delimitation of constituencies;*
- (e) recall mechanism for the parliamentarians who are failing in their duties as elected representatives;*
- (f) the introduction of second generation « development and environmental rights »; and*
- (g) enhanced process of appointment of the President for institutions designed by the Constitution and the laws of the country to maintain democracy, uphold good governance and the rule of law.”*

Question again proposed.

Mr S. Rutnah (Third Member for Piton & Rivière du Rempart): Thank you, Madam Speaker. Madam Speaker, on the last occasion when I took the floor, just to remind the House that I concluded what I had to say in relation to the sovereignty of Parliamentary issue in Mauritius and I started on the introductory part of items (a), (b) and (c). Today, I propose to deal with the subject on item (a) from its historical perspective.

Mais, avant de rentrer dans le vif du débat, Madame la présidente, j'ai entendu sur la radio un certain député, le troisième député de la circonscription No. 19, qui a qualifié cette motion, la motion de l'honorable Alan Ganoo, comme une motion rassie. C'est avec cette attitude que le troisième député de la circonscription No. 19 décrit cette motion. Le troisième député de la circonscription No. 19, l'honorable Paul Bérenger, a qualifié cette motion d'une motion rassie. Et aujourd'hui, les députés du MMM ne sont pas présents, les députés du PMSD ne sont également pas dans la Chambre aujourd'hui et, comme toujours, les députés du Parti travailliste, à chaque fois qu'on est dans cette Chambre pour discuter de choses très importantes pour le pays, ils ne sont pas présents.

Madam Speaker, it is a sad day today. On numerous occasions, I highlighted the importance of this debate. Hon. Alan Ganoo is not just any Member of this House; he is a man of experience, a man of great wisdom and he is the only MP who has brought such a Motion in this House to debate. And can you imagine, no MMM, no *Parti travailliste* and no PMSD! The PMSD which is supposed to be the main Opposition party in this country, are all down there in Quatre Bornes asking the people of Quatre Bornes to vote for them! Can you imagine!

(Interruptions)

Yes. According to them, this constitutional issue is not important at all. *C'est une motion rassie!* But, we will see after Sunday who is going to be *rassier* than *rassie*. Anyway!

Madam Speaker, the Prime Minister - whether it is a correct proposition that we should limit the tenure of the Prime Minister, I have introduced on the last occasion. Hon. Ganoo has on two pages of his speech made the case that in Mauritius we should not have a Prime Minister who holds position of the Prime Minister for more than two mandates. But that is as if writing down or amending the Constitution by the stroke of a pen, and we cannot do that because the post of Prime Minister goes back a long way how it has developed.

The first time that we heard of the notion of the post of Prime Minister was in 1624. It was in 1624, the *testament politique du cardinal duc de Richelieu* who was leading the Royal Council, under the reign of King Louis XIII. He was not specifically called the *Premier ministre* or the Prime Minister; he was called the *principal ministre d'Etat*, the Chief Minister of the State. And from that time, the concept of the person who is going to occupy the post of Prime Minister is supposed to lead the Cabinet. He is supposed to lead the Cabinet, and he is the leader of all the Ministers in the Executive Branch of Government so that with the

function of the person who, at the time, was not known as the Prime Minister, but was given the title *ministre d'Etat*, was responsible.

But, then, when we come down further in time, when Louis XIV took in charge of France, he did not agree that some Ministers would be more powerful than other Ministers, and then they abolished that post, which we, today, call the post of Prime Minister and which was called *ministre d'Etat*.

Then, in the 18th century, it was in England that the post started to develop, and the first person in England to have occupied the post equivalent to what we call the post of Prime Minister was Sir Robert Walpole. Sir Robert Walpole was a man who was trusted by the monarch but, at a later stage, during the mid-18th century, when England was at war with France, that title of the person in charge of the Cabinet was reviewed; reviewed because the Britons believed in a free society, whereas the French, at the time, were regarded as tearing.

So, England decided to demonstrate to the rest of the world, and to France in particular, that their society could be more democratic. They placed special trust in the person who heads the government; for example, during the days of Henry VIII, Thomas Cromwell held the post of what we call Prime Minister today; William Cecil and Lord Burghley under the reign of Queen Elizabeth I. Clarendon under Charles II, Godolphin under Queen Anne. All these people who were heading the government were either called the Minister, the First Minister, the Chief Minister, and eventually, very late in years, the term Prime Minister came. But, at the time, there were no election. It was the king or the queen to decide who will head the government, and sometimes when the king or the queen is not happy with the person whom they have delegated to lead the government, they would even execute; for example, Cromwell was executed and Clarendon was sent to exile.

So, it has been a struggle back in time and, at the same time, there was a process of learning, and that process of learning continued. At one point in time, the monarch decided to have two Ministers, having equal powers, to lead the government. And that also did not work because the idea that one Minister would be so powerful that it would be a dangerous thing, they appointed two Ministers, but that also did not work.

In the 17th century, it was the post-English Civil War; the civil war in England was between 1642 and 1651. Parliament then started to strengthen itself, but before going to the strength of Parliament, there was also the Glorious Revolution of 1688 and the passage of the Bill of Rights in 1689. The monarch could no longer establish any law or impose any tax

without the permission of the House of Commons; hence, the House of Commons became part of government.

Madam Speaker: Hon. Rutnah, please! I understand your passion for history. Very interesting, indeed, but yet I believe that you should come to the crux of the matter. You can elaborate, but not as much as you are doing. Please, come to the crux of the matter.

Mr Rutnah: Thank you, Madam Speaker.

Madam Speaker, I am just going back in time to demonstrate historically...

Madam Speaker: Too much down memory lane.

Mr Rutnah: ... how the post itself developed and why today we cannot just, by the stroke of a pen say, “No, we have to limit it.” There should be some real justification for it and whether a country like Mauritius is ready for such change.

But, anyway, Madam Speaker, I will not go in detail in relation to 1714, when Queen Anne became Queen and she appointed other Ministers, and then George I took over, and then came up to the time when Lord Melbourne became the Prime Minister, and this is when the concept of Cabinet responsibility, the collective Cabinet responsibility came. Lord Melbourne was one of the persons who publicly said that: Gentlemen, it matters not what you say outside. As long as we say that same thing, it’s okay, you can still stay in Cabinet, and if you don’t agree with what we decide and what we say in Cabinet, then, please, pack your bag and go. And the former Prime Minister, Dr. Navin Ramgoolam, would have said “*lev paké alé*”. That is when the concept of Cabinet solidarity developed.

I will also not go in detail about George III, when he appointed his Prime Minister, the youngest story MP. What happened is that George III was also suffering from mental illness and so on, and that is why Parliament strengthened itself and Parliament consolidated its power. So, the title of Prime Minister itself was documented for the first time when Benjamin Disraeli became Prime Minister and it did not appear in formal British Order Precedence until 1905.

So, from 1624, we came to 1905! So, officially the post of Prime Minister became known as Prime Minister as of 1905. And the concept of this Prime Ministership was copied in various colonial territories and other European countries and examples were used on the British Constitution because at the time British Constitution already developed and in other European countries and the colonial territories, they were not known as the Prime Minister,

they were still known as the Chief Minister or Chief Minister of the State or the First Minister or *le Président du Conseil* or the Chancellor like in Germany we still have the Chancellor who heads the Government.

Just *en passant*, Madam Speaker, I have to say that the longest serving Prime Minister in the world today is in Bahrain. Hon. Soodhun is not here, perhaps he would have known. Sheikh Khalifa Bin Salman Al Khalifa has been the longest serving Prime Minister in the world. He was appointed Prime Minister in 1970 and he is still Prime Minister!

When the post of Prime Minister became official, the traditions of 1624 down the line were preserved. What are those traditions that have been preserved? They are, for example, the Prime Minister has the sole right to chair the Cabinet; in 1881 the introduction of the Prime Minister's Question; in 1903 the establishment of the Prime Minister's absolute right to remove Ministers; in 1918 the Prime Minister gained from the Cabinet the right to request dissolution of Parliament by the monarch so as to trigger elections, like recently happened in England. David Cameron went to see the Queen and said he would like to dissolve Parliament because he did not succeed in his goal in relation to the Brexit vote and the monarch declared elections and then we had the new Prime Minister, Theresa May, who was elected. So, it has been a long time since the post existed, but not known formally as Prime Minister but there were other titles given to the post.

Madam Speaker, the reason I used the example of the British, the English, the United Kingdom model is because we have inherited our Constitution from them and really we followed the pattern here in Mauritius. In Mauritius, we started really from 1940 when Sir Seewoosagur Ramgoolam was nominated to the Council of Government. He was fighting for the need of political and constitutional reforms. He was leading the Council. In 1948, he was elected to the Legislative Council. In 1951, he was appointed Liaison Officer for Education. In 1953, he was again elected in the Legislative Council. In 1955, he headed the delegation in England to discuss constitutional reforms, in particular the Universal Adult Suffrage. In 1959, he was elected under the Universal Adult Suffrage. And in 1960, the Governor then appointed him Leader of the House.

Thereafter, since 1961 to 1968, Sir Seewoosagur Ramgoolam held the post of Chief Minister. He was not known as the Prime Minister. The reason why he was called the Chief Minister is the reference that we were still in the process of developing the post of Prime

Ministership in Mauritius just like it started in France in 1624 down from the 18th century from Sir Robert Walpole until William Pitt the Younger, the Conservative youngest MP.

So, there, the Chief Minister was, in fact, executing the job of the Prime Minister. But then, when we started to call the Chief Minister the Prime Minister, it is after the independence. During the process of independence, what happened is that we got the Constitution. And it is at section 59 of the Constitution that the post of Prime Minister really came into existence. At section 59, it says this –

“(1) There shall be a Prime Minister and a Deputy Prime Minister who shall be appointed by the President.”

But at the time we did not have the President, at the time we had the Governor General. So, at the time when we got the Constitution in 1968, it was a post that was appointed by, after election, the Governor General. There are a number of provisions in our Constitution that refer to the Prime Minister and, in particular, at section 61 of the Constitution in relation to Cabinet, subsection (1), it says –

“There shall be a Cabinet for Mauritius consisting of the Prime Minister and the other Ministers.”

And in Mauritius the Prime Minister heads the Cabinet.

So, Sir Seewoosagur Ramgoolam was Chief Minister from 1961 to 1968. But then, since 1968 onwards, until 11 June 1982, this is when Sir Anerood Jugnauth gave him the real blow because Sir Seewoosagur Ramgoolam brought the country to the brink of suicide at the time economically and he lost the elections of 1982 by 60-0 and Sir Anerood Jugnauth, leading the MMM/PSM, took absolute power.

And the change in Prime Ministership style, the change in good governance started to be introduced in the country. But then, I will not go into details for reasons that the people of Mauritius are aware of. In 1983, the MMM/PSM Government broke. Then, in 1983, Sir Anerood Jugnauth was anew elected to head Government and was Prime Minister, and he continued to be Prime Minister for a number of years until 1995. Then, he was elected again Prime Minister and, again, from 2000 to 2005, he was Prime Minister. Then, Sir Anerood Jugnauth became the President of the Republic of Mauritius.

Once you become President of the Republic of Mauritius, you cannot just like that come back to become Prime Minister. It is the will of the people; it is the will of the Nation

that they want a Prime Minister, whether he has served 2 times, 3 times, 10 times, 15 times. We should not forget that in 2014, thanks to the efforts made by hon. Ganoo and the hon. Third Member for Stanley & Rose Hill, hon. Bérenger, there was this alliance, MMM/Parti Travailleiste that was really going to bring the country to a dictatorship. This is when there was an outcry out there. People are asking Sir Anerood: "Please leave your post! The country needs you!" Now, if they would have had a provision in our Constitution or legislation to restrict Sir Anerood from leaving Réduit...

(Interruptions)

Yes, yes! If he would have stayed there, who would have saved this country? Would the Third Member of Stanley & Rose Hill have saved this country? He was more interested in becoming a puppet Prime Minister here.

Madam Speaker: Do not make comments of this sort, hon. Rutnah! Please, do not make comments of this sort and restrict yourself to the debate of the day!

Mr Rutnah: Madam Speaker, I agree but, as a patriot, I stand here today for my people. As a patriot, I have to tell the truth to the people of this country and I have to praise another patriot who sits here today as Rt. hon. Minister Mentor. We should go down in history that he left Réduit to come on the battlefield in order to save the people. Now, how on earth he would have been able to do that if he would have been constitutionally restricted because he had done so many mandates?

In principle, I agree that mandate should be restricted, but not only for the Prime Minister. What about the Leader of the Opposition? The Leader of the Opposition can be professional Leader of the Opposition for eternity. I am coming to the MPs. Hon. Ganoo, I respect him, he has done a lot sitting here as an MP in the House, but why for so many mandates?

Mr Ganoo: On a point of order, Madam Speaker, if it is the argument of my hon. friend that there should be a limitation of mandates for MPs also, I would kindly invite the hon. Member to come with an amendment to the Motion, and then, we will see what is the reaction of all Members of this House. We will put it to the vote at the end of the day.

Madam Speaker: No, since hon. Rutnah started speaking, you must have noticed hon. Member, that time and again I have stopped him from going out of subject. Once again, hon. Rutnah, I ask you to come back to the debate of the day and restrict yourself to what is on the Order Paper today.

Mr Rutnah: Madam Speaker, I am entitled to argue. This is not my Motion. It is a Motion formulated by my very able and learned friend, hon. Ganoo. I do not propose to amend this. If he wanted, if he really was honest, in the principle...

Madam Speaker: No! Hon. Rutnah, I will not allow you to say that hon. Ganoo has not been honest. I would request you to withdraw this word.

Mr Rutnah: So be it, Madam Speaker, I withdraw the word 'honest', but let us say again this is not my Motion. This is how the Motion has been couched and I do not intend to move for amendment of the Motion because I am arguing why we only limit the tenure of the Prime Minister. Why? Why not the Leader of Opposition? Why not Members of Parliament? Why not everybody? Like this, like this...

(Interruptions)

Tania Diolle who is the current could have become the Leader of the Party, MP – young, but anyway. Madam Speaker...

(Interruptions)

Madam Speaker: Hon. Rutnah! Once again, you are going out of subject. You must have read very carefully the Motion which has been presented by hon. Ganoo. I believe, before you intervene, you must have read very carefully the Motion of hon. Ganoo. So, please, once again, I ask you to restrict yourself to the Motion.

Mr Rutnah: Madam Speaker, I am within the Motion and maybe one should understand that we should not simply have tunnel visioning approach in relation to this Motion today. We need to have a wider margin of appreciation of the constitutional importance of the debate because we cannot, in all reasonableness, simply ask the tenure of the Prime Minister to be limited to two. We cannot do that. We need to have a wider margin of appreciation of the issues and this is my point. My point is: if the will of the population is such, if the circumstances of the country is such that even if someone has held the post of Prime Minister for more than two mandates, why he should not be given the opportunity to come back to save the country? Like Sir Anerood did. He saved this country, but putting a limitation on it would be wrong. What should happen is this: a change in attitude, a change in the political landscape that everything should not be by virtue of codified laws like in England.

In England, we do not have a law to restrict Tony Blair to be elected more than two mandates as Prime Minister. Same thing for David Cameron. There is a practice that has developed over the years by virtue of the right attitude adopted in democratic society that if something goes *perché* and if you are not acting within the expectation of the will of the people, or like it happened in Brexit that what you stood for was not accepted by the population, then you go freely and allow someone else to take over. That has not happened in England by virtue of a constitutional provision. It did not happen by virtue of a statutory provision. It happened by virtue of tradition and custom. To me, there is no need for a constitutional amendment or bringing statutory provision in order to limit the tenure of the Prime Minister.

Madam Speaker, I think, I have said enough in relation to the issue of Prime Minister coupled with my introductory remark on the last occasion, and now I will move to the anti-defection law, which is part (b) of this Motion.

In Mauritius, there is a tradition, post-independence, for political parties to go into election in alliance. It started with Parti Travailleiste/PMSD/CAM, then it was MMM/PSM, then it was MSM/Travailleiste and then it was MMM/MSM. So, we always have Governments in this country where we form alliance or alliances and go into election. Now, it has become proverbial in our political arena that sometimes after a few months, sometimes after a few years, sometimes during mid-term, the alliance Government cannot work together. Then, we see some people leaving the Government and some people staying in the Government because some people, by that time, believed in what the Government is doing for the country and some people, for reason of their own self-interest, leave Government. We had recently the PMSD leaving the Government. They said that they are leaving Government because they did not believe in the Prosecution Commission Bill that this Government wanted to introduce. We were subjected to a number of criticisms whereas a similar Bill was being discussed previously when the Third Member for Stanley/Rose Hill was in Government. He, himself, brought the Prosecution Authority and spoke about it lengthily. But then, he decided to join the bandwagon to criticise the Government and part of the PMSD went in the Opposition and some of our friends who believed in the work of the Government stayed on and we are still together. We are working.

Now, if we have an anti-defection law, those who are today, believing in the work of the Government, those who voted in December 2014 to be in Government, but yet a majority left and went in the Opposition. How would these MPs of the PMSD, who are now in

Government, have operated? Even though they do not believe in the reasons why the PMSD left, if there would be a law, an anti-defection law, then they would be coerced to leave the Government in another word.

Now, hon. Ganoo extensively referred to India during his speech. There was a case in the Uttarakhand High Court. It was on 09 May 2016 that the Court upheld a decision of the Speaker of the House, Govind Singh Kunjwal, and that decision was to disqualify nine Rebel Congress MLAs. Thanks to the ruling of the Court that the Chief Minister, Harish Rawat, preserved his post as Chief Minister. The law that governed the anti-defection law in India can be found in the 52nd amendment of the Bill which amended the Constitution. The 52nd amendment of the Constitution also saw the case of Ravi Naik versus Union of India case in the Supreme Court of India. I will come now to the way the anti-defection law works in India.

The object of the Constitution (Fifty-second Amendment) Bill, 1985 partly read as follows –

“The evil of political defection has been a matter of national concern. If it is not combated, it is likely to undermine the very foundations of our democracy and the principles which sustain it.”

The disqualification provision according to the 10th Schedule of the Constitution –

“A member can be disqualified in two circumstances. If he voluntarily gives up his membership of a party or if he votes or abstains from voting contrary to the directive issued by the party.”

These are the two circumstances in which the 52nd Amendment and the 10th Schedule of the Constitution can lead a Member to be disqualified to become an MP. In the case of Ravi Naik versus Union of India case in 1994, the Supreme Court said this –

“Even in the absence of a formal resignation from membership an inference can be drawn from the conduct of a member that he has voluntarily given up his membership of the political party to which he belongs.”

The words ‘voluntarily given up his membership’ has been interpreted in that case as follows –

“The words “voluntarily given up his membership” are not synonymous with “resignation” and have a wider connotation. A person may voluntarily give up his

membership of a political party even though he has not tendered his resignation from the membership of that party.”

So, when we get a decision like this, it binds the hands of a Member of Parliament who does not want to follow his Party who is in an alliance if his Party is clearly wrong. The Courts in India can interpret this as it is, because they have got that law that restricts people from remaining into government, even if their Party is wrong. So, in the Mauritian context, will this work? Will this ever work? My friend, hon. Ganoo, during his intervention, agrees and said this -

“The anti-defection law is, indeed, not an easy law to implement, Madam Speaker. It has already been introduced in India and has known the difficulties that it has known in terms of implementation, but it has been introduced in other countries like Bangladesh, Kenya, Singapore and South Africa.”

But, then, to justify why such law is important in Mauritius, he goes on to say this -

“But, in Mauritius, Madam Speaker, anti-defection law is very important and has the potential of having an insidious effect on our parliamentary system. I am referring to the link which defection might have with our best loser system. As we know, Madam Speaker, the eight additional seats are allocated according to the provisions of paragraph 5 of the Schedule of the Constitution. Whereas the Schedule provides that the first four of the eight seats shall be allocated to the most successful unreturned candidate. Of course, if he is a member of the Party and he belongs to the appropriate community, but regardless of which Party he belongs to.”

Now, if he agrees that the implementation of such a law does not work for the benefit of the Indian people and it is difficult to implement, how, in our culture, how, in our system of Government, how, in our political landscape, we can just, overnight, change the culture and the traditions of politics? How? And there is also the judgement of Rajendra Singh Rana vs Swami Prasad Maurya and Ors.

The Supreme Court held that the act of giving a letter, requesting the Governor to call upon the Leader of the other side to form a government, itself would amount to an act of voluntarily giving up membership of the Party on whose ticket the said Member had got elected.

So, it is the kind of judgement that you would expect if we have an anti-defection law. My very good friend, hon. Teeluckdharry, is pointing out to me that even hon. Ganoo would

have been prohibited from leaving the MMM in case of such a law is passed; hon. Barbier, hon. Kavydass Ramano.

Mr Ganoo: On a point of order, Madam Speaker. Hon. Rutnah has not read the part on which he is commenting, which reads -

“anti-defection provisions to deter the practice of crossing the floor (...)”

We have not crossed the floor.

Mr Rutnah: No, Madam Speaker, when we say crossing the floor - and again, as lawyers, we have to have a wider margin of appreciation of the issues. Crossing the floor, in a wider sense, does not necessarily mean crossing the floor from the Opposition to Government. Crossing the floor means from one side to the other - overnight! But, anyway, if my learned friend, hon. Ganoo’s view is that crossing the floor simply means crossing the floor from Opposition to Government or Government to Opposition, then so be it, but I do not subscribe to this view, and I am entitled to my view. I am entitled to interpret matters as I deem fit to interpret.

But, in any event, the two cases that I have pointed out from India are clearly cases that have created lots of difficulties in India itself, as rightly pointed out by hon. Ganoo himself. Now, are we going to really pass a law about this? Do we need or do we need a change in the attitude of people who are in politics in this country? Is it not right that we need to have political honesty, political integrity to serve the Nation and to serve the country? Sometimes, people cross the floor because of their own self-interest. Sometimes, people cross the floor for the sake of the Nation, for the sake of their country, for the sake of their children.

But what happens if you have a law that says that you cannot defect, and your people want you and you are needed by the Nation? Your presence is so important in the government that it can change the course and the destiny of a country! So, why should we bind ourselves, why tie our hands mandatorily? Why cannot be a free country, a democratic country, but with principle, with integrity, with honesty, with devotion, with perseverance to serve the country and the people? Why not? Why everything should be about law? Why everything should be about constitutional changes?

Yes, if you want to change, change for good, change for the better, change for the best! But not simply to score political points; not simply to go out there and say, “You know, suddenly, I have come out of this coma and realised that we need a law codified in relation to anti-defection.” Madam Speaker, it would be wrong to do so.

Madam Speaker, in relation to the third part of the Motion dealing with this issue of gender quota, the Motion reads as follows -

“gender quota for fairer representation of women in the National Assembly;”

Madam Speaker, insofar as gender issue is concerned, we have come a long way since our independence. Today, we have the Head of the State, the President, who is a woman. Madam Speaker, we have you, the first Speaker of this House. I see the hon. Vice-Prime Minister is smiling, and she knows that I am going to be coming to her. When, in this country, we had a female Member of the House sitting in the front bench and holding the title of Vice-Prime Minister? When? When was the last time we had an Education Minister, a lady Education Minister? When?

(Interruptions)

Only two days ago, Madam Speaker, she has presented a Bill that is going to shape the future generation of those who are going to be embarking in higher education. If we go to our Supreme Court, the number of women Judges sitting in the Supreme Court; the number of Magistrates sitting in our Intermediate Courts and District Courts; the number of women holding high position in the Civil Service; do we really need a law or do we need a change in our mindset?

(Interruptions)

Yes, *aret zour madame!* He is right! And madame also, *aret zour missier!*

(Interruptions)

So simple! If we want to coexist, we have to have mutual respect. You cannot be treating a man ‘*aboyeur*’ and you cannot expect reactions.

(Interruptions)

But I am not going to go into details.

Madam Speaker: No, I am not allowing you to go into details.

Mr Rutnah: But, Madam Speaker, hon. Ganoo, when he was in power, when he was sitting in Government, why he did not come with a proposition that we should change our Constitution; that we should change our law? He did not do it then. Why? Because if we think objectively, if we think rationally, it is not realistic; it is not practical. If you go in a Constituency, and if people are not interested, people of the opposite gender are not interested

in politics, are we going to pass a law to force them to come into politics? But I know, Madam Speaker, the effort that you have made; the setting-up of the Gender Caucus. Why others did not do it? We had so many Speakers of the House since 1968 onwards. Why they did not come up with a Gender Caucus? Why they did not make that effort to allow the participation of more women in politics and coming into the National Assembly?

Madam Speaker: Hon. Rutnah, I do not think I would allow you to talk about previous Speakers or to drag me into this debate, please!

Mr Rutnah: Thank you, Madam Speaker. I always stand guided by you, Madam Speaker, and I am grateful for your assistance.

Mr Ganoo: If the hon. Member would give way, Madam Speaker, the hon. Member said: “Why didn’t hon. Ganoo, in the past, do anything to enable a fairer representation of women?” This is the question the hon. Member put to me. I would just like to inform the hon. Member that there has been a Motion in the Opposition at that time...

Madam Speaker: Is that a point of order? I don’t think, hon. Ganoo, it is a point of order!

Mr Ganoo: If you will give way, it is a point of personal explanation!

Madam Speaker: I believe that if you have to refute the arguments of the hon. Member, then, in your summing-up, you can refute his arguments, but if it is a point of clarification, I would allow you to clarify whatever you want to say.

Mr Ganoo: On a point of clarification, just to get the debates in the right perspective. In fact, when the previous Government amended the Local Government Act to allow representation of women at the local Government level, which is the case now, the then Opposition, of which I was a Member and the MSM also was in the Opposition, came with a Motion that we should do it also for a fairer representation in Parliament, but then this Motion was not agreed to.

Mr Rutnah: Madam Speaker, as I said, my learned friend is a man of experience and I am grateful that he drew my attention, and, in fact, he is right because there was this law that came in the Local Government Act that made it mandatory for a number of women candidates to be presented for the Local Government Election, and he is absolutely right in respect of that. But I did not say when the hon. Member was in Opposition; I said when he

was in Government. When he was in Government, he did not do much effort. He is always making effort when he is in Opposition

(Interruptions)

But it is okay!

(Interruptions)

But it is okay! At the end of the day, like I said the other day, be it in the Opposition, be it on the Government side, Madam Speaker, when we get elected, we come to work for the benefit of the nation, for the benefit of the country, for the benefit of the people, for the benefit of the children of this country. And if you become wiser when you are in Opposition, then so be it.

If I may refer to an article of the ‘Gender Quota Database’, and I will read a few parts of it which are of relevance. In fact, there are many advantages of bringing equality, and I will read from what has been produced by virtue of a research that has been made, and it says this –

- “Quotas for women do not discriminate, but compensate for actual barriers that prevent women from their fair share of political seats.
- Quotas imply that there are several women together in a committee or assembly, thus minimising the stress often experienced by the “token” woman.
- Women have the right as citizens to equal representation.
- Women's experiences are needed in political life.
- Election is about representation, not educational qualifications.
- Women are just as qualified as men, but women's qualifications are downgraded and minimised in a male-dominated political system. It is in fact the political parties that control the nominations, not primarily the voters who decide who gets elected. Therefore, quotas are not violation of voters’ rights.
- Introducing quotas may cause conflicts, but maybe only temporarily;
- Quotas can contribute to a process of democratisation by making the nomination process more transparent and formalised.”

But there are also disadvantages associated to it, and research has published that –

- “Quotas are against the principle of equal opportunity for all since women are given preferences over men.
- Quotas are undemocratic because voters should be able to decide who is elected.
- Quotas imply that politicians are elected because of their gender, not because of their qualifications and that more qualified candidates are pushed aside.
- Many women do not want to get elected just because they are women.
- Introducing quotas creates significant conflict within the party organisation.
- Quotas violate the principle of liberal democracy.”

There is another research, a debate on gender quota and, in this research, the argument against the use of quotas are as follows...

Madam Speaker: Can we know the source of the research?

Mr Rutnah: Yes, Madam Speaker. It is called: “Debate on the Use of Gender Quotas” from the community portal of wikigender.org statistics. It says as follows –

- “Quotas have a tendency to promote cultural beliefs in essentialism, such as women representing women means they cannot represent men, or that all women represent all types of other women.
- Not all gender quotas legislation is equally effective in the goal of facilitating the election of a substantial proportion of female legislators.
- Quotas are against the principle of equal opportunity for all.
- If women are not present in a given area, it is simply because they do not want to.
- Quotas are considered being undemocratic - when used in a political context - because they “impose” some candidates.
- With quotas, women would be chosen because of their gender and not for their qualifications or merits.
- Against the use of quotas, other alternatives are suggested such as reinforcing skills training for women, granting more financial aid, organising flexible maternity leave.”

In this research, the argument for quotas - because I have taken two separate researches to demonstrate the pros and the cons - and in this one the “Arguments for the use of quotas”.

- “Quotas for women allow women not to represent only women or types of women but will allow women to proposition those issues that males may not identify with or see important.
- Quotas would help eliminate structural discrimination opening doors for women to work outside of their perceived expectations.
- Quotas can be considered as a compensation for barriers or existing prejudices preventing women to access the position in question. In that way, quotas are an “attempt to redress entrenched privilege.
- Women are as qualified as men but they are not able to exercise their skills because of various factors.
- They have a right to equal representation, equal citizenship and equal rights.
- When used in a matter of political representation, one of the strongest arguments is the need to represent the entire population (which constitute of 50% of women).
- In business also this idea can be applied: managers need women’s experiences to better answer the needs of the market.
- Quotas have now been implemented in several countries and they did not lead to the representation of unqualified women.”

Now, these are the pros and cons.

Insofar as parliamentary quality is concerned, the UK is listed 48th and it is suggested that even the UK should learn from Rwanda and from countries like Senegal.

I see the time. Madam Speaker, I do not propose to go very much in details; otherwise, we will not have time to debate all the issues in relation to the Motion.

Again, I would say this that we do not need laws, we do not need constitutional amendments. What we need is the will - the will to live and let live. We cannot always have a male dominated political arena because, at the end of the day, we are all one, we are all the same. There must be self-respect and mutual respect. Mutual respect is something very important because if we do not have mutual respect, can you imagine the kind of upbringing

our children will have? To do that, we do not need a law. What we need is self-respect: self-respect to allow for greater women participation in all spheres of activities, not only politics, everywhere. I am glad, today, when we go even to universities in Mauritius, we see a significant proportion of women lecturers, professors who are setting the example, who can be looked at as role models. We do not need law for that, we do not need provisions to be entrenched in our Constitution. What we need is the right attitude, is the right mindset.

(Interruptions)

Equal consideration, like the Minister Mentor is saying, but we cannot force people. We have to encourage people and, in doing so, we can change. We can start by changing a nation, but, eventually, we can change the world. If we set the example, we can reach the goal; we can reach the moon.

Madam Speaker, I will now move on to the “review of the powers of the Electoral Boundary Commission with regard to the delimitation of constituencies”. The Boundary Commission is an important institution. It is the Boundary Commission that decides how constituencies are mapped. Let us we look at section 39 of our Constitution that deals with the issue relating to boundary –

- “(1) There shall be 21 constituencies and accordingly –
 - (a) the Island of Mauritius shall be divided into 20 constituencies;
 - (b) Rodrigues shall form one constituency.”

And at subsection (2) -

- “(2) The Electoral Boundaries Commission shall review the boundaries of the constituencies at such times as will enable them to present a report to the Assembly 10 years, as near as may be, after 12 August 1966 and, thereafter, 10 years after presentation of their last report:

Provided that the Commission may at any time carry out a review and present a report if it considers it desirable to do so by reason of the holding of an official census of the population of Mauritius and shall do so if a resolution is passed by the Assembly in pursuance of subsection (1).”

Subsection (3) -

“(3) The report of the Electoral Boundaries Commission shall make recommendations for any alterations to the boundaries of the constituencies as appear to the Commission to be required so that the number of inhabitants of each constituency is as nearly equal as is reasonably practicable to the population quota:”

And really, it is this subparagraph that says it all where it is “reasonably practicable to the population quota”.

It goes on provided that the number of inhabitants of a constituency may be greater or less than the population quota in order to take account of the means of communication, geographical features, density of population and the boundaries of the administrative areas.

Madam Speaker, it was in 2009 that the last Boundary Commission reported in relation to boundaries, which was chaired by my very able and learned friend, Mr Yusuf Aboubakar. Since then, really no one has applied their mind to it. But, as it is at the moment, is there anything wrong with our boundaries? Is it wrong to have a higher number of population in one constituency than the other? Does that create an imbalance in the election? It may be yes or it may be no. But, at the end of the day, the issues that affect a nation determine how the nation is going to vote and how the people are going to vote. Be it of whatever boundary, the day the people have decided that they would vote in a certain manner, whatever boundary you change, you cannot just divert the course of the result and the will of the people during the course of an election.

Are we saying, by virtue of this Motion, that our Electoral Supervisory Commission and the powers given to the Boundary Commission are not working properly and that is why we need a change? My friend, hon. Ganoo, has not particularised. Why? He has not said what is wrong really with the current system. He has simply given figures that in certain constituencies, we have so many people, in other constituencies we have so many people and because of that it is not good, it creates an imbalance. But that is no reason. That is not good reason enough to come up and say that we need really this review of the powers of the Boundary Commission with regard to the delimitation of the constituencies.

Now, in relation to item (e), recall mechanism of the parliamentarians who are failing in their duties as elected representatives, are the MMM MPs, the Labour Party MPs and the PMSD MPs today fulfilling their duties as parliamentarians? On the last occasion, during the debate on the Higher Education Bill, none of the PMSD MPs was present in the House.

Previously, during the debate on the Equal Opportunity Bill, none of the PMSD MPs was present in the House. Are they fulfilling their duties?

Now, what happens if tomorrow people start making complains that: “I went to see hon. Rutnah at the Cab Office at Rivière du Rempart, I told him that my son has applied for a job of Educator at PSC and he turned round and said to me that he cannot interfere with the functions of the PSC.” Then, he starts making complaints, saying that hon. Rutnah did not do anything for his son. Am I going to be reprimanded for that?

What happens if someone goes and sees any of my friends here, on both sides of the House, and asks to do something which is really illegal and you refuse to do so - like I do - and they start making complaints, they go through complaint procedures? Are we going to then embark in an investigation and start to reprimand MPs? But when MPs do not really fulfil their obligations - you can see live here, this is a classic example - who is going to reprimand them? Not the House, not the Prime Minister, not even the Deputy Prime Minister, not even the Vice-Prime Minister, but out there, the people.

We are a Government of the people, for the people, by the people. If you do not fulfil your duty as an MP here, you will be sanctioned. There is no need for a recall mechanism. It would be undemocratic, it is going to be something that is going to be imposed on the people because you are then saying to the people that you should not have voted his man, and I, as a mechanism, derive power now to take your MP away. Now, how is that mechanism going to assess whether the MP has fulfilled his duties or not? How is he going to do that? Is he going to go house by house in a constituency and ask whether MP Rutnah is doing well or not in Constituency 7, Piton-Rivière du Rempart? Is he going to carry out a sample of survey or is that mechanism going to call a ballot box, a vote to ascertain whether I, as an MP for Piton-Rivière du Rempart, have fulfilled my duty or not? So, we are embarking on very dangerous territories here when we suggest that we should have a recall mechanism for parliamentarians. Very dangerous and murky territories! Madam Speaker, I see the time and I have got few more issues to deal with.

Madam Speaker: So, can I know for how long?

Mr Rutnah: Madam Speaker, I have got (f) and (g).

Madam Speaker: In terms of minutes?

Mr Rutnah: In terms of minutes, if I can be given five minutes on both items.

Madam Speaker: Only five minutes?

Mr Rutnah: Five minutes on both.

Madam Speaker: If five minutes, then okay!

Mr Rutnah: Madam Speaker, I will straightaway move on to the introduction of second generation “development and environmental rights”. In dealing with this issue, let me say what hon. Ganoo has said when he was on his feet on the last occasion. He said -

“The second-generation, socio-economic human rights guaranteed equal conditions and treatment, Madam Speaker. In fact, this second generation rights are not rights directly possessed by the individuals, by the citizens but they constitute positive duties upon the Government to respect and fulfil them. The third generation, collective development rights of the people, Madam Speaker, are usually held against the States.

We are concerned with the second-generation rights, Madam Speaker, the socio-economic rights and also the environmental rights. The time has come for us, as a signing democracy which we pretend to be, to seriously reflect on that issue, Madam Speaker. Increasingly, there have been calls on politicians, on elected representatives, on Government to protect the growing body of social and economic rights which are to be found in the International Covenant on Economic, Social and Cultural Rights and in other covenants, Madam Speaker.”

I will just say two words. Are we saying that the intention of hon. Ganoo is really to pass on the message that we are not compliant with the International Covenant on Economic, Social and Cultural Rights? Only the other day, we had the presentation of the law which made the National Minimum Wage a reality. The other day, we had the Additional Remuneration Bill that allocated, across the board, Rs360. Pensioners living a better life; people who used to work for Rs4,000 or Rs5,000 will now automatically earn Rs9,000. Are we saying that we are not compliant with the second-generation development and not respecting the social, economic and cultural rights?

We see all sorts of cultural organisations operating freely in Mauritius. There is no restriction, unless you carry out any prohibited act, which is sanctioned by law. Of course, we have got the Public Order Act. But we have to have a balance for a safe country. And, again, it is not necessary to have a provision entrenched in the Constitution, because we can sit here, discuss, and do it. The fight against poverty is ongoing. The fight against income inequality is ongoing. The fight for equal pay for equal work is on. So, there is no need for that.

Dealing with the last part of the Motion, Madam Speaker -

“(g) enhanced process of appointment of the President for institutions designed by the Constitution and the laws of the country to maintain democracy, uphold good governance and the rule of law.”

Madam Speaker, if I have to speak about the rule of law, I can start from evidence up to all the judgements in England, up to the Supreme Court of Mauritius, but it will take at least three hours for me to develop the theme! But let me say this in a nutshell. I am proud to say that we are a democratic country. We have got a President who is appointed by virtue of the law and the Constitution. We have a Constitution that has been tested in the Supreme Court on many occasions. And if there are any provisions that appear to be anti-constitutional, those provisions can be tested at the Supreme Court of Mauritius.

Why this perception that is being demonstrated, by virtue of this Motion, that we might be undemocratic, that there might be no respect for the rule of law? People are treated equally in the eyes of the law. I have heard from hon. Members of the Opposition, on so many occasions, that they trust our Judiciary. Some have said that the Judiciary *est le dernier rempart* and people are treated equally before the law in this country.

Yes, now and again, we have criticisms against our Police Force. That is something very normal. In all countries, people criticise the Police Force. But if there are serious issues that affect human rights - I have taken Police Officers to task, the former Commissioner of Police to task when I felt that my clients' constitutional rights, human rights were not being respected. I have! My learned friend, the hon. Deputy Speaker has! And we have got mechanisms for the check and balance. I see that the hon. Chief Whip is saying to me that time is up.

Madam Speaker, if time is up, so be it. But I am proud today, I stand here in the House, in a democratic society, and we can debate, we can exchange ideas, and hon. Ganoo does not take it personally. He will not go out there and attack me personally like others have done. We are today exchanging ideas. I disagree with him today, but I respect him for the Motion he has brought. But, unfortunately, I do not subscribe to his Motion on the basis of the arguments that I have advanced today.

Thank you very much.

Madam Speaker: I suspend the sitting for half an hour.

At 4.39 p.m., the sitting was suspended.

On resuming at 5.22 p.m. with Madam Speaker in the Chair.

Madam Speaker: Hon. Gayan!

The Minister of Tourism (Mr A. Gayan): Thank you, Madam Speaker. Madam Speaker, let me, first of all, say that I am very happy that hon. Ganoo is still in the House when he should be busy campaigning for his candidate in Constituency No. 18. But I think it is to his credit that having presented the Motion, he is in the House to listen to what everybody has to say. So, this is a good show of democracy.

Having said that, Madam Speaker, I wish to say that I have gone through the Motion of hon. Ganoo.

(Interruptions)

Anyway, we wish you good luck!

The Motion of hon. Ganoo is, I think, far from being *rassis* as some people pretend. It deals with matters of great importance for a democracy, for governance, for the rule of law and for the major principles and philosophies that make a State a modern State. These issues never get stale; these issues are always relevant and it is important that we are in this House to debate what is important. We may not agree with what hon. Ganoo is proposing in his Motion, but I think it is worth in this House, for once, to debate on issues and not on personalities and people. This debate is about issues and this is why I am happy to be able to make my contribution on this particular Motion.

The first part of the Motion, Madam Speaker, states that since we are in the context of the celebrations of 50 years of independence and 25th anniversary of the Mauritian Republic, we should have the Constitution of Mauritius enacted by the sovereign Parliament of the country. Now, I interpret the word ‘enacted’ as meaning enacted in a law, in a regulation and the Motion might be construed as meaning that ‘there has been no enactment of the Constitution of Mauritius within the sovereign Parliament of this country’. That is not quite the case. It is true that the Constitution of Mauritius started its life as an Order in Council in 1968. I am looking at the Constitution of Mauritius and, on the very first page, there is a footnote that says –

“This Constitution was originally published as the Schedule to the Mauritius Independence Order 1968 in GN 54 of 1968.”

The Order was complemented in the UK by the Mauritius Independence Act 1968. The Mauritius Independence Order 1968 and the Mauritius Independence Act UK were last officially published in Mauritius in the Revised Laws of Mauritius 1981 in Volume I and there has never been any challenge to the Constitution. It is true that in some countries there have been Constituent Assemblies that work on the Constitution and then it is adopted by referendum or whatever. This did not happen in Mauritius because we had a lot of history by belonging to the Commonwealth. A lot of Constitutions had been adopted in other countries, and this Constitution is a reflection of what happened in many other Constitutions around the Commonwealth. But the fact that it has not been adopted by a Constituent Assembly does not mean that we do not have a Constitution and that we are not a sovereign State. We are a sovereign State and the very fact that we are here debating about this particular Motion is a clear illustration of what a sovereign State is all about.

Since 1968, we have been independent. We have taken decisions as a nation in our capacity and in our role as a sovereign independent State and this is what we have done for the last 50 years, and this is what is going to continue. The mere fact that there has been no Constituent Assembly does, in no way, impair the validity of the Constitution, which is the Supreme law of the country.

So, I believe the first part of the Motion is redundant, is not necessary, and I would like to move on, Madam Speaker, to the other parts of the Motion which deal with specific items. The first part of the Motion deals with the limitation of the tenure of the Prime Minister. Now, I believe that a democracy is what we are and in a democracy the people decide. The people are the ones that decide upon who is Prime Minister, who is a Member of Parliament and who is rejected or whatever. This is what democracy is all about. But since there is a debate, and I must admit that there is a debate worldwide about the number of terms that a President or a Prime Minister or even an MP or a Leader of the Opposition can stay while being in office.

I will take the example of the United States, Madam Speaker. In the United States, the Constitution of the United States, until 1951, never had any provision regarding the limitation of mandates for the United States President. Never! But it became a Convention when George Washington became the first President of the United States after the Civil War, the Civil Revolution. He limited his Presidency to two terms. So, George Washington, the first President of the United States, stayed only for two terms and then it became a Convention.

But, as all Conventions, something happens, and it happened in the 1930s when President Roosevelt was elected President. He was elected again for a second term in 1936. Then he was elected again in 1940 and he was able to do that because there was no constitutional impediment to his standing again as President of the United States. And then he was elected the third time in 1940 and then he was elected a fourth time in 1944. Then, the war broke out, President Roosevelt died and Truman took power. So, all these things happened. Then, the idea germinated in the minds of the American Senate that they needed to have a limitation of the terms during which a President can be a President. And then they had a constitutional amendment. That amendment was passed and it had to be ratified by two thirds of the States of the United States, and it took about six to seven years for that amendment to be ratified by the country. And it was only in 1951 that this particular limitation of mandate became the law, the constitutional law of the United States.

So, we should not always believe that this has been the case all the time; things move on. And when there was this mandate, the limitation of two terms, some Presidents wanted to continue. President Barack Obama said he regretted not being able to stand a third time; President Ronald Reagan regretted that he was not able to stand a third time. So, I believe that just having a limitation on the tenure of Presidents or Prime Ministers does not solve any problem. In fact, it brings arbitrariness and rigidity in a system. We must have a flexible system where people can decide, depending on the will of the people, whether they continue in office or they move on.

Let's take another case in Africa! After the decolonisation in Africa, many African Presidents thought that democracy was an alien culture to Africa and that they had to do away with the democracy, as we understand democracy today, and they became Presidents for life. They had a one-party system. That was the case for many, many years, and then when you are President for life, no one can get rid of you, except by a *coup d'état*. So, that is when *coups d'état* became very popular in Africa. So, the only way to get rid of a President for life was by killing him. And then things moved on, there was this increasing awareness of the will of the people, democracy when the Cold War ended.

Then, the United States and the Western countries decided that democracy was good in itself and that it had to be imposed on countries and Africa, today, has moved on. What are the facts on the ground regarding Africa? Many Presidents, seeing that their two terms are over, amend the Constitution to be able to stand again. They have referendums. They have all sorts of other techniques just to keep staying in power. In Congo (DRC) right now, President

Kabila should have left office more than a year ago; he is still fighting on. He has tried to amend the Constitution, but it has not worked and there is a lot of pressure for him not to stand again. President Obasanjo of Nigeria - he was very popular in Nigeria - wanted to amend the Constitution to be able to stand a third time. He was not able to do that. Nearer to us, in Namibia also, Sam Nujoma wanted to amend the Constitution to stay on.

So, the problem is that as long as the basic tenets of democracy are being complied with, there should be no rigid rules about anybody continuing in office. So, I honestly believe that, although as a matter of academic interest, this is fine, but in terms of pragmatism, in terms of governance, I think this is not something that we can bring into the Constitution. Let the people decide. If somebody is elected and keeps getting elected, that is the will of the people and no one else should interfere with that. Let me also say that we like to take the example of the United Kingdom as the mother of democracy and the cradle of democracy. When there was the Second World War, Madam Speaker, Winston Churchill was the Prime Minister. The Parliament in the United Kingdom extended the terms of office of Winston Churchill by another five years. This is the fact. So, even if you have conventions or even if you have rules, reality sometimes can work against the rules and you need to be able to have the flexibility to take decisions that are required at the time that they need to be taken. So, with regard to this particular part of the Motion, I am afraid that this is something that is not sustainable in a vibrant and viable democracy.

There are other kinds of debates. Should one tenure be four years? In France, until the law was changed recently, the presidential term was for seven years, and then they changed it to five years. In the United States, the President is in office for four years. In the UK, the term is normally five years. There was a move in the United States again when the limitation of mandate was being discussed; they wanted it for six years. There is no magic in any figure, but there has to be a term limit in terms of years, but I do not think that there has to be a limit in terms of tenure. I think this is something that has to be said, and I hope that hon. Ganoo understands the philosophy behind what I am saying, that in a democracy, it has to be workable and it has to be flexible enough to enable any Government or any system to keep operating as a going institution.

Let me come, Madam Speaker, to part (b) of the Motion regarding anti-defection provisions to deter the practice of crossing the floor. Again, we go back to basic democratic principles. Hon. Ganoo, of all people, must know what happened in 1990 when there was the alliance between the MSM/MMM. In order to pave the way for that alliance, something had

to be done. The party could not move all inside Government, but the Leader of the party - I think it was the present Third Member of the Constituency that we talked so much about - was offered and accepted the post of expert in disarmament. I am sure we all recollect him attending all those big conferences. He had become the expert in disarmament. He was advising Moscow. He was advising Washington. But wasn't that technically a crossing of the floor? In 2014, the same Third Member, who is the favourite of my dear friend, hon. Rutnah, agreed for this Parliament, this cradle of democracy - which hon. Ganoo is so keen on preserving - to be closed for nine months. This is democracy! Because there were *coz cozer*. I don't know how much *coz cozer* we can *cozer* in nine months, but anyway, this is what happened.

(Interruptions)

Madam Speaker: Please!

Mr Gayan: I do not want to personalise the debate, but I am just saying that when we talk about issues and principles, we must have history as our background, as hon. Rutnah mentioned earlier on. I am sorry that I did not get to hear a lot more about what he had to say because, Madam Speaker, you stopped him from enlightening us.

Madam Speaker: I am sorry, but I think I had to!

Mr Gayan: So, when we are talking about anti-defection provision, Madam Speaker, again, things can happen inside a party, things can happen in any Government, things can happen any time. But does it mean that there will have to be laws to prevent freedom of thoughts, freedom of association of any Member in this House? Is it normal? Hon. Ganoo, himself, in 2015, was in the MMM. He is no longer in the MMM. I am not saying that he crossed the floor, but he left his party under whose banner he had been elected to continue to serve in the House. I am not saying that he is wrong. Far from it! I think the hon. Member is right. He should have done it earlier.

(Interruptions)

Well, I am being informed by the Minister Mentor that he crossed part of the floor. So, there is still room for improvement. But anyway! I am not picking a quarrel with the hon. Member.

Mr Ganoo: Madam Speaker, if the Minister would give way. In fact, this part of my Motion has been inspired from what was proposed in your own electoral manifesto at 256, "An anti-defection legislation (...)."

Madam Speaker: Hon. Ganoo, I told you earlier that if you raise a point of order or a point of clarification, I would allow you, but this is neither a point of order nor a point of clarification. You are refuting arguments which you can do very well in your summing-up, please!

(Interruptions)

No! Hon. Gayan, please proceed!

Mr Gayan: The hon. Member is just delaying the time when he had to campaign in Constituency No. 18. But anyway, I think, hon. Rutnah spoke lengthily on this anti-defection provision. I do not need to dwell more, except to say that ideally somebody who is elected inside a party on the same manifesto will stay in that party. Indeed! But things can happen when fundamental changes or differences arise. Should we prevent people from not crossing the floor but from walking out with some other options that are available? So, I believe that this again, in a country that prides on freedom, is something that is not, in my humble submission, tenable.

Let me move to (c) because we want to give chance to hon. Ganoo to go to No. 18.

“(c) gender quota for fairer representation of women in the National Assembly”

I think the debate is a serious one. People may have different views about what we must do to ensure a better and fairer representation of women not only in the House but in all institutions in the country. Madam Speaker, you will recall that you organised a seminar or something at Ebène on gender issues. Members of Parliament were invited and I took the floor at that seminar because we all wanted a better representation of women in the House and elsewhere. I said, at that seminar, that when we see how women are treated in politics, how women are taken to the gutter by Members of this Parliament who are in the Opposition, how they downgrade, degrade, humiliate, victimise and intimidate women, how do we expect women to come into politics.

(Interruptions)

I am sure hon. Ganoo knows what is being said about Tania Diolle, his candidate in No. 18.

(Interruptions)

Madam Speaker: Please, do not mention names!

Mr Gayan: Alright! But we need to remember that if a woman is serious about entering politics, when they see - and now it is all live on television - the shameful conduct of Members of Parliament attacking women, who are not in the House...

(Interruptions)

Members of the Opposition and, in fact, hon. Ganoo himself - I can go to Hansard - is also guilty of that in the beginning.

(Interruptions)

Yes, I can go to Hansard! He also has attacked women, and I think that this is ...

Mr Ganoo: Madam Speaker, the hon. Minister cannot level an accusation, a serious allegation against me. He just said that hon. Ganoo attacked women in a Hansard. Where is that? Can he quote, please?

Madam Speaker: No, hon. Minister, I think you should withdraw this. Please do withdraw! Hon, Ganoo has a point.

Mr Gayan: I withdraw.

(Interruptions)

Madam Speaker: No! Hon. Ganoo, you have made your point.

Mr Gayan: Okay, I will talk to my friend, hon. Ganoo and I will show him, but for present purposes, I withdraw this.

(Interruptions)

Yes, I will, eventually! Well, regarding gender quota, I know some countries have enacted legislation to impose a 30% - SADC says 30% - or whatever they say, but then, at the same time, the debate about equality has to be looked at in the same context as equality of opportunity for women to join politics or any other profession.

There was an article in one of the papers where somebody was saying that doing this will be tantamount to discrimination. This is something that needs a debate and this is why we cannot, on this side of the House, agree to this kind of principle or idea without a full discussion of all the implications of this matter on all the institutions of the country. I know it is fashionable today to talk about all these things, but there are implications and we need to be able to look at it in a dispassionate and very calm way so that more women join politics,

but they join politics not to be attacked, they join politics to serve, they join politics to make a contribution to the country in the public interest.

There are lots of very good women outside who would love to be able to stand in this House and speak about issues of national importance and of great importance for society at large. But they must also be given the assurance that once they join, they will not be vilified, their private life will not be dragged into the public and that they will not be subjected to degrading conduct on the part of male Members. Not only male Members, even female Members! No, I won't go into that.

If the other Members of the House were here, then I will have to talk about how sometimes we use to say *l'homme est un loup pour l'homme*. Sometimes, the same can be said about women, and I know hon. Ganoo knows what I am talking about. Let me come to (d), which deals with the –

“review of the powers of the Electoral Boundary Commission with regard to the delimitation of constituencies.”

Now, I think the Electoral Boundary Commission is an independent body. They have their work to do. How is it going to be reviewed and what kind of reviews are we talking about for the Electoral Boundary Commission? We all know about the gerrymandering in the United States; how constituencies are delimited according to which party will be favoured. All these things happen in other countries. In the UK, I think, it is more transparent. But we have an independent body. Let it work, and if somebody is not happy with the way the work of that body is being conducted, then there are ways to challenge by way of judicial review, by way of other things.

We can always challenge if there has been a flagrant injustice done to any constituency or to any group. But I would like to say that every country has its own specific problems, every country has its own constitution which is designed for that particular country. The institutions of the country are designed in such a way to meet the concerns of that particular country. The Electoral Boundary Commission is one of them. So, instead of embarking on something that may be more disastrous than what we have, it is better to have the devil we know than the devil we don't know.

Let me come to –

“(e) recall mechanism for the parliamentarians who are failing in their duties as elected representatives.”

Again, Madam Speaker, this is wishful thinking and wishful bashing of parliamentarians. How does one decide and who will decide that an elected representative has failed in his duty? When a Member leaves his party to form another party, has he failed in his duties as an elected parliamentarian? Again, we tend, in Mauritius, to borrow ideas and institutions from other countries. In the United States, in California, they have this mechanism of recalling elected representatives. But can we simply import something from a country and put it in Mauritius without thinking about all the implications, why that particular mechanism exists in that particular place and what are the checks and balances that exist in that country?

So, this is why I believe that hon. Ganoo, *en voulant bien faire*, has not given the necessary thought to all the implications of this particular Motion, because it is so subjective. What kind of mechanism can we have to decide that somebody has failed in his duty as an elected representative? Because he has not been able to meet the demand of one particular elector! Because he has not gone to his constituency for one week! What are we talking about? Are we going to have a system which will make life impossible and unbearable for parliamentarians? Because you will be always at the risk that somebody is saying: “I am going to trigger that mechanism to recall you as a parliamentarian.” Will Members of Parliament be at the beck and call of those people all the time? Will they be subjected to a form of tyranny on the part of those who can trigger that mechanism? Is this what we want? And this is certainly not what we, on this side of the House, envisage.

Let me come to -

“(f) the introduction of second-generation “development and environmental rights;”

Again, Madam Speaker, simply talking to academics without having feet on the ground, without having a sense of pragmatism is not something that we need to waste the time of the House for.

We talk of development and environmental rights to be introduced because they are second-generation developmental and environmental rights. What are we talking about here? We have a first-generation of fundamental rights: the right to life; the right to personal liberty, etc., which are well set out in the Constitution of Mauritius.

In Mauritius, we already have the rights; free health, free education, and now we are talking of second-generation development rights. What is this? We want to give to every single individual in the country the right to challenge any project because we have affected his second-generation development rights. Will that right be subjected to judicial review

before the Supreme Court? Is that what we want to do? I do not know what is in the mind of somebody who says, “You have violated my second-generation environmental rights”! Every activity that takes place, every development that takes place in any country has a downside to the environment. But it is not because there is a downside to the environment that we should stop all development activities in the country. We should ensure that we protect the environment; we preserve what we have; we enhance the environment; we make it better. But we cannot have a system where anybody can go and challenge before the Courts any project of Government because it affects their second-generation development and environmental rights. Because if we have this kind of rights in the Constitution, it will become enforceable and the Supreme Court will have to decide on this, and it is going to paralyse the whole system of Government.

But what has happened in other countries? Hon. Ganoo must be aware of this because I understand he spoke a lot about India. The Supreme Court of India has interpreted all these rights as being subsumed under the right to life. Under the right to life, anything can be absorbed. In fact, I have some examples of how this has happened in India with regard to the right to privacy. There was no right to privacy. It was only in 2017 that the Supreme Court of India gave a judgement upholding the right to privacy. But while upholding the right to privacy, the Supreme Court also said that there are limits to how far this right to privacy can exist because the State also has the power to impose reasonable restrictions for legitimate aims such as national security, prevention and investigation of crimes and distribution of welfare resources.

So, what the Supreme Court went on to say, and I quote -

“What stood out was privacy being declared intrinsic to right to life and that it formed part of the sacrosanct chapter on fundamental rights in the Constitution, which has been regarded since 1973 as part of the basic structure, immune from Parliament's interference.”

But when we talk of India as well and when we talk of second-generation rights - second-generation rights, although it is not specifically mentioned in the Motion, deal with cultural rights, traditional rights. And there are attempts in some countries to upgrade the cultural rights to the level of fundamental rights. But there is a problem! Again, there is a downside to anything that we do. The downside to that, Madam Speaker, is that, in some societies, the culture and the traditions say that women are not equal to men, that they do not

enjoy the same rights as men. There are lots of countries like that. And if we were to upgrade the second-generation cultural rights to the level of fundamental rights, then we will be creating another discrimination against that kind of situation where women are dominated, when *la mouvance internationale aujourd'hui c'est de créer l'égalité entre la femme et l'homme*.

So, again, when we talk about these things, we have to be very careful about what we are talking about and how what we are talking about makes sense in a democratic society like Mauritius. But let me also say that in India they have gone further. The Supreme Court, in 2014, upheld the right of the Hijras and declaring that they are the third gender. The third gender! Again, this is without any constitutional amendment. It is by virtue of the interpretation which the Supreme Court of India has, by expanding the scope of the right to life and the right to privacy. In fact, regarding the third gender, India is very advanced in this because they have a problem with the Hijras and they have delivered a judgement to protect the Hijras because they are being discriminated against by the whole of society.

Madam Speaker, I said that I was going to take about 40 minutes. Let me move on very fast to the last point of the Motion, which deals with “enhanced process of appointment of the President for institutions designed by the Constitution and the laws of the country to maintain democracy, uphold good governance and the rule of law.” Madam Speaker, we pride ourselves in Mauritius to be a country where we have an independent Judiciary; we have institutions that work. And one of the reasons of the success of Mauritius as an economic and financial centre is because we have the rule of law. We have predictability in the Judiciary. Anybody is free to seek the intervention of the Courts because this is where rights can be assessed and a judgement delivered to protect the rights of people.

Madam Speaker, I am happy that we have this debate because it is a very important debate, because we are dealing with issues of great importance to the nation. I am very grateful to hon. Ganoo to have brought this. We are dealing with maintaining democracy. I do not think that we have any problem with maintaining democracy, upholding good governance and the rule of law. I spoke to hon. Ganoo earlier today about what, in fact, was the problem regarding this part of the Motion. The sense I got from him was that we need to have a sort of independent body to appoint people to the constitutional posts. Ideally, yes!

In the United States, Madam Speaker, which is again a great democracy, Judges of the Supreme Court, for example, have to appear before the Senate Judiciary Committee before

they are confirmed as Supreme Court Justices. Do we want that kind of a system? Do we want our Judges to come before a panel of, let's say, MPs or whoever and we ask them questions about their biases, their prejudices, their likes, their friendship? Do we want that kind of system? No system is fair. We are not here for perfection. No one is perfect. Even those who proclaim perfection when they write every morning, they are not perfect!

Perfection is not for human beings! So, ideally, a perfect system will be in order, but we cannot have a perfect system. Somebody, somewhere has to appoint. There may be...

(Interruptions)

Mr Ganoo: In my mind, this leg of the ...

Madam Speaker: Hon. Ganoo...

Mr Ganoo: No, just to...

Madam Speaker: You will have the opportunity to refute.

(Interruptions)

No, you will have the opportunity.

(Interruptions)

I agree with you when you say that corridor discussions should not be brought in. But anyway, hon. Gayan has the right also to make his point on this Motion and you will have...

(Interruptions)

Please, sit down! When you will do your summing-up, you will have the right to refute all the arguments which have been made by each Member of this House. Please!

(Interruptions)

Mr Gayan: Well, hon. Ganoo said 'excluding the Judiciary', but I have not seen 'excluding the Judiciary' in the Motion. But, as it is, I think I am in order to speak also about the Judiciary because these are institutions designed by the Constitution and the laws of the country to maintain democracy, uphold good governance and the rule of law. The rule of law is very important. Now, who applies the rule of law? The Judiciary! But, anyway, I take your point that the Judiciary is out.

(Interruptions)

Madam Speaker: No crosstalking, please!

Mr Gayan: The Judiciary and Legal Service Commission.

I am not going to crosstalk, Madam Speaker. I am going to address the Chair.

But let us see ‘uphold good governance and the rule of law’. Already, in the Constitution, we have a section that deals with the Executive that upholds good governance and the rule of law. So, we already have the basic architecture in the country to uphold the rule of law. If there is any violation of the rule of law, we have systems to challenge and the Courts are very busy everyday dealing with challenges with regard to the rule of law.

But let me say something else which is very important. We are in a system, Madam Speaker, where we have the Legislative, the Executive and the Judiciary. These are the three pillars of any democracy, but we also have other institutions that supplement this. But, within the Executive, we have the public service. The public service, that is, Governments can come and go, but the public service stays. The Civil Service has a duty to advise Ministers, who sometimes have no experience, who sometimes do not know all the intricacies of any decision. But they need to uphold good governance by advising because they are paid to advise. It is very often that I see that civil servants get away scot-free, Ministers pay the price when they are a very important cog in the wheel of governance. So, this is also important when we speak about institutions.

But having said that, Madam Speaker, I think that I am not going to exceed the time that I have allotted myself. I am going to say that I have a lot of sympathy for hon. Ganoo in presenting this Motion, but, unfortunately, on this side of the House, we cannot support it.

I thank you, Madam Speaker.

Madam Speaker: Hon. Sinatambou!

Mr Sinatambou: Madam Speaker, I move that the debate be now adjourned.

Mr Gayan rose and seconded.

Question put and agreed to.

Debate adjourned accordingly.

ADJOURNMENT

The Ag. Prime Minister: Madam Speaker, I beg to move that this Assembly do now adjourn to Friday 15 December 2017 at 3.30 p.m.

The Vice-Prime Minister, Minister of Local Government and Outer Islands (Mrs F. Jeewa-Daureeawoo) rose and seconded.

Question put and agreed to.

Madam Speaker: The House stands adjourned.

Hon. Dayal!

(6.06 p.m.)

MATTERS RAISED

CENTRE DE FLACQ -

- (1) **TRAFFIC MANAGEMENT**
- (2) **CASTLE OF THE FORCES OF ABERDEEN – RESTORATION**
- (3) **INTELLIGENT CAMERAS - INSTALLATION**

Mr R. Dayal (First Member for Flacq & Bon Accueil): Madam Speaker, my Motion is addressed to the Ag. Prime Minister.

Madam Speaker: You have a Motion or it is an issue that you have to address on adjournment?

Mr Dayal: Exactly!

Madam Speaker: Not a Motion?

Mr Dayal: Sorry, it is not a Motion. I withdraw.

So, it is a matter of national importance which has cropped up because of the construction of a one-stop shop housing some 14 service providers in the ex-fire station. The space was about 4,000 square feet, now it is 20,500 square feet. With all these activities taking place in the centre of Flacq, we have a lot of problems to start with.

The first one is the capture of carbon emission and, for this, we have to deal with the proper management of traffic. Hon. Bodha has already attended to that issue. So, I am not coming to that, but then it forms part of a pedestrian avenue with light structures and this will, with whatever environmental backup we are going to have at that place, capture carbon emission.

The second issue is we had a historical vestige at the centre of Flacq and this was built under the Prime Ministership of Hamilton-Gordon of Aberdeen sometime in the year 1852.

Part of that structure, which is a historical vestige, has been demolished by the previous Government and this has to be restored, and all three of us, elected Members of the Constituency, feel that it should be done to restore side lit of the plates because it is a reduced version of the Castle of the Forces of Aberdeen, which is in Scotland. So, tourists coming to see it must actually have what it was initially designed for.

The third thing that is of prime importance is that whether we like it or not, urbanisation is a major problem with a fast developing city centre, or in our case, the centre of Flacq. Therefore, the NDU has to support our project which we are seeking of providing in the pipeline so that the execution can be done in a timely manner.

I request the support of the Ag. Prime Minister because this project is very important for sustainable development and also for making sure that people do not get the problems they are getting and the major problem is law and order, drugs. We are suggesting to come up with the latest trend in policing, that is, the use of intelligent cameras, monitored by no less than nine Police Officers on a 24-hour basis on the roof top of the building, and I must commend my good friends who have been working on that together with all the stakeholders of the Constituency. If this is going to happen, I can assure the House it can be replicated in all city centres, because it will eliminate, I would not say 100%, but more than 90% of the drug problem, of environmental issues and of traffic problems.

Therefore, I strongly feel that we need the support of the hon. Prime Minister, who is responsible for the NDU, for the materialisation of the project in a timely manner.

I must say that we have now in the Constituency a Minister of Arts and Culture, but this centre has got no facilities to foster arts and culture, neither handicraft which is very important. Therefore, I feel that the existing building, the historical building that we are reviving will house part of that structure.

Madam Speaker: Yes, hon. Dayal, you have got more issues to address?

Mr Dayal: No, I will be ending in a moment.

Madam Speaker: No. You have not brought any matter because today we do not have any matter specific for adjournment.

Mr Dayal: This is not specific, Madam...

Madam Speaker: So, if you have a specific problem only for your Constituency, please raise it, because I do not know how many...

(Interruptions)

Because you have addressed your issue to the Ag. Prime Minister. So, if this is an issue which is addressed to the Minister of Arts and Culture, he will have to reply, but you have lumped so many issues together.

Mr Dayal: Madam, I beg to just say that the issue concerns the Prime Minister, the Ag. Prime Minister, because he is responsible of the NDU, and whatever I am talking encompasses the purview and prerogative of the Minister responsible for NDU. Thank you. May I continue?

Madam Speaker: You haven't finished?

Mr Dayal: I have not finished, Madam Speaker. Madam Speaker, therefore, I would urge that this be given the appropriate attention because it is going to ease the lives of the inhabitants of Flacq/Bon Accueil, our Constituency, including tourists because we are thinking of having a tourist kiosk as well in that area.

The Ag. Prime Minister: Madam Speaker, when I hear my very good friend, hon. Dayal speaking, I immediately see the problem of Mauritius. We don't like progress, we don't like development.

There may be certain issues which are raised. Each of these issues will be well taken separately in order to be dealt with. Now, how do we do it? Since, apparently, there are many issues which arise out of this development which, I am informed, has been improved by the local authorities, the best way forward is to compile a memorandum where each issue will be tabbed separately and brought to the attention of the Prime Minister's Office, and then attention will be given to it.

Can I invite hon. Dayal to follow that course and we would proceed accordingly.

At 6.15 p.m. the Assembly was, on its rising, adjourned to Friday 15 December 2017 at 3.30 p.m.