

PARLIAMENTARY QUESTIONS

I B/242 The Honourable First Member for Mahebourg and Plaine Magnien (Mr Varma)

To ask the Honourable Attorney-General, Minister of Justice & Human Rights:-

Whether, with regard to the principle of separation of powers, he will state if he proposes to amend existing laws, regarding offences such as road traffic offences, so as to restore the discretion of Magistrates to impose the appropriate penalty in such cases?

REPLY

Mr Speaker, Sir, in reply to the question, I wish to point out that in May 2003, the Road Traffic (Amendment) Act 2003 was passed. The main object of the Act was purportedly to amend the Road Traffic Act in order to introduce new offences, to group together, consolidate and update the safety-related provisions of the Act and to make better provision, including more severe penalties, for offences, and to thereby better deter irresponsible behaviour by road users.

Mr Speaker, Sir, in the above Road Traffic (Amendment) Act 2003, the previous Government deemed fit to introduce minimum mandatory sentences in respect of certain road traffic offences. I have annexed to my reply a list in tabular form of these road traffic offences which are punishable by minimum mandatory sentences. The said list will be laid on the table of the Assembly.

Moreover, Mr Speaker, Sir, it is to be noted that in some instances, e.g. with regard to the offence of dangerous

driving under section 123A of the Road Traffic Act, it has been expressly provided that section 153 of the Criminal Procedure Act shall not apply to a fine imposed under the said section 123A. In effect, this means that the discretion of the Court under the said section 153 to inflict a fine less than the minimum fixed by law has been removed.

Likewise the Road Traffic (Amendment) Act 2003 provides that section 152 and Part X of the Criminal Procedure Act, the Probation of Offenders Act and the Community Service Order Act 2002 shall not apply to a person liable to be sentenced for certain specific road traffic offences. Now, Mr Speaker, Sir, these above pieces of legislation give the Court the discretion to impose a sentence of imprisonment for a period less than the minimum term of imprisonment fixed by law or a sentence other than imprisonment.

With the amendments brought about to the Road Traffic Act in 2003, this means, in effect, that in the case, for example, of someone found guilty for the second time of the offence of driving or being in charge of a motor vehicle with alcohol concentration above the prescribed limit under section 123F, the Court has no discretion but to impose a fine of not less than Rs20,000 together with imprisonment, for not less than 6 months.

Now, Mr Speaker, Sir, the determination of an appropriate sentence for a criminal offence is a judicial function. If I may be allowed to quote the following extract from the Privy Council case of Reyes v. The Queen [2002] 2 AC 235, at page 257:

“.....The administration of justice involves the determination of what punishment a transgressor deserves, the fixing of the appropriate sentence for the crime. The grant of mercy involves the determination that a transgressor need not suffer the punishment he deserves, that the appropriate sentence may for some

reason be remitted. The former is a judicial, the latter an executive responsibility. It has been repeatedly held that not only determination of guilt but also determination of the appropriate measure of punishment are judicial not executive functions

Mr Speaker, Sir, we are in a country which recognizes the principle of separation of powers. This principle is recognized by our Courts as a constitutional principle which is fundamental to the democratic set-up of Mauritius. Laws made by Parliament have to be consistent with the provisions of the Constitution including the constitutional principle of separation of powers. [True it is that it is an equally fundamental principle that a law is presumed to be in accordance with the Constitution unless and until the contrary is proved and unless and until ruled by the Courts as unconstitutional].

Mr Speaker, Sir, I am not saying that the provisions of the Road Traffic (Amendment) Act 2003 are unconstitutional but there is no denying that they have severely curtailed the discretion of the Courts as regards the sentence to be imposed for certain road traffic offences. It has been reported that the mandatory sentences, especially the minimum fines, are causing great hardship in some cases. In these premises, Mr Speaker Sir, consultations will be held with the relevant ministry if there is a need to amend the existing law, we shall do so.