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Prime Minister Mia Mottley

Opposition Leader Ralph Thorne

Amendments to Bail Act still flawed

On many occasions, I have disagreed with the notion that we must all sing from the same hymn sheet on certain issues of national importance as I believed that nothing is above political contestation. All ideas must contend. There exists space in our democracy for robust debate on approaches. Our system has not lent itself to this approach, because of our hyper-partisanship of the two-party system, where neither government nor opposition can be seen to be supporting each other.

Of course, our people aren't wrong that politicians at times do not debate approaches but instead engage in personal attacks and evade the issues at hand in order to secure electoral wins, which is why there is a call for unity on issues. However, unity is not unanimity.

On this occasion, after hearing Prime Minister Mia Mottley and Opposition Leader Ralph Thorne sing from the same hymn sheet on the issue of reviewing the **Bail Act** of Barbados, the ordinary person would be happy that the two can see eye-to-eye on the broader issue of crime, but instead, the wise should be concerned at their stances and possible legislative action.

They were both concerned that the inability of individuals to get bail for serious offences was jettisoned by the courts. Their articulation of these views are thus premature as they are both aware of the impending and decisive decision of the Court of Appeal, in the Attorney General v. Lamar Jones case. Unless the court has determined the constitutionality of the amendment, it would not be wise to contemplate or make any such amendments, especially if it can have the net effect of further reducing judicial discretion. Two wrongs certainly do not make a right!

This knee-jerk reaction seems to be to appease the valid concerns of the public who continue to fear that enough is not being done to resolve crime. However, it is as if the leaders, who are almost certain that the amendment might be struck down, want to distance themselves from the problem and seem to want to lay blame at the judiciary, who in their view, may not be sensitive to the problem of people losing their lives since they continue to grant bail. It is as if, they want to say, 'I tried but the court was the one who struck it down'.

But this view ignores and sidesteps the sound legal and ethical reasoning of the High Court decision in Lamar and other similar decisions in the Caribbean. The court has noted that any amendment which sought to make it more difficult for persons charged with murder and serious firearm offences to obtain bail until 24 months had expired after a charge has been laid was unconstitutional — because it was at odds with the separation of powers as it sought to repudiate a pre-eminent judicial power and discretion. It sought to constrain and remove the judge's power to analyse on a case-by-case basis whether the individual deserves bail based on character, antecedents, associations, community ties, nature and seriousness of the offence, familial obligations and strength of evidence against the individual.

Of course, the refrain from those in the retribution camp is that these individuals should not be out harming individuals and thus the decision is flawed. This approach however has not yielded the promised results, as while the prison population increases, furthering the constraints on resources in the country, crime is still increasing. As with the imposition of the death penalty, the evidence does not suggest that it reduces crime and violence. Is the perception of safety all that matters?

Therefore, their intention is also operating on an assumption, where data has not been provided, that it is those who are apparently granted bail who are the ones going out and committing crimes while awaiting trial. Does the data support this view? If it does, then is not the best next step to radically quicken the delivery of justice in order to ensure that these individuals are no longer able to harm others. If the assumption is also that it instils fear, the increasing penal rates do not seem to support this view. What may do it, is the understanding that justice will be delivered swiftly.

But the problem with any blanket provision is that it is not only going to apply to re-offenders, but it will apply to first-time offenders, which does not provide the judge with the opportunity to scrutinise the relevant facts and circumstances of the case in order decide.

As I've noted in another piece when this idea was proposed in Saint Lucia, such solutions are intellectually bankrupt. Yes, the time must fit the crime, but such time should in the end be decided by the judiciary, not by politicians under duress by a victimised electorate. The proposition of bail denial to individuals charged with gun-related offences is not in harmony with the notion that persons are to be treated as innocent until proven guilty.

While all right-thinking citizens consider crime repugnant, there is always the matter of justice being seen to be done. The punishment must suit the crime and such punishment cannot be left in the hands of politicians with votes in mind.

Prime Minister Mia Mottley has therefore been correct in her previous public appearances that the overly penal approach towards solving crime is ineffective. What is required is not solely conversations about bail, but a deeper conversation about the motivations and nature of crime. The long-term approach must seek to turn individuals away from a life of crime, by resocialisation through a gendered lens, educational transformation which engenders conflict resolution skills and other important virtues, rejection of individualism and self-gratification through global capitalism and the provision of economic opportunities for people. The reality is that the amendment is not a solution and the public is begging our society for fairer answers. In the end, one can only hope that wisdom prevails. Back to the drawing board, Mottley and Thorne!

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