

**THE PROTECTION FROM DOMESTIC VIOLENCE (AMENDMENT)
BILL (No. IX of 2016)**

Explanatory Memorandum

The object of this Bill is to amend the Protection from Domestic Violence Act to provide for better protection to victims of domestic violence by, inter alia –

- (a) increasing the powers of Enforcement Officers;
 - (b) widening the definition of term “domestic violence”;
 - (c) providing that a person who does an act of domestic violence against his spouse, a child of his spouse or another person living under the same roof shall commit an offence; and
 - (d) empowering a police officer not below the rank of Assistant Superintendent to arrest a person where, following an act of domestic violence, physical injury has ensued.
2. The opportunity is being taken to clarify some provisions of the Act.

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27 May 2016

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ARRANGEMENT OF CLAUSES

Clause

- 1. Short title
- 2. Interpretation
- 3. Section 2 of principal Act amended
- 4. Section 8A of principal Act repealed and replaced
- 5. Section 11 of principal Act amended

6. Section 11A inserted in principal Act
7. Section 13 of principal Act amended
8. Section 18 of principal Act amended
9. Schedule to principal Act amended
10. Commencement

A BILL

To amend the Protection from Domestic Violence Act

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Protection from Domestic Violence (Amendment) Act 2016.

2. Interpretation

In this Act –

“principal Act” means the Protection from Domestic Violence Act.

3. Section 2 of principal Act amended

Section 2 of the principal Act is amended –

- (a) by deleting the definition of “domestic violence” and replacing it by the following definition –

“domestic violence” includes any of the following acts committed by a person against his spouse, a child of his spouse or another person living under the same roof –

- (a) willfully inflicting, or attempting to inflict, a wound or blow, or threatening to inflict a wound or blow;
- (b) willfully or knowingly placing or attempting to place, or threatening to place, the spouse or the other person in fear of physical injury to himself or to one of his children;
- (c) intimidating, harassing, stalking, ill-treating, insulting, brutality or cruelty;

- (d) compelling the spouse or the other person by force or threat to engage in any conduct or act, sexual or otherwise, from which the spouse or the other person has the right to abstain;
 - (e) confining or detaining the spouse or the other person, against his will;
 - (f) harming, or threatening to harm, a child of the spouse;
 - (g) causing or attempting to cause, or threatening to cause, damage to the spouse's or the other person's property;
 - (h) depriving, without any lawful excuse, the spouse or other person of resources which the spouse or other person is entitled to or requires, or of payment for rent in respect of shared residence;
- (b) by deleting the definition of "spouse" and replacing it by the following definition –
- "spouse" means a person who –
- (a) is or has been civilly or religiously married to a person of the opposite sex;
 - (b) is living or has lived with a person of the opposite sex as husband and wife; or
 - (c) whether living together or not with a person of the opposite sex, has a common child with that person;

4. Section 8A of principal Act repealed and replaced

Section 8A of the principal Act is repealed and replaced by the following section –

8A. Report on compliance

(1) Where a domestic violence order is issued by a Court, an Enforcement Officer may apply, in such form as may be prescribed, to the Court for a probation report of compliance to be made in relation to the order.

(2) The Court may, where it so deems appropriate, direct a probation officer to report to it on the compliance of such order at such intervals as it may determine.

5. Section 11 of principal Act amended

Section 11 of the principal Act is amended –

(a) by repealing subsection (1) and replacing it by the following subsection –

(1) Where an Enforcement Officer reasonably suspects that a person is, has been or is likely to be the victim of an act of domestic violence, he shall –

(a) as soon as possible, cause an investigation to be made into the matter; and

(b) where the act of domestic violence requires immediate action or further enquiry or amounts to an offence, forthwith report the matter to the nearest police station.

(b) by repealing subsection (2);

(c) in subsection (3), by deleting the words “aggrieved spouse” wherever they appear and replacing them by the word “victim”;

(d) by repealing subsection (4) and replacing it by the following subsection –

(4) (a) Subject to paragraph (b), an Enforcement Officer may, with the consent of the victim of an act of domestic violence, make, on behalf of the victim, an application for a protection, occupation or tenancy order and shall, to that effect, swear an affidavit reciting the facts on which he relies to make the application on behalf of the victim.

(b) An Enforcement Officer may, without the consent of the victim of an act of domestic violence, make an application under paragraph (a) where the victim is unable to give his consent as a result of being injured.

6. Section 11A inserted in principal Act

The principal Act is amended by inserting, after section 11, the following new section –

11A. Duties and powers of police officers

(1) The police shall act with diligence in any case where an offence under this Act is reported to it.

(2) Where a report is made to a police station –

- (a) by a victim of an act of domestic violence, an Enforcement Officer or another person, that an act of domestic violence has been, is being or is likely to be committed against the victim; or
- (b) by an aggrieved spouse, an Enforcement Officer or another person, that the respondent spouse has failed to comply with any domestic violence order,

the officer in charge of the police station shall cause the circumstances of the offence to be enquired into.

(3) Where an offence is reported pursuant to subsection (2), a police officer not below the rank of Assistant Superintendent may, where –

- (a) physical injury has ensued; or
- (b) he has reason to suspect that a person has failed to comply with any domestic violence order,

cause the person to be arrested and brought before a Magistrate at the earliest opportunity.

(4) (a) A police officer to whom an offence under this Act is reported shall, notwithstanding the enquiry to be made under subsection (2), report the matter forthwith –

- (i) to the nearest hospital or other medical institution, where the victim of the offence is in urgent need of medical assistance;

- (ii) to the Permanent Secretary, where the victim of the offence is in urgent need of counselling or any other form of psychological support.

(b) Where the matter is reported to the Permanent Secretary under paragraph (a), he shall forthwith arrange for the victim of the offence to consult a psychologist or other suitable person for counselling or such other support as may be required.

7. Section 13 of principal Act amended

Section 13 of the principal Act is amended –

(a) in subsection (1) –

(i) by repealing paragraphs (a) and (b) and replacing them by the following paragraphs –

(a) on a first conviction, to a fine not exceeding 50,000 rupees and to imprisonment for a term not exceeding one year;

(b) on a second conviction, to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years;

(ii) by adding the following new paragraph –

(c) on a third or subsequent conviction, to imprisonment for a term not exceeding 5 years.

(b) by repealing subsections (2) and (3) and replacing them by the following subsections –

(2) Any person who does an act of domestic violence shall commit an offence and shall, on conviction, be liable –

(a) on a first conviction, to a fine not exceeding 50,000 rupees;

- (b) on a second conviction, to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years;
- (c) on a third or subsequent conviction, to imprisonment for a term not exceeding 5 years.

(3) Part X of the Criminal Procedure Act and the Probation of Offenders Act shall not apply to a person liable to be sentenced under subsection (1).

(c) by adding the following new subsection –

(4) Notwithstanding section 114 of the Courts Act and section 72 of the District and Intermediate (Criminal Jurisdiction) Act, a Magistrate shall have jurisdiction to try an offence under this Act and may impose any penalty provided in this Act.

8. Section 18 of principal Act amended

Section 18 of the principal Act is amended –

- (a) by numbering the existing provision as subsection (1);
- (b) by adding the following new subsection –

(2) The Minister may, by regulations, amend the Schedule.

9. Schedule to principal Act amended

The Schedule to the principal Act is amended –

(a) in Form A, by adding the following new paragraph –

5. I further aver that this is/is not (*to delete as appropriate*) a fit and proper case for an ancillary order for alimony to be issued by the Court, under section 8B(1) of the Protection from Domestic Violence Act, with regard to me and the following child/children (*where appropriate*) –

.....

(b) in Form D, by adding the following new paragraph –

6. I further aver that this is/is not (*to delete as appropriate*) a fit and proper case for an ancillary order for alimony to be issued by the Court, under section 8B(1) of the Protection from Domestic Violence Act, with regard to me and the following child/children (*where appropriate*) –

.....
.....
.....

(c) in Form G, by adding the following new paragraph –

6. I further aver that this is/is not (*to delete as appropriate*) a fit and proper case for an ancillary order for alimony to be issued by the Court, under section 8B(1) of the Protection from Domestic Violence Act, with regard to me and the following child/children (*where appropriate*) –

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10. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.
