

**THE JUDICIAL AND LEGAL PROVISIONS
BILL (No. I of 2018)**

Explanatory Memorandum

The object of this Bill is to amend a number of enactments with a view to, inter alia, improving the administration of justice in Mauritius.

2. The Bill, in particular, provides –

- (a) for an increase in the threshold for converting a fine to a community service order from 30,000 rupees to 50,000 rupees;
- (b) for the conferring of statutory powers on the Supreme Court regarding contempt in the face of the Court, refusing to give evidence in Court and giving false evidence under oath;
- (c) for an increase in the sentence, where a witness for the prosecution fails to appear before the Court, from 100 rupees to a fine not exceeding 100,000 rupees and to a term of imprisonment not exceeding 2 years;
- (d) for the review of the offence of outrage against the public and religious morality and the offence of stirring up contempt or racial hatred so as to criminalise such offences committed through electronic means, and to provide for stiffer penalties;
- (e) for an increase in the time limit for payment of a fine from 12 months to 2 years;
- (f) that a person sentenced to a term of imprisonment or penal servitude shall, subject to certain conditions, be given full credit for the time he has spent in custody by deducting that time from the term of imprisonment or penal servitude imposed;
- (g) that a convicted person who has, so far, not benefitted from full credit for the time he has spent in custody, may petition the President under section 75 of the Constitution with a view to obtaining full credit for the time he has spent in custody;
- (h) for an increase in the number of counts to 10 in an information lodged before a District Court;

- (i) that the Court may order the destruction of any goods used in, or giving rise to, an act of unfair practice;
- (j) that the Central Authority may, for the purposes of the Mutual Assistance in Criminal and Related Matters Act, make use of the services of public officers designated for that purpose by the Secretary to Cabinet and Head of the Civil Service;
- (k) for the amendment to the Sale of Immovable Property Act to provide –
 - (i) that a *commandement* which is to be served in a case of seizure of immovable property shall, in lieu of the visa of the *Ministère Public* or the visa of the District Clerk, require the visa of the Chief Court Usher of the Supreme Court;
 - (ii) for the publication of a notice under section 222 in one daily newspaper published and distributed in Rodrigues where the property subject matter of the sale is situated in Rodrigues,

and for matters related thereto.

M. GOBIN

*Attorney-General, Minister of Justice, Human
Rights and Institutional Reforms*

23 March 2018.

**THE JUDICIAL AND LEGAL PROVISIONS
BILL (No. 1 of 2018)**

ARRANGEMENT OF CLAUSES

Clause

1. Short title
2. Community Service Order Act amended
3. Courts Act amended
4. Criminal Appeal Act amended
5. Criminal Code amended
6. Criminal Procedure Act amended

7. District and Intermediate Courts (Criminal Jurisdiction) Act amended
8. Mutual Assistance in Criminal and Related Matters Act amended
9. Patents, Industrial Designs and Trademarks Act amended
10. Sale of Immovable Property Act amended
11. Commencement

A BILL

To amend a number of enactments for the enhancement of the administration of justice in Mauritius and for matters related thereto

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Judicial and Legal Provisions Act 2018.

2. Community Service Order Act amended

The Community Service Order Act is amended, in section 3, in subsection (3), by deleting the figure “30,000” wherever it appears and replacing it by the figure “50,000”.

3. Courts Act amended

The Courts Act is amended –

(a) in Part II –

(i) in Sub-part II, by inserting, after section 18C, the following new section –

18D. Contempt in face of Court

(1) Where any person wilfully insults a Judge, an usher or an officer of the Supreme Court during a sitting of, or while in attendance in, the Court or wilfully interrupts the proceedings of the Court or otherwise misbehaves in Court, any usher or officer of the Court may, with or without assistance from any person, by order of the Court, take the person into custody and detain him until the sitting of the Court ends.

(2) The Court may commit any person referred to in subsection (1) to prison for a period not exceeding 7 days or may impose upon him a fine not exceeding 25,000 rupees and, in default of payment, may commit him to prison for a period not exceeding 7 days unless the fine is sooner paid.

(ii) by adding the following new Sub-part –

Sub-Part VII – Miscellaneous

77. Summons to witness

(1) Any person summoned to appear or to produce any document or exhibit required to be produced by the summons who –

(a) is served with such summons and refuses or neglects, without sufficient cause, to –

(i) appear; or

(ii) produce any document or exhibit required to be produced by the summons;

(b) appears in answer to the summons and, on being required to give evidence, refuses to –

(i) be sworn or affirmed, or to make a solemn declaration, as the case may be; or

(ii) give evidence,

shall be liable to be committed to prison for a period not exceeding 2 years and be inflicted a fine not exceeding 100,000 rupees, by the Court before which the default or refusal occurs.

(2) Any person not appearing when duly served with a summons may, by warrant under the hand of a Judge, be arrested and brought before him to give evidence.

78. Witnesses heard on oath

Any person who, when heard as a witness before the Supreme Court, gives false evidence shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 5 years and to a fine not exceeding 200,000 rupees.

(b) in Part III, in Sub-part III –

- (i) in section 127, in subsection (2), by deleting the figure “100” and replacing it by the figure “25,000”;
- (ii) in section 128, by repealing subsection (2) and replacing it by the following subsection –

(1) Any person summoned to appear or to produce any document or exhibit required to be produced by the summons who –

- (a) is served with such summons and refuses or neglects, without sufficient cause, to –
 - (i) appear; or
 - (ii) produce any document or exhibit required to be produced by the summons;
- (b) appears in answer to the summons and, on being required to give evidence, refuses to –
 - (i) be sworn or affirmed, or to make a solemn declaration, as the case may be; or
 - (iii) give evidence,

shall be liable to be committed to prison for a period not exceeding 2 years and be inflicted a fine not exceeding 100,000 rupees, by the Court before which the default or refusal occurs.

4. Criminal Appeal Act amended

The Criminal Appeal Act is amended, in section 16 –

- (a) by repealing subsection (3) and replacing it by the following subsection –

(3) (a) Subject to paragraphs (b) and (c), the Court shall, in reviewing the term of imprisonment or penal servitude to be served by an appellant, give him full credit for the time he spent in custody by deducting that time from the term of imprisonment or penal servitude imposed.

- (b) The time spent in custody by an appellant shall –

- (i) in the case of terms of imprisonment or penal servitude imposed under different counts of an information and ordered to run concurrently, be deducted from the highest term of imprisonment or penal servitude imposed;
- (ii) in the case of terms of imprisonment or penal servitude imposed under different counts of an information and ordered to run consecutively, be deducted from the aggregate of the terms of imprisonment and penal servitude imposed;
- (iii) in case the appellant was, during that time, serving sentence for another offence, not be deducted from the term of imprisonment or penal servitude imposed;
- (iv) in case the appellant was, during that time, in custody for more than one offence, be deducted from the term of imprisonment or penal servitude imposed for only one sentence and only once in relation to that sentence.

(c) No appellant shall qualify for credit where, in default of payment of any fine or costs imposed, he is sentenced to imprisonment.

(d) In this subsection –

“time spent in custody” includes the time during which an appellant has been –

(i) in police detention;

(ii) on remand;

(iii) detained pursuant to the Juvenile Offenders Act, the Mental Health Care Act or the Reform Institutions Act.

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

(4) This section shall apply to a person whose case is –

(a) referred for review pursuant to section 19A; and

(b) stated pursuant to section 168B of the Criminal Procedure Act,

as it applies to an appellant.

5. Criminal Code amended

The Criminal Code is amended –

(a) by repealing section 206 and replacing it by the following section –

206. Outrage against public and religious morality

(1) (a) Any person who –

(i) by any writing which is sold, put up for sale, published, distributed, posted up, circulated, exhibited, exposed, broadcast or transmitted in any public place, public meeting or procession;

- (ii) by words, gestures, exclamations or threats used in a public place, public meeting or procession,

commits any outrage against any religion, or against good morals or against public and religious morality (*la morale publique et religieuse*), shall commit an offence and shall, on conviction, be liable to imprisonment for a term not exceeding 2 years and to a fine not exceeding 100,000 rupees.

(b) Matters of opinion on religious questions, decently expressed or written, shall not be deemed to be an outrage.

(2) Any writing or any copy of such writing in respect of, or in connection with, which an offence has been committed under this section shall be forfeited and destroyed, or deleted, as the case may be.

(3) In this section –

“broadcast” means using radio communication, whether by sound or vision, for reception by members of the public;

“electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

“writing” –

(a) means any newspaper, pamphlet, drawing, engraving, picture, illustration, placard, handbill, emblem, image, printed matter or any other written work; and

(b) includes –

(i) any writing by electronic means; or

(ii) any communication, whether in the form of speech or other sound.

(b) by repealing section 282 and replacing it by the following section –

282. Stirring up racial hatred

(1) Any person who, with intent to stir up contempt or hatred against any section or part of any section of the public distinguished by race, caste, place of origin, political opinion, colour, creed or sex –

- (a) publishes, distributes, posts up, circulates, exhibits, exposes, broadcasts or transmits any writing which is threatening, abusive or insulting; or
- (b) uses any word or makes any gesture in any public place, public meeting or procession which is threatening, abusive or insulting,

shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 20 years and to a fine not exceeding 100,000 rupees.

(2) Any writing or any copy of such writing in respect of, or in connection with, which an offence has been committed under this section shall be forfeited and destroyed, or deleted, as the case may be.

(3) In this section –

“broadcast” means using radio communication, whether by sound or vision, for reception by members of the public;

“electronic” means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic or similar capabilities;

“writing” –

- (a) means any newspaper, pamphlet, drawing, engraving, picture, illustration, placard, handbill, emblem, image, printed matter or any other written work; and
- (b) includes –

- (i) any writing by electronic means; or
- (ii) any communication, whether in the form of speech or other sound.

6. Criminal Procedure Act amended

The Criminal Procedure Act is amended –

- (a) in section 89, in subsection (2), by deleting the words “100 rupees” and replacing them by the words “100,000 rupees and to a term of imprisonment not exceeding 2 years”;
- (b) by inserting, after section 132, the following new section –

132A. Hearing on sentence

After convicting an accused, the Court shall –

- (a) prior to imposing sentence –
 - (i) afford an opportunity to the accused to adduce evidence in mitigation;
 - (ii) hear such other matter as may be relevant to the facts and circumstances of the offence; and
 - (iii) notwithstanding any other enactment, take into account such other factors as may be relevant, including the fact that the victim is an elderly person, a minor or a person with physical or mental impairment;
- (b) in case a custodial sentence is imposed, take into account the time spent in custody, if any.
- (c) by repealing section 135 and replacing it by the following section –

135. Deduction of time spent in custody

(1) Subject to subsections (2) and (3), the Court shall, in determining the term of imprisonment or penal servitude to be served by an accused, give him full credit for the time he spent in custody by

deducting that time from the term of imprisonment or penal servitude imposed.

(2) The time spent in custody by an accused shall –

- (a) in the case of terms of imprisonment or penal servitude imposed under different counts of an information and ordered by the Court to run concurrently, be deducted from the highest term of imprisonment or penal servitude imposed;
- (b) in the case of terms of imprisonment or penal servitude imposed under different counts of an information and ordered by the Court to run consecutively, be deducted from the aggregate of the terms of imprisonment and penal servitude imposed;
- (c) in case the accused was, during that time, serving sentence for another offence, not be deducted from the term of imprisonment or penal servitude imposed;
- (d) in case the accused was, during that time, in custody for more than one offence, be deducted from the term of imprisonment or penal servitude imposed for only one sentence and only once in relation to that sentence.

(3) No accused shall qualify for credit for the time he spent in custody where, in default of payment of any fine or costs imposed, he is sentenced to imprisonment.

(4) In this section –

“time spent in custody” includes the time during which an accused has been –

- (a) in police detention;
- (b) on remand;

(c) detained pursuant to the Juvenile Offenders Act, the Mental Health Care Act or the Reform Institutions Act.

(d) by inserting, after section 135, the following new section –

135A. Petition to President

(1) Where, under this Act or any other enactment, an accused has not been given full credit for the time he spent in custody, he may petition the President with a view to obtaining full credit.

(2) The Commission on the Prerogative of Mercy shall, in determining the credit to be given to an accused, act in accordance with section 135.

(3) This section shall be in addition to, and not in derogation from, the provisions of section 75 of the Constitution.

(4) In this section –

“Commission on the Prerogative of Mercy” means the Commission referred to in section 75(2) of the Constitution.

(e) in section 147, in subsection (2), by deleting the words “12 months” and replacing them by the words “2 years”;

(f) in section 200, in subsection (6)(a), by deleting the figure “100” and replacing it by the figure “10,000”.

7. District and Intermediate Courts (Criminal Jurisdiction) Act amended

The District and Intermediate Courts (Criminal Jurisdiction) Act is amended –

(a) in section 67A, in subsection (2), by deleting the figure “3” and replacing it by the figure “10”.

(b) in section 72(4), by inserting, after the words “the accused and”, the words “, after conducting a hearing on sentence in accordance with section 132A of the Criminal Procedure Act,”;

(c) in section 96, by adding the following new subsection –

(6) (a) Subject to paragraphs (b) and (c), the Court shall, in reviewing the term of imprisonment or penal servitude to be served by an appellant, give him full credit for the time he spent in custody by deducting that time from the term of imprisonment or penal servitude imposed.

(b) The time spent in custody by an appellant shall –

- (i) in the case of terms of imprisonment or penal servitude imposed under different counts of an information and ordered to run concurrently, be deducted from the highest term of imprisonment or penal servitude imposed;
- (ii) in the case of terms of imprisonment or penal servitude imposed under different counts of an information and ordered to run consecutively, be deducted from the aggregate of the terms of imprisonment and penal servitude imposed;
- (iii) in case the appellant was, during that time, serving sentence for another offence, not be deducted from the term of imprisonment or penal servitude imposed;
- (iv) in case the appellant was, during that time, in custody for more than one offence, be deducted from the term of imprisonment or penal servitude imposed for only one sentence and only once in relation to that sentence.

(c) No appellant shall qualify for credit for the time he spent in custody where, in default of payment of any fine or costs imposed, he is sentenced to imprisonment.

(d) In this subsection –

“time spent in custody” includes the time during which an appellant has been –

- (i) in police detention;
 - (ii) on remand;
 - (iii) detained pursuant to the Juvenile Offenders Act, the Mental Health Care Act or the Reform Institutions Act.
- (d) in section 126, in subsection (2), by deleting the words “be liable, on conviction, to imprisonment for a term not exceeding 2 years” and replacing them by the words “, on conviction, be liable to imprisonment for a term not exceeding 5 years and to a fine not exceeding 200,000 rupees”.

8. Mutual Assistance in Criminal and Related Matters Act amended

The Mutual Assistance in Criminal and Related Matters Act is amended, in Part IV, by inserting, before section 17, the following new section –

16A. Services of other officers

The Central Authority may, for the purposes of this Act, make use of the services of public officers designated for that purpose by the Secretary to Cabinet and Head of the Civil Service.

9. Patents, Industrial Designs and Trademarks Act amended

The Patents, Industrial Designs and Trademarks Act is amended, in section 52, in subsection (3), by inserting, after the word “forfeiture”, the words “and destruction”.

10. Sale of Immovable Property Act amended

The Sale of Immovable Property Act is amended –

- (a) in section 2, by repealing subsection (6) and replacing it by the following subsection –

(6) The usher serving the *commandement* need not be accompanied by witnesses but shall, within 48 hours after service, obtain on the original, the visa of the Chief Court Usher of the Supreme Court.

(b) in section 222, by adding the following new subsection, the existing provision being numbered as subsection (1) –

(2) Where the notice referred to in subsection (1) relates to a property which is situated in Rodrigues, one of the 3 daily newspapers shall be a newspaper which is published and distributed in Rodrigues.

11. 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.
