

**THE PROTECTION FROM DOMESTIC VIOLENCE
(AMENDMENT) BILL
(No. XIV of 2004)**

Explanatory Memorandum

The object of this Bill is to broaden the scope of application of the Protection from Domestic Violence Act and in particular to -

- (a) cover cases of domestic violence committed by persons living under the same roof;
- (b) increase the time limit before an application under section 3, 4 or 5 of the Act is heard;
- (c) increase the penalty applicable to offences under the Act;
- (d) provide for counselling.

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*Minister of Women's Rights, Child
Development and Family Welfare*

14 May 2004

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ARRANGEMENT OF CLAUSES

Clause

- | | | |
|-----|---|----------------|
| 1. | Short title | |
| 2. | Interpretation | |
| 3. | Section 2 of principal Act amended | |
| 4. | Section 3 of principal Act amended | |
| 5. | New sections 3A and 3B added to principal Act | Verified by me |
| 6. | Section 4 of principal Act amended | |
| 7. | Section 5 of principal Act amended | |
| 8. | Section 8 of principal Act amended | (R. Bhugwant) |
| 9. | New section 8A added to principal Act | PAS |
| 10. | Section 13 of principal Act amended | 11.05.04 |
| 11. | Schedule to principal Act amended | |

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 2004.

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 by –

- (a) deleting the definition of “Court” and replacing it by the following new definition -

“Court” means the District Court of the area where the person, for whose benefit an order under this Act is sought or is in force, lives;

- (b) deleting the definition of “domestic violence” and replacing it by the following new 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) wilfully causing or attempting to cause physical injury;
- (b) wilfully or knowingly placing or attempting to place the spouse or the other person in fear of physical injury to himself or to one of his children;
- (c) intimidation, harassment, ill-treatment, 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 a child of the spouse;
- (g) causing or attempting to cause damage to the spouse's or the other person's property;
- (h) threatening to commit any act mentioned in paragraphs (a) to (g);

4. Section 3 of principal Act amended

Section 3 of the principal Act is amended in subsection (2), by deleting the figure "7" and replacing it by the figure "14".

5. New sections 3A and 3B added to principal Act

The principal Act is amended by inserting immediately after section 3 the following new sections -

3A Protection order against a person living under the same roof

(1) Any person who has been the victim of an act of domestic violence by a person, other than his spouse, living under the same roof, and who reasonably believes that that person is likely to commit any further act of domestic violence against him, may apply to the Court, in form AA of the Schedule, for a protection order restraining that person from engaging in any conduct which may constitute an act of domestic violence and ordering him to be of good behaviour towards the applicant.

(2) Where an application for a protection order is made under subsection (1), the Court shall cause a notice of the application to be served on the respondent ordering him to appear before the Court on such day as may be specified in the notice, and which shall not be later than 14 days from the date of the application, to show cause why the order applied for should not be made.

(3) An application for a protection order shall be heard as a civil case between the parties.

(4) In determining an application for a protection order, the Court shall have regard to the following -

- (a) the need to ensure that the applicant is protected from domestic violence;
 - (b) the welfare of any child affected, or likely to be affected, by the respondent's conduct;
 - (c) the accommodation needs of the applicant, his children, as well as those of the respondent and his children;
 - (d) any hardship that may be caused to the respondent or to any of his children as a result of the making of the order; and
 - (e) any other matter which the Court may consider relevant.
- (5) Where a protection order is made, the Court may further –
- (a) prohibit the respondent from –
 - (i) contacting, harassing, threatening or intimidating the applicant;
 - (ii) damaging property of the applicant; or
 - (iii) causing or attempting to cause another person to engage in any conduct referred to in paragraphs (i) and (ii);
 - (b) specify the conditions on which the respondent may –
 - (i) be on the premises on which the applicant resides, works or which he frequents; or
 - (ii) approach or contact the applicant or his child.
- (6) (a) A protection order made under this section shall be in Form CA of the Schedule and shall remain in force for such period, not exceeding 24 months, as the Court may specify.
- (b) Where a protection order contains a prohibition or condition of the kind specified in subsection (5), the Court may specify different periods, being periods none of which shall exceed 24 months, as the periods for which each prohibition or condition is to remain in force.

(7) Where the Court is satisfied that there is a serious risk of harm being caused to the applicant before the application may be heard and that the circumstances revealed in the application are such as to warrant the intervention of the Court even before the respondent is heard, the Court may-

- (a) issue an interim protection order in Form BA of the Schedule, restraining the respondent from engaging in any conduct which may constitute an act of domestic violence and ordering him to be of good behaviour towards the applicant; and
- (b) order the Commissioner of Police to provide police protection to the applicant until such time as the interim order is served on the respondent or for such time as the particular circumstances of the case may justify.

(8) Where an interim protection order is issued, the District Clerk shall immediately take steps to have a copy of the order served on the respondent requiring him to appear before the Court on such day as may be specified in the order to show cause why it should not be confirmed, varied or discharged.

(9) An interim protection order shall, unless the Court directs otherwise, remain in force until such time as the Court makes a final pronouncement on the application for the protection order.

- (10) (a) Where a protection order is in force, either party may apply to the Court for a variation or revocation of the order.
- (b) The person applying for the variation or revocation of a protection order shall cause a copy of the application to be served on the other person concerned.
- (c) In determining whether to vary or revoke a protection order, the Court shall have regard to the matters specified in sub-section (4).

3B Counselling

The Court may, subject to the consent of both parties, order, in addition to any order made under section 3 or 3A, the parties to attend counselling sessions organised by the Ministry.

6. Section 4 of principal Act amended

Section 4 of the principal Act is amended in subsection (2), by deleting the figure “7” and replacing it by the figure “14”.

7. Section 5 of principal Act amended

Section 5 of the principal Act is amended in subsection (2), by deleting the figure “7” and replacing it by the figure “14”.

8. Section 8 of principal Act amended

Section 8 of the principal Act is amended by deleting subsection (1) and replacing it by the following subsection –

(1) On or after making an occupation or tenancy order, the Court may, subject to subsection (2) -

(a) make an order granting to the aggrieved spouse the use, for such period and on such terms and conditions as the Court thinks fit, of all or any furniture, appliances and other household effects in the residence to which the order relates; and

(b) where appropriate, order the applicant, the respondent spouse or both of them, to contribute to the -

(i) loan
or mortgage repayments;

(ii) repairs or maintenance,
of the residence.

9. New section 8A added to principal Act

The principal Act is amended by inserting immediately after section 8, the following new section –

8A. Report on Compliance

The Court may, in addition to any order made under this Act and where it so deems appropriate, direct a probation officer to report to it on the compliance of such order, at such intervals as it thinks fit.

10. Section 13 of principal Act amended

Section 13 of the principal Act is amended in subsection (1), by deleting the words “10,000 rupees” and replacing them by the words “25,000 rupees”.

11. Schedule to principal Act amended

The Schedule to the principal Act is amended –

- (a) in –
 - (i) Form A, by deleting the words “section 3(8)” and replacing them by “section 3(7)”;
 - (ii) Form B, by deleting the words “(8)” wherever they appear and replacing them by the words “(7)”;
 - (iii) Form E, by deleting the words “section 4(6)” wherever they appear and replacing them by the words “section 4(5)”;
 - (iv) Form H by deleting the words “section 5(6)” wherever they appear and replacing them by the words “section 5(5)”;
- (b) by inserting immediately after -
 - (i) Form A, Form AA specified in the Schedule to this Act;
 - (ii) Form B, Form BA specified in the Schedule to this Act;
 - (iii) Form C, Form CA specified in the Schedule to this Act.

SCHEDULE

(section 11)

PROTECTION FROM DOMESTIC VIOLENCE ACT

Form AA

(section 3A(1))

PROTECTION FROM DOMESTIC VIOLENCE ACT

APPLICATION FOR A PROTECTION ORDER

In the District Court of

I.....

of.....(Applicant)

MAKE OATH/SOLEMN AFFIRMATION AND SAY THAT –

1 I have been the victim of an act of domestic violence by(Respondent) a person, other than my spouse, living under the same roof, in as much as the Respondent

.....
.....

2 I have reasonable cause to believe that the Respondent is likely to commit further acts of domestic violence unless he is restrained from so doing.

3 I, therefore, move that the Respondent be summoned to appear before Court to show cause why a Protection Order, under section 3A(1) of the Protection from Domestic Violence Act, should not be issued restraining the Respondent from engaging in conduct which may constitute further acts of domestic violence and ordering him/her to be of good behaviour towards me.

4 I further aver that there is a serious risk of harm being caused to me before the present application for a Protection Order may be heard by the Court and that it is therefore urgent and necessary that an interim Protection Order be issued under section 3A(7) of the the Protection from Domestic Violence Act.

Sworn before me..... District Magistrate

This day of 20

PROTECTION FROM DOMESTIC VIOLENCE ACT

Form BA
(section 3A(7))

INTERIM PROTECTION ORDER

In the District Court of

To..... (Respondent) of

Whereas I am satisfied by information ON OATH that –

.....(Applicant) who has applied for a Protection Order under section 3A(1) and (7) of the Protection from Domestic Violence Act has reasonable cause to believe that he/she may be the victim of further acts of domestic violence and that it is urgent and necessary that an interim Protection Order be issued under section 3A(7) of the said Protection from Domestic Violence Act.

You, the saidare therefore restrained from engaging in any conduct which may constitute an act of domestic violence against the Applicant, and you are further ordered to be of good behaviour towards him/her pending the decision of this Court in the application filed by him/her for a Protection Order.

You are further summoned to appear before the District Court of..... on to show cause why the said interim Protection Order should not be confirmed, varied or discharged.

Warning you that should you fail to appear before the Court as hereby requested the Court may proceed to hear the application for the issue of the Protection Order in your absence.

Given under my hand at..... In the District Court of.....

This day of 20.....

District Magistrate

PROTECTION FROM DOMESTIC VIOLENCE ACT

Form CA
(section 3A(6))

PROTECTION ORDER

In the District Court of

To.....(Respondent)

Take notice you the saidthat after hearing an application from.....(Applicant)

for the issue of a Protection Order, the Court, in virtue of the powers conferred upon it by section 3A(1) of the Protection from Domestic Violence Act hereby restrains you from engaging in any conduct which may constitute an act of domestic violence against the Applicant and further orders you to be of good behaviour towards him/her.

The said Protection Order shall remain in force until

Take also notice that the Court, in virtue of the powers conferred upon it by section 3A(5) of the Protection from Domestic Violence Act further prohibits you

.....

his prohibition order shall remain in force until.....

Given hereunder my hand at..... in the District Court of.....

This day of 20.....

District Magistrate