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THE OFFICIAL GAZETTE 5TH JULY, 2024
LEGAL SUPPLEMENT — C

BILL No. 10 of 2024 *Friday 5th July, 2024*

PARLIAMENT OFFICE
Public Buildings,
Georgetown,
Guyana.

5th July, 2024.

The following Bill which will be introduced in the National Assembly is published for general information.

S.E. Isaacs,
Clerk of the National Assembly.

GUYANA

BILL No. 10 of 2024

MATRIMONIAL CAUSES (AMENDMENT) BILL 2024

ARRANGEMENT OF SECTIONS

SECTION

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A BILL

Intituled

AN ACT to amend the Matrimonial Causes Act.

A.D.2024 Enacted by the Parliament of Guyana :-

Short title. 1. This Act, which amends the Matrimonial Causes Act, may be cited as the Matrimonial Causes (Amendment) Act 2024.

Cap. 45:02

Insertion of new section 1A in the Principal Act. 2. The Principal Act is amended by inserting immediately after section 1 the following section –

"Interpretation. 1A. In this Act –

"marriage" includes a void marriage;

"re-marriage" in relation to a person who was a party to a purported marriage that is void, means marriage;

"spouse" means a man and woman who are married to each other and which marriage is registered under the Marriage Act.".

Cap. 45:01

Amendment of section 3 of the Principal Act. 3. Section 3 of the Principal Act is amended as follows –

(a) in subsection (1), by inserting after the words "or cruelty," the words "or irreconcilable differences,"; and

(b) by substituting for subsection (2) the following –

"(2) Application for judicial separation on any of the grounds aforesaid may be made by either husband or wife by petition to the Court in accordance with the rules, and the Court to which the petition is addressed, on being satisfied that the allegations therein contained are true and that there is no legal ground why the prayer should not be granted, may decree judicial separation, and may make any order for alimony in accordance with section 14.".

Amendment of section 4 of the Principal Act.

4. Section 4 of the Principal Act is amended by substituting for tha section the following –

"Order for protection of husband or wife's property.

5. (1) A husband or wife deserted by his or her spouse may at any time after the desertion, if resident within Guyana, apply to a magistrate or to the Court, for an order to protect any money or property he or she acquires by their own lawful industry, and property of which he or she becomes possessed, after the desertion, against the spouse or the spouse's creditors, or any person claiming under the spouse.

(2) The magistrate or the Court, if satisfied of the fact of desertion and that it was without reasonable cause, and that the husband or wife is maintaining himself or herself by their own industry or property, may make and give to the husband or wife an order

protecting from their spouse and all creditors and persons claiming under that spouse earnings and property acquired since the commencement of the desertion, and those earnings and property shall belong to the husband or wife, as the case may be, as if he or she were a single person:

Provided that –

(a) the order, if made by a magistrate, shall within ten days after it is made be entered with the Registrar of the Court, and the spouse, and any creditor or other person claiming under the spouse, may apply to the Court, or to the magistrate by whom the order was made, for its discharge; and

(b) if the spouse or any creditor of, or person claiming under the spouse seizes or continues to hold any property of the wife or husband, as the case may be, after notice of the order, the spouse shall be liable at the suit of the wife or husband (which he or she is hereby empowered to institute) to restore the specific property, and also for a sum equal to double the value of the property so seized or held after the notice.

(3) If an order of protection is made, the husband or wife during the continuance thereof shall be and be deemed to have been, during the desertion in the same position in all respects, with regard to property

and contracts and suing and being sued, as he or she would be under this Act if he or she obtained a decree of judicial separation.

(4) Where an order of protection has been made the spouse or creditor may apply to the Court, or to the magistrate for the time being exercising jurisdiction in the district in which the order has been made, and the Court, whether it has itself made the order or not, or the magistrate, may discharge the order.".

Amendment of section 5 of the Principal Act.

5. Section 5 of the Principal Act is amended by inserting after the words "or acts of the wife" the words "or husband".

Amendment of section 6 of the Principal Act.

6. Section 6 of the Principal Act is amended by substituting for that section the following –

"Payment of alimony to spouse or to the spouse's trustee.

6. Whenever the Court makes any order for alimony, it may direct the alimony to be paid either to the spouse or to any trustee on their behalf to be approved by the Court, and may impose any terms or restrictions to the Court seeming expedient, and may from time to time appoint a new trustee, if for any reason it appears expedient to the Court to do so.".

Amendment of section 7 of the Principal Act.

7. Section 7 of the Principal Act is amended by substituting for that section the following –

"Property acquired by spouse after judicial separation.

7. In every case of judicial separation as from the date of the decree and so long as the separation continues, any property which is acquired by or devolves upon the spouse shall not be affected by any restraint upon anticipation attached to the enjoyment by that spouse of any property under any settlement, agreement for a settlement, will, or other instrument; and if that spouse dies intestate such property shall devolve as if the other spouse had been then dead.".

Amendment of section 8 of the Principal Act.

8. Section 8 of the Principal Act is amended by substituting for that section the following –

"Liability of spouse for necessaries.

8. In every case of judicial separation if alimony has been ordered to be paid and has not been duly paid by the spouse so ordered, that spouse shall be liable for necessaries supplied to the other spouse.".

Amendment of section 9 of the Principal Act.

9. Section 9 of the Principal Act is amended as follows –

(a) by substituting for subsection (1) the following –

"Petition for dissolution of marriage.

9 (1) A petition for divorce may be presented to the Court either by the husband or the wife on the ground –

(a) that the respondent has since the celebration of the marriage been guilty of adultery or malicious desertion with or without adultery; or

(b) that the respondent has since the celebration of the marriage treated the petitioner with cruelty; or

(c) that the respondent is incurably of unsound mind and has been continuously under care and treatment for a period of at least five years immediately preceding the presentation of the petition, and by the wife on the ground that her husband has since the celebration of the marriage been guilty of rape, sodomy or bestiality; or

(d) of irreconcilable differences which has caused the irremediable breakdown of the marriage:

Provided that the husband and wife have been separated and have since lived apart for a continuous period of at least six months immediately

preceding the presentation of the petition."; and

(b) by inserting immediately after subsection (1) the following subsection –

"(1A) For the purposes of subsection (1)(d) –

(a) the parties to a marriage may be held to have separated, notwithstanding that cohabitation was brought to an end by the action or conduct of only one of the parties;

(b) the parties to a marriage may be held to have separated and to have lived separately and apart, notwithstanding that they have continued to reside in the same residence, or that either party has rendered some household services to the other.".

Amendment of section 14 of the Principal Act.

10. Section 14 of the Principal Act is amended by substituting for that section the following section as section 14 –

"Maintenance and alimony of a party to the marriage.

14. (1) On making any decree for dissolution of marriage, or nullity of marriage, or judicial separation, the Court may, if it thinks fit, make an order requiring a party to the marriage to maintain the other party to the extent that the first mentioned party is able to so do.

(2) The liability of a party under subsection (1) arises only where the other party is unable to support herself or himself adequately, whether by reason of having the care or control of a child of the marriage who has not attained the age of eighteen years, or by reason of age or physical or mental incapacity for appropriate gainful employment, or for any other adequate reason, having regard to any relevant matter set out in subsection (3).

(3) In determining the quantum of maintenance a party to the marriage may be entitled to under this section, the Court shall have consideration of the following matters only –

(a) the age and state of health of each of the parties;

(b) the income, property and financial resources of each of the parties and the physical and mental capacity of each of them for appropriate gainful employment;

(c) whether either party has the care or control of a child of the marriage, who has not attained the age of eighteen years;

(d) the financial needs and obligations of each of the parties;

(e) the responsibilities of either party to support any other person;

(f) where the parties have separated or the marriage has been dissolved, a standard of living that in all the circumstances is reasonable;

(g) the extent to which the payment of maintenance to the party whose maintenance is under consideration would increase the earning capacity of that party by enabling that party to undertake a course of education or training or to establish himself or herself in a business or otherwise to obtain an adequate income;

(h) the extent to which the party whose maintenance is under consideration has contributed to the income, earning capacity, property and financial resources of the other party;

(i) the duration of the marriage and the extent to which it has affected the earning capacity of the party whose maintenance is under consideration;

(j) if the party whose maintenance is under consideration is cohabiting with another person, the financial

circumstances relating to the cohabitation;

(k) the terms of any order made or proposed to be made under section 16 in relation to the property of the parties; and

(l) any fact or circumstance that, in the opinion of the Court, the justice of the case requires to be taken into account.

(4) The obligation to maintain the other party to the marriage exists without regard to the conduct of either party, but the Court may in determining the amount of maintenance have regard to a course of conduct that is so unconscionable as to constitute an obvious and gross repudiation of the relationship.

(5) In any suit for dissolution or nullity of marriage the Court shall have the same power to make interim orders for payment of money, by way of alimony or otherwise, to the husband or wife as it has in a suit instituted for judicial separation.".

Insertion of new sections 14A, 14B and 14C in the Principal Act.

11. The Principal Act is amended by inserting immediately after section 14 the following sections –

"General powers of Court.

14A. The Court, in exercising its powers under this Part in relation to maintenance, may if it thinks fit –

(a) order payment of a lump sum, whether in one amount or by instalments;

(b) order payment of a weekly, monthly, yearly or other periodic sum;

(c) order that payment of any sum ordered to be paid be wholly or partly secured in such manner as the Court directs;

(d) order that any necessary deed or instrument be executed, and that such documents of title be produced or such other things be done as are necessary to enable an order to be carried out effectively or to provide security for the due performance of an order;

(e) on or at any time after making an order for maintenance, order the person by whom maintenance is payable under the order, or the legal personal representative of that person, as the case may be, to give such security as it specifies for the

payment of any sum that is to be paid under the order and for that purpose may direct the Registrar to settle and approve a proper deed or instrument, to be executed by all the necessary parties;

(f) appoint or remove trustees;

(g) order that payments be made directly to a party to the marriage, to a trustee to be appointed, or into Court or an account standing in the name of the party at a commercial bank or to such public authority as the Court specifies in the order, for the benefit of a party to the marriage;

(h) order that payment of maintenance in respect of a child be made to such person or public authority as the Court specifies;

(i) make a permanent order, an order pending the disposal of proceedings or an order for a fixed term or for life or during joint lives or until further order;

(j) impose terms and conditions;

(k) make an order by consent;

(l) make any other like or dissimilar order as those mentioned in paragraphs (a) to (k) that the Court considers necessary in the interests of justice; or

(m) subject to this Act, make an order under this Part at any time before or after the making of a decree under another Part.

Cessation of orders.

14B. (1) An order in respect of the maintenance of a party to a marriage ceases to have effect upon the death of the party.

(2) Subject to subsection (3), an order in respect of the maintenance of a party to a marriage ceases to have effect upon the death of the person liable to make payments under the order.

(3) Subsection (2) does not apply in relation to an order if the order is expressed to continue in force throughout the life of the person for whose benefit the order was made or for a period that had not expired at the time of the death of the person liable to make payments under the order, and, in that case, the order is binding upon the legal personal representative of the deceased person.

(4) Subject to any agreement by the parties to the contrary, an order in respect of the maintenance of a party to a marriage ceases to have

effect upon the re-marriage or marriage of the party in whose favour the order is made.

(5) The person for whose benefit the order was made shall inform without delay the person liable to make payments under the order of the date that a re-marriage or marriage, as the case may be, takes place as referred to in subsection (4).

(6) Any moneys paid in respect of a period after the date of a marriage or remarriage, as the case may be, under subsection (4) may be recovered in a court having jurisdiction under this Act.

(7) Nothing in this section affects the recovery of arrears due under an order at the time when the order ceased to have effect.

Modification of maintenance orders.

14C. Where the Court is satisfied that the means of either or both of the parties have changed, the Court may, if it thinks fit –

(a) discharge or modify the order, or temporarily suspend the order as to the whole or any part of the money so ordered to be paid, and subsequently revive in whole or in part as the Court thinks fit; or

(b) vary the order so as to increase or decrease any amount ordered to be paid.".

Amendment of section 18 of the Principal Act.

12. Section 18 of the Principal Act is amended by inserting immediately after the word "husband" the words "or a wife".

Deletion of sections 17,26, 27, 28, 29 and 30 of the Principal Act.

13. The Principal Act is amended by deleting sections 17, 26, 27, 28, 29 and 30.

Consequential amendments.

Cap 3:05.

14. The Summary Jurisdiction (Magistrates) Act is amended as follows –

(a) in section 35 (a), by deleting the first proviso;

(b) in 36 (1) (c), by –

(i) substituting for the colon, a semicolon;

(ii) deleting the proviso; and

(c) in section 42, by substituting for the words "a husband for aggravated assault upon his wife, her" the words "a spouse for aggravated assault upon their spouse, an".

EXPLANATORY MEMORANDUM

This Bill seeks to amend the **Matrimonial Causes Act Cap. 45:02** to reform the law relating to spousal maintenance by removing existing discriminatory provisions so as to bring the law into conformity with certain fundamental rights guaranteed under the Constitution.

Presently, section 14 of the Principal Act provides that on a decree for dissolution or nullity of marriage, the Court may order that a husband must pay maintenance or alimony to a wife. This provision was held by the High Court to be discriminatory based on the grounds of sex and gender as it does not provide that a wife may be ordered to pay maintenance or alimony to a husband. Accordingly, this provision was found to be in violation of Articles 149 and 149D of the Constitution of Guyana which speaks to protection from discrimination on a number of grounds, including sex and gender, and equality before the law, respectively.

In addition to amending section 14, this Bill also proposes to amend other provisions of the Principal Act and specific sections in the **Summary Jurisdiction (Magistrates) Act, Cap. 3:05**, which only provide for maintenance and protection of the property of a wife.

Clause 2 of the Bill seeks to amend the Principal Act by inserting a new section 1A as the interpretation section. Section 1A provides the definition of key terms used as applicable under the Act.

Clause 3 of the Bill seeks to amend section 3 of the Principal Act to remove any provision relating to restitution of conjugal rights – an outdated concept which has since been abolished in many countries.

Clause 4 of the Bill seeks to amend section 4 of the Principal Act which deals with an order for the protection of a wife's property only. This amendment seeks to make the provision also applicable to a husband.

Clause 5 of the Bill seeks to amend section 5 of the Principal Act, which deals with the reversal of decree of judicial separation, to make this provision also applicable to a husband.

Clause 6 of the Bill seeks to amend section 6 of the Principal Act, which in its current form only provides for the payment of alimony to a wife or the wife's trustee. This amendment seeks to make the provision also applicable to a husband or the husband's trustee.

Clause 7 of the Bill seeks to amend section 7 of the Principal Act, which currently only provides for a property acquired by a wife after judicial separation to be protected. This amendment seeks to make the provision also applicable to a husband's property.

Clause 8 of the Bill seeks to amend section 8 of the Principal Act which currently makes provision for a husband to be liable for the necessaries supplied to his wife owing to his failure to duly pay alimony to his wife. This amendment seeks to make the provision also applicable to a wife.

Clause 9 of the Bill seeks to amend section 9 of the Principal Act by making provision for the dissolution of a marriage on the ground of irreconcilable differences which has caused the irremediable breakdown of the marriage. A petitioner who is relying on this ground must prove to the satisfaction of the Court, that the parties to the marriage have been separated and living apart for a continuous period of at least six months immediately preceding the presentation of the petition.

Clause 10 of the Bill seeks to amend section 14 of the Principal Act by substituting the current section 14 for a new section 14. The effect of the amendment is to provide for either the husband or wife to receive maintenance or alimony post-divorce. The clause also sets out the factors which the Court shall consider when making an order for maintenance.

Clause 11 of the Bill inserts new sections 14A, 14B and 14C into the Principal Act. Section 14 A provides for general powers of the Court in relation to maintenance orders. Section 14B provides for cessation orders and outlines the circumstances under which an order for maintenance may cease. Section 14C provides for modification of maintenance orders in circumstances where the Court is satisfied that the means of either or both of the parties have changed.

Clause 12 of the Bill seeks to amend section 18 of the Act which currently provides for the payment of costs by the adulterer. The amendment seeks to make the provision applicable to a wife as it does to a husband.

Clause 13 of the Bill provides for the deletion of section 17 which currently provides for claim for damages from the adulterer and the deletion of sections 26, 27, 28, 29 and 30 of the Principal Act which deals with restitution of conjugal rights.

Clause 14 of the Bill makes provision for consequential amendments to the **Summary Jurisdiction (Magistrates) Act.** It removes the first proviso of section 35 and the proviso for section 36, which currently provides for a husband to receive maintenance only by reason of impairment by his earning capacity through age, illness or disability of mind or body. This amendment seeks to make sections 35 and 36 applicable to both husband and wife. The clause also provides for the amendment of section 42, which deals with the procedure to be followed in respect of applications concerning matrimonial proceedings made pursuant to section 34 of said Act.

Section 42 of the Act currently sets out the procedure to be followed only in circumstances where there is a conviction of a husband for aggravated assault upon his wife. The amendment therefore seeks to make the provision applicable to a husband as it is to a wife.

Hon. Mohabir Anil Nandlall, SC, MP
Attorney General and
Minister of Legal Affairs