
CHAPTER 99**SEXUAL OFFENCES AND DOMESTIC VIOLENCE**

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CHAPTER 99**SEXUAL OFFENCES AND DOMESTIC VIOLENCE**

An Act to amend the law relating to sexual offences and to make provision in respect of related circumstances involving parties to a marriage.

*9 of 1991
10 of 2000
S.I. 36/2005*

[Assent 29th July, 1991]

[Commencement 2nd August, 1991]

1. This Act may be cited as the Sexual Offences and Domestic Violence Act. Short title.

**PART I
SEXUAL OFFENCE**

Definitions

2. In this Part —

Interpretation in
Part I.

“abatement”, “administer”, “attempt”, “consent”, “imprisonment”, “indictment”, “intent”, “premises”, “prison”, “public place” and “threat” have the meanings respectively assigned to those expressions under section 4 of the Penal Code;

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“adult” means a person eighteen years of age or more;

“minor” means a person under eighteen years of age;

“sexual offence” means any offence under sections 6 to 14 or section 16 of this Act.

3. Rape is the act of any person not under fourteen years of age having sexual intercourse with another person who is not his spouse — Definition of
rape.

- (a) without the consent of that other person;
- (b) without consent which has been extorted by threats or fear of bodily harm;
- (c) with consent obtained by personating the spouse of that other person; or

- (d) with consent obtained by false and fraudulent representations as to the nature and quality of the act.

Definition of sexual intercourse.

4. For the purposes of this Act, “sexual intercourse” includes —

- (a) sexual connection occasioned by any degree of penetration of the vagina of any person or anus of any person, or by the stimulation of the vulva of any person or anus of any person, by or with —
 - (i) any part of the body of another person; or
 - (ii) any object used by another person,except where the penetration or stimulation is carried out for proper medical purposes; and
- (b) sexual connection occasioned by the introduction of any part of the penis of any person into the mouth of another person,

and any reference in this Act to the act of having sexual intercourse includes a reference to any stage or continuation of that act.

Definition of abduction.

5. (1) A person is guilty of abduction of another person who, with intent to deprive any person entitled to the custody or control of that other person, of such custody or control, or with intent to cause that other person to be married to, or to co-habit or have sexual intercourse with, any person —

- (a) unlawfully takes that other person from the lawful custody, care or charge of any person; or
- (b) detains that other person from returning to the lawful custody, care or charge of any person.

(2) The custody, control, care or charge of a person by a parent, guardian or other person shall be held to continue, notwithstanding that the first-mentioned person is absent from the actual custody, control, care or charge of the parent, guardian or other person if the absence is for a special purpose only, and is not intended by the parent, guardian or other person to exclude or determine such custody, control, care or charge for the time being; but a person is not guilty of abduction by taking or detaining a

person unless he knew or had grounds for believing, that the person so taken or detained was in the custody, control, care or charge of some other person.

Indictable Sexual Offences

6. (1) Any person who commits rape is guilty of an offence and liable to imprisonment for life, subject to, on a first conviction for the offence, a term of imprisonment of seven years and, in the case of a second or subsequent conviction for the offence, a term of imprisonment of fourteen years. Rape. 10 of 2000, s. 2.

(2) Any person who attempts to commit rape, or assaults any person with intent to commit rape, is guilty of an offence and liable to imprisonment for fourteen years, subject to, in the case of a second or subsequent conviction for the offence being a conviction on information, a term of imprisonment of eight years. 10 of 2000, s. 2.

7. Any person who — Procurement.

- (a) procures or attempts to procure any person under eighteen years of age to have unlawful sexual intercourse, either in or outside The Bahamas, with any other person;
- (b) procures or attempts to procure any person to become, either in or outside The Bahamas, a common prostitute;
- (c) procures or attempts to procure any person to leave The Bahamas with intent that he may become an inmate of or frequent a brothel elsewhere;
- (d) procures or attempts to procure any person to leave his usual place of abode in The Bahamas with intent that he may, for the purposes of prostitution, become an inmate of or frequent a brothel either in or outside The Bahamas;

- (e) by threats or intimidation, procures or attempts to procure any person to have unlawful sexual intercourse either in or outside The Bahamas;
- (f) by false pretences or false representations, procures any person to have any unlawful sexual intercourse either in or outside The Bahamas; or
- (g) applies, administers or causes to be taken by any person any drug, matter or thing with intent to stupefy or overpower, so as thereby to enable any other person to have unlawful sexual intercourse with such first-mentioned person,

is guilty of an offence and liable to imprisonment for eight years.

Prostitution and disclosure of AIDS.

8. (1) Any person who —

- (a) knowingly lives wholly or in part on the earnings of prostitution; or
- (b) in any public place persistently solicits or importunes for immoral purposes,

is guilty of an offence and liable to imprisonment for five years.

(2) Any person who knows that he is infected with a virus causing, or known to cause, acquired immune deficiency syndrome (commonly known as “AIDS”) and who has sexual intercourse with any other person, with the consent of that other person but without disclosing the fact of the infection to that other person, is guilty of an offence and liable to be detained for a term of five years in such place and under such conditions as may be specified by the court before which he is convicted; and, while so detained, he shall be deemed to be in legal custody.

(3) It shall be a sufficient defence to any charge under subsection (2), if it is made to appear to the court before which the charge shall be brought that the person with whom the person so charged had sexual intercourse knew, or had reasonable cause to believe, before sexual connection was occasioned, that the person so charged was so infected.

Restriction on conviction under section 7 or 8.

9. No person shall be convicted of an offence under section 7 or 8(1) upon the evidence of one witness unless such evidence be corroborated in some material particular by evidence implicating the accused person.

10. (1) Any person who has unlawful sexual intercourse with any person under fourteen years of age, whether with or without the consent of the person with whom he had unlawful sexual intercourse, is guilty of an offence and liable to imprisonment for life subject to, on a first conviction for the offence, a term of imprisonment of seven years and in the case of a second or subsequent conviction for the offence, a term of imprisonment of fourteen years.

Sexual intercourse with a person under fourteen years.

10 of 2000, s. 2.

(2) Any person who attempts to have unlawful sexual intercourse with any person under fourteen years of age, whether with or without the consent of the person with whom he attempted to have unlawful sexual intercourse, is guilty of an offence and liable to imprisonment for fourteen years subject to, in the case of a second or subsequent conviction for the offence, a term of imprisonment of eight years.

10 of 2000, s. 2.

11. (1) Any person who has unlawful sexual intercourse with any person being of or above fourteen years of age and under sixteen years of age, whether with or without the consent of the person with whom he had unlawful sexual intercourse, is guilty of an offence and liable to imprisonment for life subject to, on a first conviction for the offence, a term of imprisonment of seven years and, in the case of a second or subsequent conviction for the offence, a term of imprisonment of fourteen years.

Sexual intercourse with a person between fourteen and sixteen years.

10 of 2000, s. 2.

(2) Any person who attempts to have unlawful sexual intercourse with any person being of or above fourteen years of age and under sixteen years of age, whether with or without the consent of the person with whom he attempted to have unlawful sexual intercourse, is guilty of an offence and liable to imprisonment for fourteen years subject to, in the case of a second or subsequent conviction for the offence, a term of imprisonment of eight years.

10 of 2000, s. 2.

(3) It shall be a sufficient defence to any charge under this section if it is made to appear to the court or jury before whom the charge shall be brought that the person so charged, being a person not over the age of eighteen years and not previously convicted of the same offence, had reasonable cause to believe that the person with whom he had sexual intercourse was of or above sixteen years of age.

(4) A prosecution for an offence under this section shall be commenced within six months of the commission of the offence and with the consent of the Attorney-General.

12. (1) Any person who has unlawful sexual intercourse with any person who is suffering from any mental disorder, whether with or without the consent of the person with whom he had unlawful sexual intercourse, under circumstances which prove that the accused person knew at the time of the commission of the offence that the person with whom he had unlawful sexual intercourse was a person suffering from a mental disorder, is guilty of an offence and liable to imprisonment for life subject to, on a first conviction for the offence, a term of imprisonment of seven years and, in the case of a second or subsequent conviction for the offence, a term of imprisonment of fourteen years.

(2) Any person who attempts to have unlawful sexual intercourse with any person who is suffering from any mental disorder, whether with or without the consent of the person with whom he attempted to have unlawful sexual intercourse, under circumstances which prove that the accused person knew at the time of the commission of the offence that the person with whom he attempted to have unlawful sexual intercourse was a person suffering from a mental disorder, is guilty of an offence and liable to

Sexual
intercourse with
a person
suffering from a
mental disorder.

10 of 2000, s. 2.

imprisonment for fourteen years subject to, in the case of a second or subsequent conviction for the offence, a term of imprisonment of eight years.

10 of 2000, s. 2.

(3) In this section, “mental disorder” means severe subnormality or subnormality within the meanings respectively assigned to those expressions under subsection (1) of section 2 of the Mental Health Act.

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13. (1) Any person who, knowing that another person is by blood relationship his or her parent, child, brother, sister, grand parent, grandchild, uncle, niece, aunt or nephew, as the case may be, has unlawful sexual intercourse with that other person, whether with or without the consent of that other person, is guilty of the offence of incest and liable to imprisonment —

Incest.

- (a) if he is an adult who commits the offence with a minor, for life subject to, on a first conviction for the offence, a term of imprisonment of seven years, and in the case of a second or subsequent conviction for the offence, a term of imprisonment of fourteen years;
- (b) if he is an adult who commits the offence with another adult; for a term of ten years; and
- (c) if he is a minor who commits the offence with another minor, for a term of two years.

10 of 2000, s. 2.

(2) Any person who, knowing that another person is by blood relationship his or her parent, child, brother, sister, grandparent, grandchild, uncle, niece, aunt, or nephew, as the case may be, attempts to have unlawful sexual intercourse with that other person, whether with or without the consent of that other person, is guilty of an offence and liable to imprisonment —

- (a) if he is an adult who commits the offence with a minor, for fourteen years subject to, in the case of a second or subsequent conviction for the offence, a term of imprisonment of eight years;

10 of 2000, s. 2.

- (b) if he is an adult who commits the offence with another adult, for a term of four years; and
- (c) if he is a minor who commits the offence with another minor, for a term of six months.

(3) Notwithstanding the commission by any person of an act which amounts to an offence under subsection (1) or (2), that person is not guilty of the offence if —

- (a) he committed the act under restraint, duress or fear;
- (b) he did not consent to the commission of the act; or
- (c) at the time of the commission of the act, he was the spouse of the person with whom the act was committed.

(4) In this section, any expression importing a relationship between two persons shall be taken to apply notwithstanding that the relationship is not traced through lawful wedlock; and “brother” includes “half-brother” and “sister” includes “half-sister”.

(5) No prosecution shall be commenced for an offence under paragraph (c) of subsection (1) or paragraph (c) of subsection (2) without the consent of the Attorney-General.

Sexual
intercourse with
a dependant.

10 of 2000, s. 2.

14. (1) Any adult who has unlawful sexual intercourse with a dependent child of the adult, whether with or without the consent of the child, is guilty of an offence and liable to imprisonment for life subject to, on a first conviction for the offence, a term of imprisonment of seven years and, in the case of a second or subsequent conviction for the offence, a term of imprisonment of fourteen years.

10 of 2000, s. 2.

(2) Any adult who attempts to have unlawful sexual intercourse with a dependent child of the adult, whether with or without the consent of the child, is guilty of an offence and liable to imprisonment for fourteen years subject to, in the case of a second or subsequent conviction for the offence, a term of imprisonment of eight years.

(3) In this section, “dependent child of the adult” means a minor who is not related by blood to the adult but —

- (a) is the adopted child, step-child, foster child or ward of the adult;
- (b) has been treated by the adult as a child of the family of the adult;
- (c) is being maintained, either wholly or partly, by the adult;
- (d) is in the actual custody; charge or control of the adult; or
- (e) in relation to whom the adult holds a position of trust.

15. (1) Any person who has sexual intercourse with his spouse without the consent of the spouse —

Sexual assault by spouse.

- (a) where there is in existence in relation to them —
 - (i) a decree *nisi* of divorce;
 - (ii) a decree of judicial separation;
 - (iii) a separation agreement; or
 - (iv) an order of a court for the person not to molest or co-habit with his spouse, or any other order made under Part II; or
- (b) where the person has notice that a petition for judicial separation, divorce or nullity of marriage has been presented to a court,

is guilty of the offence of sexual assault by spouse and liable to imprisonment for a term of fifteen years.

(2) No prosecution shall be commenced for an offence under this section without the consent of the Attorney-General.

16. (1) Any person who commits an act of unnatural connection with any animal is guilty of a sexual offence and liable to imprisonment for twenty years; and an offence under this subsection is complete upon penetration.

Unnatural crime.

(2) Any adult male who —

- (a) has sexual intercourse with another male who is a minor; or

- (b) has sexual intercourse, in a public place, with another male,

whether with or without the consent of that other male, is guilty of a sexual offence and liable to imprisonment for twenty years.

- (3) Any female adult who —

- (a) has sexual intercourse with another female who is a minor, or
- (b) has sexual intercourse, in a public place, with another female,

whether with or without the consent of that other female, is guilty of a sexual offence and liable to imprisonment for twenty years.

(4) Notwithstanding the commission by any person of an act which amounts to an offence under this section, that person is not guilty of the offence if he committed the act under restraint, duress or fear.

(5) No prosecution shall be commenced for an offence under this section without the consent of the Attorney-General.

Indecent assault.

- 17.** (1) Any person who —

- (a) indecently assaults any other person;
- (b) does anything to any other person with the consent of that other person which, but for such consent, would be an indecent assault, such consent being obtained by false and fraudulent representation as to the nature and quality of the act,

is guilty of an offence and liable to imprisonment for eight years.

(2) It is no defence to a charge of an indecent assault committed on a person under fourteen years of age, to prove that that person consented to the act of indecency.

Saving as to liability for rape in cases of defilement, etc.

18. Nothing in any of sections 10 to 14, 16(3) or 17 shall exempt a person from liability to punishment for rape or for an attempt to commit rape.

19. Any person who, being the owner or occupier of any premises, or having or acting or assisting in the management or control thereof, induces or knowingly suffers any person under sixteen years of age to resort to, or be in or upon the premises for the purpose of co-habiting or having unlawful sexual intercourse with any person, whether with any particular person or generally, is guilty of an offence and liable to imprisonment for ten years:

House holder, etc., permitting defilement of young person on his premises.

Provided that it shall be a sufficient defence to any charge under this section if it is made to appear to the court or jury that the accused person had reasonable cause to believe that the person so induced or suffered was of or above sixteen years of age.

20. Any person who, by force, takes away or detains any other person of any age against his will, with intent to marry or co-habit or have unlawful sexual intercourse with him, or to cause him to be married to or to co-habit or have unlawful sexual intercourse with another person, is guilty of an offence and liable to imprisonment for fourteen years.

Forcible taking or detaining of person with intent.

21. (1) Any person who detains any other person against his will —

Unlawful detention with intent to have sexual intercourse.

- (a) in or upon premises with intent that that other person may co-habit or have unlawful sexual intercourse with another person, whether any particular person or generally; or
- (b) in a brothel,

is guilty of an offence and liable to imprisonment for two years.

(2) Where any person is in or upon premises for the purpose of co-habiting or having any unlawful sexual intercourse, or is in any brothel, another person shall be deemed to detain him in or upon the premises or in the brothel, if with intent to compel or induce him to remain therein that other person withholds from him any wearing apparel or other property belonging to him, or, where wearing apparel has been lent or otherwise supplied to him by or by the direction of that other person, that other person threatens him with legal proceedings if he takes away with him the wearing apparel so lent or supplied.

(3) No legal proceedings whether civil or criminal shall be taken against a person who was in or upon any premises or brothel as mentioned in subsection (2) for taking away or being found in possession of any such wearing apparel as was necessary to enable him to leave the premises or brothel.

Abduction of
unmarried
person under
sixteen.

22. Any person who is guilty of an abduction of any unmarried person under sixteen years of age is guilty of an offence and liable to imprisonment for two years.

Abduction of
unmarried
person between
sixteen and
eighteen.

23. Any person who is guilty of an abduction of any unmarried person being of or above sixteen years of age and under eighteen years of age is guilty of an offence and liable to imprisonment for two years:

Provided that it shall be a sufficient defence to any charge under this section if it shall be made to appear to the court or jury that the person so charged had reasonable cause to believe that such unmarried person was of or above eighteen years of age.

Special provision
as to abetment in
cases of
abduction.

24. Any person who, knowing that any of the offences mentioned in sections 19 to 23 has been committed in the case of any person, or otherwise abets the unlawful detention of the person, or otherwise abets the execution of the intent with which that offence was committed, shall be deemed guilty of that offence.

Special
provisions as to
abduction.

25. For the purposes of the sections of this Part relating to abduction —

- (a) it is not necessary that the taking or detaining should be without the consent of the person taken or detained, and it suffices if the person is persuaded, aided or encouraged to depart or not to return;
- (b) it is not necessary that there should be an intent permanently to deprive any person of the custody or control of the person taken or detained;
- (c) a taking or detention is unlawful unless some person entitled to give consent to the taking or detention of the person taken or detained, for the purposes for which he is taken or detained, gives consent to the taking or detention for those purposes;

- (d) a person having the temporary custody, care or charge of another person for a special purpose, as his attendant, employer or schoolmaster or in any other capacity, can be guilty of abduction of that person by acts which he is not authorised to do for such special purpose, and he cannot give consent to any act by another person which would be inconsistent with such special purpose; and
 - (e) notwithstanding the application of the general provisions of Book I. of the Penal Code with respect to mistake of law, a person is not guilty of abduction of another person by anything which he does in the belief that he is entitled by law as a parent or guardian, or by virtue of any other legal right, to take or detain the other person for the purposes for which he takes or detains him; but this rule shall not be construed to exempt a person from liability to punishment on the plea that he did not know or believe or had not the means of knowing, that the other person was under sixteen or eighteen years of age, as the case may be, nor to exempt a person from liability to punishment for abduction if he took or detained the other person for any immoral purpose.
- 26. (1) Any person who —**
- (a) being a prospective employer importunes or solicits sexual favours from another person —
 - (i) in the terms or conditions on which he offers, to that person or any other person, employment or admission into any institution; or
 - (ii) under a threat of rejection (whether implied or otherwise) of any application made by that person or any other person for employment or for admission into any institution, or of causing such rejection;
 - (b) being in a position of authority over, or being a co-worker of, another person in any place of employment or any institution, importunes or solicits sexual favours from that other person

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Sexual
harassment.

under any holding out, promise or threat of the grant or imposition of any favour, benefit, advantage or disadvantage, as the case may be, at the place of employment or institution; or

- (c) importunes or solicits from a person in a position of authority in any place of employment or any institution, any favour, benefit or advantage, or the forbearance from the exercise of any right, power or duty relating to that authority under any holding out or promise of sexual favours,

is guilty of the offence of sexual harassment.

(2) Any person who is guilty of the offence of sexual harassment is liable to a fine of five thousand dollars or to imprisonment for two years or to both such fine and imprisonment.

(3) In this section, “prospective employer” means any person who —

- (a) is in a position of authority in any place of employment or any institution; or
- (b) is authorised to act on behalf of a person mentioned in paragraph (a) for the purpose of employing personnel for a place of employment or admitting persons into an institution.

(4) No prosecution shall be commenced for an offence under this section without the consent of the Attorney-General.

General Provisions

Powers of court
where sexual
offence
committed.

27. (1) Where, on the trial of any sexual offence against a person under sixteen years of age, it is proved to the satisfaction of the court that the offence has been perpetrated, caused, encouraged or favoured by his father, mother or guardian, or by any other person having custody, care, charge or control of him, it shall be in the power of the court to divest such father, mother, guardian, or other person having such custody, care, charge or control of all authority over him, and to appoint any person or persons willing to take charge of him to be his guardian until he has attained eighteen years of age, or any age below this as the court may direct, and the court shall

have the power from time to time to rescind or vary the order by the appointment of any other person or persons as guardian or guardians, or in any other respect.

(2) Where a person is convicted of a sexual offence, the court before which he is convicted may in lieu of, or in addition to, any penalty which may be imposed, make an Order (in this section referred to as a “psychiatric assistance Order”) requiring the person so convicted to attend a psychiatrist, for psychiatric assistance during such period specified in the Order as the court may determine.

(3) Any person who fails to comply with any of the provisions of a psychiatric assistance Order is guilty of an offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for six months or to both such fine and imprisonment.

28. (1) Any person who —

- (a) is the parent or guardian of a minor;
- (b) has the actual custody, charge or control of a minor;
- (c) has the temporary custody, care, charge or control of a minor for a special purpose, as his attendant, employer or teacher, or in any other capacity; or
- (d) is a medical practitioner, or a person registered under the Nurses and Midwives Act as a nurse or midwife, and has performed a medical examination in respect of a minor,

Mandatory reporting of suspected abuse of minors.

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and who has reasonable grounds for believing that a sexual offence has been committed in respect of that minor, shall report the grounds for his belief to a police officer as soon as reasonably practicable.

(2) Any person who without reasonable excuse fails to comply with the requirements of subsection (1) is guilty of an offence and liable on summary conviction to a fine of five thousand dollars or to imprisonment for a term of two years or to both such fine and imprisonment.

(3) No report made to a police officer under the provisions of subsection (1) shall, if such report was made in good faith for the purpose of complying with those provisions, subject the person who made the report to any action, liability, claim or demand whatsoever.

Offences under
this Part to be
indictable
offences.
Ch. 84.

29. Unless otherwise provided under this Part, an offence under the provisions of this Part is punishable on indictment and the provisions of Book I. of the Penal Code *mutatis mutandis* apply in respect of any such offence as they apply in respect of any offence punishable under Book III of the Code.

PART II DOMESTIC VIOLENCE

Definitions

Interpretation in
Part II

30. In this Part —

“apartment” means a separate and self-contained set of premises constructed for use as a place of residence and forming part of a building from some other part of which it is divided;

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“child of the family” has the same meaning as in the Matrimonial Causes (Summary Jurisdiction) Act;

“dwelling” means a building used or intended to be used mainly as a separate dwelling or place of residence and includes an apartment;

“matrimonial home” means any dwelling being used exclusively or principally as a home by one or both of the parties to a marriage, in any case where —

(a) either or both of the parties —

- (i) owns the dwelling;
- (ii) owns a specified share of any estate or interest in the land on which the dwelling is situated and by reason of reciprocal agreements with the owners of the other shares is entitled to the exclusive occupation of the dwelling; or
- (iii) holds shares in a company which owns any estate or interest in the land on which the dwelling is situated and, by reason of holding those shares, is entitled to the exclusive occupation of the dwelling; and

- (b) either or both of the parties owned the dwelling or the specified share in land or held the shares, as the case may be, at the date of any application under the provisions of this Part;

“mortgage” includes a charge and mortgagor and mortgagee shall be construed accordingly;

“mortgagor” and “mortgagee” includes any person deriving title under the original mortgagor or mortgagee.

31. (1) On an application by a party to a marriage the Supreme Court may grant an injunction containing one or more of the following provisions —

Matrimonial
injunctions.

- (a) a provision restraining the other party to the marriage from molesting the applicant;
- (b) a provision restraining the other party from molesting a child living with the applicant;
- (c) a provision excluding the other party from the matrimonial home, or a part of the matrimonial home, or from a specified area in which the matrimonial home is included, for any period not exceeding three months;
- (d) a provision requiring the other party to permit the applicant to enter and remain in the matrimonial home or a part of the matrimonial home,

whether or not any other relief is sought in the proceedings.

(2) An application under this section shall be made in conformity with Rules of the Supreme Court.

32. (1) Where, on an application by a party to a marriage, the Supreme Court grants an injunction containing a provision (in whatever terms) —

Arrest for breach
of injunction.

- (a) restraining the other party to the marriage from using violence against the applicant;
- (b) restraining the other party from using violence against a child living with the applicant; or
- (c) excluding the other party from the matrimonial home, or from a part of the matrimonial home, or from a specified area in which the matrimonial home is included,

the Court may, if satisfied that the other party has caused actual bodily harm to the applicant or, as the case may be, to the child concerned and if of the opinion that the other party is likely to do so again, attach a power of arrest to the injunction.

(2) If, by virtue of subsection (1), a power of arrest is attached to an injunction a police officer may arrest without warrant a person whom he has reasonable cause for suspecting of being in breach of such a provision of that injunction as falls within paragraphs (a) to (c) of subsection (1) by reason of the use of violence by that person or, as the case may be, of the entry of that person into any premises or area.

(3) Where a power of arrest is attached to an injunction and a person to whom the injunction is addressed is arrested under subsection (2) —

- (a) he shall be brought before the Supreme Court within a period of twenty-four hours beginning at the time of his arrest; and
- (b) upon proof of the breach of any such provision of the injunction as falls within paragraphs (a) to (c) of subsection (1), he may be ordered by the Supreme Court to pay a sum not exceeding two thousand dollars or to serve a term of imprisonment not exceeding fourteen days and, in the case of a continuing breach, he may be ordered by the Court to pay a further sum not exceeding one hundred dollars for each day that such breach continues after the date of its proof,

and in reckoning for the purposes of this subsection any period of twenty-four hours, no account shall be taken of any Saturday, Sunday or public holiday.

(4) Where by virtue of a power of arrest attached to an injunction, a police officer arrests any person under subsection (2), the police officer shall forthwith seek the directions of the Registrar of the Supreme Court as to the time and place at which that person is to be brought before the Supreme Court.

33. (1) Where one party to a marriage is entitled to occupy the matrimonial home by virtue of a beneficial estate or interest or contract or by virtue of any written law giving that party the right to remain in occupation, and the other party to the marriage is not so entitled, then, subject to the provisions of this Part, the party not so entitled shall have the following rights (in this Part referred to as “rights of occupation”) —

Rights concerning matrimonial home where one spouse has no estate.

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- (a) if in occupation, a right not to be evicted or excluded from the matrimonial home or any part thereof by the other party except with the leave of the court given by an order under this section; and
- (b) if not in occupation, a right with the leave of the court so given to enter into and occupy the matrimonial home.

(2) So long as one party to a marriage has rights of occupation, either party to the marriage may apply to the Supreme Court for an order —

- (a) declaring, enforcing, restricting or terminating those rights;
- (b) prohibiting, suspending or restricting the exercise by either party of the right to occupy the matrimonial home; or
- (c) requiring either party to permit the exercise by the other party of that right.

(3) On an application for an order under this section, the court may make such order as it thinks just and reasonable having regard to the conduct of the parties to the marriage in relation to each other and otherwise, to their respective needs and financial resources, to the needs of any children and to all the circumstances of the case, and, without prejudice to the generality of the foregoing provision —

- (a) may except part of the matrimonial home from a party’s rights of occupation (and, in particular, a part used wholly or mainly for or in connection with the trade, business or profession of the other party),
- (b) may order a party occupying the matrimonial home or any part thereof by virtue of this section to make periodical payments to the other in respect of the occupation; or

(c) may impose on either party obligations as to the repair and maintenance of the matrimonial home or the discharge of any liabilities in respect of the matrimonial home.

(4) Orders under this section may, in so far as they have a continuing effect, be limited so as to have effect for a period specified in the order or until further order.

(5) Where a party is entitled under this section to occupy a matrimonial home or any part thereof and makes any payment in or towards satisfaction of any liability of the other party in respect of mortgage payments affecting the matrimonial home, the person to whom the payment is made may treat it as having been made by that other party, but the fact that that person has treated any such payment as having been so made shall not affect any claim of the first-mentioned party against the other to an interest in the matrimonial home by virtue of the payment.

(6) The rights of occupation of a party to a marriage shall continue only so long as the marriage subsists and the other party is entitled as mentioned in subsection (1) to occupy the dwelling house.

Rights
concerning
matrimonial
home where both
spouses have
estate.

34. (1) Where each of two parties to a marriage is entitled, by virtue of a legal estate vested in them jointly, to occupy a dwelling in which they have or at any time have had a matrimonial home, either of them may apply to the Supreme Court, with respect to the exercise during the subsistence of the marriage of the right to occupy the dwelling, for an order prohibiting, suspending or restricting its exercise by the other or requiring the other to permit its exercise by the applicant.

(2) In relation to orders under this section, subsections (3) and (4) of section 33 shall apply as they apply in relation to orders under that section.

(3) Where each of two parties to a marriage is entitled to occupy a dwelling by virtue of a contract, or by virtue of any written law giving them the right to remain in occupation, this section shall apply as it applies where they are entitled by virtue of a legal estate vested in them jointly.

(4) In determining for the purposes of this section whether two parties to a marriage are entitled to occupy a dwelling house, there shall be disregarded any right to possession of the dwelling conferred on a mortgagee of the dwelling house under or by virtue of this mortgage, whether the mortgagee is in possession or not.

35. (1) Either party to a marriage may apply to a court presided over by a magistrate for an order under this section whether or not any other relief is sought in the proceedings.

Powers of
magistrate's
court to make an
order for
protection of
spouse.

(2) Where on an application by a party to a marriage for an order under this section the magistrate's court is satisfied that the other party has used, or threatened to use, violence against the person of the applicant or a child of the family and that it is necessary for the protection of the applicant or a child of the family that an order should be made under this subsection, the court may make one or both of the following orders —

- (a) an order that the other party shall not use, or threaten to use, violence against the person of the applicant;
- (b) an order that the other party shall not use, or threaten to use, violence against the person of a child of the family.

(3) Where on an application by a party to a marriage for an order under this section the court is satisfied —

- (a) that the other party has used violence against the person of the applicant or a child of the family;
- (b) that the other party has threatened to use violence against the person of the applicant or a child of the family and has used violence against some other person; or
- (c) that the other party has in contravention of an order made under subsection (2) threatened to use violence against the person of the applicant or a child of the family,

and that the applicant or a child of the family is in danger of being physically injured by the other party (or would be in such danger if the applicant or child were to enter the matrimonial home) the court may make one or both of the following orders —

- (i) an order requiring the other party to leave the matrimonial home;
- (ii) an order prohibiting the other party from entering the matrimonial home.

(4) Where the court makes an order under subsection (3), the court may, if it thinks fit, make a further order requiring the other party to permit the applicant to enter and remain in the matrimonial home.

(5) An order under this section may be made subject to such exceptions or conditions as may be specified in the order and may be made for such term as may be so specified.

(6) The court in making an order under paragraph (a) or (b) of subsection (2) may include provision that the other party shall not incite or assist any other person to use or threaten to use, violence against the person of the applicant or, as the case may be, the child of the family.

(7) Except so far as the exercise by the other party of a right to occupy the matrimonial home is suspended or restricted by virtue of an order made under subsection (3), an order made under this section shall not affect any estate or interest in the matrimonial home of the other party or any other person.

(8) A court shall, on an application made by either party to the marriage in question, have power by order to vary or revoke any order made under the foregoing provisions of this section.

Arrest for breach
of order of
magistrate.

36. (1) Where on an application by a party to a marriage a court makes an order under section 35 which provides that the other party —

- (a) shall not use violence against the person of the applicant;
- (b) shall not use violence against a child of the family; or
- (c) shall not enter the matrimonial home,

the court may, if it is satisfied that the other party has physically injured the applicant or a child of the family and considers that he is likely to do so again, attach a power of arrest to the order.

(2) Where by virtue of subsection (1) a power of arrest is attached to an order, a police officer may arrest without warrant a person whom he has reasonable cause for suspecting of being in breach of any such provision of the order as is mentioned in paragraph (a), (b) or (c) of subsection (1) by reason of the use of violence by that person or, as the case may be, his entry into the matrimonial home.

(3) Where a power of arrest is attached to an order under subsection (1) and a person is arrested under subsection (2) —

- (a) he shall be brought before a magistrate within a period of twenty-four hours beginning at the time of his arrest; and
- (b) upon proof of the breach of any such provision of the order as is mentioned in paragraph (a), (b) or (c) of subsection (1), he may be ordered by the magistrate to pay a sum not exceeding one thousand dollars or to serve a term of imprisonment not exceeding seven days and, in the case of a continuing breach, he may be ordered by the magistrate to pay a further sum not exceeding fifty dollars for each day that such breach continues after the date of its proof; and any sum so ordered to be paid shall be recoverable summarily as a civil debt,

and in reckoning for the purposes of this subsection any period of twenty-four hours, no account shall be taken of any Saturday, Sunday or public holiday.

(4) Where a court has made an order under section 34 but has not attached to the order a power of arrest under subsection (1), then, if at any time the applicant for that order considers that the other party to the marriage in question has disobeyed the order, he may apply for the issue of a warrant for the arrest of that other party to a magistrate but the magistrate shall not issue a warrant on such an application unless —

- (a) the application is substantiated on oath; and
- (b) the magistrate has reasonable grounds for believing that the other party to the marriage has disobeyed that order.

(5) The magistrate before whom any person is brought by virtue of a warrant issued under subsection (4) may remand him.

Power of
Supreme Court
in respect of
order of
magistrate.

37. Where after the making by a court of an order under subsection (3) of section 35 in relation to a matrimonial home, one of the parties to the marriage in question applies for an order to be made in relation to that matrimonial home under subsection (2) of section 33 or under section 34, the Supreme Court by which that application is heard may, if it thinks fit, direct that the order made under subsection (3) of section 35 and any order made under subsection (4) of section 35 in relation to that matrimonial home, shall cease to have effect on such date as may be specified in the direction.

PART III

MISCELLANEOUS PROVISIONS

Saving.

S.I. 36/2005.

38. (1) Nothing in any of the provisions of this Act shall be construed as having the effect of authorising the imposition in respect of any criminal offence of a penalty severer in degree than the maximum penalty that might have been imposed for that offence at the time when it was committed.

Ch. 84.

(2) The provisions of this Act do not in any way derogate from or limit the provisions of section 90 of the Penal Code.