Mr Speaker, Sir,

I move that the Legal Aid (Amendment) Bill (No.VII of 2012) be read a second time.

I will start by referring to an article written by Chief Judge Hugh Stansfield in the Bar Talk, publication of the Canadian Bar Association, on Access to Justice. I quote:

“Whether our justice system regains public confidence will be determined to a great extent by whether we – the Bar, the Bench, and government – effect material improvements in access to justice. Access to justice is the essential goal which should be shared by all of us. If we don’t adapt our processes to meet the needs of the community more effectively, why should they reasonably bestow upon us the precious commodity that is their confidence?” Unquote.

Mr Speaker, Sir, the House will appreciate Government has embarked on a series of reforms in the legal and judicial sectors. In fact, the present Bill is the 15th piece of legislation that this Government is presenting to the House, in relation to the reforms.

The Government Programme 2012-2015 states at paragraph 35 that the Legal Aid Act will be reviewed in the coming year to broaden the scope for legal assistance.

This Bill represents yet another landmark in the judicial and legal history of Mauritius.

In a world where the fundamental rights of individuals are increasingly and substantially maintained and protected, a developing country like Mauritius, being signatory to various international and regional conventions for the upholding of human rights, should aim at having a legal framework based on fairness. When one speaks of fairness, one would undeniably refer to a proper access to justice to every citizen.

With this Bill, we are increasing “access to justice” to the common man, the less fortunate, the needy and the deserving.
Mr Speaker, Sir,

Since 1974, Mauritius enacted the Legal Aid Act to provide State assistance in terms of legal aid for court proceedings. This system of legal aid has indeed contributed to the upholding of the rights of our citizens and to allow them to have assistance from lawyers in Court proceedings. However, this system had to be improved to better meet the needs and requirements of those who are in need.

The Legal Aid Act needed a fresh look to reflect the changes of the Mauritian legal system and society at large. The need for reforms in the prevailing legal aid system has been highlighted in the Mackay Report ever since 1997.

In July 2008, in line with the Government programme 2005-2010 and the recommendations contained in the Mackay report, a Green paper on “Equal Access to Justice: Reform on Legal Aid in Mauritius” was prepared by Professor Ved Prakash Torul with the help of my Office.

The guiding principles of the proposals made in the Green paper were:

(i) The Means test has to be reviewed in favour of the Merits test;
(ii) A shift from the concept of ‘poor persons’ to ‘eligible persons’;
(iii) A need to widen the assessment criteria not only based on monthly income but also on ‘family responsibilities’.

In August 2008, inter alia the above mentioned proposals were presented to Government and the Green Paper was circulated for public consultation in December 2010. There were consultations and representations from the Honourable Chief Justice, the Bar Council, the Law Society, the Chamber of Notaries, the Law Reform Commission, the Judicial Department Court Ushers Union and the National Economic and Social Council. Their views together with those of the Director of Public Prosecutions and the Commissioner of Police were taken into consideration for the finalisation of the Bill which has been prepared with the assistance of Sir Victor Glover, legal consultant.

Mr Speaker, Sir,

The salient features of the Bill, Mr Speaker, Sir, are that amongst others, it:

(i) simplifies the application process for legal aid;
(ii) extends legal assistance at police enquiry and bail stages;
(iii) provides for a penalty section for those who provide misleading information in order to prevent an abuse of the legal aid system; and
(iv) provides for a Means test and a Merits test wherever applicable.

On 2 February 2012, following an increase in the legal aid allocation, in the Budget 2011-2012 from Rs 2.5 million in 2011 to Rs 10 million in 2012, amendments were made by way of regulations to the Legal Aid Act, to provide for an immediate increase in the threshold of legal aid entitlement, pending finalisation of this Bill. The income ceiling was increased from Rs 5,000 to Rs 10,000 and the requirement of the value of property owned from Rs.75,000 to Rs 500,000 (Vide GN 10 of 2012).

The present Bill now purports to bring about the other changes taking into account the difficult economic situation while providing for flexibility.

Mr Speaker, Sir,

Clause 5 of the Bill is to clarify the wording of the existing Section 3 of the principal Act with respect to offences which legal aid and legal assistance cater for. No change is being brought to the already prescribed offences.

Clause 6 of the Bill provides in Section 4 of the principal Act for a simplified application process for legal aid. A prescribed form for legal aid is now being provided, setting out all the particulars and requirements which need to be satisfied for legal aid. The application form requires relevant information and details which would enable the Authority to have a better picture of the financial situation of the applicant.

An important amendment which the Bill proposes to bring is found at Clause 8 where a new section is being inserted (vide Section 7(3)) which caters for the Merits test. This test may be used by the Authority in specific cases to provide for a fairer system than has been in operation until now. The existing ‘Means test’ has been qualified as being too rigid as it is based on what can be classified as an ancient assessment of a man’s needs and requirements. Therefore, this section will enable the Authority responsible for the grant or refusal of an application for legal aid, to use its discretion in cases where disqualification to legal aid depends only on the capital limit and to consider whether it would be reasonable for the applicant to finance the litigation out of his capital assets.

Mr Speaker Sir,

Clause 9 of the Bill provides for an amendment to Section 7A of the Act which is extending the new concept of legal assistance to minors also so that as from now on,
any minor who is a detainee or who has been charged of a criminal offence will be provided with a legal representative for the purposes of the police enquiry and bail application. This measure is an important step in as much as there is an urgent need to provide them with assistance at the earliest possibility in order to safeguard and protect their rights.

Another important amendment is the new Section 7B at Clause 10 of the Bill. The Bill will now provide for legal assistance during police enquiry and for bail application for the prescribed offences. This measure will be of great assistance and will ensure that the rights of accused party and in particular persons with low or no means can have access to legal advice as from the time of arrest. The importance of access to legal advice at earliest opportunity has been highlighted in a number of the Supreme Court judgments. This amendment is a major and colossal step towards the upholding of the constitutional rights of the detainee or accused party. The procedures for legal assistance will be promptly dealt with and the enquiry provided under section 6 will be dealt at a later stage so as not to delay or protract matters. At first instance, the Authority will base itself on the sworn or solemnly affirmed information provided by the applicant under the application form.

Clause 13 of the Bill at subsection (b) increases the penalty already provided for under Section 10(1)(b) of the Act from a fine not exceeding 1,000 to a fine not exceeding 10,000 and from a term of imprisonment of 3 months to a term of imprisonment of 1 year. Such penalty shall be imposed in the event of breach of Section 10(1)(a) of the Act which provides that any person who takes or agrees to take or seeks to obtain from a person to whom legal aid has been granted any fee or reward for the conduct of his business in Court. This increase in the penalty to be meted out will act as a further deterrence and will provide additional protection to the beneficiaries of the legal aid system and prevent against any abuse of power from those in authority or those who are appointed to assist them.

Mr Speaker, Sir,

The new Section 12A of the Act is provided for under Clause 14 of the Bill and provides for a penalty for any false information provided in order to obtain legal aid or legal assistance. This measure will ensure a better and adequate control on the information furnished by applicants and to prevent any abuse of the simplified and prompt application process put into place.
Clause 16 provides for two new Schedules to be incorporated into the Bill by providing for prescribed forms for applications for legal aid and legal assistance. Mr Speaker, Sir, I will be moving for minor amendments at Committee Stage.

The Judiciary which is one of the major players in the implementation of the amendments to the legal aid system has given its full support and collaboration for extending legal aid to a larger category of persons and providing legal assistance at police enquiry and bail stages.

As the House is aware, since early this year, the Bail and Remand Court is open during weekends and public holidays.

With the increasing number of newly qualified barristers and attorneys, we are confident that there are adequate resources available on the market for the good implementation of the amendments to being brought.

The Mackay report states, at Chapter 15.3, I quote: “We also consider there may be injustice occasioned by the present absolute nature of the capital and revenue limit”. Unquote. The Means and Merit tests are the solution for a more equitable and fair system of assessing entitlement to legal aid. The Green Paper in 2008 strongly recommended the putting into place of the Merit test which would not only ensure a fairer system but also a more humane approach to legal aid. This Bill provide for this possibility at the new Section 7(3) with the caveat that additional sums may be injected into that particular segment of the legal aid as and when economic situation will allow.

The proposed amendments are called for in view of changes in the legal system and society at large. They will in fact increase access to justice to a larger category of persons. Nowadays, the concept of legal aid is no longer restricted to meaning legal representation in Court proceedings. The purpose of legal aid is effectively to empower people to overcome the barriers to equality and justice. It effectively means that legal aid should go beyond the normal legal representation and address every issue which may give rise to prejudice.

Mr Speaker, Sir, the changes being brought about to our legal aid system were long overdue and will align our existing laws with the current realities of life.

I seize the opportunity to thank my officers and all stakeholders without whose valued support this project would not have become a reality.

With these words, I commend the Bill to the House.