Mr. Speaker, Sir,

I move that the Criminal Code (Amendment) Bill (No. VIII of 2012) be read a second time.

Today is a historic day for the whole country. The present revolutionary piece of legislation has finally come before this House, representing a ray of hope for those women who otherwise have to undergo pregnancies in very difficult circumstances. [The presence today in our public gallery of women from several NGOs bears testimony to the importance of this legislation.]

For decades, the question of whether or not to legalise abortion has been the subject of considerable debate and controversy. Enough has been said and heard on the topic. Procrastination should stop. It is time to act. We all know that it takes enormous courage to bring such an important piece of legislation on a topic as sensitive as abortion and if there is one quality that the Hon. Prime Minister and this Government do not lack, it is precisely courage. I have said it already and I repeat it: “C’est une décision sage, courageuse et audacieuse du gouvernement.”

Mr. Speaker, Sir,

Religious, ethical, moral and cultural sensibilities continue to influence abortion laws throughout the world. Countries which allow abortion in specified cases include the United Kingdom, India, South Africa, Pakistan, France, Italy and Spain.

At present, abortion is, in any circumstances, unlawful in Mauritius. Section 235(1) of the Criminal Code provides that any person who procures the miscarriage of a pregnant woman or supplies the means of procuring such miscarriage, whether the woman consents or not, shall be punished by penal servitude for a term not exceeding 10 years. Two further offences are created in section 235, namely –

(a) under subsection (2), where any woman procures her own miscarriage or consents to make use of means pointed out or administered to her with that intent and such miscarriage ensues;
(b) under subsection (3), where any physician, surgeon, or pharmacist points out, facilitates or administers the means of miscarriage and such miscarriage ensues.

Mr. Speaker, Sir,

In the light of a number of recent cases involving women, including minors, who became pregnant as a result of sexual offences, there is a growing need to allow abortion with a view to protect the well-being and health of such women. Moreover, it is important that the law be relaxed where a continued pregnancy is likely to endanger a pregnant woman’s life, affect her physical or mental health permanently or result in severe malformation or abnormality of the foetus which will affect its viability and compatibility with life.

The object of the Bill, therefore, is to amend the Criminal Code to authorise the termination of pregnancy only in the specified circumstances spelt out in the proposed new section 235A, namely –

(a) the continued pregnancy will endanger the pregnant person’s life;

(b) the termination is necessary to prevent grave permanent injury to the physical or mental health of the pregnant person;

(c) there is a substantial risk that the continued pregnancy will result in a severe malformation, or severe physical or mental abnormality, of the foetus, as assessed by the appropriate specialists;

(d) the pregnancy has not exceeded its fourteenth week and results from a case of rape, sexual intercourse with a female under the age of 16 or sexual intercourse with a specified person which has been reported to the police or medical practitioner.

I shall later inform the House of the Committee Stage amendments I propose to bring to the new section 235A.

Mr. Speaker, Sir,

There has been a lot of outcry recently to the effect that abortion is being legalised. Let me emphasise that this is an erroneous understanding of the proposed amendments. We are not introducing abortion on demand. We are simply allowing abortion in the specified circumstances which I have just enumerated. The Government strongly believes a choice should be given to the woman. She should have a choice between life and death. She should be able to choose whether to carry on with a pregnancy if she has been the victim of a rape or incest.
I also wish to inform the House that there have been a number of consultation sessions in the course of the drafting of this legislation. As far back as April 2009, the then Ministry of Women’s Rights, Child Development and Family Welfare had organised a consultation session on the subject of abortion with different stakeholders, following which a number of written representations were submitted to it, mostly by women’s organisations and socio-religious bodies. Those representations were submitted to the Ministry of Health and Quality of Life and my Office for consideration.

I must report that the views and proposals of the Ministry of Health and Quality of Life and the Ministry of Gender Equality, Child Development and Family Welfare were sought and due consideration has been given to the proposals made by these Ministries as well as to representations submitted by relevant stakeholders in 2009. The Ministry of Health and Quality of Life has been consulted on technical and medical aspects and has confirmed that it has no objection to the provisions of the final draft Bill.

Mr. Speaker, Sir,

Moreover, the views of the Director of Public Prosecutions, the National Human Rights Commission and the Law Reform Commission have also been sought on the Bill. Their suggestions have been taken on board in the finalisation of the Bill.

Mr. Speaker, Sir,

I have also had a number of meetings with a number of persons and organisations in relation to the present legislation. It is very important that I list them –

(a) in December 2011, I met the members of the Common Front on Abortion, namely the Mauritius Family Planning and Welfare Association, Women in Networking and Muvman Liberasyon Fam and received their written representations;

(b) on 16 February 2012, I met Dr. Anthony Silverstone, Consultant in Obstetrics & Gynaecology and Gynaecological Oncology at the University College Hospital, London. Most of his suggestions have been taken on board;

(c) on 14 May 2012, I again met the members of the Common Front on Abortion.

Not later than last week, I attended a debate organised on the Bill at the University of Mauritius during which members of the medical and legal professions expressed their views on specific issues. I wish here to thank the
organisers, and especially Dr. Zeenat Aumerally, C.S.K, for having organised this meeting in record time.

Termination of pregnancy in specified cases is something I have always thought strongly about, even before I started my law degree. Little did I know that, I would be the one piloting the Bill one day.

Mr. Speaker, Sir,

Indeed, it is gratifying to note that the Bill has received a positive response from the several opposition parties which shows that on matters affecting public health, and the well-being of our citizens we can rise above party politics.

The interest in the Bill over the past month has been beyond expectations. It has been a lively but sober debate, with people expressing their views, frankly and fearlessly, without any “derapage”. This bears testimony to our mature democracy and our culture of mutual respect and tolerance.

I have read almost every press report on the Bill, and have followed exchanges on the internet and Facebook. I have also made it a point to listen to almost every radio programme on the issue. I have paid particular attention to the qualms expressed by those against the Bill and only yesterday I had a warm, friendly and constructive meeting with Mgr. Maurice Piat, Bishop of Port Louis and Mgr. Ian Ernest, Archbishop of the Province of the Indian Ocean.

I have also discussed with Honourable Members of the Opposition whose support has been most encouraging. I have, in particular, discussed proposed amendments with the Honourable Leader of the Opposition in a constructive and consensual spirit, and Government has taken on board most of his suggestions. I shall later say more about the amendments I propose to move at Committee Stage.

Mr. Speaker, Sir,

I shall now deal with the specific provisions of the Bill.

Under clause 3, section 235 of the Criminal Code is amended by –

(a) replacing the term “abortion” by “termination of pregnancy”;

(b) providing a derogation from that section;

(c) replacing the words “quick with child”, which have always caused confusion, by the words “pregnant woman”; and
(d) replacing the words “physician, surgeon,” by the words “medical practitioner”, in line with the Medical Council Act.

It is clear that termination of pregnancy by a medical practitioner will still remain an offence except in the limited cases to be specified in section 235A of the Criminal Code.

Clause 4 is the most important clause in the Bill. Under this clause, a new section 235A is inserted in the Criminal Code to authorise the termination of pregnancy in the specified circumstances I have previously listed. Section 235A also provides for a number of safeguards. Under subclause (1), no person shall provide treatment to terminate a pregnancy unless he is registered as a specialist in obstetrics and gynaecology under the Medical Council Act, he provides the treatment in a prescribed institution and he complies with all the requirements of that section.

Existing subclause (2) provides that the specialist may only provide treatment to terminate a pregnancy where another specialist in the relevant field shares his opinion, formed in good faith, that the pregnancy falls under the specified circumstances set out therein. I have received certain representations to the effect that it would be an additional safeguard for more than one specialist in obstetrics and gynaecology to be involved. For this reason, I shall, at Committee Stage, be moving to amend existing subclause (2) to provide that the specialist may only provide treatment to terminate a pregnancy where another specialist in obstetrics and gynaecology and another specialist in the relevant field share his opinion, formed in good faith, that the pregnancy falls under the specified circumstances set out in the said subclause.

In the light of certain concerns expressed in relation to subclause (2)(c), I shall, at Committee Stage, move to delete the words “, as assessed by the appropriate specialist” and replace them by the words “which will affect its viability and compatibility with life”.

Mr. Speaker, Sir,

A number of concerns have also been expressed in relation to subclause (2)(d) which provides that the pregnancy must not have exceeded its fourteenth week and must have resulted from a case of rape, sexual intercourse with a female under the age of 16 or sexual intercourse with a specified person which has been reported to the police or a medical practitioner. In particular, concerns have been expressed about the possibility of false reports being made.

I have given consideration to these concerns and I recognise that this is a potential problem which we should guard against.
Let me stress, however, that we believe that, in most cases, the woman victim will be speaking the truth to the police, and the medical practitioners will be able to base themselves on their medical examination (relying, where necessary, on the opinion of a psychologist or sexual trauma expert) or DNA evidence to form the opinion in good faith that the pregnancy results from one of the sexual offences specified in the Bill. The alleged sexual offence will have to be necessarily reported to the police. The possibility of also reporting to a medical practitioner which was provided for to make the procedure less oppressive for the victim, will be removed at Committee Stage.

With regard to the minority of cases where a woman may be tempted to make a false declaration of rape in order to procure a termination of her pregnancy, the law should be made more severe to act as a strong deterrent. Sections 297 and 298 of the Criminal Code already provide for the criminal offences of false and malicious denunciation in writing and effecting public mischief, and we could have trusted the Magistrates of our Courts to impose a very harsh sentence in such circumstances. However, in the face of the disquiet expressed in some quarters and by no less than the Director of Public Prosecutions himself, we are providing for a distinct offence.

The Director of Public Prosecutions was consulted yesterday in relation thereto and is agreeable to same.

I shall, therefore, at Committee Stage, be moving for a new subclause (3) to be added which will provide that, notwithstanding sections 297 and 298 of the Criminal Code, any person who, for the purpose of procuring treatment to terminate pregnancy, knowingly makes a false declaration of rape, sexual intercourse with a female under 16 or sexual intercourse with a specified person to the police shall commit an offence and shall, on conviction, be liable to penal servitude for a term not exceeding 10 years. The existing subclauses (3) to (9) will be renumbered as (4) to (10).

Existing subclause (3) further provides that the specialist shall not terminate a pregnancy unless he has obtained the informed consent of the pregnant person. Such informed consent shall be given by the pregnant person in writing or by affixing her thumbprint to a written statement read out to her.

Mr. Speaker, Sir,

Under existing subclauses (4) and (5), where the pregnant person is under the age of 18 or is severely mentally disabled or is in a state of continuous unconsciousness, the written informed consent of the appropriate person may be obtained.

Existing subclause (6) provides that, where appropriate, counselling shall be provided to the pregnant person before and after the termination of
pregnancy. This will ensure that, in appropriate cases, women will be provided with adequate support to help them overcome any physical or psychological effect of abortion. In the light of concern expressed by many, including in medical quarters, I shall at Committee Stage, be moving for the deletion of the words “Where appropriate” so that counselling will have to be provided to a pregnant person before and after termination of pregnancy invariably in all cases.

Under existing subclause (7), no person shall, by means of coercion or intimidation, compel or induce a pregnant person to undergo treatment to terminate a pregnancy against her will, and, under subclause (8), any person who contravenes that section shall commit an offence for which he shall be liable to imprisonment for a term not exceeding 5 years and to a fine not exceeding 100,000 rupees.

Mr. Speaker, Sir,

Under clause 5, consequential amendments are brought to the Medical Council Act to provide for a working regime for the proposed amendments to the Criminal Code. In particular, a new section 38A is inserted in the Medical Council Act which –

(a) provides the parameters within which a person may refuse to participate in any treatment to which he has a conscientious objection;

(b) gives the Permanent Secretary of the Ministry of Health or a public officer deputed by him the power to enter and inspect any institution providing the said treatment, to obtain any information from the person in charge and to examine and make copies of or extracts from any record or other document relating to a treatment;

(c) creates offences where any person discloses confidential information in relation to a record or treatment without the consent of the pregnant woman, obstructs the Permanent Secretary or the public officer deputed by him in the exercise of his functions or otherwise contravenes that section; and

(d) empowers the Minister of Health to make regulations in relation to matters which are necessary for the proposed regime to operate.

Mr. Speaker, Sir,

My colleagues may wish to note that in its Concluding Report of 3-21 October 2011 under the United Nations Convention for the Elimination of Discrimination Against Women (CEDAW), the CEDAW Committee has called upon Mauritius to expedite the enactment of the proposed Bill in order to remove
punitive measures imposed on women who undergo abortion and to decriminalise abortion in certain circumstances. Indeed, I am grateful to Mrs. Premila Patten, member of the CEDAW Committee for having expressed support for the Bill and placed it in perspective in the light of laws in other jurisdictions as well as our international obligations under treaties such as CEDAW. With the present Bill, it is felt that Mauritius will finally be able to honour its international obligations.

We consider that the proposed Bill will considerably help women who would otherwise have to go through pregnancies in difficult circumstances. Many women undergoing difficult pregnancies resort to clandestine abortions carried out in most unsafe, often “butcherous” conditions by non-professionals which often result in severe complications to the women’s health and, at times, death. Likewise, it is against a woman’s human dignity to force her to bear a child for 9 months where that child is the fruit of an aggression, a crime, a sin.

Mr. Speaker, Sir,

This Government is committed to bring changes that will impact positively on the lives on all Mauritians and we shall not stop in our endeavour.

As I stated before, this Bill is revolutionary and, to a large extent, it also marks a turning point in the fields of women’s rights and medicine in Mauritius.

I would particularly like to thank Dr the Hon. Prime Minister for his support and guidance throughout the preparation and finalisation of the Bill. I also thank the Hon. Vice Prime Minister and Minister of Finance, the Honourable Minister of Health and Quality of Life and the Honourable Minister of Gender Equality, Child Development and Family Welfare for their collaboration.

I thank the doctors from the Ministry of Health and Dr Anthony Silverstone from University College Hospital, London for their expert views on the medical aspects of this legislation. My thanks also go to the Common Front set up to support the Bill with Mrs Lindsey Collen and collaborators, and to all individuals, non-governmental organisations and socio-religious bodies who or which have expressed their views and suggestions, both for and against the Bill. Finally, I thank my colleagues from Government, the Hon. Leader of the Opposition and several members of the Opposition for their encouragement and support. A special note of sincere appreciation to my officers and Sir Victor Glover, our Legal Consultant, who have worked diligently in the preparation and finalisation of the Bill.

With these words, Mr. Speaker, Sir, I commend the Bill to the House.