

# The concept of the statutory rape law general essay

Law



## INTRODUCTION

Although rape of children has always existed in Mauritius, its true prevalence has only come to light in recent decades. Similarly, from an international perspective, the very existence of the crime dates back to antiquity. It was not until the middle age that the European law introduced the concept of the 'statutory rape'[1]. This established the age of consent to lawful sexual intercourse. The underlying principle would be that a child, who was under a specific age, was deemed not to have the capacity to consent to any sexual activity. To that effect, consent was automatically disregarded as an element of the crime of rape of children. Historically, this law was mainly intended to protect the chastity of unmarried young girls who were raped by men. At that time, nobody was willing to marry a non virgin girl. Therefore, either compensation had to be paid to the father of the victim or the perpetrator was forced to marry the latter. In 1275, according to the Statute of Westminster in England, the child who was under the age of 12 years was unable to consent to sexual intercourse. This was later reduced to 10 years in 1576. Feminists successfully managed to increase the age of consent to 16 years in 1885. However, it was clearly established that no such protection would be afforded to girls under 16 years of age, who got married with the consent of their parents. Under the French law, the age of consent was initially 11 and 13 years respectively in the 19th century, it was later increased to 15 years in 1945[2]. This was regarded as the milestone in the history of criminalising rape of children. Later in 1989, the international community came forward with the Convention on the Rights of the child. After ratifying the Convention in 1990, Mauritius soon enacted the Child

Protection Act in 1994. Today, the Criminal Code and the Child Protection Act are the main instruments sanctioning rape of children in Mauritius. The first amendment of the Criminal Code was made in 1990. It was followed by several subsequent amendments in 1991 and 1998 respectively. In 2003, the Code was further amended by The Sexual Offences (Miscellaneous Provisions) Act. Modifications were also made to The Child Protection Act in 2005. In 2008, the Judicial Provisions Act made simultaneous amendments, to both the Criminal Code and The Child Protection Act, so as to be in line with each other. Although, the purpose of such a legal regime is to do justice to victims, paradoxically devastating psychological distress[3] is further being perpetrated on them by the criminal justice system. From time immemorial, this has been decried as the underpinning issue as regards rape of children in Mauritius. During cross examination, oppressive questions are put by the reckless cross examiner to children complainants, with the main intention to demoralise them. That explains why the prosecution prefers not to tender the child for further cross examination where a confession has already been made by the accused[4]. Feeling overwhelmingly stressed, it becomes extremely difficult for children to recall the salient details of the crime and it is understandable if they fail to give reliable evidence. Clearly, the intention of the defence is to trigger unnecessary feelings of guilt and confusion in victims. This, in turn, not only affects the ability of victims to testify in court but also the overall quality and credibility of their evidence. While this might be in favour of the accused, no justice is being done to victims. Instead, they are said to undergo a "second rape, re-victimisation or institutional rape"[5]. Those awful experiences are undoubtedly far more traumatic than the rape

itself. The system seems to completely overlook the fact that children, owing to their tender age, can neither be treated like adults nor expected to respond like them. Special needs of children are not being taken into consideration[6]. Hence, other victimised children, aware of the stark reality, are discouraged to report the crime and find themselves trapped in a vicious circle of 'conspiracy of silence[7]'. In the light of such scourge, the aim of this thesis is to essentially evaluate the legal framework sanctioning rape of children in Mauritius and to streamline the existing protective mechanisms so as to afford better protection to victims. This will be best achieved by highlighting the anomalies and lacunas found in both the Criminal Code and the Child protection Act and to remedy those accordingly. In the same vein, the shortcomings of the law of evidence and of the criminal justice system will also be tackled to such an extent that they do not hamper effective prosecution of the offence anymore. In fact, the proper functioning of the criminal justice system plays such a crucial role, especially as regards the peculiar nature of the crime, that it cannot be viewed in isolation with the rest of the statutory regime. Overall, overarching reforms of anachronistic legal provisions will have to be undertaken in the best interest of the child. In this respect, inspiration and guidance can be sought from foreign laws. A second aim is to point out that children, relatively to adults, most pressingly deserve heightened protection regarding the crime of rape. Being unable to fend for themselves and representing an easy prey for assertion of male power, children are incontestably more vulnerable. That is the rationale for children particularly, to be the focal point of the thesis. At a glance, this chapter will provide a general overview of rape of children in Mauritius. It will

go back to the very origin of crime and an analysis of the key elements establishing the offence will further be undertaken. The chapter will also shed light on the peculiar nature of the crime in respect to co-authorship and complicity. The rape trial and the defence available to the accused, especially where the child is a victim, will be broadly examined. Lastly, the evidential aspect of the offence will be addressed.

## **1. 0 HISTORY**

The law sanctioning rape of children in Mauritius is of French inspiration. At first, the French law did not provide for any definition of the offence but the jurisprudence and doctrine, notably well known authors, such as Garraud and Garçon attempted to define it[8]. Gradually, the law has evolved and the French legislator devised a proper definition of rape. Where the crime is committed against young children, harsher penalties are provided for accordingly[9]. However, the Mauritian law did not experience any similar evolution. In a democratic country like Mauritius, championing children's rights and being a state party to the Convention on the Rights of the Child, no definition of what constitutes rape of children is provided for in the domestic law. The Criminalcode simply criminalises 'sexual intercourse with a minor under the age of 16' years by a maximum penalty of 20 years[10]. This provision is expressed in an inexplicit manner and no clear meaning is given for 'sexual intercourse'. Over the years, case law has been relied upon by the prosecution to devise the elements of the offence. This represents a prime loophole in the law. However, arguably those elements can therefore be crafted based on sexual activities children are currently being subjected to in society. Nowadays, it is undeniable that young girls are notoriously

victims of rape and other sexual offences[11]. Nonetheless, the gruesome reality is that sexual offences are increasingly being perpetrated on young boys as well[12]. Although, the pervasiveness of such crimes might not be as severe as for girls, they still represent a major scourge. To that effect, the court can create precedent by not restricting the definition of rape only to penile penetration of the vagina anymore. This would be in the interest of children altogether, including boys, since the ultimate aim should be to safeguard them from sexual abuse, irrespective of sex.

## **1. 1 THE ELEMENTS OF RAPE**

### **1. 1. 0 PENETRATION**

Broadly, the three main elements establishing rape of children are; the act of penetration, the intentional element and absence of consent. The relevance of the third element varies according to the age of the child; at one end of the spectrum, where the child complainant is under the age of 16 years and at the other end of the spectrum, where the latter is 16 years or above. Penetration encompasses only vaginal penetration of a child by a penis[13]. Oral[14]and anal penetration[15]are categorised as different offences respectively. This being an essential element the crime, it makes the offence a gender specific one, where the complainant can only be a girl. Normally, forensic evidence confirms the act of penetration, especially where the accused is denying it[16]. However, if at the very outset of the case, the accused concedes to have had intercourse with the child victim[17], then the element of penetration is deemed to be systematically established.

### **1. 1. 1 THE INTENTIONAL ELEMENT**

Historically, the drafters of the French Penal Code made no specific mention of the element of criminal intent mainly because it is so indisputably linked with penetration committed with violence that once the latter is proved, the mens rea is automatically established[18]. Accordingly, the same trend has been adopted in Mauritius where it has become fairly easy for the prosecution to prove the intention of the accused and to eventually secure a successful conviction[19]. This undeniably acts in favour of the child complainant.

### **1. 1. 2 ABSENCE OF CONSENT**

Where rape is committed upon a child, as opposed to rape of an adult, the prosecution bears no burden of proving that sexual intercourse was non consensual. In both the Criminal Code[20] and the Child Protection Act 1994[21], consent is disregarded where rape is committed against a child. Normally, once the prosecution has proved that the child is under the age of 16 years[22], coupled with penetration and the criminal intent, the offence is automatically constituted. By making rape of children a strict liability offence as to age, this demonstrates the intention of the legislator to protect young girls who lack the requisite maturity to realise the consequence of indulging in sexual intercourse. This was highlighted in the case of *Bahorun v State*[23]. It was also explained that the age gap between the child and the offender has further propelled the enactment of such provision so as to prevent the latter from taking undue advantage of the immaturity of victims. However, under the Criminal Code, consent is disregarded only where the child complainant is under the age of 16 while in the CPA, it also applies to

<https://assignbuster.com/the-concept-of-the-statutory-rape-law-general-essay/>

children who are 16 years old or above since the word ‘child’[24] is defined as an unmarried person under the age of 18 years. The age of consent to lawful sexual intercourse in Mauritius being 16 years[25], it can be deemed the aim of the legislator when drafting the Criminal code was to entitle a sexual autonomy to those who were 16 years of age or above. In this respect, consent will be a relevant element of the crime where the child complainant is 16 years old or above. Nonetheless, this still represents a major discrepancy since confusion might arise and it can, in turn, hamper effective application of the law.

## **1. 2 CO-AUTHORSHIP AND COMPLICITY**

A peculiarity about rape of children in respect to co-authorship and complicity is the strict element of penetration. For an accused to be convicted as a co-author, he needs necessarily to have participated in the act of penetration[26]. Therefore, it infers that mere holding of hands or keeping watch only amounts to complicity. This interestingly, proves to be very helpful for the prosecution since it alleviates the notoriously difficult task of distinguishing between co-authorship and complicity.

## **1. 3 RAPE TRIAL**

Normally, in Mauritius rape cases are tried in the Intermediate Court before two magistrates[27]. Where rape is committed by two or more individuals, upon the instruction of the Director of Public Prosecution, the case can be tried by a judge without a jury at the Assizes. This highlights the seriousness of the nature crime of rape, especially when it is committed against children. Additionally, the fact that rape trial of children may be heard before the



Supreme Court, the court vested with the highest judicial authority in Mauritius, further accentuates the particular heinous nature of the offence[28].

## **1. 4 DEFENCE**

In Mauritius, the main defence available to the accused where he is charged with sexual intercourse with minor under the age of 16 years is ‘reasonable’ belief that the child was above 16 years of age[29]. Much emphasis is laid on the word ‘reasonable’. The case of *Police v Marc Stephan Bernard Louise*[30] described how this defence was rejected since the accused and the victim were neighbours and the former used to drop the latter to school and knew her for a long time. Hence, it was very unlikely that the accused did not know the age of the complainant. The law has meticulously been drafted to such an extent that the accused cannot escape punishment so easily.

## **1. 5 EVIDENTIAL ASPECT OF RAPE**

In Mauritius, although the law criminalising rape of children is of French inspiration, the law of evidence has largely been inspired by English law[31]. Evidence plays a preeminent role, especially in respect to the nature of the crime. At times, a lack of sufficient evidence can prove to be fatal for the prosecution. As regard to the rape trial where the complainant is a child, the prosecution might encounter additional challenges owing to the young age of the victim.

### **1. 5. 1 EVIDENCE OF CHILDREN**

Generally, the rule is that all witnesses in criminal cases ought to depone under oath in pursuance with section 106 of the Criminal Procedure Act 1853[32]. However, very often, it may happen that a child complainant does not understand the nature of an oath. This was problematic until special provisions had been made in the Criminal Procedure Act[33], allowing a child victim under the age of 9 years to give unsworn evidence in court. The gist of that particular provision depicts the legislator's concern to provide optimal protection to young victimised children so as to best achieve justice.

According to that same provision, a legal test has necessarily to be made by the Judge or Magistrate to ascertain that the child has sufficient intelligence to make a rational statement on the subject of the trial. Besides, the test has to be on the court record and non compliance with such criteria renders evidence of the child inadmissible[34]. This implies that a balance has been stricken between protection of the child complainant and the competing rights of the accused, where the latter can possibly appeal on the ground that such a test has never been undertaken.

### **1. 5. 2 CORROBORATION**

Normally, the testimony of one witness is sufficient for a court of law to come to a decision[35]. However, in respect to the evidence of victims of sexual offences and children particularly, corroboration is required as a matter of practice because of the nature of such evidence[36]. Evidence given by children in general is considered as unreliable since due to their ' childish imagination, suggestibility or fallibility of memory', they might not always tell the truth[37]. At times, this can prove to be unfairly prejudicial to the

accused. When the child complainant testifies, the court can act on the latter's evidence alone, however, if corroborative evidence is available, it will be taken into consideration[38]. This implies that even if no corroboration is available, the victimised child would not be prejudiced simply because of her young age[39]. Where the victim successfully convinces the court of being truthful, there is no reason for her testimony to be disregarded. Normally, with regard to the delicate nature of the offence and the way it is committed, corroborative evidence is not available. Bearing this in mind, the legislator has deemed it of utmost importance to maintain the flexibility of the law of evidence in order not to impede fair administration of justice. On the other hand, corroboration warning however is required as a matter of law when the child victim testifies in court[40]. The judge has a duty to warn the jury of the danger of acting on uncorroborated evidence of children complainants since owing to their childishness, evidence gathered might not be very reliable. In the absence of such warning, conviction can even be quashed[41]. It can be observed that successful prosecution of the offence rests largely on how effectively the judge fulfils his responsibility. Hence, where such criterion has properly been complied with by the court, it would be fairly easy to prove the case beyond reasonable doubt and practically no ground of appeal would be left for the convicted offender.

### **1. 5. 3 DISTRESSED CONDITION OF THE CHILD COMPLAINANT**

The distressed condition of the child victim may only amount to corroborative evidence unless it has been independently witnessed by another person immediately following the rape[42]. Such strict requirement

will prevent the defence from pointing fingers at the evidence of the prosecution, especially on the ground that distress has been simulated by the child.

### **1. 5. 4 EVIDENCE OF CONSISTENCY**

If shortly after the occurrence of the rape, the victim narrated the incident to a family member or any other person, this can be admissible as evidence in court. However, it would not be used to prove that the accused committed the alleged offence nor to corroborate the version of the child but it would simply show consistency of the victim's testimony in court with her aforementioned conduct[43]. This is an exception to the rule against self-serving statement. It can be observed that the admissibility of such evidence is to bolster the credibility of the child complainant, upon whom normally the defence casts a suspicious eye without least consideration. Following such an analysis of the law, it can therefore be inferred that the law of evidence in Mauritius has been crafted in such a way so as to achieve best evidence when the child complainant testifies in court. Nonetheless, it is essential to underline that the law has also been very finely balanced in order to ensure a fair trial to the accused and to avoid any perceptible miscarriage of justice. In the first part of this chapter, a glimpse will be given of the various definitions of the word ' child' at both the domestic and international level. A critical analysis of the efficiency of the legal regime sanctioning rape of children in Mauritius, particularly in respect to the prosecution of the crime, will further be undertaken. Lastly, the various mechanisms catering for the protection of victimised children will be laid down in the second part of the chapter.

## 2. 1 DEFINITION OF ‘ CHILD’

There are several protective measures which are at the disposal of children who are raped but before delving into them, it is vital to examine the various definitions of word ‘ child’ in both the international and domestic law. This will primarily help to better understand the rationale behind affording special protection to victimised children. Secondly, it will also be particularly relevant so as to give an insight of the extent of the uniformity of the word in the domestic law. According to the Child Protection Act 1994[44], a ‘ child’ means any unmarried person under the age of eighteen years. In fact, this definition was largely inspired by that found in the Convention on the Rights of the Child[45]. The Interpretation and General Clauses Act 1974 gives a similar definition of the word[46]. On the other hand, in the Ombudsperson for Children Act 2003[47], a child is defined as a person under 18 years of age. This shows that such definitions have been diligently designed, with the main intention of safeguarding interests of children, until they reach a level of maturity where they would be in a position to protect themselves. Besides, such unambiguous definitions would also be very helpful to interpreters of the law, comprising not only of judges, magistrates or barristers but as well as laymen. Today, since an increasing number of lay persons are upholding rights of children, is it imperative for them to be conversant with the law. Additionally, a standard definition of the word would be particularly useful to the prosecution, bearing the burden of proving that the victim falls within the definition of child, in accordance with section 2 of the Child Protection Act, at the time of the alleged rape[48]. While the overall consistency of the several definitions would undeniably make the

task of the prosecution much easier, it would also prevent confusion from arising.

## **2. 2 CHILD PROTECTION**

In Mauritius, rape of children is sanctioned primarily by a set of two legislations, notably; the Criminal Code 1838 and the Child Protection Act 1994 complementing each other. Normally, the Criminal Code is read in conjunction with the Child Protection Act.

### **2. 2. 1 THE CRIMINAL CODE 1838**

The only provision pertaining to rape of children in the Criminal Code is section 249(4). It states that: ‘ Any person who has sexual intercourse with a minor under the age of 16 or a mentally handicapped person, even with his consent, shall be liable to penal servitude for a term not exceeding 20 years’ Arguably, where the child is 16 years of age or above but below 18 years, the prosecution would have to resort to Section 249(1) the Code, sanctioning rape of adults in general. This infers that the same provision is being applicable to both children and adults when it should have been otherwise. Children, relatively to adults, need to be given enhanced protection since they are more at risk of being raped.

### **2. 2. 2 THE CHILD PROTECTION ACT 1994**

Section 14 of the Child Protection Act broadly sanctions sexual offences committed against children whereby; ‘ 1) Any person who causes, incites or allows any child-to be sexually abused by him or by another person... shall commit an offence.... a child shall be deemed to be sexually abused where he has taken part as a willing or unwilling participant or observer in any act

<https://assignbuster.com/the-concept-of-the-statutory-rape-law-general-essay/>

which is sexual in nature...’However, no classification of the different sexual offences is made. Generally, the word ‘ sexual abuse’ is construed as vaginal, anal and oral penetration by any part of the body of the offender, including his penis, fingers or tongue or by an object[49]. It also extends to kissing, touching and inducing a child to watch or listen to any sexual activity.

### **2. 2. 3 PROSECUTING UNDER SECTION 249 OF THE CRIMINAL CODE OR SECTION 14 OF THE CHILD PROTECTION ACT**

In respect to rape of children, the prosecution has discretion to either prosecute under Section 249 of the Criminal Code or Section 14 of the Child Protection Act[50]. Obviously, based on the way those laws have been drafted and after undertaking a thorough vetting process, the prosecution would take a decision in the best interest of the child complainant. In fact, several factors would act as determinants to help the prosecution to make a choice. First and Foremost, the penalties would mainly influence the prosecution to decide under which law to prosecute the accused. Under the Criminal Code[51], in respect to sexual intercourse with a minor under the age of 16 years, penal servitude for a term not exceeding 20 years is the maximum penalty. If the prosecution chooses to prosecute under the Child Protection Act[52], the exact same penalties are provided for. Although, it might not always be convenient and at times, even confusing to have to deal with two different pieces of legislations, yet it can still prove to be advantageous in certain circumstances. A vivid example would be where rape is committed upon a child who is 16 years of age or above. The

prosecution can decide to prosecute under the 249(1) of the Criminal Code where the penalties can be up a maximum of 40 years penal servitude. If the same offence would have been prosecuted under the Child Protection Act, then a penalty exceeding 20 years could never have been expected.

Therefore, having two laws in parallel, sanctioning the same offence, should not necessarily be perceived as a drawback. However, the Criminal Code does not differentiate between rape committed against an adult and a child who is mentally handicapped; this represents a major pitfall in the law. A maximum penalty of 20 years is applicable to both categories of victims. On the other hand, the CPA[53] provides for the child who is mentally handicapped, thereby sanctioned by a maximum penalty of 30 years penal servitude. In such a case, the prosecution would certainly prefer to prosecute under the CPA where the same crime is being sanctioned by harsher penalties. Furthermore, as regards rape committed by a parent or any other family member in general, no mention is made of the word 'incest', in neither the CC nor the CPA. Instead, the CC[54] only gives an explanation of 'specified person' whereby it comprises; i) any person... who comes within the prohibited degrees set out in articles 151, 152 and 153 of the Code Napoleon; ii) includes-a step child or an adopted child, of whatever age...; a child of whatever age whose custody or guardianship has been entrusted to the person charged...; a child of whatever age or a mentally handicapped person, other than the spouse of, but living under the same roof as, the person charged or who is the child of the partner of the person charged.' It can be observed that those provisions are meant to apply to both adults and children complainants since the Code mentions 'a child of whatever age'.



This is certainly not restricted only to children who are under the age of 18 years. Under the Criminal Code, the crime of rape upon a specified person is sanctioned by penal servitude and if the law is interpreted correctly, penal servitude[55] would mean imprisonment up to a maximum of 40 years. Hence, based on the penalties, rape of a specified person is deemed to be an aggravating circumstance under the CC. On the other hand, if the same offence is prosecuted under the CPA[56], then the penalties would be up to a maximum of 20 years and where the child victim is mentally handicapped, it would be 30 years. Accordingly, the harsher penalties provided for in the CC will exhort the prosecution to prosecute under that law. Similarly, where rape is committed by a person who has the 'custody or guardianship' of the child, the prosecution will certainly choose to prosecute under the CC for the same reason as aforementioned. Lastly, another important factor to be considered when deciding under which law to prosecute, is the availability of a defence to the accused. As explained in the case of *Police v D. Sadal*[57], the CPA as opposed to the CC[58] does not provide for the defence of reasonable belief that the child was above 16 years of age at the time of the offence. In the light of this, the prosecution would definitely prefer to opt for the CPA where the chances of conviction are higher.

## **2. 2. 4 PROTECTION AFFORDED DURING TRIAL**

### **2. 2. 4. 1 IN CAMERA PROCEEDINGS**

During the rape trial, protection of the child complainant is safeguarded by a mechanism known as In Camera proceedings. Most of the time, following a motion made by the prosecution, the child will testify in camera, pursuant to Section 161A of the Courts Act[59]. This section has been enacted in line <https://assignbuster.com/the-concept-of-the-statutory-rape-law-general-essay/>

with the Constitution[60]. It is basically where, apart from the parties to the case and their legal representatives, no other person is allowed in the courtroom. Even where no motion is made by the prosecution, the court can still exercise its general discretionary power of hearing the complainant In Camera[61]. Victims are spared from narrating their painful and embarrassing experience in front of strangers. Besides, such legal provision can further encourage reporting of the crime.

## **2. 2. 4. 2 LIVE VIDEO AND TELEVISION LINK**

The law in Mauritius[62] allows the child complainant to testify by live video or live television link system upon a motion made by the prosecution. The child gives evidence in another room which is in turn transmitted live to the accused. To that effect, it curbs the psychological trauma of having to face the perpetrator again. This represents a groundbreaking step on the part of the Mauritian legislator since many foreign countries such as the United Kingdom also provides for such a facility in the best interest of children[63].

## **2. 2. 5 PROTECTION AFFORDED AFTER TRIAL**

### **2. 2. 5. 1 ANONYMITY**

Although there is no specific legal provision catering for anonymity of the child victim in the media, at least her identity is kept anonymous in the written judgment rendered by the court. Being available to public consultation, it has been deemed expedient not to disclose identities of victims of sexual offences in judgments[64]. This is mainly to avoid exacerbating trauma and making recovery far more difficult. The Ombudsperson for children has been working proactively to highlight the

need of protecting identities of children who have been sexually abused[65]. A study in the United States demonstrated how children, whose identities are published in the media, are more likely to feel stigmatised[66]. At worst, this implies that it might even trigger suicidal behaviours in some victims. As a result, this highlights the pre-eminence of anonymity.

## **2. 2. 5. 2 MEDICAL CARE**

In Mauritius, antiretroviral drugs, also known as post exposure prophylaxis are given to victimised children so as to protect them from unwanted pregnancy and sexually transmitted diseases. This constitutes the very first step after the crime is reported to the police. Such drugs are being provided to children since December 1999 so as to prevent transmission of infections such as HIV[67]. In several developed countries including Austria, France, Germany, Italy, Luxembourg, Spain, Switzerland and Australia and in the United States, this has been the common practice[68].

## **2. 2. 5. 3 INSTITUTIONAL CARE**

The aim of the Drop in Centre, found in Bell village, is to essentially assist children victims of sexual abuse to re-integrate society[69]. In the same breath, under the aegis of The Child Protection Unit and The Child Development Unit, counselling services are provided to children by trained psychologists[70]. Besides, since 2002 two sexual assaults wards are operational at Dr Jeetoo Hospital and Victoria Hospital respectively. Services of psychologists, police officers for reporting the crime and medical officers are provided under the same roof[71]. A 24-hour hotline is also at the disposal of the public to report cases of sexual abuse against children[72].

Both women and men police officers are being trained on how to deal with victims of sexual abuse[73]. This represents the overall protection afforded to victimised children in Mauritius. Since rape of children has become pervasive all over the world, it will be interesting to undertake a comparative analysis of various laws sanctioning the crime. This will consist of four jurisdictions, notably: Scotland, France, Australia and Canada. Each of those jurisdictions has been selected for a specific reason. Scotland has been chosen because its legal framework, sanctioning rape of children, has just recently been enacted. France has been included because historically, the law of rape in Mauritius is of French inspiration. In respect to Australia, an analysis will be undertaken of how effectively the legislative regime, of its different states and territories, adjusts with each other. Lastly, Canada forms part of the comparative study essentially due to its hybrid jurisdiction which is very similar to that of Mauritius.

### **3. 1 SCOTLAND**

The Sexual Offences Act 2009[74] is the main piece of legislation sanctioning rape of children in Scotland. Generally, rape has been defined to include penetration of the vagina, anus or mouth of a person without his consent by another person's penis[75]. Accordingly, this makes rape a gender neutral offence where the complainant can either be a girl or a boy. A very interesting peculiarity of this law is the fact that it makes separate provisions for ' young' and ' older' children, whereby young children refers those who are under the age of 13 years while older children are those who are 13 years of age or above but under 16 years. The penalties are harsher, the younger the child. This distinction undeniably makes the task of the

prosecution easier. Besides, very young children are afforded the enhanced protection they deserve. Consent is disregarded where the child complainant is under the age of 16 years, making the crime a strict liability offence. This strict legal framework perfectly demonstrates how the Scottish legislator is doing his level best to safeguard the most vulnerable, not only from uncanny sexual predators but from their own naivety. The rationale behind further criminalising rape of those children, who are under the age of 18 years, by a person in a position of trust[76] is to show that children of all age groups are considered to be particularly vulnerable to such a crime and not only the very young. However, the Act does not distinguish between adults and children complainants suffering from a mental disorder[77]. Another serious loophole is the fact that no provision is made for the offence of incest, thus making the law appear disjointed and scattered. As a result, other legislation has to be resorted to when prosecuting the crime[78]. For the sake of convenience, it ought to have been in that act itself. In relation to protections afforded to children, there is a restriction imposed on the media not to publish or broadcast the identity of the child complainant[79]. In the same vein, the public can be excluded from the courtroom so that the intimidated child complainant can best testify in court[80]. Other special measures[81] which are normally arranged include; testifying via live television link in a separate room, behind a screen in the courtroom itself and pre-recorded interview of the victim. Those facilities spare the victim from having to face the accused. With regard to children with disabilities, the law provides for a 'supporter', where the job of the latter is to ease communication between, for example, a deaf complainant and the court[82].

This reflects how far reaching the scope of protection is in Scotland so that disabled children are not unfairly prejudiced. Additionally, convicted sex offenders in the United Kingdom can be barred from working with children in the education sector[83]. Besides, those people have a duty to notify their names and addresses to the police so as to keep track of them[84]. It has been deemed wiser to cater for the long term protection of children. The sole existence of a legal framework would definitely not be enough to safeguard children from potential offenders or from those who might relapse.

### **3. 2 FRANCE**

The French Penal Code[85]criminalises rape of children, whereby rape is construed as non consensual penetration of the vagina, anus or mouth by the penis, any other part of the body or any object. A distinctive feature about the French law is that a woman can be charged for rape of a child since penetration does not necessarily have to be made by a penis. It constitutes an aggravating circumstance[86], firstly, where the crime is committed against a minor who is under the age of 15 years and secondly, if it is committed by a family member, relative or by any other person having authority over the victim. Accordingly, the penalty is tougher. Owing to the young age of the child, a need has been felt to make provision for heightened protection. With regard to incest on minors, the French legal regime has recently been reinforced[87]. The case is tried before the court of the assizes, consisting of 3 judges and 9 jury members. This clearly highlights the seriousness of offences against morality in France. The French law further allows the child victim to personally bring an action against the accused as soon as he or she reaches majority[88]. The aim is to encourage

reporting of the crime since it is understandable that fear can sometimes hamper a child to divulge such a traumatic experience. During the investigation process, the child is normally assisted by a psychologist whose task is to reformulate questions of the police[89]. Besides, the child victim is entitled to medico-psychological expertise at an early stage of the investigation so as to determine the extent of mental and physical harm[90]. Facilities which are afforded during trial include; in camera proceedings[91]and testifying via audio-visual facilities[92]. Restrictions are further imposed on the media regarding publication of the child's identity[93]. It is laudable how the criminal justice system assists the child, using a staged approach, so that he or she can successfully go through the court process. The law reinforcing protection of children has made provision for a social and judicial treatment for convicted offenders[94]. Failure to abide by those measures may result in five years of imprisonment. This aim is to circumvent the vicious cycle of recidivism.

### **3. 3 AUSTRALIA**

In Australia, the respective criminal code[95]of each state criminalises rape of children while their child protection legislations[96]provides for corresponding protective measures. The definitions used to describe the crime vary across those jurisdictions. Generally, rape involves non consensual penetration of the vagina, anus or mouth of a person, by a penis, any other part of the body or any object[97]. This implies that the crime is gender neutral. Age is considered as the determining factor when sanctioning rape of children[98]. A distinction is made between young and older children, where the younger would be in the cohort of those under the

age of 10, 12 or 13 years while the older children are in the range of 16, 17, or 18 years of age[99]. This varies in the different states. In fact, the penalties are higher, the younger the child[100]. This nuance demonstrates that the focus of the legislator is on the safeguard of younger children. To further reinforce such protection, consent to sexual intercourse is disregarded as a defence where the child is under a specific age depending on the states[101]. Each of those jurisdictions provides for incestuous sexual intercourse with children either separately[102] or under the same heading[103] as those of adults complainants. Besides, harsher penalties are provided for where the offender is in a position of authority in relation to the child[104]. The purpose of this provision is to particularly punish odd behaviours of persons who were meant to safeguard the interest of the child. Apart from the Northern Territory[105], none of those states differentiates between the adult and the child complainant who is mentally handicapped. This ought to be reviewed to include physical disabilities. The law should make it clear how odious it is to take undue advantage of a child suffering from disabilities. Normally, rape of children is tried before the District or County Court of the respective states[106]. A ground breaking provision found in the Australian law is pre-recorded evidence. The child testimony is recorded about a month before the trial and this may subsequently be played if a second trial is held or on appeal[107]. Additionally, overlapping facilities in the various states include; in camera proceedings[108], testifying by closed circuit television or behind a screen in the courtroom itself, special seating facilities where the child does not have to face the accused and prohibitions imposed on the media as regards



publication of the victim's identity[109]. In a nutshell, this demonstrates the determination of the Australian criminal justice system to curb the trauma of child complainant. 3. 4 CANADA Where rape is committed against children who are under the age of 16 years, it is termed as 'sexual interference' in the Canadian Criminal Code[110]. It comprises non consensual sexual touching of a child, with any part of the body of the offender, including the penis or any object. In this case, 'touching' encompasses vaginal or oral penetration. The definition is broad enough to infer that the crime is not gender specific, where the complainant as well as the accused can be of either sex. The law provides separately for unlawful anal intercourse[111] A major downside is the fact that rape of children is not sanctioned by tougher penalties as opposed to rape[112] of adults in general[113]. However, the law has been drafted in such a way so as to give ample protection to those complainants who are under the age of 16 years since the defence of consent cannot be raised by the accused[114]. The law further sanctions 'sexual exploitation'[115]. It involves rape of children in the cohort of 16 to 17 years by a person in a position of trust or authority. This demonstrates that the legislator is also concerned about the protection of older children since they are equally at risk. Although, the law provides for 'sexual exploitation' against persons with disabilities[116], it does not differentiate between the child and the adult complainant. In the same way, incestuous intercourse[117] is criminalised under the same heading for both adults and children. Instead, it should have been an aggravating factor, carrying higher penalties where the crime is perpetrated against a child. The criminal justice system is well equipped so that the child can best give evidence in court.

First of all, the public is excluded from the courtroom in order to spare the child from additional trauma[118], other facilities include; testifying behind a screen or via video outside the courtroom, evidence is recorded in advance and may subsequently be played at trial[119]and lastly, a duty is imposed on the media to keep anonymous identities of victims[120]. Those provisions are primarily meant to improve the child's experience in court. Additional measures have effectively been devised with the intention of providing post-sentence punishments. In this respect, convicted offenders are prohibited to work with children[121]. In accordance with the Safe Streets and Communities Act 2012, offenders convicted of sexual offences against children are further forbidden from applying for suspension of their bad record[122]. Such a rigid legal framework aims at acting as a deterrent for potential offenders. Altogether, this comparative study can be an appropriate guidance for prospective reforms as regards the law sanctioning rape of children in Mauritius. At the outset of this chapter, a statutory reform dichotomy has been undertaken, entailing substantive law as well as procedural law reforms. The aim is to eliminate discrepancies and anachronistic provisions found in the Criminal Code, the Child Protection Act and the law of evidence respectively. The proposals are primarily intended to make both the law and criminal justice system more responsive to the needs of victimised children. Lastly, practical recommendations, inspired by foreign laws but tailored to the Mauritian context, have been addressed. To that effect, there can be realistic expectation that the likelihood of convictions will increase. By all means, justice must be done to the child complainant- this ought to remain the predominant motive of the legislator.

## **4. 0 REFORMING THE EXISTING STATUTORY REGIME**

### **4. 1 REFORMING THE SUBSTANTIVE LAW**

4. 1. 1 THE CRIMINAL CODE Following a staged approach, the first loophole to be remedied in the Criminal Code would be to devise an explicit definition of the word 'rape'. Successful prosecution of rape of children cannot be expected if the law itself is ambiguous of what constitutes the offence.

Arguably, the Code does provide for an indication that consent is disregarded where the child is under the age of 16 years [123]. Nonetheless, as regards the act of penetration, no legislation has ever expressly explained whether it is vaginal, oral or anal. To that effect, rape should be described as non consensual penetration of the vagina, anus or mouth of a person by another person's penis, any other part of the body or any object. Being in line with the French and Australian law [124], such a definition would certainly extend the scope of protection of children. Increasingly morbid sexual behaviours, perpetrated on young boys as explained in chapter one [125], justify the fact of not restricting rape solely to vaginal penetration by the penis. It would be exceedingly unfair that protection of boys is overlooked by the law. This reform would certainly reflect modern perception of the nature the offence. In the same vein, the crime would become fully gender neutral where both accused and the child complainant can be of either sex. Irrespective of whether the accused is a man or a woman, the latter should not escape punishment. Secondly, the Canadian Criminal Code, being very similar to that of the Mauritius in its format [126], has separate provisions for rape of adults and rape of children. Likewise, the layout of the domestic Code should

be amended so as to prevent any confusion from arising. This would, undeniably, facilitate the task of prosecution, where the law sanctioning rape of children can directly be referred to. In the same breath, largely inspired by the Scottish law, it would be appropriate to further introduce the notion of ‘ young’ and ‘ older’ children[127]; whereby the younger the child, the tougher the penalties. Young children would refer to those under the age of 12 years while older children would be those in the cohort of 12 years or above but under 16 years of age. The rationale behind this nuance would be to categorise children of different age groups in respect to their level of immaturity. Subsequently, this would afford enhanced protection to very young children who, being the most vulnerable, indulge blindly in risky and impulsive sexual activities. Again, it would also act in favour of the prosecution. Thirdly, where ‘ specified person’[128]is referred to in the Code, it applies to victims of ‘ whatever age’. Instead, the code should differentiate between an adult and a child victim. Specific separate provisions should further be made where the offender is in a position of trust or care in relation to the child and in case of incestuous intercourse perpetrated on children. Accordingly, those should be categorised as aggravating factors, sanctioned by tougher penalties. Besides, an unambiguous definition of ‘ incest’ should be added so as to avoid having to refer to the Civil Code every time. Similarly, a person having the custody or guardianship[129]of a child should be extended to persons working in foster homes or reformatory institutions, teachers, employer of the child, social worker and psychologist. Lastly, the CC should criminalise rape of mentally disabled children separately from that of adults and tougher penalties should also be provided for. It only sanctions

rape of persons with mental impairments[130]in general. This is construed to encompass both adults and children, thereby carrying the same maximum penalty of 20 years. On the other hand, in the Child Protection Act[131], rape of mentally handicapped children is sanctioned by a term of imprisonment not exceeding 30 years. Such inconsistencies, repeating provisions and variance with regard to the penalties should be reviewed altogether.

4. 1. 2 THE CHILD PROTECTION ACTIt is undeniable that children should be given heightened protection in respect to rape. However, the Child Protection Act should strike a balance between protection of older children and their sexual autonomy. The age of consent to lawful sexual intercourse being 16 years in Mauritius, a child of 16 years or above, who consents to sexual intercourse, cannot be assumed to be raped[132]. Tothat effect, the Act should classify separately rape of children who are under the age of 16 years and those who are above. Different penalties should be provided for respectively. Secondly, apart from mentally handicapped children, the Act makes no mentionof any other aggravating circumstances. The legislator should contemplate adding some other aggravating factors such as physical disability[133]. Being a state party to the Convention on the Rights of the Child, Mauritius should fulfil its duty by fully transposing the provisions the Convention into the domestic law. Besides, other aggravating circumstances[134]can notably comprise; use of threats by the offender so that the complainant does not report the crime, the very young age of the child, abduction, where the child has been subtly made to consume alcohol or drugs, where the offender knowingly transmits sexually transmitted diseases to the child. In the same vein, where pregnancy or death has occurred, where the offence is

committed by 2 or more persons and any offensive weapon used by the offender can also be included[135]. To that effect, tougher penalties should be provided for respectively. Those would certainly act as effective deterrents for potential offenders. However, the legislator should be careful so as to avoid overlapping provisions, which would be found both in the Criminal Code and in the CPA since they are read in conjunction with each other. Those two statutes should be carefully amended so that they are in line with each other.

#### 4. 1. 3 THE LAW OF EVIDENCE

##### 4. 1. 3. 1 ADMISSIBILITY OF CHILDREN'S HEARSAY EVIDENCE

The Mauritian court should exceptionally have discretion to make admissible the testimony of a person about a recent complaint made to him or her by the child victim, only where it is satisfied that such evidence have adequate probative value[136]. Owing to the way rape is perpetrated, the requisite evidence is not available most of the time. This is notoriously known for impeding successful prosecution. However, to avoid unjust conviction, the accused should not to be tried solely on such hearsay evidence[137]. A number of jurisdictions have already allowed this exception including Canada, some states of the United States and some states in Australia as well[138]. In the authoritative case of *R v Khan*[139], the Supreme Court of Canada established, via the 'necessity' and 'reliability' tests, the admissibility of children's hearsay evidence.

## 4. 2 REFORMING THE PROCEDURAL LAW

### 4. 2. 1 PRE-TRIAL PROCESS

#### 4. 2. 1. 1 INTERVIEW AND MEDICAL EXAMINATION

The reporting stage is known as one of the most difficult experience for the child complainant. In this respect, interview of children should be carried out by police officers who

<https://assignbuster.com/the-concept-of-the-statutory-rape-law-general-essay/>

have undergone a specialised training[140]to delicately deal with children. Those officers should further be allowed to consult a child psychologist[141], depending on the need of the complainant; for instance, in the case of a gang rape. The motive should be to gather unambiguous and best quality evidence at the very outset of the case so as to secure conviction of the accused. As regards forensic examination of the victim, it should be undertaken in a specialised centre in an environment conducive to children[142]. Record of medical examination such as photos or videos, should be carefully kept. In case of contention, those can be analysed by the defence[143]. In the same vein, children should subsequently be coached on how to deal with the upcoming court process.

## **4. 2. 2 THE RAPE TRIAL**

**4. 2. 2. 1 COURT PROCESSThe** rape trial, being one of the most traumatic and bewildering experience for a child, the criminal justice system makes it even tougher for the latter as shown earlier, especially if trial is postponed several times. In this respect, a fast track court should be introduced where the case would be tried day after day. The sooner, the better for the child since this would avoid lingering trauma. Recently, in India, rape trial of a one and half year old girl has been completed within 10 days[144]. **4. 2. 2. 2 SEXUAL OFFENCES COURT**In the same breath, a separate court with an environment conducive to children should be established, in the best interest of the child victim. It should be equipped with trained judges and prosecutors having the necessary skills to work with children. In view of the delicate nature and the gravity of the crime, rape of children should be tried in a specialised court. Such a court is already operational in South Africa, New

South Wales and Canada[145]. In the waitingroom, before trial, children are provided with toys, books and can even watch television[146]. The underlying aim of such a court would be to reduce the secondary trauma that children experience when going through the court process.

4. 2. 2. 3 BETTER CONTROL OF CROSS EXAMINATION

The stark reality of how children undergo exceedingly unfair cross examination cannot be overlooked. This in turn only exacerbates trauma and unfortunately, leads to acquittal of the offenders. In order to prevent the crime from being further perpetrated, this issue should be remedied. To that effect, there ought to be a duty on the magistrate or judge to regulate the types of questions put to the child complainant, which are most of the time irrelevant[147]. In Australia, a similar proposal has been made, essentially in the interest of the child. A corresponding proposal would be that throughout the trial, the child victim should be entitled a child intermediary or supporter as described by Scottish law[148]. That person would have the necessary expertise to help the child to fully understand and respond appropriately to questions put to him in a purposely intimidating manner. This would also be particularly relevant where the child complainant has certain disabilities such as any hearing, visual or speech impairment[149].

4. 2. 2. 4 SPECIAL FACILITIES FOR CHILDREN TO GIVE EVIDENCE

Pre-recorded evidence of the child should be admissible as direct oral evidence to be used in examination in chief[150]. The rationale behind this would be to ensure that the child does not have to confront the accused as far as possible. This facility has been available to the child complainant in various jurisdictions, including the United Kingdom and Australia[151]. To that effect, given in less stressful conditions, the overall quality of evidence, especially in terms of



accuracy, would undeniably be better. A common form of pre-recorded evidence could be to record the interview of the child which is conducted by the police[152]. This would prevent the accused from indulging in any eventual distortion of evidence during trial, since the recording would clearly depict the child complainant's appearance, bodylanguage and true emotions. Thus, making the accused plead guilty at an early stage of the trial would be a fairly easy task for the prosecution. Besides, this would exhort an increasing number of people to report cases of rape against children, knowing that appropriate facilities are at the disposal of children. To further circumvent the traumatic experience encountered by the child victim in court, she should be allowed to testify behind a screen in the courtroom itself. By knowing that the accused would not see her while she gives evidence, would indeed be reassuring for the child. This is already the standard practice in various jurisdictions including the United Kingdom, Australia and Canada[153]. Another innovative proposal would be to arrange the seats in the courtroom in such a way that the child would not be facing the accused while she testifies[154]. In addition, the layout of the room should be modified so that the child is allowed to sit besides his parents, guardians or legal representatives during the whole proceedings[155]. Further preparations should be made so that the child and the accused use different doors to leave or get into the room[156]. The introduction of those facilities altogether, are meant to avoid causing undue stress to the child so that she can fully participate in the court process.

## **4. 2. 3 POST TRIAL PROTECTION**

**4. 2. 3. 1 ANONYMITY OF THE CHILD**It should be made an offence in Mauritius where the media would disclose, either via publication or broadcast, a child complainant's identity to the public[157]. This should be done, primarily, with the intention of exhorting children to report the crime. At the same time, this would eliminate any fear of social stigma and encourage a quicker recovery. Nonetheless, the child should still have the discretion to waive the right to anonymity in the future. The United Kingdom, particularly; Scotland, Canada, France and Australia have since long a well established statutory regime as regards anonymity of the child victim[158].

**4. 2. 3. 2 PSYCHOLOGICAL COUNSELLING**The Ministry should ascertain that victims are adequately monitored, even after the trial, by providing further medical and psychological services. This would mirror the existing legal provisions in France[159]. Besides, where trauma of the child is made worse, such as when rape is coupled with torture, abduction[160] or pregnancy or when it is committed on those in foster homes[161], an intensive counselling session would be necessary. Devoid from any moral support from their close ones[162], victimised children in such institutions deserve special attention and care so as to best overcome such a horrible experience.

## **4. 3 FURTHER RECOMMENDATION**

**4. 3. 1 SEX OFFENDERS REGISTER**A person who has been convicted for rape of a child should have his name and address added in a special register so that the police can keep track of him. This is already applicable in the United Kingdom[163]. This would also be particularly helpful to institutions recruiting people to work with children. Those applicants, whose names

appear in the register, should be systematically disqualified as prospective employees. This proposal would be categorised mostly as a preventive rather than a curative approach to the crime. The success of these proposals, reforms and remedies in Mauritius would be determined by a two pronged approach. The introduction of new law or mechanisms alone would certainly not guarantee protection of children from rape, what would carve the line of demarcation is how best those would be implemented and accordingly, their deterrent effect on potential offenders.

## CONCLUSION

At the beginning of this thesis, (Chapter 1) an insightful analysis of the history of rape of children has been made so as to track the evolution of the crime in Mauritius. By further analysing the elements of the offence, a clearer perception of what exactly constitutes the crime has been achieved. Another substantial part has largely been dedicated to the evidential aspect of rape of children. The thesis proceeded by examining the definition of the word 'child' from both an international and domestic perspective so as to have a better insight of the targeted category of victims who are entitled to protection(Chapter 2). Since the determinant role of the prosecution cannot be overlooked, it has been deemed of utmost importance to understand how best it uses the legal provisions notably; the Criminal Code and the Child Protection Act, to secure successful conviction of the accused. In the same breath, the most eminent protective mechanisms available to the child complainant have been underlined. By using a comparative approach, an analysis of the law sanctioning rape of children in several foreign jurisdictions, notably; Scotland, France, Australia and Canada has further

been undertaken. (Chapter 3) Lastly, (Chapter 4) following an extensive critical analysis of the statutory regime, a wave of sensible reforms, as regards the substantive law and procedural law, have been addressed respectively. Key recommendations which are worthwhile implementing in Mauritius have also been laid down. By pointing out the shortcomings and inadequacies of the legal provisionssanctioning of rape of children and by suggesting reforms accordingly, theprimary aim of the thesis has undeniably been met. Following extensive research to improve the criminal justice system, recommendations aboutinnovative facilities to be provided to victims, have satisfactorily been outlined. Quite interestingly, those loopholes constituted the right impetus for reviewing the law and system altogether. The relative vulnerability of the victimised child has successfully been emphasised by incessant criticisms of how limitative the law criminalising rape of children is. Hence, the second purpose of this thesis is also deemed to have been achieved. By pointing fingers at the meagre one-line provision sanctioning rape of children in the Criminal code, this further implies that children are not being adequately protected. Similarly, as regards other aggravating factors of the crime, it has been contended that the law is too general and not children oriented at all. This has shown that the legislator has completely overlooked the fact that children, as opposed to adults, are more at risk of being raped. Besides, the way the thesis culminated, with suggestions which are conducive to children, also helps to accentuate their vulnerability. The comparative analysis undertaken in chapter 3 has shown the extent to which the domestic law is not sufficiently equipped to fully protect victimised children. Overall, the message is clear-

the law ought to be drafted so as to serve a dual purpose; it must not only be protective but has to be punitive as well. The efficiency of the criminal justice system ought to be improved so as to hold offenders accountable for their actions. Altogether, it can confidently be inferred that the objectives of the thesis have been fulfilled. To conclude, if a main recommendation has to be made, the enactment of an all-embracing statute sanctioning sexual offences, is the most appropriate and timely solution. First of all, this Act ought to consist of the newly-devised definition of rape, as proposed in the previous chapter, followed by separate and unambiguous provisions for rape of children. It must also comprise the aggravating factors when the crime is committed against children in particular. The proposed facilities to which the child complainant has to be entitled to during trial, such as testifying behind a screen in the courtroom or special seating arrangements, ought to be included under the same Act. In fact, the pervasiveness of the crime is one of the main reasons propelling the adoption of such legislation. Besides, since until now only piecemeal amendments have been made to the law, it is high time to undertake an all-inclusive reform. Another purpose of such a proposal is to avoid resorting to a set of scattered and disjointed law, where confusion is very likely to arise. In view of the proposed new definition of rape, it will be best to delete the sections 249; ' Rape, attempt upon chastity and illegal sexual intercourse' and 250; ' Sodomy and Bestiality' of the Criminal Code in its entirety. This will avoid repeating provisions. Besides, as regards section 14 of the Child Protection Act, it will be wiser to keep it, but it will have to be amended so that the penalties and aggravating circumstances are in conformity with the proposed new piece of legislation.

Preserving that section will, most importantly, be emblematic of the entrenched protection to which children are entitled in Mauritius. The Sexual Offences Bill of 2007 was indeed a laudable initiative of the former Attorney General, Mr Rama Valayden, but as contended by the latter himself[164], it was never passed into law owing to a serious lack of conviction from the government. Overall, the bill mirrored the Sexual Offences Act 2003 of England and Wales. What will determine the success of such instrument is how best it is going to be applied in practice. The law by itself cannot be expected to make any remarkable difference unless a concerted approach is adopted altogether; by the police, the prosecution, those responsible for the proper functioning of the criminal justice system and the Ministry of Gender Equality, Child Development and Family Welfare, to effectively implement the legal provisions. The Ministry must be more focused on helping victims to better cope with the legacy of rape, which includes their reintegration in society. In a nutshell, the reputation of Mauritius, as a country fit for children, will certainly be achieved by the gradual eradication of such atrocious crime.