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- Mrs. Daisy Rani BRIGEMOHANE [Civil Society]
- Mr. Navin GUNNASAYA [Civil Society]

Secretary: Mrs. Saroj BUNDHUN
About the Commission

THE LAW REFORM COMMISSION OF MAURITIUS consists of –
   (a) a Chairperson, appointed by the Attorney-General;
   (b) a representative of the Judiciary appointed by the Chief Justice;
   (c) the Solicitor-General or his representative;
   (d) the Director of Public Prosecutions or his representative;
   (e) a barrister, appointed by the Attorney-General after consultation with the Mauritius Bar Council;
   (f) an attorney, appointed by the Attorney-General after consultation with the Mauritius Law Society;
   (g) a notary, appointed by the Attorney-General after consultation with the Chambre des Notaires;
   (h) a full-time member of the Department of Law of the University of Mauritius, appointed by the Attorney-General after consultation with the Vice-Chancellor of the University of Mauritius; and
   (i) two members of the civil society, appointed by the Attorney-General.

Under the direction of the Chairperson, the Chief Executive Officer is responsible for all research to be done by the Commission in the discharge of its functions, for the drafting of all reports to be made by the Commission and, generally, for the day-to-day supervision of the staff and work of the Commission.

The Secretary to the Commission is responsible for taking the minutes of all the proceedings of the Commission and is also responsible, under the supervision of the Chief Executive Officer, for the administration of the Commission.
Executive Summary

LAW REFORM COMMISSION OF MAURITIUS

Issue Paper
“Criminal Investigation: Reform of Police Procedures & Practices”

In this Issue Paper, the background to UK PACE and its evolution are first considered. This is followed by an examination of police powers and procedures under PACE and their relevance to Reform of the Law of Mauritius:

(a) Police Powers to Stop and Search Persons and Vehicles & to Search Premises;
(b) Arrest and Detention; and
(c) Access to Legal Advice & Police Interviewing.

The Commission is of the opinion that the adoption of legislation and Codes of Practice for police and other law enforcement officers, on same line as the 1984 UK PACE [Police and Criminal Evidence Act] or Jersey Police Procedures and Criminal Evidence Law 2003, is the way forward for greater professionalism and transparency in the conduct of criminal investigations.

Before the adoption of any new legislative scheme, training needs would have to be assessed so as to minimize resistance, due to unfamiliarity with the new legislation, on the part of the police and other stakeholders. We also consider that empirical research should be carried out to assess the current situation and later on evaluate the impact of the new legislation and its Codes of practice in relation to practices at the different stages of the criminal investigation process.
(A) Introductory Note

1. In January 2010, the Commission, in its 2009 Report to Hon. Attorney-General on its activities, informed the Government that it is against the putting in place of a system of ‘juge d’instruction’, that the adoption of legislation and Codes of Practice for police and other law enforcement officers, on same line as the 1984 UK PACE [Police and Criminal Evidence Act], is the way forward for greater professionalism and transparency in the conduct of criminal investigations, and that it shall release an Issue Paper on this aspect of the law.¹

2. This is what the Commission had to say on the matter:

“It was announced in the 2005-2010 Government Program that “Government will put in place a system of Juge d’Instruction in order to ensure greater transparency and professionalism in the conduct of criminal investigations in the light of the recommendations of the Law Reform Commission” [para. 250].² The Commission has thus been researching on the role and functions of the “juge d’instruction” (including his powers, duties and accountability) in the French criminal justice system [and the shortcomings of this institution as disclosed by “l’affaire Outreau”].

The Commission has examined the report of two French experts [Messrs Jean-Pierre Zanoto, Inspecteur des Services Judiciaires, and Samuel Laine, Chef du Bureau de l’Entraide Pénale Internationale à la Direction des Affaires Criminelles et des Grâces] who visited Mauritius, from 25 June to 1 July 2006, on a « mission d’assistance technique » and submitted a Report on « Propositions pour la Réforme du Système Judiciaire Mauricien ». Zanoto and Laine were of the view that the difficulty lies in the “rôle prépondérant de la police dans la conduite de l’enquête pénale” and that “à la différence de ce qui existe au Royaume-Uni (avec le ‘Crown Prosecution Service’ et, plus récemment, le ‘Serious Organized Crime Agency’), le contrôle de l’activité policière est quasi inexistant ». They concluded that the introduction of the system of « juge d’instruction » is one option; another option is « some form of control by DPP over criminal investigations, as is the case increasingly in England and Wales»:

“L’introduction de la fonction du juge d’instruction permettrait de mieux encadrer les forces de police pendant la phase de l’enquête, tout en respectant les droits fondamentaux prévus par la Constitution de la République de Maurice. Mais, la réalisation de cette réforme, dans un pays fortement imprégné de la procédure anglo-saxonne, à la fois dans les textes et dans les pratiques professionnelles, ne peut s’opérer sans entraîner une modification de la Constitution et des règles procédurales en vigueur ...

L’attribution au DPP d’un droit de regard sur le déroulement des enquêtes constitue une autre solution possible, au demeurant mieux adaptée au droit mauricien et à l’équilibre des pouvoirs de la société mauricienne. L’évolution du DPP pourrait s’inspirer de celle que connaît, en Angleterre et au Pays de Galles, le Crown Prosecution Service qui


² In the 2000-2005 Government Program it was announced that “Government will introduce a system of "Juge D'instruction" based on the French model in each police district with a view to assisting the police to instruct cases, especially the more serious ones.” [para. 21].
désormais décide du principe de la poursuite ou non, des chefs s’accusation à retenir et conseille la police sur les investigations à accomplir, même si celle-ci demeure indépendante pour enquêter ».

The Commission has also considered:
(a) The Background to the adoption of a Police and Criminal Evidence Act [PACE] in UK, which then was regarded as an innovative attempt to regulate the investigation of crime;
(b) Evolution of PACE since then – although the basic structure of PACE has survived, almost continual revision and amendment has resulted in a markedly different creature than that which was originally enacted;
(c) Current Impact of PACE in UK - whilst legal advice has become established as a basic right of those arrested and detained by the police, the police service has become increasingly professionalized but also increasingly driven by government objectives and targets [such as the further review of PACE in 2007 to ‘re-focus the investigation and evidence gathering process (to deliver) 21st century policing powers to meet the demands of 21st century crime’; the Crown Prosecution Service, originally established to separate prosecution from investigation, is now becoming involved in the investigative process with the power to make charge decisions].

The outcome of the research work is that the adoption of the system of “juge d’instruction” in Mauritius would not necessarily achieve the objective sought. The Commission has formed the opinion that the 2nd option proposed by Zanoto and Laine is to be preferred, viz. some form of control by DPP over criminal investigations, as is the case increasingly in England and Wales. Our research confirms the view expressed by the Hon. Prime Minister at the National Assembly in April 2007, viz. adoption of legislation and Codes of Practice for police and other law enforcement officers, on same line as the 1984 UK PACE [Police and Criminal Evidence Act], is the way forward for greater professionalism and transparency in the conduct of criminal investigations.”

3. In this issue Paper, we elaborate on the relevance of the adoption of a new Police Procedures and Practices Act, modeled on UK PACE.

**B) Background to UK Police and Criminal Evidence Act 1984 [PACE] & its Evolution**

4. In February 1978, a Royal Commission on Criminal Procedure (RCCP) was established, under the chairmanship of Professor Sir Cyril Philips, with the following terms of reference:

“To examine having regard both to the interests of the community in bringing offenders to justice and the rights and liberties of persons suspected of crime, and taking into account also the need for efficient and economical use of resources, whether changes are needed in England and Wales in:

- The powers and duties of the police in respect of the investigation of criminal offences and the rights and duties of accused persons, including the means by which they are secured;
- The process of responsibility for the prosecution of criminal offences; and
- Such other features of criminal procedure and evidence as relate to the above and to make recommendations in these matters.”
It issued its report in January 1981.\(^3\) As a result of the recommendations of the Royal Commission, the Police and Criminal Evidence Act 1984 and the Prosecution of Offences Act 1985 were enacted.\(^4\)

5. The setting up of the Royal Commission was triggered by the report of Sir Henry Fisher’s investigation into the “Confait affair”.\(^5\)

On 22\(^{\text{nd}}\) April 1972 one Mr. Maxwell Confait, originally from Seychelles and known to the police as a homosexual prostitute and transvestite, was found dead at 27 Doggett Road, London, after firemen were called to put out a fire at the said premises.

Following his death, three suspects - namely Ronald Leighton, 15 years old, Colin Lattimore, 18 years old but having a mental age of 8, and Ahmet Salih, 14 years old - were arrested.

Lattimore was arrested in connection with three cases of arson, one of which was near Doggett Road. When being questioned about the Doggett’s fire he admitted as being the author, together with Leighton. Salih, who was at Leighton’s house, was also arrested. All three were interviewed in the absence of an appropriate adult. They confessed as being the authors of the crimes. However, at the trial in the Old Bailey, they pleaded not guilty and alleged having been assaulted by the police.

During the trial, the defence was prevented by the judge to make reference to one Mr. Winstone Goode\(^6\), who apparently shared similar interests as Confait for the wearing of women’s clothing, have had to say, viz. his jealousy to the effect that Confait would leave his place to settle with another man.

The three accused were found guilty. On the 24\(^{\text{th}}\) November 1972, Leighton was convicted for murder of Confait and for arson. He was sentenced for life imprisonment at Aylesbury Prison. Lattimore was convicted for manslaughter on grounds of diminished responsibility and for arson. He was ordered to be detained under the Mental Health Act

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\(^3\) The Royal Commission on Criminal Procedure (Cmd 8092, 1981).

\(^4\) The Royal Commission made the following three main criticisms of the Criminal Justice system in England and Wales:
- the police should not investigate offences and decide whether to prosecute. The officer who investigated a case could not be relied on to make a fair decision whether to prosecute;
- different police forces around the country used different standards to decide whether to prosecute;
- the police were allowing too many weak cases to come to court. This led to a high percentage of judge-directed acquittals.

\(^5\) Sir Henry Fisher, President of Wolfson College, Oxford, was appointed on 19 October 1975 to investigate into the circumstances leading to the trial of those arrested in the Confait case.

\(^6\) Goode could not be further interviewed as he was subsequently admitted to a psychiatric hospital and later when released in 1974 he committed suicide.
at Rampton Hospital while Salih was convicted for arson and sentenced for four years to youth custody of the Royal Philanthropic School.

The defence appealed against the decision but leave to appeal was refused in July 1973.

As a result of wide publicity in respect of allegation of miscarriage of justice and upon the insistence of Christopher Price, the Lewisham MP, on the 18th June 1975 the then Home Secretary, Roy Jenkins, decided to send the case back to the Court of Appeal.

In the light of experts’ evidence, the Court of Appeal quashed all the convictions as being unsafe.\(^7\)

6. The report of Sir Fisher\(^8\) revealed actual and potential miscarriages of justice in the conduct of the Confait case. It concluded that the police had committed breaches of the Judges’ Rules during the investigation of the three suspects particularly in conducting interviews in the absence of appropriate adults. The report also blamed the prosecution for having failed in properly preparing the case. Sir Fisher\(^9\) did not exculpate the three accused but found on a balance of probabilities that the three boys were involved in the case of arson and that Salih and Leighton were also involved in the killing of Confait. The report recommended that all police interviews in the future should be tape-recorded.

7. Following the request of Mr. Christopher Price,\(^10\) a written statement was laid down in the House of Commons by the then Attorney General setting out the circumstances of the murder of Mr. Maxwell Confait.\(^11\) In his statement to the House of Commons, the then Attorney General stated that had evidence, which came to light in January 1980, been before Sir Fisher, the latter would not have concluded that the three boys were either involved in the killing or in the arson. The Attorney General further stated that there was insufficient evidence to prosecute anyone else.

8. In addition to what happened in the Confait case, there had been on other occasions, particularly in the media and in courts, criticisms about the low transparency or even the opacity of police actions. For instance, it has been observed that lack of communication between the police and the public for understanding police actions may be considered as one of the causes that resulted in the Brixton disorder.\(^12\) These shortcomings in the

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\(^7\) Judgment of \textit{R v Lattimore and others} was delivered by Lord Justice Scarman.

\(^8\) The report was submitted on 19th October 1977 and published in December 1977.

\(^9\) Probably basing himself on the findings of John Fryer, an Assistant Chief Constable, who conducted a re-examination of evidence of the case prior to Sir Fisher’s investigation.

\(^10\) Christopher Price and Jonathan Caplan later in April 1977 wrote and published a book known as “\textit{The Confait Confessions}”.

\(^11\) Hansard, House of Common Debates, 4\textsuperscript{th} August 1980, Volume 990 cc 21-3W.
conduct of investigations had resulted in injustices that had prompted the need for detailed legal rules pertaining to the conduct of police actions and treatment of suspects. It had also become important to have a standard to gauge the accountability of the police in a more tangible manner and at the same time to safeguard and uphold the rule of law.

9. Significant reforms have been brought about by PACE, which lays down the legal framework for the exercise of police powers. PACE also provides for Codes of Practice to be adhered to by police in the performance of their duties. The Act deals mainly with police powers to search an individual or premises, including their powers to gain entry to those premises, the handling of exhibits seized from those searches and the treatment of suspects once they are in custody, including procedures to be observed during interviews. Criminal liability may arise if the specific provisions of the Act are not observed, whereas failure to conform to the Codes of Practice while searching, arresting, detaining or interviewing a suspect may lead to evidence obtained during the process being held inadmissible in court.

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13 The Codes are as follows:
- Code A deals with the exercise by police officers of statutory powers to search a person or a vehicle without first making an arrest. It also about the need for a police officer to make a record of a stop or encounter;
- Code B deals with police powers to search premises and to seize and retain property found on premises and persons;
- Code C sets out the requirements for the detention, treatment and questioning of suspects not related to terrorism in police custody by police officers;
- Code D concerns the main methods used by the police to identify people in connection with the investigation of offences and the keeping of accurate and reliable criminal records;
- Code E is about the audio recording of interviews of suspects in the police station;
- Code F deals with the visual recording with sound of interviews with suspects. There is no statutory requirement on police officers to visually record interviews. However, the contents of this code should be considered if an interviewing officer decides to make a visual recording with sound of an interview with a suspect;
- Code G deals with powers of arrest under section 24 the Police and Criminal Evidence Act 1984 as amended by section 110 of the Serious Organised Crime and Police Act 2005;
- Code H sets out the requirements for the detention, treatment and questioning of suspects related to terrorism in police custody by police officers.

14 Non-observance of the codes does not of itself give rise to any criminal or civil liability, but non-compliance therewith or breach thereof may be relevant to the admissibility of evidence. Evidence obtained in breach of a code may be excluded by the trial judge under section 76, section 78 (exclusion of unfair evidence) or at common law. The effect of a breach of the provisions has been considered in numerous authorities; in particular breaches of Code C and D. General principles apply and can be derived from two Court of Appeal decisions: R v Absolam 88 Cr. App. R 332 and R v Delaney 88 Cr.App. R 338 and they are as follows:
(a) a breach of the code does not lead automatically to exclusion;
(b) where there is a breach, the judge has a discretion to exclude the evidence;
(c) the breach must be significant and substantial and the more so, the more likely the judge is to exclude the evidence;
(d) bad faith/flagrant disregard of the code’s provisions will make the exclusion more likely.
10. PACE was an innovative attempt to regulate the investigation of crime. Although the basic structure of PACE has survived, almost continual revision and amendment has resulted in a markedly different creature than that which was originally enacted. Whilst legal advice has become established as a basic right of those arrested and detained by the police, the police service has become increasingly professionalized but also increasingly driven by government objectives and targets [such as the further review of PACE in 2007 to ‘re-focus the investigation and evidence gathering process (to deliver) 21st century policing powers to meet the demands of 21st century crime’].\(^{15}\) The Crown Prosecution Service, which was originally established to separate prosecution from investigation, is now becoming involved in the investigative process with the power to make charge decisions.

Crime control and the growing concerns of the public in respect of fear of crime has become a public policy issue. Thus, in recent years, emphasis had been on identifying priorities for responding to the increase in crime and negotiating these priorities with the public. The rise in crime in UK together with the concerns of the public has dramatically shifted the balance underpinning PACE with time. Thus, the initial balance which was formerly between civil liberties and crime control has shifted as a result of reviews brought to the Act in order to meet these priorities and the growing concerns of the public. The shift in the balance to be struck is also obvious in the review to which PACE was subjected in 2002.\(^{16}\) In fact, the review of 2002 was meant to assess whether the practices set out in the Act\(^{17}\) could be “improved and made more efficient”. In the same breath of meeting the growing demands on the police to combat 21st century crimes and enabling the policy makers to achieve their goals, it was stated that it had become crucial for the investigative tool of the police to be modernized. Thus, five years after the 2002 review, a further reform was brought about to PACE by the Home Office under the heading of “Modernising Police Powers”. The emphasis is now on rebalancing the criminal justice system in favour of the law-abiding majority. The new priorities are to cut down crimes, reducing re-offending and protecting the public. The abiding majority in that context include victims, witnesses and avoiding privileging offenders over victims. However, the views expressed by eminent police officials that police are judged


\(^{17}\) The final paper in respect of the 2002 review came out with 43 issues of practices under PACE which needed to be amended or clarified.
on the basis of numbers and number crunching are clear indications of the new trends in the target-driven culture of the policy makers.\textsuperscript{18}

It appears that the shift in striking a “proper balance” has been used by the UK Government in order to win support for its policies in favour of the “punitive rhetoric” for controlling crimes. For instance, there have been concerns for using the fight against terrorism to justify undermining civil liberties. Concerns have been voiced out by eminent personalities in that context. Thus, Professor Michael Zander had expressed his reservation and skepticism in very clear terms as to the interests of the victims in the criminal justice system by saying, “I do not share the Minister’s view that the processes under PACE should be re-focused to serve the needs of the victims and witnesses. This is a fashionable mantra by the [then] Prime Minister and successive Home Secretaries to rebalance in favour of prosecution”.\textsuperscript{19}

In the same vein it may also be said that amendment brought to PACE by different statutes such as the Police and Magistrates Courts Act 1994 showed that the police are being driven by government objectives. This tendency can be seen as result of statutorily compelling the Police Authority\textsuperscript{20} to have regard, in making its planning, to the national objectives of the Home Secretary. In addition, there are arguments that in the target-driven culture, emphasis is on the volume of offences rather than on quality of investigation because by increasing the number, the performance of the police would be better reflected in the eyes of public opinion.

\textsuperscript{18} For instance, Jan Berry, Chair of the Police Federation for England and Wales, has expressed concerns that the police performance should be based of achieving targets.

\textsuperscript{19} Vide generally M. Zander, \textit{The Police and Criminal Evidence Act 1984} (London, Sweet & Maxwell, 5\textsuperscript{th} ed., 2005).

\textsuperscript{20} See section 106 of PACE.
(C) Police Powers to Stop and Search Persons and Vehicles & to Search Premises under PACE: Relevance to Reform of this Aspect of the Law of Mauritius

(1) Police Powers to Stop and Search Persons and Vehicles & to Search Premises under PACE

11. PACE has introduced a general power to stop and search persons or vehicles for stolen and prohibited articles. The conduct of stop and search is grounded either on prevention or detection.\(^ {21}\) Prior to the introduction of PACE, the power to stop and search was contained in different pieces of legislative instruments. One of the reasons of the necessity of designing a new legal framework in respect of the law regarding stop and search was to address the lacuna prevailing in that sphere, particularly because the powers contained in the different legislations were not clear and workable. The exercise of such power by the police was based on hunch or stereotyping\(^ {22}\) with the consequence that black people were more likely to be searched than whites.\(^ {23}\) The absence of legal requirements for making proper written record for stop and search was one of the consequences arising through lack of supervision by superior officers. The aims with which PACE was introduced were to address issues relating to these lacuna and at the same time providing better safeguards to those likely to be subject to stop and search.

12. PACE introduced the criterion of “reasonable grounds for suspicion” as a basis for effecting stop and search. As safeguards, it introduced the requirements of providing to the person being subject to a search, the reason for the search as well as the necessity of making proper written records.\(^ {24}\) It has to be said that the criterion of “reasonable grounds for suspicion” goes beyond mere suspicion. It involves some concrete basis for suspicion before the decision is reached to proceed to do a stop and search. On this premise, the aims of the new legislation were to reduce arbitrary stop and search prevailing at that time and at the same time to increase the success rate in the detection of crimes.

13. When PACE was introduced, the term “reasonable suspicion” was rather an abstract one because of its unclear definition.\(^ {25}\) This was so despite the fact that in the original version

\(^{21}\) Figurers of Home Office (1995) showed that 70 % of stop and search was effectuated on the basis of stolen property or drugs whereas those effectuated on the basis of prevention such as for offensive weapon was 5 % or for articles to be used for burglary was 18 %.


\(^{24}\) A standard form for stop and search was made available.

of Code A\textsuperscript{26} an attempt was made to define it. The unclear definition of the expression was one of the reasons for police inclination to have recourse to consent for effecting stop and search rather than complying with the restrictive requirements of PACE. In fact even after the introduction of PACE, stop and search was still conducted with consent. The possibility of evading the “reasonable suspicion” criterion caused most police officers to hold that they were not significantly affected by the introduction of this new concept.\textsuperscript{27}

14. The issue of consent has been the subject matter of debates following the introduction of PACE. Although, it has been made clear\textsuperscript{28} that cooperation does not imply consent it seems that stop and search was in fact conducted on persons because of their ignorance of the law.\textsuperscript{29} The ignorance was at two levels, namely ignorance of their rights and police powers.\textsuperscript{30} It is clear that by having recourse to consent for effecting a stop and search, the requirements of PACE become inapplicable since there is no duty in such a situation for the keeping of written records. Thus, in such a case the police can easily curtail the requirements of keeping records and the giving of reason for the search. The consequences are that scrutiny in supervision and sanction become impracticable. Another consequence associated with such police action while using consent instead of complying with the requirements of PACE is that it renders the duty of the court in the administration of justice a dead letter since it prevents the purpose of implementing the safeguards for the suspects.

15. There have also been findings\textsuperscript{31} that even after PACE was in operation, the police did not limit the exercise of their powers relating to stop and search based on “consent” or “reasonable suspicion” but on other factors. These factors include age, class, gender, race and area. These factors may be attributed to the experience acquired by the police through their encounters and dealings with such categories of people.\textsuperscript{32} In that context, there has been argument that the experience of the police of those involved in crimes could not be abandoned at the expense of the concept of “reasonable suspicion” and as such the concept was very often not applied uniformly within the police in England.

\textsuperscript{26}Code A, Annex B.

\textsuperscript{27}Vide D. Brown, \textit{PACE ten years on: a review of the research} (Home Office Research Study 155, 1997).

\textsuperscript{28}Home Office Circular 88/1985.


\textsuperscript{30}Safeguards have been introduced in PACE for police to inform suspects of their rights and reasons for arrest.

\textsuperscript{31}Vide P. Quinton et al, \textit{Police Stops, Decision-Making and Practice} (Home Office Policing and Reducing Crime Unit, Paper No. 130, 2000). See also J. Young, \textit{Policing the Streets: Stops and Search in North London} (Centre for Criminology, Middlesex University, 1994).

16. Other factors may also affect the concept of “reasonable suspicion” and thus tilt the balance in favour of circumventing rather than applying it. These include the practical conditions prevailing and the short time frame within which the police have to decide to exercise their powers of search. The short gap for making a decision may render the level of suspicion more difficult to reach. In addition, traditional working practice of the police in England have conflicted head-on with complying with the new legislative framework under PACE. The reason for such conflict was that these working rules were so deeply incrusted in police culture and changing them would require substantial efforts in the mindset of the police as well as the necessary training and willingness to work within a new legal framework.

17. Stop and search based on “reasonable suspicion” has been seen as a form of constraint rather than assisting the police. The term is seen as a constraint because under PACE, the police may be called upon to justify the use of their powers. It is clear that suspicion would not necessarily emerge on the first encounter that the police may have with an individual but rather at a later stage during the encounter. This is contrary to the presumption under PACE requirements. Such constraint has also played in favour of police effecting stop and search with consent rather than complying with the requirements of PACE. Thus, when police are doing stop and search on the basis of consent, the reason put forward is that it is being conducted for the purpose of detection of crime rather than investigation.

18. The limitations of the new concept have been identified and are related to the following:
(a) the concept is unclear to be workable and to deal with practical issues;
(b) inadequate training to change existing police culture and the application of legal criteria to practical situations;
(c) the timing of its implementation was not proper, due to the political controversy and police discontent within which the Act came into force;
(d) the inadequacy of disciplinary sanctions for breaching the rules; and
(e) the unawareness of public as to their rights and police powers.

19. Despite the above difficulties and apprehension, PACE is turning out to be a valuable tool in the investigating process and in safeguarding the rights of suspects. Statistics have shown a significant increase in the use of stop and search power under PACE, accompanied by a corresponding increase in recording. The criterion of “reasonable suspicion” has become workable since its introduction because there has been significant decrease in searches following stops. In addition, post PACE research found that because suspicions are better founded, stops are more likely to result in a search and


arrest. It appears that most of the objectives of the Act, as far as stop and search is concerned, are being fulfilled while others, such as race, are still underway. In that context, most researches admit that race is still considered as a major determining factor for stop and search. A comparison of figures of researches effected prior to and after the introduction of PACE showed that there was a drop in the number of stop which effectively lead to the search of the person. This tends to show, as was intended with the introduction of the Act, that the “reasonable suspicion” requirement under PACE has reduced the arbitrary use of police powers of stop and search.

20. Prior to the introduction of PACE it was unclear whether the police did have the power to search the premises of persons in view of finding evidence in connection with the offence for which they had been arrested. The Sheffield study in respect of the exercise of the power of entry, search and seizure has confirmed the existing confusion prevailing during the pre-PACE period, particularly that the police had such power from common law. In fact, research has shown that 75% of search and seizure done in the pre-PACE period was without the consent of the suspects/occupiers. According to the said research those subjected to search and seizure were ignorant about the existence or not of such powers. A study has shown that searches after arrests were effectively conducted without warrant under such an assumption. The assumption of the existence of the right to search the premises of detained persons under the common law has been brought to a halt in the case of McLorie v Oxford [1982] Q.B 1290. Hence the necessity of PACE to clarify these issues by placing such power on a statutory footing and at the same time making provisions in the Code of Practice Code B so that even if search is effected on the basis of consent, such consent is an informed one, that is, by informing the suspects of his right to refuse.

21. The investigative powers of the police have undergone important changes with the introduction of PACE. Section 18 of the Act provides the police with the power to enter and search premises of a person under arrest and to seize any article that is reasonably believed to be evidence in connection with the offence under investigation or any other offence. Despite the statutory power for search of the premises of suspects under arrest, research had shown that police prefer using consent to effect search and seizure. Researchers have questioned the genuineness of the consent of suspects for the conduct

35 As evidenced by British Crime Surveys.

36 Vide K. Lidstone, Magisterial Review of the Pre-trial Process [Centre for Criminology ND Socio-Legal Studies, University of Sheffield, 1981].


38 K. Lidstone, Magisterial Review of the Pre-trial Process [Centre for Criminology ND Socio-Legal Studies, University of Sheffield, 1981].

of search,\(^{40}\) which should normally be an informed one. As stated above, it has to be noted that where consent has been used as a basis for search, the requirements of PACE may be curtailed as such searches do not require the authorisation of an officer of at least the rank of an inspector. In a sense, the conduct of search with consent relieves superior officers from the burden of exercising their role of supervision since in such situations no records are required to be maintained. The evasion of the requirements of PACE in a way confirms the apprehension related to innovation brought by the new law.

22. As far as the powers to search premises of arrested persons are concerned, they are now clearer and there are also relevant safeguards to prevent abuse. The safeguards among others relate to seeking the authority of a higher rank police officer prior to doing a search of the premises of arrested suspects. The Code of Practice B sets out the way in which such searches should be conducted. Moreover, the police have to provide the necessary information to justify the search and the duty to make a proper written record in that connection. Although, there has been some doubts as to whether the provisions in PACE effectively ensure a proper monitoring of the records of searches conducted by the police,\(^{41}\) it appears that these safeguards\(^{42}\) are very important for the purpose of control, accountability and supervision of the police in the conduct of investigation.

23. Another important issue in connection with search is the searching of the detained person at station. There was no statutory power for the police to effect search of suspects at police station before PACE;\(^{43}\) this practice was conducted routinely. The search of a detained person is now placed on a statutory footing.\(^{44}\)

(2) Relevance of PACE Framework as to Police Powers to Stop and Search Persons and Vehicles & to Search Premises to Reform of this Aspect of the Law of Mauritius

24. Section 9 of the Constitution provides for the privacy of home and other property. Section 9(1) provides that the search of a person or his property or entry by others on his premises may be done with his consent whereas section 9(2) makes provision for search


\(^{42}\) The safeguards under the Code relate to the obligation of the police to keep proper records, the detailed rules of the conduct of the search and the way consent is obtained.

\(^{43}\) There is no provision in law for searches conducted by the police at station prior to detaining a person in police cell in Mauritius as well.

\(^{44}\) There is also provision for intimate search under the authority of a superintendent of police for class A drugs or articles that might cause injury.
to be conducted under enactments. There are provisions in different enactments providing for the conduct of stop and search, including those relating to search conducted under warrants issued by Magistrate. These stops and searches are based on grounds of ‘reasonable suspicion’. The reasonable ground of suspicion usually emerge as a result of suspicion linked to the securing of drugs, property obtained unlawfully or articles used or likely to be used in the commission of an offence.

There is no safeguard such as relating to informed consent of a person being subjected to a stop and search. In fact there is no provision in our law as to the way the stop and search should be conducted, contrary to provisions in PACE, except for a proper entry in the Diary Book and Stop and Search Register. We consider a general power for stop and search, as is the case under UK PACE together with the relevant safeguards, would be most welcoming in order to strike a proper balance between the exercise of powers by the police and the rights of persons.

25. Astonishingly, there is also no provision in our law up to now for search of a suspect at police station prior to his detention, contrary to the law in UK where a power of search under section 32(8) of PACE has been introduced. However, as was the case in UK prior to PACE, search of person at police station in Mauritius is routinely conducted in respect of every person committed to police cell as provided in the Police Standing Orders.

23. The practice of effecting search and seizure with consent at the premises of suspects, in the absence of clear legal provisions to that end, may give rise to the same concerns as indicated above relating to lack of reason for police actions. In fact, it could reasonably be questioned whether the consent of the suspect for the search of his person or his premises in Mauritius is an informed one, particularly for the same reasons as those that occurred in UK. The reason for such a contention is linked to the same argument as explained above, namely the ignorance of the law, particularly in relation to their rights and the existence or extent of police powers and their limitations. Although there is no research as to the actual practice of obtaining consent in Mauritius, most statements recorded from suspects show that the consent is only obtained at the end and no mention is made as to whether the suspect had a right to refuse. This leaves the suspect with no choice other than to accept the search to be conducted. It is possible to suggest that an arrested person may wrongly assume that such a power is being exercised under a warrant or that the police have such authority to conduct the search. This assumption can only be dispelled if the police are statutorily required to make it clear to the suspect under what power the search is being conducted. In the same vein, the public should be made aware of what is an informed consent. Under PACE, there are legal requirements for the police to explain the person being the subject of a search, the purpose of the search and

45 Section 31(f) of the Ports Act

46 Sections 36, 37 and 39 of the District and Intermediate Court (Criminal Jurisdiction) Act or section 50 of the Dangerous Drugs Act.

47 There is provision in the Police Standing Order, S.O 120, for the search of an arrested person at police station.
that there is no obligation on them to agree to it. In doing so, the person being subjected to the search will be in a position to give an informed consent to the police prior to the search.

26. In order to avoid the police falling back into old practices, as was the case in UK, if an Act in the style of the UK PACE model is to be implemented in Mauritius, it would be necessary that the concept of “reasonable suspicion” be well defined beforehand. Training should be provided to the police at all levels for the adequate completion of records. Supervisors should also be inculcated with understanding the necessity for keeping of records as an aid to supervision. Police officers performing their duties should be left in no doubt that their records would be routinely inspected by superior officers. In addition, adequate training needs to be provided promptly as to its application to prevent any attempt from the police to evade or curtail the new provisions. Superior officers should not only monitor the conduct of search but also provide the proper training in view of eliminating the shortcomings noted from the experience of countries such as UK where PACE has become a fundamental tool for the investigating process. There is also a need to educate people about their rights and the extent and limits of police powers.

(D) Arrest and Detention under PACE: Relevance to Reform of this Aspect of the Law of Mauritius

(1) The PACE Framework for Arrest and Detention

27. Before the advent of PACE, police derived their powers of arrest from common law and statutes. The confusion that had arisen, as a direct consequence of this duplicity of powers, led the RCCP to recommend the simplification of the powers of arrest in order to make them more workable. There had even been doubts as to whether arrest was based on legal criteria prior to the introduction of PACE. PACE provided the power to arrest for arrestable offences\(^48\) and at the same time repealed all other types of arrests without a warrant. As regards other offences falling outside the category of arrestable offence, a new concept of “necessity principle” based under the criterion of “reasonable suspicion” had been introduced. Thus, section 25 of the Act introduced a general power of arrest in respect of non-arrestable offences. In that context, detention is only resorted to on the concept of “necessity”. As a safeguard, the arresting officer has to be able to satisfy the independent officer in the person of the custody officer of the necessity for detaining the arrested suspect. The Act also imposes a duty on the police to inform persons in clear terms at police station of their status as far as arrest is concerned.

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\(^48\) As defined under section 24 of PACE
28. The powers and procedures underpinning PACE and its Codes of Practice have a significant impact on the way arrest is made, particularly having regard to the nature of evidence available before proceeding for arrest. Several studies have shown that under PACE, the police are being proactive in obtaining pre-arrest evidence rather than relying too much on evidence obtained during questioning.\(^{49}\) There are unanimous conclusions among researchers that the standard of evidence on which arrests were previously made has improved significantly with PACE.\(^{50}\) The improvements noted are mainly related to the safeguards afforded to the suspects, but other factors may also have contributed to that effect. These may be attributed to the fear of disciplinary sanctions or the necessity to justify that the reasonable ground of suspicion had been reached to warrant an arrest, or the need to provide written record\(^{51}\) of the grounds of detention or the requirement of informing the suspect of the grounds of his detention. It has to be noted that where there is insufficient evidence to charge a suspect, the custody officer will have no other choice than allowing the release of the arrested person, except where such detention is necessary for the purpose of preserving or securing evidence in connection with the offence for which that person had been arrested.\(^{52}\)

29. PACE also had the effect of reducing lengthy detention without charge\(^{53}\). This is so despite the increase in bureaucratic procedures under PACE. In fact, the study on Burglary shows a decrease from 8% in 1983 to 5% in 1987 of suspects who have not been charged or released.\(^{54}\) However, an increase has been noted in respect of less serious offences due mainly to new procedures under PACE\(^{55}\) but in most cases the tendency was that those who were not charged were detained for shorter periods. Hence, it cannot be denied that the requirements of PACE, as far as arrest and detention are concerned, have assisted the police not only in achieving greater professionalism in their tasks of obtaining better evidence prior to arrest but also restricting detention to instances when it is strictly necessary.

30. Prior to the introduction of PACE it was possible to detain suspects for longer period because it was incumbent upon the police to determine what amount to a “serious


\(^{50}\) Ibid.

\(^{51}\) Vide section 37 of the Act.

\(^{52}\) Section 37(2) of the Act.


\(^{55}\) Especially in cases where juveniles are involved which, require contacting and securing the presence of adults.
offence”. This situation has changed under the Act as it is the latter which imposes limit on the detention period. There is a threshold of six hours where detention has to be justified. In fact, the Act limits the detention period in the majority of cases to 24 hours.\textsuperscript{56} In that context, the clock of the detention period starts ticking from the moment the custody officer determines that the suspect should be detained. Research shows that most cases of burglary were dealt within 24 hours.\textsuperscript{57} As far as serious offences are concerned, the police can detain for a maximum period of 36 hours.\textsuperscript{58} Beyond the statutory limit of 24 hours or 36 hours for serious offences, a whole scheme is provided under the Act for requesting and obtaining further detentions of suspects.\textsuperscript{59} Although detention up to 96 hours is possible,\textsuperscript{60} it is only upon the authority of a Magistrate that this can be obtained.\textsuperscript{61} These provisions are meant to prevent abuse of the detention period by the police and hence providing better safeguards for suspects.

31. PACE requires detained persons to be released once it is established that there is no reason to keep them for further questioning or for securing additional evidence. Of course objection to release on bail based on an assessment of risks involved, such as the risk of interference with witnesses or risk of re-offending, can be invoked by police for pre-trial detention but reasons for objecting must be concrete and would be subjected to judicial scrutiny.\textsuperscript{62} It is because of the stringent provisions under PACE that lengthy detention periods have been reduced. The reasons for the reduction in the period of detention are linked to several factors but the most important ones are accountability of police officers and the review of the detention period by the custody officer. In fact, there is some degree of reluctance on the part of investigating officers to seek requests for extension of the period of detention from the superintendent. The personal involvement of a superior officer for authorizing further detentions acts as a safeguard for the suspect in the sense that the officer may be called upon by the court to justify his or her authorisation.\textsuperscript{63}

\textsuperscript{56} Section 41 of PACE


\textsuperscript{58} Section 42 of PACE

\textsuperscript{59} The 1\textsuperscript{st} review occurs 6 hrs after the original decision to detain. Further review occurs at 9 hrs intervals such that after 24 hrs the following conditions must be met before further detention is authorised: (i) the authorisation of a superintendent, (ii) it must be an indictable offence, (iii) reasonable grounds for believing that detention is necessary for the purpose of securing evidence in relation to the offence or to obtain evidence by questioning the suspect, and (iv) the investigation is diligently conducted. After 36 hrs any further detention must be authorised by a Magistrate.

\textsuperscript{60} No detention without charge is possible beyond that limit.

\textsuperscript{61} Section 43 of PACE.

\textsuperscript{62} There are other reasons that can also be invoked for refusing bail. These include detention is necessary for the own protection of the accused, or the prevention of injury to other persons or the prevention of loss or damage to property or risk related to the accused to abscond or having no fixed place of abode or interference with investigation or administration of justice.
32. Prior to the introduction of PACE, concerns had been expressed from various stakeholders and repeated in the RCCP that an independent person from the investigation should have the responsibility of the suspect during his detention at the station. The Act provides for a police officer from the rank of police sergeant styled as a custody officer to be independent from investigation. PACE provides for greater accountability in the investigation process particularly in respect of the “independence of the custody officer.”

The aim of having such independent officer is not only to have his approval as to whether detention would be necessary or not but also to ensure that the suspect’s welfare is safeguarded. His independence or his retreat position from investigation enables him to be more objective in carrying out the assessment of the evidence available before allowing the detention of the accused. His role as intended by the legislator was to act as a filter mechanism to prevent unnecessary detention.

Reservations have been expressed as to whether the assessment of evidence by the custody officer, as provided by the arresting officer, is unbiased. Evidence on that score, as provided by researchers, is that there has been no reduction in the number of detained persons following arrest meaning that most arrests resulted in detention. It has even been observed that detention is a rather routine process and that it was unlikely there would be a divergence of opinions in respect of arrest and detention between the custody officer and the arresting officer. The main reasons for the criticisms leveled against the contention in respect of his independency in the assessment of evidence are related to his shared interests, namely the common goals of reducing crimes and his collegial relationship with other colleagues. Another reason militating in favour of the routine nature of detention rather than a real assessment of evidence is linked to pressure of work on the custody officer.

However, this view is not generally shared among other researchers. It is contended that in order to avoid blame, including disciplinary actions, the custody officer has the responsibility of ensuring that his handling of the suspect during his/her detention period is legally sound. This also includes the assessment of evidence. In fact, the custody officer has to ensure strict compliance with the law in respect of everything that goes on

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64 Section 36 of PACE.


33. The Act imposes on the custody officer a duty to have everything recorded as far as the detention of a suspect is concerned. He has the responsibility of opening and maintaining a record commonly known as “custody record”.\(^69\) This document contains a range of specified information in respect of each person detained at a police station and particularly in respect of his treatment and welfare. The records should include matters in relation to interviews, cautions, the provision of meal, sleep, refreshments, attendance and consultation with legal advisers, reviews and other related matters. In other words, this document allows the scrutiny of the detention to be effected not only by the legal representative of the suspects but also by the court in view of ascertaining any material irregularity by the police in the treatment and observance of the rights of a suspect.\(^70\) The custody officer retains responsibility for the welfare of prisoners in accordance with section 39 of PACE and in some cases he should be able to seek the advice of healthcare professional to monitor the state of health of a detainee.

It is the responsibility of the custody officer to decide to accept a detainee or not so that the safety and welfare of the detainees and staff is not compromised. This is in line with the provision of PACE, Code C para 8.1. The custody officer must undertake a risk assessment of every detainee brought in the station in order to determine whether this person is fit to be detained.

34. PACE has not only introduced a time limit for detention but also a periodic review of such detention within a specified time. The purpose of the review is to ascertain whether it is still necessary to detain. To ensure independence and objectivity, where a person has not been charged, the Act\(^71\) and the Codes of Practice\(^72\) make provision for such review be conducted by another officer not involved in that particular investigation, of at least the rank of inspector. There is a continuing duty to review the necessity of the detention periodically. This constitutes another safeguard for the suspect against prolonged detention especially being given that representation in respect of the detention can be made to the reviewing officer.

The Reviewing officer is considered as the quality controller of cases. In exercising his duty, the Reviewing Officer has to consider, in the light of the circumstances of the case, whether there is any necessity to order further detention of the suspect. One of the

\(^{68}\) Section 39 of PACE

\(^{69}\) Code C paragraph 2.1

\(^{70}\) In particular those rights relating to free legal advice and to have someone informed of the arrest.

\(^{71}\) Section 40 of the Police and Criminal Evidence Act

\(^{72}\) Paragraph 15 of Code C.
reasons for review within specified period is to prevent repeated interviews where grounds for further detention no more exist. In that context, reviewing officers play an important role not only as an independent and detached officer from the investigation but also as an officer looking after the safeguard of the detained person. Such high rank police officers, who are called upon to exercise their powers/duties, would obviously be keen not to fall foul of the requirements of the law. Thus, the accountability and personal involvement of higher rank officers assist in providing better safeguards for the suspects as well as fostering a more professional approach in the conduct of investigation.

(2) Relevance of PACE Framework to Reform of the Law of Mauritius as to Arrest and Detention

35. The Commission has had already the opportunity to review our law on Arrest.\(^73\)

Section 5(1) of the Constitution is to the effect that a person may only be deprived of his liberty if a law so permits on one of the grounds listed down.

Section 22 of the District and Intermediate Courts (Criminal Jurisdiction) Act provides that any police officer may arrest a party without warrant, in all cases where a private person may so arrest,\(^74\) and also on a reasonable charge made of a crime committed or of dangerous wounds inflicted by the party arrested.

Section 12 of the Police Act provides that a police officer may without warrant arrest any person who commits an offence within his view and whose name and address cannot be immediately ascertained; any person so arrested may be detained until his identity has been established.

By virtue of section 26 of the District and Intermediate Courts (Criminal Jurisdiction) Act, a police officer may apprehend any person who assaults him while he is in the execution of his duty.

Section 13F of the Police Act is to the effect that any police officer, who has reason to suspect that any person has committed or is about to commit an offence which will endanger public safety or public order, may arrest that person and use such force as may be necessary for that purpose.

\(^73\) Vide LRC Discussion Paper, Criminal Investigation, Arrest and Bail (April 2008), at pp. 14-27.

\(^74\) Section 16 of the District and Intermediate Courts (Criminal Jurisdiction) Act provides that a private person who sees a crime committed or attempted to be committed or a dangerous wound given, may immediately, or on fresh pursuit made, without warrant, arrest the offender. By virtue of section 17 of the District and Intermediate Courts (Criminal Jurisdiction) Act, the owner of a property, or his servant or any person authorized by him, can arrest any person found stealing same. Section 18(1) of the District and Intermediate Courts (Criminal Jurisdiction) Act is to the effect that any person to whom property is offered and who has any reasonable cause to suspect that same has been stolen or otherwise obtained unlawfully, he may arrest the party offering same.
According to section 23(1) of the District and Intermediate Courts (Criminal Jurisdiction) Act, any police officer, not below the rank of Assistant Superintendent, who has reasonable ground to suspect that any person has the intention of committing a breach of the peace against any particular person or against any person unknown, or is likely to commit any act which may lead to a breach of the peace or threaten public safety or public order, may cause that person to be arrested.

Section 25 of the District and Intermediate Courts (Criminal Jurisdiction) Act provides that a police officer may without warrant between sunset and sunrise arrest any person whom he has just cause to suspect of having committed or of intending to commit a crime, or any idle or disorderly person whom he may find disturbing or being about to disturb the public peace, or lying or loitering in a public place or street, or any yard or other place, and not being able to give a satisfactory account of himself. A police officer may, by virtue of section 30(1) of the Criminal Code (Supplementary) Act arrest any person found to be an idle and disorderly person or a rogue and vagabond. Any police, forest or customs officer may, by virtue of section 46 of the Dangerous Drugs Act, without warrant arrest any person who has committed or attempted to commit, or is reasonably suspected by such officer of having committed or attempted to commit an offence under that Act, where he has reasonable grounds for believing that person will abscond unless arrested or where the names and address of that person are unknown and cannot be ascertained.

There are also other specific provisions conferring on police officers the power to arrest without warrant, such as under section 13(2) of the Protection from Domestic Violence Act, section 41(3) Firearms Act, section 133(3) and 134(1) of the Road Traffic Act.

36. In Sheriff v. District Magistrate of Port Louis (1989) MR 260, the Supreme Court held that a total neglect of the explanations that a suspect may have to offer may well lead to the conclusion that the suspicion leading to the arrest is not reasonable or based on just cause, and would therefore be in breach of section 5(1)(e) of the Constitution. A police officer who is making an arrest must take into consideration the totality of the circumstances including the explanations of the suspect and the motive of the declarant. Whatever suspicion the police may harbour against the suspect should be weighed against any factors, which tell in favour of the suspect.

In Dahoo v. State & Commissioner of Police (2007) MR 55, the Supreme Court observed that an arrest may be unlawful, even if the arrest was within the powers of the police, if there has been an improper exercise of such powers.\(^75\) Regarding the alleged practice of the

\(^75\) The Court referred to Holgate v Duke (1984) 1 AC 437, where the House of Lords was called upon to decide an issue of wrongful arrest, by a detective constable, of a woman on suspicion that she had stolen jewellery. In that case, the arrest had been effected under section 2(4) of the Criminal Law Act 1967 which conferred a power on the police to arrest a person without a warrant upon reasonable cause to suspect that person to be guilty of an arrestable offence.

The House of Lords held (as per the Judgment of Lord Diplock, with which the other Lords concurred) that
police in Mauritius to arrest as a matter of course when there is a power to arrest given under an enactment, the Court had this to say:

“We indeed feel it appropriate to draw to the attention of the police and of their legal advisers that even where there is a power to arrest, it must not be exercised as a matter of course: the discretion to arrest must be exercised in a reasonable manner.”

37. Although our statutory provisions on police powers of arrest without warrant do not give rise to any ambiguity, we consider that provisions akin to PACE would make the law more understandable to police and the public at large and clear any misunderstanding that may have cropped up.

Under PACE, the relatives of a person arrested have to be notified of the arrest. There is no such legal provision in our Law but Mauritius being a member of SARPCCO since several years now, there is a legal obligation to enforce such right in our domestic law. The Human Rights Standards of SARPCCO require the prompt notification of the relatives of an arrested person or his transfer from one place to another.

38. Currently, under our law, suspects may be detained at police stations for 21 days and thereafter on remand to prison. There are many instances where suspects have been granted bail but because of their inability to furnish surety they have had to spend several months in prison. There are also instances where suspects have even made confessions but have had to remain on remand in jail for several months. Sometimes the detention on remand may cover the period of their imprisonment for the particular offence for which they have been arrested. This is really a disturbing feature of our detention process and needs to be addressed urgently in a new legislation.

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(1) whether the constable had reasonable cause to suspect the woman to be guilty of the offence was a condition precedent for the exercise of the power to arrest, and was a question of fact for the Court to determine;

(2) once that condition precedent had been fulfilled, the arrest could still be unlawful if, and only if, there was an unreasonable exercise of the power under the well known Wednesbury principles laid down by Lord Greene M.R. in Associated Provincial Picture Houses Ltd v Wednesbury Corporation [1948 1 K.B. 223]: those principles are applicable not only in applications for judicial review but also for the purpose of founding a cause of action for damages in tort;

(3) in the case falling under their consideration, it had been established that the constable had reasonable cause to suspect the woman (the appellant), and the constable had been shown not to have unreasonably exercised the power inasmuch as he had arrested her for a purpose which was well established as one of the primary purposes of detention upon arrest: namely, for the purpose of using the period of detention to dispel or confirm his reasonable suspicion by questioning the suspect.

76 Standing Order 120 of the Mauritius Police Force however provides that the relative of a person arrested should be informed of the arrest and place of detention.

77 Vide LRC Report on “Bail and Other Related Issues” (August 2009).
39. In Mauritius, as per the Standing Orders of the Mauritius Police Force and contrary to PACE in the UK, the charge and responsibility of the detained person rests on the Station Orderly who is usually a police constable. Although the Police Standing Orders requires a “Charge Sheet” to be filled in respect of each prisoner detained in police cell, there is no precision in the Standing Orders as to what information should be included in the “Charge Sheet”. It is submitted that a scrutiny of the charge sheet of person detained in police cell in Mauritius is unlikely to disclose information capable of making a proper assessment of the treatment of that person, particularly in respect of his rights. In addition, although the station orderly is responsible for the detention of a suspect, it is unlikely that he can ensure the proper handling of the suspect when the latter is taken for interrogation by investigating officers. It is submitted that a station orderly has a very insignificant role, contrary to the custody officer, particularly in respect of the length of detention, the timing or the necessity of interrogation of a suspect. More importantly, it is unlikely that a station orderly will either question the detention of a suspect or carry out any assessment of evidence before detaining someone. In fact, contrary to the role of the custody officer under PACE, the station orderly has no say in respect of the charge against the suspect or his release. Under PACE, decisions as to whether questioning should proceed rests on the custody officer and he has to ensure that suspects are aware of their right to legal advice. In Mauritius, the role of the station orderly is limited to the handling of the suspect in the cell of the station and therefore he has no control on the suspect during interviews which is usually conducted in his absence. Consequently, it cannot be said that the station orderly will be able to ensure that the suspect has been made aware of his rights prior to questioning. Under UK PACE, the responsibilities and duties of the custody officer are statutorily provided for and as such this provides for a proper accountability of the officer concerned.

40. It had been submitted that the short detention period provided for by PACE puts additional pressure on the police especially in view of the fact that the detention period should also cater for the time spent in waiting for legal advisers to attend station or for allowing the suspect to have his eight hours of sleep. The same problems arise where other suspects are still at large or where stolen articles need to be recovered.

78 The Custody Officer should be as from the rank of Police Sergeant.


80 The station orderly will act on the order of a superior officer, usually a gazetted officer, to commit the person in police cell.

81 Vide section 37 of PACE regarding sufficiency of evidence to prefer a charge against a suspect.

82 Sections 37(1) and 37(7) of PACE provide that the custody officer shall make an assessment of evidence for the charge or the release of the suspect.


84 The Duty Solicitor Schemes which cover one or more and police stations within a geographical area are based on the ability of the Duty Solicitor to reach the client at a police station within a specified time.
Although the time limit imposed for detention period of suspects has been reduced, there is unanimous view that this was positive to the suspects as well as to the police. Obviously, for the suspects the lesser they are detained, the better it is for them whereas for the police, it is said that it has brought greater professionalism in their work. The time-limit has encouraged the police to gather firmer evidence before the decision to arrest is resorted to and as such it has upgraded their professional standard. It should also be added that the reduction of the detention period was one of the aims that were fixed by the framer of the Act and there is evidence as elicited above that this aim is being achieved.

We do not therefore consider that such requirements if embodied in our law would hinder the operational capability of the police.

(E) Access to Legal Advice & Police Interviewing under PACE: Relevance to Reform of this Aspect of the Law of Mauritius

41. The role of the legal adviser is to safeguard the rights of a suspect and to provide legal advice that best serves the interests of his client. However, prior to the introduction of PACE, although suspects had a right to legal advice, there was no duty on the Police to inform them of such right. The facility with which the police could turn down a request for legal advice was great. At that time, the Judges’ Rules were the basis for the provision of legal advice to a person held in detention. The importance of obtaining legal advice or securing the attendance of a legal representative for the provision of legal advice prior to interview is crucial. This is so because interviews may be considered as the turning point of the investigation. The presence of legal advisers during the interview is to ensure that the fundamental rights of suspects including their right against self-incrimination are preserved. The reason is because the police may be tempted to obtain damaging evidence, including a confession, for establishing a prima facie case against the suspect during the interview. According to research done in UK, the police used to interview 80% of suspects before they were allowed access to a legal adviser.85

(1) Legal Advice, Police Interviewing, Right to Silence and Confessions under the PACE Framework

42. With the introduction of PACE, compliance with this important right has been secured by placing it into statutory form.86 In fact, section 58(1) of PACE provides for a statutory

85 Home Office Research Study 123.
right of access to legal advice\(^{87}\) for arrested persons and \(58(2)\) provides for a record to be made for such a request. Under PACE, the police are duty bound to inform the suspect of his right to counsel. Moreover, the custody officer must in a sense act in order to secure the provision of legal advice and he/she must note the reason for any refusal to legal advice in the custody records.\(^{88}\)

43. As a result of the implementation of PACE, the tendency of interviews being conducted before the provision of legal advice has been reversed.\(^{89}\) Research has found that in 1987, 75\% of suspects were allowed to consult a legal adviser before the interview was being conducted.\(^{90}\) In addition, the introduction of a new legislation\(^{91}\) following PACE has made the presence of a legal adviser during interview more advantageous to the police particularly in advising their clients to answer questions in order to prevent silence being subsequently used as evidence against them in the trial.\(^{92}\)

There has been a significant rise following the introduction of PACE in the provision of legal advice. A leap from 6 to 36\% had been noted in the research in burglary cases. This constitutes a six-fold rise of solicitor’s visiting police station for the provision of legal advice. The research also found that there was a 24-fold rise in suspects seeing a solicitor before the interview.\(^{93}\)

44. One of the main concerns following the implementation of PACE in England has been the parallel increase\(^{94}\) in the exercise of right of silence and legal advice. No sensible explanation has been made in connection with the said increase because according to

\(^{86}\) Vide J. Baldwin, *The Role of Legal Representatives at the Police Station* (Royal Commission on Criminal Justice, Research Study No. 2, 1992).

\(^{87}\) Code C 3.1 imposes a duty on the Custody Officer to inform the suspect of his rights, particularly his right to free and independent legal advice.

\(^{88}\) Vide Code C 6.5.


\(^{91}\) Criminal Justice and Public Order Act 1994


\(^{94}\) A. Sanders et al, *Advice and Assistance at Police Stations and the 24-hour Duty Solicitor Scheme* (Lord Chancellor’s Department, 1989).
research\textsuperscript{95} the exercise of right of silence is not totally related to legal advice.\textsuperscript{96} The exercise of the right to silence gave rise to concerns related to “ambush defences” being raised by suspects in court for the first time and consequently taking the prosecution by surprise. In order to deal with difficulties arising as a result of the implementation of PACE, the Criminal Justice and Public Order Act 1994 (CJPOA)\textsuperscript{97} was enacted and came into force in April 1995. The CJPOA has been enacted to consolidate certain provisions of PACE and at the same time to circumvent certain unwanted outcomes arising through its operation. In its attempt to counter the excessive use of the right of silence and to assist the police in the conduct of their investigation, the aims of CJPOA were inter alia to prevent criminals to hide behind the right of silence\textsuperscript{98} and at the same time to prevent “ambush defences” being raised in court.\textsuperscript{99} With the implementation of the provisions of the CJPOA, the right to silence, both at the level of investigation and trial, has been significantly curtailed.\textsuperscript{100} One of the effects of CJPOA is that advice given at police station and particularly in respect of a “no comment” interview\textsuperscript{101} could have severe consequences at the trial and, may be, on the outcome of the case.\textsuperscript{102}

In addition, the provisions of the CJPOA have also affected the practice of legal advisers in respect of the advice given to their clients, especially in relation to the exercise of the right of silence at pre-trial and during trial. According to research work carried out those

\textsuperscript{95} The research of Sanders et al (1989) shows that legal advice does not necessarily affect what the suspect would say in the interview since the majority of suspects receiving legal advice do not necessarily exercise their right of silence.

\textsuperscript{96} This view is supported by P. Softley et al, Police Interrogation: an observational study in four police stations (Home Office Research Study No. 61, HMSO, 1980).

\textsuperscript{97} The CJPOA has its source in the Criminal Law Revision Committee of 1972 where a similar set of changes were recommended but subsequently abandoned because of political pressure.

\textsuperscript{98} The drawing of (adverse) inferences in court as a result of relying on facts not raised through failure to answer questions in interview, that is through the exercise of the right of silence [section 34 of CJPOA]; or failing to account for substances, incriminating objects or marks or specified place [vide sections 36 & 37].

\textsuperscript{99} The disclosure provision under the Criminal Procedure and Investigation Act 1996 has also reduced the number of ambush defences in court.

\textsuperscript{100} The Royal Commission on Criminal Procedure (1981, Cmnd. 8092) and the Royal Commission on Criminal Justice (1993, Cm. 2263) were against changes which would put pressure on the suspects to answer police questions and hence incriminating themselves. There have been arguments from different stakeholders that by using silence as an item of evidence against the suspects, the provisions of the CJPOA have affected the central tenet of the English adversarial system, namely that it is for the prosecution to prove its case and not the accused to prove his/her innocence.

\textsuperscript{101} To rely on certain specific facts in court where he ought to have revealed them as per the questions put to him in the interview.

\textsuperscript{102} Adverse inferences together with other evidence may not be seen as necessarily strengthening the case for the prosecution but certainly undermining the case of the defence.
receiving legal advice and who were more likely to exercise their right of silence have suffered the highest drop in the use of silence in interviews following the introduction of CJPOA. A drop from 10 to 6% was noted generally in respect of the use of silence during police questioning. A new attitude on the part of barristers seems to have emerged: barristers seem to be more likely now to advise their clients to answer police questions and testifying in court than before the introduction of the CJPOA. This new attitude has arisen because barristers are aware of the risk of their advice. In fact, to remain silent on the basis of acting on legal advice given by barristers during police questioning will not prevent the drawing of inference in court unless the court found that such advice was a reasonable one in the circumstances.

It appears also that the police no longer regard the presence of legal adviser as an obstruction to their investigation during questioning having regard to the exercise of the right of silence. Under the CJPOA, the presence of legal adviser is more likely to facilitate questioning of suspects. This is because the advice given, particularly to remain silent, may have serious consequences on the outcome of the case. This is the main reason why legal advisers have become very reluctant to advise their client to remain silent in the face of police questioning. There have also been arguments that the safeguards provided under PACE are now being seen as sufficient for protecting the suspect without the necessity of having further recourse to the right of silence.

It can also be said that the provisions of the CJPOA, in respect of inference that can be drawn on failure to answer police questions in interviews, have also affected legal professional privilege to some extent. The reason for this contention is that if a suspect refuses to answer questions in police interviews on the basis of legal advice, this would not constitute a sufficient defence to prevent inference being drawn. In fact, despite acting on legal advice, adverse inference may still be drawn if in court, the accused subsequently relied on facts that he had failed to mention during the police questioning. The accused will have to explain the reason for such advice because in the absence of evidence the jury cannot consider the reason or explanation for silence. The giving of evidence as to the reason for such advice will constitute a waiver of the legal professional privilege by the accused.


104 There were claims that legal adviser very often provide advice in view of obstructing police in their investigation: vide Moston et al (1992).


The implementation of the CJPOA, though it has not abolished the right of silence or the right against self-incrimination, has curtailed the right of silence. The Act is said to have introduced greater efficiencies in the conduct of investigation.\(^\text{107}\) This is so because interviews have become more productive. Under the Act, the exercise of the right of silence in the face of police questioning represents a substantial risk. The likelihood of adverse inference being subsequently drawn at trial in exercising the right of silence, even on the basis of legal advice at interviews,\(^\text{108}\) has provided greater scope for the police to probe deeper in their investigation and particularly allowing them to investigate into the accounts provided by the suspects. This has also reduced the possibility of raising “ambush defences” and thus avoided the prosecution being taken by surprise.

45. Under PACE, by virtue of section 58(8) of the Act, the police are empowered statutorily to prevent access to legal advice as far as serious arrestable offences are concerned. Although, generally, a request for legal advice is usually allowed there are circumstances where its provision is not possible. It has been found that legal advice may not be met on account that the specific legal adviser may be unable to respond\(^\text{109}\) or the police are unable to make contact.\(^\text{110}\) The police attributed delay in investigation to two factors. These were the time taken for waiting for the legal adviser to attend police station and the advice given to remain silent in interviews.

Prior to PACE there was no time limit on delay for access to legal advice. The discretion was left to the police and they could prevent access to legal advice on the basis that contacting the legal adviser would cause unreasonable delay to the investigation or to administration of justice. The Act has fundamentally changed the whole process of preventing access to legal advice. There is an obligation\(^\text{111}\) under PACE on the part of the police to record all requests for legal advice and the reason for not attending to such a request. Moreover, the police are under a duty to record the reason for delaying a request for legal advice. The recording of the reason for delaying legal advice did not exist before. It is to be noted that legal advice can only be delayed in limited circumstances.\(^\text{112}\)


\(^{108}\) Vide *R v Roble* (1997) where the Court of Appeal held that the exercise of the right of silence on the basis of legal advice is not in itself sufficient to prevent inference from being drawn.

\(^{109}\) Vide A. Sanders et al, *Advice and Assistance at Police Stations and the 24-hour Duty Solicitor Scheme* (Lord Chancellor’s Department, 1989).


\(^{111}\) Section 58(2) provides for inserting a relevant entry in the custody records of any request for legal advice; vide also Code C, para 3.1, 6.4 and 6.5.

\(^{112}\) The suspect is detained for a serious arrestable offence as specified in s 116 and schedule 5 of PACE which define and list such offences and the delay must be authorised by a police officer of the rank of superintendent or above. The latter must be satisfied that the exercise of such right would cause certain specified consequences such as
46. The Act also provides for the setting up of a duty solicitor scheme to counter the argument of non-availability of solicitors to attend a request for legal advice at police stations. Research carried out in the early years of implementation of PACE showed that about 25% of suspects make requests for being assisted by counsels and up to 90% of the requests were being attended.\textsuperscript{113} In addition, the Act provides that questioning must cease where a request for legal advice during the course of an interview is made. The average time to make contact for a request for legal advice has improved under the requirements of PACE shifting from 50 minutes in 1983 to 30 minutes in 1987. Such delay inevitably has a consequence on the progress of investigation as it constitutes loss of work time. However, research has shown that it would be unusual for the police not to establish contact with legal adviser whenever a request for legal advice is made.\textsuperscript{114} In addition, it is also possible under PACE for legal advice to be given by telephone.

47. The admissibility of a confession is based on its voluntariness in the sense that it has not been obtained from the accused as a result of fear of prejudice or hope of an advantage held out by persons in authority.\textsuperscript{115} This is the position in Mauritius as was the case under the common law in England prior to PACE. The common law test of voluntariness had however been criticized because of the difficulty in assessing it. The test under PACE is a mixture of two factors namely reliability\textsuperscript{116} and oppression. It also encompasses an element of fairness as to the admissibility of evidence.

One of the main criticisms that emerged from the police with the introduction of PACE was related to the harsher approach in obtaining admission/confessions.\textsuperscript{117} A decrease in confessions from interrogation had been noted following the introduction of PACE. This could be attributed to the fact that procedures under the new Act were more closely regulated and accountable. However, the fall in admission/confession has been attributed to several factors. These among others include the role of the custody officers and the increase in the presence of solicitors at police stations for providing legal advice. The role of alerting of other suspects who are still at large. In \textit{R v Samuel} [1988] 2 W.L.R 920, the Court of Appeal stressed that the circumstances for delaying legal advice are very limited.

\textsuperscript{113} Vide A. Sanders et al, \textit{Advice and Assistance at Police Stations and the 24-hour Duty Solicitor Scheme} (Lord Chancellor’s Department, 1989).

\textsuperscript{114} Ibid.

\textsuperscript{115} Ibrahim v R (1914) AC 599. See also \textit{R v Priestley} (1965) (51) CAR 1.

\textsuperscript{116} ‘Reliability’ in the sense of whether it was obtained as a result of anything said or done which likely to render it unreliable in the particular circumstances in which it was made and ‘oppression’ is the sense that it was obtained as a result of oppression being exercised on the maker of the confession.

of the custody officer in handling the request for legal advice, once it is made, affords a watertight protection of the suspect’s right. In that context, the right of the suspect is protected not only as a result of the detached and independent role of the custody officer in the investigation but more particularly because he has to record that he had made the suspect aware of his right to legal advice. If refused, he has to record down the reason for such refusal. In addition, he has to stop the interview from continuing once a request for legal advice is made until such advice is provided. Similarly, the increase in presence of legal advisers following the introduction of PACE has secured the protection of the rights of suspects against unwanted police actions in obtaining confessions. These safeguards were in accordance with the aims to be achieved with the introduction of PACE, namely interviews to be conducted with greater professionalism in order to avoid unnecessary challenges to confession whilst ensuring that the rights of the suspect are safeguarded.118

48. Under PACE, the police have had to work with the constraints imposed by the stringent provisions of the Act so that any admission or confession obtained would be admissible as evidence. This has resulted in a change in the mindset of the police and hence helping them reduce reliance on confessions and instead concentrate in a more professional way in obtaining other incriminating evidence to secure a conviction.119

49. The Codes of Practice under PACE provide the way in which interviews should be conducted and the appropriate keeping of records, including the setting and conditions of the interview room [Code C] and the procedures for tape recording of interviews [Code E].

There is evidence that the rate and duration of interviews have declined with the introduction of PACE.120 The reasons for such a decline are numerous but two of them are related to the use of tape recording and the fall of repeated questioning under PACE provisions. Moreover, the confrontational attitude in interview between the suspect and the police has opened the way, with the provisions of PACE, for fostering and establishing a better rapport, making interviews more productive.121

Tape-recording of interviews has a significant advantage over contemporaneous note taking. However, this technique has its drawbacks. Despite a significant fall in the frequency of interviews under PACE, research has shown that the time taken for tape


recording of interviews is slightly longer than pre-PACE. In addition, the number of police officers involved in interview has not changed with the introduction of PACE. The practice of contemporaneous note taking of interviews with a minimum of two officers, one for recording and one for questioning, during pre-PACE, has remained the same although it is practicable with tape recording of the interview under PACE for only one officer to record the interview.

(2) Relevance of PACE Framework to Reform of the Law of Mauritius as to Legal Advice, Police Interviewing, Right to Silence and Confessions

50. In Mauritius, the police and other bodies investigating offences are still governed by the Judges’ Rules, issued since 12th March 1965. The Rules were issued as a guide to police officers conducting investigations, particularly for questioning suspects in relation to criminal offence.

Section 5(3) of the Constitution provides that any person arrested or detained shall be afforded reasonable facilities to consult a legal representative of his own choice, and it must be read (in the absence of any other statutory provisions relating to right to counsel) in conjunction with the Judges’ Rules.

According to Police Standing Orders, attorneys and barristers are allowed to communicate in private with prisoners in police custody and any interview will be conducted under the instruction of the officer in charge of the case.

In State v. Coowar (1997) MR 123, the Full Bench of the Supreme Court held that a suspect has a constitutional right to be informed that he is entitled to have access to counsel; there is thus a duty on the police to inform a suspect of his right to consult a legal representative of his own choice. In Wadud v. State (1999) MR 270, however, the Full Bench of the Supreme Court approved what the Judicial Committee of the Privy Council had to say in Mohamed (Allie) v. State (The Times, Dec 10, 1998), that is that the constitutional provision requiring a suspect to be informed of his right to consult a lawyer, although of great importance, was a somewhat lesser right and that therefore not every breach thereof would therefore result in a confession being excluded. The fact that there has been a breach of a constitutional right was a cogent factor militating in favour of the exclusion of the confession, but the judge has to

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124 S.O 120, paragraph 35.
perform a balancing exercise in the context of the circumstances of the case.\textsuperscript{125} If it is established that an accused has deliberately been denied access to counsel by police during investigation, any confession obtained by police would most probably be held inadmissible by a court: \textit{R v. Beegun} (1988) MR 212.

51. Although no research is available in respect of the frequency of police refusing access to legal advice in Mauritius, it may be submitted that such refusal is rare. However, concerns have been voiced out that legal advisers had not been able to have access to their clients as a result of certain tactics employed by the police. This is particularly the case where police fail to inform relative of the place of detention of suspects and thus making access of legal advisers to suspects more difficult. There is a duty on the police to inform relatives of the place of detention of suspects, as provided for in Police Standing Orders as well as in the Judges’ Rules. In addition, the case of \textit{Togally v C.P} (1981) MR 230 is authority for the proposition that detainees have the right to communicate with their relatives as well as with their counsel. It may be submitted that by failing to inform the relatives of the place of detention of suspect the police may be seen as infringing the right of detainees to communicate with his relatives or with counsel.

52. Another issue in relation to legal advice is the provision of the same through telephone. Although the Judges’ Rules make provision for legal advice\textsuperscript{126} to be made through telephone in Mauritius, such practices are very unlikely. A statutory provision in respect of allowing access for legal advice through telephone will be meaningful for the safeguard of the right of the suspects.

53. In our opinion, should our law provide for the right to counsel as is the case under PACE, the protected right of a suspect to legal advice would be reinforced.

54. Section 10(7) of the Constitution and section 184(2)(a) of the Courts Act provide for the right of silence of person arrested in connection with an offence at his trial.

In \textit{Ramdeen v. R} (1985) MR 125, the Court held that the right of an accused to silence, whether from the beginning of his arrest at the enquiry stage or throughout the proceedings at the trial stage, is a fundamental principle of our criminal law. The Court had this to say:

"This right is founded on the constitutional presumption of innocence. For this reason, an accused person is cautioned at the enquiry stage before he is

\textsuperscript{125} The Judicial Committee observed that the judge had to weigh the interest of the community in securing relevant evidence bearing on the commission of serious crime so that justice could be done, with the interest of the individual who had been exposed to an illegal invasion of his rights.

\textsuperscript{126} Paragraph 7 (a)(i) of Appendix B of the Judges’ Rules
questioned. For this reason as well, at the trial stage, he is reminded by the Court, if he is not represented by counsel, that it is his right to remain silent or else to make a statement from the dock or to depone, if he so wishes."

In *Ramdeen v R* (1985) MR 125, the Supreme Court held that the right of an accused to silence whether from the beginning of his arrest, at the enquiry stage, or throughout the proceedings at the trial stage is a fundamental principle of our criminal law founded on the constitutional presumption of innocence.

55. Section 188A and Schedule 3 of the Courts Act provides for the admissibility of sound recording evidence and sets out the procedures to be followed when interviews are tape recorded in connection with the investigation of a criminal offence. Although the law is silent in relation with transcript or summaries of the interview, it can be argued that the introduction of tape recording of interviews will have the same effect in the Mauritian context in terms of human resources and time spent for making transcripts. The reason that there will be no reduction in the number of officers involved in interview is that, as a matter of fact, police will be prudent to protect themselves against allegations from suspects by having at least a witnessing officer present during interviews. The witnessing officer plays an important role in that context, not only for supporting the version of the recording officer but also in the latter’s absence, the witnessing officer can take the leading role for the prosecution in respect of the interview. As far as full transcripts are concerned, the issue will have to be determined whether this should be limited to cases tried by the Supreme Court and Intermediate Courts since in England full transcripts are prepared only for cases to be tried by the Crown Court.

56. Prior to PACE, the Judges’ Rules were applicable in England for the same purposes as they are actually in Mauritius.

The Judges’ Rules relate to interrogation and taking of statements by the police. The “Judges’ Rules” are a set of six rules. It is important to differentiate between the “administrative directions” contained in Appendix B and the rules contained in Appendix A to the letter conveying the Judges Rules to the Commissioner of Police. The “administrative directions” contained in Appendix B were made by the officers of the Secretary of State for Colonies whilst the rules contained in Appendix A were made by a Committee of Judges of the Queen’s Bench Division. The “administrative directions” and the “Judges’ Rules” can also be differentiated in respect of value and weight. A breach of the “Judges’ Rules” is more serious than a breach of the “administrative directions”.

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127 Any person arrested must be cautioned in the manner laid down in the Judges’ Rules before being interrogated by police officers.

128 Though the “Judges’ Rules” and the “administrative directions” are of relatively the same status, in a court of law a breach of the “Judges’ Rules” is considered as more serious than a breach of the “administrative directions”. However, a breach of the “Judges’ Rules” is not as serious as a breach of a statutory or constitutional provision.
The Judges’ Rules do not have the status of law; they are intended to be mere guides to the police officers. They have the status of a code of conduct to regulate police practices in the course of interrogations of suspects. In *Rosin v. R* (1954) MR 23 the Supreme Court held, following *R v. Voisin* (1918) 13 Cr App Rep 89 (CCA) that the Judges’ Rules do not have the force of law but are guidelines for police authorities, that a statement obtained in contravention of the rules is admissible in evidence, provided it was voluntary.

The view has been taken for some time by one Judge of the Supreme Court that Judges Rules have attained constitutional status and breaches thereof would render evidence inadmissible. It is now clear that such a view has been rejected in the light of the rule laid down in *Samserally v State* (1993) MR 94 that Judges’ Rules are mere guidelines still holds good. Some of the rules contained in Judges’ Rules, however, relate to constitutional rights, such as the right to silence and the privilege against self-incrimination, the right to be informed of right to counsel. In such situations, the issue is not just one of a breach of Judges’ Rules having occurred but rather of one of a constitutional right having been infringed.

57. Under the Judges’ Rules, once a suspect has been charged or informed that he may be prosecuted for an offence his subsequent interrogation can only be done under stringent rules. The Judges’ Rules provide that “*no questioning shall be allowed*” once a suspect has been charged except where it is necessary to prevent or minimize harm or injury to the person or the recovery of property or to clear up ambiguity arisen in previous answers.

Code of Practice C under PACE has similar provisions, but there are additional circumstances in which further questioning can be made after a suspect has been charged, namely in the “interest of justice” to allow him to comment an information which has come to light since he was charged.

We are of the opinion that if such rules were included in a statute, it would secure more rigorous compliance by the police. It can also be added that although it is clearly stipulated in the Judges’ Rules that a detainee has a right to have someone informed of his arrest, however, the extent to which this right is effectively given force is unclear. The actual status of the Judges’ Rules does not meet the modern requirements for safeguarding the rights of detainees. If rights of detainees such as the right to have someone informed of his right to counsel or the right to telephone are placed on statutory footing their effective application would be enhanced.

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(F) Concluding Observations

58. The Commission welcomes the commitment of the Government, as spelled out in its 2010-2015 Government Program, to “adopt a new Police Act and a Police Procedures and Criminal Evidence Act, with Codes of Practice designed to regulate the conduct of persons entrusted with the duty of investigating offences”,130 and to “establish an independent law enforcement agency under the aegis of the Office of the Director of Public Prosecutions to reinforce the fight against transnational crime and to recover ill-gotten gains.”131

59. We are favourable to the adoption of a new Police Procedures and Practices Act, modeled on UK PACE or the Jersey Police Procedures and Criminal Evidence Law 2003. The new legislative scheme shall, as was the case in UK with PACE, bring about greater professionalism in the conduct of criminal investigations whilst safeguarding the rights of suspects.

60. Before the adoption of any new legislative scheme, training needs would have to be assessed so as to minimize resistance, due to unfamiliarity with the new legislation, on the part of the police and other stakeholders.

61. We also consider that empirical research should be carried out to assess the current situation and later on evaluate the impact of the new legislation and its Codes of practice in relation to practices at the different stages of the criminal investigation process.

130 Presidential Address, Sir Harilall Vaghjee Hall, Tuesday 8 June 2010, at para. 21.

131 Ibid. at para. 16.