



LAW REFORM COMMISSION

Opinion Paper on “The Prevalence of Parental Alienation Syndrome in Mauritius: A Need For Reform?”

[LRC_ R&P 187, March 2025]

13th Floor, SICOM Building II
Reverend Jean Lebrun Street
Port Louis, Republic of Mauritius
Tel: (230) 212-3816/212-4102
Fax: (230) 212-2132
E-Mail: lrc@govmu.org
URL: <http://lrc.govmu.org>



LAW REFORM COMMISSION

Chairperson	:	Mrs. Yanilla MOONSHIRAM [Barrister]
Chief Executive Officer	:	Mr. Sabir M. KADEL
Members	:	Representative of Judiciary [Judge Nicholas F. OH SAN-BELLEPEAU] Solicitor-General or his Representative [Mr. Rajeshsharma RAMLOLL, SC] Director of Public Prosecutions or his Representative [Mr. Abdool Rashid AHMINE] Mr. Anwar MOOLLAN, SC [Barrister] Mr. Bernard D'HOTMAN DE VILLIERS [Notary] Mr. André ROBERT, SA [Attorney] Dr. Roopanand MAHADEW [Law Academic (UOM)] Mr. Percy YIP TONG [Member of Civil society] Mrs. Nirmaladevi Marutha MUTHU [Member of Civil society]
Secretary	:	Mrs. Saroj BUNDHUN

Staff & Human Resources

Chief Executive Officer : Mr. Sabir M. KADEL

Law Reform Cadre

Law Reform Officer/Senior Law Reform Officer : Ms. Dhan Devi SOOKUR

Mrs. Nishita Devi HORILL-GOPAUL

Ms. B. N. Shaseeb MUNGUR

Mr. Ghirish RAMSAWOCK

Law Reform Intern (under STM) : Ms. Hooriyyah Banu RUJUB

Administrative Support Staff

Secretary to Commission : Mrs. Saroj BUNDHUN

Office Superintendent : Mrs. Marie Roseliette SOOBRAMANIA

Office Management Assistant : Mrs. Neelamani BANSRAM

Mrs. Kajal RAMDUT

Senior Office Attendant/Technical Assistant : Mr. Subhas CHUMMUN

Driver/Office Attendant : Mr. Naraindranathsingh JANKEE

EXECUTIVE SUMMARY

Opinion Paper on “The Prevalence of Parental Alienation Syndrome in Mauritius: A Need for Reform?” [LRC_R&P 187, March 2025]

Under article 372 of the Civil Code of Mauritius, it is the father and the mother who exercise the parental authority jointly. But in the eventuality of a separation, it becomes incumbent upon the Court, after being seized by one of the parents, to decide on whom to award the custody of the child or children. During this litigation, tearing the former couple apart, the child is often the neglected party as both parents often use him as a means to get back at the other. A common by-product of divorce is often the manipulation of the child, who is more gullible and malleable than an adult. This may lead to a phenomenon called the “Parental Alienation Syndrome”. Coined in the 1980s, this controversial syndrome is described as a disorder in which one parent deliberately, or unintentionally, displays to the child unjustified negativity towards the other parent, bringing the child to believe he is the one who hates that parent. This brings the child to desire to cut ties with the alienated parent to the benefit of the alienating parent. In the long run, Parental Alienation Syndrome can be quite detrimental to the well-being of the child.

This syndrome has been subject to litigious debates among medical professionals, as there has not been concrete evidence of its presence and studies done to show its ill-effects on the child have not been conclusive. Nevertheless, although neither our courts nor our legislations have not recognised such a syndrome yet, other jurisdictions in fact have, with one going as far as to codify it in their statutes book.

Therefore, the question arises whether Mauritius should also follow suit when psychologists and psychiatrists themselves cannot find a consensus on this syndrome. And whether it is a real issue or a whitewashed way of enabling abusers to in turn alienate the abused parent from their child, as they brandish the shield of being a victim of parental alienation. As such, this Opinion Paper will analyse our legislation and caselaw on the matter of custody of children, and further consult the input of other jurisdictions on the theory of Parental Alienation Syndrome, so as to determine the feasibility of an amendment of our domestic laws to cater for this ambiguous phenomenon, while always keeping in mind the sacrosanct principle of the best interests of the child.

INTRODUCTION

1. With the rate of divorce in Mauritius ever soaring,¹ children are more and more being subjected to the endless battle of custody. When a couple separates, it is always the child who bears the cost of it, as they often become either a tool, or an accessory, rather than the main focus of the parents. The negative effects of divorce on children are not a new concept, but whilst the parent's goal should be to alleviate their children's woes, their focus is often on undermining the other, or on a semblant of protecting the child against the other parent. A parent's perception of what is good for the child is not always what is in truth actually beneficial for him.
2. Although not all divorces lead to conflicts, more often than not, they are not a smooth procedure, especially if there are children involved. A tactic often used by one parent is to deliberately turn the child against the other parent. This may in turn lead the child to hate that parent, which eventually brings to voluntary alienation from that child towards the alienated parent. This concept is called "Parental Alienation Syndrome" (PAS).
3. This term has been coined in 1985 by child psychiatrist Richard Gardner.² He defines PAS as:

*"(...) a disorder that arises primarily in the context of child-custody disputes. It is a disorder in which children, programmed by the allegedly "loved" parent, embark upon a campaign of denigration of the allegedly "hated" parent. The children exhibit little if any ambivalence over their hatred, which often spreads to the extended family of the allegedly despised parent."*³

¹ Statistics Mauritius, Economic and Social Indicators, 'Gender Statistics', Year 2022.

² American Psychological Association website: <https://dictionary.apa.org/parental-alienation-syndrome>

³ Richard A. Gardner, 'Recommendations for Dealing with Parents Who Induce a Parental Alienation Syndrome in Their Children,' Journal of Divorce and Remarriage 28, nos. 3-4 (1998).

4. Parental alienation can range from a parent unintentionally influencing their child's perception of the other parent by speaking negatively about them and their family, sharing details of the divorce with the child, to pressuring the child to choose between them and the other parent, in some sort of emotional manipulation.⁴ The alienating parent may either consciously or unconsciously, engage in such behaviours that harbour animosity or fear towards the alienated parent. There is most often the element of fallacy, or an embellishment of a truth in the words of the alienating parent, especially in intentional parental alienation.
5. Children tend to be more easily manipulated than adults as they are more vulnerable and possess the inability to distinguish between what is truly detrimental or advantageous to them. When the parents separate, this further weakens the child's perception of things, as this big shift in his usual and comfortable life makes him more vulnerable, and often children take it upon themselves when their mother and father divorce, leading them to believe they are the root of such.⁵
6. It is essential to point out that real abuse or neglect should be clearly distinguished from PAS. If there is abuse, mental or physical, same would not be a mere syndrome but a real crime under the Children's Act, punishable by a fine not exceeding 200,000 rupees and a term of imprisonment for a term not exceeding 5 years.⁶ But the impact of parental alienation has been under scrutiny in various studies and they have shown to be just as detrimental as mental abuse.
7. In 2005, a qualitative retrospective study was conducted on the effects of parental alienation on children by Dr Amy J.L Baker, which reveals that children tend to grow up with low self-esteem, depression, lack of trust and an endless cycle of perpetual parental

⁴ Vacca A., *'How to avoid unintentionally alienating your children from their other parent,'* (2018).

⁵ Kruk E., *'How do we tell the kids about the divorce'* (2015). Available online at: <https://www.psychologytoday.com/us/blog/co-parenting-after-divorce/201501/how-do-we-tell-the-kids-about-the-divorce#:~:text=Children%20have%20a%20limited%20ability,themselves%20for%20their%20parents%20divorce.>

⁶ Section 13 of the Children's Act

alienation from their own children in turn. Parental alienation may also make the child more vulnerable to eating disorders and even post-traumatic stress disorders, which in turn affect the child in his social relationships and education.⁷ Some studies have also shown that parental alienation may even path the way to addiction and substance abuse.⁸

8. Although dubbed a syndrome, the medical community have mitigated opinions on the matter and whether or not it is a real syndrome. To some it is simply not, but to others such as Richard A. Warshak,⁹ psychologist, it is a real medical syndrome that is most prevalent today. In 2001, the latter identified three components that must be present for a bona fide identification of alienation, namely:
 - (a) persistent, not occasional, rejection or denigration of the parent that reaches the level of the campaign;
 - (b) an unjustified and unreasonable or irrational rejection by the child; and
 - (c) rejection by a child that is partially a result of the alienating parent's influence, i.e., by that time they have wholly adopted the allegations.¹⁰
9. Due to its expansion into the legal field and custody battles, advocates against PAS have argued about its dangers. This so-called syndrome has been brandished by mostly fathers, claiming to be victims of the gate-keeping of their child by the mothers. In so doing, they perpetrate the misogynistic stereotypes that women are manipulative and hysterical.¹¹ The World Health Organisation, American Psychiatric Association, American Psychological Association, and the Association of Professional Psychologists in the UK,

⁷ Verhaar S., Matthewson M., Bentley C., *'The Impact of Parental Alienating Behaviours on the Mental Health of Adults Alienated in Childhood'* (2022).

⁸ *Ibid.*

⁹ Richard Ades Warshak, *'Divorce Poison: Protecting the Parent-Child Bond From a Vindictive Ex'* (2001).

¹⁰ *Ibid.*

¹¹ N Jaffe-Geffner, *'Gender Bias In Cross-Allegation Domestic Violence-Parental Alienation Custody Cases: Can States Legislate The Fix?'* Columbia Journal Of Gender And Law (2021).

have for their part dismissed the said syndrome as it lacks empirical and clinical evidence.¹²

10. Parental Alienation Syndrome can be claimed only to get back at the other parent to make them lose custody, and not ensuring the safety of the child, as a means to the ends of his or her selfish motives. Even the proposed antidote for children who are diagnosed with this syndrome is a most dangerous practice. It is suggested that the child be removed from the alienating parent and thrust into the care of the alienated parent. The potential risk is that due to the inaccuracy in proper identification of Parental Alienation Syndrome, a parent may claim parental alienation when it is actually unfounded and the child may be sent straight into the jaws of their abuser.
11. Even if some allegations against the alienated parent may be vindictive, there may also be elements of truth in the alleged brainwashing. Or simply they may not be mere allegations at all, but clear simple truths and the recognisance of Parental Alienation Syndrome becomes an enabling mechanism for a wolf in sheep's clothing to obtain custody.
12. Many countries have recognised the term in their legal considerations, amidst the theory being a controversial one. Adducing expert evidence at trial is the most used tool of the Courts when deciding on custody when Parental Alienation Syndrome has occurred,¹³ and the most likely outcome is often mediation between the alienated parent and the child, or a removal of custody of the child from the alienating parent.
13. To this day, in Mauritius, we do not have any legislation concerning PAS; we do not even recognise such a term in our caselaw. But parental alienation is not foreign in our country either. The Ombudsperson for Children's Office (OCO) has discussed the

¹² *"The pseudoscience of 'Parental Alienation Syndrome'"* (2023). Available on: <https://www.auckland.ac.nz/en/news/2023/11/15/the-pseudoscience-of-parental-alienation-syndrome-.html#:~:text=The%20theory%20depends%20on%20a,that%20children%20will%20suffer%20more>

¹³ Re C ('parental alienation'; instruction of expert) [2023] EWHC 345 (Fam).

syndrome of parental alienation in its annual report of 2018-2019,¹⁴ and pursued the discourse in the following year’s annual report.¹⁵

14. The 2018-2019 Annual Report of the OCO listed some selected cases investigated by the office and this included a complaint made by a father against his wife, whom he was separated from, stating that she, as well as her mother, was influencing their son to stop talking to the father. The OCO held a mediation meeting between the spouses and the child, whereby they explained that the personal conflicts of the parents should not interfere in the child’s wellbeing.
15. The OCO believes that parental alienation is a serious form of child abuse, and even stated that *“Children of divorced/separated parents are often drawn into the parent alienation syndrome by being coerced into an alignment with the more powerful custodial parent which causes tremendous damage to the child’s wellbeing. This phenomenon is rising and it is important that relevant stakeholders carry out awareness programs within the parent population on the nature of parental alienation and its consequences on children. Children’s best interests should always be the main focus.”*
16. In the OCO Annual Report of 2019-2020, the office dedicated a whole chapter on PAS, entitled: *“Parental Alienation: Children Have a Fundamental Right to a Healthy Relationship with Both Parents.”* The OCO is of the opinion that parental alienation goes against the core principles of the United Nations Convention on the Rights of the Child as it involves emotional abuse by the alienating parent, which is unhealthy to the development of a child. The OCO is a firm believer of PAS and its negative impacts on the Mauritian children, going so far as to institute an initiative to raise public awareness on parental alienation through 2018 to 2020, which was conducted all around Mauritius and Rodrigues.

¹⁴ Available on the website of the Ombudsperson for Children, Government of Mauritius.

¹⁵ *Ibid.*

Law Reform Commission of Mauritius [LRC]

Opinion Paper on "The Prevalence of Parental Alienation Syndrome in Mauritius: A Need for Reform?"

[LRC_R&P 187, March 2025]

17. Other jurisdictions have recognised the syndrome, with their Courts making use of PAS in guiding them into making any custody order. But the question is whether they are in the right for recognising such? If even the scientific community cannot agree on the effect or rather, absence therein, of PAS on a child, can legislators bring such a law forward? Even if PAS is introduced in our law, is removal of the custody of the child from the alienating parent to the alienated parent a wise decision or rather an opening to bigger evil.
18. It is precisely the purpose of the Law Reform Commission in this Opinion Paper to canvass the weight of PAS and its possible addition in our legislation. This document will discuss the issue of custody of children in instances of separation of the parents in Mauritius (A), the stand of other jurisdictions on this matter (B), and in the light of this, propose reforms pertaining an eventual introduction of the PAS in our statutes (C).

(A) CHILD CUSTODY RIGHTS IN MAURITIUS

19. As previously stated, in Mauritius there is no law governing parental alienation. Our legislations on children and their custody make no mention of PAS, and the most salient matter to retain from these legislations is that the Court will always decide upon the very best interest of a child. It is up to the judiciary to come up with the best decision in favour of the child.
20. In the eye of the law, there exist three types of parentages: legitimate,¹⁶ natural,¹⁷ and adoptive.¹⁸ A child born during the marriage of his parents is a legitimate child, whilst one born out of wedlock is known as a natural child. But whichever his filiation may be, when he is born, a child's responsibility is vested in his parents. It is their duty to care of the child and manage his life and assets until he reaches adulthood.
21. The parental authority is exercised by the spouses during marriage,¹⁹ but if the child is natural, it is exercised by the parent who legally recognised the child, or if both parents have legally recognised him, either by both if they live under one and same roof in community, or by the one with whom the child primarily resides.²⁰
22. But it may arise one day that the couple wishes to separate or divorce. The Civil Code, reinforced by multiple case laws, shows that it is the child's interest that reigns supreme. The law provides that in cases where the parents decide to separate, a spouse may seize the jurisdiction of the Supreme Court or the Judge in Chambers to decide to whom the custody of the child will be entrusted.²¹

¹⁶ Article 312 et al of the Civil Code.

¹⁷ Article 331 et al of the Civil Code.

¹⁸ Article 343 of the Civil Code.

¹⁹ Article 372 of the Civil Code.

²⁰ Article 374 of the Civil Code.

²¹ Article 372 of the Civil Code.

23. If a parent is seeking the urgent custody of the child, for reasons varying from child endangerment, to possibility of abduction by the other parent, the matter is dealt with before the Judge in chambers exercising its equitable jurisdiction, under an application known as "Immediate Care and Control." But normal custody litigation is dealt with before the normal Court which is the Family Division of the Supreme Court.
24. When the custody of children is in issue, it is clearly provided in the Civil Code that the Judge will exclusively take into consideration the best interests and benefits of the children.²² This principle is laid down in the case of *Muller vs Mason* (1974 MR 268), where the Court stated that "*in actions relating to the attribution of custody to divorced spouses and to the conditions that ought to be imposed upon its exercise, the interests at stake are those of the child on the one hand, and those of the parents on the other*".
25. When the Judge will adjudicate on the matter of custody, he will give one parent the custody, shifting the parental authority on the latter, and the other parent will be granted visitation right, as well as accommodation rights (*droit d'hébergement*).²³ It is to be noted that the option of joint custody is not recognised in Mauritius. However, the spouse to whom the custody has not been granted must still contribute towards the maintenance and education of the child through alimony.²⁴
26. It is also possible that the Judge may summon the child at the centre of the custody battle and hear him before taking any decision.²⁵ The Civil Code also provides that the custody of a child under five years of age must always be awarded to the mother, unless there are exceptional circumstances that may affect the security or health of the said child.²⁶ The said exceptional circumstances are strict and must not be frivolous, as reinforced by the judgment of the Court of Civil Appeal, *Salik vs Salik* (1991 MR 73), which states that provisions of paragraph 3 of article 242 of our Civil Code lay down in unequivocal

²² Article 261 and 372 of the Civil Code.

²³ Article 242 of the Civil Code.

²⁴ Articles 263 and 265 of the Civil Code.

²⁵ Article 264 of the Civil Code.

²⁶ Article 242 of the Civil Code.

terms that the custody of a child under the age of five must always be granted to the mother.

27. Even if the child is born out of wedlock, and the parents decide to separate, the same rule will apply. The Court will exclusively determine custody based on the advantage and best interests of the child,²⁷ similar to the laws applicable for a legitimate child.
28. It is also possible for the Court to order that the custody of the child be remitted to a third party in case the parents have lost temporarily or permanently their parental authority.²⁸ The Court will seek the opinion of the *Ministère Public* before adjudication.²⁹ If the Court finds it appropriate to order so, it will also determine the extent of the power the custodian party will have, both towards the child and his assets.³⁰
29. The Judge may impose conditions, limitations and control onto the exercise of the powers conferred to him. The Judge may also order that the custodian party will have the same power as a tutor under articles 424 and following of the Civil Code, or allow the parents to exercise partial parental authority, and give the rest of the authority to the custodian party. The same will apply also to natural children.³¹
30. In summary, the Court's only concern when deciding on custody of a child is condensed to the best interests of the child. This term is extracted from Articles 3.1 and 3.2 of the Convention on the Rights of the Child, which Mauritius is a party of. The Articles state:

3.1 In all actions concerning children, whether undertaken by public or private social welfare institutions, Courts of law, administrative authorities or legislative bodies, the best interests of the child shall be a primary consideration.

²⁷ Article 374 of the Civil Code.

²⁸ Article 373 of the Civil Code.

²⁹ Article 261 of the Civil Code.

³⁰ Article 373-2 of the Civil Code.

³¹ Article 374 of the Civil Code.

3.2 States Parties undertake to ensure the child such protection and care as is necessary for his or her well-being, taking into account the rights and duties of his or her parents, legal guardians, or other individuals legally responsible for him or her, and, to this end, shall take all appropriate legislative and administrative measures."

31. Our legislation leaves it up to the Judge to assess on what is considered most beneficial to the welfare of the child given the facts in issue. But there are potential considerations a Judge will heed into when analysing what is in the best interests of a minor. Our caselaw has provided us with precedence of what the Court will scrutinise to determine to whom custody should be granted, whilst paying highest regard to the child's benefits.
32. In the aforementioned judgment of *Muller vs Mason (1974)*,³² the Court took view that the child's interest is of paramount consideration and that they did not need to be in conflict or closely linked to the interest of either parent as the child should be keeping ties with both his mother and his father.
33. Moreover, in the case of *Peer vs Ramtoolah (1992)*, Justice Ahmed stated that the element of interests of a child has a very wide meaning and is not confined by mere material wealth or prosperity. He further added that the parties to a custody battle often embroil the child's interests with their own wish or gratification, but the Court only considers the advantages and interests of the child as per Article 261 of the Civil Code. The Judge also added that the interest of a child is not confined to material wealth or prosperity and is indeed a very wide concept. In this matter, the Court took note of the report of the probation officer and adjudicated on the dispute in reliance with the report, entrusting custody to the father.
34. The Court may also consider factors such as change of residence as affecting the child's best interests, as stipulated in the case of *Paruit vs Nankoo (1956 MR 374)*, which was

³² Muller v Mason (1974 MR 268).

in turn mentioned in *Sababady vs Rivet* (1972 MR 171). In the former case, the Court stated that the uprooting a child by a parent and making him leave the country is an instance for the other parent to invoke his right over the child, and infer that it is not within the best interests of the child that he migrates to a foreign country.

35. Furthermore, as illustrated in the 2023 case of *Leung-Tack vs Laup*,³³ it is often not beneficial for the child to be under a joint custody agreement between the parents, as both parents’ definition of the child’s best interests can be fundamentally different. In this case the different methods of education and upbringing negatively impacted the child’s development, especially as it was apparent that “*the parents are still engaged in recurrent conflictual situations and that they can hardly agree on an adequate and consistent approach to deal with their child’s special needs, resulting in their continuing disagreements adversely impacting the child’s well-being.*”
36. As per article 371-2 of the Civil Code, it is up to the mother and father to protect the child, and ensure his security, his health and morality.

³³ *Leung-Tack P D E vs Laup V L* (2023 SCJ 497).

(B) PARENTAL ALIENATION SYNDROME IN OTHER JURISDICTIONS

(i) BRAZIL

37. Brazil is the only country to date to have formally recognised Parental Alienation Syndrome in its legislation, going so far as to enact a new law to legally recognise the syndrome of parental alienation. The Law No. 12318 of August 26, 2010³⁴ provides for parental alienation and amends article 236 of the law no. 8069 of July 13, 1990, which is known as the “Statute of the Child and Adolescent.”
38. The said law states that *“the act of parental alienation is considered to be interference in the psychological formation of the child or adolescent promoted or induced by one of the parents, grandparents or those who have the child or adolescent under their authority, custody or supervision so that they repudiate a parent or that causes harm to the establishment or maintenance of bonds with the parent.”*
39. The Act goes on to list exemplary forms of parental alienation which a Court of law may rely on, in addition to those assessed by a Judge or verified by experts. Among them is the hindrance in the parental authority by the alienating parent, to pervade the contact of the child and the parent or to deliberately omit crucial information pertaining the child from the alienated parent.³⁵
40. The said legislation states that the practice of parental alienation violates the fundamental right of the child or adolescent, to a healthy family life as it affects the relationships of the child with that one parent and the extended family therein, constituting a mental abuse of the child or adolescent.

³⁴ Available on the website of the Government of Brazil at: https://www.planalto.gov.br/ccivil_03/_Ato2007-2010/2010/Lei/L12318.htm

³⁵ Article 2 of the Law No. 12318 of August 26, 2010.

41. The mechanism of this law functions simply as such: any evidence of an act of parental alienation may, either upon request or ex officio, be declared at any moment during a legal process. The Judge will then hear the submissions from the Public Prosecutor's Office and determine on the provisional measures necessary to preserve the psychological integrity of the child or adolescent, to ensure their coexistence with their parent or to facilitate effective rapprochement between them, if applicable.
42. The said law also provides that the Judge may order a psychological or biopsychosocial examination if there is evidence found of parental alienation.³⁶ The expert ordained by the Court will assess the case by interviewing the parties, examining the relevant documents related to the case and the family history of the parties and the chronology of events.³⁷ The said expert report will be conducted by a special team who have the necessary aptitude to diagnose cases of PAS,³⁸ and they will be accorded a period of 90 days to conduct the necessary examination, which may be extended upon judicial authorisation.³⁹
43. The Brazilian law also establishes the multiple orders that a Court of law may direct, upon analysing the seriousness of the case,⁴⁰ and they are:
- (a) declare the occurrence of parental alienation and warn the alienator;
 - (b) expand the family coexistence regime in favour of the alienated parent;
 - (c) stipulate a fine for the alienator;
 - (d) determine psychological and/or biopsychosocial monitoring;
 - (e) determine the change of custody to shared custody or its inversion; and
 - (f) determine the precautionary establishment of the child or adolescent's domicile.

³⁶ Article 5 of the Law No. 12318 of August 26, 2010.

³⁷ Article 5 (1) of the Law No. 12318 of August 26, 2010.

³⁸ Article 5 (2) of the Law No. 12318 of August 26, 2010.

³⁹ Article 5 (3) of the Law No. 12318 of August 26, 2010.

⁴⁰ Article 6 of the Law No. 12318 of August 26, 2010.

Additionally, if an abusive change of address is characterised, worsening the parental alienation situation, the judge may annul the obligation to take or remove the child or adolescent from the parent’s home, during alternating periods of family cohabitation.

44. The law also establishes the mode by which the said report is to be done, providing that psychological or biopsychosocial monitoring must be subjected to periodic evaluations, with at least one initial report being issued, containing an assessment of the case and an indication of the methodology to be used, and a final report at the end of the monitoring. Moreover, the Brazilian Court is also entitled to grant or reassign custody of the child in favour of the parent that it will find to be more appropriate for the child or adolescent to live with in instances where joint custody is not feasible.
45. In November of 2022, UN experts,⁴¹ in an effort to end violence against women and girls, urged the newly elected Brazilian government to repeal the 2010 law on PAS as it may actually lead to more discrimination towards women in custody battles, especially in cases of domestic violence and abuse.⁴²
46. The use of this law in family Courts, amidst the fact that this syndrome lacks clinical and scientific legitimacy, has enabled fathers accused of domestic violence and abuse to brandish PAS and use it against the mothers with whom they are having a litigious custody battle with. What is more dangerous is that, according to the UN experts, Brazilian family Courts often dismiss allegations of sexual abuse made by the mothers against the fathers in turn, as the latter have waved the red flag of parental alienation. The mothers then prefer to remain mute on the sexual abuse committed by the father in fear that they are accused of alienating him and in turn lose their custody rights.

⁴¹ The experts are part of what is known as the Special Procedures of the UN Human Rights Council. Those experts are: Ms. Reem Alsalem, Special Rapporteur on violence against women and girls, its causes and consequences; Ms. Tlaleng Mofokeng, Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health; Ms. Dorothy Estrada-Tanck, Chair-Rapporteur of the Working Group on discrimination against women and girls, Mr. Victor Madrigal, UN Independent Expert on Protection against violence and discrimination based on sexual orientation and gender identity.

⁴² United Nations, ‘Brazil: UN experts urge new government to target violence against women and girls, repeal parental alienation law’ (2022). Available at: <https://www.ohchr.org/en/statements/2022/11/brazil-un-experts-urge-new-government-target-violence-against-women-and-girls>

(ii) AUSTRALIA

47. In recent years, the Federal Circuit and Family Courts of Australia have begun to recognise Parental Alienation Syndrome more widely. Although not going to the extent of codifying it in a law, they have brought this syndrome before their judiciary and used it as a legitimate syndrome that may in turn affect the outcome of a custody battle.⁴³
48. Australian family matters usually go through the first step of mediation to resolve the issues between the parties before turning it into a litigation. The Court is empowered by the Family Law Act of 1975⁴⁴ to order that an expert evidence is needed before drawing any conclusions.⁴⁵ The Judge will first state in relation to what is the expert evidence required, the matters in which the expert is to provide evidence, as well as how the expert is to provide that evidence.⁴⁶
49. Similar to the situation in Mauritius, Australian Courts also decide upon custody taking into consideration exclusively the benefits and interests of the child, but the fundamental difference is that their legislation establishes both the primary and additional considerations of best interests of the child that the Court will consider.⁴⁷ One of the principal considerations is the benefit to the child of having a meaningful relationship with both parents, to which parental alienation could be interpreted as being a clear infringement of this section.

⁴³ Matthies Lawyers, 'Parental Alienation: What is it and how is it Relevant to Family Law Matters?' (2023). Available at:

<https://matthieslawyers.com.au/parental-alienation-australia/#:~:text=If%20a%20court%20determines%20that,parents%20to%20undertake%20parenting%20courses.>

⁴⁴ Available online at: <https://www.legislation.gov.au/C2004A00275/2019-03-10/text>

⁴⁵ Section 69ZX of the Family Law Act (1975)

⁴⁶ *Ibid.*

⁴⁷ Section 60CC of the Family Law Act (1975)

50. In the case of *Udall v Oaks* [2010],⁴⁸ the Court analysed the syndrome of parental alienation after complaint made by mother against the father that he was engaging in behaviours that damages the relationship between mother and child, alienating the later from her. The Court weighed in the multiple theories of parental alienation in this matter, citing the above-named mentioned Richard Gardner and Richard Warshak, and consulted expert evidence. The Family Court ultimately decided that there was indeed parental alienation on behalf of the father against the mother and even noted that the father was exercising unhealthy interdependence on the child, going on to say that the father loves his child dearly, but too much that refuses to share him with the mother. The Court then granted custody to the mother and granted the father visitation and accommodation rights.
51. In the 2020 case of *Cardus v Lavrick*,⁴⁹ there have been series of applications that were started by the father and then replied by the mother. The father was seeking right of access to their child in 2018 and the Court decided that a memorandum be prepared by a family consultant and provided to the Court and the parties. The father filed some more applications which ended up with the Court ordering that the child be taken to a psychologist to repair the child’s relationship with the father. When the family report ultimately came out though, it was found that the relationship between the father and the child had broken down and the father was callous in his paternal role. Eventually, the father raised the issue of parental alienation.
52. The child’s psychologist was compelled to depone in Court to give her views on the matter and stated that this allegation is not only unfounded, but the contrary is actually so, until the mother ultimately decided to give up conciliation between father and daughter as it was not in the child’s interest. Upon consultation of the child’s paediatrician, who ensured the Court that the father never once showed up to the medical check-ups of the child, and also the Court-ordered family report and psychological

⁴⁸ *Udall v Oaks* [2010] FMCA 1482 (fam).

⁴⁹ *Cardus v Lavrick* [2020] CA 579 (Fam).

evaluation, the Court went on to say that the father cannot claim parental alienation when he himself is the reason why the child is alienated from him.

53. Even though, the Courts have recognised this syndrome, there is still polarising views on the matter in Australia and whether it is a recognised mental disorder. Multiple family dispute professionals have spoken from experience and gave positive views to the existence of PAS, but medical professionals, such as Dr H. Nancarrow, Chief Executive Officer of Australia's National Research Organisation for Women's Safety, have firmly debunked the theory and even warned about the dangers of the syndrome.
54. In the Joint Select Committee on Australia's Family Law System, dated 13th of March 2020,⁵⁰ with the theme of improvement in family law, Dr Nancarrow highlighted that since the concept of equal shared parental responsibility was introduced in 1996, women have been pressured not to reveal domestic or family violence in fear of being branded as an alienating parent, and thus losing parental authority, which is similar to the Brazilian's opinion against the legislation on PAS. She went on to criticise the current Australian family law system for perpetrating this pattern of abused women remaining silent on their abuse, and the abuse of their child out of fear of being presented by Courts as alienating or unfriendly parent - family law professionals even often encourage those women to confine themselves to silence as they will ask them that they change their expectations as the abusive father will obtain visitation rights to the child anyway.⁵¹

⁵⁰ Available online on the website of the Parliament of Australia at: https://www.aph.gov.au/Parliamentary_Business/Hansard/Hansard_Display?bid=committees/commsen/dafb42f2-1951-48f7-9fe6-51b0bb7cc129/&sid=0006

⁵¹ *Ibid.*

(iii) UNITED KINGDOM

55. Likewise, the UK does not have a formal legislation on Parental Alienation Syndrome, but the concept has been recognised in a Court of law in various cases. In Practice Direction 25C (children proceedings – the use of single joint experts and the process leading to an expert being instructed or expert evidence being put before the Court),⁵² it is provided that expert evidence may be adduced in children proceedings, including custody matters. But the Court retains the discretion whether to take the evidence into consideration when making its decisions or not. Courts are quite reticent to resolve or discuss disputes about theories in the medical field.⁵³
56. Health professionals in the UK also debate on the authenticity of the so-called syndrome, and whether it is indeed a legitimate mental issue or not. Although accepted by the English judiciary, PAS is not entirely valid either. The main issue to be encountered is the evidential value a psych report will bring a resolution to the dispute or not. Court will have to weigh the evidence in favour of PAS, against the possible disadvantages to the child this would incur.
57. In the 2023 case of *Re A and B*,⁵⁴ Justice Keehan had to make a consequential series of findings of facts pertaining to the mother’s alienating behaviours. Over the four years this case ran, the Court has heard numerous experts, which included a child psychiatrist, as well as a psychologist, expert in matters of PAS. Even though the children were entrusted in the custody of the father, the mother attempted several alienating steps against the father, going to the length of encouraging the minors to run away from the father’s home and even making false accusations to the police and social workers.

⁵² Available at: https://www.justice.gov.uk/courts/procedure-rules/family/practice_directions/practice-direction-25c-children-proceedings-the-use-of-single-joint-experts-and-the-process-leading-to-an-expert-being-instructed-or-expert-evidence-being-put-before-the-court

⁵³ J. Mitchell, ‘*Parental Alienation Syndrome: the debate*,’ New Law Journal (2002).

⁵⁴ *Re A and B (Children: 'Parental Alienation')* (No 5) [2023] EWHC 1864 (Fam).

58. The Judge, after consultations of the relevant expert evidence, concluded that there was indeed a severe case of alienating behaviour in favour of the mother against the father. Justice Keehan further added that the risk the children will encounter if they continued a relationship with their mother, by far, outweighs the advantages of it - thus the mother was forbidden from seeing and communicating with the children for the time being. The Judge also found that the children were thriving with their father after consulting a child psychiatrist, who counselled with the children. A similar approach has been previously adopted in the 2010 case of *Re S (Transfer of Residence)*.⁵⁵
59. In February 2023, Sir A. P. McFarlane delivered a colossal judgment on the instruction of experts on parental alienation issues.⁵⁶ This judgment was an appeal and it originated with the father making an application pursuant to Part 25 Family Proceedings Rules 2010 for the instruction of a Child and Adolescent Psychiatrist or child psychologist, after his separation with his wife, to which the latter accepted, as well as the Court. One Ms A. conducted the report, although it was unclear whether she was a psychologist or psychiatrist, and she found that the children were alienated against their father by their mother.
60. As for the expert’s report, at the hearing after, the Judge ordered the removal of the children from their mother’s care and directed that there should be no contact between mother and children pending a fuller hearing. The mother alleged that the said Ms. A was not a qualified psychologist, despite claiming to be one. The Court assessed the qualifications of the said Ms. A, and the conditions of the Association of Clinical Psychologists of UK, which according to them did not meet the criteria enough to draw expert evidence to be adduced before Court.
61. Ultimately, the appellate Court decided to instead focus on the reasoning of the trial Judge and concluded that the findings of the original Court was indeed correct and decided that the appeal cannot stand. The Courts stated that: “*These findings were the*

⁵⁵Re S (Transfer of Residence) [2010] 1 FLR 1785.

⁵⁶ Re C (‘parental alienation’; instruction of expert) [2023] EWHC 345 (Fam).

Judge's own findings, based on the written and oral evidence of the parties. They were free-standing findings and not based upon the analysis and conclusions of either Ms A or the guardian." This goes to show that whether the Court takes into consideration the expert evidence or not, its motivation to come to a conclusion is what is ultimately most important, whether it goes against or in favour of the expert evidence adduced.

62. The Court stated that much like an allegation of domestic abuse, the decision about whether or not a parent has alienated a child is a question of fact for the Court to resolve and not a diagnosis that can or should be offered by a psychologist. It is ultimately a question of fact.
63. The Children and Family Court Advisory Support Scheme (CAFCASS), on the other hand, has endorsed the syndrome as a proper one and defines parental alienation as "*the unjustified resistance or hostility from a child towards one parent as a result of the psychological manipulation by the other parent.*"⁵⁷ It further states that PAS is a recognised form of parental psychological abuse and undermines the Universal Declaration of Human Rights and the UN Convention on the rights of the child.
64. In May of 2022, the Women's Resource Centre gave a Written Evidence in answer to the House of Lords Children and Families Act 2014 Select Committee Inquiry,⁵⁸ heavily criticising family Court proceedings pertaining the appointment of professionals which they deem to contribute to evidence to remove children from abused mothers. One of their main findings is:

"Allegations of abuse are routinely rejected by family Court as incredible on the basis of the unproven theory of Parental Alienation Syndrome with two thirds of women advocating for their children's safety pathologised and their motivations viewed as malicious."

⁵⁷ D. Emmerson, 'Parental alienation: a hostile environment?' New Law Journal (2023).

⁵⁸ Available at: <https://committees.parliament.uk/>

65. They also addressed the issue that once labelled as an ‘unfit parent’, some mothers never regain custody of their children in spite of their allegations of abuse, albeit their claims being validated. They urged family Courts to “*reject the pseudoscientific concepts that pathologise parents seeking to protect children such as Parental Alienation Syndrome, and other simplistic theories of parental alienation that rely on un-validated constructs.*” They view this theory as allowing biased preconception about mothers and children based on cultural and gendered patriarchal beliefs that have no scientific basis, which in turn has no place in a courtroom to be adduced as credible evidence by Judges, lawyers and those recognised by the Court as experts.

(iv) HONG KONG

66. In a Report on the family dispute resolution process, primarily focusing on mediation as an alternative to the traditional adversarial legal system in family disputes, the Hong Kong Law Reform Commission reviewed existing mechanisms, evaluates the effectiveness of mediation, and makes recommendations for reform.⁵⁹ The report emphasises the limitations of the adversarial legal system in family disputes, particularly in child custody and access cases, noting that adversarial proceedings often exacerbate conflicts and fail to prioritise the best interests of the child. Mediation is presented as a more effective approach, fostering cooperation and empowering parties to reach mutually satisfactory agreements while reducing emotional and financial costs. A pilot scheme implemented in Hong Kong demonstrated the viability of mediation, with significant rates of settlement and user satisfaction. Mediation helped parties save time and money, reduced tensions, and provided an educational platform for constructive dialogue. The pilot also highlighted the importance of a pluralistic approach involving social welfare officers, NGOs, and private practitioners. The adversarial system exacerbates conflict between parents, polarises their positions, and focuses on “winning” rather than resolving disputes amicably. The report notes that this system often leads to acrimony, making it ill-suited for resolving sensitive family disputes

⁵⁹ The Law Reform Commission of Hong, *Report on “Family dispute resolution process”*, March 2003

involving children. PAS cases often involve heightened conflict, with one parent accused of alienating the child against the other. The adversarial system can aggravate these dynamics, as each parent tries to “prove” their case in court. This is especially detrimental when the child becomes a pawn in the process, further entrenching the alienation.

67. Hong Kong, to this day, does not provide for Parental Alienation Syndrome in any of their legislations. Nonetheless, their family Courts have in recent years acknowledged the dangers associated with PAS. The first and paramount consideration taken by the Court in a minor’s custody is the welfare and best interests of the child⁶⁰ and this has translated into a court’s decision in a 2020 child custody case⁶¹, whereby the latter noted that “*parental alienation is exceptionally harmful to children and can be seen as a kind of emotional abuse and thus in the best interests of the child, should be rectified immediately*”.

68. In the above-mentioned case, the Single Joint Expert Report ordered by Court in this matter revealed that the father’s own grudge against the mother was transposed onto the child, which resulted in the child declaring that he is scared of the mother. But the Court properly took into consideration the child’s real behaviour, as opposed to his words, upon seeing his mother. Said behaviour was entirely contradictory which lead to the Court to come to the conclusion that there has been manipulation on behalf of the father and alienation towards the mother.

69. This goes to show that there is a real and live issue of parental alienation in Hong Kong and that Court is slowly but surely accepting PAS as a real threat to the child, thus affecting custody orders of the family court, as divorce rates continue to soar in Hong Kong⁶².

⁶⁰ Section 3 of The Guardianship of Minors Ordinance (Cap 13) of Hong Kong.

⁶¹ *W, KM v K, J* ([2020] HKCU 1204)

⁶² Wu & Kang-chung, ‘Divorce applications rise 25% in Hong Kong as younger couples look to split’, South China Morning Post (2024).

(C) RECOMMENDATIONS

70. As can be seen in the above-mentioned jurisdictions, the recognition of PAS is not a foreign or a new concept. There are cases where PAS has been taken effectively in Court and proper expert evidence adduced to back up the allegations of the parent. As can be seen, they are mostly Court mandated which provides that a neutral observer is the one drafting the report that will aid a Family Court to decide on the matter of PAS and in turn, custody of the child.
71. Whilst analysing the position of Brazil, Australia and the United Kingdom, the Law Reform Commission proposes that the syndrome of parental alienation must be taken with a grain of salt. As already mentioned, there can exist various issues which hinder the smooth running of parental alienation being considered a solid and medically recognised syndrome; they stem from perpetration of misogyny and abuse, to dubious use of expert's qualifications and outcomes, passing by the fact that it is still a scientifically unfounded "syndrome". It will be remiss not to mention the fact that PAS may be used as a victim shield by an abuser, either to get back at the abused parent, or to continue the abuse upon the child after obtaining custody.
72. Moreover, there is no predefined meaning to Parental Alienation Syndrome, which is why it would not be auspicious to implement such a polarising notion. Due to its dangers, parental alienation cannot become the panacea to the woes of spited parents and must be taken before a Court of law with caution, or worse, an enabling "syndrome" used by abusers over their abused spouse, and children. There needs to be clear scientific proof that the alienation pattern of the parent is encroaching on the child's wellbeing and their relationship with the other parent and, most importantly, that the said alienation allegations are unfounded.
73. An eventual introduction of the recognition of PAS in the Children's Act would have to be a rigorous and arduous exercise. The first recommendation would be that the Court needs to be ready to appoint a neutral psychologist, not sponsored by the mother or father.

In order to ultimately decide on the fate of the child, the Court-mandated psychologist or psychiatrist, would have to make the necessary psychological evaluation that there is indeed PAS or not, as illustrated in various English and Australian cases, such as the case of *G (children: intractable dispute)*,⁶³ in 2019, whereby the Court accepted the report of the expert which debunked the allegations of parental alienation and, in consequence, dismissed the appeal.

74. Taking inspiration from the Brazilian legislation, the Commission further proposes that the Family Division of the Supreme Court appoint a permanent team of Family Court advisors, which will comprise psychologists, psychiatrists and child experts. Their credibility needs to be assessed by the Court prior, so as to avoid any issue on the integrity of the experts. The availability of the experts in Court will aid in making swift decision whenever the issue of PAS arises at any moment in a family matters. PAS involves intricate psychological and relational issues that may not be immediately apparent to judges or legal practitioners. Experts can provide an objective, professional assessment of the family dynamic, helping the court distinguish genuine cases of alienation from those where other factors, such as mutual parental conflict or legitimate safety concerns, may be at play. This nuanced understanding ensures that decisions are made with the child’s welfare as the paramount consideration.
75. In addition, it is also recommended that if the Court indeed finds that there has been parental alienation on behalf of a parent, that a mediation exercise be mandated immediately, suspending temporarily the custody litigation between spouses, inspired loosely by Article 5 (3) of the Law No. 12318 of August 26 2010, of Brazil.
76. Pertaining to the outcome of a positive finding of PAS, the Commission is of the view that the Court will have to be cautious on the removal of custody from one parent to another based exclusively on the allegation of parental syndrome, even if assessed that there has indeed been alienation. The Court will have to focus on not the parent’s

⁶³ *G (children: intractable dispute)* [2019] EWCA Civ 548.

emotions, but the child's best interests, like it has always done. Whether an expert report states that there has been PAS or not, it is up to the Court to assess the facts and circumstances of the case and decide what is ultimately best for the child.

77. Thus, in order for Judges in family matters to better deal with such a delicate issue, the Commission further proposes that a special training be set up so that Judges will have an enhanced acumen in identifying parental alienation, the behaviour of parents and children, and making out psychological reports, as well as taking sound decisions for the best interests of the child when PAS is involved. Training would focus on equipping judges with the tools to identify credible indicators of parental alienation, such as manipulation tactics, unjustified rejection of one parent, and psychological pressure on the child. This ensures that genuine cases are distinguished from unfounded or exaggerated claims. Judges must also be prepared to discern false or strategic accusations of PAS, which are sometimes weaponised during custody disputes. Training would provide insight into the psychological and emotional behaviours exhibited by alienating and alienated parents, including tendencies toward coercive control, victimisation, or estrangement. Judges would gain the ability to assess parental conduct through observed patterns rather than relying solely on subjective testimony.
78. The phenomenon of parental alienation syndrome and its exploitation in family law cases reflects a troubling intersection of emotional, ethical, and professional challenges. While the overarching goal of family law is to serve the best interests of the child, the involvement of legal practitioners can sometimes complicate and exacerbate the emotional turmoil inherent in such disputes. When lawyers intentionally prolong these cases for personal or financial gain, the consequences can be devastating for all parties involved - particularly the children. Lawyers, as facilitators of legal strategy, can either mitigate or exacerbate this problem. By amplifying accusations of alienation or framing the other parent as a perpetual threat, lawyers can create a toxic environment that hinders resolution. The longer the dispute persists, the more opportunities exist for legal fees to accumulate. Lawyers have an ethical obligation to act in their clients' best interests, but they must also respect the overarching principle of ensuring justice. In cases involving

children, this duty extends to safeguarding the welfare of minors, who are often the silent victims of such legal battles. By manipulating PAS claims or prolonging litigation, lawyers undermine their professional responsibilities. Therefore, Judges should be trained to recognise patterns of delay and unnecessary litigation, imposing penalties for frivolous filings or strategic prolongation of cases. Moreover, training programs for lawyers on the ethical handling of PAS cases and the psychological impact on children can encourage a more compassionate approach.

79. In light of the above, the Commission also proposes that the Court deals with 90% of family matters involving children within a maximum of 12 months at best so that neither the alienated parent nor the children suffer from lengthy delays and the stress and cost that accompanies same. This is inspired by the Federal Circuit and Family Court of Australia’s aim to resolve family matters within 12 months in order to alleviate the weight of litigation on families.⁶⁴
80. Correspondingly, to further mitigate the pecuniary burden of parents, the Commission is additionally recommending that variation order applications in child custody matters be less onerous in order to make it more accessible to parents who wish to apply for such. Ensuring that variation order applications are financially accessible is essential to uphold the principle of equality before the law. Currently, the costs associated with legal fees, court applications, and potential expert consultations can create significant barriers for parents, particularly those with limited means. By simplifying the process and reducing associated costs, the legal system would become more inclusive, enabling all parents to seek adjustments to custody orders as necessary. Financial obstacles should not prevent parents from pursuing changes to custody arrangements when circumstances evolve. Reducing the pecuniary burden ensures that decisions are driven by the child’s best interests rather than the financial capabilities of the parents.

⁶⁴ Federal Circuit and Family Court of Australia, “The new Federal Circuit and Family Court of Australia officially commences” [Press Release] (2021).

81. As has been highlighted before, in reference to the Hong Kong Law Reform Commission Report, adversarial litigation frequently overlooks the best interests of the child, which should be the guiding principle in family disputes. The report advocates for processes like mediation that prioritise the child’s well-being by promoting cooperation and reducing conflict. In PAS cases, the child’s best interests are often subsumed by the parents’ conflict. Alienation allegations can result in the child being pressured to take sides, creating emotional harm. Mediation, as described in the Report, offers a platform where parents can focus on the child’s needs and find solutions that restore healthy relationships. Mediation fosters a non-adversarial environment, enabling parents to work collaboratively on solutions. It also allows emotions to be expressed constructively, minimising the antagonism that fuels prolonged disputes. Parental alienation often thrives in hostile environments where parents fail to communicate effectively. Mediation could serve as a valuable tool in PAS cases by de-escalating conflict, fostering dialogue, and encouraging the alienating parent to recognise the harm caused to the child and the other parent.
82. Finally, the Commission recognises that provisional custody orders, while necessary to provide immediate stability during the initial stages of parental disputes, often require follow-up due to the evolving nature of family circumstances. The passage of time brings significant changes in the child’s developmental needs, parental relationships, and living conditions, making it imperative to establish a structured mechanism for reviewing and potentially modifying such orders. This is especially critical in cases where Parental Alienation Syndrome (PAS) is alleged or identified. A child’s needs and preferences change significantly as they grow. Young children may require different custody arrangements compared to adolescents who might express a preference for living with one parent. Parents may reconcile or reach an improved co-parenting arrangement over time, necessitating a reevaluation of custody terms that were initially imposed under contentious circumstances. Moreover, changes in employment, relocation, remarriage, or financial stability can alter the living conditions of one or both parents, impacting their ability to comply with or benefit from the original custody order. Provisional custody orders can sometimes be manipulated to exclude or alienate one parent under the guise

of protecting the child. In cases where PAS is suspected, prolonged provisional arrangements without review may solidify the alienation and cause long-term harm to the parent-child relationship. Early and periodic reviews provide an opportunity to assess whether the provisional order is inadvertently contributing to or failing to address issues of alienation. This ensures that interventions are implemented promptly to safeguard the child’s well-being and preserve relationships with both parents.

83. However, codifying a so-called syndrome which has no proper scientific background is opening the gates to malevolence and misuse as one parent may brandish the sword of parental alienation to effectively sever the connections of the other parent with the child. In that sense, the Law Reform Commission advises against the introduction of PAS in our law, with the main concern being the possible abuse that the introduction of such legislation would entail, as well as the absence of reliability on the theory of PAS.

CONCLUSION

84. The question of whether Parental Alienation Syndrome (PAS) should be legally recognised in Mauritius demands a measured and judicious approach that takes into account the scientific legitimacy, evidentiary challenges, and potential misuse of the concept in family law disputes. While there is no doubt that cases of parental alienation occur in contested custody battles, the classification of this phenomenon as a syndrome remains a subject of intense debate within the medical, psychological, and legal communities.
85. The fundamental principle governing child custody disputes in Mauritius, as in most jurisdictions, remains **the best interests of the child**. Article 372 of the Civil Code of Mauritius enshrines the joint exercise of parental authority, and where disputes arise, the courts are tasked with determining custody arrangements that prioritize the child’s welfare. In this regard, the introduction of PAS as a statutory concept could potentially shift the focus away from an individualised assessment of the child’s circumstances and introduce a controversial, medically unverified standard that could have adverse consequences.
86. Jurisdictions such as Brazil have taken the radical step of codifying PAS, yet their experience highlights the **dangerous potential for misuse**, particularly in cases where allegations of abuse or domestic violence are present. The Brazilian legislation has been criticised for enabling abusive parents to weaponise PAS claims against protective parents, thereby silencing genuine victims of abuse and distorting the adjudication process in custody matters. Similarly, concerns have been raised in Australia and the United Kingdom regarding the manner in which PAS allegations may be exploited in legal proceedings, often to the detriment of vulnerable children and custodial parents. The UN Special Rapporteurs and women’s rights organisations have repeatedly cautioned against the adoption of PAS as a legal standard, emphasising that it lacks empirical and scientific credibility.

87. Legal scholars have also warned against the **reification of PAS in legal systems**, arguing that it lacks a robust evidentiary foundation and that its inclusion in judicial decision-making could erode the integrity of family law proceedings. As Professor Carol Bruch aptly cautions:
- “Parental Alienation Syndrome, as developed and purveyed by Richard Gardner, has neither a logical nor a scientific basis. It is rejected by responsible social scientists and lacks solid grounding in psychological theory or research.”*
88. In contrast, rather than enshrining PAS in statutory law, courts should continue to assess cases of alleged alienation **on a factual and case-by-case basis**, relying on credible expert testimony where necessary but without adopting an unverified syndrome as a legal doctrine. The Mauritian judiciary has consistently upheld the principle that custody disputes should be adjudicated with regard to **the specific circumstances of the child and the capacity of each parent to provide a nurturing and stable environment**. This individualised approach remains the most appropriate mechanism for addressing cases of alleged parental alienation without falling into the potential pitfalls of an unscientific legal construct.
89. Further, there is an inherent risk that recognising PAS in legal proceedings could lead to **judicial bias and gendered stereotypes**, particularly against mothers, as seen in various jurisdictions where PAS has been raised disproportionately by fathers in custody disputes. This risk is compounded by the fact that PAS claims often emerge in adversarial legal settings where the strategic interests of litigants may overshadow the genuine well-being of the child. The absence of a **standardised, peer-reviewed diagnostic framework** further complicates the ability of courts to objectively assess PAS allegations.
90. While the Law Reform Commission acknowledges the **serious impact of parental alienation on children**, it is critical to distinguish between cases of legitimate alienation and those where PAS claims may be used to obscure genuine concerns of abuse, neglect, or poor parenting. Rather than legislating PAS as a recognised syndrome, the more

prudent approach would be to **enhance judicial training in child psychology, strengthen the role of neutral court-appointed experts, and refine procedural safeguards** to ensure that all custody determinations are made in the best interests of the child.

91. Moreover, judicial delay in resolving child custody matters remains a pressing concern, and prolonged litigation often exacerbates the psychological harm inflicted on children caught in parental disputes. The Commission, therefore, recommends that child custody matters be adjudicated within a **strict 12-month timeframe** to minimise legal uncertainty and mitigate the adverse effects of protracted litigation on children. This aligns with best practices in other jurisdictions and would ensure that custody arrangements are determined expeditiously while still allowing for periodic review where necessary.
92. In light of the above considerations, the Law Reform Commission **does not recommend the legislative recognition of PAS in Mauritius at this stage**, given the lack of scientific consensus, the potential for misuse, and the overarching imperative of safeguarding the best interests of the child. However, continued judicial vigilance, enhanced evidentiary standards, and procedural safeguards should be employed to address cases where genuine parental alienation occurs, without resorting to the codification of an unverified syndrome.
93. Ultimately, the law should serve as a protective mechanism for children, ensuring their welfare and psychological well-being, rather than being **instrumentalised as a tool in acrimonious parental disputes**. A cautious and fact-based approach remains the most prudent course of action in navigating this complex and highly contested area of family law.