**RESPECTING, PROTECTING AND FULFILLING THE RIGHT TO FREEDOM OF THOUGHT**

1. The Constitution of Mauritius, which is the supreme law of Mauritius, recognizes the right to Freedom of Thought at **Section 11 of the Constitution**, which reads as follows:

*“(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of conscience, and for the purposes of this section, that freedom includes freedom of thought and of religion, freedom to change his religion or belief, and freedom, either alone or in community with others and both in public and in private, to manifest and propagate his religion or belief in worship, teaching, practice and observance.*

*(2)  Except with his own consent (or, if he is a minor, the consent of his guardian), no person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if that instruction, ceremony or observance relates to a religion that he does not profess.*

*(3)  No religious community or denomination shall be prevented from making provision for the giving, by persons lawfully in Mauritius, of religious instruction to persons of that community or denomination in the course of any education provided by that community or denomination.*

*(4)  No person shall be compelled to take any oath that is contrary to his religion or belief or to take any oath in a manner that is contrary to his religion or belief.*

*(5)  Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—*

 *(a) in the interests of defence, public safety, public order, public morality or public health; or*

 *(b) for the purpose of protecting the rights and freedoms of other persons, including the right to observe and practise any religion or belief without the unsolicited intervention of persons professing any other religion or belief,*

 *except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.”*

1. **Section 3 of the Constitution** **of Mauritius**  furtherprovides *inter alia* the following:

*“It is hereby recognised and declared that in Mauritius there have existed and shall continue to exist without discrimination by reason of race, place of origin, political opinions, colour, creed or sex, but subject to respect for the rights and freedoms of others and for the public interest, each and all of the following human rights and fundamental freedoms—*

 *(a) the right of the individual to life, liberty, security of the person and the protection of the law;*

 *(b) freedom of conscience, of expression, of assembly and association and freedom to establish schools; and*

 *(c) the right of the individual to protection for the privacy of his home and other property and from deprivation of property without compensation,*

*and the provisions of this Chapter shall have effect for the purpose of affording protection to those rights and freedoms subject to such limitations of that protection as are contained in those provisions, being limitations designed to ensure that the enjoyment of those rights and freedoms by any individual does not prejudice the rights and freedoms of others or the public interest.”*

1. The right to freedom of thought is a qualified one and the State is only allowed to restrict that right provided that it is reasonably justifiable in a democratic society and the act of restriction is in the interest of defence, public safety, public order, public morality or public health, for the purpose of protecting the rights or freedoms of other persons or the imposition of restrictions upon public officers.
2. **Section 12 of the Constitution of Mauritius** provides as follows:

*“(1) Except with his own consent, no person shall be hindered in the enjoyment of his freedom of expression, that is to say, freedom to hold opinions and to receive and impart ideas and information without interference, and freedom from interference with his correspondence.*

*(2)  Nothing contained in or done under the authority of any law shall be held to be inconsistent with or in contravention of this section to the extent that the law in question makes provision—*

 *(a) in the interests of defence, public safety, public order, public morality or public health;*

 *(b) for the purpose of protecting the reputations, rights and freedoms of other persons or the private lives of persons concerned in legal proceedings, preventing the disclosure of information received in confidence, maintaining the authority and independence of the Courts, or regulating the technical administration or the technical operation of telephony, telegraphy, posts, wireless broadcasting, television, public exhibitions or public entertainments; or*

 *(c) for the imposition of restrictions upon public officers,*

 *except so far as that provision or, as the case may be, the thing done under its authority is shown not to be reasonably justifiable in a democratic society.*

1. Any violation to the above provisions is actionable before the Supreme Court of Mauritius under section 17 of the Constitution and the Court may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcing, or securing the enforcement of section 3 to the protection which the person concerned is entitled. In the event that the aggrieved person requires swift relief or fears an intended breach of his right, he may also seize the Judge in Chambers for injunctive relief.
2. The Criminal Code provides for the offences relating to freedom of conscience and to religion as follows:

 **(i) Section 183 of the Criminal Code,** which concerns ‘Interference with freedom of conscience”, provides for a fine not exceeding 100,000 rupees and for an imprisonment for a term not exceeding 2 years in case of any breach;

**(ii) Section 184 of the Criminal Code, “Disturbing religious ceremony”**, makes provision for a fine not exceeding 1000,000 rupees and imprisonment for a term not exceeding 2 years in cases of a breach;

**(iii) Section 185 of the Criminal Code, “Outrage on religious worship”**, provides for a fine not exceeding 100,000 rupees and imprisonment for a term not exceeding 2 years;

**(iv) Section 206 of the Criminal Code, “Outrage against public and religious morality”**, provides for imprisonment for a term not exceeding 2 years and a fine not exceeding 100,000 rupees.

1. There is no clear distinction in the law in Mauritius as regards “freedom of thought”, “freedom of belief” and “freedom of opinion”. The law does not further state clearly whether human rights, rights to privacy, freedom of opinion and expression are dependent upon, support or are related to freedom of thought. In addition, it does not stipulate whether certain manifestations of thought constitute “thought” in and of themselves.
2. **The Independent Broadcasting Authority**, under the Independent Broadcasting Authority Act, which is the licensing authority in respect of radio and television broadcasting services, has as its objects to inter-alia:

*“ (a)promote the provision of a diverse range of radio and television broadcasting services throughout Mauritius;*

 *(b) promote the development of broadcasting services which are responsive to the needs of the Mauritian audience;*

 *(c) preserve and promote the pluralist nature of Mauritian culture by ensuring that licensees include, in their services, programmes reflecting the linguistic and cultural diversity of Mauritius;*

 *(d) ensure that licensees include, in their services, regular locally produced programmes;*

 *(e) ensure that broadcasting services are not controlled by foreign nationals;*

 *(f) impose limitations on cross media control of private broadcasting services;*

 *(g) ensure fair competition between broadcasting licensees;*

 *(h) set acceptable standards for programmes and advertising and monitor compliance with those standards;*

 *(i) ensure that broadcasting services—*

 *(i) are of such a nature as not to encourage or incite crime or racial hatred leading to disorder or offending public feeling;*

 *(ii) give adequate coverage to information, education, culture, entertainment and recreation; and*

 *(iii) are impartial and accurate;”*

1. **The Mauritius Broadcasting Corporation Act** under which the Mauritius Broadcasting Corporation was created, which is the “*principal medium for the dissemination of information, education and entertainment*”, provides at Section 4 of the Act, the objects of the Mauritius Broadcasting Corporation, which are, inter alia, to:

*“(a)provide independent and impartial—*

 *(i)broadcasting services of information, education, culture and entertainment in Creole, Bhojpuri, French, English, Hindustani and such other languages spoken or taught in Mauritius as the Board may, with the approval of the Minister, determine;*

 *(ii)broadcasting services which cater for the aspirations, needs and tastes of the population in matters of information, education, culture and entertainment; and*

 *(iii)external broadcasting services if the Minister so requires;*

*(b)ensure that its broadcasting services help towards the development of—*

 *(i)the knowledge, sense of initiative, civic rights, duties and responsibilities of the population; and*

 *(ii)cultural exchanges and a Mauritian consciousness and identity;*

*(c)ensure that its broadcasting programmes—*

 *(i)maintain a high general standard both in respect of content and quality;*

 *(ii)cover a wide range of subject-matter; and*

 *(iii)appeal to the aspirations, needs and tastes of its audience;*

*(d)ensure that its broadcasting programmes, including advertisements—*

 *(i)do not offend against decency, good taste or public morality; and*

 *(ii)are not likely to encourage or incite to crime, disorder or violence;*

*(e)give adequate coverage in its broadcasting programmes to news items, both local and foreign, in the languages specified in paragraph (a) and ensure to the best of its ability that the news bulletins broadcast are accurate and presented in an impartial manner;*

 *(f)strike a fair balance in the allocation of broadcasting hours among various educational, cultural, political and religious standpoints;*

 *(g)refrain from expressing its own opinion and observe neutrality and impartiality on—*

 *(i)current affairs;*

 *(ii)matters of public policy; or*

 *(iii)matters of controversy relating to culture, politics, religion or any other subject, other than broadcasting;*

 *(h)refrain from giving publicity to any person, product or service, other than in a commercial broadcasting advertisement, except in so far as it may be necessary for the broadcast of effective and informative programmes”.*

1. **The Information and Communication Technologies Act** prohibits the use of an information and communication service in the following circumstances:

 (i) to send, deliver or show a message which is obscene, indecent, abusive, threatening, false or misleading, which is likely to cause or causes annoyance, humiliation, inconvenience, distress or anxiety to any person;

 (ii) for the transmission or reception of a message which is grossly offensive, or of an indecent, obscene or menacing character; or

 (iii) for the transmission of a message which is of a nature likely to endanger or compromise State defence, public safety or public order

1. The Second Schedule of the Independent Broadcasting Authority Act provides for Code of Conduct for broadcasting services. The relevant extract of the Act is attached as at **ANNEX.**  Media Organisations have also their own in-house Code of Ethics and Code of Conduct for their journalists.
2. The Media Trust is a Statutory Body set up under the Media Trust Act 1994. It is managed by a Board, consisting of nominated members by Government, as well as ELECTED representatives from the Media.
3. Freedom of Thought and Expression, and Press Freedom is central to the ongoing activities of the Media Trust. It engages media professionals to discuss Human Rights issues by way of high-level training conducted by professional media persons, local and international with a view to better understanding the subject matter for more effective dissemination to the general public.
4. The Media Trust also collaborates with local stakeholders, such as, the National Human Rights Commission, to organise workshops and seminars for the local media. In addition, there are regular collaborations with the University of Mauritius, NGOs, such as Gender Links, to hold further training sessions.

**Jurisprudence**

1. There have been a few relevant cases related to the freedom of thought before the Courts in Mauritius, namely in actions of defamation where the press has penned down their thoughts about public figures or any particular person. The Court have, in those cases. a tendency to do a balancing exercise between the public interest, whether the article was made in good faith and the right of the person in question as follows:

(a)In the case of **E. Francois v/s Le Mauricien Ltd & Ors** (2005 SCJ 94) the Court has stated that:

“*“Freedom of expression constitutes one of the essential foundations of a democratic society … it is applicable not only to “information” or “ideas” that are favourably received or regarded as inoffensive or as a matter of indifference but also to those that offend, shock or disturb. Such are the demands of that pluralism,tolerance and broad-mindedness without which there is no democratic society.”*

*“… the press plays an essential role in a democratic society. Although it may not overstep certain bounds, in particular in respect of the respect and rights of others …”*

(b)In the case of **Cinemax Ltd & Ors v.s Le Mauricien Ltd & Ors** (2018 SCJ 139), the Court has referred to the case of **L. Davdison v.s Le Mauricien Ltee & Ors (2017 SCJ 371)** to set down the principles which constitute the defence for fair comment which are as follows:

“(1)The matter in respect of which the comment is made is a matter of public interest.

(2) Where the matter consists of facts alleged to have occurred, the facts are true.

(3) The comment is ‘fair’.

(4) The statement is not made maliciously.”

(c)**Hossenbaccus v.s Le Mauricien Ltd & Ors (2001 SCJ 283)** the Court held that the test to be applied is as follows:

*“There are two questions involved in the attempt to identify the appellant as the person defamed. The first question is a question of law – can the article, having regard to its language, be regarded as capable of referring to the appellant? The second question is a question of fact – does the article, in fact, lead reasonable people, who know the appellant, to the conclusion that it does refer to him?”*

1. There is no precedent of evidentiary challenges in our case law. Cases under **section 11** of the **Constitution** are few and in all of those cases, there was no evidentiary burden placed on the plaintiff.

In **Roman Catholic Diocese of Port-Louis v Minister of Education 1991 MR 176 1991 SCJ 350**, the **Education (Amendment) Regulations 1989** purported to amend the **Education Regulations 1957** inconsistent with the plaintiff’s fundamental freedoms as guaranteed under **sections 11** and **14** of the **Constitution**. The plaintiff averred that they had ensured that the employment of any person of their staff was compatible with the Roman Catholic faith and moral tenets and the specific religious character of the schools. However, they have never made any discrimination on racial grounds in their recruitment.

The Court held that what the plaintiff is really saying is not that it wants to be able to refuse to employ a teacher solely because he is not of the Catholic faith (which it could not do) but that, in the recruitment of its staff, it wishes to be free, in order to preserve the specificity of its schools and foster its message from the Holy Gospel through the education it provides, to ensure that, on the one hand, it can refuse to employ, or dismiss, those who openly advocate unacceptable practices and, on the other, that it may, in appropriate cases, use criteria additional to mere academic qualifications so as to have available on its staff a suitable number of persons to achieve those purposes. The plaintiff is perfectly entitled to do so and it would not be permissible to abolish that right by legislation.

1. To effectively assist the State of Mauritius in promoting Freedom of Thought, the Police Department ensures that all Mauritian citizens are free to enjoy this right within the community to which he/ she belongs. All police officers are empowered and provided with knowledge on above human rights and relevant consequences for any breach of those rights. As Police Officers are of different cultural backgrounds and origins, training is given to ensure that there are no forms of discrimination as regards to the practice of different religions and beliefs.
2. The Police Training School (PTS) in its programme do contain a comprehensive module on Human Rights including the Constitution of Mauritius which is dispensed to every Police recruit during his/ her “foundation Training” and to “in service” Police Officers during refresher courses. Moreover, Police Officers are educated on the different offences which may arise from any breach of human rights provisions.

**16 June 2021**

**ANNEX:**

SECOND SCHEDULE OF THE IBA ACT

(sections 21, 24, 25)

CODE OF CONDUCT FOR BROADCASTING SERVICES

1. **Preamble**

The fundamental principle to be upheld is that the freedom of all broadcasting licensees is indivisible from, and subject to, the same restraints as those relevant to the individual person, and is founded on the individual's right to be informed and to freely receive and disseminate opinions.

1. **General**

Broadcasting licensees shall -

* 1. not broadcast any material which is indecent, obscene or offensive to public morals or offensive to the religious convictions or feelings of any section of the population or likely to prejudice the safety of the State or the public order or relations between sections of the population;
	2. not, without due care and sensitivity present material which depicts or relates to brutality, violence, atrocities, drug abuse and obscenity;
	3. exercise due care and responsibility in the presentation of programmes where a large number of children are likely to be part of the audience.
1. **News**
	1. Broadcasting licensees shall report news truthfully, accurately and objectively.
	2. News shall be presented in the correct context and in a balanced manner, without intentional or negligent departure from the facts, whether by -
		1. distortion, exaggeration or misrepresentation;
		2. material omission; or
		3. summarization.
	3. Only that which may reasonably be true, having due regard to the source of the news, may be presented as fact, and such facts shall be broadcast fairly with due regard to context and importance. Where a report is not based on fact or is founded on opinion, supposition, rumors or allegations, it shall be presented in such manner as to indicate clearly that such is the case.
	4. Where there is reason to doubt the correctness of a report and it is practicable to verify the correctness thereof, it shall be verified.

Where such verification is not practicable, that fact shall be mentioned in the report.

* 1. Where it subsequently appears that a broadcast report was incorrect in a material respect, it shall be rectified forthwith, without reservation or delay. The rectification shall be presented with such a degree of prominence and timing as may be adequate and fair so as to readily attract attention.
	2. Reports, photograph or video material relating to matters involving indecency or obscenity shall be presented with due sensitivity, clue regard being had to the prevailing moral climate. In particular, broadcasting licensees shall avoid the broadcasting of obscene and lascivious matter.
	3. The identity of rape victims and Other victims of sexual violence shall not be divulged in any broadcast without the prior consent of the victim concerned.
1. **Comment**
	* 1. Broadcasting licensees shall be entitled to comment on and criticize events of public importance.
		2. Comment shall be presented in such manner that it appears clearly to be comment, and shall be made on facts truly stated or fairly indicated and referred to.
		3. Comment shall be an honest expression of opinion.
2. **Controversial issues of public importance**
	1. In presenting a programme in which controversial issues of public importance are discussed, a broadcasting licensee shall make reasonable efforts to fairly present significant points of view either in the same programme or in a subsequent prograrnme forming part of the same series of programmes presented within a reasonable period of time and in substantially the same time slot.
	2. A person whose views have been criticized in a broadcasting programme on a controversial issue of public importance shall be given a reasonable opportunity b y the broadcasting licensee to reply to such criticism, should that person so request.
3. **Elections**

During any period starting, in respect of National Assembly Elections, on the day of election and ending on the day poll is to be taken, all licensees shall comply with such guidelines as shall be issued by the Authority.

1. **Privacy**

In so far as both news and comment are concerned, broadcasting licensees shall exercise exceptional care and consideration in matters involving the private lives and private concerns of individuals, bearing in mind that the right to privacy may be overridden by a legitimate public interest.

1. **Paying a criminal for information**

No payment shall be made to persons involved in crime or other notorious behaviour, or to persons who have been engaged in crime or other notorious behaviour, in order to obtain information concerning any such behaviour, unless compelling societal interests indicate the contrary.