

**Freedom of Expression as set out under Article 22 (1) – Scope of the freedom  
as guaranteed by the Constitution.**

*A paper delivered by the Chief Justice during the Symposium held on the theme  
“The Freedom of Expression”, at the Palais des Justice on the 17<sup>th</sup> of June 2024  
on the occasion of the Day of the Constitution.*

**Protocols**

- Your Lordship, the President of the Court of Appeal, Hon. Justice Anthony Fernando.
- Representative of the Speaker of the National Assembly, Hon. Bernard Georges;
- Hon. Attorney-General, Mr. Frank Ally;
- Hon Justices of Appeal and Hon Judges of the Supreme Court
- Hon Magistrates ;
- Representatives of the National Assembly;
- Members of the Diplomatic Corps;
- Members of the Attorney General’s Office, Human Rights Commission, Media Commission, Anti-Corruption Commission;
- President & members of the Bar Association of Seychelles;
- Representatives of the media;
- Faculty & students of the University of Seychelles;
- Distinguished guests
- Ladies and gentlemen,

Good morning.

Permit me to welcome you all once again to the Judiciary's annual Constitution Day Symposium. We have strived to make these annual events part of a continuous celebrations commemorating the adoption of our Constitution, which heralded the creation of our Republic. This is an event where critical issues of the Rule of Law, which underpins our system of government, are discussed, the aim of which is to further strengthen our democracy and our Republic.

This year we have chosen the very critical theme of "Freedom of Expression", which is a fundamental right guaranteed by Article 22 of the Constitution of the Republic of Seychelles. We have chosen this theme because this particular freedom is one which is central to our way of life, and to which several other freedoms are related and dependent upon. It is one of the most talked about right and yet it is also one of the most misunderstood right. Its importance to a right owner is self-evident, as it is clear that if he cannot be allowed to express himself fully, he or she will not be able to successfully prosecute the enforcement of other rights and freedoms in our Charter of Fundamental Rights and Freedoms, as it is through expressions, verbal and written that they can all be enforced. It is our hope that at the end of our discussions today, this right will be better understood by us all here present, as well as by the generality of the citizenry here represented.

George Orwell once wrote; *"If liberty means anything at all, it means the right to tell people what they do not want to hear."* I think in this phrase he managed to capture the essence of the Freedom of Expression. The importance of freedom and free speech cannot be overstated. Without this right, individuals are unable to express their thoughts and beliefs, share their ideas, and participate in meaningful dialogue. In a free society, individuals are able to exchange ideas and engage in constructive debate, which brings innovation and progress. Free speech also serves

as a check on government power, ensuring that those in power are held accountable and preventing abuses of power.

Article 22 of our Constitution enshrines the right to Freedom of Expression or of speech as follows;

*“22. Freedom of expression*

*(1) Every person has a right to freedom of expression and for the purpose of this article this right includes the freedom to hold opinions and to seek, receive and impart ideas and information without interference.”*

My modest contribution this morning is an attempt at dissecting this Right, whilst the other distinguished speakers would be focusing more on the permissible derogations

### **What is freedom of expression?**

Freedom of expression is a fundamental component in a democracy. It provides every person the freedom to hold diverse opinions and express them, to obtain information, as well as to communicate information and ideas without interference from public authorities. This fundamental right allows for the circulation of different perspectives and beliefs, as well as free debate and discussion within society.

Moreover, it is a key tool for the media and the wider society to hold the State, its institutions, and politicians accountable for their actions, particularly regarding questions of corruption or conflict of interest within government. Therefore, even though this right is highly important for all people, it is of particular significance for journalists and anyone working in the media, as it is their job to be the

‘watchdog’ of a healthy democratic society. This means that they must be allowed to write and report freely about, or criticize, the State and its institutions.

### **What forms and types of expression are protected?**

The right provided for in Article 22 (1) does not exclude any other forms of lawful expressions not otherwise provided in its provisions as it uses the expression “includes”, meaning that it does not necessarily excludes those forms not expressly provided. First of all it includes the right to hold opinions. We all have opinions on all matters of life, public or private, controversial or mundane. We are entitled as of right to have and hold those opinions as strong as they may be. Most of the time these opinions and ideas are part of our thoughts, and as far as they remain in those forms and in our minds, obviously they cannot even be touched. I have never come across a civil or criminal prohibition penalizing a form of thought.

Freedom of expression protects ideas or opinions that may be controversial, disturbing or even shocking – because pluralism and tolerance are core values of a democratic society. It is those opinions that are eventually turned by somebody into an expression. Whatever be the form that the opinion takes, it becomes liable to control and limitations, given that there are not expressed. Therefore one must distinguish the right to hold an opinion from the right to express an opinion. The former permits no exception or restriction – nobody can be prohibited from holding an opinion, even an unpopular one as this is by nature beyond the capacity of external control. What is restricted is the expression of that opinion in certain situations and context.

The forms of the human expression covered by the right is extensive. First it is to be noted that it covers expressions that actively **seek ideas and information;**

secondly, it covers expressions that seek to **receive ideas and information**; and thirdly, it covers **expressions that seek to publish and disseminate ideas and information**. Whether it is in the form of seeking or receiving, this right covers different forms of expression: visual (pictures, photographs, images and video), audio (music, expressed words, etc.) and conduct (performance or action). It will also cover both verbal and non-verbal communication. Expressions of different nature are protected: political, artistic, commercial, or other forms. A simple practical example would be somebody speaking and another listening; both persons, the speaker and the listener, engaged in the conversation, are both enjoying their freedom of expression. Now we can take the same scenario, but change the mode or means of communication, and it would not change the protection afforded by Article 22 (1). Both of them could be conversing over the internet; through a social media platform; video conferencing ; audio and video calling and they would still be enjoying the right.

### **What are the limitations to freedom of expression?**

Freedom of expression is not absolute and thus can be subject to restrictions. In Seychelles the restrictions are provided for in Article 22 (2) of the Constitution. Which stipulates as follows;

*“(2) The right under clause (1) may be subject to such restrictions as may be prescribed by a law and necessary in a democratic society—*

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

*(b) for protecting the reputation, rights and freedoms or private lives of persons;*

*(c) for preventing the disclosure of information received in confidence;*

*(d) for maintaining the authority and independence of the courts or the National Assembly;*

*(e) for regulating the technical administration, technical operation, or general efficiency of telephones, telegraphy, posts, wireless broadcasting, television, or other means of communication or regulating public exhibitions or public entertainment;*

*or*

*(f) for the imposition of restrictions upon public officers.”*

These restrictions have generally been accepted and applied by other international human rights institutions and followed by many national decision-making bodies as permissible exceptions to the exercise of this right. If the restrictions are ones that are proportional to the objectives sought to be attained by the State, and are ones that are reasonably required in a democratic society, they would be permissible.

THEREFORE, IT IS TO BE NOTED THAT not all expressions are legal and constitutional; for example, hate speech or incitement to violence are not granted such protection. I note that there are distinguished speakers who will make their presentations on some of those limitations to Article 22(1) and the scope of the restrictions. I am, just as you are, looking forward for their exposes.

**Who protects this right?**

The State is the main guarantor of human rights. Its obligations are two-fold: negative (obligations “not to do” something) and positive (obligations “to do” something).

The negative obligation is to refrain from arbitrary interference with one’s freedom of expression, thus creating an environment allowing the free exchange of ideas and opinions. The positive obligation is to ensure the protection of freedom of expression from interference by public authorities or any other interference. This includes the establishment of effective mechanisms for the protection of journalists, a functioning system of courts and passing enabling legislation that would protect this right. For example, the protection of an individual against slander and libel has to be provided for in law under Article 22(2) (b) of the Constitution. Without this law the right would be ineffective, and this falls within the positive obligation on the state.

However, it is to be noted that the right is give and can be enforced against any others, including a private individual.

### **International recognition of this right**

Freedom of expression was included in the Universal Declaration of Human Rights of 1948, the first comprehensive list of human rights adopted by the United Nations General Assembly.

Article 19 reads:

*“Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.”*

This right is also included other in international and regional human rights conventions and that of constitutions of many democratic societies. For example;

***The International Covenant on Civil and Political Rights (ICCPR) – Article 19,*** which provides as follows:

- 1. Everyone shall have the right to hold opinions without interference.*
- 2. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice; and*

***The African Charter on Human and Peoples’ Rights – Article 9,*** which similarly provides that:

- 1. Every individual shall have the right to receive information.*
- 2. Every individual shall have the right to express and disseminate his opinions within the law.*

Under Article 48 of the Constitution the courts of Seychelles are bound to take Judicial Notice of pronouncements made in international, regional and states forums enforcing those instruments and the texts of those instruments. This jurisdiction has been very active in enforcing Article 22(1) over the years. A lot of interesting case law has developed on the subject, all leaning heavily towards a liberal interpretation of this right. Clearly setting out the scope and content of the right in total conformity to our treaty obligation and the aspiration of the Makers of the Constitution. This has been the case with regards to the law of defamation; regulating and broadcasting of communication; the law on public order; licensing



etc. In all cases the court is always trying to find the perfect balance between the proper exercises of the right within the context of the permissible derogation. One passage struck me in a judgment given by a Supreme Court Judge in a defamation suit in 2016, which succinctly captures this exercise. He held

*“The freedom of expression is the life blood of the media. Without this it cannot function. However that freedom, as the Constitution clearly provides, is limited to the extent that the citizen is fully entitled to enjoy his reputation, which means that no one is allowed to harm his reputation. These are two corresponding rights; one does not exist without the other. Whenever therefore, a party comes to a court of law and alleges that his reputation has been tarnished by another person, it is open for the latter to prove that what he published was true; this is the basis of the long established basis of the defence of justification. No harm can be caused by publishing the truth.”*

## **Conclusion**

Everyone has the right to communicate his or her opinions and ideas and share information in a variety of forms. Hence the generic term *expression*. This, as we would see, prohibits censorship by the state and other people in society, and it can be restricted for only very serious reasons. The exercising of this right – without fear or unlawful interference – is central to living in an open, equitable and fair society; one in which people have access to justice and enjoy their human rights. We at the Judiciary we have given our unswaying commitments to ensure that this freedom of expression, that is no doubt the precursor and enabler of so many other freedoms and rights in the Constitution, is maintained.

However, I have noticed that this is a right in which technology and innovation is always changing its form and the modes by and in which it is exercised. The more

innovatively we communicate, and the easier technology allows us to express ourselves freely to a larger audience, the more the tendency for us to believe in an absolute right to speak without restrictions. This cannot be the case. We all need to reflect on the fact this freedom is real because it exists in the context of the Rule of Law, a right which comes within a legal framework where there is balancing competitive interests, proportionality and protecting the rights of others.

You need to be able to tell people things that they do not want to hear, just as people need to be able to tell you things that you do not want to hear. Winston Churchill said: *“Everyone is in favor of free speech. Hardly a day passes without its being extolled, but some people's idea of it is that they are free to say what they like, but if anyone else says anything back, that is an outrage”*.

Personal discipline, tolerance and broad mindedness is therefore essential in the proper exercise of this right. The Supreme law dictates that this right operates in this context, if this right is to be properly exercised and enjoy fully by one and all.

Thank you for your kind attention.

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