



RIGHTS TO FREEDOM OF EXPRESSION AND THE PRESS

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ABSTRACT

The paper appraises the constitutional provision that every person shall be entitled to freedom of expression, including freedom to hold opinion and to receive and impart ideas and information without interference. It states that the endemic fears of domination of one ethnic group by the other was one of the reasons for entrenchment of the right to freedom of expression and the press in the Nigeria Constitution. It reasons that theoretically that true freedom of expression and the press is feasible but practically it is not realizable. It is of the view that derogation clause contained in the constitution is necessary because it serves as a balancing provisions in any society.

Key words: Freedom of Expression, Press, Constitution and Limitation on the Right

INTRODUCTION

The history of the concept of freedom of expression and the press is as old as history itself and any organised society can lay claim to its origin. However, to an Euro-centric scholar, this inherent right is traceable to the Greek and the Romans. This conclusion is however most unfortunate and faulty, for the fundamental human right of man to freely express himself is not an exclusive preserve of any particular society. This inherent right claimable by mankind pervades all human civilization, and organized societies in its distorted form. However, the modern idea of freedom of expression and the press started shortly after the brutal termination of the second world war. This commenced principally because of the unprecedented violation of freedom of expression and the press in particular and other forms of human rights in general by State authorities that are ironically supposed to promote, protect and respect them.

In 1948 to be precise, the internationalization of human rights issues took a positive dimension with the progressive codification of internationally recognized human rights in a document called the *Universal Declaration of Human Rights*. With respect to freedom of expression and the press, Article 19 of the *Universal Declaration of Human Rights*, specifically provides that: "Everyone has the right to freedom of opinion and expression,

this right includes freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media regardless of frontiers." (United Nations Organisation, UNO, 1948)

This formal declaration of inherent human rights in a document though not legally binding was swiftly followed by series of binding treaties such as, the *International Covenant on Civil and Political Rights* and the *International Covenant on Economic and Social Rights*. Similarly, the *African Charter on Human and Peoples' Rights* which came into force in 1986 expects its signatory States to uphold, and promote the provisions of its charter with regard to the question of freedom of expression and the press. Article 9 of the Charter 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.

These international covenants, treaties, declarations, proclamations, principles and guidelines serve as human rights

models for modern democratic States of the world including Nigeria.

The meaning of freedom of Expression and the Press

Freedom of expression and the press is one of the coalitions of human rights ideas that have received constitutional backing in Nigeria (Federal Republic of Nigeria, FRN, 2011). Freedom as a term means enjoyment of personal liberty, a state of not being a prisoner or a slave. It is a situation of being free of encumbrances that hinder the enjoyment of one's liberty. Linked with the word "expression", freedom of expression connotes the liberty to openly discuss issues without fear of restriction or restraint. On the other hand, freedom of the press according to Blackstone (2016), essentially means, the liberty of not putting any previous restraints or restrictions on a publication and not liberty from censure when an untrue or seditious material is published. In his words:

Every freeman has an undoubted right to lay what sentiments he pleases before the public: to forbid this, is to destroy the freedom of the press: but if he publishes what is improper, mischievous, or illegal, he must take the consequence of his own temerity....But to punish (as the law does at present) any dangerous or offensive writings, which, when published, shall on a fair and impartial trial be adjudged of a pernicious tendency, is necessary for the preservation of peace and good order, of government and religion, the only solid foundations of civil liberty. (Blackstone, 2016).

The press generally covers printed matter of all kinds and not merely Newspapers and

periodicals. The freedom of the press as earlier stated consists in laying no previous restraints upon publications and not in freedom from censure for criminal matters when published. Thus "liberty" so said by Lord Mansfield in *R. v. Shipley* "consists in printing without any previous license subject to the consequence of law". To Alexander Hamilton in *People v. Crosswell* (1804) freedom of expression and the press connotes the: "right to publish with impunity, truth, with good motives for justifiable ends though reflecting on government magistracy or individuals."

The right to freedom of expression extends to all types of expression, which impart or convey ideas or information irrespective of the content or channel of communication. This right as held by a European Court in *Handyside* case constitutes one of the essential foundations of a democratic society and the basic condition for its progress and development.

The Right to Freedom of Expression and the Press Under the 1999 Constitution of Nigeria

The endemic fear of domination of one ethnic group by the other is an absolute conviction which every ethnic nationality in Nigeria holds supreme. To help erase this recurrent decimal of fear of domination, the framers of Nigerian constitution inserted series of human rights provisions in the constitution. From 1960 Independence Constitution to the present constitution, there are several entrenched human rights provisions. With reference to Freedom of Expression and the Press, the Nigerian Constitution provides in section 39 (1) that:

Every person shall be entitled to freedom of expression, including

freedom to hold opinions
and to receive and impart
ideas and information
without interference. (FRN,
2011).

A proper understanding of the above section means that the right to freedom of expression and the press is claimable by all Nigerians and non-Nigerians residing in Nigeria. Thus every person within the territorial confine of Nigeria possesses the right to hold opinion; to be educated, to educate others and most importantly, to share ideas and information with others without censure, or other forms of restriction.

The Constitution in its preamble provides that:

Having firmly and solemnly
resolved to provide for a
constitution for the purpose of
promoting the good
governance and welfare of all
persons in our country on the
principles of freedom,
equality and justice and for the
purpose of consolidating the
unity of our people:

**DO HEREBY ENACT
AND GIVE TO
OURSELVES** the following
constitution. (FRN, 2011).

In every human society, Nigeria not being an exception, the desire and freedom of an individual to hold an opinion and share the same with a listener of his choice is a fundamental one. This is because a person has right to have a perspective of the world, the circumstances around him and the people he interacts with. It is the realisation of this right that prompted Justice Cardozo to opine in the United States of America case of *Palko v. Connecticut* (1973) that freedom of expression and the press is, “the matrix, the indispensable condition of nearly every other

form of freedom.”

The right to freedom of expression and the press is a core and valuable right in any human society. This is because without the exercise of this right, true freedom of a person or persons would be elusive and a person would not be able to ventilate his view points or speak out or write his thoughts or even associate with others who might subscribe to his viewpoint or interest.

In Nigeria, like in any other democratic state, there is stiff competition for position of power and influence. To ensure a free and fair competition for these coveted positions, citizens must feel free to speak out their minds and exchange their convictions with others so as to convince them. To silence this inalienable right is to strike at the heart of the inherent of the public to choose what it wants. This is indeed the essence of the right to freedom of expression and the press as encapsulated in the current constitution of Nigeria.

The right to freedom of expression and the press as enshrined in section 39 of the current constitution is an encompassing one for it also embraces the power of the mass media, and acknowledges the right of individuals in harnessing and sharing the vast reservoir of information that the mass media has to offer.

In other to ensure that the press and the mass media live up to expectation, the constitution cushions the right to freedom of expression and the press with an obligation. Specifically, section 22 of the Nigerian Constitution provides that;

The press, radio, television
and other agencies of the
mass media shall at all times
be free to uphold the
fundamental objectives

contained in the chapter and uphold the responsibility and accountability of the Government to the people.

Though the above provision gives a clear-cut message, it must however be borne in mind that non-observance of the provision alone is not a justifiable cause in any court of law in Nigeria. This is because, the provision stemmed from chapter II of the constitution which merely outlines fundamental objectives and directive principles which any government in power not withstanding its tier should observe. Essentially, the fundamental objectives are mere policy objectives which governments in Nigeria are enjoined to pursue so as to realize the enviable national aspirations or objectives outlined therein.

Limitation on the Right to Freedom of Expression and the Press Under the 1999 Constitution

Though chapter IV of the Constitution contains clusters of rights among which is the right to freedom of expression and the press, the rights so guaranteed under it are not absolute

but subject to several limitations. These limitations in a nutshell includes, treason, official secrets, sedition, contempt of court or parliament, defamation, civil libel and slander under criminal law, incitement to muting or disaffection among armed forces or police, obscene publication, blasphemy, incitement to commit any criminal offence, public disorder and racial hatred. In total, the right to freedom of expression and the press like other rights enshrine in the constitution is residual and subject to limitation by the constitution and other laws.

Constitutionally, the right to freedom of expression and the press is curtailed with other rights by section 45 of the constitution. The said section provides that;

- i. Nothing in section 37, 38, 39, 40 and 41 of this constitution shall invalidate any law that is reasonably justifiable in a democratic society,
 - a. In the interest of defence, public policy, public order, public morality or public health or
 - b. For the purpose of protecting the rights and freedom of other persons.

The summary of section 45 is that it expressly permits the breaching of the enshrined rights contained in section 37, 38, 39, 40 and 41 of the constitution under certain circumstances. For instance, on account of defence, war, public safety, order, morality, peace, and health, the right to freedom of expression and press in particular and others in general may be brushed aside. Sadly, it is possible that a government poor in promoting or projecting human rights in general and the right to freedom of expression and the press in particular may capitalize on the leeway offered by the above derogation clause to unleash human right abuse and ambush individuals enshrined rights. This was exactly what happened during the infamous Abacha era.

It is good that every interference with freedom of expression and the press, and other fundamental rights must be justified or prescribed by law, an interference must be authorized by a national law which may be a constitutional provision, statute or delegated legislation. Furthermore, the law legalizing the derogating law must be well known.

To further elucidate whether an act is reasonable and justifiable, the constitution provides that the action in question must be so regarded in a democratic society and where an act is

done during a declared state of emergency, it must be reasonably justifiable for the purpose of dealing with the situation that exists during the period of emergency.

The determination of whether a particular act is justifiable in a democratic society is a question of fact solely reserved for the court to determine. This was the true essence of the court's decision in *Amakiri v. Iwowan*.

Apart from relying on derogation clauses for the purpose of undermining human rights in general and the right to freedom of expression in particular, another common but unfortunate method governments in Nigeria, especially military regimes adopt is the outright suspension of the provisions of Chapter IV. For example, upon coming into government in 1983, the Buhari military regime promulgated the infamous Decree 2 of 1984, which provided that:

No suit or other legal proceeding shall lie against any person for anything done in pursuance of this Act.

The Decree further provided that: Chapter IV of the Constitution of the Federal Republic of Nigeria is hereby suspended for the purpose of this Act and any question whether any provision thereof has been or is being or would be contravened by anything done or purported to be done in pursuance of this Act shall not be inquired into by any court of law.

Interpreting the provisions of the above Decree, the Court of Appeal infamously held in *Wang Yao and others v. Chief of Staff Supreme Headquarters and others* (1986) that:

The combined effect of the provisions of Decree No. 2

and No 13 of 1984 is that on the question of civil liberties, the law courts of Nigeria must now blow muted trumpets.

Theoretically, "true freedom" of expression and the press is feasible. Practically it is not. This is because an absolute exercise of freedom of expression and the press without any clawback is capable of undermining nationhood, hence, the inclusion of derogation clauses to regulate the freedom of expression and the press as enshrine in the constitution.

The derogation clause contained in the constitution serves as a balancer and the balancing provisions as cited above, are necessary in any society. This is because an unregulated Newspaper publication can undermine the unity of a nation; destroy an individual's right to fair hearing or even a person's reputation for life. This is truly the essence of section 39 (a-b) and section 45 of the 1999 constitution of Nigeria. As held by Justice Felix Franfurter in the case of *Dennis v. United States* (1951):

The primary responsibility for adjusting the interests which compete in the society between us is of necessity belongs to the congress... we are set to set aside the judgment of those whose duty is to legislate only if there is no reasonable basis for it.

CONCLUSION

The question now is how effective are these derogation clauses in balancing the public interest, in exposing wrongs and the private interest or right, of having

one's reputation protected. It is only when the balance is struck at the equilibrium that the willy-nilly relationship existing between the press and successive governments in Nigeria will subside.

However, no matter the level of relationship existing between individuals and the governments or even between individuals, the need for freedom of expression and the press in any society cannot be over emphasized. As Brandeis reasons in far away America in the celebrated case of *Whitney v. California* (1927):

Those who won our independence believed that the final end of the State was to make men free to develop their faculties... they believed that freedom to think as you will and to speak as you think are means indispensable to the discovery and spread of political truth... they recognized the risks to which all human institutions are subjected. But they knew that order cannot be secured merely through fear of punishment... that it is hazardous to discourage thought, hopes and imagination; that fear breeds hate; that hate menaces stable government..., and that the fitting remedy for evil counsels is good ones...

Fear of serious injury cannot alone justify suppression of free speech and assembly. Men feared witches and burnt women. It is the function of free speech to free men from the bondage of irrational fears. To justify suppression

of free speech there must be reasonable ground to fear that serious evil will result if free speech is practiced. There must be reasonable ground to believe that the evil to be prevented is a serious one.

As it were years ago, these immutable words remain relevant in contemporary Nigerian society.

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