

INTERROGATING THE LEVEL OF FREEDOM OF NIGERIAN MEDIA IN THE FACE OF FREEDOM OF INFORMATION ACT

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ABSTRACT

The press has for long been regarded as the fourth estate of the realm. This allusion to the media was based on its perceived power to provide counterpoint to the functioning of the other three organs of government. The only way the press can carry out its watchdog role is that it is free. The Nigerian 1999 constitution, as amended provides for such freedom. Yet, there is an inherent contradiction, as the same constitution has laws that guide the operation of the media. Basing this study on the descriptive analytical method, the paper found that during both military and civilian regimes in Nigeria, several control measures and legal restraint have always been in the way of the media from exercising this much desired freedom. The paper concludes that absolute freedom is an illusion, as it does not exist anywhere in the world. The paper therefore recommends among other things, that journalists should be wary of these legal stipulates, so as not to fall victim of the long arm of the law, as ignorance is no excuse in law.

Keywords: *Media FoIA Law Press Freedom Democracy*

INTRODUCTION

Section 22 of the constitution of the federal republic of Nigeria (199, p. 35) empowers the press – radio, television and other agencies of the mass media to, at all times be free to hold the fundamental objective of holding government accountable to the people. With this constitutional backing, the push for the Freedom of Information Act (FOIA) got to its crescendo especially during the second term of former president Olusegun Obasanjo. However, it was not until President Jonathan's regime that the bill was passed into law, hence it became an Act. Robert (2000) avers that Freedom of Information means access to information held by public authorities, which is a fundamental element of the right to freedom of expression, and is essential to the proper functioning of any democracy. Until recently, the right to freedom of information in Nigeria was overlooked while many established democracies across the world have

enacted Freedom of Information regime. Nigeria had (before now) regarded freedom of information as a luxury, only practicable in the Western world, and other established democracies (Ekunno, 2001). Ekunno (2001) further states that a culture of secrecy had become entrenched in Nigeria's government, and that members of the public, including the media are always denied access to official information of which they are supposed to be entitled to.

The mass media of any country operating democratic system of government is supposed to be free to perform their legitimate function of information gathering and dissemination. This is why Malemi (2009) explains that freedom of the press means putting no pre determined limitation on the path of the media, by the government or its agent, on what to publish or what not to publish. Publications should not be censored or impaired. Every person has the right to lay what sentiments, facts, information or publication which they deem fit to share with the public. It could also mean the right to broadcast through electronic media, without prior restraints (Campbell, 1994). Not only is it good to have the mass media as an integral part of the freedom of expression, but at the same time, as part of a system of social control that ensures that relationships between persons and social institutions are mediated. In the words of Esimokha (2014),

The right to access information held by public bodies is an integral of the fundamental human right of freedom of expression as recognized by resolution 59 of the United Nations General Assembly adopted in 1946, as well as by article 19 of the Universal Declaration of Human Rights of 1948 (p. 104).

The UDHR asserts that everyone shall reserve the rights to seek, receive and share information through any media irrespective of frontiers. In Nigeria, this same freedom is extended to the press as provided by section 39 of the 1999 constitution, with a guarantee to enjoy the right to make public pronouncements by means of publication or broadcast.

Corroborating the preceding, Black stone as cited in Tom (2006, p.26) states:

Press freedom is a principle of common law, exalted as one of the great bulwarks of liberty. It is entrenched in the constitution of the free world, not in those of totalitarian ... It means that there is to be

no censorship, no restraint should be placed on the press as to what they should publish.

A Look at Press Freedom in Some other Societies

Democracy to me seems to be the craziest (nay, nicest) thing that has happened to mankind. Many things that are not permissible in other forms of government characterize democracy. Call to mind all the fundamental human rights that have found their way into the constitutions of several countries of the world. Foremost are the freedom of speech and freedom of the press.

Hodgson (1986, p 168) documents that Britain has a free press. According to him, "There is no censor and no licensing; anyone can publish a newspaper, provided he or she does not break the law in doing so". There is no government controlled newspaper, no government shareholding in newspaper, and the only help the press gets from the government is in the form of exemption from Value Added Tax (VAT). The press without restriction covers the proceedings of the parliament; the workings of the government are reported and commented on, just as are the operations of all other public institutions. And it is fundamental to add that similar to that of the United States of America, the freedom of the press in that society is not codified in any form. Rather, it exists on the basis of consensual agreement. Similarly, the United States of America has one of the most friendly press freedoms. However, it is also on record that there is nowhere in the world where one finds an absolute freedom. Freedom carries along with it a concomitant condition to avoid abuse and chaos. Corroborating the foregoing assertion, Malemi (2009) contends:

The position in many countries is that journalists as well as any other citizens do not have a special right of access to information. What a journalist as well as any other person has is a right to seek information subject to the basic restrictions imposed by law, in the interest of the individual and the nation. However, where there is a statute which guarantees access to information, such as the Access to Information Act 2000 (South Africa), Freedom of Information Act 2000 (United Kingdom) and the Freedom of Information Act 1966 (USA). The mass media and members of the general public would have a right to obtain from government and its agencies, such information as they need. Upon default by an agency, an applicant may go to court for an order of mandamus to be issued by court to compel the disclosure of such public

information which is not subject to secrecy under the Nigerian constitution or the Official Secret Act. In USSR, shortly after the October 15, 1917 Bolshevik revolution led by Lenin, which resulted to the overthrow of the Czarist dynasty and the amalgamation of the 15 republics in the region to form the United Socialist Soviet Republic, the so formed union of USSR later disintegrated in 1991 consequent upon the coup attempt masterminded by the hard line deputies against reformist, premier Gorbachev. In USSR, the press was seen as a potent instrument and therefore should assist in the attainment of the Marxist objectives. Since the state is supreme, the press should not be used as an organ of criticism against the government (Ngwokor, 2014).

The Imperativeness of Press Freedom to the Working of Democracy

Press freedom entails that the mass media should have the right to, at all times, gather, and disseminate information without any form of restriction or censorship either by the government or its agent. "Press freedom is the liberty to gather, hold, express and disseminate information and opinion without official or unofficial restriction via written and unwritten laws and action" (Okoye, 2007). Press freedom as enshrined in constitutions of most countries has objectives Ufuophu-Biri (2006, p. 127) outlines the following as the fundamental objectives of press freedom.

1. To guarantee press freedom to journalists and other contributors to the press.
2. To guarantee the freedom and right of the journalists to freely decide what should be published, and not to be dictated to by any external body.
3. To guarantee media access to information of public interest, the media should not be prevented from gathering information that is of public interest.
4. To guarantee media practitioners freedom to public for a (Journalist can go into public fora and gather news).
5. To guarantee journalists the freedom and right to comment on issues or persons freely without fear of intimidation.
6. To give the journalists the right to comment on the conducts of public office holders; by accepting to become a public office holder, the individual has accepted to be in the people's court – the press.
7. To confer power on the press to be the watchdog and conscience of the society.
8. To enable the people to participate in matters those affect them.

9. To enable the government to be aware of, and to be sensitive to the feelings and attitude of the people towards government policies, programmes and actions (This guarantees the people's right to criticize the government constructively through the press.
10. To help to prevent the government from living in a fool's paradise. Most government advisers, especially in the third World countries are sycophants, praise singers, always telling the government that all is well whereas the reverse is the case.

Freedom of the Press: The Nigerian Experience

Nigeria is the acclaimed giant of Africa but unfortunately, Nigeria is also the leader when one thinks of negative things. The country's experience since independence can be said not to be so palatable. This is because, for the better part, the military dominated the political landscape of the country. And of course, when that is the situation, the press as usual is at the receiving end. Freedom of the press was therefore emasculated. Ngwokor (2018) laments that it is more glaring that since independence, Nigeria had witnessed more number of years of military rule than democratic governance which is while it is not surprising that the press had not found it so rosy, given the fact that Nigerians had witnessed more dark days of military dictatorship.

On the other hand, democracy permits more of freedom of the speech and of the press, by which citizens as well as the press are allowed to express their opinions without fear of molestation. In support of the foregoing, Blackstone as cited in Tom (2006) asserts that every man has the unlimited right to lay whatever belief or opinion he pleases before the public. To deny him of such a freedom is to destroy the freedom of the press. Blackstone however places a caveat by adding that if such a person publishes what is illegal, or mischievous, he must be ready to face the consequences of his temerity. Absolute freedom of the press, whether during military or civilian regime is utopian. This could arise from the various control mechanisms placed on the mass media.

Some Nigerian Mass Media Control Mechanism

To further ensure that the mass media is not free, government exerts strangulating controls, via regulation of both the private and public media. Nwachukwu as cited in Onwuka (2009, p. 90) avers: "these pernicious laws and decrees against the media gave government officials legal backing

to persecute, fine, detain, and imprison journalists, and to proscribe media houses". Adebayo (2010) notes that apart from government control of the media through laws, it uses certain preferential treatment to 'buy' the most influential journalists in the media to top positions within the government. For example when Tony Iredia became popular, nay, notorious with his "Point Blank" on NTA Network, asking his guests tasking questions, most of whom were government officials, the federal government did not hesitate to first appoint him as Director-General of National Orientation Agency (NOA) and later, Direct-General of NTA. This tactics put paid to his quest for asking too many tasking questions.

Mass media laws are an infringement on press freedom. There are a number of laws which act as bottle-neck to the exercise of the freedom supposedly given to the mass media. According to Nwosu (1993), the law as regards the mass media has been so clearly written and differentiated that it gives no room for doubt as to its intentions. And this intention is to forestall over zealousness, embarrassment, dissent, disaffection or excitement. Weather the mass media agree to its desirability, wisdom and humanness is another issue. Although there has been hue and cry against certain legal stipulations, it still remains to be deleted, amended, or reconstituted for the good of the journalist. Esimokha (2016) defines media law as:

A body of rules and regulations governing the dissemination and receiving of ideas and information through the media of mass communication. In other words, media law is an area which cover various media of communication, providing guidelines for their operation and sanctions that will be enforced against violators (p9).

The following are some of the laws that are openly against the much desired freedom of the press.

Defamation

Tracing the origin of defamation, Tom (2006) explains that it could be linked to the reign of king Alfred the Great, who in the 9th century had decreed that slanderers should have their tongues cut off. He explains that however, as civilization set in, slanderers were no longer subjected to physical punishment like cutting off of their tongues, but are now made to bear some financial pain through payment of damages. Tom (2006) therefore defines civil defamation as: Communication which exposes a

person to hatred, ridicule, or contempt, lowers him in the esteem of his fellows, causes him to be shunned or injures him in his business or calling.

With the backing of the constitutional provision, the journalist is entitled to practice his profession freely, but he should recognize the fact that where his right ends marks the beginning of another's right. This is because a publication made by a journalist which may appear to him as harmless may obviously be defamatory to a person affected by such a publication who may resort to court for legal redress.

Contempt of Court

Simply put, contempt of court means disregard for the court and its paraphernalia. It consists in actions that aim to attract disrespect or disrepute to the court by way of obstructing the process of administration of justice. Contempt of court could be either civil, i.e. when it deals with disobedience to court injunction and disobedience to subpoena, or criminal contempt, i.e. any act of public character that tends to interfere with the administration of justice is a criminal contempt. (Eweluka, 2004).

Sedition

The law of sedition usually frowns at any act capable of inciting the public against the government of the day. The law of sedition exists to prevent words or publications that cause hatred, ill will, contempt, or disaffection against the person of the president or Governor, likely to lead to public disorder."This law is meant to prevent criticism that could lead to public protest against public officials" (Ufuophu-Biri, 2006).

Official Secret Act

Section 1(1) of the act says a person who transmits any classified matter to a person to whom he is not authorized on behalf of the government to transmit it, or who obtains, reproduces or retains any classified matters which he is not authorized on behalf of the government to obtain, is guilty of an offence. Section 2 of the official secret Act states that any person who for any purpose prejudicial to this section of the law of Nigeria:

- (a) enters or is in the vicinity of or inspects a protected place,
- (b) photographs/makes sketches of anything situated in a protected place,

- (c) obstructs, mislead or otherwise, interferes with a person engaged in guarding a protected place,
- (d) obtains, reproduces or retains any photograph, sketch, plan, placed in a protected place shall be guilty of an offence.

The official secret Act is enacted to safeguard secret and confidential information, document, and matters belonging to government. However, its purpose is not clearly made. As Esimokha (2016, p. 92) puts it:

The issue of access to information and protection of state or government secrets again bring to the fore the perennial conflict between freedom of expression i.e. freedom to gather information and the right and duty of the state to safeguard national security.

Copyright Law

The essence of the law is to protect the intellectual property of persons in the society. Sambe & Ikoni (2004) explain that copyright has to do with the exclusive right to do or to authorize other persons to do certain acts in relation to any intellectual work in any material form, publishing it, performing it in public, broadcasting it, or making any adaptation of it.

Newspaper Amendment Act (1964)

Nwosu (1993) writes that this Act was introduced in 1964 as a check on the licentiousness of publication of the press. Section 4(1) (2) of the Act provides as follows:

Any person who authorizes for publication, publishes, reproduces or circulates for sale in a newspaper any statement, rumour or report, knowing or having reason to believe that such rumour or report was false, shall be guilty of an offence and liable on conviction to a fine of two hundred pounds, or to imprisonment for a term of one year, and the fact that he did not know the rumour or other statement to be false is not valid defense, unless he shows that he took reasonable steps to verify the accuracy of such statement, rumour or report.

Theoretical Framework

Free Press / Free-Flow of Information Theory

The free press theory also known as free flow of information theory was propounded in 1963 by Siebert, Peterson and Schramm. The scholars formulated the theory out of the liberal thinking in the 18th century in

England, the intent was to support liberty, freedom of expression and respect for the individual to think and act. They believed that the media should serve as a free market place of ideas, as a result of which it should be free from all manner of censorship.

The era also produced many apostles of free press. Among these apostles were John Milton, Benjamin Franklin, Thomas Jefferson, James Madison and John Stuart Mill. These apostles of free press were so unanimous in their fighting for press freedom. They vehemently fought for press freedom in the 18th century and finally, they achieved it in the 19th century (Asemah, 2011). McQuail (1987) believes that "a free press is an essential part of 'a free and rational society" (P. 113).

This theory is relevant to this study as it explains the rationale for the free sharing of information in a free society. Nigeria is a democratic society, and therefore journalists, based on the recently passed 'Freedom of Information Act', should be allowed access to information without any cog in the wheel of performing their function of information gathering and dissemination.

CONCLUSION

It is true that the constitution of the federal republic of Nigeria provides that the press shall at all times be free to perform its avowed responsibility of holding government accountable, yet it is evidently true that absolute freedom does not exist anywhere, hence it is an illusion. In the course of one exercising one's right, one may infringe on another's right. This is why there are laws to guard against abuse of those human rights. Nwosu (1993, p.47) reminds us that the issue of law is not peculiar to any state. It is not native to races, ethnic groups or a nation....One thing absolute about law is its ability to bring people to order. In law, there is always this maxim: "ubisocietie ibi jus" which means that "where there is society, there is justice or law" and "ubi jus, ibi remedium" meaning "where there is a law, there is a remedy." Therefore, journalists should endeavour to always refresh their memories on the various legal stipulations put in place to guard against excesses.

RECOMMENDATIONS

Bearing the foregoing in mind, journalism professionals should be wary of these several legal limitations, in order to be able to toe their professional

pathway without frequently falling victim. Government at every level should respect the Freedom of Information Act which supposedly guarantees free access to information to journalists. Government functionaries should remember at all times that the press have the constitutional responsibility of holding them to account, therefore, they (government functionaries) should endeavour to keep open all their operations with minimal traits of abuse of office.

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