

FREEDOM OF EXPRESSION AND OF THE PRESS IN NIGERIA: A WISH OR A RIGHT FOR THE COMMON MAN

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Abstract

Local and international legislations abound to assure citizens of their right to freedom of expression and in extension to make this right far reaching, the freedom of the Press which serves as an extension to the right to freedom of expression is also provided for, guaranteed and protected under Nigerian laws. It is in a bid to Foster and localize the right to freedom of expression and of the press and arouse the consciousness necessary for national Constitutional Press freedom activism that this paper is attuned. This paper examines the freedom of the press under Nigerian laws as well as the right to freedom of Expression. It also examines the press as a polity not excluding cardinal and coordinated hard knots which are nebulously put in place be the microscopic few, to militate against the exercise of these rights. The laws of this country particularly the Nigerian Broadcasting Commission Act 1992 as amended in 1999 is analytically examined as it affects the right to own a broadcast station. From the court judgment in FCC v Pacifica

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the intendment of some judgments of courts as it relates to press freedom is examined as well as words considered indecent. This work also discusses press as the hope of the common man; freedom of Expression but, not against the ruling class and the rule of activism in ensuring the enjoyment of the right to freedom of expression.

1. Introduction

The world is today referred to as the globe. This is because information now circulates round and within it regardless of international barriers. Expression is man's asset to get the best, starting from Adam. God even created all things by words of the mouth called spoken words. Adam named the creatures also by expression of words of mouth. Trying to coordinate and regulate the means and media of Expression, the people's social contract brought about several rules among which is the codification of this natural bequeathment. The world's nations and states through their Fundamental laws have put in place protocols and regulatory documents to not only grant this human right but also to protect it vehemently, Nigeria is not an exception to this codification. Therefore laws abound including the Constitution of the Federal Republic of Nigeria 1999(as amended)(hereinafter refer to as CFRN) as expressed provisions guarantee and protecting this right it is also important to state here that this right of expression is a human right and that it has been Fundamentally guaranteed the world over also the press has also been statutorily set up and saddled with the additional right in furtherance of the enhancement of the right to freedom of Expression this paper is an attempt to crystallize Thai right as it affects our society today and most

importantly examines the denial of same by reasons of status and corruption under the guise of connection.

The challenges faced by the common man is it that has informed this paper this right which was first guaranteed by the Universal Declaration of Human Rights in 1948, has now gained local acceptance and the citizens crave to benefit and enjoy its usage, unfortunately, the movers and controllers of corrupt political power have monopolized it and dispenses it as though it is not a human rights and as also in so doing influenced other agencies of government the judiciary inclusive in some cases to rob the common man of this right.

2. Freedom of Expression under Nigerian Laws.

By freedom one means the allowance to do something at will without being stopped or controlled by anyone¹. It also means the legal right to say what you want or chose your religion. Freedom of Expression is considered the backbone of a democratic society. It is a citizen's right to express his opinion on political, economic and social issues and also to criticize undesirable events with a view to restoring sanity in the society. The right to freedom of expression is a universally approved and acknowledged phenomenon. It is the right to express one's idea and opinion freely through speech and other forms of communication including the internet but without deliberately causing harm to the character and reputation of others by false and misleading statements. By the express provision of section 39(1) CFRN, 'every person shall be entitled be to freedom of expression including freedom to hold opinions and to receive and impart ideas and information without interference; also, the National Assembly pursuant to Section 39(3) CFRN enacted the

¹ Longman Active Study Dictionary, 5th edn. p. 357

freedom of information Act, 2011 which gives elaborate explanation and procedures all pointing and geared toward the right provided under Section 39 CFRN. On up till now, the National Assembly is still working hard to get the Protection from Internet Falsehood and Manipulation Bill 2019 otherwise called ‘Hate Speech Bill’ through as a law.

The Longman Dictionary² explains expression to mean ‘when u say, write, or do something, to show what you are thinking or feeling’. It then means that freedom of expression as provided under our laws go as far as protecting us from any liability whatever, arising from what we say or write, provided it is not defamatory or false. Little wonder, Sir William Blackstone (1723-1786) the eminent English jurist explained freedom of expression thus:

‘...every man has the undoubted right to lay what sentiment he pleases before the public....to forbid that is to destroy the freedom of expression, but if one publishes what is illegal or mischievous, he must face the consequences of his own temerity’³.

This position of the law was judicial vented in the locus classicus case of *A.G Federation v Guardian Newspaper Ltd*⁴, where the court held that to forbid the right to freedom of Expression is to destroy the freedom of expression and the press. As a matter of fact, freedom of Expression extends to criticizing technically actions that are not in synch with the morals of a particular society. In *Senate v Momoh*⁵, the Lagos High Court held that to compel a

² See fn 1 above

³ Blackstone Commentaries Vol. 4 p 151

⁴ (1999) 9 NWLR (Pt. 618) 187

⁵ (1981)1 NCLR 105

journalist to disclose his source of information amounts to a breach of the right to freedom of Expression and the press guaranteed under section 36(1) of the 1979 Constitution, now section 39(1) CFRN 1999.

3. The Press as a Polity

The term 'press' may be defined as ' the totality of publication emanating from the press and the communicating public, in a given society or country; and the journalist who works for newspapers, periodicals and the news personnel, that is journalist who work in the news industry⁶. By the provision of section 22 CFRN 1999, certain rights are given to the press and it provides 'the press, radio, television and other agencies of these media shall at times be free to uphold the fundamental objectives contained in this chapter and uphold the responsibility and accountability of the government to the people'.

4. Functions of the Press

Traditionally, the generally role of the press in a modern society includes⁷:

- a) To carry news and publish information, to inform the people and government, on events and developments and vice versa. The press is a news reporter and publisher. It is the three main functions of the press are to source for information, to process information and to disseminate information.
- b) A means of communication between and among individuals and the words in general on any matter of

⁶ Ese Malemi, *Mass Media Law-Press Law*, 3rd edn, Princeton Publishing Co. Ikeja, p. 3

⁷ See fn 6 p6

- interest. The mass media affords multifarious and fast means of communication for everyone who has access.
- c) It serves as a watchman of Government's action the act of those who constitute the government and the conduct of the person and society.
 - d) It also serves as a constructive legal critique of the government when and where necessary.
 - e) The Press also serves as the voice and ear of the people since it is able to access where the common cannot enter. For example, press personnel Presidential Villa and other places for coverage and interview purposes.
 - f) The Press through the NUJ serves as a pressure group.
 - g) It is a trend seller through public and mass education and enlightenment programs
 - h) The Press is an opinion moulder and a seller of agenda. It is an examiner of the action of the government and society, and expresses opinion through news and editorials with a view to promoting change. It helps government and society to set agenda and priorities for social, political and economic development by drawing attention to priorities and urgent issues, needs and matters which require actions.
 - i) It also serves as an advocate of change through investigative and fact-finding reporting.
 - J) If organized and coordinated, the press serves a modern, professional and equipped basic infrastructure for social, political and economic growth. The Press which is an instrumentality to the exercise and enjoyment of the extended freedom of expression provides multifarious and fast means of communication. It is a necessity in making the world a global village.

According to Tony Momoh, a distinguished journalist, lawyer and a former Minister of information of the Federal Republic of Nigeria, in his book⁸ 'The News of the Forgotten Army';

Neighbour of the lonely, informer of the curious, entertainer of the bored, teacher of the willing, victim of the unaccommodating, friend in times of bliss and enemy in times of adventure, champion of freedom and barometer of freedom's ups and downs, foot-match of the successful, bad boy of the thief and fraudulent, naked gunpowder in the hands of the despots, encyclopedia of joy and sorrow, success and failure, honesty and half-truth, banter and blackmail.

From the above expression, it is obvious that the press is the mirror of the society. It is the child of controversy as well as the moderator of controversy and events. It is also the brain of historiography and historicity. We therefore, live and dine by the services of the press. However, the freedom given to the press, in so far as the right to freedom of expression is guaranteed, the devil at the corridor of power has bedeviled the exercise of these rights.

5. Freedom of Expression Delimited

Freedom of expression being rights provided for under the CFRN 1999 is not an absolute right. By the provision of subsection (2)(3) of section 39 CFRN. Subsection (2) and (3) of section 39 provides that:

no person, other than the government of the federation or of a state or any other person or body

⁸ Efma Publications, Lagos 1983

authorized by the president on fulfillment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.

The next, subject the right to any other law which would be made by the National Assembly, like the Freedom of Information Act, 2011 which in the guise of buttressing the freedom of expression renders it almost as though it is a privilege. As the common man would say, 'there is freedom of speech, but no freedom after speech'. The right to freedom of expression has been so neglected by the enforcement arm of the government especially when it affects the dubious activities of the officers of government agencies. Unluckily too, there is no Independent democracy. The executive still builds estates for judges, buy cars for the justices and judges and in fact, dictates their security. One begins to query; if the freedom of expression is a right and the judiciary is the interpreter of it, what happens where the judiciary is faced with issues against the executive which serves as its pay master? In Rivers State for example where the state governor buys car for the judges and justices, can such judges interpret this right against the said governor. Is it not said that 'he who pays the Piper dictates the tone'. Does the judiciary still maintain its stance as the hope of the common man?

In *Abacha v Fawehinmi*⁹ the respondent being a human right activist and a senior Lawyer make comments, calling for the return to democracy by criticizing the policies of the government considering the undemocratic means of operation witnessed in the

⁹ (2000)6 NWLR (pt 660) 228

government's dealings. He was arrested and detained and the necessary machineries of law enforcement could not even come to his aid to protect his right to freedom of expression. The respondent was denied his right and the officers who denied him of his right were neither queried nor punished.

The fear of secrecy of the agent's inordinate and fraudulent activities as well as their influence on the judiciary is a major delimiting factor of the exercise of the right to freedom of expression. It was Woodrow Wilson, one of America's Presidents who wrote 'everybody knows that corruption thrives in the secret places and avoids the public places, and (we believe) it is fair presumption that secrecy means impropriety',¹⁰ To shut down the urges and conscience of the willing whistle blowers in the offices of government agencies, they went as far as enacting Official Secrets Act,¹¹ to deprive the govern of their lawful information.

It is the proper and all time responsibility of the government to keep its people informed. Patrick Henry, of United States who spoke during the debates proceeding the adoption of the United States Constitution, explained the duty and responsibility of government to inform its citizens thus: 'the liberties of a people never were, no ever will be secured, when the transactions of their rulers may be concealed from them... I am not an advocate for divulging indiscriminately all the operations of the government, though the practice of our ancestors, in some degree, justifies it. Such transactions are related military operations or affairs of great consequence, the immediate promulgation of which might defeat

¹⁰ Norman Mornan Marsh QC, *Public Access to Government Held information*, Stephens 1987 p. 2

¹¹ Cap O3, 2004

the interest of the community, I would not wish to be published, till the end which required their secrecy should have been effected. But, to cover with the veil of secrecy the common routine of business, is an abomination in the eyes of every intelligent man¹².

6. Press Freedom: Delimited and Monopolized

Notwithstanding the derogation of this rights provided for under the section 39(2)(3) CFRN as it affects the ownership, establishment and operation of any medium for the dissemination of information, there are also some hard knots in form of procedures that are set down by the National Assembly if they so say, provided for under the National Broadcasting Commission Act¹³, 13 though a military decree. The requirements for the establishing a medium of dissemination of information is in itself a delimiting trap and only the Ruling class can fulfill the requirements.

7. The Press as the Hope of the Common Man

In as much as the press in most cases is been treated like the common man, in appropriate realms of public affairs which are not subject to the right freedom of expression and the press includes the right to gather news and the right to public news. Speaking on the press' duty which is to inform the people, Dorathy Thompson in the finest tradition of American journalism explained that the duty of the news reporter is to the people:

He does not exist to serve the government but to inform the American people and to do so with the utmost objectivity of which he is capable. The line

¹² Justice Williams O. Douglas, *The Right Of the People*, pyramid Book N p. 52

¹³ No. 38 Of 1992 (as amended) in 1999

he must hew to is the line of truth, and no other, if he is frivolous and irresponsible (regarding the truth) he will be corrected by the other if his revelations do not support a government a government policy, they may lead a change in it. His value is that he is not the hired man of any government but a reporter and testifier of truth. He is responsible exactly to the extent that he seeks to fulfill these functions. And its fulfillment is not only his professional duty; it is his patriotic duty. The suggestion that freedom of reporting can exclude access to facts is extremely dangerous doctrine. The gleaning of fact is essential, to knowledge without which the right to the public is empty and its exercise irresponsible¹⁴.

Form this excerpt, it is clear that even when the person fears the government in its service guaranteed by the Constitution and it does appear that even the Constitution is not able to protect the rights it purports to protect. Justice Learned Hand rightly puts it:

“I often wonder whether we do rest our hopes too much upon Courts. These are false hopes. Liberty lies in the hearts of men and women; when it dies there; there is no constitution, nor law, no Court that can save it; no Constitution, no laws, no court can even do much to help it. While it lies there, it needs no constitution, no law, no court to save it¹⁵”

¹⁴ See page 53 of footnote 12

¹⁵ ‘Spirit of liberty, Papers and Address of Learned Hand’ 2nd 1953. *Amard v A G Trinidad & Tobago* (1936) AC 322

It is said that the government is of the people, by the people and for the people and that "...the security and welfare of the people shall be the primary purpose of government"¹⁶ does this still stand correct seeing that the government's activity is now hidden from the people's knowledge. Does this secrecy and refusal to impart ideas of government's activity on the people not constitute a breach of right to freedom of expression and of the press? In *Crisp and HomeWood's* case,¹⁷ where a clerk in the British War Office disclosed details of contracts between the War office and the manufacturer of military clothing, to the director of a tailoring company. This was held to be an offence under Section 2 of the English Official Secrets Act, 1911 on which the Nigerian Official Secrets Act is modeled. To this level of denial of the right to freedom of expression is the so called right not a mere wish. When the officers at the apex of government's agencies reserve the sole right of expression as only a president says whatever he wills and he is under no liability, same as the state governor and all other government's agents. If not for reputation and international consular coverage, persons like Prof. Patrick Lumumber a senior Counsel in Kenya would not still be alive. One of the most cherished and people's voice personality, Chief Gani Fawehinmi a Senior Advocate of Nigeria and a human right activist had his name martyred with countless court processes for what he had right and freedom to do. Who knows whether worries from threat to his life and from a floodgate of court proceedings pressure was contributory to his death. Another was a top minded optimist, journalist and an environmental activist of the people of the Niger Delta region, Chief Ken Saro-Wiwa who also had his name martyred alongside 9 others for advocating for the clean-up of the

¹⁶ Section 14(2)(b)CFRN 1999(as amended)

¹⁷ (1919)83 J 121

Ogoni area and criticism of the government's refusal to implement the United Nations Environment Program Report (UNEP Report) and enforcement of the Ogoni bill of Rights though this action of national murder cost the government of Nigeria years of ostracism from the common wealth as the execution of Ken Saro-wiwa who did no wrong than exercise his freedom of the press and of expression. Nelson Mandela called for the suspension of Nigeria from the common wealth and was backed by Robert Mugabe and Daniel Arap Moi though criticized by Jerry Rowlings. It is noteworthy there, that at that level, the freedom of Expression exercised by the outspokenness of Nelson Mandela resulted in the suspension of Nigeria from the common wealth for killing Ken Saro-Wiwa and Nigeria was also considered a naval blockade,¹⁸ yet the government of Nigeria continues to masquerade unjust administrative instrument against the exercise of the freedom of expression and unfortunately, the judiciary plays as its counterpart in part especially where the chief of executive wills.

8. Status of the Ruling Class and Freedom of Expression

Contemporary facts abound in our society in dismay of freedom of expression and of the press. The ruling class has often times proven to be the grantors and determiners of who says what, and against whom. The recent unreported case of *Sir Dr. Peter Odili v Odinakalu and Anor. Suit No. Phc/319/18* instituted at the High Court of Rivers State in the Port Harcourt judicial division is a lugubrious one which beckons for attention in this paper. In that case, Prof. Chidi Odinakalu, the former chairman of National Human Rights commission wrote in his book titled 'Too Good to Die, the Third Term and the Myth of the Indispensable Man in Africa', how Peter Odili the former governor of Rivers State under

¹⁸ Reynold's Report from New Zealand 28-02-1995

the Obasanjo's tenure as President, in connivance with the president's intention for a third term abetted the president in cushioning and siphoning the nation's revenue through the State Government's account. In the book, the author also stated how criminal the governor's action was as he linked some deaths in the state to the governor's activities as governor. The claimant upon sighting the book discovered that pages 129-130, 136-138 and 162 were not only malicious but also defamatory and he therefore, commenced an action at the high court of Rivers State. The defendant upon entering appearance filed a notice of preliminary objection on 3 consecutive grounds:

- 1) That the book in question was neither printed, published or sold in Rivers State being the territorial jurisdiction of the court.
- 2) That the cause of action did not emanate in Rivers State being the territorial jurisdiction of the court
- 3) That the defendant does not live or carry on business in Rivers State being the territorial jurisdiction of the court.

The Court instead of determining the issue of jurisdiction, which is the life wire of the court and treat it accordingly, rascally discountenanced the objection so raised and assumed jurisdiction over the matter.

Not minding the report of the defendant on how he was abused and denied access to the Court by the claimant's Chief of Staff, the Court per Justice Augustina Kingsley Chukwu proceeded and held the defendant liable in defamation and forthwith granted the claimant damages of ₦250 Million against the defendant and also an additional ₦50 Million as cost. Though the defendant has appealed the judgment, the Court's judgment is enough to deter the common man from freely expressing himself even when he has

enough evidence to educate the public as the judiciary has seized to be the hope of the common man as Justice Learned Hand rightly said.¹⁹ In as much we trust the judgements of the courts, it is hereby appealed that the judiciary be strengthened as an independent arm of government to enhance administration of justice system. Our nation degenerates on all fronts thereby giving Nigerians, agencies and agents of government to rise and save our fatherland. If one would suffer for speaking out then, the right to freedom of expression is more of a wish than right.

9. Conclusion

This paper is much and passionately interested in the free exercise of expression of the common man bearing in mind that we live in a democratic society where the rule of law guides and binds all. If sovereignty lies in the people and government and the law so made are mere conduit pipes of the people's collective aspiration and desire for the common good of man and for an orderly society, it therefore calls for a rise to the consciousness that Nigerians speak up and speak out. It is commonly said, 'if you say the truth, you will die and if you do not say the truth you will as well die'. Chief Obafemi Awolowo GCFR, SAN admitting the right of the public to comment on a case in his paper 'The press in the service of the state', explained that:

“it is perhaps not generally recognized among our journalist in this country that criticism of the conduct of a judge in a judicial proceeding is permissible: The only limitation, and it is an important limitation is that the criticism must not be calculated to obstruct or interfere with the due

¹⁹ See fn 16

course of justice or to amount to personal scurrilous abuse of the judge as a Judge....'²⁰ interestingly too, the European Court of Human Rights in the case of *The Sunday Times v United Kingdom...*²¹ acknowledge the right of the public to information and comments on a matter which comes before a court, even when the matter is still pending this:

There is general recognition of the fact that the courts cannot operate in a vacuum. Whilst they are the forum for the settlement of disputes, this does not mean that there can be no prior discussion of disputes elsewhere, be it specialized journals, in the general press, or amongst the public at large. Furthermore, while the mass media must not overstep the bounds imposed in the interest of the proper administration of justice, it is incumbent on them to impart information and ideas concerning matters that come before the courts just as in other areas of public interest. Not only do the media have the task of imparting such information and ideas, the public also had a right to receive them.

The people who have the right ought also to claim and protect as well as defend it, else it goes into extinction.

²⁰ Voice of reason: selected Speech of Obafemi Awolowo vol. 1 Fagbamigbe Publishers 1981, p. 201

²¹ (1979) ECHR 1