

Legal Overview of Press Freedom under Nigeria law

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ABSTRACT: *The researches work 'will extras the press under the Nigerian Law. Through the social responsibility theory approach, the role of the media in a democratic era such as it is in Nigeria, will be examined as the press lends a big hand to the actualization of the rule of Law in the country. The press, known as the fourth estate of the realm, serves as a watchdog to the other arms of government. Through the powers conferred on the press by the 1999 constitution, the press upholds the accountability and responsibility of the government to the people and transparency is ensured, without which there can be no civil liberty. Freedom of expression is one of the fundamental human rights with international recognition, a right, which the successive post independence constitutions of Nigeria recognize and guarantee. The Nigerian press since independence has enjoyed freedom which cannot be said to be absolute. The press is always regulated by Laws permissible or reasonably justifiable in a democratic society, hence the 1999 constitution allows derogations oh the fight to freedom of expression and the press for the overriding .public interest. The military Juntas in Nigeria since 1966 have always suppressed the press through authoritarian governance, making room for no press freedom in the country. This, they achieved through the promulgation of draconian press gag Laws such as Decree No 4 of [985 and usually by suspending some provisions of the constitution upon coming into power and ousting the power of the court from entertaining matters which question their authority to make Laws. This work reviews the constitutional limitations to press freedom occasioned by section 45 and 39 (3) of the 1999 constitution as well as other Laws and ethics which regulate the press in Nigeria. In all, it can be said that press freedom in Nigeria is a liberty with great responsibility.*

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I. INTRODUCTION

Every nation needs the media to sustain good governance and engender national development. It is for this reason that the press is recognized as the fourth estate of the realm. It behoves the press therefore to monitor the three arms of government (the legislature, executive and judiciary) in order to enthrone democracy and the rule of law. The press has an enormous task to accomplish this role as the watchdog of the society.

The constitution under section 39¹ guarantees the freedom of expression to every citizen. This includes the freedom to hold opinions and to receive and impact ideas without interference. By implication, it presupposes the right to know the truth; the right to be informed about the activities of the government, its institutions and public officers who are agents of the electorate the right to hold personal opinions and not be persecuted for it and the right to impact ideas.

Ensuring the realization of these rights is the basic role of the press in Nigeria.

It is the duty of the press to ensure that the government is accountable to be people as provided by section 22 of the constitution. Such accountability cannot be guaranteed if the activities of government' are not disseminated to the members of the public. The press therefore serves as the guardian of public interest.

Gleaning at the statement of Dorothy Thompson/ the duty of the news reporter is thus."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 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 others. If his revelations do not support a government policy, they may lead to 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 be extent that he seeks to fulfill this function 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 facts is essential -to knowledge, without which the right to publish is empty- and its exercise irresponsible" Nobel laureate Amartya Sen⁴ sees the media as a watchdog not just against corruption but against disasters. According to him, a free press and the practices of democracy contribute greatly to bringing out information that can give enormous impacts on polices for famine prevention; a free and active political opposition constitute the best early warning system a country threatened by famine could have.

The recent terrorist attacks on Nigeria, basically fraught by the northern Islamist sect, Boko Haram has been brought to bear through the media in the country. The news of their activities is carried by television and

radio stations as well as social media, like Facebook, Twitter and Instagram et cetera, through these media, opinions emerge amass as political and religious voices and star characters at large express their personal views on the bomb attacks in the country, the Fulani herdsmen terror attacks on villagers; tribal and religious disputes in the northern part of the country, political tussles between The People's Democratic Party (PDF) and the All Progressive Congress (APC) on party defections; the abduction of over 200 female students in Chibok village of Born State on the 14th of April 2014. On the 20 July 2014, Patrick Sawyer, a Liberian American brought Ebola Virus Disease into Nigeria and it became a trend on the media. On the 8 of August also, news went viral through the social media that bathing and drinking salt water was a cure for the Ebola virus disease (E.V.D) to that end, messages and calls were made to love ones in the early hours of the morning. Here, the media acts as a life saving machine.

Right from the military era in Nigeria, till the current civil regime, the existence of press freedom has been in question, just as much as its constitutionality⁵ has been subjects of argument by Political, Media and Human Rights scholars at large. By the end of the first republic beginning in year 1966, Nigerian military governments sought to influence the media to suit its tenets. As at the time of the Nigerian civil war for instance, the press was basically owned by the government and used for propaganda, to dish the information as it suits the government such as it were of the 'Citizens' and the 'Nigeria Outlook' Newspapers which were owned by the northern region government and the eastern region government respectively.

The Military promulgated various Decrees to gag the press which includes the Newspapers Prohibition of Circulation Decree 1.967, the Newspapers Public Official Reporting Act 1976, Public Officers Protecting against False Publication Decree No 4, 1985 and Decree, 6, 7 and 8 of 1994.

Decree No 4 of 1984 made it a crime to make publications that were contrary to government interest. General Babangida's regime of 1984 repealed the Decree and made for freedom of expression. This however did not stand the test of time. The regime began to develop media intolerance with time and it was recorded to have closed down more news houses and civil liberty organizations in Nigerian pre colonial history. The military era from 1985-1993 manifested a great deal of insensitivity, intolerance and cruelty for the press and journalists at large. Freedom of expression was greatly inhibited. A lot of Human Rights Activists, Journalists and Lawyers were imprisoned, properties were confiscated and some murdered.

Dele Giwa, a Nigerian journalist, editor and founder of News Watch Magazine had been arrested severally by the Shagari administration in 1982 for publishing articles that attacked top officials of the government. In 1986, during Babangida's regime, following his publication on Babangida's newly introduced second tier foreign exchange market. Giwa was invited by the SSS for an interview and several other interviews followed within the year with more allegations from the military government. Subsequently, he was killed by a mail bomb delivered as a parcel in his home on October 19 1986.

Two journalists at the time, Tunde Thompson and Nduka Irabor were tried under a press gag law, Decree No 4 and jailed. The government in 1990 sealed The Punch Newspaper for a month, Vanguard Newspaper was sealed off on June 11. That same year, T.S.M Magazine felt the brunt of the government as their property was damaged and the editorial staff and publisher detained by the government. Human rights activists were not left out. Gani Fawehinmi, Femi Falana, Dr Beko Ransome Kuti, Mr Olisa Agbakoba was at the time 'visited' by the government.

The electronic media was also suppressed by the government. This was achieved through licensing of broadcast stations and vetting or scrutinizing the content of their broadcast. The Ogun State Broadcasting Corporation of Nigeria was shut down on July 22. The Federal Ruling Council of Nigeria (FRCN) on the 11th of August dismissed Mr. Ladi Lawal, a Newscaster for casting the day's news without prior vetting by the military authority at the time. The electronic media was owned by the government and was used for political propaganda to suit its whims. It was therefore a job risk for the workers to express their views and uphold their conscience. Even in the civilian era, print media was owned and controlled by politicians. It was a game of He who pays the piper dictating the tune. In view of this, Reuben Abati stated thus

"At every moment in Nigeria history, the press has been in the fore front, managing the barricades. The centrality to the issues of the day and lines of the people has brought the Nigerian press much travail from colonial times, it has been treated as a major tool of power, opposing power centers which feel threaten by its dynamism invariably seek to control the press through several means in which politicians later result to misuse of mass media to achieve their selfish desire".

For the press to effectively operate in a democratic system press freedom must be guaranteed and protected press freedom is the right to express one self, publish information through the print or electric media, receive or impact ideas and to hold opinion without fear of restriction or censorship. These may be subject only to the laws of libel, obscenity, sedition, privacy laws et cetera and derogations allowed with respect to laws that are reasonably justifiable in a democratic society.

According to Blackstone, it consists in laying no previous restraints upon published. He stated further that every freedom has an undoubted right to lay what sentiments he please before the public, to forbid this is to destroy the freedom of the press.

1.2 Statement Of Problem

Section 22 of the 1999 constitution gives the press, radio, television and other agencies of the mass media the freedom to uphold the fundamental objectives contained in chapter 2. The press, radio, television and other agencies of the mass media is as well accorded the duty to uphold the responsibility and accountability of the government.

In the celebrated case of *Senate v Momoh*⁶, Prince Tony Momoh, a Lawyer and Journalist, and the Minister of Information during General Babangidas regime , was summoned to appear before the Senate over a publication in the Daily Times Newspapers in 1981 for which he was the editor, and ordered to disclose his source of information.

Momoh brought an action for the violation of his constitutional rights of freedom of expression and press freedom as a Journalist and Editor of a Newspaper under sections 21 and 36 of the 1979 constitution and filed an action at the Lagos High Court seeking inter alia that his summon before the Senate was unconstitutional and unlawful.

Justice Candide Ademola Johnson , Chief Justice of Lagos High Court in his judgment stated."It is a matter of common knowledge that those who express their opinions, or impart ideas and information through the medium of newspaper or by any other medium for the dissemination of information enjoy by customary law and convention a degree of confidentiality. How else is a disseminator of information to operate if those who supply him with such information are not protected?" The court of appeal held that sections 21 and 36 of the 1979 constitution did not shield a

Journalist from disclosing his source of information. The statement of Justice Philip Nnaemeka Agu (as he then was) is thus-"I see nothing in section 21 and 36 to entitle a pressman or any other media man to any separate treatment. Section 21 is only one of the fundamental objectives and directive principles of state policy which are not justifiable. Section 36 does not carry with it expressly or by implication, the right not to disclose information of pressmen, nor does the section protect the disseminator from legal disabilities or liabilities such as are imposed by the law of libel".

The president of the court of appeal at the time, Justice Mammam Nasir said "If the mass media is to be free to uphold the responsibility and accountability of the government to the people, it follows that it has a duty to look for and collect enough data upon which to base its own opinion. In carrying out this duty, it may like a government department be obliged to keep certain secret. I do not however think that this obligation is absolute."

Justice Adenekan Ademola JCA in his concerning judgment referred to the cases of *A.G v. Mulholland and Foster** to the effect that in England, Journalists have no protection of confidentiality under the common law which is part of our received law.

On the liberty of the press, Eze malemi in his text , reporting the case of *Senate v. Momoh* stated that it is the correct view of the law that journalists do not enjoy an absolute

privilege against disclosing their source of information accordingly, in the exceptions stipulated, by the Nigeria constitution, in the national interests, a publisher withholds his source of information at his own risk and as such, just as in other areas of-life, there is an absolute press freedom for a person to behave as he wants. Consequently, absolute press freedom is not a necessity for a journalist or the press to operate.

In the case of *Branzburg v. Hayes* , it was held that a journalist's privilege to refuse to disclose information, such as the names of informants is not different from that enjoyed by other citizens. A journalist must therefore cooperate where such en is in good faith without harassment.

Press freedom in Nigeria is said to be partially free. Press freedom ends where the right to privacy and dignity of other persons begin¹² some scholars have argued that partial press freedom in Nigeria is due to the fact that there is no express provision for Press freedom in Nigeria but rather the freedom of expression.¹³

Again, section 22 evidently accords the duty to uphold the fundamental objectives in chapter 2 as well as the duty to uphold the responsibility and accountability of the government to the press alone and not to other citizens, while section 39 generalizes the freedom of expression to every citizen without particular accordance to the press. The thin line ought to be reconciled.

1.4 Objective Of The Study

This research work intends to extras the exercise of Press freedom through Nigeria's post independent history till current times. Basically, it seeks to review the provisions of the 1999 constitution of Nigeria as to ascertain whether it guarantees Press freedom and the extent to which the Nigerian courts enforce these rights.

1.8 Research Methodology

The methodology of this research is content analysis of books, journals, newspapers and the internet. The research work is based on the information gathered through doctrinal method.

II. Meaning Of Press Freedom

Press freedom is right to publish information freely without any forms of restriction save as otherwise limited by the constitution. To this effect, the constitution guarantees the right and liberty to express oneself whether individually or as a group subject only to the exceptions as provided by the constitution¹. Here, freedom of expression is full, cannot be interfered with except by the constitution itself.

There is a trite saying in law that where one's right ends begins another's right. Thus the liberty to express oneself does not give a self-expressing public the right to slander, or defame another; neither will the publication of unlawful, criminal, mischievous or seditious information go unpunished by the law.

According to section 39 (1) of the 1999 constitution of Nigeria

"Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference".

2.1 Definition Of Press Freedom

Freedom of the press or freedom of the media is the freedom of communication and expression through mediums including various electronic media and published materials. While such freedom implies the absence of interference from an overreaching state, its preservation may be sought through constitutional or other legal protections.

Merriam Webster dictionary defines freedom of the press to be the right to publish newspapers, magazines and other printed matter without governmental restriction and subject only to the laws of libel, obscenity, sedition, et cetera¹ⁿ

2.2 Meaning Of Press Law.

Online resources define press law in the following ways-Press laws are laws concerning the licensing of books and the liberty of expression in all products of the printing press, especially newspapers. Media law is an area of law which covers media communications of all sorts and sizes,

Media regulation is the control or guidance of mass media by governments and other bodies. The regulation via law, rules of procedure, can have various goals, for example intervention to protect a stated "public interest", or encouraging competition and an effective media market or establishing common technical standards. '

2.3 Media Ethics

A Longman English dictionary defines ethics as moral rules or principles of behavior for deciding what is right and wrong and professional ethics to mean the moral rules relating to a particular profession.

A Webster's new world dictionary defines ethics to mean a system or code of morals of a particular person religion, group, profession et cetera.

Ethics According to Black's Law dictionary has been explained thus-"Relating to moral action, motive of character, ethical emotions; also treating of moral feeling. Duties or conduct, containing precepts of morality, professional right or befitting; conforming to professional standards of conduct."

Etymologically, "ethics" comes from the Greek word "ethics" meaning "character" which denotes a set of principles or standard for correct conduct and reliable character within society²⁰

Every profession has ethics guiding its accepted conduct. These ethical behaviors are the codes of conduct. These codes of conduct and values set the acceptable standards of behavior for the members of the particular profession. These ethical standards thereby control their conduct.

For the purpose of this work, focus is placed on the Ethics of Journalism (Media ethics).

In 1978, the Nigerian Press Organization, composed of three media bodies: the Nigerian union of Journalists (NUJ), the Nigerian Guild of Educators (NGE) and the newspaper proprietors Association of Nigerian (NPAN) that got together and formulated the code of Ethics. The Nigerian press council has come up with a code of ethics for Nigerian journalists.

2.4. Code Of Ethics For Nigerian Journalists

Preamble

Journalism entails a high degree of public trust. To earn and maintain this trust, it is morally imperative for every journalist and every News medium to observe the highest professional and ethical standards. In the exercise of these duties, a journalist should always have a healthy regard for the public interest,

Truth is the cornerstone of journalism and every journalist should strive diligently to ascertain the truth of every event.

Conscious of the responsibilities and duties of journalists as purveyors of information, we, Nigerian journalist, give to ourselves this Code of Ethics. It is the duty of every journalist to observe its provisions.

1. EDITORIAL INDEPENDENCE

Decisions concerning the content of news should be the responsibility of a professional journalist.

2. ACCURACY AND FAIRNESS

- i. The public has a right to know. Factual, accurate balance and fair reporting is the ultimate objective of good journalism and the basis of earning public trust and confidence.
- ii. A journalist should refrain from publishing inaccurate and misleading information. Where such information has been inadvertently published, prompt correction should be made. A journalist must hold the right of replay as a cardinal rule of practice.
- iii. In the course of his duties, a journalist should strive to separate facts from conjectures and comments.

3. PRIVACY

As a general rule, a journalist should respect the privacy of individuals and their families unless it affects public interest.

4. PRIVILEGE/NON-DISCLOSURE

- i. A journalist should observe the universally accepted principle of confidentiality and should not disclose the source of information obtained in confidence.
- ii. A journalist should not breach an agreement with a source of information obtained as “-the-record” or as “back ground information.

5. DECENCY

- i. A journalist should dress and comport himself in a manner that conforms with public taste.
- ii. A journalist should refrain from using offensive, abusive or vulgar language.
- iii. A journalist should not present lurid details, either in words or picture, of violence, sexual acts, abhorrent or horrid scenes.

2.5 THEORETICAL FRAMEWORK

There are four normative theories of the press propounded by Wilbur Sharamm, Siebert and Peterson in 1956 and it was an attempt to clearly define what journalism practice ought to be especially with the advent of political dynamism in today’s modern societies.

There are basically four major theories of the press.

- (1) **The authoritarian theory** which developed in the late Renaissance and was based on the idea that truth is the product of a few wise men;
- (2) **The libertarian theory** which arose from the works of men like Milton, Locke, Mill and Jefferson and avowed that the search for truth is one of man’s natural rights;
- (3) **The social Responsibility theory** of the modern day, equal radio and television time for political candidates, the obligations of the newspapers in a one-paper town, et cetera;
- (4) **The soviet communist theory**, an expanded and more positive version of the old Authoritarian theory.²²

2.5.1 THE AUTHORITARIAN THEORY

The authoritarian theory was presented by Siebert Peterson and Schuman under the normative theories of mass communication.

The authoritarian theory prescribes that all forms of communications are under the control of the governing elite or authorities or influential bureaucrats.

The press under this theory is used as an instrument to facilitate the ruler’s power. The authorities have all rights to permit any media and control it by providing license to the media and make censorship. The authorities then reserve the right to revoke such licenses and the electronic media strictly scrutinized before news is cast. The government thereby restricts sensitive issues from the press to maintain peace and security in the nation.²³

2.5.2 THE LIBERTARIAN THEORY

The libertarian theory as one of the normative theories of the press originally came from libertarian thoughts from 16th century in Europe. The libertarian theorists are against the authoritarian thoughts. Liberalism means information is knowledge and knowledge is power libertarianism is freedom from any authority or any control or censorship. The libertarianism is an idea of individualism and limited government which is not harmful to another.

The libertarianism theory generally arose and gained momentum in the 17th century, especially as philosophers such as Milton, John Lock and Saint Simone sought to subject the

Prevailing theory at the time (authoritarianism) to severe critique and analyses. The libertarians believe that man is thinking, independent and rational, being capable of deciding between the good and the bad and between the good and the better when faced with alternative choices.

2.5.3 THE SOVIET/COMMUNIST THEORY

The communist theory of the press arose, along with the theory of communism itself, in the first quarter of the present century. Karl Marx was its father, drawing heavily on the ideas of his fellow German, George W. F. Hegel. The mass media in a communist society, said Marx, were to function basically to perpetuate and expand the socialist system. Transmission of social policy, not searching for the truth, was to be the main rationale for existence of a communist media system.

Mass media, under this theory, are instruments of government and integral parts of the state, they are owned and operated by the state and directed by the communist party or its agencies, Criticism is permitted in the media(i.e. criticism of failure to achieve goals), but criticism of basic ideology is forbidden. Communist theory, like that of authoritarianism, is based on the premise that the masses are too fickle and too ignorant and unconcerned with government to be entrusted with governmental responsibilities.

2.5.4 THE SOCIAL RESPONSIBILITY THEORY

This fourth theory of the press has been drawn largely from a report published in 1947 by the Hutchins Commission. Emerging from the Commission's publications and solidified in the literature of journalism by four Theories of the press, this new theory maintains that the importance of the press in modern society makes it absolutely necessary that an obligation of social responsibility be imposed on the media of mass communication.

The social responsibility theory was first introduced in 1947 and was recommended by the Hutchins Commission on Freedom of the press as a means to combat the pressures that threatened freedom of the press at the time. It stated that the media should serve the public, and in order to do so, should remain free of government interference. It defined guidelines that the media should follow in order to fulfill its obligation of serving the public.

The Theory Allows

1. Everyone to say something or express their opinion about the media.
2. Community opinion, consumer action and professional ethics.
3. Serious invasion of recognized private rights and vital social interests.
4. Private ownership in media may give better public service unless government has to take over to assure the public to provide better media service.
5. Media must take care of social responsibility and if they do not, government or other organization will do.

III. The Press Under The Nigerian Legal System

3.1 THE PRESS UNDER THE NIGERIAN CONSTITUTION, 1999

Freedom of expression and the press is a fundamental requirement of a democratic society. It is through expression that the people elect persons who will govern them. Nigeria runs a democratic government¹ and the preamble to the 1999 constitution rests sovereignty on the electorate. The government duly elected by the people owes responsibility, accountability and transparency to the people.

This is why the 1999 Constitution of Nigeria provides for the right to freedom of expression under section 39 and confers the duty to uphold the fundamental objectives of the state contained in chapter 2² of the constitution as well as the responsibility and accountability of the Government to the people, to the press by virtue of section 22.

The right to freedom of Expression is not just a function of a democratic society, but a Natural Right recognized by International law and forms part of the Fundamental Human Rights recognized by most International States, Nigeria inclusive.³

Article 19 of the Universal Declaration of Human Rights states that

Everyone has the Right to Freedom of opinion and expression. The right includes freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.⁴

Section 39(1) of the 1999 constitution is a replica of Article 19 the Universal Declaration of Human Rights (UDHR) above, it states-Every person shall be entitled to freedom of expression, including freedom to hold opinion and to receive and impart ideas and information without interference.

This provision is in line with the universal conception that freedom of the press and freedom of expression are so fundamental that any law that tends to obstruct any of the two cannot be law properly so called. Blackstone⁵ in view of this stated.

‘The liberty of the press is indeed essential to the nature of a free state....every free man has an undoubted right to lay what sentiments he pleases before the public; to forbid this is to destroy the freedom of the press;

According to Ese Malemi⁶. The protection offered by the right to freedom of expression and the press in the 1999 Constitution, in section 39 complimented by section 22 are sufficient to

- (1) Enable the press and the communicating public to exercise the right to freedom of expression and publication, to receive and impart ideas and information without interference.
- (2) It also provide the basic means of giving practical effect to freedom of expression and the press, by making provisions for interested individuals, group or entity to own a medium of communication, to disseminate and receive ideas and information.

The sufficiency of the constitutional provision of section 39 and 22 of the 1999 constitution to guarantee press freedom is still a subject of controversy in Nigeria. According to Dr. Tonnie Iredia⁷.

3.3 THE FREEDOM OF INFORMATION ACT

The fundamental right to information is operationalised by the freedom of information Act.²⁴ According to the Media Rights Agenda 2011, the Freedom of information Act makes public records and information more freely available, provide for public access to public record and information to the extent consistent with the public interest and the protection of public privacy, protect serving public officers from adverse consequences for disclosing certain kinds of official information without authorization and establish procedure for achievement of these purposes and for related matters.

The newly enacted freedom of information Act according to Ene “Guarantees the right of access to information held by public institutions, irrespective of the form in which it is kept and is applicable to private institutions where they utilize public funds, perform public functions or provide public services.

Requires all institutions to proactively disclose basic information about their structure and processes and mandates them to build the capacity of their staff to effectively implement and comply with the provisions of the Act.

Provides protection for whistleblowers, and makes adequate provision for the information needs of illiterate and disabled applicants.

Recognized a range of legitimate exceptions and limitation to the public right to know, but it makes these exceptions subject to a public interest test that in deserving case, may override such exceptions.

3.4 Laws Limiting Access To Information In Nigeria.

3.4.1 The Criminal Code Act

Section 97 of the Criminal Code Act provides that

1. Any person who being employed in the public service, communicates any fact which comes to his knowledge by virtue of his office, and which is his duty to keep secrets or any document which comes to his possession by virtue of the office and which it is his duty to keep "secret, except to some person to whom he is bound to publish or communicate 'it. is guilty of misdemeanor and is liable to imprisonment for two years.

2. An person who being employed in the public service, without proper authority abstracts, or makes a copy of an document the property of his employer is guilty of a misdemeanor and liable to imprisonment for one year.

This means that the information a person obtain by the position such a person occupies in public service or a document thereof which ought to be kept secret shall not be published, such an officer except by express permission of the requisite authority otherwise he shall be guilty of misdemeanor.

3.4.2 THE EVIDENCE ACT

Section 167 provides that- Subject to any directions of the president in any particular case, or of the governor where the records are in the custody of a state, no one shall be permitted to produce any unpublished official records relating to affairs of state, or to give any evidence derived therefore, except with the permission of the officer at the head of

the department concerned, who shall give or withhold such permission as he thinks fit.

Section 168 states that – No public officer shall be compelled to disclose communications made to him in official confidence, when he considers that the public interest would suffer by the disclosure.

Section 175 provides that – No one shall be compelled to produce documents in his possession which any other person would be entitled to refuse if they were in his possession unless such last mentioned person consents to their production.

The Evidence Act thus recognized that material evidence may be withheld from the court where such evidence was within the government custody and constituted unpublished official records relating to affairs of state, except with the permission of the officer of the department concerned who had the discretion to give or withhold such permission as they saw fit. The court well lacked the jurisdiction to compel a public officer to disclose communications made to him in official confidence where the concerned public office considered that the public interest would suffer by the disclosure.³⁸

3.4.3 THE OFFICIAL SECRETS ACT⁶⁰

The Act protects two classes of government secrets.

1. Classified matters.⁶¹
2. Protection of defence establishment.⁶²

Section 1 of the Act provide for the protection of official information et cetera. It states that

(1) Subject to subsection (3) of this section, a person who

(a) Transmits any classified matter to a person to whom he is not authorized on behalf of the government to transmit it or

(b) Obtains, reproduces or retains any classified matter which he is not authorized on behalf of the government to obtain, reproduce or retain, as the case may be, is guilty of an offence

(2) A public officer who fails to comply with any instructions given to him on behalf of the government as to the safeguarding of any classified matter which by virtue of his office is obtained by him or under his control is guilty of an offence.

Section 1(3) makes proof of ignorance a defence for an offence under sec 1(1) accordingly, when an officer later comes to knowledge that he had transacted on a classified matter and he forthwith placed his knowledge of the case at the disposal of the Nigerian police force. It shall be a defence to his case⁶³

Section 2 of the Act provides for the protection of defence establishment et cetera.

3.4.4 THE 1999 CONSTITUTION

Press freedom under the 1999 constitution is not absolute; its exercise is limited by the constitution to the extent to which it is inconsistent with public interest and interferes with the right to privacy of other persons protected by the constitution.

Section 39(3) (a) of the constitution poses limitation to access to information in Nigeria. it states

Nothing in this section shall invalidate any law, that is reasonably justifiable in a democratic society -

(a) For the purpose of preventing the disclosure of information receive in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films.

Access to private information may also be limited by the provision of section 37 of the constitution. Section 45 as well justifies or validates any other laws that may run t. outran o section 39 for the overriding public interest.

3.5 DISCLOSURE OF SOURCE OF INFORMATION.

Questions arise as to whether a journalist or editor or a person charged to court on account of a particular publication can be compelled to disclose his source of information and if that be the case whether it is constitutional or justifiable under the law.

The right of media press workers to have their sources protected is essential to promoting the free flow of information and the public. Journalists must be able to assure sources that their identities will remain secret in order to encourage them to speak freely. They must also be able to protect the fruits of their news gathering from scrutiny by government or private entities in order to maintain their editorial independence. Without this protection, the press will not be able to perform their oversight function as the fourth estate of the realm and upholding the accountability and responsibility of the government.

The constitution under sec 39(3)(a) recognizes the need for confidentiality in exercise of right to freedom of expression and the press. It states-

(3) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society.

(a) For the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephone, wireless broadcasting, television or the exhibition of cinematograph films.

Media ethics require that journalists protect the confidentiality of their source. A journalist who violates a promise of confidentiality will not be trusted by other sources in the future.

3.6 LIMITATION TO PRESS FREEDOM IN NIGERIA

By virtue of section 22 of the 1999 constitution, the press is empowered at all times to be free to uphold the fundamental objectives contained in chapter 2 and uphold the responsibility and accountability of the government to the people. This right is however limited by the fact that most government held information cannot be accessed with ease. The Official Secrets Act and some provision of the Criminal Code Act limits the extent to which the press or members of the public can access public documents as much as it limits the extent to which they can reveal information received in confidence. These Acts hamper the free flow of information thereby demeaning the frontier for accountability by government. Public officials are shielded from making their activities subject to public scrutiny while citizens are discouraged from disseminating information on issues of public interest for fear of prosecution and incurring other tortious liabilities against the government. If this be the case, that subsidiary laws enacted to defeat the aim of the constitution⁸⁷, then there is indeed no press freedom.

In *British Steel Corporation v. Granada Television Ltd*⁸⁸. Lord Denning held as follows-"The public has a right of access to information which is of public concern and of which the public ought to know. The newspapers are the agents, so to speak, of the public to collect that information and to tell the public of it. In support of this right of access, the newspapers should not in general be compelled to disclose their sources of information neither by means of discovery before trial nor by questions or cross examination at trial, nor by questions or cross examination at the trial nor by subpoena. The reason is because, if they were compelled to

IV. Regulation Of The Press In Nigeria

4.1 STATUTORY REGULATION OF THE PRESS IN NIGERIA

The constitution¹ of Nigeria allows derogations from the right to freedom of expression and the press guarantees for the interest of the public at large. These laws are permissible to the extent to which they are justifiable in a democratic society for the overriding public interest. It is for this constitutional limitation that the press in Nigeria is not to have absolute freedom.

There is therefore the need to regulate the activities of the press in order to ensure they operate within the legal bounds necessary to protect the rights and interests of others within the society. The ethics required of the media is also regulated by ethical codes put in place to check that.

4.1.1 THE NIGERIAN CONSTITUTION²

The proviso to section 39(2) regulates the television or wireless broadcasting stations through licensing by the government. Thus only persons who are able to fulfill the conditions laid down by the national assembly or authorized by the president can operate or establish a television or wireless broadcasting.³

The constitution⁴ allows⁵ or rather validates regulations which have the effect of preventing the disclosure of information received in confidence, maintaining the authority and the independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films; or

It allows by regulation laws which restricts public officers or members of the armed forces of the federation or members of the Nigerian police force or other security services or agencies from divulging or disclosing official secrets or classified matters, information of which they hold by virtue of the office they occupy.

4.1.2 OFFICIAL SECRETS ACT

The Official Secrets Act⁶ prohibits the publication of classified or confidential information and matters relating to defence establishments, security installations and other protected places in Nigeria. Additionally, section 97 of the Criminal Code Act prohibits the disclosure of official secrets and the abstraction of confidential documents.

4.1.3 LAW OF SEDITION

Sections 50 - 60 of the Criminal Code Act⁷ provides for the law of sedition, and prohibits the publication of seditious matters and other undesirable or alarming publications and the carrying out of seditious acts.

4.1.4 LAW OF CONTEMPT

Sections 133 and 6 of the Criminal Code Act⁸ and section 155 of the Penal Code Law⁹ provides for the law of contempt. These provisions of the law prohibit acts of

⁴Section 39(3)a

⁵Which must be reasonably justifiable in a democratic society.

⁶2004

⁷2004

disrespect and disobedience to court, including publications which are disrespectful or are aimed at damaging or destroying the maintenance of the authority, or the independence of the courts. Contempt in the face of court is an offence punishable by a judge suo motu, that is, immediately on its own, under the inherent powers of a court under the English common law. The Constitution has also made provision for the punishment of contempt of court in sections 6(6) (a) and 39 (3) (a) respectively. On the other hand, the Legislative Houses (Powers and Privileges) Act¹⁰ provides for contempt of parliament and at the application of the relevant parliament such contempt or is usually prosecuted in court, and if found guilty is sanctioned accordingly.

4.1.5 OBSCENE AND HARMFUL PUBLICATION LAWS

The obscene and harmful publication laws prohibit the publication of obscene and harmful literatures, articles and acts that are likely to destroy the morality of the public. Criminal law is the main law that prohibits immoral acts and obscene and harmful publications. The Criminal Code Act and laws under sections 214 - 233 (a) prohibits various offences against morality, whilst sections 233(b)-(f) specifically prohibits obscene publications and articles. This apart, the Penal Code, the Children and Young Persons Laws, the Constitution, and so forth also prohibit obscene and harmful publications.

4.1.6 DEFAMATION LAW

Under the defamation laws of the various states,¹¹ it is wrong for one person to defame another person by means of defamatory publications. The defamation laws of the various states have been passed to protect the reputation of a person. A person may therefore be liable for making defamatory statements about another person without justification. In addition, defamation is also a crime, and sections 373 - 381 of the Criminal Code Act and laws prohibit defamation.

4.1.7 COPYRIGHT ACT

The Copyright Act¹² protects copyright work for a copyright owner. There fore, an publication or other act, which is an infringement of copyright work, or intellectual property, is wrongful and attracts appropriate sanctions under copyright law.

4.1.8 ADVERTISING LAW

The law of advertising and particularly, the Advertising Practitioners (Registration, et cetera) Act¹³1990 deals with the regulation of the profession, the practice of advertising in Nigeria, and ethical issues arising from the practice of advertising.

4.1.9 THE NATIONAL BROADCASTING COMMISSION ACT

The National Broadcasting Commission Decree¹⁴ now Act as amended by the National Broadcasting Commission (Amendment) Decree No. 55 of 1999 regulates radio and television broadcasts in Nigeria.

4.1.10 NIGERIAN COMMUNICATIONS COMMISSION ACT

The Nigerian Communications Commission is empowered by this Act to regulate all telephone service providers and related activities in Nigeria.

4.1.11 THE NEWSPAPER ACT

The Newspapers Act¹⁵ and its equivalent Newspaper laws¹⁶ in the States made provisions for the registration of newspapers and sundry purposes relating to the newspaper industry. However, these laws have been repealed by the Newspapers (Repeal) Decree No. 57 of 1999. The provisions of the Newspaper Act constituted a prior restraint, which in fact were a limitation on publication and therefore a breach of the constitutional provision for freedom of expression and the press. Such prior restraint makes newspapering unattractive and discourages investments in the sector. It is a law designed to proscribe an unwanted news media.

4.1.12 PRINTING PRESSES REGULATION LAW

There is the printing presses regulation law of Lagos State¹⁷ which was enacted to regulate the print media in particular. Ese Malemi in his book¹⁸ pointed that this law can be used as an instrument of prior restraint. According to him, it is an example of over regulation of the press, a law designed to proscribe and kill the press.

4.1.13 PUBLICATION LAW

This law is an example of over regulation of the press industry. It can be used as an instrument of prior restraint on publication in breach of the constitutional provision for liberty of expression. Other statute which concern and regulate the press to some extent includes:

4.1.14 THE NIGERIAN PRESS COUNCIL ACT

The Media Council Act as amended by the Nigerian Media Council Decree No. 85. 1992 established the Nigerian Press Council, a body aimed at tackling media misdemeanour and interpretation of ethical principles and issues involving the practice of journalism. This law is an example of over-regulation of the media and it is a dangerous trend. A benevolent and liberal council can raise the standard of newspapering and the mass media generally, and defend media practice, whilst on the other hand, this law wrongly used, can be a grievous tool of offence and can be used to destroy the freedom of expression and the press and harass journalists and media practitioners. The law has been repealed and replaced by the Nigerian Press Council (Amendment) Decree No. 60, of 1999 now Act 2004.

4.1.15 THE NIGERIA TELEVISION AUTHORITY ACT

The Nigeria Television Authority Act¹⁹ provides some framework for the regulation of the television stations, under its authority; among other things.

4.1.16 THE FEDERAL RADIO CORPORATION OF NIGERIA ACT

The Federal Radio Corporation of Nigeria Act and similar laws in the various states with respect to radio and television stations provide some framework for the regulation of such government owned media.

4.2 INTERNATIONAL REGULATION OF THE MASS MEDIA IN NIGERIA

4.2.1 AFRICAN CHARTER ON HUMAN AND PEOPLE'S RIGHT. (ACHPR) 1979

Article 9(1) (2) provides for the freedom of expression and the press thus

- 1) Every person shall have right to receive information.
- 2) Every person shall have the right to express and disseminate his opinion within the law.

Article 25 of the ACHPR enjoins the state parties to the charter, to guarantee the full implementation of the provisions of the charter and equally charged them with the duty of promoting, teaching, education and publication in the respect of these right created under the charter and to ensure that those freedom and rights as well as corresponding obligation and duties.

4.2.2 THE UNIVERSAL DECLARATION ON HUMAN AND PEOPLES RIGHT. UDHR 1948

Article 19(1) of the Universal Declaration of Human Rights provides that-

Everyone has the right to freedom of opinion and expression, freedom to hold opinion, seek and impart ideas without interference through any media regardless of any frontiers.

This right is limited by article 29(2) thus In terms of one's rights and freedoms, every one shall be subject only to such limitation as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and of meeting the just requirement of morality, public order and the general welfare in a democratic society.

The Universal Declaration of Human Rights is however merely a declaration in that it is non binding of the state parties to it but rather persuasive.

4.3 ETHICAL REGULATION OF THE MASS MEDIA

Professional and non statutory bodies within the mass media industry also provide some form of regulation through the provision and enforcement of professional ethics, or code of conduct. These bodies include:

1. The Nigeria Press Organization (NPO) a tripartite body made up of the:
 - (a) Nigerian Union of Journalists (NUJ)
 - (b) The Nigeria Guild of Editors (NGE); and
 - (c) The Newspapers Proprietors Association of Nigeria (NPAN)

Each of these bodies has a constitution and code of ethics regulating members.

4.3.1 THE NIGERIAN PRESS COUNCIL ACT²⁶

Section 1 of the Act establishes the Nigerian press council while Section 3 provides for the powers of the council thus

The council shall be charged with the duty of

- a. Enquiring into complaints about the conduct of the press and the conduct of any person or organization towards the press and exercising in respect of complaints, the power conferred upon it under this Act;
- b. Monitoring the activities of the press with a view to ensuring compliance with the code of professional and ethical conduct of the Nigerian union of journalists;
- c. Receiving application from, and documenting the print media and monitoring their performance to ensure that owners and publishers comply with the terms of their mission statement and objectives in liaison with the Newspapers Proprietors Association of Nigeria;
- d. Researching into contemporary press development and engaging in updating press documentation;
- e. Fostering the achievement and maintenance of high professional standard of the press;
- f. Reviewing developments likely to restrict the supply through the press, information of public interest and importance or which are liable to prevent free access of the press to information and advising on measures necessary to prevent or remedy such development;
- g. Ensuring the protection of the rights and privileges of journalists in the performance of their professional duties.²⁷

Section 9 of the Act requires the Nigerian Union of Journalists (NUJ) to provide a code of professional and ethical conduct to guide the press and journalists in the performance of their duty. It also requires the code of ethics to be revised from time to time as may be deemed appropriate to conform to media practice by the Nigerian Union of Journalists" and the council shall after due consideration approve the code of professional and ethical conduct by the Nigerian Union of Journalists and ensure compliance with codes of conduct,³⁰ and shall publish the list of approved ethical and professional conduct in the Nigerian Press Council Journal which shall become binding on every journalist in Nigeria.

Section 20 provides for punishment of Unprofessional conduct under the Act.

5.1 OBSERVATION

In the course of this work, the researcher has been able to observe the following

1. That press freedom in Nigeria is not absolute. It is a liberty with a responsibility.
2. That the constitution of Nigeria did not make a special provision in the constitution for press freedom for the media sector specifically like countries like Ghana and the United States of America which has special provision for the press
3. That section 22 of the constitution being unjusticiable does not guarantee press freedom but merely outlines the duties of the press.
4. That there are a lot of limitations to press freedom in Nigeria owing to the plethora of laws in Nigeria regulating the press, such as the Official Secrets Act, section 219 of the Evidence Act et cetera.
5. That the members of the public have limited access to government held information.

5.2 RECOMMENDATIONS

I recommend that Nigerian constitution should be amended to include a provision which will confer peculiar rights to the press in Nigeria like it is in Ghana and the United States of America.

1. The public also needs to be educated of their right to expression as this is a fundamental requirement of democratic governance.
2. That the Freedom of Information Act in Nigeria should be enforced by the Nigerian courts in order to ensure press freedom in Nigeria.
3. Section 219 of the Evidence Act ought to be reviewed to check the limitation and injustice it occasions as it is in breach of section 36 of the 199 constitution.
4. Journalists should not be compelled to disclose their sources of information as their informants will be discouraged from divulging information to them which can make their sources dry up. Having in mind the case of *Senate v. Tony Momoh*¹ which establishes that journalists can be compelled to disclose their source of information.

5.3 CONCLUSION

The 1999 constitution of Nigeria provides for the right to freedom of expression under section 39. It confers on every Nigerian citizen the right to freely express oneself without interference, and also the freedom to hold opinions to receive and impart ideas and information without interference.

Section 22 accordingly accords the press, radio, television and other agencies of the mass media the freedom to uphold the fundamental objectives contained in chapter two of the constitution and also the obligation to uphold the responsibility and accountability of the government to the people. Press freedom entails the enjoyment of these rights without any sort of interference or censorship.

Any practice therefore which seeks to regulate or scrutinise the contents of a work before its publication or to restrict the publication of certain information which are not in favour of the government is a denial of press freedom and unlawful.

Press freedom entails the right not to be compelled to disclose the source of a journalist's information and the freedom from unreasonable punishment for what is published. Press

freedom also presupposes the right of the public to have access to government held information except defence information or national security information.

Press freedom includes the right of the public to know the truth about the affairs of the state. The press and all concerned should not be restricted from having access to public held information. It is also not enough to disclose information. It is also the duty of the press and the government to ensure that the public is not fed with false information. Chief Obafemi Awolowo GCFR SAN said

"Freedom to know the truth is the first among all freedom... to know the truth, and to disseminate untruths to the ignorant, or to disseminate news carelessly as to whether it is true or false; it is the most heinous of all sins in a democracy. Truth and liberty are twin sisters. Where there is truth, there is liberty."

It is for the purpose of enforcing the right of the public to know and access government held information that the government of Nigeria through the National Assembly enacted the freedom of information Act 2011.

The freedom of expression guaranteed by the Constitution and in effect press freedom does not refer to press workers alone, but rather covers the public at large.

Professor Ben Nwabueze affirmed this in his statement "The press is not an institution comprising special members; it is simply a vehicle, an organ for the dissemination of ideas or opinion to the public... a newspaper, magazine or other periodicals is operated as a business and has to be manned by workers, but it's used for dissemination of ideas or opinions are open to the public at large. The protection needed is not for the workers as such but for access to the medium, by any person for the dissemination of information and ideas"² Press freedom in Nigeria is not an absolute right. It has been noted by scholars³ to be a right or freedom with a corresponding responsibility. It is freedom from prior restraint as to what or what not to be published but not freedom from legal consequences of publication.⁴

In conclusion, one can say that there is no country which has absolute press freedom; however Nigeria ought to ensure that the press freedom maximally is guaranteed to all.

Reference

- [1]. Abiola M.K (1998). Issues and problems in mass communication. *Mass Media and Political Awareness* 122-134.
- [2]. Abubakar, A. (2002). Presidential Goodwill Message in Akinola R (Ed.) *Redefining Journalism in a Democracy*.
- [3]. Akpan, E. (1988). *Television and National Security* in Akinfeleye R. (Ed) *Contemporary Issues in Mass Media for Development and National Security*, Lagos: Unimedia Publications Ltd.
- [4]. Baran, S.J. (2004). *Introduction to Mass Communication: Media Literacy and Culture* (3rd ed.) New York: McGraw-Hill Companies.
- [5]. Ciroma, A. (1995). Professionalism and the Nigerian Mass Media, in Akinfeleye, R, Omole, O. & Omang, G. (Eds.) *Nigerian Mass Media and National Crises*. Lagos: Nigerian Press Council. Constitution of the Federal Republic of Nigeria (1999).
- [6]. Daramola, I. (2006). Legal Limitations to Media Performance. *International Journal of Communication*, 5, 178 - 192.
- [7]. Doyin M.(1998,) *Newspaper Ownership and Regulation in Nigeria*; A paper delivered at the Guardian Newspapers Limitedtd, Isolo Lagos on July 29, to the visiting Mass Media Law Class, final year Law Students , 1997/98 session , Lagos State University.
- [8]. Egbon, M. (2001). *A comparative study of press freedom in the American and Nigerian Media*. Zaria: Tamaya Publishing Ltd.
- [9]. Folarin, B (2005). *Theories of Mass Communication: an introductory text* (3rd Ed.) Ibadan: Bakinfo Publications Limited.
- [10]. Gambo, D. (2006). Press freedom, media ownership and democracy in the North Eastern Nigeria. *International Journal of Communication*; 5, 159 – 169.
- [11]. Gana, J. (2002). Presidential goodwill message in Akinola, R. (Ed.) *Redefining Journalism in a democracy*. Lagos: NUJ Lagos Publications.
- [12]. Ibelema, M. (2003) "The Nigerian Press and June 12: Pressure and Performance During a Political Crisis, *Journalism Communication Monographs*, Vol. 4 (4), Winter 2003
- [13]. Ibezimako, C.M. (2006). The Nigerian Press: The Quest for Professionalism. *Nsukka Journal of Mass Communication*. Vol. 2 . 53-62.
- [14]. Imobighe, I. (2001). cited in Akindele, R.A. and B. Ate, *Beyond Conflict Resolution: Managing African Security in the 21st Century*, Ibadan: Vantage Publishers and NIIA. 53
- [15]. Okunna C. S. (1990). Freedom of the press in the third world: freedom for whom? *Nigerian: Journal of Mass Communication*, 1(1):140-149.

- [16]. Oso, L. (1988). Press Freedom Limits of a Constitutional Provision in Constitutional Making; National Development, Abeokuta, Ogun State MAMSER, 45-74.
- [17]. Sir Steve O. (1998). Advertising practice and regulation in Nigeria; A paper delivered on August 26, to the Mass Media Law Class, final year Law Students, 1997/98 session at the Faculty of Law, Lagos State University.

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