

An Examination of the Right to Freedom of Expression in Nigeria

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Abstract

The Freedom of Information Act 2011, Laws of Federation of Nigeria (LFN) also provides for the right to freedom of expression by ensuring that public records and information are freely available and provided for public access to public records and information. The Act provides for protection of personal privacy. The Act protects serving public officials from adverse consequences of disclosing certain kinds of official information without authorization and establishes procedures for the achievement of those purposes and related matters. This article examined the extent to which the Nigerian Constitution, Freedom of Information Act and Laws have provided for the exercise of this right. It also examined the provision of the constitution and laws that derogate and restrict the right to freedom of expression in Nigeria. It was concluded that the Law of defamation has been provided to restrict the right of freedom of expression. The legal requirements for proving that one's right has been infringed is difficult as there exist several defenses to the tort of defamation.

Keyword: Examination, Right, freedom, expression, Nigeria

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INTRODUCTION

The quest for the realization of freedom of expression is essential in promoting sustainable democratic governance and human right in society. In the words of Benjamin Cardozo, an eminent American jurist “freedom of thought and speech.... Is the matrix, the indispensable condition of nearly every other form of freedom” (Gill, Marcus 2006) [1] Freedom of expression is one of the fundamental rights which are universally recognized and protected. Indeed, the constitutions of most countries of the world including Nigeria have expressly provided for the protection of those rights because of its importance and relevance to the enactment of personal liberty and democracy. In every society, with Nigeria no being an exception, the desire and freedom of an individual to hold opinion and share the same with a listener of his choice is fundamental. This is because a person has a right to have perspective of the world, the circumstances around him and the people he interacts with (Odike, 2005) [2].

Freedom of expression is also regarded as one of the essential ingredients of a “democratic

democracy”. This right prevents the government and individuals from preventing a person from receiving information and ideas available to the public. (Ogbu, 1999) [3] It imposes obligations and duties on the state or agencies and on individuals to protect and promote human rights and fundamental freedoms.

Freedom of expression is also referred to as the freedom of speech, press, assembly, or religion as guaranteed by first amendment; the prohibition of governmental interferences with those freedom. (2004). It is seen to play an important role in the society when once this right is allowed to be exercised by the citizens. However it is also being recognized by different conventions and treaties globally. For example, in Article 19 of the 1948 Universal Declaration of Human Rights (UDHR) this states that:

Everyone has a right to freedom of opinion and expression; this right shall include freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media regardless of frontiers (1948). [4]

The Article 19 of the ICCPR further states in respect to freedom of expression that:

Everyone shall have their right to hold opinions without interference and everyone shall have the freedom to expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice (1966). [5]

It is important to note that these conventions are binding on Nigeria because they are parties to this convention. The convention has in turn been agreed upon, ratified by Nigeria and domesticated by an Act of the National Assembly there allowing for this convention to be enforced in Nigeria hence allowing for the rule of *pacta sunt servanda* (let the agreement be kept) to take effect.

The right of freedom of expression which is stressed in the 1999 constitution in S.39 that every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference as well as protect the right of every person to own, establish and operate any medium for the dissemination of ideas and opinions (Oliyiye, 2006)[6] and without prejudice to the generality of subsections 39(2) {1}, {2}, {3}.

This provision allows individuals to own, establish and operate any medium for the dissemination of information, ideas and opinions in Nigeria.

This paper work would help to play a significant role in the process of building a democratic society where one is able to hold information, impart ideas, and receive ideas and information.

In Nigeria, there is also the freedom of information Act of 2011 Laws of the Federation of Nigeria to give more light to the freedom of expression in our society today. Freedom of expression is one of the very crucial aspects of democracy in Nigeria. Being put in the constitution entail that it is being guaranteed for the Nigerian citizen at all times with exceptions in certain circumstances that

would lead to defamation which is a restriction to the enjoyment of this right. The freedom of expression is regarded as a cornerstone of democracy which ensures the consolidation and development of democracy. As a result of the exercise of this right, citizens are able to criticize the actions of government, organizations as well as individual. It is also deemed to be essential for the development of knowledge and understanding among people which will lead to true tolerance and operations among nations, this protection extends to freedom to hold opinions and to receive and impart ideas and information without interference as well as protects the right of every person to own establish and operate any medium for the dissemination of information of information, ideas, opinions (Oliyiye, 2006).

In practice, the right to freedom of expression is not absolute in any country not even in Nigeria and the right is commonly subjected to limitation. The Government may restrict the right to freedom in light of interests of greater concern. The impression given to the outside world is misleading as the basic right to freedom is still not guaranteed.

CONCEPT OF FREEDOM OF EXPRESSION

The free communication of ideas and opinions is one of the most precious of the rights of individuals and as such every citizen should be allowed to speak, write, inform and print without interference. Freedom of expression is sometimes used synonymously with freedom of speech on some countries and it includes an act of seeking, receiving and imparting information or ideas, regardless of the medium used, also refers to the right to speak, write or do anything in order to allow for one's feeling, opinions and ideas without any restriction. This pertains to the fact that an individual can give his own thoughts on a particular issue on what he thinks or feel about it.

Odibe(2011)[7] considers the guaranteed right to freedom of expression and the person under the Nigerian constitution, the African Charter on Human and Peoples' Right (ACHPR). Here the author makes reference to the definition of freedom of expression as right to openly

discuss issues without fear of restriction or restraint. The author also consolidates the definitions of writers on the freedom of press.

The right of freedom of expression extends to the press as it constitutes an important part of the society and so if the government closes down a newspaper, it interferes not only with the journalists' right to speak, but also the right of readers of the newspaper to seek and receive information. The author further opines that the right to freedom of expression and the press is not without some limitation including treason, sedition, official secrets, defamation and contempt of the court or parliament. [8]

Freedom of expression is one of the fundamental rights, which are universally recognized and protected. Indeed, the Constitutions of most countries of the world, including Nigeria¹, have expressly provided for the protection of this right because of its importance and relevance to the enhancement of personal liberty and democracy. [9]

The right to freedom of expression is also protected under the Universal Declaration of Human Rights and the various regional Instruments and Conventions on human rights. Obligations and duties are imposed on the State or its agencies and on individuals to protect and promote human rights and fundamental freedoms.

However, the right to freedom of expression, like most other rights, is not absolute. There are recognized restrictions and exceptions to this right; one of which is to be found in the law of defamation. Thus, the enjoyment of the right to freedom of expression must take into consideration the right of other citizens to protect their reputation. The courts therefore have an important role to play in balancing the conflicting interests between freedom of expression and protection of reputation.

This paper aims at examining the legal and constitutional guarantee of the right to freedom of expression in Nigeria and the extent to which the law of defamation has restricted the enjoyment of this right. The effectiveness of the Nigerian courts in striking an acceptable balance between the two conflicting rights and interests in this regard is also examined.

Osita, Eze (1999) asserts that freedom of expression is of great importance to human race, as free exchange of ideas tends to promote harmony and social development; while suppression of the freedom of expression and includes the fact that where this right to freedom of expression is suppressed, it would lead to conflicts. In line with what the author asserted, the court in *Benhadj v Algeria* held that the freedom of opinion and expression are indispensable conditions for full development of the person and they are essential for any society. Having known the freedom of expression are indispensable conditions for full development of the person and they are essential for any society. Having known that freedom of expression is needed to sustain the concept of democracy, it would be important to note that the concept of democracy is the government of the people and that for such system to work, an informed electorate is necessary.

Nwabueze (1999) [10] maintains that freedom of speech and the press are instruments of self-government by the people because they enable the people to be informed and educated about the affairs of the government, thereby enabling them to form and express intelligent opinions on such matters. This position is right in the sense that it recognizes the right of every individual to get information about policies of the government and to keep them aware of the activities of the government.

Udofia (2005) [11] also affirmed the positions of Eze and Nwabueze where he stated that freedom of expression connotes the liberty of every person to openly discuss issues, hold opinions and impart ideas without restrictions, restraints or fear of punishment. He ascertains that individuals could share their thoughts and ideas without any form of derogation. He however also failed to resolve the issue that as to what happens in situations where the right of another is endangered simply because he is expressing his right of liberty to hold opinions and impart ideas and failed to identify the challenges of the right to freedom of expression.

Legal/Constitutional Guarantee of Right to Freedom of Expression

The right to freedom of expression is guaranteed and protected in Section 39 of the

1999 Constitution of Nigeria in the following terms:

1. 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. Without prejudice to the generality of sub section (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions provided that no person, other than the government of the federation or a state, or any other person or body authorized by the president on fulfillment of a condition laid down by an Act of National Assembly, shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.

The right to freedom of expression is also guaranteed under the various international instruments on human rights and fundamental freedoms. Thus, Article 19 of the Universal Declaration on Human Rights provides as follows:

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinion without interference and to seek, receive and impart information, and ideas through any media and regardless of frontiers. Similarly, Article 19 of the International Covenant on Civil and Political Rights provides for the right to freedom of expression as follows.

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

Article 9 of the African Charter on Human and Peoples Rights also provides for the protection of the right to freedom of expression in the following terms:

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

Nature and Scope of Right to Freedom of Expression

Generally, freedom of expression connotes the liberty of every person to openly discuss issues, hold opinions and impart ideas without restrictions, restraints or fear of punishment. [12] It is undoubtedly, a right to be enjoyed by every person who is not under any bondage or disability. In every human society, Nigeria not being an exception, the desire and freedom of an individual to hold an opinion and share the same with a listener of his choice is a fundamental one. This is because a person has the right to have a perspective of the world, the circumstances around him and the people he interacts with (Odike, 2015) [13]. Indeed, true freedom of a person or persons would be elusive if it is not possible to ventilate one's viewpoint or share one's opinions with others in the society. Therefore, freedom of expression is one of the essential ingredients of every democratic society. Accordingly, Nwabueze (1999) maintains that free speech and a free press are instruments of self-government by the people because they enable the people to be informed and educated about affairs of government, thereby enabling them to form and express intelligent opinions on such matters. He therefore concludes that free dissemination and discussion of ideas and opinions is indispensable to democratic government. Freedom of expression is also regarded as a basic condition for the progress of the society and the development of mankind.

The European Court on Human Rights in *Handy* side Case confirmed this position when it held that the right to freedom of expression is one of the essential foundations of a democratic society and the basic condition for its progress and development. [14]

In the same vein, Osita, Eze (1999) [15] asserts that freedom of expression is of great importance to human race, as free exchange of ideas tends to promote harmony and societal development; while suppression of the freedom of expression often leads to conflict and instability (1979).

The freedom of expression guaranteed in the Nigerian Constitution and the various

International Instruments on human rights and fundamental freedom, has three constituent elements; namely, the freedom to (1) hold opinions (2) receive ideas and information (3) impart ideas and information?

The freedom to hold opinions can only be manifested when the opinions are communicated without adverse consequences. This is therefore inseparable from freedom of speech. It can be said that it incorporates the right to hold and express dissenting views, and the right to comment on matters of public interest. Democracy implies the recognition of skepticism as a vital element and attitude in the lives of free men (Osita, 1999).

Any law or Act that tends to deny people of the right to express their opinion would be regarded as undemocratic and tyrannical and would portray the government of the day in bad light. Thus, the attitude of some government owned media, which, in spite of clear non-discrimination clauses, refuse to air or carry the views of an opposition party is reprehensible as it amounts to a contravention of the right to freedom of expression. [16]

However, the negative effect of such actions is no longer felt as there are so many privately owned media houses in Nigeria today, which are ready to air or carry views which are contrary to those of government. The freedom to receive ideas and information is also an aspect of the right to freedom of expression and the press. It prevents the government and individuals from preventing a person from receiving information and ideas that are available to the public (Ogbu, 1999). Thus, where there is a riot and journalists have taken notes or filmed the incident, the seizure or destruction of such notes or films by government security agents will be a violation of the constitutional right of the citizens to be informed. (Ogbu, 1999). The right to impart information, whether in oral or written form and through any medium is indeed the actualization of freedom of expression. Thus, any individual is free to own, establish and operate any medium for the dissemination of such opinions, ideas or information.

ANALYSIS OF THE FREEDOM OF EXPRESSION IN NIGERIA AND ITS JUSTIFICATIONS

The right to freedom of expression is clearly stated in the Constitution and the emergence of freedom of Information Act which has also served as backbone to the constitution towards the safeguard of individual's right to expression in Nigeria will be discuss. The right to freedom of expression is also examined during the military era in comparison with the present democratic system and the positive impacts that the right to freedom of expression has contributed.

Right to Freedom of Expression and the Press under the Constitution of the Federal Republic of Nigeria 1999 (As Amended)

The Constitution mandates that 'every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference. Without prejudice to the generality of subsection(1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas, and opinions; provided that no person, other than the government of the federation or of a state or any other person or body authorized by the president on the fulfillment of conditions laid down by the Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for whatever purpose whatsoever.

For the purpose of preventing the disclosure of information receives in confidence, maintaining the authority and independence of courts by regulating telephony, wireless broadcasting, television or the exhibition of cinematography films; or imposing restrictions upon persons holding office under the Government of Federal of a state, members of armed forces of the federation or members of the Nigeria Police Force or other Government security services or agencies established by law.

Components of the Right to Freedom of Expression

Freedom to Hold Opinions without Interference

The freedom to hold opinion is a part of freedom of expression and it forms a part of this right. Having opinion means that one must

be able to make choices for himself without undue influence of another. This right allows individuals to have an opinion on a subject or issue whatsoever and to express this opinion also, but only to the extent where it does not infringe upon the right of another. In relation to government activities, citizens must be able to show their satisfaction or dissatisfaction with the acts of the government and this freedom to hold opinion should be absolute and not be restricted.

A person can hold opinion on various subject matters, for example, personal views on polygamy, homosexuality, religion, etc. A person's opinion is usually based on his dimension, ethics, beliefs, ideals or principles. One has the right to hold opinions and to express them freely without government interference. [17]

A good case where a citizen was seen to hold opinion in Nigeria is the recent case between Prof. Itse Sagay and the Nigerian Senate, where Sagay described the Senate as 'childish and irresponsible' and as result of this statement was summoned by the Senate. In his argument, Prof Itse Sagay said the senate lacked the authority to summon a private citizen and that he did not fall within the category of government officials to honor any invitation, adding that the lawmakers were embarking on a 'futile exercise that could have embarrassing consequence. He also stressed that he only exercised his constitutionally guaranteed right to hold an opinion.

Freedom to Receive Ideas and Information without Interference

Every individual has the freedom to receive ideas and information. To receive information means to take or acquire information given or offered, experience or subjected to it. Persons should be able to receive information on a particular subject matter so that he would understand, retain, communicate and be able to hold opinions and air his view on what he thinks. An individual should be allowed to receive ideas and information to keep him conversant with the activities of government and individuals around him. It is seen to be antithetical to what was seen during the military era. Information is valuable because it can affect behavior, a decision or an outcome. An

individual also has the right to request access to recorded information held by the government organization. This information may appear on any form and they are not limited to papers, microfilm or disk, photographs and maps. In many cases, one may be able to obtain the information is about can ask for access to this information and correction of that information. However, such information may be withheld for various reasons especially because the information could be sensitive or personal.

Right to Impact Information without Interference

To impact here means to share, communicate the knowledge or disclose information between individuals in whatever medium and as such, every individual is entitled to give out information to other persons on any subject. Information can be impacted through speech, expression or publications. Speech and Expression usually involves the physical interaction between two parties who communicate information between each other, while publication is subject to different meanings. In one sense, it refers to information publicly circulated in print form as in a newspaper, magazines, pamphlets, letter, telegraph, computer modem or program, posters, orally by broadcast or radio or television. It may also mean placing a legal notice in an approved newspaper of general publication in a country or district which a company requires such notice to get published. The idea of blogging by individuals as means of sharing information is also regarded as an exercise to the freedom of expression in Nigeria. With such activities, it is certain that information is made easily accessible. This right is exercised between individuals too as between the government and citizens, as individuals can pass information to others without any form of interference. However, the right to impact information does not allow a medical doctor to disclose the health status of his patient to the public on any account except in exceptional cases which is required for public policy. Another limitation is placed on banks from disclosing bank statement of account of her customer to another individual. Clergy are also exempted from disclosing privileged information gained in a confession or private conversation which is in line with the doctrine of the church.

Furthermore, the fact that the social media is a platform for imparting information does not allow that false information is spread to create distortion, instigate violence or promote immorality.

Freedom of the Press

This **freedom of the press** or **freedom of the media** is the principle that communication and expression through various mediums, including printed and electronic media, especially published materials, should be considered a right to be exercised freely. Such freedom implies the absence of interference from an overreaching state; its preservation may be sought through constitutional or other legal protections.

With respect to governmental information, any government may distinguish which materials are public or protected from disclosure to the public. State materials are protected due to either of two reasons: the classification of information as sensitive, classified or secret, or the relevance of the information to protecting the national interest. Many governments are also subject to sunshine laws or freedom of information legislation that are used to define the ambit of national interest. [18]

The United Nations' 1948 Universal Declaration of Human Rights states: *"Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference, and to seek, receive, and impart information and ideas through any media regardless of frontiers"*

This philosophy is usually accompanied by legislation ensuring various degrees of freedom of scientific research (known as scientific freedom), publishing, and press. The depth to which these laws are entrenched in a country's legal system can go as far down as its constitution. The concept of freedom of speech is often covered by the same laws as freedom of the press, thereby giving equal treatment to spoken and published expression.

This right is guaranteed by S.39 of the Constitution stating that:

Every person shall be entitled to own, establish and operate any form or medium for the dissemination of information, ideas and

information with a proviso which restricts any person other than the government of the federation or state or any other person or body authorized by the President on the fulfillment of the condition laid down by the Act of the National Assembly, to own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.

The freedom of the press according to Blackstone consists in laying no previous restraint upon publication and not in freedom from censure for criminal matter when published. He also went on to say that every man has an undoubted right to lie what sentiments he pleases before the public: to forbid this, is to destroy the freedom of the press. (Yakubu 1999). [19] The press is seen to include; television, radio, newspapers, magazines, amongst others and medium is used to relay all kinds of information to the public. In Nigeria, radio is regarded as the most important medium of mass communication due to the fact that newspapers and television are relatively expensive and because of the literacy low of the citizens. Freedom of press is a fundamental right that ferments the dissemination of ideas and information and at a social level it builds the basis of political debate and civil participation. At an individual level, it promotes intellectual emancipation and human welfare. This implies that the freedom of the press creates avenues by which information can be made known to the public and citizens through the press can commend, criticize the actions and policies of the government as well as show their grievances without any form of interference.

Freedom of the press allows for the concept of journalism which involves writing, editing and presentation of news and news articles for the purpose of informing the public. Journalism guards closely the actions of government to make sure they do their jobs accurately and with all honesty and to do this effectively, the journalist should not be manipulated by government.

Freedom of Information Act 2011

The freedom of information Bill was submitted to the National Assembly in 1999, but the legislature's four-year term passed without the

bill being voted in. the bill was re-submitted a few years after the inauguration of the 6th National Assembly, it scaled through the lower and upper chambers of the National Assembly and the harmonized version was passed by both Chambers on May 26, 2011. It was conveyed to President Goodluck Jonathan on May 27, and he signed it into law on May 28, 2011.

The Freedom of Information Act (FOIA) came into operation on 1st June, 2011. The major aim of this Act is to make public records and information more freely available, provide for public access to public records and information to the extent consistent with public interest and the protection of personal privacy, protect serving public officers from adverse consequences of disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes and for related matters.

Under Section 1 of the Act, all government or public institutions are required, subject to certain exceptions, to disclose information pursuant to a request by any person. In addition, public institutions must put in place adequate machinery for record keeping and publish information about itself as specified under S.2 of the Act. The right to access information is derived from the guarantee of right to freedom of expression found in Article 19 Universal Declaration on Human and People's Right (UDHR) 1948 and Article 19 of the International Covenant on Civil and Political Right (ICCPR) 1976.

Right to Freedom of Expression during Military Dictatorship

The military government is otherwise known as the government of the tyrant. Military rule is seen to be antithetical to a democratic government and during this period, citizens were denied their right to freedom of expression. Fundamental rights were either abridged or put in abeyance to create room for full blown military dictatorship. Under the military administration, the first thing done after office had been taken over was the suspension of the constitution by virtue of Decree No 1 of 1966. The Military government then ousted the jurisdiction of the courts thereby making the courts powerless. They also

set up their military courts to resolve matters which did not address the right to freedom of expression. However, when this was done the right to freedom of individuals was being trampled upon and they could not seek redress because the government did not create rooms by which individuals could hold opinions or impart ideas or information of any kind. The military government blazed the trail of repression by taking control of and television stations and made it an offence to publish information which they believed could embarrass a government or public or bring him to ridicule or some form of disrepute. (Ageh, 2015)[20].

From the colonial era, the sword of repression, torture and incarceration has ever been cutting through mass communication practitioners who express their heartfelt convictions. Some of these journalists met with all forms of dehumanizing treatment and sometimes even death.

This act of government was seen during the period of 1976–1979 and this got to another level in 1984 when the military government then promulgated Decrees No.2 and 4 which provided for a journalist who published information threatening national security or simply made fun of a civil servant to be imprisoned without trial. Two Guardian Newspaper journalists who had written a story about diplomatic postings were the decrees first victims. Likewise, Dele Giwa, a journalist who had issues with the government as he carried out investigative journalism based on thorough enquiries and was killed as a result of his publications about the government by a time bomb supposedly sent by the then military head of state. [21]

In Conclusion, the right to freedom of expression is a fundamental human right provided for by both local and international statutes and as a result has received universal recognition. It allows that every individual could make any statement of his choice in whatever circumstances and this article tends to what point the exercise of this right should be restricted. The Right to Expression also covers the mass. The Constitution and Freedom of Information Act has already acknowledged this

right but the issue would then lie with the process of its enforcement and protection of this right as it would serve as a crucial tool for socio – economic development in the country. With the recent enacted Freedom of Information Act, the right of freedom of expression has been given more limelight in addition to the provisions of the constitution. It has promoted press freedom, enhanced transparency, accountability, foster good governance and consolidated democracy in Nigeria.

This article dealt with issues revolving round the question of what limitation ought to be imposed upon the rights of freedom of expression in order to ensure that it reconciles with the interest of rights of other individuals and social interest for the benefit of the society.

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