

FREEDOM OF THE PRESS VERSUS LEGAL FRAMEWORK OF NEWS REPORTING: AN INHERENT CONTRADICTION

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Abstract

Democracy is today considered as the most admired system of government, practiced in most civilized countries. One of the major characteristics of democracy that makes it attractive to nations is its permissiveness for freedom, including freedom of speech, from which derives press freedom. Unfortunately, press freedom has suffered, and is still suffering brutality in the hands of governments. The media are variously emasculated, gagged or censored. These happen especially in developing countries such as Nigeria. In this study, energy was expended in the direction of finding out if there exists an inherent contradiction between freedom of the press and legal framework of news reporting. Survey method was adopted for the study; questionnaire was the instrument of data collection. Data generated were displayed on pie chart and analyzed using simple percentages while democratic participant media theory served as its theoretical framework. The study found that press freedom in Nigeria is low and that absolute freedom is important for Nigeria's democracy to flourish. It however concluded that absolute freedom does not exist anywhere in the world, and recommended among others things, that media practitioners should be guided in the execution of their responsibilities through press law, to prevent abuse.

Key Words * Democracy * Freedom* Press * Speech * Law

BACKGROUND

Democracy, a term which derived from the Greek word *demokratia* originated from the Greek City State of Athens in the middle of 5th century. The whole idea was to give a voice to each and every member of the society on matters of common interest. Today, democracy is the most popular form of government practiced by most countries of the world. This is perhaps because of the attraction it offers, as it is assumed to be the most popular form of government which also is the reason it is

defined as the government of the people, by the people and for the people. One of the attributes of democracy is freedom of expression within which one finds freedom of the press. The 1999 Nigerian constitution as amended, Section 22 states: "The press- radio, television, and other agencies of mass media, shall at all times be free to uphold the fundamental objectives of holding government to account (p.35).

Following this constitutional mandate, like in other parts of the global community, the agitation for the Freedom of Information Act (FoIA) commenced at the National Assembly during President Olusegun Obasanjo's administration. The bill was severally debated but it did not see the light of day until President Goodluck Jonathan's administration when the bill was passed into law, hence an Act now. On this, Ngwokor (2018) writes:

Freedom of the press means that the press- newspaper, television and other agencies of the mass media by the provision of the common law shall have the right to gather, write, publish and disseminate information (news) without any form of restraint from individuals, groups, or even governmental agencies. This press freedom has its root in the freedom of speech, and which has itself root in the 1945 Universal Declaration of Human Rights and 1959 Bill of Rights (p.127).

Under the very nose of Freedom of Information Act here in Nigeria, the media are still being emasculated, gagged or sanctioned. The constitution guarantees freedom of the press, mounting stumbling blocks in the way of the media is at the same time, an unfavorable climate against the practice of professional journalism. However, over the years, journalists in the country have weathered through the storm, some, out of their passion for their job lost their lives while others maimed.

STATEMENT OF THE PROBLEM

Civilized countries all over the world recognize the invaluable essence of press freedom, especially as it pertains to the working of functional democracy. The press acts as a balancing mechanism in democratic



societies. In Nigeria, freedom of the press has long been passed into law though, but its functionality leaves much to be desired. It is like giving a child a gift of bread with the right hand and retrieving it with the left hand. That is the scenario Nigerian journalists and the society have found themselves in. Oloyede (2008) writes that press freedom has suffered, above all other freedoms, from the eventual degradation of the essence of liberty. Though it is usually piously protected, nay guaranteed in the constitution and statutes of most countries, its practicability is never guaranteed. One of the obstacles put in place to ensure there is nothing like total freedom of the press, are laws that guide the operations of the media. These laws are obstacles to the effective performance of journalists in their watchdog function.

This is why this study became necessary, to pin down the necessity or otherwise of these laws as they affect press men in the execution of their avowed responsibilities of information gathering, processing and dissemination.

OBJECTIVES OF THE STUDY

The broad objective of this study is to assess how the media legal stipulations infringe on the freedom of the press. Its specific objectives are to:

i. Know the level of freedom enjoyed by the press in Nigeria

ii. Find out the benefits of the press law to the working of the press in Nigeria.

iii. Know how often these laws are infringed upon by journalists.

1.4 Research Questions

i. What is the level of freedom enjoyed by the press in Nigeria?

ii. Are there any benefits of press law to the workings of the press in Nigeria?

iii. How often are press laws infringed upon by journalists?

REVIEW OF CONCEPTS

Free Press

For any society to be democratic in the true sense of it, such a society must recognize the value of free press. Free press means that the media in any society is not gagged, they are to carry out their duty of newsgathering, writing, editing for either publishing or broadcasting without any form if restraint. One of the cardinal means of measuring how free a nation is, is by knowing the level of liberty the citizens enjoy in terms of speaking, writing, and publishing for public consumption. Buttressing this, Tom (2006) writes:

> Freedom of expression is a major test for assessing the degree of liberty which the citizens of a nation have. Such freedom includes freedom of speech, writing and publishing. Perhaps this is why freedom of speech is entrenched in the constitution of most modern countries today. The major values underlying free speech and press is society's need for maximum flow of information and opinion and the individual's right to fulfillment. People should be informed about how they are governed and what is going on in the world around them. The duty of disseminating this information is therefore cast on the mass media (p.1).

Let's now properly situate the meaning of freedom in the context of its place in democracy. The Oxford Advanced Learner's Dictionary defines it as "a state of being unrestricted in one's actions, liberty, choice, decision, fear, pain or expressions" On the other hand, Webster's Encyclopedic Dictionary sees "Freedom of the Press" as "the right to print and publish without government censorship" From the foregoing definition of "freedom" and the concept of "press freedom", it is clear that the essence of freedom of the press is to underscore the need for the mass media in a democratic society to be totally free to inform citizens, of the goings-on in the world around them, and which at the same time is a safeguard for democracy itself. This is because, the people constitute the ultimate source of power in every democracy, and if government of the day feels they (the people) lack the power to control this power, the remedy



should not be to snatch the power from them, but it should be to inform their discretion.

News Reporting

Every sane person requires news of significant developments from both within and without his immediate environment. News makes us to be current in our society, without it, we would be living a life of "in all directions and in no direction". News makes the humankind knowledgeable, informed, current and dignified. McDougal (1982) defines news as an account of an event, not the event itself. It is a timely report of an event which becomes history the next day. Akinfeleye (1987) sees it as an "account of unusual events which more or less compels reporting. It is an account of what the public wants to know, what they must know, what they ought to know, and a commercial proposition". While Ufuophu-Biri views it as "published or broadcast account of an event or occurrence in the mass media" (p.12). McDougal (1982) insists that nothing is news until it is reported. "The role of a reporter is to find the facts and publish them. (Wakeel, 2010, p.13).

In sum, news reporting is the art and act of following up on development or occurrence, and giving accurate account of what happened, where it happened, when it happened, who is involved and why it happened, for the consumption of news audiences or readers.

REVIEW OF LITERATURE

Free Press: Scholars' Nexus

In an ideal democracy, freedom of the press is expected to flourish in order to protect the fundamental human rights. By extension, media, democracy and good governance are like triplets, born together. Freedom of the press should not be negotiable for whatsoever reason. Unfortunately, most developing countries especially in the African continent, do not respect the fundamental rights even when enshrined in their constitution. This is, in fact, a quagmire. On this, Oloyeade (2008) avers that, although the human race is united on the importance of, and need for press in modern society but it is also absurd to note that they

are not unanimous as to the level of freedom that should be allowed the press in performing their function of newsgathering, editing, and publishing/broadcasting.

Robert (2021) elaborates on the need for freedom of the press as according to him; Freedom of Information is all about having free access to information held by public authorities, a basic requirement of the right to freedom of expression as well as proper functioning of any democracy. But not so in the case of Nigeria, as most times, government authorities apply different means to hoard information sought after, from journalists. Buttressing this, Ekunno (2001) states that a culture of secrecy is an integral part of Nigeria's government which is why members of the public, the press inclusive are usually denied access to official information. This is contrary to the dictates of true democracy as a number of scholars have voiced out their feeling on the contradictions observable in most democracies of the world. According to them, the mass media are basic necessity in the protection of democracy, since the media serve as a link between the governors and the governed. One of their functions as watchdog of society is to expose ills in the society and most importantly, holding government accountable (Fog, 2004; Kellner, 2004). Freedom of the press which derives from freedom of speech is against any form of abridgement especially as it concerns the right held by the press. A good number of leaders are always against this basic freedom because they are afraid of being watched over, due to the threat such action pose on their perceived misrule. (Ufuophu-Biri, 2010). Ufuophu-Biri (2006) also observes that the media are free to comment on issues of national interest through publication and broadcast of issues of public interest.

> Press freedom can therefore be thought of as one of the basic requirements of free and rational society. It is in realization of this fact that many governments of the world and even organizations and societies have made declarations that tend to legitimize press freedom (Okoro & Agbo,, 2003).

On the importance of free press in democracy, Lavarch (2019) writes that the media is a key accountability mechanism for ensuring that the



institutions of power are constantly under watch. The institutions as he identifies are: Political power of executive government, the social and cultural power of institutions as diverse as church and sporting groups, and the economic power of business sector. Freedom of expression which gave birth to free press simply means the liberty to say or publish whatever what one wishes to, there should be no restraint on publications, as every person reserves the right to lay what sentiments, facts, information or publication he has before the public. To forbid this right is to destroy the freedom of expression and the press.

The Key Law Infringing on Free Press

There remain extant laws guiding the operation of the media in different countries. In this sub-section, we are going to consider the main law that affect the media operation with particular attention on Nigeria, the law is the law of defamation.

Defamation Defined

Since the freedom of the press means the liberty of the media to publish or broadcast whatsoever they wish to, it should be noted that absolute freedom, anywhere in the world is utopian. This is why there is an attached clause to free press: "where a person publishes what is unlawful, criminal, defamatory or mischievous, he should face the consequences of his publication" (Malemi, 2009, p.10). It was in the spirit of protecting others from the excesses likely to be born out of free press that the need for the law of defamation arose. Tom (2006) traced the origin of law of defamation to King Alfred the Great who as early as the 9th century had decreed that anyone who commits the offence of slander should have his tongue cut off. With civilization, the tongues of slanders are no longer chopped off as they are now made to suffer certain amount of financial pains via, payment of damages as redress.

> Defamation is the publication of statements, which exposes a person to hatred, ridicule, contempt or causes him to be shunned or avoided by right thinking members of society generally. Thus, defamation is the communication of any

information that injures the reputation of a person and exposes him to hatred, ridicule or damage him in his office, trade, or profession" (Malemi, 2009, p.117)

Tom (2006) elucidates on the definition by presenting the two divisions of defamation: libel and slander. While libel means any defamatory statement in printed form, and which also includes broadcast materials, slander on the other hand is when the defamatory statement is by words of mouth. However, it should be recognized that freedom is not limited to only a few selected persons or groups. This is why the constitution of Nigeria places a caveat on free press and freedom of expression. The judge of appellate court of New York in the suit: Dael V Times Inc. as cited in Ufuophu-Biri (2010), held that defamation is:

> Any written or printed article published of, and concerning a person without lawful justification or excuse and tending to expose him to public contempt, scorn, obloquy, ridicule, shame or disgrace, or tending to induce an evil opinion of him in the minds of right thinking persons, or injures him in his profession or trade, is libelous, and actionable, whatever the intentions of the writer may have been. The words need not necessarily input actual disgraceful conduct to the plaintiff; it is sufficient if they render him contemptible and ridiculous (p.99).

Okoro & Agbo (2003) views it as any statement or broadcast whether in permanent or transient form, aimed at lowering a person in the estimation of the right-thinking members of the society or cause him to be shunned or avoided or even exposed to hatred, ridicule, contempt or to convey an imputation on him, disparaging or injuring him in his office, profession, trade or business. Our emphasis here is on libel which is of two types namely: (i) Criminal libel, in which case, government is the plaintiff, as such, the one who can sue or prosecute the libeler. In other words, criminal libel is a crime against the state (Okoro & Agbo, 2003). (ii) Civil libel on the other hand is one in which an individual or organization can



initiate court action. The libeler if found guilty is made to suffer financial settlement to the plaintiff as damages. (Ngwokor, 2018). Esimokha (2016) identifies the following as the elements of defamation:

a. **Publication**: The defamatory content or statement must be published, i.e. it must have been made available to a third party. This means that people, other than the plaintiff must have knowledge of the defamatory statement.

b. **Identification**: The plaintiff has the onus of proving that the defamatory statement refers to him.

c. **Defamatory words**: The statement termed defamatory by the plaintiff must be capable of harming his reputation. Other essential ingredients of defamation according to Ngwokor (2018) are:

d. **the publication must be false**. This means that the imputation by the defendant must be baseless and therefore unfounded.

e. The defendant must be at fault. This also means that the defendant did not exercise due diligence in the performance of his duty as a writer or journalist.

It is also imperative to spell out the route available to a journalist facing the charge of defamation. Such a journalist could be set free if he advances the following:

Summary Judgment

(i) **Statute of Limitation**: Defamation suit may be considered stale if the plaintiff fails to initiate action after some years. In Nigeria, after six years, such an action is considered stale.

(ii) **Jurisdiction**: Here, the defendant can ask the court to quash the suit for lack of jurisdiction. This has to do with the geographic area where the said defamation was committed.

2. Truth

This is where the journalist can prove that what he published is nothing but the truth, and he stands his grounds.

3. **Privilege Communication**: This takes three forms- (i) Absolute privilege (ii) Qualified privilege (iii) Neutral reportage.

4. Fair Comment: That what he wrote was an unbiased expression of personal opinion without malice.

5. **Consent**: if the plaintiff knew about, and approved of the statement before its publication, he would have no locus standi to sue for damages or redress.

6. **Right of Reply**: If a person who was defamed replies with an equal amount of defamatory words, he stands a chance of winning his case. (Ngwokor, 2018).

THEORETICAL FRAMEWORK

Democratic Participant Media Theory

The Democratic-participant media theory was propounded by Dennis McQuail in the year 1957. This theory is one of the two theories propounded by Dennis McQuail to fill the lapses not taken care of by the four foremost press theories. McQual came up with this theory as a result of new developments and increasing criticism of the dominance of the media of communication by private or public monopolies. "This means that democratic participant media theory was an outcry against the commercialization and monopolization that characterized privately owned media; the centralism and administrative bottlenecks evident in public owned media (Ijwo & Omula, 2014). McQuail as cited in Ojobo (2002) identifies the following as the assumptions of democratic-participant media theory:

1. Individual citizens and minority groups have rights of access to media (right to communicate) and rights to be served by the media according to their own determination of need.



2. The organization and content of the media should not be subject to centralized political or state bureaucratic control.

3. The media should exist primarily for their audiences and not for media organizations, professionals, or clients of the media.

4. Groups, organizations and local communities should have their own media.

5. Small scale, interactive and participative media forms are better than large scale, one-way, professional media.

6. Certain social needs relating to the mass media are not adequately expressed through individual consumer demands nor through the state and its major institutions. Communication is too important to be left to professionals.

Anaeto, Onabajo & Osifeso (2008) note that till now, democraticparticipant media theory is only associated with the more developed liberal democracies in the world, it has not been incorporated into the operating tradition of any particular media organization. Notwithstanding, some developing societies are being attracted towards its tenets. Contrary to the principles of the democratic-participant media theory, most democratic countries, especially in developing countries do not guarantee free access to information. Corroborating this, Asemah (2011) avers:

Going by the theory, everyone in the society should be allowed to have access to the media. But does this really happen? The answer is simply no. This is because, there are certain factors, which hinder the populace from having access to the media. (p.155)

STUDY METHODOLOGY

Adopting the survey method, academic staff numbering 20 (twenty) in the department of Mass Communication, Federal Polytechnic, Nasarawa form the population of the study. Since the population is small and manageable, the twenty academic staff made up of Lecturers, Instructors

and Technologists were purposively chosen as sample size for the study. Asemah, Gujbawu, Ekhareago & Okpanachi (2017) advise that when the population is small, it is recommended to sample the entire population to achieve desirable level of precision. The choice of academic staff in the department of Mass Communication was based on the researcher's belief that they are enlightened and have knowledge of the subject of research, since it falls within their field of specialty.

20 (twenty) copies of structured questionnaire were distributed but only 16 (sixteen) were returned as at the time of retrieving same, upon which the analysis of data was based.

The study adopted pie chart and simple percentages in the presentation and analysis of data generated.



DATA PRESENTATION AND ANALYSIS How would you rate press freedom in Nigeria?

On rating press freedom in Nigeria, 6% representing 1 respondent said press freedom in the country is moderate, a whopping 81% representing 13 respondents were of the view that press freedom in the country is low while 13% representing 2 respondents rated it to be very low.





Do you agree that absolute freedom is required for a functional press in democracy?



Data on this chart indicate that 68% representing 11 respondents strongly agreed that absolute press freedom is required for our democracy to function properly, another 19% representing 3 respondents agreed that absolute freedom is necessary for a functional democracy, 13% constituting 2 respondents strongly disagreed that there should be absolute press freedom.

Should press be restricted by media law?



The data as can be observed from the chart above reveal that 18% representing 3 respondents were of the view that press law is a hindrance to the smooth running of democracy, 68% representing 11 respondents expressed the view that press law is necessary to regulate journalists in their job of news reporting why 13% representing 2 respondents were of the opinion that press law should be applied minimally



How often do journalists infringe on press law in the course of their duty?





Data on this chart reflect the feeling of the respondents on how often journalists infringe on press law while performing their duty. Consequently, 56% representing 9 respondents felt that journalists occasionally go against the dictates of press law while 44% representing 7 respondents were of the idea that journalists rarely infringe on press law in the course of their duty.

DISCUSSION OF FINDINGS

Result from the analyzed data shows that as far as Nigeria is concerned, press freedom is on the low side, which is not healthy for her democracy. In other words, freedom of the press remains a sine-qua-non for an ideal democracy. For journalists to be free to be the watchdog of the society, they should be free to perform their avowed obligation. However, it is at the same time believed that press law should be in place to regulate the operation of the media, in order to serve as a check on their excesses. This is why Blackstone as cited in Tom (2006) avers:

Every man has the undoubted right to say what sentiments he pleases before the public. To forbid that is to destroy the freedom of the press, but if he publishes what is illegal, or mischievous, he must face the consequences of his temerity (p.2)

As a matter of fact, journalists in Nigeria, aware of the law guiding the operation of their profession, are also mindful of those legal stipulates,

especially that of defamation (libel). In other words, it is only occasionally one finds journalists in the country running against the extant media laws. Perhaps, lack of diligence has led a few journalists into legal bottlenecks for defaming another person.

CONCLUSION

From the data gathered and the analysis thereof, it can be safely concluded that freedom of the press is still at low ebb in Nigeria, an indication that Nigeria belongs to the class of third world country. It requires democratic maturity to have in place the desired level of press freedom that guarantees a free setting or environment. On the other hand, absolute freedom is utopian, as no government will allow the kind of freedom that will expose it to danger.

RECOMMENDATIONS

Government should allow a sizeable level of press freedom to enable the press perform optimally, in their duty as watchdog of society. In democracy, those in government are usually elected by those they represent, therefore, the only way the electorates can know how they (the representatives) are doing is by having in place press that is free.

The press should be guided in the execution of their responsibilities. Therefore, press law should serve as safeguard for the prevention of abusing the ethics of the journalists' professional calling, built around objectivity, balance and fairness.

Journalists of today need to be more educated, as the world gets more sophisticated by the day, to know what is approved of publication or broadcast in order to avoid public opprobrium.



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Appendix A

Questionnaire

| 1. | How would you rate press freedom in Nigeria? High Moderate Low Very low |
|----|---|
| 2. | Do you agree that absolute freedom is required for a functional press in democracy? Strongly agree Agree Strongly disagree Disagree |
| 3. | Should press in democracies be restricted through media law? Press law is a hindrance Press law is necessary to regulate the media Press law should be applied mi_ally |
| 4. | How often do journalists infringe on press law in the course of their duties? Always Occasionally Rarely |

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