



Freedom of... (Murtala, A. M. & Gwarzo, A A. 2024) DOI:<https://10.59479/jiaheri.v1i1.54>

Freedom of Expression in Nigeria is not Absolute.

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Abstract

This study will deal with the details of freedom of expression, its meaning, historical perspectives and restrictions. The paper will also include the study on right to freedom of press, including the role of censorship, defamation, concept of media trials, and the lack of conclusion of cases on fundamental rights breach allegation against the state at all levels in Nigeria, accompanied with all the relevant case laws.

The strength and importance of media in a democracy is well recognized. Section 39 provides for freedom of expression and Section 22; which is the mission statement in chapter two by federal government of Nigeria (being that a military government made the constitution for Nigeria, it couldn't shake off that tango, and promises made therein are now used by many for excuses to vilified the federal government and attribute any breach of Press Freedom to, even if committed by state government) in the Nigerian Constitution, both sections includes within its ambit, Freedom of Press. The existence of a free, independent and powerful media is the cornerstone of a democracy, especially of a highly mixed society like Nigeria. Media is not only a medium to express once feelings, opinions and views, but it is also responsible and instrumental for building opinions and views on various topics of state, regional, national and international agenda. The pivotal role of the media is its ability to mobilize the thinking process of millions.

Freedom of Press is undoubtedly one of the basic freedoms in a democratic society based on the Rule of law. Nonetheless freedom of expression is not an end in itself. The public function which belongs to the press makes it an obligation of honour to exercise this function with the fullest sense of responsibility.

Keywords: Freedom of Expression, Restriction, Derogation, Constitution, Human Rights.

Introduction

Freedom of expression is broadly understood as the notion that every person has the natural right to freely express themselves through any media and frontier without interference such as a censorship without fear as reprisal, such as threats and persecutions.

The main objective of the article is an evaluation, of the doctrinal interpretation of the freedom of expression, its derogation by the constitution which provides this rights, and it shall explain the complex nature of freedom of expression, the reason for the perception that freedom of expression is "absolute", and not the reality that it is "non-absolute"; herein called henceforth, absolutists and non-absolutists in nature in classification of interpretation.

The source for this perception and the influence it had on decided cases in Nigeria, USA, India and some common law countries, and the two major divides of the argument that Freedom of



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Expression is absolute and those who says it is not, and even a weakly third; Mandatory, meaning that once the meaning and scope of the First Amendment have been determined, the constitutional guarantee is 'obligatory'.

It cannot be denied that it is of practical importance that a precarious balance between the fundamental right to expression and the right to one's privacy be maintained. The second practice which has become more of a daily occurrence now is that of Media trials. Something which was started to show to the public at large the truth about cases has now become a practice.

Purpose of Study.

How relevant is the question of doctrinal interpretation in judgements delivered by judges in Nigeria as it relates to freedom of expression?

Meaning and Scope:

Freedom of speech and expression means the right to express one's own convictions and opinions freely by words of mouth, writing, printing, pictures or any other mode. It thus includes the expression of one's ideas through any communicable medium or visible representation, such as gesture, signs, and the like. The expression connotes also publications and thus the freedom of the press is included in this category. Free propagation of ideas is the necessary objective and this may be done on the platform or through the press. The freedom of propagation of ideas is secured by freedom of circulation. Liberty of circulation is essential to that freedom as the liberty of publication. Indeed, without circulation of the publication, freedom of expression will be impaired.

Historical Perspectives.

There is some study who claims that freedom of expression originated from the ancient Greek inheritor around 5th century B.C as 'PAREHEA' meaning, 'FREE SPEECH'. (B.O. Nwabueze, 1982). The first Amendment to the constitutions of the United State of America adopted on the 15th of December, 1791 expressly forbade congress from making any law abridging the freedom of speech and the press [USA Constitution was signed by 39 of the 55 delegates in 1787].

Thus article 19 of universal declaration of human right 1948 provided for freedom of expression the international covenant on civil and political rights adopted in 1966 also provide for free speech in article 19 of the treaty that came into force in March, 1979. In the same vein other human right Instrument like the African chart on human and peoples right Article 9 provides for this. The United Nations General Assembly declared: Freedom of information is a fundamental human right and is the touchstone of all of the freedoms to which the United Nations is consecrated.

What is interjectory however in the case of Nigeria only the universal declaration of human right that was adopted by a civilian government at independence, all the other charters like African charter on human and people's rights, were adopted by the military government; the anomaly there is that the military governments gets its 'legitimacy' by ousting the section 1 and chapter 4 of the constitution(s) in Nigeria in force.

Throughout the colonial era, Fundamental Human Rights were not incorporated in any of the constitutions written and proclaimed for Nigeria. Only at independence in 1960, did Nigerians enacted Bills of Rights; Section 24 in 1960, Section 25 of the 1963 Section 36, in 1979 and Section 39 1999. Thus, no government; Federal State or Local Government can assume guardianship of persons' mind. Section 39 as shown clearly that it is more generous that First Amendment to the US constitution and the plethora of judicial reviews by US Supreme Court trying to gauge, interpret and in some cases stretch the interpretation of the minds of the legislature and the division of the



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academia in taking a stand with either the justice black minority justice or the majority by Chief Justice Vinson, in the locus classicus case of the DENNIS V. United States (1951), the Chief Justice said “nothing is more certain in modern society, than the principle that there are not absolutes” Justice Frankfurter in concurring opinion, said the demands of free speech in democratic society as well as the interest in national security, are better served by candid and informed weighting of competing interest. This way of balancing is clearly missing in the recent case in Court of Appeal of Nigeria ,in its judgement in Nmandi Kanu V. The State (2022).The Court clearly didn’t weight or balance this interest and what is unsatisfying is that none of the three Justices deemed it fit to tell Nigerians, why they felt, the person who jumped bail, left the country after a charge of treason since 2017, should be set free, because the state committed an act of ‘extra ordinary retention’ in returning him from Kenya. This should be a clear case of evidential hearing to determine; if at all, such an allegation happened as stated in the affidavit evidence brought by Kanu. How he was brought to court isn’t, important in law, as evidence obtained in any manner can be tendered in the court. The court didn’t explain how is it illegal for such a bail jumper being brought to court, even if by ‘extra ordinary rendition’ .What is the position of the law in Nigeria if alleged fundamental right of a citizen is violated as it affect the trial of a terrorist suspect before a competent court of law? No judicial precedent on this. In USA, it has allowed agents of the United States to detain foreign nationals without any legal process and primarily through counterparts in foreign intelligence agencies, to employ brutal interrogation methods that would be impermissible under federal or international law as a means of obtaining information. Thus illegal or extra ordinary rendition is a transfer of a suspect criminal to its home country where the criminal can be tried and it is “[legal]” because of the current global terrorist threat. So why is the Court of Appeal saying it does automatically vitiate legitimate continuation of trial in the case of Nmandi Kanu . The court of appeal not only discharged the suspect terrorist [IPOB, has been declared a terror Organisation by a competent court of law and this decision was affirmed by the Court of Appeal], but stopped any lower court from trying him again. The State has appealed the judgment and stay of execution hearing stated for 24/10/22, the court has adjourned the case and no date has been fixed for this.

Importance of Freedom of Expression.

The strength and importance of media in a democracy is well recognized. Section 39 of the Nigerian constitution (1999), which gives freedom of expression includes within its ambit, freedom of press. The existence of a free, independent and powerful media is the cornerstone of a democracy, especially of a highly mixed society like Nigeria. Media is not only a medium to express once feelings, opinions and views, but it is also responsible and instrumental for building opinions and views on various topics of state, regional, national and international agenda. The pivotal role of the media is its ability to mobilize the thinking process of millions. The criminal justice system in this country has many lacunae which are used by the rich and powerful to go scot-free. In such circumstances the media ought to play a crucial role in not only mobilizing public opinion but bringing to light injustices which most likely would have gone unnoticed otherwise, sadly what we have is media that encourages hate, tribalism, sensationalism and half-truth in most of its headlines and contents. Thus this freedom is mostly abused and weaponised by the owners of the media outfits, Journalists, critics and even the so called social rights activists. Things have been politicized that you can hardly recognize the truth anymore. The practitioners have distorted



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all facts and introduced what they called “political solution” that mostly they are not interested in the truth, especially if one of their own is involved. The judiciary is not allowed to conclude trials and a lot of false conclusion on the extent of this right is out in the public domain that most Nigerians think that the freedom of expression is not restricted nor did the constitution provides for its abrogation in certain circumstances. The provision of section 22 of the constitution which is tagged obligation to the mass media has been erroneously elevated to the level of a sanctimonious level of absurdity. A chapter which is just a “mission statement” (A. M. MUHAMMAD 2003) and not justiciable has been given the status of contract between state and its citizens. This is clearer when you take a look at few examples on contemporary Nigeria today and its effects on our polity.

Chapter 2 of the 1999 Constitution of the Federal Republic of Nigeria, in respect of the Fundamental Objectives and Directive Principles of State Policy lays the foundation for what should be free rein for the press, radio, television and other agencies of the mass media to exercise their civic liberty but unfortunately, as has been evidenced through happenings in the country, that has not been the case.

However, this ideal as prescribed by the law is a far cry from reality. In 2018, officers of Nigeria’s Department of State Services (DSS) arrested and detained for seven days, Tony Ezimakor, the Abuja Bureau Chief of Daily Independent Newspaper for publishing a story on Boko Haram and alleged ransom payments for abductees. He was interrogated about his sources but he declined to disclose. Similarly, Samuel Ogundipe, a journalist with Premium Times was arrested by the Special Anti-Robbery squad (SARS) on 14 August 2018, for a story on the National Assembly invasion investigation which led to the dismissal of the former Director-General of the DSS. He refused to disclose sources of his story and was subsequently charged to court for criminal trespass and theft of police document. However, he was released on bail on 17 August 2018. These are just a few in the plethora of examples of the stinging dichotomy between what the law provides and what truly obtains in the country, the truth is the law never provided for such unchecked freedom, and where it did, there was restriction and abrogation. Except it’s only the judge who is allowed to determine how or what constitute such restrictions or abrogation. The lack of patience and faith in the court process, frustrates the development of laws in that area.. A close look at history reveals that blatant disregard for these rights are not a novelty in Nigeria. Another example is in 1976, the military government took over some newspapers from private hands, despite the guarantee of freedom from censorship provided for in the 1963 constitution. However, that part of the constitution was suspended and the action of the military was legal, however that of 2018, because of the provision of section 39 of a 1999 constitution in a democratic period of government, was illegal and the head of the DSS paid the price with his job. (saharareporters, 2018).

This method of what is termed “political” solution has affected the richness of our legal jurisprudence in Nigeria, and why mostly we have to refer to case law of other countries like USA, India and other common countries to elucidate our points and enrich our research. You don’t have cases that are allowed to run their course, thus, we are left with citing newspaper reports, new media as our source and not law reports. For example, Agba Jalingo was arrested on August 22, 2019, by the Cross Rivers Government for asking the Governor to account for N500 Million, meant for Micro finance bank. He was arraign for ‘disturbing the peace’ and letter invited for likely a person of interest in a treason case, against Sowore (who is standing trial for treason, but a



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presidential candidate in the 2023 election, he is granted bail, whilst his trial is ongoing), instead of the course of justice be allowed to exonerate Jalingo, the Amnesty International Nigeria and another outfit called CPJ (committee to protect journalist) both NGOs are calling on Nigerian authority and not Cross Rivers government to release Jalingo, extra judicially. If Amnesty International Nigeria has turned political, then how comes the head of CPJ Angela Quintal is quoted as saying; authorities in Nigeria should release Cross River watch publisher Agba Jalingo and drop the charges against him and stop using the county's state security laws to harass government critics. All shows he was arraigned by a state government then of PDP, and not a federal government of APC. This deliberate falsehood made the story to get traction leaving the main charge or court process at limbo. This style of addressing human rights issues is an offshoot of the military government and mentality of the activists, who do not trust the courts to get them speedy justice. Forgetting the fact, that in a military era, no fundamental rights are available to the citizens, and the social media pressure is affecting the understanding of rule of law.

Another case currently ongoing is that of Nmandi Kanu of the terrorist organization called IPOB. In the case marked CA/ABJ/CR/625/2022, Justice Adefoye Okojie said its unlawful charge(s) and the court quashed all the seven counts of charges and no oral testimony was called to show that rendition took place and what is the position of the law of such an action. In the USA where rendition was introduced because of the new wave of terrorism, it has allowed agents of the United States to detain foreign nationals without any legal process and primarily through counterparts in foreign intelligence agencies, to employ brutal interrogation methods that would be impermissible under federal or international law as a means of obtaining information. Thus illegal or extra ordinary rendition is a transfer of a suspect criminal to its home country where the criminal can be tried and it is "[legal]" because of the current global terrorist threat. So why is the Court of Appeal saying it does not automatically vitiate legitimate continuation of trial in the case of Nmandi Kanu? The court of appeal not only discharged the suspect terrorist, but stopped any future trial in a lower court. (Saharareporters 2022).

The United Nations General Assembly declared: Freedom of information is a fundamental human right and is the touchstone of all of the freedoms to which the United Nations is consecrated.

The Blackstonian concept of freedom of press which was expressed as early as in 1769 contained five basic points which still form the crux of the concept of Freedom of Expression. They are as follows:

1. Liberty of the press is essential to the state.
2. No previous restraints should be placed on the publications.
3. That does not mean there is press freedom for doing what is prohibited by law.
4. Every freeman has the undoubted right to lay what sentiment he places before the public, but if he publishes what is improper, mischievous or illegal he must take the consequence of his own temerity.
5. To subject the press to the restrictive power of a licenser, as was formerly done, both before and since the revolution, is to subject all freedom of sentiment to the prejudices of one man, and make him the arbitrary and infallible judge of all controverted points in learning, religion, and government. But to punish (as the law does at present) any dangerous or offensive writings which, when published, shall on the fair and impartial trial be adjudged of a pernicious tendency, necessary for the preservation of peace and good order, of government and religion



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the only solid foundation of civil liberty. Thus the will of individuals is left free; the abuse only of the free will is the object of legal punishment. Neither is any restraint hereby laid upon freedom of thought or enquiry; liberty of private sentiment is still left; the disseminating, or making public, of bad sentiments, destructive of the ends of society, is the crime which society corrects (Mississippi Law Journal, 255.1985).

Nigerian courts have in limited cases passed judgment against the state especially the Police, on breaches of fundamental rights but they are very few in between the republics because of military interruptions; 1966- 1979 and then 1983- 1999, this coups have affected the jurisprudence of bill of rights cases greatly as they don't exist during the military which are dictatorial regimes. In the case of Inspector General of Police v. All Nigerian Party (2007) the Court of Appeal held that 'the police have no power to stop or restrict the fundamental right of Nigeria to freedom of expression and assembly once those right are exercised within the ambit of the law.

It cannot be denied that it is of practical importance that a precarious balance between the fundamental right to expression and the right to one's privacy be maintained. The second practice which has become more of a daily occurrence now is that of Media trials. Something which was started to show to the public at large the truth about cases has now become a practice interfering dangerously with the justice delivery system.

The following observations of the Supreme Court in *R. Rajagopal and Another v. State of Tamil Nadu and Others* (1994) are true reminiscence of the limits of freedom of press with respect to the right to privacy. But the legal implications arising out of the concept of 'press freedom' are many and hence they are not confined to the constitutional provisions alone. The different aspects of in infringe inter alia on criminal law, law of contempt, Copyright Act, Official Secrets Act, Freedom of Information Act 2011, Law of Torts, to name a few . These laws deal with different issues like those of decency or morality, the issue of privacy versus right to information, defamation and so forth. Issues arising due to investigative reporting are also dealt with by these laws. There are also exclusive press acts like, Press Councils Acts 1988, The Press Councils Act created the quasi-judicial body- Press Council of Nigeria. Basic issues relating to section 22 are settled.

The freedom of expression is the single most important political right of citizens, although private property is required for its operation, without free expression, no political action is possible and no resistance to injustice or oppression is possible. Without free expression, elections would have no meaning at all. Policies of the contestants become known to the public through the freedom of expression and become responsive to public opinion only by virtue of free expression. This free expression of opinions by citizens helps to restrain oppressive ruler. Without this freedom it is futile to expect political freedom or, consequently, economic freedom. Thus freedom of speech is the sine qua non of a democratic society.

Research Methodology:

The methodology adopted is Blackletter or doctrinal research which is concerned with the formulation of legal 'doctrines' through the analysis of legal rules, Paul Chynoweth (2008).

This analysis is known as the 'doctrinal' approach or sometimes, legal dogmatic. Legal doctrine goes beyond merely stating the rules of law accurately. Typically, it seeks to identify underlying legal principles on which legal decisions are based.



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This type of analysis is perhaps best illustrated by the type of advice a legal practitioner would give their client: detailed application of the law according to the rules as they are. Research is library and web sources based. No access to specialist collections of data and materials are required.

Conclusion/ Recommendation.

Generally, the enforcement of fundamental rights, which includes the right to freedom of expression, is supposed to be given paramount consideration by the courts in Nigeria. Indeed, the courts have a duty to ensure that the fundamental rights of the citizens are upheld and protected at all times and are not whittled down except by the exceptions and provisions clearly enacted or identified in the Constitution itself or in existing statutes or regulations which are not in conflict with the Constitution (HRR of 7/12/1976 Series A of NO. 24 at 49). One of the recognised exceptions or restrictions to the right to freedom of expression is the right to the protection of reputation as provided under the law of defamation in *A. Akulega v Benue State Civil Service Commission* (2001) person will therefore be liable if in the course of exercising his right to freedom of expression, he infringes the right of others to the protection of reputation. However, the exception provided by the law of defamation also aims at promoting mankind and enhancing the dignity of the human person. It introduces discipline and self-control into the system and prevents the abuse of the right to freedom of expression. Indeed our courts in Nigeria has not showed us any doctrinal reasoning in their process of reaching conclusion in fundamental human rights cases, and this lack of standard has made most judgements subjective and stare decisis difficult to follow, and research more difficult to understand the path the courts want to take between the two main pillar arguments as enunciated in this study. Though the threat of liability for defamation may have a freezing effect on freedom of expression, the resultant discipline in the society and respect for the rights of one another would help in maintaining social cohesion and stability for the overall development of the society. The danger that the individual defamed might be provoked to violent retaliatory action, while it passed as a justification for the criminal punishment of defamation is more prevalent today than in the past, the reason of delays and cost of litigation is what is making it look as if people don't care to damages done to them. This encourages impunity especially on social media and the main stream media invites people who talk without regards to defaming the subject and showing lack of decorum and the anchors just sit there without stopping them. More violent days are gradually coming back because of frustration, ego and power. So conditioned by more uncivilized actions of individuals and politicians many are not seeking redress of grievance through the established process of the law, but through assaults, murders and sponsored kidnappings.

Finally, it is important to stress that since the majority of Nigerian citizens are still ignorant of their rights, it has become necessary for the government at all levels with the active support of Non-Governmental Organizations (NGOs; who unfortunately have been corruptibly largely by politicians and foreign donors with agendas), to embark on intensive programmes aimed at enlightening the citizens, not only on their fundamental rights, which include the right to freedom of expression but also on the limits of those rights. An enlightened society where people know their rights and respect the rights of others would certainly be more conducive for social, political and economic development.



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Existing privilege laws are a bit too ambiguous and expansive in nature as it doesn't define what exactly constitutes a breach of privilege or Contempt of National Assembly. Recommendations have also been made with the intentions to protect journalists and professionals, from being compelled to disclose information received in confidence except when required in public interest and also against a charge of contempt of Court by permitting truth as a defense.

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