

CHALLENGES OF FREEDOM OF SPEECH AND INVASION OF PRIVACY

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Abstract

Freedom of Speech is a fundamental human right. However, the complexity of life and ignorance of the law by the people has made freedom of speech and invasion of privacy difficult to be protected. It is evidenced from our daily living that most citizens do not know their rights. Section 39(1) of the Nigerian 1999 constitution guarantees freedom of speech as a fundamental human right. Having reviewed relevant concepts to this paper, the theory of Sociological Imagination was used to shed adequate light for understanding. However, secondary data is highly relied on for the method of data collection. This paper aims to review the gap between freedom of speech and invasion of privacy especially as it affects the average Nigerian in this present dispensation. It was however discovered through findings that despite laws enabling freedom of speech and minimizing invasion of privacy, people are still harassed. It was therefore concluded in this paper that freedom of speech is not absolute and that right to privacy is needed for a fulfilled life.

Keywords: Freedom, privacy, speech, media

Introduction

Freedom of speech is one of the fundamental rights globally acknowledged and protected by the constitutions of most countries universally, including Nigeria. Its importance and relevance to liberty and democracy cannot be overemphasized. (Odiye,2005)

According to Nwabueze, free speech and free press are tools for self-government by citizens to know and be educated about the government's affairs, giving room for the formation of opinions and intelligent interactions on government matters. Freedom of speech is highly regarded as a necessary condition for society's progress and the development of mankind. Freedom of expression is an essential ingredient of any democratic society (Nwabueze,1982)

Privacy is a fundamental human right, protected by numerous global laws. This is the basis for the protection of human dignity and any democratic society. Activities that affect this

right include surveillance and censorship. They can only be justified by prescribed law to achieve a legitimate aim. (Akande, 2000).

The right to privacy is a constitutional limit on the powers of the state. The private zone by an individual has taken up infringement of people's privacy, which was traditionally imputed by the government. In the world today, the increasing threat to national security has given rise to technological innovations like CCTV and biometrics, which infringes on the right to privacy by the citizens in a nation. Technology has contributed to the invasion of individuals' privacy through social media, electronic mail monitoring, and an interception that is used to create a database in many marketing and advertising agencies. (Jeremy, 2008).

The freedom of expression and right to privacy covers a wide range of issues that contradicts these rights, such as eavesdropping, sexual orientation, medical history, internet use, social media, email, and personal lifestyles and data. The six components of privacy according to Solove are relationships, personal autonomy, confidentiality and management of personal information, the right of individuality, and limited access to self. In the list stated above, it is clear that privacy is only essential when it is required to protect the rights of an individual that wants to keep private. That is, information the person wants to keep from the public space, goes further to mean that activities individual intend to exclude from the knowledge of other individuals. (Solove, 2008).

Conceptual Review

The Issues of Press Freedom

Press Freedom is often controversial. Part of the reason is that people in government often do not want a powerful press that could be a counterpoise to their exalted position. They would rather that the press be sycophantic so that their shortcomings are not brought to the public glare.

Despite the skepticism of many persons in power towards the press, it is obvious that the power of the media cannot be easily wished away. It was in this context, that a former American President Thomas Jefferson declared that if he had a choice, he would prefer media without government than government without the media. Such a strong endorsement coming from the Presidency of America, often considered the world's strongest democracy, is worth noting, and perhaps, worth celebrating.

As Sambe and Ikoni (2004) have pointed out, there are six issues which press freedom is all about.

- a. No prior or subsequent restraint
- b. Freedom to gather information
- c. The right not to be compelled to disclose the source of information
- d. Freedom of impart
- e. The right to receive information
- f. Freedom from unreasonable punishment for what is published.

The State of Press Freedom in Nigeria

Nigeria emerged from colonialism in 1960. While colonized, Nigerians suffered press freedom infractions from the colonial authorities. According to Momoh (2002, p.10) restrictive media laws could be said to have actually taken roots in 1903 with the enactment of Newspaper Ordinance of that year and the sedition Ordinance of 1909. As Momoh recalled, perhaps the most notorious press gag law was the 1917 Act. The author noted that “it brought together previous colonial laws”.

No doubt, these laws were put in place to curb the perceived “excesses” of the local press and sufficiently frighten them to desist from attacking the Colonial Administration. Tellingly, most of those Draconian laws have remained in Nigeria’s law books because the new rulers who took over from the colonialists were not interested in abrogating them. Not unexpectedly, therefore, in 1964, this earlier Act was amended and has been the basis of anti-press laws in Nigeria. The first civilian administration under Tafawa Balewa, the Prime Minister enacted the law. If the civilian administration was not particularly media-friendly, it was even worse with the subsequent military administrations, each of them trying to outdo each other in an effort to put the media in its “rightful place”.

In the United States of America, there is a stable democracy, anchored on freedom of the individual and the press. The first amendment to the American Constitution states inter alia that “Congress shall make no laws abridging the freedom of the press”. But in Nigeria, the writers of the constitution did not seem convinced that Nigerians deserved unconditional freedom, hence the frequent reasons to the word ‘provided’. Such punctuation or vitiation of the freedom of the press in Nigeria often provides opportunity for those in authority to take advantage.

The Right to Privacy

Privacy is a fundamental human right, enshrined in numerous international human rights instruments. It is central to the protection of human dignity and forms the basis of any democratic society. It also supports and reinforces other rights, such as freedom of expression, information, and association. The right to privacy embodies the presumption that individuals should have an area of autonomous development, interaction, and liberty, a “private sphere” with or without interaction with others, free from arbitrary state intervention and from excessive unsolicited intervention by other uninvited individuals. Activities that restrict the right to privacy, such as surveillance and censorship, can only be justified when they are prescribed by law, necessary to achieve a legitimate aim, and proportionate to the aim pursued.

Home and Correspondence

Section 37 of the Constitution guarantees the right of every person to his home and correspondence. Homes, correspondence, telephone conversations, and telegraphic communications of individuals are protected under this section and are inviolable. The court in *Ezeadukwa v. Maduka* affirmed this view. Under this, it is illegal and unconstitutional for the police or any other security official to search any person’s residence without a lawful warrant. They have no right to search any individual’s body on the road, seize and search a person’s telephone, etc. To invade a person’s home or correspondence, the authorities must obtain a warrant.

It is unconstitutional to carry out surveillance activities in and around a person's home or over his telephone, and other correspondences except such are justifiable under section 45 of the 1999 Constitution. The eviction of families and individuals from their homes has been held to amount to a violation of this right.

Theoretical Framework

Theory of Sociological Imagination

Issues addressed in the study are situated within the framework of the Theory of Sociological Imagination propounded by Wright Mills (1959). The ideal of press freedom is expected to affect democratization. The emergence of the Freedom of Information Law (FOIL) in Nigeria can also affect the operations of press freedom, depending on its efficacy or inefficacy. The aforementioned issues can be explained in the light of socio-political history of contentions among individuals and groups in the Nigerian society. Thus, Mills' (1959) Theory of Sociological Imagination is adapted to explain the FOIL and its linkages to freedom of speech and invasion of privacy in Nigeria. Mills (1916-1962) was recognised as a radical theorist in American Sociology and his masterpiece on "the Power Elite", which appeared in 1956, showed "how America was dominated by a small group of businessmen, politicians, and military leaders" (Ritzer 1996). The Theory of Sociological Imagination developed from Mills' interest in Marxism and the problem of the Third World. Recognition of powerlessness of individuals and groups in their struggle for social justice within the ambit of the law is a key issue in the Theory of Sociological Imagination

Method

Methods of data collection for the present study are based on secondary data. The secondary data used for the present study were generated from peer reviewed articles and official documents. The secondary data was subjected to thematic content analysis for a robust interpretation of problems with freedom of speech and invasion of privacy in Nigeria. Issues addressed in the present study are necessitated by a triumph in the struggle for freedom speech on one hand and continued demands for social justice in Nigeria on the other hand.

Discussion of Findings

One aspect of the right to privacy that has attracted much interest in Nigeria is unlawful searches of homes, offices, phones, etc., and seizures of a suspect's property by the police to obtain evidence. This was most common during the military era when many prominent Nigerians had their residences, offices, and documents searched and seized illegally. Also, meetings taking place in private homes were disrupted without regard to the rule of law. The security agencies carry out these illegal acts allegedly under sweeping powers by some enabling laws. These legislations confer on these agencies sweeping powers of arrest, search, seizure, and detention. The police, for instance, have powers of arrest, detention, and search, take fingerprints of suspects, etc.

Abortion

The question of whether abortion should be prohibited apart from its direct implication for the right to life also has direct consequences for the right to privacy. The arguments of the

different schools in support and against abortion have been under the right to life. Nigeria. In Nigeria, abortion is illegal. Section 228 of the Criminal Code Act of Nigeria provides that:

Any person who, with intent to acquire the miscarriage of a lady whether she is or isn't big, unlawfully administers to her or causes her to require any poison or their harmful medication, or uses any force of any kind, or uses any other means whatever, is guilty of a felony and is liable to imprisonment for fourteen years.

Generally, the enforcement of fundamental rights, which includes the right to freedom of expression, is usually given paramount consideration by Nigeria's courts. Indeed, the courts have to ensure that the citizens' fundamental rights are upheld and protected at all times and are not whittled down except by the exceptions and provisions enacted or identified in the Constitution itself or in existing statutes or regulations are not in conflict with the Constitution. One of the recognized exceptions or restrictions to the right to freedom of expression is the right to protect reputation as provided under the law of defamation. Therefore, a person will be liable if, within the course of exercising his right to freedom of expression, he infringes the proper of others to the protection of reputation. However, the exception provided by the law of defamation also aims to promote the interest of mankind and enhance the dignity of the human person. It introduces discipline and self-control into the system and prevents the abuse of the right freedom of expression.

Though the threat of liability for defamation may have a freezing effect on freedom of expression, the resultant discipline within society and respect for one another's rights would help maintain social cohesion and stability for the general development of society. It is suggested that criminal defamation and the offense of sedition should be reviewed and reformed to suit modern democratic Nigeria's realities or wholly expunged from our statute books. The danger that the individual defamed might be provoked to violent retaliatory action. At the same time, it passed as a justification for the criminal punishment of defamation in the old, more violent days, seems rather outworn in times, conditioned by more civilized ideas about the redress of grievance through the established process of the law. 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), to embark on intensive programs aimed at enlightening the citizens, not only on their fundamental rights, which include the right to freedom of expression but also on their right to the protection of reputation. An enlightened society where people know their rights and respect others' rights would definitely be more conducive for social, political, and economic development.

The question of Freedom of Speech and Fundamental Human Rights in Nigeria

The concept of freedom of speech has become widely used and misused among individuals and groups in Nigeria. While some concerns for freedom are expressed in private spheres, other interests in it are publicly expressed. The movement for press freedom of speech in Nigeria lies in the latter and such movement is theoretically geared towards protection of fundamental human rights. In his remarks on a decade of democratization in Nigeria, Jega (2010) mentioned the relevance and restrictions of freedom thus:

“Human freedom could no longer be taken for granted. Those who have, at one time or the other, lost their freedom or have been in bondage would better appreciate the indispensable character of freedom. [...] As desirable as freedom is, it has to be regulated. The doctrine of the separation of power was designed to enhance human freedom by regulating relationships between the different departments of government the legislature, the executive and the judiciary (Jega 2010)”.

The power to ensure human freedom extends beyond the abovementioned institutions of governance. In a liberal democratic ideology, it is believed that power belongs to the people, usually the electorates, and this premise justifies the quest for press freedom through which individual's right to self-expression can be recognized. The majority of Nigerians can express their satisfaction or dissatisfaction about a number of issues, particularly a wide gap between the elites and the general public. In his observation of this situation, Olurode (2010) speculated that:

“In the next decade, democratic resources will be deployed to avert the phenomenon of rising social discontent which is being fuelled by unjustifiable remuneration of political office holders.”

The freedom of the press cannot be ignored in this context. In his observation of the relevance of the press to socio-political history of Nigeria, Mättig (2010) submitted that: “Nigeria's vibrant culture, its outspoken intellectuals, brave labour unions, civil society and media activists have given rise to hopes about a different Nigeria and a better Africa [...] newspapers and numerous publications decry corruption and bad leadership, and articulate the desire for a better state”.

The above submission implies that the Nigerian society would improve under a regime that tolerates individual's right to self-expression and by extension freedom of the press. Unfortunately, successive Nigerian governments have not lived up to expectations in this regard. Even with its loud acclamation for the rule of law, the regime of late President Yar'Adua was alleged of closure and harassment of the press in his attempt to avert public access to vital information about his ill health (Oyebode 2010). Lack of public access to vital information can endanger democratization of society via corruption.

Aturu (2010) cited several examples of how a tiny proportion of the Nigerian population has continued to benefit from the opaqueness and corruption that lack of public access to information engenders. He argued that how only a few derive maximum benefits from the abundant resources of the state would remain unknown without freedom of information. Aturu's (2010) call for a fundamental change in the Nigerian society through the full exercise of the civil and political rights such as press freedom, a key promise of liberal democracy, is in consonance with the Theory of Sociological Imagination. Many reasons and justifications proffered for the hostility of the ruling elite to the Freedom of Information Bill can be recalled. The main argument against the Bill was that granting public access to information would jeopardize national security. In contrast, restriction of public access to information constitutes human rights abuse. Consistent with Rixin's (2010) observation of

marginalization of the masses in the distribution of national wealth, the Nigerian greedy politicians and their cronies opposed the Freedom of Information Bill for over a decade, while socio-economic conditions of the majority of Nigerians have continued to deteriorate. A major outcome of this eventuality is expansion of the gap between the rich and the poor. The rate of wealth accumulation of the minority and the rate of mass unemployment have reached astronomical proportions in Nigeria. Likewise, the gains of privatization have been concentrated in the hands of the privileged Nigerians, whereas the underprivileged Nigerians continue to wallow in abject poverty.

Thus, adequate protection of the freedom of the press is urgently required to empower the Nigerian public towards participation in formulation and implementation of public policies. The exclusion of the majority of Nigerians from governance is however compounded by inadequate protection of press freedom and this has contributed to the rise of human rights abuses in Nigeria, pointing to the need for citizens' participation in governance (Machado 2011). Adequate freedom of the press can guarantee people's involvement in government and such freedom can stimulate democratization of Nigeria. A number of controversies raised on the question of press freedom have been addressed in the passage of the Freedom of Information Bill (FOIB), which has become the Freedom of Information Law (FOIL).

Conclusion

The right to a private life is connected to human dignity and personal autonomy as it derives from the right to be let alone. It is the right of people to live to the exclusion from public per lustration and the ability to control the boundaries of public interference. In other words, the right to privacy allows the individual to live a fulfilled life. However, it should be noted that a state where there is a complete disrespect for the right of privacy would be unbearable. Furthermore, a state where is absolute privacy would be difficult to function as a state. Thus there's the crucial need that a balance is achievable. For instance, as the world is shrinking, the essence of privacy becomes diminished to some extent.

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- Solove, Daniel. (2000). Understanding Privacy. 2008. <http://www.usdrinc.com/downloads/Privacy.pdf> Unlike in civil defamation, where communication of the defamatory matter to the plaintiff alone will not constitute publication. The defendant must have communicated it to a third party—Ibid, s. 378.