

ASSESSMENT OF THE ROLE OF THE LAW OF SEDITION AND LIBEL IN CURBING JOURNALISTS' EXCESSES IN NIGERIA

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Abstract

The press often collides with individuals and with government which made the government to ensure that the power of the press is regulated to avoid unnecessary breach of relationships among themselves. It is in keeping with this principle of control that brought certain laws to checkmate the excesses of the press. Such laws include laws of defamation, libel, slander, sedition, invasion of privacy, obscenity, copyright, etc. In this study, we are look at the laws of libel and sedition. Trying to examine these laws revealed the nature of the government that introduced them and why they still prevail. Classical theories of the press which tries to look at the press in terms of their relationship with government in power were exhaustively reviewed to see if the press fared well or not under the government. Objectives of the study include a review of the media laws before independence, examination of the Universal Human Rights of the United Nations as it affects the press, and the recently passed Freedom of Information. Some known cases on sedition and libel were also examined. The theoretical framework of the study is the transitional media approach theory, selected because of the transitional nature of the media laws in Nigeria.

Key Words: Role. Law of Sedition. Law of Libel. Curbing Journalists' Excesses.

Introduction

There has been a long standing war between the press and government and that was what made government to come up with so many defence mechanisms in form of proscriptions, promulgation of different laws and all sorts of control. The popular maxim that 'the pen is mightier than the sword' which is a truism has made government to be apprehensive of the press any time by every government and as such, different control mechanisms have been put in place to curb the excesses of the press. It is as a result of this that work examines the role of sedition and libel in curbing the excesses of journalists.

According to the Oxford Advanced Learner's Dictionary, 8th edition, sedition is "the use of words or actions that are intended to encourage people to oppose a government". Also Wikipedia defines sedition thus; "in law, sedition is overt conduct, such as speech and organization that is deemed by the legal authority to tend towards insurrection against the established order. Sedition often includes subversion of a constitution and incitement of discontent or (resistance) to lawful authority. Sedition may include any commotion, though not aimed at direct and open violence against the laws. Sedition words in writing are seditious libel".

Typically, sedition is considered a subversive act, and the overt act that may be prosecutable under sedition laws. Sedition varies from one legal code of one country to another country. It includes the stirring up of rebellion against the government in power. Treason is the violation of allegiance to one's sovereign or state, giving aid to enemies or levying war against one's state. Also, sedition is encouraging one fellow citizen to rebel against their state whereas treason is actually betraying one's country by aiding and abating another state. Sedition laws some what equate to terrorism and public order laws.

Also, libel according to Oxford Advanced Learner's Dictionary, 8th edition defines libel as: "the act of printing a statement about somebody that is not true and that gives people a bad opinion of them". According to Pember (1987) the law of defamation is ancient. Its roots can be traced back several centuries. Initially, the law was an attempt by government to establish a forum for persons involved in a dispute brought about by an insult or by what we today call a defamatory remark. One man called another a robber and a villain. The injured party sought to avenge his damaged reputation. A Fight or duel of some kind was the only means of gaining vengeance before the development of libel law. It was obvious that fight and duels were not satisfactory way to settle such disputes, so government offered its "good offices" to solve these problems. Slowly the law of defamation evolved.

Today, the process of going to court to avenge one's honor is highly institutionalized. In addition, some scholars in the field suggest that the purpose of the law has subtly changed as well. Standards of responsible journalism and professional conduct are frequently applied to the press in determining liability and in this way society and the government, via the court system, are taking a role in defining acceptable journalistic practices.

In other parts of the world, different schemes are used to accomplish similar ends. In continental Europe, libel suits are uncommon. When a newspaper defames a person, according to Pember (1987:115) 'that person has the right – underlaw – to strike back, using the same columns of the same newspaper to tell his side of the story; so to speak, to blast the writer or the editor. This right is called the right of reply, and it exists in the United States in a far less advanced form.

However, there are many definitions of libel or defamation and they are all the same. Phelps and Hamilton (1966) define libel as "a communication which exposes a person to hatred, ridicule, or contempt, lowers him in the esteem of his fellows, causes him to be shunned, or injures him in his business or calling'.

The legal encyclopedia *Corpus Juris* in mass media law by Don R. Pember defines libelous words as follows:

Words which have the tendency to disgrace or degrade the person or hold him up to public hatred, contempt, ridicule or cause him to be shunned and avoided; the words must reflect on his integrity, his character, and his name and standing in the community ... the imputation must be one which tends to affect the plaintiff in a class of society whose standard of opinion the court can recognize. It is not sufficient, standing alone, that the language is unpleasant and annoys and irks plaintiff and subjects him to jests or banter, so as to affect his feelings.

From the above definitions of sedition and libel, it is well understood that sedition is an offence against the state in print or broadcast while libel is an offence against individuals with reputations. There are so many known cases of sedition and libel. However, defamation is on someone's reputation and not on his character. This implies that any person without reputation cannot sue for libel.

Recently, so many newspapers carried report of the arrest of former Minister of Federal Capital Territory, Nasil el Rufai because of false and seditious publication accredited to him, according to Sahara Newspapers. The report claimed that figures provided by El Rufai about defence spending in his article recently was false. The Director General, State Security Service (SSS) was quoted as saying that El Rufai ought to have seized the opportunity of the recently approved Freedom of Information Bill (FoIB) to get correct information instead of the 'inciteful' article where wrong figures about defence spending were quoted. It was discovered from the scenario that the problem of the arrest is that Nigeria does not have a valid sedition law known even though government has always arrested journalists and some other Nigerians for sedition (savanapress.com)

Looking at the two laws, sedition and libel, one would see that those in authority would never be happy to see the press expose them to public riddle. The two laws mainly are there to protect those in authority, while the press is always put to test in their quest to do the 'watch-dog' role to the society.

Objectives Of The Study

The main objectives of this work include:

- a. To review the media laws as applicable before independence when Nigerian journalists fought for independence and what obtains now.
- b. To peep into the Universal Human Right of the United Nations as it applies to our constitution and the way the government has been keeping with the free access to information with regards to the law of the land.
- c. To review the recently passed Freedom of Information law as it affects journalists.
- d. To review the activities of National Broadcasting Commission as regards to 'borderless' media that is now in place in the country. How much control has NBC applied the law to check some unwholesome contents in satellite broadcasting in the country?

Media Laws in Nigeria That Tilt Towards Libel and Sedition

Generally, the Nigeria media laws, as they relate to defamation, libel, slander, national security etc, are patterned after the English laws. Every other institution in Nigeria has had a radical change in the process of Nigerianization since independence but the Nigeria press laws are still patterned after the British press laws. The first newspaper law in Nigeria was enacted in 1903. It made provision for the regulation of newspapers published in Southern Nigeria (Elias, 1969). By this period, it was only in the southern Nigeria that newspapers were published. This was before the amalgamation of the Northern and Southern Nigeria in 1914.

In 1948, amendment to the newspaper ordinance was introduced. Here, the amendment sought payment of cash instead of bond that the first amendment embodied.

Furthermore, the Newspaper (amendment) Act of 1964 which tended to curb the excesses of journalists press especially on libel issues was introduced. This was to deter journalists from publishing falsehood against anybody especially the elite. The law was well followed by the Circulation of Newspaper Decree, 1966 which tried to correct the press was between regional based newspapers. In 1967, General Gowon came up with another decree called "Proscription of Circulation of Newspaper Decree 1967". This decree tended to ban those newspapers that were not friendly to the Federal Military Government.

Yet another, the Public Officers [Protection Against False Accusation] Decree, 1979. This decree was very controversial then and the decree was meant to defend the military and the civilian elite that were part of their government from the press attacks.

Another similar decree emerged during the reign of Buhari called "Public Officers' (Protection Against False Accusation) Decree 4 of 1984. It was this decree that sent Tunde Thomson and Nduka Irabor to prison. What the two Guardian newspaper reporters termed scoop on the yet to be released diplomatic postings later boomeranged against them. They were tried, found guilty and sentenced for one year imprisonment and the Guardian Newspaper was fined fifty thousand naira (N50,000.00) Daramola (2006).

Some Cases on Sedition and Libel

There are so many cases on sedition and libel in Nigeria but in this paper, a few is cited as published in the Nigeria Press Council publication of 1994.

1. **Innocent Okoye** - Editor of **Daily Satellite** newspaper was apprehended and detained by the military, accused of sedition on a story published by the newspaper on Wednesday, March 31st, 1993 headlined; Oil Subsidy, Goes At Last.

2. **Funso Olojo** of the **Punch** newspaper was accused of publishing falsehood, on Friday May 7th, 1993 entitled: Museum Commission Accused of Corruption. The article alleged that the Director General of the Commission, Yaro Gella was engaged in massive receipt and invoice racketeering at the Museum to divert funds.

3. **Tony Momoh**, former Chairman of the Board of Nigeria Airways filed a complaint that he was misrepresented in his speech at an Air transport seminar in Lagos on Tuesday, October 12th, 1993 by some media houses specifically **Federal Radio Corporation of Nigeria (FRCN)**, **Nigeria Tribune** and **Lagos State Television [LTV]**. Momoh averred that in his five-page address which touched on many aspects of the aviation industry, he had expressed the view that Nigeria Airways should not be privatized but rather commercialized. He said that the three media organs above wrote; 'that the Interim National Government has set up a panel to look into the finances of Nigeria Airways and to audit the airline's account; that the government has already verified the debt of Nigeria Airways and this debt is more than N7 billion and will be taken over. He said that the two reports were false and not part of the speech he delivered on March 8th 1994.

4. **Olusegun Obasanjo** former Head of State, was reported by **Razor** as having careless sexual life and the report touched so many issues about him and his ex-wife Oluremi. Obasanjo said that his marriage with his former wife, Oluremi was dissolved before he became the Head of State contrary to what **Razor** reported. He also averred that all that **Razor** reported were false. **Razor** did not apologize but rather said, "... You expressed your shock at the photograph we used in the report which exposed to the Nigerian public the level of moral debasement of our so-called leaders and elders who preach decency and morality in the day time, but are worst culprit of moral depravity and hypocrisy at newspaper.

5. **Tam David-West** versus **Razor**. On April 2, 1994, David-West, a professor of Virology, complained over a publication of **Razor** of March 8, 1994 page 17 as well as the use of his photograph on page 8 which he said were palpably libelous and mischievous. The professor further claimed that the publication was replete with lies and falsehood. He also said that Princess Abiola Elegbede Fernandez could not have been responsible for his divorce with his wife, Professor Abba Sagoe, as reported by **Razor**. "We were divorced in 1980. I met Abiola in 1984," he said. The report was found to be untrue.

6. **Abiodun Shobanlo**, MD of Insight Communication had a case against **TSM (The Sunday Magazine)** over the innuendoes contained in its April 17, 1994 edition entitled "Abacha's Time Up!... Diya's Secret Agenda Revealed". The complainant's grouse is the statement in the **TSM** report that "A Highflying Advertising and Public Relations Executive who comes from the same town as Diya and was his school mate reportedly obtained a juicy two million dollar contract from government to polish Nigeria's image abroad". He said that the report was unfair and maligned his person as he was sure he was the person referred to. The chief executive of **TSM**, Mrs. Chris Anyanwu denied that it was not Insight Communication that was referred to in that publication. She was asked to reflect her explanation in the subsequent publication of **TSM**.

Theoretical Foundation

The theoretical foundation to this study is the Transitional Media Approach theory. This is because, looking at the country, Nigeria, before and after independence and the type of media laws in place, they seem to be transitional in nature. The initial media laws properly suits Authoritarian concept but as time continues to drag we have been witnessing changes in the media laws in the country. The mixture of military dictatorship and the civilian democracy that have been epileptic will show exactly that it has been on a transition.

Naturally, it is the changing world political environment, advances in communication technologies (especially "borderless" technologies such as satellite and the internet). And rapid globalization encouraging this call for a more flexible approach to evaluating a given media system against that society's hypothetical ideal (the basis for normative theory).

Furthermore, going by the above argument; in Nigeria the media laws have been undergoing a process of change. The initial ones, through the normative concept especially the authoritarian systems

witnessed before we had independence and the laws/decrees we had during the military era. The initial laws try to gag the press with some known cases (Decree 43 of 1984) for instance. It was only in 1992 that the electronic media in Nigeria was liberalized. The liberalization also allowed satellite broadcasting. The Freedom of Information Bill (FoIB) only got the president's signature in 2011 which, however has not been tested.

Discussion

In the Nigeria statute-book, it is only libel that is well defined; that of sedition has no clear definition. That is why most of the sedition cases are what government considers seditious. Arguably, it was because of this that the military introduced Nigeria Press Organisation (NPO) which later metamorphosed into the Nigeria Press Council (NPC). The introduction of the Nigeria Press Council is a subtle way of gauging the press because, a press council should not be a government affair.

Also, the role of the National Broadcasting Commission (NBC) is another body empowered by law to clamp down on any broadcasting outfit whose content, the government considers unethical or unprofessional. Monitoring of contents of broadcasting by the NBC is somehow limited to media organizations that are indigenous and owned by Nigerians. Contents of satellite and cable networks are rarely monitored by the NBC.

More so, the saying that the pen is mightier than the sword still holds firm in all countries of the world. Every government is always afraid of the press. The concept of press freedom which often has been misconstrued, has been a clarion call by the press all over the world and that was what gave birth to the "classical theories of the press". In the classical theories, it is used to find out how 'free' is the press in each country. What is looked at is the 'relative freedom' the press is allowed to operate in these countries. There is nowhere in the world that the press is allowed total or absolute freedom to operate. The eye of the government is always on the press because if they remove their eyes from the press, the press is capable of causing a revolution, or even toppling them.

For instance, before Nigeria gained its independence, the press in Nigeria fought against so many press laws introduced in the country by the colonialists, Britain but when we had independence in 1960 most of these laws that were considered 'obnoxious' were allowed and even got more strengths when those that fought the same laws got into government.

Generally, media laws as they relate to journalists going by the universal human rights, is a relative term which applies to nation states according to the type of government in place. In Nigerian constitution, the aspects of human rights provided by the constitution; Chapter IV from section 30 to 39 of 1979 Constitution are the same provision where Nigerians have suffered in the hands of government for violating government order. Because of the flagrant violation of these human rights by the ruling class, so many organizations have sprung up to champion the cause of the 'ordinary' man. Some of these organizations globally include:

- > Article 19
- > The Committee to Protect Journalists
- > Electronic Frontier Foundation
- > Freedom House
- > Index on Censorship
- > International Freedom of Expression Exchange
- > International Press Institute,
- > Media Legal Defense Initiative
- > Reporters without Borders
- > Student Press Law Centre
- > World Association of Newspapers
- > World Press Freedom Committee
- > Worldwide Governance Indicators, etc.

Conclusion

The laws of sedition and libel are there to protect government and individual citizens. The Nigerian press laws in summary include: the Newspaper Act of 1903, Seditious Offences Act 1909 newspaper Act, 1917, official secret Act, 1929. The newspaper Decree 43 of 1993 incorporates provisions of the Newspaper Act of 1917 and 1964. Here, it demands registration and payment of certain amount of money before one establishes a newspaper or news organization.

Now that democracy is gaining ground in Nigeria which is evidenced by the recently approved Freedom of Information Bill. This bill tends to aid and empower journalists to seek information for any issue at any level. This will now make it possible for the Nigerian press to assert the 'watch dog' role and see itself as the 4th estate of the realm. The social responsibility theory of the press can be better practised with some of these relative media laws. Responsible journalism in the type that will not spare anybody no matter how highly placed, provided, the truth is told.

Unfortunately, the Nigeria judiciary has been in the news of corrupt practices and unethical handling of cases in Nigeria. The judiciary should not allow the executive and the legislature to mess the citizens up in their inordinate quests.

Recommendations

From our review, the following are recommended to the government:

1. That a thorough review of the media laws as was handed over to us by our colonial masters is achieved.
2. That there should be legislation in the empowerment of media practices so that they can discharge their duties without interference provided that they do it within the law.
3. That the Nigeria Press Council should be reorganized to give more strength to the media practices and that the appointment of the chief executive of the body should be a collective responsibility of the media practitioners so that it will not be looked upon as an arm of government.
4. The Nigeria Press Council should be charged with more responsibilities to discipline journalists that run foul of professional ethics.

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