

MEDIA REGULATIONS IN NIGERIA: THE ROADBLOCKS TO FREEDOM OF THE PRESS

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ABSTRACT

This paper discusses the mass media laws in Nigeria that are aimed at regulating the media operations in the country. Mass media were observed to be regulated in almost everywhere in the world for reasons other than politics, security and religion. Through reviewing some literature relevant to the study, it was found right from the inception that the press was put under some derogatory roadblocks preventing it from enjoying absolute freedom. The press in Nigeria was not left behind in enacting and promulgating different laws regulating its operations.

Key Words: *Regulation, Mass Media, Freedom, Press, Absolute*

INTRODUCTION

The media, as broadly categorized into print and broadcast, and by extension the new media comprising of computer, cell phone, internet, etc., is seen as a public means of mass communication. People make use of mass media as a source of information, education, entertainment, and as a means of expressing their views most especially in a democratic setting. Over the years, mass media have emerged as powerful means of expression in human societies. Their influence has been profound and felt in all aspect of life, as Curran (2002) argued, that mass media serve as source of cultural expressions, politics, economy, philosophy and lots of other forms and values of life.

Article 19 of the Universal Declaration of Human right proclaim freedom of individuals and groups to freely seek and exchange information, provides legitimacy for the operation of the media globally. From this universal convention, media organizations across the world derive their legitimacy. The Nigerian 1999 Constitution in its Section 39(1) for example guarantees the right to freedom of expression and the press on the one hand thus: “every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference” subsection (2) added that “without prejudice of subsection (1) of this section, every person shall be entitled to own, establish, and operate any medium for the dissemination of information, idea and opinions...”

The right to freedom of speech is not an absolute right due to societal constraints. For this, there would always be a dialectical conflict between the doctrine of free speech and regulation of mass media. However, the fact is that the rationale for regulation of the broadcast media is both political and economic (Hilliard and Keith, 1996) realizing that the broadcast media can be used for good or evil, there are often needs for a system of control, hence, media regulation is a fundamental consideration in media practices.

MEDIA REGULATION

Media regulation begins with the application of the printing press to book production from the mid-15th century onwards in Western Europe. When printing press was established, there had been a rampant publishing of books and other printing materials. This led the then churches and the state to have some interest on the contents of what was being published. For this, printing business had to obtain license and/or church approval before allowing into the business. This led also to the control and prohibition of export or import of books (Source: Module 2: Unit 11: Media Regulation).

With the advent public broadcasting from 1920 onwards, the media were closely regulated by national laws that were more or less required by international agreements relating to technical requirements (e.g. radio frequency allocation). They also served other interest of the state, military and economic considerations. Often regulation took the form of control by state bodies or public monopolies. In other cases, such as United States, supervision was exercised by a powerful governmental body (the federal Communication Commission). During the early 20th century, the cinema film was also established,

typically regulated locally for reasons of safety (fire) and/or content (moral standards), (Source: Module 2: Unit 11: Media Regulation).

Historically speaking, mass media as the outfit for disseminating information had for long fall into religious roadblock to free speech. This is to say, different religious beliefs do not assent absolute freedom of speech to the followers, thereby setting some regulations to the free speech and expression. In Christianity for example, Newth (2001:1) observed that:

Free speech and freely expressed thoughts and ideas may have posed problems to free-Christian rulers, but hardly more troublesome than the guardians of Christianity, as orthodoxy became established. Helpful measures to fend off a heretical threat to Christian doctrine were introduced, such as Nicene Creed, promulgated in 325 AD. But as more books were written, copied and increasingly widely disseminated, subversive and heretical ideas were spread beyond control. Consequently, censorship became more rigid and punishment more severe.

The history of media regulation in Nigeria could be traced back to the period of British colonialism in the country. The colonial masters knew the meaning and importance of informing the society and therefore made laws to check the type of information that must get to the populace. For that reason therefore, various laws were made to regulate information dissemination, as a reason for protecting those in authority. Laws of libel, slander and sedition were promulgated to restrict the freedom of the media and keep their secrets secret (Obadan, 2008). The law of sedition for example came into being in the United Kingdom in 1275 because those in authority felt that the press should not freely criticize the British Monarch adversely, as it offended public good and deserved punishment (Stone, 1986).

According to Uche (1989:36) radio came to Nigeria in 1932 when Lagos began to relay the British Empire Service from England. The intention according to Daramola (1997:116) was mainly to strengthen the colonial hold of Britain, on colonies for political, cultural and economic reasons. In the late 1940s through the mid of 1950s, re-diffusion was the mode of broadcasting in Nigeria the service of which extended to the many parts of the state. Meanwhile, radio broadcasting then was mainly under the control of the States and Federation until 1992 when the policy of deregulation was enacted empowering the NBC to regulate the broadcasting industries and to also grant license to the private investors. Since then NBC became the major broadcasting regulatory agent.

LAWS REGULATING MASS MEDIA IN NIGERIA

In order to ensure National Security and by keeping relevant facts and information secret from the public and the rest of the world, the provision of the 1999 Constitution of Nigeria guarantees a regulation of the freedom of expression and the press. While section 39(1) guarantees the right to freedom of expression and the press, section 39(2) and (3), (a)-(b) quickly check the provisions by permitting its restriction or abridgment, by any law which is reasonably justifiable in a democratic society for the purpose of preventing the disclosure of information received in a confidence; or imposing restrictions upon persons holding office under the government of the Federation or State; or Members of the Armed Forces, or Police, and other security agencies (Malemi, 2009).

The above section gave rise to different enactments and promulgations of laws with the aim of regulating “absolute freedom” enjoyed by the mass media in Nigeria just like their counterpart in rest of the world. Following are the laws aimed at regulating the media in the country:

a) *The Nigerian Constitution:* Even though, Section 39(1) of the 1999 constitution guarantees the right to freedom of expression and the press, Section 39(2) and (3) however place a limitation on the freedom of expression and the press by:

- I. that the authorization of the President of the Federal republic of Nigeria must be required in order to own, establish or operate a television or wireless broadcasting station for any purpose whatsoever;
- II. that it is prohibited to publish any information received in confidence, that is, matters classified by governments as official secrets or as confidential matters, or any matter that will affect the maintenance of the authority and independence of the courts, that is, publications which constitute

contempt of court, and publication prohibited by laws regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films;

- III. Prohibiting the publication of information, such as, official secrets, security matters or other classified matters, received in confidence by persons holding office under the Federal Government of a state, or confidential information received by members of the Armed Forces of the Federation.

Section 37 guarantees to the individual the right to private and family life, “and so the press may not impugn the private and family life of an individual with inappropriate or unlawful publications” (Malemi, 2009), except for instances where individual in question is public figure, or there is lawful justification, or it is a matter of public interest and so forth.

Section 45 justifies the limitation of press freedom posed by the provisions of the law in the interest of defense, public safety, public order, public morality, public health; and for the purpose of protecting the rights and freedom of other persons, such as under the law of defamation, criminal libel, the children and young person’s laws of various states and under the matrimonial causes Act and so forth.

b) Official Secrets Act: The official Secrets Act prohibits the publication of confidential information and matters relating to defense establishments, security installations and other protected places in Nigeria. Similarly, Section 97 of the Criminal Code Act prohibits the disclosure of official secrets and the abstraction of confidential documents. For this therefore, official Secret Act serves as a means of limiting or part of regulating the functions of mass media in Nigeria.

c) Law of Defamation: The law of defamation is said to be up to sub-divisions such as libel, slander, innuendo, and abuse. Although it is part of the statutes of general application or received English laws, almost all the states of the federation have their defamation laws. A person may therefore be liable for making defamatory statements about another person without justification. In addition, defamation is also a crime and section 373-381 of the Criminal Code Act (1990) and laws prohibits defamation.

d) Law of Sedition: The offence and penalty as stated in this law is provided in section 50-60 of the Criminal Code, and prohibits the publication of seditious matters and other undesirable publications and the carrying out of seditious acts.

e) Law of Contempt: “This concept is most often difficult to describe as it has contempt in face of court or out of court” (Obadan, 2008). Most jurists however attempted to define contempt as any conduct which tends to bring into disrespect, scorn, the authority and administration of the law or which tends to interfere with and/or prejudice litigants and/or their witnesses in the course of litigation”. Law of contempt can therefore be said to put a roadblock to free operations of the mass media in the country.

f) Obscene and harmful Publication Laws: These laws prohibit the publication of obscene and harmful literatures, articles and acts that are likely to destroy the morality of the public. Criminal law is the main law that prohibits immoral acts and obscene and harmful publications. The Criminal Code Act and laws under sections 214-233(a) prohibits various offences against morality, whilst section 233(b)-(f) specifically prohibits obscene publications and articles. This apart, the Penal Code, the Children and Young Persons laws, the constitution, and so forth also prohibit obscene and harmful publications (Malemi, 2009 *ibid*).

g) Copyright Act: This law protects copyright work for a copyright owner. Any publication or other act which is an infringement of copyright work, or intellectual property, is wrongful and attracts appropriate sanctions under copyright law.

h) Advertising Law: The code of advertising Practice in Nigeria, of 1990 regulates the advertising profession and practices in Nigeria and also dealing with the ethical issues concerning the profession. Any person practicing advertising in Nigeria must therefore abide by the provision of the code failure of which a sanction can be enforced on the violation.

i) The Newspaper Act: The Newspaper Act and its equivalent Newspaper laws in the state made provision for the registration of newspapers and sundry purposes relating to the newspaper industry. However, these laws have been repealed by the Newspaper (Repeal) Decree No.57 of 1999. The provision of the Newspaper Act constituted a prior restraint, which in fact, were a limitation on publication and therefore a breach of the constitutional provision for freedom of expression and the press (Malemi, *ibid*).

Such prior restraint makes newspapering unattractive and discourages investment in the sector. It is law design to prescribe an unwanted news media.

j) *The National Broadcasting Commission Act:* The National Broadcasting Commission Decree, (now Act) established by the Decree No 48 of 1992 which is amended by the National Broadcasting Commission (amendment) Decree No. 55 of 1999 regulates radio and television broadcast in Nigeria.

k) *Nigerian Communications Commission Act:* The Nigerian Communications Commission is empowered by this Act to regulate all telephone service providers and related activities in Nigeria.

l) *Printing Presses regulation Law:* Printing Presses Regulation Law is empowered to regulate the printing and publication of other printed materials in Nigeria.

m) *Publication Law:* As observed by the scholars, publication law is also an example of over regulation of the press industry, and can be used as an instrument of prior restraint on publications in Nigeria (Malemi, *ibid*).

n) *The Nigerian Press Council Act:* This law as amended by the Nigerian Media Council Decree No. 85 of 1992 established the Nigerian Press Council. This is the regulatory body aimed at tackling media misdemeanor and interpretation of ethical principles and issues involving the practice of journalism in Nigeria. This law has been repealed and replaced by the Nigerian Press council (Amendment) decree No. 60 of 1999 now Act 2004.

o) *The Nigerian Television Authority Act:* The Nigerian Television Authority Act (2004) provides some framework for the regulation of the television stations, under its authority; among other things.

p) *The Federal Radio Corporation of Nigeria Act:* The Federal Radio Corporation of Nigeria Act (2004) and similar laws in the various states with respect to radio and television stations provide some framework for the regulation of such government owned media.

q) *Professional and Non Statutory Bodies:* Within the mass media in Nigeria, there are professional and non-statutory bodies that provide some form of regulation through the provision and enforcement of professional ethics, or code of conduct. These bodies include The Nigerian Union of Journalists (NUJ); The Nigerian Guild of Editors (NGE); and The Newspapers Proprietors Association of Nigeria (NPAN). Each of these bodies has a constitution and code of ethics regulating members.

r) *Beat Based Associations:* Beat based associations are the associations of journalists involved in a particular sector of the profession and they provide informal regulation to their members. Such associations include the Sport writers Association of Nigeria (SWAN); National association of Political Correspondents; Labour Writers Association (LAWA); etc.

s) *Individual Self-Regulation:* This is self-control or self-regulation in the auspice of the media organization itself. Self-regulation helps media organization to achieve a maximum of set goals and objectives of the organization. Self-regulations therefore enable an individual worker at the organizational level to work within dictates of the policy of his organization.

Due to its pervasiveness features, broadcasting media industries are sought to be controlled the more by different government through different policies globally. In many countries, broadcast, until recently, are said to be a state monopoly, a situation which is still in some states. According to Mendel et al, (2002), private broadcasting in other countries is becoming increasingly important and a variety of mechanisms have been used to try to control it.

CONCLUSION

Absolute freedom of the mass media was never achieved all over the world even in the “free societal states” of the world. Mass media were said to be put under different regulatory mechanisms right from the time printing press was invented, when books were massively being printed in the Western Europe. The same history of regulating media was experienced in other part of the world including China, France, India, and Australia among others. In Nigeria, mass media were thought to be regulated firstly by the colonial masters. The Constitution of Nigeria 1999 also followed the same trend of the colonial masters in specifying a particular section justifying the media regulation in the country. Different laws regulating the mass media in Nigeria include Law of Sedition; Law of Contempt, Law of Defamation, Law of Publication, National Broadcasting Commission Act, and so on. These laws therefore serve as the roadblock to freedom of the Press in Nigeria.

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Governments across the world are responding to the COVID-19 pandemic. Alongside the mountain of related challenges, fake news has become a source of frustration. Some are now referring to this fake news phenomenon as a "disinfodemic". Purveyors of fake news are disseminating propaganda and disinformation. This has increased panic amongst the public and slowed the progress of the fight against the new coronavirus pandemic. The "disinfodemic" has resulted in misinformed behaviours such as drinking alcohol and applying heat to kill the virus. Some people were led to believe that the virus only af Nigeria apparently, the paradigm is that press freedom is derived from the freedom of expression, and, therefore, the press does not need any special protection. This belief. mass media shall at all times be free to uphold the fundamental objectives contained. in this Chapter and uphold the responsibility and accountability of the Government to the people." With the theme, "Press freedom, regulating online media and the growing need to protect media practitioners", the participants also argued that continuous advocacy and coalition building is important. x. In his speech, Prof. In Nigeria, the media was almost annihilated during the military era leading to guerilla journalism. The challenge is taking the risk and finding a balance. The battle will continue. There is a need for media literacy. Carlos Gaio said media regulation is broad. "Plurality of the press and access to information is important in defense of democracy. Conversations are going on to regulate social media with the excuse of combating fake news, hate speech. In Europe, there is a discussion over the Digital Service Act. Freedom of the press is the freedom of communication and expression through vehicles including various electronic media and published materials. While such freedom mostly implies the absence of interference from an overreaching state, its preservation may be sought through constitutional or other legal protections. Speaking about current state of freedom of the press, I should say that it is one of the central problems of mass media and of democratic society on the whole. However, not only government restricts journalism. News giants also establish their own codes and rules. In fact, they find it much better business holding their news division to a fierce accounting than giving journalists autonomy in their professional decisions since "right" news is much more profitable.