

# **FREEDOM OF INFORMATION ACT, OFFICIAL SECRET ACT AND PRESS FREEDOM IN 21<sup>ST</sup> CENTURY NIGERIA: HOW FREE IS THE PRESS?**

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**Abstract:** *This research examined the Official Secret Act of 1962, the Freedom of Information Act of 2011 as well as some other relevant laws bordering on press freedom in Nigeria. The research, using the qualitative research method, found that while the Official Secret Act was restrictive in nature, the Freedom of Information Act appeared to be the long awaited messiah in view of its supposed liberal couching and content. The research, however, discovered that even with the enactment of the Freedom of Information law and the passage of same by the National Assembly into an Act, it is not yet uhuru for the Nigerian press, as their supposed freedom to “free access to and publication of information” is still gagged and fettered not only by various successive governments of the day but, most pathetically, the same laws that ought to be the saviour. The work finally recommended, among others, a revisit to the enabling laws on press freedom in Nigeria in order to extinguish, through amendments, all exclusionary and limiting clauses in them which are hampering the freedom of the press in Nigeria.*

**Keywords:** Freedom, press freedom, Official Secret Act, information, freedom of information.

## INTRODUCTION

*I would rather live in a country with a free press and no government than in one with a government but no press; for the only security of all is a free press.*

..... Thomas Jefferson (1743 – 1826).

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The above immortal statement of the third president of the United States of America, indeed, underscores the great importance of the press in any given society. The press, through their tripartite traditional functions of information, education and entertainment, becomes the bastion of hope for the society and can, in the same vein, through their investigative prowess and trainings unearth rather hidden and shocking underground dealings and information concerning a state, an institution or individual. The exposure of the Watergate scandals in the United States of America that led to the resignation and exit of President Richard Nixon in August 1974 as well as the Nigerian “Buharigate” – Toronto Certificate saga of Salisu Buhari (Nwodu, 2006, pp. 148 -149) all point to the inextricable fact that the press, no doubt, unflinchingly wields the power of “life and death” for they can make and mar. The press/media, indeed, are “the eyes through which the world sees” (Oduah, 2009, p. 224).

Commenting on the powers of the press which cannot be wished away, especially pertaining to the duo of President Richard Nixon of the United States of America and the impeached former speaker of the Nigerian House of representatives - Alhaji Ibrahim Salisu Buhari, Nwodu (Ibid) states:

Nixon (America’s former president) and Salisu Ibrahim (Nigeria’s former speaker of House of Representative in the third republic) shared a common fate. Their tenures of office were terminated before gestation period following investigative media report on them. While Washington Post unveiled Nixon’s alleged unholy involvement in the poaching of Democratic Party office dubbed Watergate scandal; Ibrahim fell like a pack of cards to the news report of his certificate forgery, dubbed Toronto University.

Aware of the enormous and tremendous powers as wielded by the press, societies and nay, governments, at various stages and time had chosen not to be unguarded in matters relating to the press and whatever it represents. In this regard, the 16<sup>th</sup> century England came up with the authoritarian theory of the press whereby the leaders could use and control the press to maintain power and social stability as well as “to support and advance the policies of the ruling class” (Agbanu, 2013, p. 159).

Yet to some others, the press must be free in all its ramifications; Merrill (1991) as cited in Agbanu (2013, p. 161) argues that “humans as rational beings, must be free to search for truth and that the media are partners in that search”. This is the concept of libertarian theory of the press which according to Obe & Adebayo (2010, p 113) “prescribes that an individual should be free to publish what he or she likes and to hold and express opinion freely”. They specifically call this theory “free press theory”. Even though there exists other media theories such as the soviet-communist media theory (also called workers theory) and the social responsibility theory (media

being socially responsible, Akpoveta & Ogbemi 2006, p. 68), press freedom vacillates between the authoritarian (unfree and controlled press) and the libertarian (free and uncontrolled press) theories of the press.

In Nigeria, before, during and after the attainment of political independence by the country in 1960, several laws/decrees had been enacted and/or promulgated which either restrict the operations and/or freedom of the press or appear to liberate this fourth estate of the realm. Some of these laws include but are not limited to the Official Secret Act of 1962, Public Officers (Protection Against false Accusation) Decree No 11 of 1976; Newspaper (Prohibition of Circulation, Validation) Decree No 12 of 1978, Public Officers (Protection Against False Accusation) Decree 4 of 1984, the Newspaper Act of 1917, the Press Registration Act of 1933, Obscene Publication Act of 1961; the Defamatory and Offensive Publication Decree No 44 of 1966, Nigerian Press Council Decree No 13 of 1978, State Security (Detention of Persons) Decree No 2 & 4 of 1984, Newspaper Registration Decree No 43 of 1993; Offensive Publications (Proscription) Decree No 35 of 1993; Section 22 and 39 of the constitution of the Federal Republic of Nigeria, 1999 and the Freedom of Information Act, 2011 (Nkwocha, 1999; Asemah, 2011).

Ever since the post independence enactment in 1962 of the Official Secret Act, particularly “to prevent the disclosure to the public of any material which government considers as classified matter” (Okoye, 2007, p. 136), to the coming into being of the 1999 constitution (particularly sections 22 and 39 that dwell on the rights, functions and freedom of the press) up to the recent final passing into law of the Freedom of Information Act in 2011, the question on the lips of many a concerned mind has been how the press has fared so far in terms of its freedom to operate in the Nigerian society. Can the Nigerian press be adjudged to be operating in a free society where it can, without government control and interference, discharge its duties freely, without hindrance, restrictions and molestations even in the face of sections 22 and 39 of the constitution of the Federal Republic of Nigeria as well as the Freedom of Information Act, 2011? This forms the nucleus of this work.

## **PRESS FREEDOM: A DEFINITIVE APPROACH**

*In every society, freedom of the press is essential to transparency, accountability, good governance and the rule of law. It cannot be suppressed without dire consequences for social cohesion and stability. When it is sacrificed, whatever the reason invoked, the chances are that conflict is not far down the road.*

*..... Kofi Anan, former secretary-General of the United Nations on the occasion of the World Press Freedom Day, May 3, 2000.*

Every institution that adorns the garb and toga of information purveyor is, indeed, sacrosanct. To safely discharge and exercise this onerous responsibility, such person or institution must be allowed this surrounding atmosphere of freedom with which to operate. Without this unfettered and un-gagged atmosphere, this responsibility is not only impeded and truncated, but, most importantly, leaves the society, which is

supposed to be the utmost beneficiary of the freedom, to grope and wallow in the dark. This underscores the essence of the freedom of the press in any given society.

Simply put, freedom of the press is the unrestrained right and liberty of the press to express opinions and to seek for, have access to and publish any information which appears to be newsworthy and/or in the interest of the public, subject to the laws of the land. It is “the liberty to gather, hold, express and disseminate information and opinions without official or unofficial restrictions via written and unwritten laws and actions (Okoye, 2007, p.47). For Alabi (2003, p. 53), press freedom “simply means that the press is allowed to publish without prior

Ezeigbo (2009 p. 242) rather has a two-dimensional approach to the definition of press freedom, namely, government and media practitioners’ dimension. She states:

On the part of government, press freedom implies the use of tact and intelligence in controlling the flow of information in a state to avoid disgrace. Media practitioners see press freedom as the freedom to carry out their legitimate duties without undue and unwarranted interference.

It is instructive to note that the coinage “freedom of the press” has two major components or ingredients. These are that the press must enjoy the liberty to freely publish information without prior restraint and that the societal laws should be invoked where the publications are not in line with constitutional provisions. Malemi (2009, p. 10) concurs with this when he avers that “liberty or freedom of expression and the press means two broad things, namely: putting no prior restraint on publication and liability for publication. Hence, the press in civilized and democratic societies must be given this air of freedom to publish without any modicum of restraint, either prior or after. However, where in the process of publication, the press infringes on the rights of another, they shall bear the consequences inherent therein. This is because “for every right, liberty or freedom, there is a corresponding obligation, responsibility, duty, price or observance, which must be maintained for the speaker or writer to continue to enjoy it (Malemi 2009, p. 11).

Thus, in the case of the *King v. Shipley*, the learned law lord, Lord Mansfield, defined press freedom as “to be free to live under a government by law (and) the liberty of the press consists in printing without any previous licence, subject to the consequences of the law”. Lending a voice, the eminent English jurist William Blackstone, as cited in Malemi (2009, p.11) said this concerning press freedom:

Liberty of the press consists in laying no previous restraints upon publication and not in freedom from censure for criminal matters where published. Every man has the undoubted right to lay what sentiment 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 own temerity

It is worthy of note at this juncture, that what constitutes press does not necessarily confine to those who work in the press or media industries. It goes beyond this horizon as it supposedly extends to the right of an individual to express himself or his

opinions through the press without prior restraints or hindrances. This view is supported by Malemi (2009, p. 11) when he declares: “properly explained, the terms “press and liberty of the press” refer not only to people employed in the press industry but includes the self expressing and communicating public at large. Incidentally, the doyen of law in Nigeria and a constitutional lawyer, Prof. Ben Nwabueze, gave vent to this position when he observed that:

The press is not an institution comprising special numbers. It is simply a vehicle, an organ for the dissemination of ideas or opinions to the public .... A newspaper, magazine or other periodical is operated as a business and has to be manned by workers, but its use for the dissemination of ideas or opinions is open to the public at large. The protection needed is not for the workers as such, but for access to the medium by any person for the dissemination of information and ideas

## **PRESS FREEDOM: A HISTORICAL OVERVIEW**

Right from the time of creation, and in fact, in the Garden of Eden, man in his human nature, was carried away and indeed, practically fought for his supposed freedom. He was eager to extricate himself from the “cage” he thought he was placed in, hence, his eating the forbidden fruit. In the Hobbesian account, as cited by Ezeigbo (2009, p. 243), “people found themselves in a state of nature which was brutish, short, nasty, poor and solitary ... (where) might was right and the freedom of the weak was mortgaged”. Man was uncomfortable with this degrading and uncivilized state and thus, engaged in acts aimed at lightening the noose around his neck.

Press Freedom, as it were, became an issue in Europe with the birth of modern mass media such as books and newspapers following the invention and spread of printing as a result of Johannes Gutenberg’s invention of movable type in about 1445 (Okoye, 2006, p. 57). With this, printing emerged; “Italy embraced printing in 1462; France in 1470, Spain in 1474; and England in 1476” (Okoye, *Ibid*).

As a result of this development, many ragtag newspapers called “corantoes” (Okoye, *Ibid*) started springing up in England in 1621. This development did not go down well with the kings of England as they were afraid that with the birth of these newspapers, the masses would most likely get enlightened and could challenge their authorities. Consequently, series of restrictions were placed on the journalists as well as the printers. These restrictions and demands of the government on the press were so severe that many of the newspapers could not withstand the conditions of the government and, thus, had to engage in the act of publishing the newspapers abroad and smuggling same into England. This was the era of the authoritarian theory of the press which posits that “every institution including the media, are controlled by the ruling elite ... and the press exists as an extension of the state apparatus and has no powers to operate independently (Nwabueze, 2011, p. 51). Here, the state controls all institutions and criticism of state activities by the media is not tolerated (Nwabueze, 2012a). One of the techniques and weapons of “warfare” as applied by the state is that “the state uses devices such as licencing, censorship of material before publication, the granting of exclusive printing rights to favoured elements of the press and the

swift, harsh punishment of government critics to force press compliance to state control (Dominick, 2002, p.465)

Piqued and disturbed by the then trend of control and restriction on the press by the government of the day, many intellectuals tirelessly engaged in publishing essays in support of the freedom of expression. One of these personalities was John Milton (Okoye, 2006, p. 57). Key to the arguments of Milton was that the press should be a marketplace of ideas and “that falsehood and truth should be allowed to grapple and let the superior force win (Okoye, Ibid). This perhaps was the cardinal and underlying principle in the libertatian theory of the press which, according to Akakwandu (2012, p. 63), “encapsulates and represents the freedom of the press to carry out its operation without intimidation, molestations and harassment from the government in power”. He further states that libertarian press theory “represents the constitutional right of the media to perform its obligations to the society without undue interference”. Interestingly, Milton’s famous essay “Arepagitica” was one of the works in the dark days of the press that advanced formidable arguments against the then existing press licencing laws of England. “Luckily”, this essay with other works of that time, saw to the discontinuance and “death” of the licencing law, and this brought about a new era of freedom and to the birth of “the first real newspaper in England called the *Daily Courant* in 1702” (Okoye, 2009, p. 58).

In Nigeria, the *Iwe Irohin* (short for “Iwe Irohin fun awonera Egba ati Yoruba” meaning “a paper of information for the Egba people in the Yoruba country”) was the first newspaper to be published in Nigeria and it was the brainchild of an Anglican Reverend – Rev. Henry Townsend, a missionary (Oduah, 2011, p. 2). However, by the early 1900s, the British colonizers started becoming uncomfortable with the emergent press, and began to enact harsh laws to put the press in check”. According to Omu (1978, p. 174) as cited in Okoye (2007, p. 58),

the heightened tone of the press criticism which marked political opposition from the last days of the nineteenth century to the eve of the first World War could not but irritate the colonial administration.

As a result of the perceived fear of press publishing materials that may be inimical to the government of the day and which may incite the populace against the government, the colonial masters in order to put the press under check and in control, first enacted the Newspaper Ordinance of 1903, followed by the Seditious Offences Ordinance of November 6, 1909, which was particularly enacted “to restrict the press report of the railway scandal which was widely published by nationalists/journalists, one of whom was Herbert Macaulay” (Asemah, 2009, p. 345). Again, the Official Secret Act was enacted on the 13<sup>th</sup> of September 1962 which “serves as a check against the publication of highly confidential information or documents that may weaken or limit the integrity of any government and, by extension, threaten the security of the state (Asemah, 2009, p. 371). One cardinal thing about the Official Secret Act is that it also binds citizens of Nigeria in Diaspora (Asemah, Ibid).

The military junta in Nigeria did not help matters as an avalanche of laws aimed at restricting press freedom was at different times promulgated. These include Public Officers (Protection Against False Accusation) Decree No 11 of 1976, Newspaper (Prohibition of Circulation) (Validation) Decree No 12 of 1978, as well as Public Officers (Protection Against False Accusation) Decree No 4 of 1984 (Asemah, 2011, pp. 64 – 65). It is instructive to note that it was under the Public Officers (Protection Against False Accusation) Decree 4 of 1984 that two journalists of the Guardian Newspaper – Messrs Nduka Irabor and Tunde Thompson were arrested and detained without explanation over a report on ambassadorial appointments published by the Guardian newspaper of April 8, 1984 and were later jailed on July 5 1984 (Fab-Ukozor, 2003, Asemah, 2011, Nkwocha, 1999).

Noting, however, that no society that is worth its salt, thrives where press freedom is fettered and gagged, both the 1979 and 1999 constitutions of the Federal Republic of Nigeria made provisions for the duties, rights and freedom of the press. In the 1999 constitution, the duties and obligations of the mass media are as set out in section 22 while the right to freedom of expression and the press are provided for in section 39. Furthermore, the administration of President Goodluck Ebele Jonathan on 31<sup>st</sup> March, 2011 assented to the bill sent in by the national Assembly which bill, among others, was aimed at providing public access to public records and information to information seekers including the press. That marked the birth of the Act tagged “Freedom of Information Act 2011.

## **NORMATIVE THEORIES OF THE PRESS**

Theories are the benchmark upon which new and novel ideas could be tested (Ekeanyanwu, 2012, p. 28). A theory offers an explanation of the relationship that exists among concepts (Nwodu, 2006, p. 32). According to Nwabueze (2012, p. 93), “they are generalizations largely based on empirical observations which give logical explanations of realities. He further argues that theories “provide insight on why things happen in specific ways, through certain structures”. They are a set of interrelated concepts, definitions and statements that present a systematic view of a phenomenon by specifying relationships among the concepts with the purpose of explaining the phenomena (Kerlinger, 1973 as cited in White, 2001). Simply put, a theory is a generalization reached which serves as a platform, guide or benchmark for the explanation of a given phenomena or reality.

Normative theories of the press explain how the media operate or are likely to operate in any given society (Nwabueze, 2014). In the views of McQuail (2005), “normative theory is concerned with examining or prescribing how media ought to operate if certain social values are to be observed or attained”. Thus, they explain the tripartite relationship between the media, government and the society or public. In line with this, Nwabueze (2012) avers that the normative theories explain the relationship between the media, government and the public; the responsibilities of these stakeholders in shaping the society and how the nature of media ownership, control

and regulation define the media system in any nation. The normative theories of the press are: the authoritarian theory, the libertarian theory, the Soviet-Communist theory, the social responsibility theory, the Democratic-Participant Theory and the development media theory.

The authoritarian theory is the media theory which explains the supremacy of the ruling elite in the society and every institution, including the media are controlled by the ruling elite (state). Hence in the authoritarian media theory, the state controls all forms of media communication and no form of opposition or criticism is tolerated. The media in this type of society exist as an agent of the state and must ensure that their operations are to satisfy the whims and caprices of the government of the day. In fact, the press here “exists as an extension of the state apparatus and has no power to operate independently (Nwabueze, 2014).”

The libertarian media theory, as the name implies, is the opposite of the authoritarian theory of the press. Its hallmark is liberty in that the press is free to report any information it deems proper and newsworthy. Here, the media become a marketplace of ideas leaving the masses to sieve what to accept. Thus, in this system, the press has freedom to report whatever good or bad things it uncovers (Ofor, 2004)

The Soviet-Communist theory is developed in line with communism as a form of government whereby the government or state owns and controls every institution. It is related to the authoritarian theory except that in this system, the media is used to promote and propagate the ideologies of government/party in power. Private media ownership is not tolerated or allowed. In fact, the media are owned by the people as represented by the state and the media should support the state in order to achieve its goals (Dominick, 2002).

The Social Responsibility Theory simply “enjoins the press to act responsibly (Uwakwe, 2013). The theory stipulates that as much as the press in a given society should be given the freedom and liberty to operate, the press must not lose sight of its responsibilities or obligations to the society. Thus, the press must exercise caution in whatever it does for “press freedom does not mean the press should do as it pleases (Nwabueze, 2014).

The Democratic-Participant Theory was propounded in 1987 by Dennis McQuail. “This theory advocates for decentralization and democratization of the press to allow easy access and popular participation of the public (Nwabueze, 2014). It posits that access to the mass media should be for all – both the poor and the rich.

The Development Media Theory, like the Democratic-Participant Theory was the handiwork of Dennis McQuail and was propounded also in 1987. It simply states that the media, as it were, should be used to pursue goals that are geared towards developing the society. Thus Folarin (2002) sees the Development Media Theory as a theory that explains the idea of development communication and development journalism. In fact, the Development Media Theory is a theory which has the third world countries at heart; for it places emphasis on communication through the

instrumentality of the press which will assist in moving the society forward rather than pushing the society or government backward.

## THE OFFICIAL SECRET ACT

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The Official Secret Act is a law enacted in Nigeria which prevents the publication or disclosure to the public of any material which the government views or sees as confidential. It protects what government views as confidential records (Nwabueze, 2014). These confidential matters or materials are tagged “classified” by the government, meaning “secret” and/or “confidential” and as such must not be revealed. The Official Secret Act as a law was first enacted on 13<sup>th</sup> September 1962, but reviewed in 1990. According to it, classified matter is:

any information or anything which under any system of security classification, from time to time in use by any branch of government, is not to be disclosed to the public, and which the disclosure to the public would be prejudicial to the security of Nigeria

The “Official Secret Act serves as a check against the publication of highly confidential information or document that may weaken or limit the integrity of any government and by extension threaten the security of the state (Nwodu, 2006). Its main aim is to ensure national security and to “prevent people who have custody of secret or official documents such as policy decisions, contracts and actions of government from recklessly delivering them to the public” (Ewelukwa, 2004). The Official Secret Act is, however, not without its dangers as observed by Ezeukwu and Nwanze (1998) thus:

This (Official Secret Act) is a very dangerous and uncharted sea for journalists in this and other countries of the world. Under this law, all government employees, including members of the civil servants take an oath, promising not to divulge “Official Secrets”. This is an Act of all embracing scope and technically under it, a minor civil servant could be prosecuted for telling his wife what type of biscuit was provided in their office for lunch

It is instructive to restate here that the Official Secret Act “is applicable throughout Nigeria and also binds citizens of Nigeria in diaspora” (Asemah, 2011, p. 371). The rationale and very essence of the Act, according to Nwodu (2006, p. 164) is to:

- a) Restrain garrulous and mischievous public servants from leaking government’s confidential information.
- b) To check the excesses of over-zealous journalists who may, out of desperation, publish top government secret information that may threaten the stability of the state.
- c) To safeguard the security of the state by checking access to and publication of secret information likely to cause pandemonium, chaos, anarchy and mass action against government.

## **FREEDOM OF INFORMATION ACT AND OTHER CONSTITUTIONAL PROVISIONS ON THE FREEDOM OF THE PRESS**

The Freedom of Information (FOI) Act, simply defined, is the law of the National Assembly which provides for the right of a person to freely, on request, have access to public records and information and to publicly disclose same, if such disclosure is in the public interest without adverse consequences on him. It “establishes the right of, and procedure for, the people to request and receive information from government sources” (Nwabueze, 2014, p. 242). Lending his voice, Oduah (2011, p. 255) avers that “Freedom of Information Act, 2011 is a statute or legislation passed by the National Assembly and signed and/or assented to by the president with the sole aim of granting the public and the media practitioners in particular un-restricted access to information in the custody of the public or private institutions”.

The import of the Freedom of Information Act is that “everyone, whether an individual, corporate body, government institution or the press is now free to apply or request for public information and record (Ezendiokwere, 2012, p.2). In the views of Nwabueze (2012) one of the key points on which the freedom of information bill that later metamorphosed to an Act was founded was the promotion of an enabling environment for free or unregulated access to information as it concerns the conduct of public affairs and keeping of records and documents in view of the fact that major official transactions in the public sector are still veiled or shrouded in secrecy. Thus, Freedom of Information Act, as it were, “empowers media practitioners to have unrestricted access to information including ‘secret’, classified or official documents (Eze, 2012).

In providing for this supposed free access to public records and information, the long title to the Act states the purpose of the Act thus:

An Act to make public records and information freely available, provide for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences for disclosing certain official information and establish procedures for the achievement of those purposes and related purposes thereof.

## **THE 1999 CONSTITUTION AND THE FREEDOM OF THE PRESS**

Both the 1979 and 1999 constitutions copiously provide for the press as pertains to its functions, obligations and rights. These provisions are in view of the importance and onerous responsibilities of the press in any given society especially considering the fact that “access to information is the cornerstone of effectiveness in journalism (Oduah, 2012).

Thus, in providing the constitutional framework for the working of the press, section 22 of the constitution of the Federal Republic of Nigeria 1999 (as amended) provides thus:

The press, radio, television and other agencies of the mass media shall at all times be free to uphold fundamental objectives contained in this chapter and uphold the responsibility and accountability of the government to the people

Very germane and of great note in the above provisions is that the Nigerian press is constitutionally adorned with the garb of freedom to publish any material that would be in the public's interest regarding especially the workings and functions of the government of the day. Malemi (2009, p.5) in supporting this view asserts that "by virtue of this provision, the constitutional power, function, right, obligation, or duty of the press to the Nigerian nation and its people are twofold, namely:

1. To uphold and help government to realize the Fundamental Objectives and Directive Principles of State policy, as set forth in the Nigerian constitution; and
2. That as a watchman, to uphold the responsibility and accountability of the government to the Nigerian people

As a prop to the above provisions section 39 (1) of the 1999 constitution (as amended) clearly spells out and provides for "the right to freedom of expression and the press". By virtue of this section, every Nigerian citizen is entitled to freely express his opinions and ideas as well as impart ideas and information without any interference or restriction. The section provides:

Every person shall be entitled to freedom of expression including freedom to hold opinions and to receive and impart ideas and information without interference

To further strengthen the provisions of section 39 (1) (supra), the constitution in section 39(2) assures the press and indeed all Nigerians of their right to freely own, establish and, in fact, operate any medium of communication for the purposes of ensuring and, indeed, disseminating their ideas and/or opinions. It unequivocally states:

Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions

## **HOW FREE IS THE NIGERIAN PRESS?**

The combined provisions of section 22 and 39(1) of the 1999 constitution of the Federal Republic of Nigeria as well as the "birth" of the Freedom of Information Act in 2011 had been openly eulogized by many Nigerians (including writers and journalists alike) as providing the Nigerian press/media with all the needed safeguards, guarantees and protections to carry out their sacred duties unfettered, unrestricted and without interference. In fact, Malemi (2009, p. 28) writes:

The protection offered by the right to freedom of expression and the press in the 1999 constitution in section 39 complimented by section 22 are sufficient to:

1. Enable the press and the communicating public to exercise the right to freedom of expression and publication to receive and impact ideas and information without interference.
2. It also provides the basic means of giving practical effect to freedom of expression and the press by making provision for interested individuals, group or entity to own a medium of communication to disseminate and receive ideas and information

The big question begging for an answer is, “is Malemi correct in what he termed “the sufficiency” of the constitutional provisions for press freedom? In other words, do the express provisions of section 22 and 39(1) of the 1999 constitution of the Federal Republic of Nigeria (as amended) as well as that of the Freedom of Information Act 2011 provide the “sufficient” freedom for the press in Nigeria to operate?

With respect, this work begs to disagree with Malemi (2009) as the combined effects and/or provisions of the above enabling laws of the Federal Republic of Nigeria have not provided the much needed tonic and freedom for the press in Nigeria to operate. The reasons cannot be far-fetched as there are plethora of gagging, limiting and exclusionary sections and clauses which have provided “spirit sagging” bureaucracy and bottlenecks to the freedoms of the Nigerian press to operate. For example, notwithstanding the express provisions of section 22 and 39(1) of the 1999 constitution of the Federal Republic of Nigeria (supra), section 39(3) of the same constitution expressly prohibits and prevents people from disclosing certain pieces of information at their disposal. The section reads:

Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society:

- (a) For the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematography films; or
- (b) Imposing restrictions upon persons holding office under the government of the federation or of a state, members of the armed forces of the federation or members of the Nigeria Police Force or other Government security services or agencies established by law

The purport of the above provisions of the 1999 constitution is that a person who is in custody of certain pieces of information which the press considers to be of interest to the public, can hide under this law and refuse to grant same to the press. Moreover, such journalist and/or media man cannot legally and freely invoke the provisions of section 1 of the freedom of information Act which guarantees right to freedom to seek for and have access to information. The reason is simple: the Freedom of Information Act, no matter its superficial trappings and attractions, is still very much subject as well as a slave to the 1999 constitution (as amended).

In fact, section 1(3) of the 1999 constitution overtly expresses its supremacy to any other law as made in Nigeria when it states:

If any other law is inconsistent with the provisions of this constitution, this constitution shall prevail and that other law shall to the extent of the inconsistency be void

(See the case of *Tony Momoh V Senate of the Federal Republic of Nigeria* (1981) 1 NCRL, 105 HC; (1983) 4 NCLR 269 CA. See also *Oyegbemi V AG Federation & Ors* (1982) 3 NCLR 895)

In *Momoh V Senate of the Federal Republic of Nigeria*, the plaintiff/applicant was summoned by the Senate of the Federal Republic of Nigeria to name or disclose the sources of his information in respect of the story he published in his newspaper, the Daily Times, and which the lawmakers felt was offensive to them. Tony Momoh was not comfortable with the position of the Senate and thus filed a suit at the Lagos State High Court in a bid to stop the Senate from enforcing their resolution. The court ruled in favour of the applicant (Momoh) as it declares that “any attempt to force a person as the applicant who disseminated information through the medium of a newspaper to disclose the source of information apparently given in confidence is an interference with the freedom of expression granted by section 36(1), now section 39 (1); of the constitution”. Unsatisfied with the decision of the court, the Senate went on appeal at the Court of Appeal. In what appeared like a double pronged judgment, the court of appeal stated that “the power of investigation conferred on the Senate by section 82(2) of the constitution does not constitute the House into a universal ombudsman, inviting and scrutinizing the conduct of every member of the public” (Agbanu, 2013, p.196). On the other hand, the appellate court held that “journalists do not enjoy an absolute privilege against disclosing their source of information”. It follows, therefore, that “a publisher withholds his source of information at his own risk” (Malemi, 2009, p. 18)

Moreover, section 45(1) of the 1999 constitution (*supra*) appears to have put the final nail on the coffin of whatever is left of the freedom of the press in section 39(1). The section states:

Nothing in sections 37, 38, 39, 40 and 41 of this constitution shall invalidate any law that is reasonably justifiable in a democratic society.

- (a) In the interest of defence, public safety, public order, public morality or public health;  
or
- (b) For the purpose of protecting the rights and freedom of other persons

The purport of the above section 45 of the 1999 constitution (*supra*) is that the Nigerian press is still at the mercy, dictates and vagaries of the government of the day as any dictator can wake up from the wrong side of the bed and decide to muscle the press by coming up with a draconian law/action against the press in the guise that such annihilating action/law of theirs is *in the interest of defence, public safety or public order*.

Apart from the above, the Freedom of Information Act, 2011 appears not be the messiah it is being referred to in some quarters regarding the freedom of the press to have free and unrestricted access to public records and information. This is because

the Act obviously took away with the left hand from journalists that which it has given them with the right hand. Oduah (2011) writing on the shortcomings and limiting/exception clauses of the 2011 Freedom of Information Act laments:

..... a closer interpretation of certain sections of the same Freedom of Information Act would no doubt unearth the fact that what seems to be eureka for the media practitioners and the general public in respect of right to access to information is obviously taken away by some clauses/provisions in the Act

The sections/clauses and provisions of the Freedom of Information Act referred to by Oduah (*supra*) and which deny the press freedom to full access to information include sections 5(b), 8(1), 12, 15, 16, 17, 18 and 20 of the Act. All these sections expressly state that a journalist or any information seeker may be denied access to such information he/she wants. Even though section 26(1)(i)(ii)(iii) of the Act empowers the court to, *suo motu*, if approached by an applicant, order a public institution to disclose information as sought by an applicant if the information is in the interest of the public, this situation is rather a “punishing” and disheartening one for information seekers including journalists as this legal exercise will be largely time and money consuming. Nwabueze (2014, p. 243) captures the dilemma of journalists regarding some of the unaccommodating sections of the FOI Act when he laments thus:

The existence of FOI Act in Nigeria is expected to put to rest difficulty journalists encounter in gaining access to public records. However, the Act seems to exist only on paper as journalists in Nigeria still complain that government agencies and establishments do not make public records available on request.... Journalists also complain that the Act involves a lot of bottlenecks which make it difficult to use in accessing public records. There is need for government to ensure enforcement of this Act to facilitate the practice of investigative reporting in the public interest.

## CONCLUSION

The Official Secret Act, the Freedom of Information Act as well as Sections 2 and 39 of the 1999 constitution are all laws made in Nigeria and directed at the press especially regarding access to and publication of information. While the Official Secret Act is restrictive in nature, Section 2, and 39(1) of the 1999 constitution of the Federal Republic of Nigeria (as amended) as well as many sections of the Freedom of Information Act appear to be the needed tonic for the supposed unrestrained, unfettered and free access to information by journalists. Unfortunately, sections 39(2)(3) of the 1999 constitution (as amended) as well as sections 5(b); 8(1), 12, 15, 16, 17, 18 and 20 of the Freedom of Information Act, among others, impinge on the press’ right to freedom of information.

## RECOMMENDATIONS

Having x-rayed and explored relevant laws relating to freedom of the press in Nigeria with particular emphasis on the Official Secret Act, the 1999 constitution as well as the 2011 Freedom of Information Act; and also having found that the press in Nigeria is yet to be free in accessing information especially public records in the hands of government officers and other agencies, this researcher recommends as follows:

- a) That all clauses, sections or sub-sections in the Nigerian law especially in the 1999 constitution of the Federal Republic of Nigeria and the Freedom of Information Act, 2011 which hinder or have the capacity to hinder unrestricted access to information by journalists must be revisited and appropriately amended.
- b) The word “public interest” as used in the Freedom of Information Act deserves an explanation or interpretation in order not to leave it to divergent and selfish interpretation by those who may wish to hide under it in denying information to genuine seekers of information like the press.
- c) That apart from very sensitive areas of national and business interests like security and other copyright matters, any person should, on request, have a right to access any information or document desired by him or her.
- d) Express penalty and/or punishment should be provided for in the constitution against any person, group and/or institution that deliberately neglects, refuses, and/or fails to grant access to an information seeker.
- e) That wherein an information seeker is unduly refused access to any information not bordering on security, such a person may approach the court for a judicial order in this respect and that the time within which the court may have to hear and determine such matter should not exceed two (2) weeks. This will, for sure, save the journalists, nay, all information seekers the agony of having to waste many years in court just to obtain an order of court for an access to information, after all, legally speaking, justice delayed, is justice denied.

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