

## **THE RIGHTS TO PRIVACY, LIBEL AND SLANDER, SEDITION & DEFAMATION IN JOURNALISM**

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### **Introduction**

Salmon (2008) observes that freedom of expression is a universal human right: "Everyone has the right to freedom of opinion and expression; this right includes the right to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers." This right is reflected in Article 9 of the African Charter on Human and Peoples' Rights, Article 10 of the European Convention for the Protection of Human Rights and Fundamental Freedoms and Article 13 of the American Convention on Human Rights.

She notes that it is important for democratic societies to have a wide range of independent and autonomous means of communication, in order to be able to reflect a diversity of ideas and opinions. The Preamble to the European Convention on Trans-frontier Television, a Convention agreed between Member States to the Council of Europe representing nearly all countries in Greater Europe, states that freedom of expression and information constitutes one of the essential principles of a democratic society and acknowledges the importance of broadcasting and journalism in this regard.

The key principle of ensuring freedom of speech should be embodied in any system of broadcasting regulation, but this is not an unencumbered right. The European Convention on Human Rights makes it clear that everyone has the right, "to receive and impart information and ideas without interference by public authority and regardless of frontiers." However, these freedoms may be subject to such conditions and restrictions as are prescribed by law and necessary in a democratic society. The exclusions cover: the prevention of disorder or crime, the protection of health or morals, the protection of the reputation and rights of others (including the right to privacy), preventing the disclosure of information received in confidence, and maintaining the authority and impartiality of the judiciary. Therefore one of the key issues for legislators is determining where the balance lies between the potentially conflicting rights of the broadcaster/journalist and the society as represented by the State, and the individual.

Totalitarian states generally make it an offence to broadcast or publish material which may be critical of government. Unfortunately, there are still many such states, for example in Eastern Europe and Central Asia. Although these States may represent an extreme position, most countries are unlikely to tolerate broadcasting or journalism which encourages insurgency. A balance must be sought which on the one hand allows freedom of expression of opinion, but does not go so far as to incite to crime, including political insurgency. Wherever the balance is drawn, it is vital that the rules are codified to enable journalists, broadcasters, viewers, readers, listeners, and law makers to know where the boundaries of acceptability lie. Subject to these rules, broadcasters must be ensured editorial independence, to broadcast free from interference or censorship by the State or any regulatory body.

### **Rights to Privacy**

Privacy is a fundamental human right, guaranteed under the Universal Declaration of Human Rights (23). However, in a democratic society, the citizen's right to privacy must be balanced against the public's

right to receive information. This balance is often difficult to judge. It is the balance between individual privacy and the public interest. Both these concepts are difficult to define.

What is the right to privacy? The Parliamentary Assembly of the Council of Europe has said, it "...consists essentially in the right to live one's own life with a minimum of interference. It concerns private, family and home life, physical and moral integrity, honor and reputation, avoidance of being placed in a false light, non-revelation of irrelevant and embarrassing facts, unauthorized publication of private photographs, protection against unjustifiable or unreasonable spying and prying, protection against misuse of private communications, protection from disclosure of information given or received by the individual confidentially."

In most countries, privacy is protected at the constitutional level, or by common law, or specific legislation. Often, all three forms of legal protection apply. The definition given by the Council of Europe includes matters which often are not the concern of broadcasting/publishing regulators. They may well be the subject of specific laws relating to defamation and 'confidentiality, as well as privacy. But, given the ability of the broadcast media to interfere dramatically in an individual's private life, there is merit in the regulator having a remit over privacy matters. It also involves applying standards directly through regulation; this can mean providing guidance to publishers/broadcasters about where the acceptable limits might lie.

Any infringement of privacy must be justified as being in the public interest. But what is the public interest? It has often been pointed out that the public interest does not mean whatever interests the public; scurrilous stories about the sex lives of celebrities certainly attract audiences, but are they justifiable as a breach of privacy'?

The European Convention on Human Rights seeks to define when intrusion into privacy by a public authority may be justifiable: *"...in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others."*

While this list is appropriate for setting the limits on when public authorities have a right to intrude on citizen's privacy, most countries - perhaps oddly - would not apply such strict limits to commercial printers, publishers and broadcasters.

When dealing with matters of privacy, special attention must be paid to children, who are particularly vulnerable as they are not in a position to give informed consent. Children do not lose their rights to privacy because of the actions or fame of their parents. Children can be gullible and publishers and broadcasters who are eager for a story should not abuse their trust.

### **Privacy versus Seditio**

Wikipedia (2011) defines Seditio as overt conduct, such as speech and organization, which is deemed by the legal authority to tend toward insurrection against the established order. Seditio often includes subversion of a constitution and incitement of discontent (or resistance) to lawful authority. Seditio may include any commotion, though not aimed at direct and open violence against the laws. Seditious words in writing are seditious libel, seditio is one who engages in or promotes the interests of seditio.

Typically, sedition is considered a subversive act, and the overt acts that may be prosecutable under sedition laws vary from one legal code to another. Where the history of these legal codes has been traced, there is also a record of the change in the definition of the elements constituting sedition at certain points in history. This overview has served to develop a sociological definition of sedition as well, with in the study of state persecution.

The difference between sedition and treason consists primarily in the subjective ultimate object of the violation to the public peace. Sedition does not consist of peaceful protest against a government, nor an attempt to change the government by democratic means (such as direct democracy or constitutional convention).

Sedition is 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. Sedition is encouraging one's fellow citizens to rebel against their state, whereas treason is actually betraying one's country by aiding and abetting another state. Sedition laws somewhat equate to terrorism and public order laws.

### **What is Libel?**

The Nigerian 1999 Constitution provides for freedom of expression in Section 39 (1) and the freedom to own the Media for the expression of ideas in 39 (ii). The constitution also makes provision for the protection of the right of the individual and national security. Section 45, of the constitution provides that: Nothing in section 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.

However, Momoh (2004) highlights human reputation as one of the protections he/she enjoys in the constitution. He states further that; any attempt to reduce such reputation is a gross violation of his right to good name. Therefore, if the offending statement is in a concrete and written form, the writer is said to have been libeled.

Invariably, Ewelukwa (2004) defines libel as defamation by means of writing or by any other concrete form such as audio/video tapes, pictures and so on. In line with Ewelukwa's argument; Malemi (1999) also defines libel as a defamatory statement made in a visible or permanent form such as written or printed statements as in books, newspapers, notes, circular, letter, or by way of effigy, caricature, painting, photograph, film, radio, and television broadcasts, or any recorded audio-visual material and so on. In his practical analysis of what constitutes libel, Ewelukwa cites the case of Union Bank of Nigeria Versus R. Oreden & Anor in Libel suit.

- (a.) The publication must be in writing
- (b.) The publication must be false
- (c.) The publication must be published to some other person aside from the plaintiff and the defendant.
- (d.) The publication must refer to the plaintiff and must be defamatory of him.
- (e.) The publication must be by the defendant.

## **What is Slander?**

Slander is defamation through the use of spoken word or gesture.

Such slanderous acts include the following:

1. Allegation of a criminal offence punishable with imprisonment, such as theft, burglary, rape and so on.
2. Allegation of a contagious disease which may cause widespread damage to members of society such as HIV/AIDS, diarrhea, leprosy and so on.
3. Allegation of unchastely against a young woman.
4. Allegation of incompetence or unfitness against a worker, which can injure him in his trade, office, trade or profession.

## **What is Vulgar Abuse?**

Thus legal practitioners has pointed out that many slanderous statements could be dismissed by the court of law as mere vulgar abuse. For instance, if there is a hot exchange of abusive words between two persons, and the aggrieved party decides to sue and claim damages for slander, the court will examine the particular circumstances under which the offensive words were spoken and authenticate the evidence before the court. If there is no concrete proof the court shall dismiss such as 'frivolities'.

But, if the evidence is weighing, the court will not dismiss such offence as mere vulgar abuse where the words spoken alleges specific acts of wrong doing or a crime that could lead to the person being shunned by the public or being arrested by the law enforcement agents. An example is a vulgar abuse that could tarnish someone's integrity or reputation, like calling such person a drug peddler or armed robber when there is no evidence to prove such allegation. The court will not dismiss such as mere vulgar abuse.

Although, freedom of expression is a fundamental human right, and expressly guaranteed by the constitutions of free societies, but does not means an absolute privilege. The law of libel imposes limitation to unchecked freedom of expression, aimed at protecting the reputation of persons.

In a nutshell, many of those abuses traded in the street may pass as vulgar abuse, while others indeed are quite capable of attracting legal actions of slander. Therefore, we should be careful of what we say to fellow humans during conflicts no matter the level of provocation.

## **What is Defamation?**

Defamation is defined as the transmission to a third party, either orally or in writing, of information that could damage the reputation of another person. It is the publication of a statement, which exposes a person to hatred, ridicule, contempt and/or causes him to be shunned or avoided by right thinking members of society.

Scholars in the field of media agreed that, for a statement to be defamatory of a person, the following statement must be false and targeted towards:

- (a.) Lowering his morale in the estimation of right-thinking men or
- (b.) Causing him to be shunned or avoided, or
- (c.) Expose him to hatred, contempt or ridicule, or
- (d.) Conveys an imputation on him disparaging or injurious to him in his office, profession, calling, trade or business.
- (e.) injures his financial credit.

This is highlighted in the Penal Code in Section 391, under Defamation, which states as follows:

*"whoever by words either spoken or reproduced by mechanical means or intended to be read or signs or by representations, makes or publishes any imputation concerning any person, intending to harm the reputation of such person, is said ... to defame that person."*

### **Criminal Defamation**

Defamation could be civil or a criminal act. Thus, both the Criminal and Penal Codes have provisions on defamation. Section 373 of the criminal code defines defamatory matter as matter likely to injure the reputation of any person in his profession or trade. Even a dead person can be defamed, according to both codes.

Section 375 of the Criminal code stipulates that any person who publishes any defamatory matter is guilty of misdemeanor and is liable on conviction to imprisonment, fore knowledge that the offending matter is false attracts imprisonment for two years. Section 376 states further that:

Any person who publishes, or threatens to publish, or offers to abstain from publishing, or offers to prevent the publication of defamatory matter, with intent to extort money or other property or with intent to induce any person to give, confer, procure or attempt to procure, to upon, or for any person, any property or benefit of any. Similarly, the Penal Code stipulates in Section 392, that "Whoever defames another shall be punished with imprisonment for a term, which may extend to two years or with fine or with both"

### **The Purpose of the Law of Defamation**

The law of defamation is meant to protect the reputation of people resulting from injurious statements, or acts by others. It is concerned with safeguarding the plaintiff's interest in the good opinion which other people hold of him. Therefore, both the criminal and penal codes emphasizes that the offending publication must not be false as follow: "In due course, we shall see that truth is a strong defence to defamation". It goes further that; 'Should any injury be established in the person's reputation, office, trade or profession, such injury must be compensated'. However, if the plaintiff has no reputation in respect of what is said, then the law cannot protect him and he will not be entitled to any redress. For instance, if a political office holder is removed for "age or certificate forgery" it will not be defamatory to nickname him a "liar or forgery".

### **Ingredients of Defamation**

The following facts must be proved for an action of defamation to succeed in court.

(1.) **Publication:** The offending statement must have been published. Publication means that the statement was communicated to a third party, other than the plaintiff. The writing of a libelous matter or the speaking of a slanderous matter to only the plaintiff does not amount to publication. Thus, the plaintiff must give the name of that third party in court as evidence that the offending matter was actually published.

(2.) **Malice:** Another essential ingredient of defamation is that the offending statement must have a malicious intent. Malice is evil motive or spite. If the plaintiff can prove the existence of a malicious intention, the defence of fair comment by the defendant will be defeated.

(3.) **Damage:** Damage is quantifiable loss as a result of the defamation. If the defamatory statement is not actionable due to mere publication, the plaintiff must be able to prove some special or actual damage to succeed in his/her claim.

(4.) **Repetition:** The repetition and dissemination of defamatory matter could necessitate litigation against the printer, publisher, author, vendor or news agent, newspapers and magazines.

Although, practically it is rare and unusual to join vendors in defamation as the law views their involvement with leniency, regarding them as innocent disseminators.

### **The Right to Reply, and Rules on Fairness**

Given the power of broadcasting and publishing, broadcasters and journalists should have an obligation to be fair. It is generally considered appropriate for broadcasters to be required to offer a prompt right of reply to any person or organization who has been treated unfairly in a programme. An apology might also be in order.

### **Obligations for News to be Accurate and Impartial**

Standards of good journalism require news to be accurate, however published. This is perhaps particularly so in the broadcast media, given their persuasive power. Some countries, for example those within Europe, require news to be impartial. This is not the case in others, for example the USA, where the editorial bias of the channel's owner can filter through to news.

### **General Obligations for Impartiality**

In many countries it is considered acceptable for a degree of editorial bias to affect general, non-news programming. However, in the UK, all news and other programmes dealing with controversial matters must be impartial. This does not mean that points of view and opinions cannot be aired, but that it is incumbent upon the broadcaster to ensure that appropriate opposing views are heard and that the television or radio service is not partial itself to any particular view.

### **Press Control in Nigeria**

Okonkwo (1999) states that the first measure to control the 'press in Nigeria was the Newspaper Ordinance No 10 of 1903. This law required registering not only the newspaper, but also the real names and addresses of the editor, the proprietors, printers and publishers. It also stipulated that the owners give and execute a bond for 250 pounds with the condition that they would pay to the crown any

damage or penalties that may be imposed on the owners in cases such as libel. Okonkwo further recounts that the question of sedition in government-press relations arose out of a pamphlet with an innocuous title- 'Governor Egerton and Railway-Letter N01'. In this pamphlet, Herbert Macaulay had charged that the Governor disregarded the serious allegations of sandals in the railway because the person involved was his friend. Okonkwo states that based on his representation to the Secretary of State, the governor was permitted to enact a law that will strengthen the government against publications and speeches that are designed to inflame an 'excitable and ignorant populace'. This led to the promulgation of the 1909 Ordinance. Okonkwo notes that the 1909 Ordinance was operated throughout the colonial period and was codified under section 50-52 of the Nigerian criminal code order of 1964.

Ever since the colonial era, the Nigerian government has in spite of its avowed constitutional obligation to guarantee freedom of expression, has also set up institutional agencies with legal provisions to 'oversee' and control the press. The NBC Act for instance provides that the commission shall regulate and control the broadcast industry. Section 2(h) of the NBC Act 38 of 1992 which states among the functions of the commission-

Establishing and disseminating a national broadcasting code and setting standards with regards to the contents and quality of materials for broadcast.

In Nigeria, both the NBC Act of the Broadcasting Code provide for withdrawal of license of any station that broadcast inciting materials that can lead to breakdown of law and order. Section 8.d of the third schedule of the Act 38 of 1992 provides that-

A license might be revoked by the commission in the following cases;

Where in the opinion of the commission the station has been used in a manner detrimental to national interest...

There are still signs of governments agitation or 'fear' of the media, for instance on the 4th of November 2006, a correspondent of Daily Trust Newspaper and Gbenga Aruleba of AIT were arrested and detained by SSS and charged for sedition by president Olusegun Obasanjo regarding the story of a newly purchased presidential jet, which the journalists had reported was 'tokunbo' i.e second hand and not new. Similarly, in 2009 channels TV was shut down by the men of the SSS for relaying a story that President Yar Adua had died. Other print media houses have also suffered one intimidation or the order as a result of their position on national issues.

The long delay and tactical maneuvers that trailed the Freedom of information bill in Nigeria is also a pointer to the 'fear' of the media by government. Though the bill was eventually passed it was not after government had ensured that certain information will remain classified in the national interest. Amadi (2011) states that the Nigerian senate insisted that journalist in Nigeria should demonstrate a high sense of 'responsibility' before the senate can pass the freedom of information bill brought for enactment since 1999.

## **CONCLUSION**

The arguments and debates over the continued relationship between the media and government will continue to rage so long as the media continues to be a potent tool for the people to require

accountability from government. National and public interest will also continue to clash with the undefined and calibrated limit of the man in power. However, government will in its desperation wield the laws on sedition to keep the media in check.

## REFERENCES

Amadi, Fred (2011) '*Ambiguity and Sub-texts in the quest for freedom of expression*'. In Journal of Communication and Research, Vol 3 NO 2

Ewelukwa, B.N. (2004). *Introduction to Nigerian Press Law, Onitsha: Maranatha Press Ltd*

Okonkwo, Chude (1989) '*Evolution and Dynamics of Nigeria Public communication System*'. Nigeria Media Policy, Lagos Federal Printing Press

Salmon, Eva (2008) Guidelines for Broadcasting Regulation, London .CBA and UNESCO.

Malemi, E. (1999). *Mass Media Law: Cases and Materials*, Lagos: Grace publishers Inc.

The Nigeria Broadcasting Code (2006) Abuja. National Broadcasting Commission.

Wikipedia, available at <http://www.wikipedia.sedition>, retrieved Dec 9<sup>th</sup>, 2011