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CHAPTER TWO

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Sunday Ogbonna, Joshua Kayode Okunade, Achike C. Okafo & Y.O. Ayobolu

Introduction

The International Convention on Civil and Political Rights Article 19(2) which took effect in 1976 added its voice to the pursuit of press freedom and individual freedoms. Most famous of these conventions is the Universal Declaration of Human Rights; Article 19 of the Convention states that, “everyone has the right to freedom of opinion and expression”. With the advent of the social media, there is little or no demarcation presently between freedom of expression and hate speech; with issues bothering on national interest and governance in Nigeria.

Recent experiences have shown both the negative and positive usage of the social media in Nigeria and globally. An anti- social media bill introduced by the Nigerian Senate on November 5 2019, criminalising the use of social media in peddling false or malicious information, failed to sail through due to public criticisms. Before then, the Freedom of Information Act (FoIA) was signed into law by former President Goodluck Ebele Jonathan in 2014. It is against this backdrop that this chapter examines the issue of hate speech, freedom of expression, national interest and governance in Nigeria. Press freedom which includes freedom of information may be curtailed by government due to prevailing circumstances of hate speech in some clime or due to national interest. Based on the 'harm principle' (Ruzic, 2007), there is need for the Nigerian government to strengthen the legal system in line with countries with functional laws in the area of hate speech on social media.

Background

Indeed, freedom of expression is universally acknowledged as both a fundamental and foundational human right. It is seen not only as the cornerstone of democracy, but indispensable to a thriving civil society (UN General Assembly, 1946) cited in (Global Trends in NGO Law, n.d). Viewed from a different perspective, freedom of expression is seen as an extension of man's

inalienable right recognised globally. The UN acts, such as the Universal Declaration of Human Rights (1948), considered to be the core international legal document on standards of human rights applies to all UN Member States. Article 19 of its Declaration, clearly states: “Everyone has the right to freedom of opinion and expression, whereby this also includes freedom to hold opinion and expression, as well as to seek, receive and impart information and ideas through any media”.

Such is a common feature of most modern constitutions and it is characterized by certain features (UN, 2010). Most especially, it applies to “everyone” equally without distinction of any kind whatsoever; based on “race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”; are entirely irrelevant to its application (ICCPR, Art. 2(2)).

Freedom of expression and the press share similarities with freedom of thought, belief, opinion and expression protected as a fundamental constitutional guarantee in section 2(b) of the Canadian Charter. The section adds that these rights include “freedom of the press and other media of communication” (Hogg, 2007). The Canadian Bill of Rights recognized freedom of speech as fundamental human rights. This federal law sets out various rights, including freedom of religion and freedom of the press (Walker, 2018).

To Bollinger (1991) freedom of the press entails the right to publish newspapers, magazines and other printed materials without government restriction and subject only to laws of libel, obscenity, sedition, etc. Alabi (2003) cited in Ogbonna & Alaka (2016) argues that press freedom simply means that the press should be allowed to publish without prior restraint. Furthermore, it is the right to broadcast through electronic media without prior restraint (Campbell, 1994). Nwodu (2006) opines that the Nigerian Constitution, like that of other nations and the legal documents of most human rights bodies, recognise press freedom as key to individual rights and liberty. He maintains that an individual's freedom to seek, receive and impart information and ideas “can only be guaranteed in a social climate where the press enjoys unrestricted freedom”. Section 36 (1) of the 1979 Constitution (now Section 39(1) of 1999 Constitution states that: “Every person shall be entitled to freedom of expression including freedom to hold opinions and to receive and impart ideas and information without interference”.

In Nigeria, proponents of press freedom argue that the media have to be free and the government has to be prevented from interfering with what they print or broadcast. Ekunno (2011) asserts that a culture of secrecy had become entrenched in the activities of Nigerian leaders and members of the public, including the media are always denied access to official information, which in a democracy, they should be entitled to. For those yearning for greater freedom of the press were however disturbed by the public outcry that trailed the malicious comments on various social media platforms across the globe warranting calls to question the freedom of expression. At a seminar on Unity in Diversity, Security and Development, held in Abuja, the vice president of Nigeria, Professor Yemi Osinbajo, argued that “hate speech proceeds genocide, the greatest tragedy in human history”.

Within the African continent, at the aftermath of the 2007 Presidential elections in Kenya, Human Rights Business (2013), a non-governmental organization, said that some politicians engaged in hate speech and inciting the electorate to violence. Specifically, Uhuru Kenyatta and William Ruto (currently serving as President and Deputy President respectively, were indicted by the International Criminal Court (ICC) for crimes against humanity for their alleged roles in

orchestrating the 2007 post-election violence which led to the death of over 1000 people with other 600,000 people displaced.

The case of Rwanda where an estimated 800,000 to 1 million people were killed, reveals abundant examples of hate speech disseminated by the media (Danning, 2018). The newspaper *Kangura* started an anti-Tutsi and anti-RPF campaign on October 1990 and published the infamous “Ten Commandments”, which specified amongst other things that Hutus who married Tutsi or engaged in business with Tutsi would be traitors, and that all political positions should be reserved for Hutus exclusively (Des Forges 1999), cited in (Scheffler, 2015). Aftermath of this hate speech led to the unprecedented deaths in that country.

Back home in Nigeria, a bill prescribing death by hanging for any person found guilty of any form of hate speech sponsored by the Senate spokesperson, Sabi Abdullahi, sought the establishment of an Independent National Commission for Hate Speeches, but was unable to scale through due to pressure from civil society groups in Nigeria. This chapter argues that press freedom which includes freedom of information may be curtailed by governments due to prevailing issues of hate speech and national interest in the traditional and social media. The position of the authors is rooted on J.S. Mill's stand on freedom of thought and expression as the important values for self-expression of every individual on the one hand, and the limitation of expression based on adequate application of the harm principle on the other (Ruzic, 2007). According to Mill, free speech fosters authenticity, genius, creativity and individuality. He added that “if we ban free speech, the silenced opinion may be true, or contain a portion of the truth, and that unchallenged opinions become mere prejudices and dead dogmas that are inherited rather than adopted” (Mill, 1978).

Conceptual Clarifications

Hate speech

There is no universally accepted definition of hate speech, incitement to hate, or other key terms within human rights law (Mohan & Barnes, 2018). As a result, various courts around the world have adopted all kinds of definitions dealing with this issue. According to UNESCO (2015) cited in ACSPN (2018), multilateral treaties such as the International Covenant on Civil and Political Rights (ICCPR) have sought to clarify the concept. Yet, “hate speech continues largely to be used in everyday discourse as a generic term, mixing concrete threats to individuals' and groups' security with cases in which people may be simply venting their anger against authority” (UNESCO, 2015, p.7) cited in (ACSPN,2018, p.24).

The UN's International Committee on the Elimination of Racial Discrimination defines hate speech as a: “Form of directed speech which rejects the core human rights principles of human dignity and equality and seeks to degrade the standing of individuals and groups in the estimation of society generally”. Similarly Mohan & Barnes (2018), state that the criminal codes in various countries generally refer to speech that “incite(s) any group of persons to commit an offense against any other group” or that “creates enmity between groups”. The European Court of Human Rights (ECHR) equally defines hate speech as:

All forms of expression which spread, incite, promote, or justify racial hatred, xenophobia, anti-Semitism or other forms of hatred based on intolerance, including intolerance expressed by aggressive nationalism and ethnocentrism, discrimination, and hostility towards minorities, migrants, and people of immigrant origin.

The Broadcasting Complaints Commission of South Africa defines hate speech thus:

Material which, judged within context, sanctions, promotes, or glamorizes violence based on race, national or ethnic origin, colour, religion, gender, sexual orientation, age, or mental or physical disability or “propaganda for war, incitement or imminent violence, or advocacy of hatred that is based on race, ethnicity, gender or religion and that constitutes incitement to cause harm.”

Definition by Mihajilova, Bacovska & Shekerdjiev (2013) can be drawn from the discussion held by experts and numerous proposals for defining “hate speech” thus:

Hate speech is a kind of expression designed to promote hatred on the basis of race, religion, ethnicity, national origin, gender, sexual orientation, class/ social origin, physical or mental disability

Most comparative research on hate speech focused on the divide that exists between the American and European approaches to regulating hate speech (Rosenfeld, 2012; Bleich, 2013). The Institute of Human Rights and Business (2013, p. 2) warned that:

‘Hate speech’ has become a catch-all term that often encompasses both illegitimate expressions that can be banned under international law, and legitimate, if offensive, expression.

The Centre for Information Technology and Development (CITAD, 2016), defined hate speech as:

Any speech or act that is aimed at inciting the audience to denigrate people on the basis of ethnicity, religion, gender, geography and any other socially conceived parameter with the purpose of marginalizing them or placing them at some disadvantage that is contrary to the provisions of the Universal Declaration on Human Rights as well as the International Covenants on rights of the people (CITAD, 2016).

According to a recent CITAD report, ethnicity and religious related speeches occupied the highest percentage of 39.9% respectively hate speech relating to the issue of farmers/herders clash was reported to be 3.1%, while that of elections was the least with 2.2%. The centre disclosed that analysis of the cases indicated that ethnicity and religious related hate speeches occupied the highest percentage with 39.9% and 37.7% respectively in Nigeria. It then means that the aim of hate speech is to injure, dehumanize, harass, intimidate, debase, degrade, and victimize the targeted groups and to foment insensitivity and brutality against them (Cohen-Almagor, 2013)

A study by Alakali, Faga & Mbursa (n:d) examined the phenomenon of hate speech and foul language on social media platforms in Nigeria. The study objectives were to assess the respondents' moral and legal consequences in the society and to journalism practice. The paper found that although the respondents understand that hate speech and foul language attract legal consequences in the society, they do not know what obligation are created by law against perpetrators of hate speech and foul language in Nigeria. Similar study by the Global Trends an NGO (n:d) shows that law has been used in numerous ways to restrict the freedom of expression around the world. According to the finding of this study, law has been used across all cultural, religious, political, and national boundaries, appearing in every geographical region and invoked by every type of regime.

Gilber and McNamara (2016) examined the harms of hate speech with the objectives to provide a voice to targets of hate speech, and also provide evidence on the effects of hate speech. Study found that hate speech laws are sufficiently broad and flexible to address the types of speech events and spectrum of harms as attested to by the interviewees. In assessing the harm from perspective of the targeted communities, members of indigenous and racial/ethnic minority communities in Australia enjoy a greater level of protection than equivalent communities in the many countries that have not been prepared to define the field of unlawful hate speech.

Stone and Williams (n:d) examined the Freedom of Speech and Defamation: Developments in the Common Law World, tracing the relationship between freedom of speech and the common law defamation in India, Australia, South Africa, Canada, the United Kingdom and New Zealand. Study revealed that the interaction of the law of defamation and the principles of the freedom of speech demonstrates that most courts in the common law world are not committed to the particular vision of freedom of speech that characterizes the First Amendment to the United States Constitution. Further revelation shows that with the possible exception of the Indian Supreme Court, courts have tempered their commitment to freedom of speech out of deference to other interests such as privacy and the protection of reputation.

National interest

Academic and political scientists have tried to offer a common definition of national interest, but Daramola (2008) sees it as a nebulous concept. He however views national interest as revolving around the following issues: national security, national welfare, national prestige etc. He draws the conclusion that national interest are those issues that are of paramount interest to a sovereign state that it (state) would devote its resources and energy to pursue (Daramola, 2008). Other scholars and foreign policy analysts viewed it differently.

Against this background, conceptually, national interest lacks a universally acceptable definition. Rosati (2006) contends with the view of the possibility of having anything being referred to as “national” in regards to the multitude of prevailing personal, group, class, sectional and public interest in a state. According to Marchall (1994 cited in Ajayi, Njoaguani, Olorunyomi & Folarin, 2015), interests refer to whatever contributes to the general well-being or fulfillment of a purpose of an individual. This is because there is no definitive measure for the streamlining of all these conflicting concepts to a “national” interest (Rosati, 2006 cited in Ajayi, Njoaguani, Olorunyomi & Folarin, 2015).

Brooking Institute (1953) explains national interest as “the general and continuing ends for which a nation acts.” Lerche and Said (1963) defines national interest as the general long term and continuing purpose which the state, the nation and the government all see themselves as serving. Van Dyke (1962) sees national interest as an interest which the states seek to protect or achieve in relation to each other. According to Dawn (2010) they are the vital interests of a state of which survival is the first and foremost interest. This means that a state's independence and territorial integrity come above all other interests. If the state disappears, then no other interest remains.

It can be reasoned therefore that the supreme duty of the state is to maintain itself. Morgenthau (1951) affirms this assertion and argued that the meaning of national interest is survival, protection of physical, political and cultural identity against encroachments by other nation-states. To Niccolo Machiavelli, Jean Bodin, Hugo Grotius and Thomas Hobbes, a state's political behavior should be subject to concerns of national interest. They argued that it's rationale in taking the national interest into account in the development of foreign policy (Riaz-Ud-Din, 2015).

Governance and National Interest

Implied in the various attempts at defining national interest, is the problem of ascertaining who actually determines national interest. Is it the leadership or the citizens of the nation? The leadership has key responsibility of protecting the people as well as providing them with good life and controlling the affairs of the state for positive change; while the citizens of the country are directly affected either positively or negatively by the drive of the country's national interest. Hence, the national interest of a state should aim at promoting the national development and by extension image, prestige and respect both at home and abroad. Ake cited in Ajayi, Njoaguani, Olorunyomi & Folarin, (2015) identifies what constitutes the core of national interest to include: national security, political independence, territorial integrity, promotion of economic interest of the nation and world peace.

The general definition provided by *Webster's Third New International Dictionary* (1986: 982) cited in (South Africa's National Party, n: d) indicates that governance is synonymous with government, or “the act or process of governing, specifically authoritative direction and control”. A working definition used by the British Council, however, emphasizes that “governance” is a broader notion than government (and for that matter also related concepts like the state, good government and regime), and goes on to state that : “Governance involves interaction between the formal institutions and those in civil society”.

John Healey and Mark Robinson, state that “good government” “implies a high level of organisation effectiveness in relation to policy-formulation and the policies actually pursued, especially in the conduct of economic policy and its contribution to growth, stability and popular welfare. Good government according to the authors also implies accountability, transparency, participation, openness and the rule of law. It does not necessarily presuppose a value judgment, for example, a healthy respect for civil and political legitimacy”. Government makes laws for the protection of lives and property in any clime. Leaders turn their personal interest to national interest and pursue it vigorously and with all the resources and power available at their disposal. According to Daramola (2008):

Late General Sani Abacha) considered his transformation from a military head of state to civilian president as one of the interests of the state that he used all the resources, tactics and coercive power to pursue such interest.

In similar manner, former President Olusegun Obasanjo showed his disgust for corruption: He used all the resources and power available at his disposal to pursue that interest. President Obasanjo went to the extent of humiliating his Inspector-General of Police, Alhaji Tarfa Balogun and hounded many of his top party stalwarts including the then Senate President, Mr. Adolphus Wabara to...or courts of law.

In Zimbabwe, Mr. Robert Mugabe (of blessed memory) considered it national interest by raising to the top of the ladder the revocation of the farmland of the Whites. Former President Ibrahim Badamosi Babangida, equally considered it national interest when: “he turned the killer loan from the International Monetary Fund (IMF) to a matter of national interest in 1985 despite opposition of majority of Nigerians to government obtaining the loan”.Daramola (ibid) further stated that in spite of the personal interest of leaders in power, no leader will allow any journalist or spy into defense places or where a country's armaments are kept. He added that no leader will permit anyone, be it a citizen or foreigner to tamper with the national flag of a country; nor permit any external aggressor to overrun his country in the name of anything.

Theoretical Framework

The National Interest Theory (NIT) naturally fits into this discourse. The theory is as old as classical and modern discussions on the primacy of the objective will and aspirations of the state as driving force in international politics (Machiavelli, 2012; Thompson, 1960; Morgenthau, 1989; Clausewitz, 1873). Realists and constructivists have claimed that the national interest is a key explanatory tool in the analysis and understanding of foreign policy. The relevance of this theory to the study, underlines its emphasis on the protection of a nation's interest first as the primary interest of any modern state.

The study also employed the Social Responsibility Media Theory due to its stance that the press in any society should be responsible in the performance of its functions. Among the recommended functions by this theory, the first three are basically useful to this paper. These are: to serve the political system by making information, discussion and consideration of public affairs accessible; by acting as watch-dog over the government and to inform the public, and to enable it take self-determined action. By implication, the mass media, though it could freely express and publish news information, in doing so must be socially responsible to the society. It should engage in political mobilization, be objective, propelled by public interest rather than individualized or parochial interest. In doing so, it is not expected, however, to invade private rights or disrupt vital social structures or interests (Folarin, 1998:27).

Gilmore and Root (1971) quoted in Nwosu (1999:508), pointed out that the social responsibility theory has its root in the religious and philosophical concepts of the 'golden rule' and utilitarianism. The theory, Nwosu (1999) explains, draws its normative theoretical formulation from the works of the Hutchins Commission in the United States. In response to widespread criticism of the American newspaper press, especially because of its sensationalism and commercialism, but also its political imbalance and monopoly tendencies, a private commission of inquiry was set up in 1942. The founder was the publisher Henry Luce and it was conducted under the high-minded chairmanship of Robert Hutchins, Chancellor of Chicago University (Blanchard, 1977). Baran and Davis (2000, p.103) cited in Oso & Pate (2011), noted that the members of the Chicago School in their criticism "argued that unregulated mass media inevitably serves the interests and tastes of large or socially dominant groups. Small, weak and pluralistic groups would be either neglected or denigrated. In simple terms, the theory postulates that the mass media's exercise of freedom should be couched in responsibility to the society, which they serve. This is because as Peterson (1966) cited in Oso & Pate (2011: 51) observed:

The negative freedom of the libertarian theory is inadequate in modern society: freedom carries with it responsibility, and man is not wholly a rational creature, he is not so much irrational as lethargic, and his reluctance to use his reason makes him ready prey for special pleaders (Peterson:1966).

Discussion

Premised on the above, free speech is not merely of fundamental importance for democratic societies, but it is one of the most basic rights of an individual that enables him to form and develop his opinions, and thereby realize himself (Bakireiogu, 2008). According to this view, freedom of expression, however, is not absolute, but may be subject to certain limitations. Most democratic states impose restrictions on certain forms of expression, depending on the political and historical context. Germans, for instance, are naturally more sensitive about Nazi propaganda than other nations. The British on the other hand, are keener to restrict racially motivated speech due to its colonial past and its concern to keep its diverse population in harmony. In this regard, as

Boyle (2002) notes:

A society that respects freedom of expression is not one where there are no restrictions on that freedom. There are always restrictions... [A] Healthy society is to be measured ... by noting whether there is open public debate and argument about the necessity of restriction in particular cases. Indeed, a society that does not fight against the seeds of its own destruction cannot be deemed healthy.

Under the International Covenant on Civil and Political Rights (ICCPR) (Bakireiogu, 2008) the exercise of free speech is not absolute, it “carries with it special duties and responsibilities”. A Committee set up by the ICCPR is of the view that:

When a state party imposes certain restrictions on the exercise of freedom of expression, these may not put in jeopardy the right itself... The restrictions must be “provided by law”; they may only be imposed for one of the purposes set out... and they must be justified as being “necessary” for that state party for one of those purposes.

In accordance with the postulation of Walter Lippman in Odichukwu (1991), national security denotes that “a nation is secured to the extent to which it is not in danger of having to sacrifice core values if it wishes to avoid war and is able if challenged, to maintain them by victory in case of war”.

Indeed, phenomenon of hate speech has taken an extensive dimension in Africa due to poor regulations (Ezeibe, 2015). There is no Nigerian law that expressly prohibits hate speech; the Criminal Code has provisions related to libel, slander, blasphemy, perjury, and similar offenses. Section 95 of the Nigerian Electoral Act of 2010 prohibits acts that constitute hate speech during election campaigns but falls short of explicitly labeling them as such (Isola, 2018).

Most Canadian human right laws prohibit publishing or displaying material that expresses an intention to discriminate, implies discrimination, or intends to incite others to discriminate (British Columbia Human Rights Code, n:d). The Supreme Court of Canada recognized that eliminating the spread of hatred is part of the broader goal of addressing discrimination. Although the Canadian law found a number of anti-hate propagated laws to be infringements of the right to free expression, the Supreme Court determined that they are largely justifiable under the Charter and the reasonable limitations it permits on citizens' rights in Canada's free and democratic society. The country's court found that the harm caused by hate propaganda is not keeping with the aspirations to freedom of expression or the values of equality and multiculturalism contained in sections 15 and 27 of the Charter (Canada (Human Rights Commission; 1990).

Conclusion and Recommendations

In conclusion, press freedom which includes freedom of information may be curtailed by governments due to prevailing issues of hate speech and national interest in the traditional and social media. The surge in electoral violence in Nigeria from 2011, 2015 and 2019 elections were as a result of hate speeches expressed by religious and political leaders and carried by the conventional/ social media. It is therefore, recommended that there is need to assess the Maltese law on hate speech which states that “...racial or religious hatred against another person shall be liable to imprisonment for a term from six months to eighteen months” on its workability in Nigeria. Media Rights Agenda (MRA), Newspaper Proprietors Association of Nigeria (NPAN), Nigerian Guild of Editors (NGEs), Human Rights Groups, Non-governmental Organisations

(NGOs), and others should come together to faction out hate speech law suitable for Nigeria and Nigerians in particular. It will be indefensible for anyone in the name of freedom of expression to express hateful speech that may result to violence and total breakdown of law and order which will be inimical to Nigeria's national interest.

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