

PERSPECTIVES ON THE MASS MEDIA RESTRICTIVE LAWS AND THEIR IMPLICATIONS ON THE PERFORMANCE OF THE NIGERIAN PRESS

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Abstract

This paper examines the relevant provisions in the 1999 Constitution of the Federal Republic of Nigeria on (he responsibility assigned to the mass media pointing out the relationship between democracy and the mass media. Citing examples of some mass media restrictive laws in Nigeria, the paper argues that the existence of such laws does not provide a conducive environment for the media to discharge it constitutional responsibility. This is because these laws are not in consonance with democratic values and principles.

Introduction

Chapter II Section 22 of the 1999 Constitution of the Federal Republic of Nigeria under State Principles clearly spells out the obligation of the mass media. The Section provides that:

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

The provision expects the media to contribute to the achievement of political, economic, social, educational, foreign policy and environmental objectives of the State.

Similarly, Chapter IV Subsection 39 of the Constitution under fundamental rights guarantees rights to freedom of expression and the press. It 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.

The constitutional provisions quoted above demonstrate that the mass media are expected to play a vital role of upholding the responsibility and accountability of the government to the people. Consequently the constitution provides for freedom of expression.

However, for the Nigerian media to carry out their responsibility, cognisance must be taken of the existence of some laws guiding the practice of mass media personnel. Some of these laws were enacted several decades ago.

The purpose of this paper is therefore to highlight the incompatibility of these laws with the present reality of Nigeria situation where there now exists democratic government through multiparty system.

The Mass Media

The Oxford Advanced Learner's Dictionary defines the media as means of mass communication e.g. television, radio, newspapers. Quite often the word press is used in place of mass media and according to Momoh (2002) the press includes radio, television, wire services, newspapers, magazines and such other channels of communication involved in the collection and dissemination of information.

Traditionally, the function of the media is to educate, entertain and inform. It is used to mobilize people towards desired goals and serves as an agent of change. Generally, the mass media being such a powerful tool can be used to shape the goals, aspirations, motivation and values for the society.

One important advantage of the media is that it is the fastest means of informing and enlightening the people. It therefore helps man in overcoming the problem of limited capacity of surveying environment.

Mass Media and Democracy

In a democratic setting, the mass media play a very important role. In the first place the media have the responsibility of monitoring the performance of Government and her agencies. The people get to know how their elected representatives at various levels of government are performing. This, therefore makes it possible for the citizens to participate in the political process as active participants.

The media also provide a forum for the citizens to make their feelings, views, opinions known to the government: on any given issue. This, the media do by providing information necessary for citizens to take enlightened decisions. Without the media performing such a vital function democracy cannot be said to be in place.

The mass media are also supposed to help greatly in championing the cause of democracy by explaining to the public the benefits of democratic governance and opposed to military dictatorship. This they can also do by adequately informing and educating people on the virtues of democracy, good governance, multipartisan and so on.

In any democratic setting citizens are ultimate decision takers and therefore need information to make intelligent choices (Nwachukwu, 1999). The media are therefore expected to furnish the people with a wide range of information to make intelligent decisions. This the media can do by writing well researched and edited news stories and articles, which will ultimately guide the population in their decision making.

What all this boils down to is that the media are indispensable in any democratic set-up. However, can the media perform these functions in the light of existence of draconian media laws in our statute? Before we address this issue, we will take a look at some of these laws below:

According to Kasoma (1994), Journalism law is a statute which is enacted specifically about journalists concerning their work relations with the state and the public. Journalism laws are meant to among others (i) Protect journalists against abuse of authority by the state (ii) to protect the state against misuse of privileges and rights by journalists (iii) to protect the public against misuse of privileges and right by journalists and (iv) to protect journalists against unfair accusations and actions by the public.

Many laws exist in Nigeria that can therefore be regarded as journalism laws even though they do not exclusively concern journalism practice. Some of these laws are discussed below.

(I) Seditious Publications

The law on seditious publications is meant to prevent any form of criticism of either the President of the country or the Governor of a State. Section 50 Subsection 2 of the Nigerian Criminal Code defines a, seditious publication as publication having a seditious intention. Since it is the responsibility of the mass media to uphold the responsibility and accountability of the government to the people, it is doubtful if this function can be effectively performed without criticizing the leadership of Government at various levels.

(II) Defamation

Chapter three of Nigerian Criminal Code Act defines defamation matter as:

Matter likely to injure the reputation of any person by exposing him to hatred, contempt or ridicule or likely to damage any person in his profession or trade by an injury to his reputation.

The law further explains that "such matter may be expressed in spoken words or in any **audible** sounds, or in words legible marked on any substance whatever or by any sign or object **signifying such** matter otherwise than by words and may be expressed either directly or by insinuation or irony.

The law further provides that it is immaterial whether at the time of the publication of the defamatory matter the person concerning whom such matter is published is living or dead.

However, distinction must be made between defamation and libel. It is only when the defamatory matter is in permanent form, that it is regarded as libel. Slander on the other hand is defamatory matter in spoken words.

Whether defamation is libel or slander, the law on defamation is a concern to every practicing journalist. This is because he is constantly aware that if he/her violates the law he could be sentenced to prison.

(III) Publication of False News

Nigerian Criminal Code Act of 1967 clearly states that:

Any person who publishes or reproduces any statement, **rumour or** report which is likely to cause fear and alarm to the public or to **disturb the** public peace knowing or having reason to believe that such **statement, rumour¹ or** report is false shall be guilty of misdemeanor and liable to conviction to imprisonment for three years.

According to the provision, it shall be no defence that the person did not know or did not have reason to believe that the statement, rumour or report was false unless he proves that prior to publication he took reasonable measures to verify the accuracy of such statement rumour or report.

Undoubtedly this law is capable of having¹ negative impact on the performance of the media. When does a reporter, for example, know that what he is being told by a news source is a rumour? What is the definition of "reasonable measures" when some news sources are sometimes uncooperative?

(IV) Contempt of Court

Anything done to interfere with the administration of justice is regarded as contempt. The law on contempt of court in Nigeria lists nine possible offences, but only two directly concern mass media personnel, namely:

- (i) Section 133 subsection (4) states that while a judicial proceeding is pending (any person who) makes use of any speech or writing, misrepresenting such proceeding or capable of prejudicing any person in favour or against any party to such proceeding or calculated to lower the authority of any person before whom such proceeding is being had or taken (is guilty of a simple offence and liable to imprisonment for three months).
- (ii) Any person who publishes a report of the evidence taken in any judicial proceeding which has been directed to be held in private is also guilty of the offence.

: The law of contempt is particularly worrisome to the mass media. This is because the law can be abused by the judge who will sometimes judge in a case that involves, himself. It is in this light that Momoh (1986) argues that law of contempt of court is exceedingly vague. Robertson on his own points out that the law on contempt is imprecise and inconsistent in its application.

Experience over the years has shown that mass media are usually charged, for publication of materials calculated to prejudice the conduct of legal proceeding which are pending or imminent or to interfere with the administration of justice generally or to scandalize the courts.

(V) Obscene Publications

Chapter 21 Section 2, of the Law of Obscene Publications (1967) states that: Any person who whether for gain or not distributes or projects any article deemed to be obscene commits an offence punishable on conviction by a fine not exceeding four hundred naira or by imprisonment for a term not exceeding three years.

For the purpose of clarity an obscene, material is the one that its effect taken as a whole is such as to deprave and corrupt persons who are likely, having regard to all relevant circumstances, to read, see or hear the matter contained or embodied in it.

The laws on obscene publications is dangerous to the mass media practitioners. The first problem one encounters is the definition of obscene publication. There is no universally agreed definition of obscene matter. This of course focus the media practitioners to be unnecessarily cautious in the process of carrying out his assigned responsibility which invariably affects his performance.

(VI) Divorce and Auxiliary Proceedings

Mass media practitioners particularly journalists are expected to cover court proceedings involving divorce cases according to the law of the land. The law on divorce and auxiliary proceedings therefore provides that:

"It shall not be lawful to print or publish or cause or procure to be printed or published in relation, to a judicial proceeding for dissolution of marriage for nullity of marriage, for judicial proceeding other than the following:

- i. The names, the addresses and occupations of the parties and witnesses;

- ii. A concise statement of the charges, defences and counter charges in support of which evidence has been given;
- iii. Submission of any point of law arising in the proceeding and the decision of the court there on;
- iv. The judgment of the court and observation made' by the court in giving judgment.

Infringement of this law unexpectedly attract fine not exceeding £41000. The important thing about this law is that, it lists what to include in the news report but does not list what should not be included. This puts the reporter in a dilemma more so when the reporter has been trained on writing of complete stories.

Conclusion

The five laws cited and discussed above are far from being exhaustive. They are just a tip of the iceberg. They are only typical of the numerous laws in Nigeria that restrict the practice of mass media personnel.

It is therefore the contention of the researcher that these laws might have been useful when they were promulgated considering the circumstance then. However, with the advent of the 21st century, and the resultant constitutional guarantee of freedom of expression, these laws have become obsolete and need to be abrogated. As Mayer (1993) puts it "For the media to perform the vital role as defenders of democracy and as watchdogs for the community, journalists as individual persons need a framework of laws and collective agreements which concretely and in detail guarantee the conditions to fulfill their task and work under reasonable term.

Recommendations

The National Assembly should enact laws that are progressive by nature. Nigeria can borrow a leaf from Canada which came up with charter of rights and freedom. The charter guarantees :- of thought, belief, opinion including freedom of the press and the .media of communication. a a similar vein laws could be enacted allowing unlimited access to information. This is in line with **Manila** National Conference which called on governments to enact legal patterns establishing

right to access to information held by government and its agencies.

Finally, the National Assembly should expedite action on the passage of the access to bill presented to it by a coalition of some non-governmental organizations aimed at obstacles which the media face in information dissemination.

References

- Kasoma, **FJ***. (1994) Developing Pluralistic and Independent Media as Bastions of Democracy in **Africa. Paper** Presented at the Southern Africa Development Community (SADC) Conference in **Promoting a Culture of Democracy and Human Rights in Southern Africa**, Maputo, Mozambique, February 7-11.
- Kasoma, P.P. (1999) Independent Media, Professionalism and Ethics in Journalism Education. In Uche (ed) *Mass Communication Democracy and Civil Society in Africa, International Perspectives*. Lagos: Smagh and Company Nigeria Limited.
- Mayer, W. (1993) The Right Responsibilities of Journalists and the Means of Upholding Them, *Institute of International Affairs Bulletin* No. 9.
- Meril, J. (1998) Inclination of Nations to Control Press and Attitude of Professionalism. *Journalism Quarterly* 65 (No.) Page.
- Nigerian Law Report CAP77 (1999) *Constitution of the Federal Republic of Nigeria*.