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Freedom of Expression and Freedom of Information Act 2011

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RIGHT TO FREEDOM OF EXPRESSION
AND FREEDOM OF INFORMATION ACT
2011
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“everything that is really great and inspiring is created by the individual who can labor in freedom”

Albert Einstein, (1879-1955)

• notion that “every person has the natural right to freely express themselves through any media and frontier without outside interference, such as censorship, and without fear of reprisal, such as threats and persecutions”

• ONE OF THE OLD RIGHTS

- recognized by all the international, regional as well as domestic human rights instruments

- Unfortunately, IT TOOK LONG TIME TO INCORPORATE IN NIGERIAN CONSTITUTION

  - Throughout the colonial era, fundamental rights have not been incorporated in any of the colonial constitutions, let alone the controversial right to freedom of expression

  - ROCOGNISED FOR THE FIRST TIME IN NIGERIA UNDER 1960 CONSTITUTION THEN IN ALL THE CONSTITUTIONS FOLLOWING
• 1960 constitution under section 24
• 1963 IS UNDER SECTION 25
• 1979 IS UNDER SECTION 36
• 1999 IS UNDER SECTION 39
Universality of the right

- section 39(1) OF 1999 CFRN states thus:
  - Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

- Article 19 of the Universal Declaration of Human Rights:
  - Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.
• Article 19(2) of *International Covenant on Civil and Political Rights* (ICCPR), a formally binding legal treaty ratified by 165 States including Nigeria states:

• *Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art or through any other media of his choice*
Point to note

- Inspector General of Police v. All Nigeria Peoples Party
- (2007) 18 NWLR (Pt.1066) 457 C.A
- the Court of Appeal held:
  - "The police have no powers to stop or restrict the fundamental rights of Nigerians to freedom of expression and assembly once those rights are exercised within the ambit of the law. If the demonstrates or marchers breach any law in the course of exercising their freedom of expression and assembly the Criminal Code is there to take care of such infraction”.
- "Per ADEKEYE, J.C.A.(P.28, Paras.F-G)"
Is right to freedom of expression absolute?

**Absolute Rights**
- Can never be departed from because they are inherent in man and so fundamental to him
- Right to fair hearing, right to freedom from torture, discrimination

**Qualified Rights**
- Can be interfered with in certain circumstances and under certain conditions
- Right to private and family life, right to freedom of expression

**Limited Rights**
- Can be departed from in certain circumstances as provided by the law
- Right to life under section 33
• Holding the opinion is **Absolute**

• But its exercise **carries along with it a duty or responsibility**
William Blackstone, (1770)

• “The liberty of the press is indeed essential to the nature of a free state; but this consists in laying no previous restraints upon publication, and not in freedom from censure for criminal matter when published. Every man has an undoubted right to lay what sentiments he pleases before the public; to forbid this, is to destroy the freedom of the press; but if he publishes what is improper, mischievous, or illegal, he must face the consequences of his temerity”

• Blackstone Commentaries, Vol. 4, 151-152
In almost all the international, regional and domestic human rights instruments guaranteeing freedom of expression, the right does not at all confer an absolute or unqualified right to “speak, print, broadcast or publish without responsibility”
Right and privacy of others

National security, defense, peace etc.

Law restricting use of telephony, disclosure of info. Received in confidence etc.
• Article 19(3) of the ICCPR also provides:

“The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary:

(a) For respect of the rights or reputations of others;

(b) For the protection of national security or of public order (order public), or of public health or morals”
Section 45 of CFRN states thus:

“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 defense, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedom or other persons
Section 39(3)

- 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 cinematograph 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.
Important

• The restrictions are **never left to the discretion of any one single person** but **must be enacted into law and passed by the legislature**. The restriction **must also be for protection of legitimate aim and overriding interest taking into account its purpose and effect.**
So

That

Some legislations criminalize some categories of publications, expressions etc: Because:

Are against peace and order
Are against national security, defence,
Are against morality etc
That is why certain group of people are prevented from speaking on certain issues:

- The police and SSS and other members of security
- Telephony, wireless broadcasting, television, cinematograph are regulated
Examples:

51 of the Criminal Code

prohibit the utterance of *seditious words, publication, selling, reproduction, distribution or importation of seditious material*

The section prescribes punishment of 2 years – 1\textsuperscript{st} offender imprisonment of 3 years and forfeiture of the seditious material or publication to the state — subsequent offender
• 373-381CC prohibits publication of any defamatory matter against any

and prescribes the punishment of 1 year

but if the publisher knows the publication to be false, a punishment of 2 years –

unless the publication at the time it is made is for public benefit

and defamatory material is true.
• 416-421 of the Penal Code

prohibit utterance of any words or publication of any material or false news with intent to cause offence against public peace, inciting hatred between classes etc.

The punishment extended to 7 years imprisonment or fine or both
And again that is why:
Certain legislations in Nigeria provide for the establishment of certain regulatory agencies

like the National Broadcasting Commission under the National Broadcasting Commission Act
The problem with NBC

“lacking in independence and as being another hunting dog for the office of the Minister of Information and Communications and well as the President”

“unnecessarily silencing some “inconvenient voices””

“unjustifiably muzzling privately owned broadcast stations but turning a blind eye when government owned stations violate the provisions of the Broadcasting Code”
Unfortunately these restrictions are manipulated and vaguely into sedition laws, national security laws, public order laws, official secret Acts, etc with overly broad extent that any objective criticism of government can be regarded as punishable offence.

breeds secrecy, corruption, abuse of power and office

unnecessary laws prevent the public from scrutinizing the government
Without free speech, there is no freedom and where there is no freedom there is no life
Resources

• http://works.bepress.com/ibrahim_sule/
• http://www.nassnig.org/nass/actssearch.php?search=freedom+of+information&Submit=Search