

## FREEDOM OF EXPRESSION AND THE PRESS IN THE 1999 NIGERIAN CONSTITUTION: A REFLECTION\*

### **Abstract**

*The legal framework for the operation of the press as well as the freedom of expression remains a fundamental component for enhancing democratic values. Growth of the social media has impacted on mass communication and appears to have put a challenge on the traditional role of the press. Within the constitutional limits of the freedom of expression and the press, there exists ample protection of these rights to flourish in the democratic space. This paper examines the right to expression and the freedom of the press within the constitutional setting of present day Nigeria alluding to the various instances in which the requirements for the restriction of the right might become necessary due to public good. The paper recommends appreciation of the reasoning for the restrictions on the right as a necessary component of a democratic culture.*

**Keywords:** *Freedom of Expression, Freedom of the Press, 1999 Nigerian Constitution, Fundamental Rights*

### **1. Introduction**

It is important in discussing the Nigerian Constitution and the provision on freedom of expression and the press to make references to previous constitutions that were promulgated but jettisoned for historical and political reasons. Prior to independence, there were constitutional conferences held: Lyttleton, Macpherson and Richards Constitutions, all of which never provided for freedom of expression. The Independence Constitution of 1960 provided for freedom of expression in Section 24. However with the attainment of Republican status, a new constitution was promulgated called the Republican Constitution of 1963 and retained the provision on freedom of expression in Section 25. These were the two constitutions operated in what was referred to as the First Republic when Nigeria practiced the parliamentary form of democracy. Even though Nigeria became independent in 1960, the Queen of England remained as the Head of Government. The Prime Minister, Sir Abubakar Tafawa Balewa, had to consult her on certain matters of government. This only changed in 1963, when Republican status was achieved and Dr. Nnamdi Azikiwe became the President and Head of the Government. The First Republic was aborted through a coups d'état that led to the emergence of a military government. The military rulers resorted to ruling through Decrees. When the country embarked on return to civil rule it set up the Constituent Assembly in 1978 that produced the 1979 Constitution for the Second Republic. That constitution also retained the provision on freedom of expression in Section 36. But the Second Republic also collapsed. There was an attempt to introduce another constitution for the Third Republic but also collapsed. The 1989 Constitution also retained the provision on freedom of expression in Section 38 with another provision on the establishment of a National Mass Media Commission (NMMC), which was roundly rejected as a calculated step to control the media. The Third Republic collapsed with the cancellation of the result of the Presidential election that caused political instability. The already elected legislature could not survive the political turmoil that followed. The current constitution was used to usher in the Fourth Republic, which came into force in 1999 and also provides for freedom of expression in Section 39. The discussion on freedom of expression will draw from the provisions of the 1999 Constitution as amended.

### **2. Freedom of Expression as Human Right**

Freedom of expression is among the charter of rights in the Nigerian Constitution 1999<sup>1</sup> as amended. The Constitution recognises two categories of human rights: Civil and Political Rights<sup>2</sup> and Economic, Social and Cultural (ECOSOC) rights<sup>3</sup>. Civil and political rights are placed in Chapter IV of the constitution under the title *Fundamental*

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<sup>1</sup> CFRN 1999

<sup>2</sup> See The United Nations International Covenant on Civil and Political Rights <http://www.hrweb.org/legal/cpr.html> visited 2/2/19

<sup>3</sup> See International Covenant on Economic, Social and Cultural Rights <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> visited 2/2/19 See also J. Oloka-Onyango.,n Beyond the

Rights; while the Economic, Social and Cultural (ECOSOC) Rights are placed in Chapter II under the title *Fundamental Objectives and Directive Principles of State Policy*. Conversely, all ESCR have negative aspects; some states prevent people from freely exercising ESCR, for example by blocking food or medical supplies to disfavored groups or regions.<sup>4</sup> There are reasons for the dichotomisation of human rights in the constitution. It was a conscious political decision by the framers of the constitution. Freedom of expression falls under civil and political rights. Civil and political rights are thus regarded as the rights that people enjoy without placing any demands on the government. Citizens can easily enjoy such rights. This includes rights to freedom of speech, freedom of conscience and religion, freedom of association, freedom of movement, etc. Citizens can sue for the actualisation of these rights in situations where they are infringed. That is claims can be made for the enforcement of civil and political rights in the courts. However ECOSOC rights demand of deployment of resources by government to achieve them. This includes right to work/employment, right to education, right to housing, right to health, etc. Individual citizens depend on the State to achieve them. Government operates with limited resources and there are competing demands to fulfilling this category of rights. It is in that context that the framers of the constitution decided that the rights in Chapter II are to be realised based on resources being available to government. Based on this citizens cannot make claims on the government for the enforcement of ECOSOC rights. So the dichotomisation of rights in the 1999 Constitution results in making one set of rights (civil and political) *justiciable* while the second set of ECOSOC rights is *non-justiciable*. The first is actionable in the courts while the second one is not as the Constitution itself provides in Section 6(6)<sup>5</sup>:

The judicial powers vested in accordance with the foregoing provision of this section –

(c) shall not, except as otherwise provided by this Constitution, extend to any issue or question as to whether any act or omission by any authority or person or as to whether any law or any judicial decision is in conformity with the Fundamental Objectives and Directive Principles of State Policy set out in Chapter II of this Constitution.<sup>6</sup>

It is important to understand the ideological basis of the division of justiciable and non-justiciable rights. In the context of capitalists' ideology<sup>7</sup> the most important rights are the civil and political rights, which guarantee freedom of the individual to do as they please and to find self-actualisation. Without freedom, capitalists' reason, it will be difficult to achieve development. A recent justification for this line of thinking was provided by Amartya Sen in his work titled *Development as Freedom*<sup>8</sup>. They privilege civil and political rights over ECOSOC rights. Socialists hold a different view of human rights by placing emphasis on ECOSOC rights. They argue that civil and political rights are not useful to a person living in hunger, deprivation and destitution. One needs to have economic power to be able to exercise civil and political rights. So there is no point setting any dichotomy among human rights as they are all related and indivisible.<sup>9</sup> It is the responsibility of government to fulfill right to education, right to health, right to work or employment, right to decent accommodation, freedom of speech, freedom of conscience, freedom of movement, freedom of association, etc. It is important to keep this brief background in mind when talking about the constitutional provisions on freedom of expression.

### 3. The Provision on Freedom of Expression

The 1999 Constitution of the Federal Republic of Nigeria provides for freedom of expression titled *Freedom of Speech and the Press* and provides that: Section 39(1): Everybody shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.<sup>10</sup> It can be seen that the Constitution provides for right to freedom of expression<sup>11</sup> to all citizens, without exception. It is important to note that even though the title of the section mentions the press, there is nothing in the wordings of the

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Rhetoric: Reinvigorating the Struggle for Economic and Social Rights in Africa <http://hrlibrary.umn.edu/africa/Oloka-Onyango.html> visited 1/2/19

<sup>4</sup> This positive versus negative dichotomy has been discredited recently in favor of the understanding that all human rights have both positive and negative components. It is a matter of common sense that civil and political rights, including free speech, require the positive outlay of state resources in terms of providing a functioning judicial system and educating people about their rights.

<sup>5</sup> CFRN 1999 (as amended)

<sup>6</sup> *ibid*

<sup>7</sup> See Philip Ferguson, How capitalist ideology works, <https://rdln.wordpress.com/2011/10/18/how-capitalism-works/> visited 2/2/19

<sup>8</sup> AK Sen, *Development as freedom* Oxford University Press 1999

<sup>9</sup> See The Indivisibility of Economic and Political Rights By Linda M. Keller A review of *Development as Freedom* by Amartya Sen. New York: Knopf, 1999 (Paperback Edition: Random House, 2000).

<sup>10</sup> CFRN 1999 (as amended)

<sup>11</sup> See I. J. Udofo., RIGHT TO FREEDOM OF EXPRESSION AND THE LAW OF DEFAMATION IN NIGERIA [www.icidr.org/ijalsg\\_vol2no1\\_april 2011/Right to Freedom](http://www.icidr.org/ijalsg_vol2no1_april_2011/Right%20to%20Freedom) accessed 10/1/19

section that made direct reference or suggests the press. The title appears misleading, a grudging acknowledgment of the importance of the press in a democratic society without making express provision for freedom of the press. This is in contrast with the American constitution, under the First Amendment<sup>12</sup>, that provides that: Congress shall make no law abridging the freedom of speech or of the press.

The quest for freedom of the press has been a long one. The Nigerian Union of Journalists (NUJ)<sup>13</sup> made a submission in to the then Constituent Assembly of 1978<sup>14</sup> charged with the responsibility of producing the 1979 Constitution arguing on the need to expressly provide for freedom of the press. The NUJ argued that journalists are professionals in the art of gathering, processing, packaging and dissemination of information to the public. It also argued that it is not every individual that engages, or even engages, in the distribution of information. Instead of individuals having to spend time searching for information, the media can largely fill in the void and free people to attend to other matters of interest to them. They reasoned that not all people are based in their places of origin. Many have moved to other places to eke out a living and do need to get some information about their places of origin. NUJ argued that the media need this express freedom in the constitution to serve society better. Another significance of the need for press freedom is to allow the press to serve as check on public affairs by both public and private operators. The Constituent Assembly did not accept the arguments of the NUJ and decided that the provision on freedom of expression covers every citizen without having to privilege any group of people with express freedom. At the root of the rejection of press freedom in the constitution is the fear of supposed media power and exposure of abuse of power by the elite.<sup>15</sup>

The media in Nigeria derives its freedom from the general provision on freedom of expression. The right that is enjoyed by all citizens is the right that the media also enjoy. It is important to note that the Nigerian media despite the generality of the provision have always struggled to maintain their freedom which, often times, led to friction with the authorities resulting in arrests and detentions of journalists and closure of media houses.<sup>16</sup> The media have asserted their freedom and have given expression to the provision of section 39. The 1999 Constitution does not stop at giving freedom of expression to all citizens it also provides some caveats that could affect the exercise of the right to freedom of expression. The Constitution particularly gave conditions for the ownership, establishment and operation of electronic media in Nigeria. It provides that:

Section 39(2): Without prejudice to the generality of sub-section 1 of this section, everybody shall be entitled to own, establish and operate any medium for the dissemination of ideas and opinions:

Provided that no person, other than the Government of the Federation or of a State or any other person or body authorised by the President on the fulfillment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.<sup>17</sup>

The provision makes it clear that except federal and state governments, no one can own a medium for television or wireless broadcasting without getting license, upon fulfillment of conditions laid down by the National Assembly, from the National Broadcasting Commission (NBC).<sup>18</sup> NBC is the body authorised by the President under the law to deal with issues of applications, processing of licenses (signed by the President), establishment and operation of electronic media. The NBC is also empowered to regulate the activities of all broadcasting stations in Nigeria. It can be seen that this provision affects the electronic or broadcast media. The reason for doing this are because of the issues of the type, radiating power and standard of equipment for broadcasting and the allocation of broadcast frequency to avoid frequency jamming. The frequency spectrum is not an infinite resource and is internationally

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<sup>12</sup> U.S. Constitution › First Amendment [https://www.law.cornell.edu/constitution/first\\_amendment](https://www.law.cornell.edu/constitution/first_amendment) accessed 1/2/19

<sup>13</sup> <http://nuj.org.ng/about.php>

<sup>14</sup> See H. Gibrill, *The Impact Of Constituent Assemblies (1978-1995) On Nigerian Constitutions And Political Evolution* for a discussion of the Report [digitalcommons.auctr.edu/cgi/viewcontent.cgi?article=](http://digitalcommons.auctr.edu/cgi/viewcontent.cgi?article=). visited 2/2/19

<sup>15</sup> See the interesting paper by M. Palevic & S. Djordjevic, *Freedom of information and abuse of media in the process of globalization* <http://webology.org/2013/v10n1/a104.html> accessed 1/2/19

<sup>16</sup> See for example the infamous Decree No 4 of 1984 or even the Nigerian Press Council Act recently nullified by the Federal High Court,

<sup>17</sup> CFRN 1999 (as amended)

<sup>18</sup> The National Broadcasting Commission is a parastatal of the Federal Government of Nigeria established by Section 1 of the National Broadcasting Commission Act, Cap. NII, laws of the Federation, 2004 and vested with the responsibilities of, amongst other things, regulating and controlling the broadcasting Industry in Nigeria.

regulated by the International Telecommunications Unions (ITU) to ensure access for all countries and agencies and individuals in countries.

#### **4. Constitutional Restrictions on Freedom of Expression**

The provision on freedom of expression in the constitution makes exceptions to the freedom that can be exercised by individuals.<sup>19</sup> This is because freedom is not absolute and certain restrictions are universally accepted. The constitution again provides that:

Section 39(3): Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society:

(a) For the purpose of disclosure of information received in confidence, maintaining the independence and authority of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematographic films; or

(b) Imposing restrictions on 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 service or agencies established by law.<sup>20</sup>

The Constitution provides for the making of laws that are reasonably justified in a democratic society.<sup>21</sup> It does provide specific areas where such restrictions will apply. The restrictions are for the purposes of:

- Respecting confidentially: not to disclose information received in confidence
- Respecting Independence of Courts: maintaining the authority and independence of courts
- Regulation of Electronic Media: regulating telephony, television, wireless broadcasting
- Regulation of film: regulation of the exhibition of cinematographic films
- Protection of State Secrets: restriction of government officers, military and police officers, security services or agencies from disclosing State intelligence and defence information including all official secrets

These are areas of significant national interest that the Constitution places restrictions on. The restrictions have been justified in another section of the Constitution.<sup>22</sup> Media operating in Nigeria have to note the exceptions to freedom of expression as outlined above. Individuals like to keep some of the information they provide to be treated with strict confidence. Certain pieces of information are provided to certain individuals in their position as qualified professionals armed with knowledge and skills to handle individual or group issues. This is the case with health professionals working in health care centres – clinics, dispensaries or hospitals. The confidentiality surrounding one's health can be appreciated when one is sick. Health officials are required to handle the health issues of their patients under strict confidence.<sup>23</sup> No one would like the public disclosure of his or her health status without a reasonable cause. Banks are also required to treat the financial transactions with their customers in confidence. They cannot disclose how much is in the account of an individual, whether a person has overdrawn his or her account, the interest accruing to a savings or deposit account, number of accounts held or the account number. These are pieces of information that the bank can only disclose to or discuss with its customer. The same principle of information received in confidence applies to schools where the personal details of individual students and staff are recorded and kept. These are information provided in confidence and cannot be revealed to unauthorised persons.

Courts are places where the laws of the land are interpreted and where adjudication of cases on the basis of the laws occurs. The courts receive and treat cases under conditions that guarantee justice to the parties any legal dispute. The courts are, therefore, given the powers to operate independently so that they cannot be influenced to undermine or

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<sup>19</sup> See The Right to Freedom of Expression: Restrictions on a ... [www.icnl.org/research/trends/trends6-1.pdf](http://www.icnl.org/research/trends/trends6-1.pdf) accessed 20/1/19

<sup>20</sup> CFRN 1999 (as amended)

<sup>21</sup> See Discourse on press freedom in the Nigerian 1999 constitution ...[www.sharpjournal.com](http://www.sharpjournal.com) ›

<sup>22</sup> Quare the impact on the following provisions Section 24 of Cybercrime (Prohibition, Prevention, Etc.) Act, 2015, Section 391(1) of the Penal Code for Northern Nigeria and similar provisions in the Criminal Code et al

<sup>23</sup> See Health Care Professionals Legal–Ethical Issues samples.[jpub.com/9781284036794/9781284069761\\_CH09...](http://jpub.com/9781284036794/9781284069761_CH09...)

abuse the law to perpetrate injustice. This will not only undermine their independence, but also their authority. The judiciary, as represented by the courts, is considered the last hope of the common people. Issues of justice reside in the courts and they need to operate independently without interference to assert their authority. Among the arms of government it is the judiciary that serves the role of legal arbiter when there is dispute between the executive and the legislature; between the federal and state governments; between the state and local governments; between the federal and local governments; between employee or trade unions and employer; etc.

The broadcast or electronic media have some limitations and do not enjoy the same latitude as newspapers and magazines in relation to the issues of ownership, establishment and operations. The constitution makes it necessary to regulate wireless broadcasting, television and telephone. All these have to make use of the frequency spectrum, which is a limited international resource on which frequency is allocated to countries for broadcast. The emergence and developments in satellites technology may have expanded the space of broadcasting this does not eliminate the limitations of the frequency spectrum. No one can establish a wireless broadcast station, television or telephone company without obtaining a licence from the relevant regulatory agency. For broadcasting the relevant regulatory agency is the National Broadcasting Commission (NBC) and for telephone the regulatory agency is the Nigerian Communications Commission<sup>24</sup> (NCC). The quality and type – not brand – of equipment must be in conformity with the standards set by the regulatory agencies based on the laws that gave birth to them. Any person or group interested in the ownership, establishment and operation of a broadcast station or telephone company must comply with the set down rules for doing so. Even if one were to use satellites, the laid down rules must apply on the ownership, establishment and operation of the electronic media. The reasons are to ensure that stations do not cross each other and jamming each other's signals. This is to ensure that the audience gets clear broadcasts and calls; to respect the ITU<sup>25</sup> protocol on the use of the frequency spectrum; and, to ensure responsible use of the air waves.

Film is a medium that has been the subject of regulation and it is no exception in Nigeria. It has been a contentious medium based on popular beliefs on the effect of the content on the viewing public. It is the one medium that there seems to be agreement on censoring its content in many countries. This is to ensure that obscene and indecent – sexual explicit, violence, cruelty to animals, blasphemous, racist or sexist – materials do not fall into wrong hands such as children and minors. Film content is subject to the dictates of the censors' board. The fingerprint of the censors' board is reflected in the classifications of films. In Nigeria, the National Film and Videos Censors Board (NFVCB) is responsible for the regulation of film. There are two interrelated reasons for subjecting film to the censors: the issue of upholding community standards and protection of the vulnerable public from obscene and indecent films. It is important to point out that such matters are not exclusive to films as other media – radio, television or music – can also disseminate obscene and indecent materials. Ayakoroma states that: '... the essence of censorship is to protect the public from being exposed to injurious information or ideas unnecessarily and making the communication medium to be more responsive to perceived social ideas'.<sup>26</sup>

It is interesting that the censorship of film is accepted in the light of the effects it is likely to have on the society. Yet there is a subsisting debate on the effects of the media generally with popular ideas of effects rejected with competing scientific evidences. However the position canvassed by Klapper remains valid on media effects.<sup>27</sup> The imposition of restrictions on the armed forces, the police and related security agencies is meant to ensure the collective security and safety of the country is guaranteed. It is not every piece of information in the custody of the State that can be left to the dictates of freedom of expression. All countries have accepted this restriction because it affects not only the safety and security of citizens, but also the national interest. The armed forces, police and all security agencies are the representatives of the State. They have powers to act for and on its behalf and need to work with intelligence to deal with crime and threats to the country, both internal and external threats. The security agencies are tasked with the responsibility of defending the nation and they deal with security and intelligence information necessary for their job. It is important to recognise that the security agencies are to ensure respect for the law, observance or respecting the law and its implementation. This applies primarily to the police and related security agencies while the armed forces are to protect the territorial integrity of the country and could also be involved in internal security duty. The details of the significance of the defence and intelligence information is further emphasised in the section dealing with restrictions on and derogations from fundamental rights. This is examined below.

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<sup>24</sup> See Nigerian Communications Commission - Official Site [www.ncc.gov.ng](http://www.ncc.gov.ng)

<sup>25</sup> International Telecommunication Union (ITU)

<sup>26</sup> B. F. Ayakoroma, *Trends in Nollywood: A Study of Selected Genres. Ibadan, Nigeria*: Kraft Books Limited, 2014 P. 59

<sup>27</sup>J.T. Klapper. The Effects of Mass Communication [https://www.researchgate.net/publication/31844848\\_The\\_Effects\\_of\\_Mass\\_Communication\\_JT\\_Klapper](https://www.researchgate.net/publication/31844848_The_Effects_of_Mass_Communication_JT_Klapper) accessed 22/1/19

## **5. Restrictions on and Derogation from Fundamental Rights**

The Constitution further specifies the areas of restrictions on some and derogation from fundamental rights.<sup>28</sup> The restrictions, as noted above, are to be based on justifiable reasons in a democratic society. The reasons for the imposition of restrictions which would amount to derogations from fundamental rights are provided in Section 45.<sup>29</sup> It provides that:

45(1): 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 others

(2) An Act of the National Assembly shall not be invalidated by reason only that it provides or the taking, during periods of emergency, of measures that derogate from the provisions of S. 33 or 356 of this Constitution; but no such measures shall be taken in pursuance of any such Act during any period of emergency save to the extent that such measures are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency;

Provided that nothing in this section shall authorise any derogation from the provisions of S. 33 of this Constitution, except in respect of death resulting from acts of war or authorised any derogation from the provisions of Section 36(8) of this Constitution

(3) In this section, a “period of emergency” means any period during which there is in force a proclamation of a state of emergency declared by the President in exercise of powers conferred on him under S. 305 of this Constitution<sup>30</sup>

Though the restrictions appear clear, it is important to isolate each of the reasons advanced by the Constitution for a more nuanced understanding. There are several reasons which are designed to promote and protect, among other things, the: defence interest of the nation; safety of the public; preservation of public order; safeguarding public morality; protection of public health; and, protection of the rights and freedom of others

The terms or conditions under which restrictions or derogations from rights could be exercised are clarified to mean period of emergency, which can be declared by the President based on powers specified in S. 305 of the Constitution.<sup>31</sup>

The defence interests of the nation are not restricted to intelligence gathering only. They cover a wide range of issues relating to the operations, readiness and capabilities of the security agencies including covert operations. The arsenals of war, inventions or modifications cannot be readily divulged in the name of freedom of expression. Again, the deployment of troops, weapons and strategy and tactics of operations cannot be disclosed. It is important to be mindful of the significance of barracks, aviation facilities, train stations and sea ports and how they are secured or protected cannot be subjects of public inquisitiveness in the name of freedom of expression. It is for this reason that the repealed Official Secrets Act<sup>32</sup> specifies the measures put in place to protect State secrets. Even with the passage of the Freedom of Information Act<sup>33</sup> which is seen an extension of the Section 39 of the Constitution, there are clear exceptions to defence and intelligence matters.

Public safety is important to the continued development of the country. Business, politics, administration, schooling, transport etc. need safe environment to be conducted with ease and certainty. The security agencies are one of the

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<sup>28</sup>See the article Understanding Human Rights Law in Nigeria(2) - Vanguard News [www.vanguardngr.com/2012/10/understanding-human...](http://www.vanguardngr.com/2012/10/understanding-human...) Accessed 3/2/19

<sup>29</sup> CFRN 1999 (as amended)

<sup>30</sup> ibid

<sup>31</sup> Ibid

<sup>32</sup>The Official Secrets Act, in section 4 for instance, prohibits the unauthorised transmission of any information which has been classified by any government branch as being prejudicial to the security of Nigeria.

<sup>33</sup>Freedom of Information Act 2011 Laws of the Federation of Nigeria: An Act to make public records and information more freely available, provide for public access to public records and information, protect public records and information to the extent consistent with the public interest.

many means by which public safety is guaranteed and enforced. Safety is important to everyone who believes in doing things the right way and for the stability and development of society. Safety from harm – criminal harm, health harm, environmental harm, political harm, reputation harm, emotional harm, etc. – are critical to building a better society.

Tied to the issue of public safety is the subject of public order. Society needs some form of orderliness to be able to function effectively. It is for this reason that emphasis is placed on respecting the law and preventing people from resorting to self-help in moments of dispute or disagreement with other persons or groups. People are also required to resort to the established mechanisms for resolving grievances so that violent conflicts do not arise to disrupt the order in society. The security agencies, among other responsibilities, are required to ensure that public order is not disrupted. Where anyone attempts to disturb public order, the security agencies are expected to take preventive actions by bringing the person under control. They have a responsibility to police demonstrations and control riots including terrorist activities. Where they apprehend law breakers they are required to prosecute them through the law courts and secure conviction for the affected individual to serve a prison sentence. The prison is a reformatory to make inmates to learn to obey the rules and exhibit good behaviour after serving their sentence.

Society is guided not just by laws but also by norms, values and mores. These values need to be upheld and protected. Freedom of expression does not mean that blasphemy, abusive words, sexual exhibitionism and pornography including violent language will be tolerated as this will damage the moral fabric of society. So the law provide for exceptions to ensure the moral values are observed and not to offend the sensibilities of some individuals or groups. Public health is important to ensure that people are not exposed to conditions that will harm their health. The outbreaks of diseases have to be controlled and no one is allowed to engage in practices that will lead to harming the health of the public. Manufacturers are required to ensure that the setting for the production of goods are safe, the products do not harm society and the environment. Environmental health is very much a part of public health. Safeguarding the environment becomes a key aspect of protecting public health. Individuals need to imbibe and practice good health habits as a safeguard against injuring public health.

Freedom of expression is indeed granted to everyone, but this does not mean that the right of other individuals can be infringed upon. Some people in society need to have their rights protected from the actions of other persons. Children's rights are one of such areas needing protection because children are minors lacking the maturity and sense to protect their rights and interest. They need to have that space that provides them with protection for self-expression. There are other groups of persons who may need to have their rights protected such as the poor, people with disabilities and women. The power relations in society may be to their disadvantage and they need to have their rights and freedoms protected. The protection of the rights and freedom of others is important to ensure protection for every member and for the stability of the society. The phrase is reminding journalists that they do not have unfettered freedom to do as they please despite the provision of Section 39(1)<sup>34</sup> which provides for the right to freedom of expression, to receive and impart information and ideas without interference. The phrase – nothing shall invalidate any law that is reasonably justifiable in a democratic society – provides the reason for the promulgation of specific laws that address certain issues related to freedom of expression such as the laws of defamation, privacy, contempt of court, official secrets, freedom of information, sedition, copyright, obscene and indecent publications, children and young persons' harmful publications, etc. There is no society where some forms of restrictions on the media do not exist. Even in the US and many European countries they have laws of defamation, privacy, copyright, official secrets and freedom of information, among others. Journalists are reminded that the people and events that they report and comment about also have some form of legal protection since rights are not absolute. It is the provision of Section 45 that makes it possible to enact laws that cover specific areas: laws of defamation, official secrets, freedom of information, regulatory agencies, copyright, obscene and indecent publications, film and video censors, children and young person's harmful publications, sedition, contempt of court and privacy. The Constitution identified specific areas of rights where derogations could apply. The specific provisions, in a larger context, can be invalidated by laws that are reasonable justifiable in a democratic society. It is important to bring out the specific issues addressed by

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<sup>34</sup> CFRN 1999 (as amended)

the Constitution as identified in sections 33, 35, 36, 37, 38, 39, 40 and 41. These are issues that border on fundamental human rights, which the State has a responsibility to protect. All these are issues relating to the question of life and property.

## **6. Obligations of the Mass Media**

Having examined the provisions of the Constitution on freedom of expression and the justifications for derogation from that right, the Constitution provides for obligations of the media to the Nigerian society. Whereas the media do not have specific provision for freedom in the Constitution, they are still assigned the specific responsibility of playing the role of the fourth estate, the watchdog function of the press. This is provided in Section 25. Section 25 states: '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 of the people'<sup>35</sup> The media are required to uphold the Fundamental Objectives and Directive Principles in Chapter II and to also hold the government responsible and accountable to the people. It is important to note that this provision is in Chapter II which is not justiciable. The non-justiciability of Chapter II renders the ability of the agencies of the mass media to hold the government responsible and accountable to the people weak. This does not stop the media from conducting investigations and exposing the efficiency or inefficiency of the machinery of government in serving the people. The media could not enforce this provision of the Constitution since Section 6(6) has ousted the power of the courts to inquire into the provision of the chapter. The Repealed Official Secrets Act which rendered public or official documents secret and the fact that all civil servants are required to swear to an oath of secrecy as government officials did not also help matters. However, there is now the provision of the Freedom of Information Act which makes access to official records possible with exceptions under certain conditions and in specific areas.

The media do not only exist to inform, educate and entertain, they are also required to be responsible to society by keeping an eye on the goings on in government cycles and in private organisations as well to ensure service to the public. There is a sense in which this provision will help to uphold the public interest. Government officials and private ones too know that the media can inquire into their activities and disseminate their findings as news or commentary to the public. The value of this provision is that it keeps public officers aware of the "prying eyes" of the media recognising that they need to sit up and do their work in the wider interest of the public. Knowing the pedigree of the Nigerian media, in particular the press, government officials are aware that journalists are on the lookout for news and information about the affairs that affect the public. But more importantly, the Constitution requires all organs of government to apply the provisions of the Constitution. Still in Chapter II, Section 13, it is provided that: 'Section 23: It shall be the duty and responsibility of all organs of government, and of all authorities and persons, exercising legislative, executive and judicial powers to conform to, observe and apply the provisions of this Chapter of this Constitution'<sup>36</sup> The media have the responsibility of beaming the searchlight on the organs of government to hold them responsible and accountable to the people.

## **7. Conclusion**

It is obvious that the right to expression and the freedom of the press are coterminous. The constitution has made elaborate provision for the right while clearly stating situations in which the right may be abridged. These circumstances are in the interest of the society. The demand of a democratic society lends itself to the need for a vibrant press to provide the society education on all happenings that affect the society. It is therefore of utmost importance that the exercise of the right is effected in such a way to further the objectives of the grant of the right rather than to be used as an instrument for the destruction of the society.

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<sup>35</sup> CFRN 1999(as amended)

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