



Information Access, Freedom of Expression, Censorship and Personal Privacy: The Nigerian Experience

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Abstract

Successful democratic societies are built around principles that engender and promote fundamental human rights like information access, freedom of expression and personal privacy without interferences from individuals or constituted authorities. Nigeria as a democratic society has laws that guarantee the principles of intellectual freedom and personal privacy, prominent among which is the Freedom of Information Act (FOIA). Adopting a conceptual framework, this paper examines the concepts of information access, freedom of expression, censorship and personal privacy from the perspective of the Nigerian experience. It was discovered that although, a plethora of both international and domestic laws that protect these rights exists, most Nigerian citizens are still plagued with deliberate suppression and intimidation from government agencies, which is attributable to high rate of illiteracy, ignorance, poverty and poor or total lack of ICT skills. It was therefore recommended among others that; the Human Rights Groups and Civil Society Organizations should to continue to pressure governments at all levels into complying with the legislations on information access, freedom of expression and personal privacy; libraries and librarians must continue to promote the acceptance and realization of the principles of information access and freedom of speech by refusing to be used as instruments of negative censorship.

Keywords Information access, freedom of expression, censorship and personal privacy, Nigeria

1. Introduction

Democratic societies all over the world strive to entrench the principles that promote the culture of accountability, good governance and active citizens' involvement. Participatory democracy requires that citizens enjoy basic rights that enable them to access information, acquire knowledge, freely express themselves on societal issues, and enjoy personal privacy without fear of any form of intimidation. It is a popular saying that, 'information is power', therefore, access to information and intellectual freedom are the bedrocks of all other forms of freedom, especially the freedom of expression because as observed by Sule (2013) without free speech, there is no freedom and where there is no freedom there is no life. This perhaps explains why tyrannical, dictatorial and authoritarian leaders breach access to information, freedom of expression and impose all manner of censorships on information that is meant for public consumption. It is also for this reason that, nations of the world upholding the tenets of intellectual freedom have continued to deepen their democracies by strengthening their institutions through enacting and implementing laws that empower the citizens to hold their leaders accountable at all times.

Considering the importance of citizens' access to information and freedom of expression, there are plethora of local and international laws that seek to emphasize the rights of humans to have access to information, freedom of speech and personal privacy. Among them include: European Convention on Human Rights (ECHR); American Convention on Human Rights (ACHR); African Charter of Human and Peoples' Right (ACHPR); Universal Declaration of Human Rights, (UDHR); the International Covenant on Civil and Political Rights (ICCPR); Press Registration Act, 1933; Children and Young Persons (Harmful Publications) Act, 1961; Defamation Act, 1961; Emergency Powers Act, 1961; Seditious Meeting Act, 1961; Official Secrets Act, 1962; Newspaper Amendments Act, 1964; National Film and Video Censor Board Act, 1993; National Film and Video Censors Board Regulations,

2008; the Criminal Code on Obscene Publications; and most importantly the Freedom of Information Act, 2011, to mention just a few.

However, a detailed analysis of the provisions of some of the numerous laws which existed to regulate access to information prior to the enactment of the Freedom of Information Act indicates that, before now there was no all-encompassing law in place which aimed at ensuring the protection of the citizen's right to know. Rather there were several laws which either constrained or promoted the right of public access to information in varying degrees. Ajulo (2011), attributes this legislative constraint of the right of access to information to Nigeria's colonial heritage and long period of military rule, which entrenched a culture of secrecy in the conduct of government business, thus shielding the governments and their actions from public knowledge and scrutiny.

The constitutional provision that guarantees access to information is stated in Section 34 (1) of the Constitution of the Federal Republic of Nigeria 1999 which 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 Freedom of Information Act (2011) also establishes the right to access to information for the citizens and public because it provides the comprehensive framework through which information can be obtained. Notwithstanding the provisions and presence of all these laws, Nigerians as citizens of a democratic State cannot be said to have adequate access to information (without censorship); freedom of expression and personal privacy as a result of deliberate efforts of government to use the instrument of government to clamp down the press and intimidate critics of government policies.

Lending credence, the Nigerian Journalists Internet Rights Initiative observes that,

"in spite of the seeming added advantage of Freedom of Information Act the press, offline and online have not fared significantly better in spite of the nation's return to civil rule from military dictatorship since 1999. Journalists and bloggers are now routinely arrested and intimidated. This trend is even more prevalent at the state level, where opinions expressed on Facebook, which commands the largest followership among all social media, have led to the arrest and prosecution of many". (Nigerian Journalists Internet Rights Initiative, 2018).

For any society to be progressive, information access, freedom of expression and personal privacy ought to be guaranteed with little or no restrictions. This piece of work therefore seeks to critically examine the Nigerian experience viz-vis access to information freedom of expression, censorship and personal privacy.

2. Conceptual Overview

Information access is the ability for an individual to identify, seek, receive, use and impart information effectively through any convenient medium of communication. It entails individual's right to obtain collected or generated by others. According to Hiader, Mccloughlin and Scott (2011), access to information is critical for enabling citizens to exercise their voice, to effectively monitor and hold government to account, and to enter to informed dialogue about decisions which affects their lives. It is access to information that gives value to freedom of expression.

Freedom of expression is a principle that supports the liberty of an individual to articulate his thoughts, ideas and opinions and express same without any fear of restriction. It is a fundamental right to express one's opinions without censorship or any legal penalty. According to Sule (2013), freedom of expression is a notion that every person has a natural right to freely express himself through any media and frontier without outside interference, such as censorship, and without fear of reprisal, such as threats and persecutions. The right to freedom of expression constitutes the bedrock of functional democratic societies. Without freedom of expression, there is no freedom, and where there is no freedom, slavery reigns supreme. For citizens to enjoy freedom of expression, restrictive principles such as censorship must be downplayed.

The right to freedom of expression straddles numerous aspects of democratic society in a manner quite unlike other fundamental rights we enjoy. It encompasses the rights to freedom of speech, media, academic inquiry and artistic endeavour. It extends to and can conceivably be regarded as essential to other fundamental rights such as freedom of choice, religion, conscience, association, protest, and political freedom. It includes the right of access to information and the right to receive and impart information. Both the right of access to information and freedom of expression forms the backbone of many vital institutions and activities of civil society (Kekana, 1999).

Censorship is the act or practice of suppressing speech and public communication which is considered objectionable, harmful and sensitive by government, media outlet or other controlling bodies. Citing (Reichman, 1988), Anyaegbu and Obiamaka (2016), explain the concept of censorship as the removal, suppression, or restricted circulation of literary, artistic or educational materials on the grounds that they are morally or otherwise

objectionable in the light of the standards applied by the censor. Virtually any decision made by school board members on what should be taught, used and learned in school can be viewed as censorship. The proponents of censorship like Dafiaghor (2011) believes that, the practice is based on the fact that every society has customs, taboos and laws by which speech, dress, religious observance and sexual expressions are regulated in order to protect the family, the church and the state. They believe that, censorship exist to protect the individuals, especially young people from damaging contents in public media; helps to control obscenities; averts religious, political and ethnic intolerance as well as promotes national development. Different types of censorship exists in Nigeria such as political censorship; moral censorship; military censorship; corporate censorship, religious censorship, corporate censorship, ethnic censorship among others.

Although legal instruments abound that guarantee information access and freedom of expression as fundamental human rights, it should however be stated that there is no right without limits. When a right begins to infringe upon the interests of another person or group of people, then such rights should be checked. Across the countries of the world, governments impose certain censorship laws because they believe it is in the public interest to protect the citizens from inappropriate and offensive materials. In Nigeria, certain legislations provide for the establishment of certain regulatory agencies like the National Broadcasting Commission (NBC) empowered to regulate the media; the National Film Video and Censor Board (NFVCB) empowered to regulate the censorship and public exhibition of films and video works. Censorship restrictions if objectively used are meant to protect the rights of others.

Personal privacy is the last concept to be explained. It is a fundamental right essential to autonomy and protection of human dignity which enables individuals to create barriers and manage boundaries to protect themselves from unwarranted interferences. Scheinin (2009) opines that, the right to personal privacy embodies the presumption that individuals should have an area of autonomous development; interaction and liberty, a “private sphere” with or without interaction by other uninvited individuals. Personal privacy is central to the protection of human dignity and forms the bases of any democratic society. It also supports and reinforces other rights such as freedom of expression and association.

Banisar (2010), identifies four types of personal privacy. The first is information privacy, which encompasses the right of individuals to control personal information such as financial and medical information held by other parties and the creation of rules governing the collection and handling of this information. The second is bodily privacy, which involves the protection of people’s physical selves against invasive procedures such as genetic tests, drug testing and cavity searches. Next to bodily privacy is communication privacy which is concerned with the privacy of communications made by using postal mail, telephones, e-mails and other technologies. The last been territorial privacy which entails the setting of limits on intrusion into the domestic and other environments such as the workplace or public space. This include searches, video surveillance and identity checks.

3. Information Access, Freedom of Expression, Censorship and Personal Privacy: X-raying the Nigerian Experience

It has been established that there are sufficient international and domestic laws and regulations that guarantee and protect access to information, freedom of expression and personal privacy. Individually and together, they help to ensure that government are accountable, reduce corruption and promote development through improved governance and public participation. Effort has been made in the preceding section to highlight some of the relevant portions of the legal instruments. Nigeria, in 1999 returned to democratic system of government after a protracted military incursion. Ever since then, different administrations have been making efforts to enact and execute laws that promote the values and ideals of a democratic societies. There has been the 1999 Constitution and its amended version of 2010; the Freedom of Information Act (FOIA) of 2011; the Nigerian Data Protection Regulation (NDPR) of 2019, among many others, all geared towards ensuring that citizens have access to information, express themselves freely with little or no restrictions and enjoy personal privacy. However, the problem with the Nigerian society has very little to do with enactment of laws but everything to do with enforcement of laws. It is one thing to make laws and another thing to implement them.

By the provision of the Section 39 (1) of Constitution of the Federal Republic of Nigeria (1999 as amended), governments of all levels and their agencies cannot assume the guardianship of public mind and opinion (Sule, 2013). The basic essence of legally guaranteeing information access and freedom of expression is to protect all persons not withstanding their status, tribe, political or religious affiliation is to seek and obtain information and air their view on divergent issues for or against any government policy or individual interest without the fear of intimidation or interference from anybody or agency, so far as the thoughts are expressed within the compass of

the law. This cannot be said to have been the experience of Nigerians because of deliberate efforts by governments and their agencies to clampdown opposing voices.

Although Nigeria has passed the Freedom of Information Act, there is still in existence some national legislations and policies which are ambiguous particularly in relation to national security issues. This would make the implementation of access to information a bit challenging in this area (Okenyodo, n.d). It should be noted that in an increasingly conflictual Nigerian society where the security agencies have for some time been fighting insurgencies by extremist groups, the right to freedom of expression has often been breached under the guise of safeguarding national security or protection of information that could compromise intelligence gathering in the course of fighting terrorist groups (Nigerian Journalists Internet Rights Initiative, 2018).

In spite of the widely acknowledged efforts of the press in the nation's political maturation process, the Nigerian bureaucracy and government do not believe that they owe the press or public any explanation for anything done or not done (Ekpū, 2000), thereby deliberately denying the citizenry access to basic information with which to hold them accountable.

In fact, the status quo of information sacredness which existed before the FOIA still persists. The Nigerian Journalists Internet Rights Initiative (2018), believes that, there is an ingrained culture of secrecy in the public service, which appears to have been derived from automatic rule of sacredness of office information bestowed on civil servants on assumption of office. Thus the average public servant cringes at a request for information from members of the public, yielding to such request might under the previous legal regime cost him his job, or at least result in a reprimand or even result in his being imprisoned based on the provisions of the Official Secrets Act, the Criminal Code, the Statistics Act and similar provisions in other laws that were applicable hitherto. It is therefore quite unrealistic to expect the same public servant to automatically switch over to one who is open to the release of information which he/she was hitherto oath bound to keep shaded from public scrutiny. In order to achieve a transition from the era of information sacredness and oaths of secrecy, there is an apparent need for a reorientation of public officers. In the absence of this, public officers will remain suspicious of demands for information, and on impulse decline such request or attempt to pass on the burden of responding to the request over to a superior officer. This will in turn engender delays in response to requests and thus impede successful implementation of the Act. This is also the reason why Section 13 of the FOIA was specifically included in the law (Nigerian Journalists Internet Rights Initiative, 2018). The idea is to use it to gradually wean public officials away from a default position of secrecy to one that embraces and encourages openness.

Some of the restrictions in the legal instruments are manipulated into sedition laws, national security laws, public order laws, official secret acts among others with overly broad extent that any objective criticism of government can be regarded as punishable offence. This attitude breeds secrecy, corruption, abuse of power and office in Nigeria because these unnecessary laws prevent the public from scrutinizing the government (Sule, 2013). Just last year, a bill captioned "Protection from Internet Falsehood and Manipulation Bill 2019" was proposed in the Senate by Senator Muhammadu Sani Musa who claimed that the measure was necessary to prevent the spread of "hate speech" and extremist ideologies through online channels. The bill which if passed in to law could limit democratic expressions among social media users in Nigeria proposes a fine of up to N300,000 or three years imprisonment for offenders. Despite the claims of politicians that the bill will be an instrument for curtailing "hate speech" and fake news, the bill is being seen as a hindrance to free speech and a move in line with that of an autocratic government, as it would give the government free will to block access to sites used in expressing opinions considered opposing to what the government deems appropriate. In 2015, a similar bill was proposed, it received widespread condemnation from the citizens and was never passed.

In Nigeria, there a form or method of censorship that is not so obtrusive. This is referred to censorship through intimidation. It can be anything from threats against individuals to a government proposing to monitor all activities online. If citizens feel their activities will be screened by governmental agencies in Nigeria, their inclination to engage in expression will be much less than if their governments stay away (Daifaghor, 2011). In 2017, Mr. Charles Otu, the Ebonyi State Correspondent of The Guardian newspaper was abducted from his office in Abakaliki by thugs suspected to have been sent by the State Governor. His only offence been to have called on the State Governor, David Nweze Umahi, to honour his campaign promises by providing social amenities and meaningful infrastructures instead of spending the state money on things that have no direct benefits to the people of the State, a statement he posted on his Facebook platform. In 2019, a popular programme of the African Independent Television (AIT) called "Kakaki Social" which highlighted trending issues that shaped conversation on social media was banned by Nigerian Broadcasting Commission (NBC) for allegedly breaching the prevailing national broadcasting code. Whatever be the allegation, the ban of the programme was widely bemoaned because it provided the masses a platform to scrutinize and criticize the policies of government, which many believed was the reason it was banned.

There is an ongoing campaign against hate speech and fake news by the federal Government of Nigeria championed by the Ministry of Information under the leadership of Alhaji Lai Mohammed. Instead of sheaving the critical voices of many Nigerians especially members of the opposition parties, what the current administrating is doing is to simply dismiss them as mere fake news or “hate speech”.

Way back in 2014, the government of President Goodluck Jonathan allegedly awarded a USD 40 million ‘internet spy’ contract to Elbit Systems, an information and communication technology intelligence firm from Israel. The company was commissioned to spy on citizens’ computers and internet communications under the guise of intelligence gathering and national security. Earlier, researchers at Munk School for Global Affairs had hinted that Nigeria, Kenya and Egypt were deploying surveillance and censorship technology developed by an American company, Blue Coat, which specialises in online security. The company was to enable the government to invade the privacy of journalists, citizens and their sources. Its censorship devices used Deep Packet Inspection, DPI, used by many western Internet Service Providers, to manage network traffic and suppress strange connections (Nigerian Journalists Internet Rights Initiative, 2018).

Many governments are also pursuing technical measures to limit access to materials they deem unacceptable. This is especially common with sites or content that is outside the country’s legal controls. This is known as filtering or blocking. It is typically done by using software or hardware technologies to prevent access to sites that are deemed objectionable. Depending on the size and use of the network, the controls can be installed at central access points or gateways to the country in small countries which are often operated by the state telecommunications provider. In larger networks, they can be placed at the ISP or provider level. Sometimes, the systems block entire the web domains such as YouTube. In other systems, it can be based on specific pages or even keywords. Search engine results can be filtered. The reasons for blocking are varied. The commonest reason cited in most countries for blocking internet sites is that of publishing material deemed to be of an improper sexual nature. This can include non-obscene materials relating to homosexuality or family planning. Equally common in less democratic states is that of publishing materials that criticize the government (Banisar, 2010).

At the moment, there are two pieces of legislations authorizing communications surveillance in Nigeria: the Terrorism (Prevention) Act 2011 and the Cybercrimes (Prohibition, Prevention, Etc) Act 2015. Despite incorporating some safeguards, both Acts contain insufficient protection for the right to privacy, as they do not comply with internationally recognized principles like legality, necessity, proportionality, judicial authorization, effective independent oversight, transparency, user notification, among others that surveillance policies and practices must observe. Furthermore, does not have an all-encompassing data protection legislation; nor has any agency charged with administering the country’s overall data protection regime. Best practices suggest that an effective data protection regime depends on comprehensive data protection legislation and the existence of a well-resourced and independent authority to ensure consistent application of rules and maintain the accountability of organizations that engage in the processing of personal data. (Initiative and Privacy International, 2018).

In Nigeria, there are surplus instances where the men of security agencies invade people’s home uninformed and even without warrants. There are reports of unlawful arrests, forced access to people’s mobile devices, torture and even murder of citizens by men of the defunct Special Anti-Robbery Squad (SARS). Indeed, the ungodly activities of the SARS officers prompted the Amnesty International to accuse them of regularly detaining young adults unlawfully and extorting money from their families. The uncivilized activities of SARS subsequently let to the EndSARs protest that Nigeria in October, 2020 that resulted to the ban of the Squad. When people are unlawfully detained, their right to personal privacy has been abused. Most worrisome is the fact that the vast majority of Nigerians appear not to bother about their freedom of expression or right to access to information and personal privacy as a result of high level of illiteracy, ignorance, poverty, fear of intimidation, poor or total lack of ICT skills among others.

4. Conclusion

What is obvious is that information access, freedom of expression, censorship and personal privacy are mutually interdependent. The right to know and freedom of expression are two aspects of the same principles. The right to know is a requirement for freedom of thought and conscience; freedom of thought and freedom of expression are necessary conditions for access to information”. In this piece, efforts have been made to explain the concepts of information access, freedom of expression, censorship and personal privacy with the corresponding protective legislations from international and domestic perspectives. The Nigerian experience in relation to the concepts was equally x-rayed. There are laws that guarantee the rights, but their implementation still leaves much to be desired. While the government and its agencies battle with the implementation of relevant laws, Librarians as information providers must to continue to show commitment to intellectual freedom as a core responsibility. They

must adhere to the principles of unhindered and open access to information and freedom of expression while recognizing the privacy of their clients.

5. Recommendations

Based on the discussions so far and in order to promote the principles of intellectual freedom and personal privacy, the following recommendations are made:

1. Libraries and Librarians must continue to promote the acceptance and realization of the principles of information access and freedom of speech by refusing to be used as instruments of negative censorship.
2. The Human Rights Groups and Civil Society Organizations should to continue to pressure governments at all levels into complying with the legislations on information access, freedom of expression and personal privacy.
3. The media, the academia, and other relevant stakeholders in mass education like the National Orientation Agency (NOA) and the ministries of information should consistently and aggressively engage in the enlightenment of the general public on the provision of the FOIA and other related legal documents that guarantee their fundamental rights.
4. The judiciary should endeavour to swiftly adjudicate on cases brought before it that emanated from breaches of the provision of the law regarding information access, freedom of expression and personal privacy.
5. The citizenry should raise up to hold their governments accountable by exploring of the law.
6. Governments at all levels and their agencies should as a matter of basic obligation to the people, comply and promote the compliance with all laws especially those that promote intellectual freedom and personal privacy.

Declarations

Data availability Data will be made available upon reasonable request.

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