

## **TOWARDS A GLOBAL DEMOCRATIZATION OF FREE SPEECH: A CRITICAL APPRAISAL OF CONSTITUTIONAL LANDMINES ON THE TRAJECTORY OF PRESS FREEDOM IN NIGERIA**

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**ABSTRACT:** *This paper offers a critical evaluation of constitutional traps along the path of press freedom in Nigeria within the framework of the global efforts aimed at the democratization of free speech. These assertions are etched in international and domestic instruments like the United Nations Declaration on Human and Peoples Rights, International Covenant on Civil and Political Rights, the Constitution of several countries, etc. The investigation climaxes on the altar of the Constitution because it is the fundamental and organic law of the country from which all other laws derive their validity. The subject matter is analysed and discussed with the utilization of both formal and material sources of law and other literature survey. It concludes by underscoring the cold reality that the press are 'free' but bound in chains from a critical vista with derogable and clawback measures in the constitution strewn on the trajectory of press freedom in the country.*

**KEYWORDS:** derogable measures, clawback measures, press freedom, constitution, liberty of expression.

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### **Introduction**

The *Awake!* magazine of July 22, 1996 states that 'throughout history men have fought for freedom of speech. Laws have been passed, wars have been fought, and lives have been lost over the right to express an idea publicly (P.3). It queried: 'Why should such a seemingly natural right have formented controversy, even to the point of bloodshed? Why have societies, both past and present, found it necessary to restrict or even prohibit the exercise of this right?' (p.3). Amadi (2014) navigates and provides a gander on the possible reason(s). According to him, 'irrespective of time and space, one suspicion has continued to unsettle the ruling class. The belief that anarchy will reign where freedom of expression is not restrained has always alarmed the hegemonic class' (p.10). Granting an historical and instructive account of this mistrust, he continued as follows:

The fear of freedom of expression started when Emperors began contaminating Christianity, despite Bible's disapproval (John 15:19; John 14: 30; 1<sup>st</sup> John 5:19; John 6: 14-15) with temporal powers (Cairns, 1981). For instance, Thomas Hobbes 'The Leviathan' – that infamous but seminar tirade against freedom of speech – was inspired after the feudal lords of modern day Germany - 'The 'Reichstag' – were cajoled by the Roman Catholic Church to rise against a social system where freedom of expression reigned (Kunczik, 1995, P.16). The censorship edict issued by the catholic church in 1482 triggered the global wave of mistrust that characterized the relationship between world rulers and the media. By 1847, the Pope had decreed that no one would be allowed to publish anything without prior scrutiny by the 'Roman

Curia (the papal court) or its representatives' (Kunczik, 1995, p.16) ... But because of catholicism's overwhelming influence on feudal Europe and because also of the omnipotent influence that feudal Europe wielded on the rest of humanity, the move to constrain freedom of expression eventually gained resilient roots all over the world. The root against freedom of speech drew nutrient from human beings' predilection towards misfeasance (Marx Weber as cited in Pember, 2001) P. 10.

On the other hand, as noted by *Awake!* magazine earlier cited, attitudes towards freedom of speech for the people have swung like a huge pendulum in the clock of time. Sometimes freedom of speech has been viewed as a privilege to be enjoyed. At other times, it has been considered as a problem to be dealt with by governments or religions (P.4). By the 17<sup>th</sup>, 18<sup>th</sup> and 19<sup>th</sup> centuries, notable persons came forward to lend their voice on the need for free speech. Among them was John Milton, cerebral freedom of speech and of expression advocate who in *Areopagitica* regaled those who cared with riveting treatise on why freedom of expression must be nurtured by all (Amadi, 2015 citing Kunczik, 1995, p.17). Wikipedia affirms this position by stating that '*Areopagitica* is among history's most influential and impassioned philosophical defences of the principle of a right to freedom of speech and expression. It is regarded as one of the most eloquent defences of press freedom ever written because many of its expressed principles form the basis for modern justifications of that right'. The others include British philosopher and political economist, John Stuart Mill who in his *On liberty* defended free speech. He argued that 'free discourse is a necessary condition for intellectual and social progress' (Wikipedia); Thomas Jefferson, who theorized that any government which could not stand up against criticisms of the press is bound to fail. According to him, 'The basis of our government being the opinion of the people, the very first object should be to keep that right and that were it left for me to decide whether we should have government without newspapers or newspapers without government, I should not hesitate a moment to prefer the later'.

To paraphrase the positions held by the libertarian philosophers, it could be mentioned with lesser effort that 'communication is best and most beneficial to man and man's ultimate collective survival when freely expressed and received' (The crisis of press freedom in Nigeria, p.1). This translates into the apt expression by Austrian-American philosopher and family therapist, Paul Watzlawick that 'man cannot not communicate'. Wilson (1997) concurs that 'communication is like a kind of life giving elixir ... a basic human survival tool' (p.ix). Probably, it was in an effort to preserve this inalienable and cherished natural right of man that the framers of the **Universal Declaration of Human Rights** of December 10 1948 at Article 19 stated:

Everyone has the right to freedom of opinion and expression. This right includes freedom to hold opinion without interference and to seek, to receive and impart information and ideas through any media and regardless of frontiers.

The main gist of the above provision is replicated in Article 9 of the **African Charter on Human and Peoples Rights** which states that 'Every individual shall have the right to receive information. Every individual shall have the right to express and disseminate opinions within the law'. Freedom of expression and of speech is today recognized in international human rights law. The right is further defined in Article 19 of the **International Covenant on Civil and Political Rights** and Article 13 of the **American Convention of Human Rights**. The concept can also be found in early human rights documents like

**England's Bill of Rights** (1689) which granted freedom of speech in parliaments and is still in effect; the **Declaration of the Rights of Man and of the Citizen** adopted during the French Revolution in 1789, specially affirmed freedom of speech as an inalienable right (Diamond, 2008).

The umbilical cord of the above cited provisions and specifically the **African Charter on Human and Peoples Rights** and the **United Nations Declaration of Human and Peoples Rights** was therefore tied to Nigeria (and some African countries) having ratified both documents as members of the United Nations and the African Union. Nevertheless, as stated in a study by the Constitutional Rights Project, 'Nigeria has its own peculiar history impinging on the realization of a noble universal goal' (The crisis of press freedom in Nigeria, p.1). There appears to be a fixation on the Constitution within a maze of other laws in respect of the subject matter because the Constitution is the grundnorm; the most fundamental of all legal instruments of a political society. As Adolphus Karibi Whyte JSC (as he then was) puts it in **Miscellaneous Offences Tribunal v Okoroafor (2001) 8 NWLR (P.745) 295 at 350:**

The Constitution of the country is its fundamental law, the fons et origo, of all laws, the exercise of all powers and the source from which all laws, institutions and persons derive their power.

Also, section 1 (3) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) clearly shows the supremacy of the Constitution over all other laws in the country. It states:

If any other law is inconsistent with the provision of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void.

It is within the above stated commentaries that this paper intends to revisit, x-ray and navigate the constitutional road blocks on the path of freedom of the press in Nigeria against the backdrop of the global efforts aimed at democratizing free speech.

### **Literature/Theoretical underpinning**

Yalaju (2001) states that the history of freedom of speech and the press, as a fact must be traced to the emergence of democracy in 15<sup>th</sup> century, BC, in the Greek City State of Athens. Though the democratic experiment was short lived, it espoused the idea of self government. Through the dialectic process, Plato opined that rigorous discussion from which no facts or argument are withheld, if the citizens are to be served well by their government, such opportunities must be endemic as a consequence of governance. And according to Plato, governments are unhelpful and unwilling to submit their policies to public scrutiny. The consequence for criticizing government is it marks you out as an enemy of the rulers. Socrates was such a victim. He was accused of 'corrupting the youth and believing in gods which the State does not recognize' (Adams, 2010, p.1). He was sentenced to death by drinking Hemlock which produces a slow death by its grievous action of attacking the Central Nervous System. His plea before the jury that sentenced him to death was one of the poignant speeches in defence of free speech. Hear him:

If you offered to let me off this time on condition that I am not any longer to speak my mind in this search for wisdom, and if I am caught doing this again I shall die, I

should say to you, 'Men of Athens, I shall obey the God rather than you'. While I have life and strength I shall never cease to follow philosophy and to exhort and persuade, many one of you whom I happen to meet. For this, be assured the God commands ...' And, Athenians, I should go on to say, 'Either acquit me or not; but understand that I shall never act differently, even if I have to die for it many times (*Awake!* July 22 1996, p.3).

The Press Freedom Barometer Report for 2015 released by Reporters Without Borders (a non-profit organization which defends the freedom to be informed and inform others) indicates that in the year under review, 24 journalists were killed worldwide, 158 were imprisoned and 176 Netizens were also imprisoned. Its 2014 report shows that 69 journalists were killed, 11 media assistants and 19 Netizens/citizens journalists were also killed. Notice should be made of the fact that journalists killed according to the reports are those killed because of their work or activities as journalists. In Africa, there are ample examples of infringements of press freedom. For example, the Ethiopian Constitution guarantees the right to information (RTI) in the public interest at Article 29 and a Freedom of the Mass Media and Access to Information Proclamation 2012 (Jalipa, 2014). As Jalipa further puts it, 'The reality of RTI however is a different story. Ministerial guidelines to actualize the Access to Information Law are yet to be published and the enforcement of national laws that contradict this provision claw back on this guarantee' (p.1).

Nyamnjoh (2010) observes that 'In francophone Africa, the tendency is for new laws to grant freedom in principle while providing often by administrative nexus, the curtailment of press freedom in practice' (p.70). He cited the Burundian example in which the 1992 press law granted journalists a right to protect their sources, yet has a proviso that such a right could be shelved by an order of a judge. This is in addition to the fact that by the provisions of the law, government was empowered to set up a National Communication Council but through the back door it was also given the powers to appoint its members. Coming closer home to Nigeria, the literature is awash with so many instances of trampling on the freedom of the press including killing of journalists, beating of journalists, seizing of working equipment, razing/demolition of media houses, confiscation of copies /sealing of media houses and publishing fake editions of papers (Ogbondah, 2003; Udeze, 2012). In fact, killing of journalists still occur after the death of Dele Giwa, Editor-in-Chief of *Newswatch* magazine on 19<sup>th</sup> October, 1986 via a parcel bomb. Examples of such deaths over the years include Godwin Agbroko, *This Day* (December 22, 2006); Paul Abayomi Ogundeji, *This Day* (August 16, 2008); Bayo Olu, *The Guardian* (September 20, 2009); Edo Sule Ugbagwu, *The Nation* (April 14, 2010); Zakariya Isa of the Nigerian Television Authority (NTA) 2011; Eneche Akogwu, Channels TV, (January 20, 2012), etc. (This Day Live, 22 July, 2014). A report released by the Committee to Protect Journalists (CPJ) has shown that Nigeria has joined the list of prominent countries in the world where journalists are murdered regularly and their killers go free.

As noted by Ehimare (2004) in Ojo (2008), infractions on freedom of the press in the military era in Nigeria included the promulgation of Decree No. 4 of 1984 under the General Mohammadu Buhari administration entitled 'Protection Against False Accusation' under which Tunde Thompson and Nduka Irabor of *The Guardian* newspapers were each jailed for one year and the newspaper fined thirty thousand naira (N30,000). Their offence? The two journalists were accused of using the instrumentality of *The Guardian* newspaper which they

work for to publish a story about ambassadorial postings which the military government interpreted to be an embarrassment and affront to it.

### **Liberty of the press: A conceptual and practical exegesis.**

Malemi (2009) opines that freedom of expression and the press means the liberty to say what one wish to say subject to consequences under the law as the case may be; which laws must be fair, and reasonably justifiable in a constitutional democracy. There should be no prior censure of publication. Every person has the right to lay what sentiments, facts, information or publication he has before the public. To forbid this right is to destroy freedom of expression. On the other hand, freedom of the press also involves liability for publication.

Flowing from the above is the fact that freedom of the press in some jurisdictions like the United States of America, is the 'Right guaranteed by the first Amendment of the US constitution. This right has also been referred to as the 'first freedom' (Pember, 2004: p.39; Yalaju, 2001:p.79). Such rights include freedom from prior restriction of the publication. The First Amendment to the United States Constitution expressly stated 'Congress shall make no law... abridging freedom of speech, or of the press'. As a result, government regulation of the media must be not only unobtrusive, 'but also sufficiently justified to meet the limits of the first Amendment' (Baran, 2010; p. 394). Citing the case of **Gitlow v New York**, Baran (2010) further commentates that 'Congress shall make no law should be interpreted as government agencies shall make no law. Today, 'no law' includes statute laws, administrative regulations, executive and court orders and ordinances from government, regardless of locale' (p. 395). Hear Lord Mansfield in the very old case of **The King v Shipley: Dean of St. Asaph's case** in respect of a definition of liberty of the press:

To be free is to live under a government by law. The liberty of the press consists in printing without any previous license, subject to the consequence of the law.

However, in **Near V Minnesota** (1931) 238 US 676 in which the defendant was sued for publishing 'scandalous and defamatory materials', the U.S supreme court held that press freedom is, principally, but not exclusive immunity from prior restraint or censorship. A Royal Commission Report (1977) defined press freedom as:

We define freedom of the press as that degree of freedom from restraint which is essential to enable proprietors, editors and journalists to advance the public interest by publishing facts and opinions without which a democratic electorate cannot make a responsible judgement.

The above commentaries point to one fact: a free press is a bastion of democracy. Lloyd (1991) concurs. According to him, 'In any community where democratic and egalitarian values prevail, it is obvious that the right to free speech and the right to freedom of the press must be ranked as fundamental values' (p.151). Continuing, he noted that such freedoms are quintessential for the overriding reason that they help in crystallizing public opinion thus becoming a conveyor belt for such opinions to be acted upon by the government. However, the liberty of the press must be associated with corresponding responsibilities (Hayer, 1982).

The exposition so far made have something in common: they dwell within the precincts of libertarianism. Here the input of Siebert et al (1956) who advanced four theories that prehend the essence of press freedom and thus put forward a much more fluid theoretical and practical



perspective come to the fore. According to the authors, the press in relation to their freedom and liberty are greatly impacted upon by the prevailing socio-economic and mainly political milieu they operate in. The first theory so delineated was the authoritarian theory. Here 'truth was conceived to be not the product of the great mass of people, but of a few wise men that were in a position to guide and direct their fellows' (P.42). Therefore, the role so ascribed to the press was to merely inform the people of what the rulers 'thought they should know and the policies the rulers thought they should support. With this theory, the government of the monarch was vested with the power to control the ownership and manipulate the content and use of the media for mass communication. Besides, no press dared criticize the monarch, government officials or the political machinery, as they existed principally to support and advance the policies of the monarch and by extension, the government (Ojo, 2005: p. 78). Ojo further writes:

It is this perception of press freedom that greatly influenced military government in Nigeria. The 1688 overthrow of the monarch in Britain, however, put paid to the monarchical authoritarianism, thus giving way to the second theory that explains press freedom is the libertarian theory. The argument of its proponents is that man is a thinking, independent and rational animal that is capable of making a choice between what is good and that which is bad ... Truth is no longer conceived of as the property of power. Rather, the right to search for truth is one of the inalienable natural rights of man ... **The press is conceived as a partner in the search for truth.** (Stress mine, P. 79).

The soviet-communist theory of the press is the third limb of the four theories outlined and intellectually stimulated by Siebert and his colleagues. As the name suggests, it is 'branded in Marxist determinism and in the harsh political necessity of maintaining the ascendancy of a party, which represents less than ten percent of the people of the country. The Soviet press operated as a tool of the ruling party just as the old authoritarian theory' (pp. 78-79). Now, several issues flow from these assertions. How? The Soviet press which to an average observer may seem to be clothed in 'authoritarianism', is with lesser effort assumed to be 'democratic' when viewed from the prism of the communist system and all those who are persuaded by its teachings and philosophies. This is because the press in this system serve as the megaphone of the ruling party and are considered to say 'the truth'. In such considerations therefore, the Anglo-American press is not 'free' in the true sense from the Soviet vista for the basal reason as they put it that 'the American press is not truly free because they are business-controlled and therefore not free to speak the Marxist truth. Putting his imprimatur on this line of thought, Karl Marx stated that 'the first freedom of the press consists of its not being a commercial pursuit'.

The reverse side of the argument from the other side of the divide in a nutshell is that the Soviet press is used as an instrument of propaganda and agitation including suppression of the larger majority of the people. These accusations and counter accusations has led Amakiri (2011) to liken the claims of both parties to the right of way of freedom of speech and the press (depending on the ideological bent of the messenger) to the concept of democracy. He observes:

Contemporary politics both at the domestic and international levels is driven by one word – democracy. So enticing and powerful is this word that men are willing to die for it. Nation-states are known to wage wars to 'defend' it against its enemies given

as communism, fascism, totalitarianism, and dictatorship. The allurements the word has for society is evident in its appropriation by all types of governmental systems usually for image laundering. In the recent past, both capitalism and communism had claim to it in their ideological competition; the former describing its own version of it as 'liberal democracy', while the latter called its brand 'people's democracy', thus creating the impression that we can disaggregate its essential elements to give it more than one meaning. Such ideologically biased treatment of democracy has introduced a conceptual confusion into the true meaning of the word, following which G.C. Field (1965:85) has observed that some people in despair have felt inclined to declare that the word is rapidly ceasing to have any precise meaning, and it has been suggested that its use be better abandoned altogether'. To avoid being entangled in the confusion, Field has advised against 'committing ourselves' to any dogmatic assertions about the 'right use' or 'real meaning' of the term. Surely, there is every wisdom in Field's advice to guide the inquirer in attempting a semiotic, etymological meaning of the word (P.1).

Nevertheless, it is quite instructive to note that Field's commentary included as narrated by Amakiri (2011) the fact that 'democracy' has demonstrated 'a continuous development, always retaining a recognizable core of identity ... primarily the freedom of expression and the right to choose one's rulers' (P.3).

The fourth lap of the theories canvassed by Siebert and his associates is the social responsibility theory. McQuail (2005) citing Hutchins (1947) and Blanchard (1977) reported that the concept of social responsibility of the press came up in response to the widespread criticism of the American newspaper press, especially because of its sensationalism and commercialism, but also its political imbalance and monopoly tendencies, a private commission of inquiry was set up in 1942 and reported in 1947. The founder was the publisher Henry Luce and it was conducted under the high-minded chairmanship of Robert Hutchins, Chancellor of Chicago University. Its aim was 'to examine areas and circumstances under which the press of the United States is succeeding or failing; to discover where free expression is or is not limited, whether by government censorship, pressure from readers or advertisers or the unwisdom of its proprietors or the timidity of its management' (p.170). Therefore, the theory 'is of the belief that freedom carries concomitant obligations and that the press, which enjoys a privileged position, is obliged to be responsible to the society in carrying out certain essential functions of mass communication' (Ojo, 2008: p.81). Ethical codes of conduct for journalists practically in all areas of the world it is strongly believed, is influenced by the dictates of social responsibility as a media philosophy.

On the other hand, Harry (2015) lends his voice to the fact that there are other theories which the Third World felt would be of practical relevance to their own level of development which was not captured by the 'four theories' as discussed by Siebert et al (1956). Of particular interest here is the development communication theory (its sub sets are development theory and development journalism). According to the initial proponent of the theory, Professor Nora Quebral of the Philippines, it can be defined as 'the art and science of human communication applied to the speedy transformation of a country and the mass of its people from poverty to a dynamic state of economic growth that makes possible greater social equality and the larger fulfillment of the human potential'. To summate, the development theory of the press states that the media are basically used to highlight efforts being made by

the communities in building health centres, federal roads, civic centres, etc. They are also used to showcase the efforts of government in the provision of basic social amenities.

## **METHODOLOGY**

This paper relies on literature survey and exploration of both primary and secondary sources of information or as Wigwe (2011) puts it, the formal and material sources of law. The formal sources are legal procedures and methods for the creation of rules that have general application and are legally binding on those subject to that system of law. Examples include statute/convention, legislation, subsidiary legislation and judicial precedents. Material sources are that which provide 'evidence of the existence of rules which when proved, have the status of legally binding rules of general application' (p 185). They include opinion of jurists, conventions, writings of publicists, etc.

## **Findings**

Findings from this work show that there are several constitutional landmines on the path of press freedom in Nigeria. These traps on the trajectory of the press come in the form of derogable and clawback measures in the constitution of Nigeria 1999 (as amended).

## **Discussion**

Momoh (1983) presents a picturesque explanation of the role of the press. He declares that the press is a:

Neighbour of the lonely, informer of the curious, entertainer of the bored, teacher of the willing victim of the unaccommodating, friend in times of bliss and enemy in times of adversity, champion of freedom and barometer of freedoms ups and downs, foot mat of the successful, bad boy of the thief and fraudulent, naked gun powder in the hands of the despots, encyclopaedia of joy and sorrow, success and failure, honesty and half-truths, banter and blackmail (pp. 41-42).

However, the Nigerian media are those agencies which it (the Constitution in section 22) says 'shall at all times be free to uphold the fundamental objectives contained in this chapter (Chapter 2) and uphold the responsibility and accountability of the government to the people'. This is the national brief for the mass media as expressly spelt out in the Constitution. These agencies of the mass media are identified as the 'press, radio, television and other agencies of the mass media' (Section 22). They are according to Momoh (2007) both print and electronic and they include news agencies and other information gathering outfits that 'are involved in the collection, collation and processing of information for use in the mass media. They do not therefore include information gathering for use of security agencies or by any other body for the purpose of prosecuting cases in court' (p.7). Sections 37, 38, 39, 40 and 41 of the constitution covers a nexus of provisions that dwell on fundamental human rights including the right to private and family life, right to freedom of thought, conscience and religion, right of freedom of expression and the press, right to peaceful assembly and association and right to freedom of movement.

The discussion so far under this sub-heading raises several issues in connection with the theme of this paper. In the first instance, Chapter 2 of the constitution is aptly tagged 'fundamental objectives and directive principles of state policy' and which all those who



exercise legislative, executive, and judicial powers must swear ‘to conform and observe and apply’ (Section 13). This runs from sections 13 to 24 and as indicated on the side notes, the areas discussed include the fundamental obligations of government, the political, economic, social, educational environmental, foreign policy objectives of the country, etc. Thus, the Nigerian mass media are majorly the institutional conduits through which these objectives are to be achieved with the multiplier effect of accomplishing societal development and nation building. However, the irony of it is that chapter 2 which ordinarily is supposed to be the spring board upon which the mass media is to launch their selves as the custodians of nation building is not justiciable. The implication is that the Nigerian mass media cannot deploy their constitutional/legal rights in their quest to defend their obligation as directly outlined in section 22 of the Constitution. Hence, the fundamental objectives and directive principles of state policy as contained in chapter 2 are merely ‘to guide the government in steering the ship of state’ (Yakubu, 1999: p.50). Wokocha (2008) agrees. According to him, ‘The directive principles are the ideals upon which the Nigerian nation is founded. The objectives and principles are like sign posts, which point to the government the direction it should follow’ (p.5). The non-justiciability of chapter 2 is also captured in section 6(6) of the Constitution. It provides that:

The judicial powers vested in the judiciary, shall not except as otherwise provided by this Constitution, extend to issue or question as to whether any act of 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.

This is the reason a school of thought has questioned the rationale for including these non-justiciable objectives and principles in the Constitution. According to this school of thought, a constitution is a sacred document that should have no room for empty declarations of objectives and sentiments. This school holds that ‘every provision of the Constitution should be enforceable as a mark of its seriousness. Yet, ‘another school believes that these provisions are very important because they play a very important role as guides of the national effort’ (Wokocha, 2008: p.8). Wokocha further citing the case of **Attorney General of Ondo State v Attorney General of the Federation (2002)9 NWLR (Pt 172) 222** noted that the supreme court has held that ‘while fundamental objectives and directive principles cannot be enforced by legal process, it would be seen as a failure of duty and responsibility of state organs if they acted in clear disregard of them’ (P.5).

On the other hand, S.39 (1) (2) is very unambiguous: there is no ‘special’ treatment of the mass media. It provides at sub-section 1 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’. At sub-section 2, the Constitution states:

Without prejudice to the generality of subsection (1), of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions: provided that no person, other than the Government of the Federation or of a State or any other person or body authorized 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 or whatsoever.

Hence, the freedom in the above sections within the vortex of this confabulation is for ‘every person’ not the press, although a school of thought has argued that as members of the society, the general laws of the land must guide the press in the performance of their duties. And wait! As if this is not enough, sub-section 3 of section 39 added more salt into injury: ‘Nothing in this section shall invalidate any law that is reasonably justifiable in a constitutional democratic society’. And the final kill: Section 45 with the import or assertion that in the interest of public safety, public morality, public order, public health and for the purpose of protecting the rights and freedom of other persons, the freedom of the press and of expression can be completely jettisoned. So who determines when such action(s) is/are reasonably justifiable? The government acting through the legislative arm. Hence, what was given to the press with one hand was ‘almost immediately’ retrieved by the second hand.

It is the opinion of this author that the country should borrow a leaf from the first amendment to the American Constitution and the press freedom document drafted by the Federal Diet of Germany wherein the rights to freedom of expression and the press were entrenched (Okoro and Okolie, 2004). This will enable the mass media to truly function as the ‘Forth Estate of the Realm’ and hold government accountable to the governed.

## CONCLUSION

The concept of freedom of the press no doubt, is one enmeshed in controversy in practical terms. However, there seem to be a global drive to democratize free speech including press freedom. These efforts could be found in several international and domestic documents like the Universal Declaration of Human and People’s Rights; International Covenant on Civil and Political Rights, African Charter on Human and People’s Rights, etc. On the other hand, in Africa and Nigeria in particular, extra legal measures are still applied to gag the press. More so in Nigeria, notice was made of the fact that the Constitution has inbuilt landmines along the trajectory of press freedom. These landmines planted along the right of way of press freedom come in the form of derogable and clawback measures. Thus, while in section 22 the mass media was given the ‘powers’ to hold government accountable to the governed, section 39 transferred such ‘powers’ to the general public.

Although the media is part of the public, they are not isolated for power the way they were isolated for functions. As Tony Iredia, veteran broadcaster puts it, ‘The only protection provided in section 39(2) of the Constitution of the Federal Republic of Nigeria (as amended) is for the owners of the media not for the practitioners. So, the Nigerian press is free but bounded in chains’

## FUTURE RESEARCH

This author recommends that future research on the subject matter should pan toward the constitution (the supreme law) of other countries especially in Africa within the context of the global task aimed at democratizing free speech and press freedom.

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