

**SOCIAL MEDIA AND THE RIGHTS OF THE INDIVIDUAL: THE  
NIGERIAN PERSPECTIVE\***

**Abstract**

The main focus of this paper is to examine to what extent the right to freedom of expression and opinion on the social media is protected in Nigeria. While applauding Nigeria's impressive record, the paper points out that the manifestation of hate speech cannot be ruled out in a climate of freedom. The solution is not in restraining the rights and freedoms of the citizenry but in safeguarding and championing them. This will ultimately make for a better governed society.

**1. Introduction**

The advancement of communication technology in modern day society has turned the world into a global village. With the mobile phone in hand, an average internet savvy, human being is in a world of his own. And with a wide range of phones and mobile networks to choose from, the average internet savvy, human being is undoubtedly equipped with the requisite tools to navigate the internet as he desires. His access to the internet is incomplete without the social media platforms, such as Facebook, WhatsApp and so many others, which form his major media of communication. The functions of social media have and continue to transform into that which was never anticipated. Most founders of social networks are surprised with the diverse and astounding ways users are able to engage and utilize their platforms. That is the beauty of invention within social media- capacity and opportunities are infinite. In the developing world, the internet has led to solutions and services even more forward thinking than those in advanced nations, further highlighting the transformative nature of these networks and their

---

\*Dr. U. M. Ogisi, Lecturer at the Faculty of Law, Delta State University, Abraka

capacity to incite change to promote the kind of development countries like Nigeria need<sup>1</sup>. According to recent statistics, internet penetration in Nigeria currently stands at about 30% with over 50 million internet users in the country<sup>2</sup>.

In societies with large numbers of internet users, the use of social media usually has a far reaching effect on virtually every aspect of life. This is as a result of the atomization or individualization of media space through the instrumentality of social media. The social media thus democratizes access to the use of media space by the lay citizenry of the society. It affords the users a large ambit of options to choose from and empowers them to take decisions on bringing the political leaders to accountability.

## **2. Definition**

The term social media is a term of imprecise delimitations and continues to expand and change with new applications appearing every day. According to a commentator, its indefinable nature speaks to its ability to transform how we engage, sell, buy, create and live in the digital age<sup>3</sup>. It can be roughly divided into six categories namely; social news, book marking sites, social networks, media sharing, blogs and forums and micro blogging. Social Media can be defined as interactive, web based media that belong to the new genre of media that focus on social networking, allowing users to express themselves, interact with people, share personal information, as well as publish their own views on the internet<sup>4</sup>.

---

<sup>1</sup> The Social Media Landscape in Nigeria 2014: the who, the what and the know [www.africappractice.com](http://www.africappractice.com).

<sup>2</sup> See Research carried out by Business Day Research and Intelligence Unit (BRIU) and Terragon Insights' 2013 Report on the State of Digital Media in Nigeria, 2013

<sup>3</sup> See The Social Media Landscape in Nigeria 2014 p.1

<sup>4</sup> Adibe, K. Social Media, Electioneering and Sustenance of Democracy in Africa: A "Swot" Analysis. (2012) Africa Media & Democracy Journal Vol. 1 Issue: 1 30 November.

### **3. Legal Framework for the Freedom of Expression vis-à-vis the Social Media**

Although the social media and the internet have thrown up some novel legal issues, it is important to note that the social media draws its basis from the same principles governing Freedom of Speech and Expression and by extension, Freedom of the Press. Article 19 of the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) unequivocally state the general rules as follows:

- i. Everyone shall have the right to hold opinions without interference.
- ii. Everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.
- iii. The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order, or of public health or morals.

Section 39 of the Constitution of the Federal Republic of Nigeria 1999 as amended 2011 states that:

“Every person shall be entitled to freedom of expression; including freedom to hold opinions and to receive and impact ideas

and information without interference<sup>5</sup>". In *Chief of Defence Staff & Anor v. Tijah*<sup>6</sup>, the court held that "every person shall in accordance with Section 39(1) of the 1999 Constitution be entitled to freedom of expression including the freedom to hold opinions..." see also *Inspector General of Police v. Nigeria Peoples*

Section 22, of the Nigerian 1999 constitution states that:

"The press, radio, television and other agencies of the mass media shall at all times be free to uphold the fundamental objectives contained in this chapter and uphold the responsibility and accountability of the government to the people<sup>7</sup>".

The cited Section 22 of the 1999 Constitution have been upheld in Plethora of cases in Nigeria as can be seen in *Anyah v. A.N.N. Ltd*<sup>8</sup>.

It is immediately visible that the means or medium or forum for carrying out this activity is not stipulated nor limited by a list. It can then be inferred that the contemplation of the draftsmen was the freedom to hold and impart information without interference. It can also be rightly inferred from the above, that any and every citizen of Nigeria who is a beneficiary of fundamental human rights is free to use the social media to express his freedom of expression.

---

<sup>5</sup> Section 39 of the Nigerian 1999 Constitution

<sup>6</sup> (2016) LPELR- 40818 (CA)

<sup>7</sup> (2007) 18 NWLR (pt 1066) 457 CA

<sup>8</sup> (1992) NWLR (pt. 247) 319

Invariably, freedom of opinion and of expression constitutes the cornerstone of any democracy and a solid basis for development in all its ramifications. Indeed, participatory democracy is inconceivable without free speech and freedom of expression. If democracy is about transparency, accountability and good governance then free speech is indispensable. Thus, the public not only has a right, but is obliged to scrutinize the actions of public office holders to engage in full and open debate about their priorities, as the most effective way of addressing governance deficit.

Freedom of speech prohibits government from unnecessarily interfering with one's personal opinion, or speech. It fosters a sense of shared responsibility as well as gives a person a certain level of responsibility, enhanced trust, frankness, and better sense of liability. It acts a tool in nurturing social evolution and enhances self-esteem, as it helps people develop poise to express their views without fear of being molested, condemned or victimized. Besides the sharing of ideas which free speech invokes, enhances productivity at workplace and fosters social relationships. Freedom of expression also encourages social evolution just the same way it protects individual liberty. This is not to say that government must put measures in place to stop groups that promote offensive views, hate speeches, incitement of violence, racism, fascism, sexism and terrorism. As Nigerians, every citizen has the right to air his or her view as he or she deem fit and any form in which this right is been infringed upon, he or she has the right to seek redress. See *Chukwuma v. Commissioner of Police*<sup>9</sup>

One of the most interesting innovations of the social media is that it offers us something different from the traditional mass media where you

---

<sup>9</sup> (2005) 8 NWLR pt. 927 pg 278

can only send information but with no way to receive a feed-back instantaneously. The social media is particularly unique because it gives people the ability to emerge from not only being consumers of content but to also being publishers of same. The social media has the ability to function as a two-way traffic where the receiver can also disseminate the same piece of information received and send his feedback to the sender instantly. As long as the receiver has access to the internet, he can send it to a plethora of receivers who are not bound nor limited by geographical or territorial limitations. If the mass media is free and enjoys a certain degree of non-interference, then it could be correctly asserted that the social media is absolutely limitless with regards to its coverage. The traditional media is organized and can be easily controlled but it will take a lot of effort to shut the social media down. See the case of *Spiller and Anor v Joseph & Ors*<sup>10</sup>.

#### **4. The Freedom of the Social Media and Democracy**

The people are a fundamental component of both democracy and the freedom of the social media<sup>11</sup>. The social media is a platform built to provide the people with the opportunity to interact and contribute to the society. The implication of this is that the people are the focus of the social media which is aimed at presenting their contributions to society. By logical extension, the people can be said to be the corner stone of democracy. Since the people are constantly involved in communication, dialogue, consensus and compromise in society the social media can be used as a tool to develop the democratic state. The use of social media by the mass of the people has therefore undoubtedly impacted positively on the democratic process.

---

<sup>10</sup> (2010) LPELR- 17881 (UKSC) Suit No (2010) UKSC 53

<sup>11</sup> AJ, Omede in Social Media: A Trend or Threat to Democracy? JORIND 13(1) June, 2015  
[www.ajol.info/journals/jorind](http://www.ajol.info/journals/jorind)

Generally, a country is said to enjoy freedom of the social media where there is minimal government control over the industry. A heavily regulated social media or internet cannot be said to be free. This has become the basis for the determination of the freedom of social media. Are there laws heavily regulating what is said via the social media? Are there any government policies against speaking one's mind on the social media? Have citizens suffered any sanctions, arrest or punishment because of what they have said on the social media? What is the population of the citizens that have access to the social media without overwhelming government restriction or control?

With the laudable effect of #occupy in late 2011 and 2012 over the fuel subsidy issue, and the most recent #bringbackourgirls (#BBOG) campaign on Twitter that got the First lady of the then U.S, Michelle Obama supporting the campaign, and the role the social media played in the immediate past 2015 general elections, it is not possible to say that the social media is in chains. Nigeria also has a lot of top government officials who actively use the social media to share information. The military and police all use the social media to update the general public on the events taking place country wide. The online presence of most television stations for live online viewing and the presence of online versions of all newspapers and magazines is an evidence of a free social media.

The visit of Facebook's CEO, Mark Zuckerberg to Nigeria is an indication of the freedom of the social media. He said that “with over 18 million Facebook users in Nigeria, he and his team were working to provide more access to the internet through the 'Free Basic' Initiative<sup>12</sup>”.

---

<sup>12</sup> *Ibid*

His meeting with President Muhammadu Buhari and his Vice President is a confirmation of the freedom of the social media in Nigeria.

There is also no government policy or regulation shutting down any websites; in fact all videos as published by the insurgents, Boko Haram goes viral on the social media and most Nigerians view and download such videos from the internet. Most anti-government protests and activities of groups such as Indigenous People of Biafra (IPOB) and the Niger Delta Avengers (NDA) are active via social media.

## **5. Social Media and Hate and Dangerous Speech**

The nature and characteristics of hate and dangerous speech is still very much uncertain in the literature. This is attributable, among others, to the failure of the literature to properly clarify the difference or differences between hate and dangerous speech. For the purposes of this work, whenever the term hate speech is used, it also refers to dangerous speech. Hate speech has been defined as any speech, gesture, conduct, writing or display, which could incite people to violence or prejudicial action. The UN Committee on the Elimination of Racial Discrimination<sup>13</sup> notes that hate speech includes: (a) all dissemination of ideas based on racial or ethnic superiority or hatred, by whatever means; (b) incitement to hatred, contempt or discrimination against members of a group on grounds of their race, colour, descent, or national or ethnic origin; (c) threats or incitement to violence against persons or groups on the grounds in (b) above; (d) expression of insults, ridicule or slander of persons or groups or justification of hatred, contempt or discrimination on the grounds in (b) above, when it clearly amounts to incitement to hatred or discrimination; and (e) participation in organizations and activities, which promote and incite racial discrimination.

---

<sup>13</sup> General Recommendation on Combating Racist Hate Speech, 2013 CERD/ C/ GC/ 35 p. 4

According to Neisser<sup>14</sup>, hate speech refers to “all communications (whether verbal, written, symbolic) that insults a racial, ethnic and political group, whether by suggesting that they are inferior in some respect or by indicating that they are despised or not welcomed for any other reasons”.

Also, Kayambazinthu & Moyo<sup>15</sup> refer to hate speech as “war waged on others by means of words”. This conceptualization of hate speech is particularly true when it comes to the use of hate speech on social media networks. The use of hate speech online is mainly characterized by the application of words and symbols. With respect to the motivation behind hate speech, many scholars have pointed to factors, such as lack of tolerance, political clashes, discrimination, enmity and the openness of social media as facilitating the incidence of hate speech online. For example, prior to the advent of social media, Spiegel<sup>16</sup> predicted that the internet will be another avenue for racists and “hate-mongers” to spread their messages. Nemes<sup>17</sup> considered the internet as a very important channel for spreading messages of hatred. Witschge<sup>18</sup> however, canvassed a more balanced understanding of the Web's potentials within the area of political communication. On one hand, he endorses Brant's (2008) views of a “horizontal, open and user- friendly nature of the internet”, which affords people with opportunities for greater participation in the public sphere, while on the other hand, he subscribes

---

<sup>14</sup>See Subtle, Pervasive, Harmful: Racist and Sexist Remarks in Public as Hate Speech. *Journal of Social Sciences* 2002 Vol. 58, No. 2

<sup>15</sup> See Hate Speech in the New Malawi in H. England (Ed) *A Democracy of Chamelons: Politics and Culture in the New Malawi* (2002) Stockholm: Elanders Gotab

<sup>16</sup> See Hate Speech, Civil Rights and the Internet: The Jurisdictional and Human Rights Nightmare, *Albany Law Journal of Science and Technology*, 1999.

<sup>17</sup> See Regulating Hate Speech in Cyberspace: Issues of Desirability and Efficacy. *Information and Communications Technology Law*, 2012 Vol11, No. 3 p. 179.

<sup>18</sup> See Examining Online Public Discourse in Context: A Mixed Method Approach. *Javahost- The Public* 2008, Vol. 15, No. 2

to Dalhberg's<sup>19</sup> counter arguments that the Web might facilitate abusive postings and even contribute in silencing some voices. Finally, Witschge<sup>20</sup> contends that whether the Web enables deliberation or not, it depends on how people utilize the opportunities provided online. Stating the effects of hate speech, Leets<sup>21</sup> posits that it violates the individual's dignity, resulting in humiliation, distress and psychological or emotional pain. Similarly, Nemes<sup>22</sup> submits, among others, that hate speech can provoke pain, distress, fear, embarrassment and isolation to individuals. While hate speech towards groups of people can bring inequality problems and isolation, it creates the feeling of fear and discourages them from participating in the community and expressing their opinions. Adding to the argument, Nielsen<sup>23</sup> points out that the degradation and humiliation brought by hate speech can silence the 'victims' and therefore reinforce existing hierarchies in society; while Parekh<sup>24</sup> states that it can also lead victims to become aggressive and dangerous. Deducing from the above, it is evident that hate speech is harmful and it needs to be curtailed, especially on the social media although this may result in undue censorship.

Brinks<sup>25</sup> presents this great dilemma in his work. He maintained that the regulation of hate speech might bring equality but it would also affect liberty. Similarly, Downs & Cowan<sup>26</sup> argue that "if speech is restricted,

---

<sup>19</sup> The Internet and Democratic Discourse: Exploring the Prospects of Online Deliberative Forums Extending the Public Sphere. *Information, Communication and Society Journal*, Vol. 4: 4

<sup>20</sup> *Ibid*

<sup>21</sup> Experiencing Hate Speech: Perceptions and Responses to Antisemitism and Antigay Speech. *Journal of Social Issues*. Vol. 58, No. 2 p. 341-361

<sup>22</sup> Regulating Hate Speech in Cyberspace: Issues of Desirability and Efficacy. *Information and Communications Technology Law* Vol. 11, No. 23.

<sup>23</sup> *Op, cit*

<sup>24</sup> Hate Speech: Is there a case for Banning? *Public Policy Research* 2006

<sup>25</sup> Freedom of Expression and Hate Speech. *Millian Principles, Legal Theory* Vol. 24

<sup>26</sup> Predicting the Importance of Freedom of Speech and the perceived harm of Hate Speech, *Journal of Applied Social Psychology* (2012), Vol. 42, No. 6.

it silences those who may benefit largely from its expression". Post<sup>27</sup> observes constructively that hate speech regulation imagines itself as simply enforcing the given and natural norms of a decent society but from an extra legal point of view, law actually only enforces the mores of the dominant group that controls its content. According to Gagliardone<sup>28</sup> online hate speech is not essentially different from similar expressions found offline; however, there are some specific characteristics as well as challenges unique to online content and its regulation. They summarized these characteristics as permanence, itinerant, anonymity or pseudonym and transnationality. On permanence, hate speech can remain online for long periods of time and in different formats across different platforms, and can be repeatedly linked. In this sense, the architecture of any particular platform influences how long topics 'stay alive'. For instance, Twitter is built around the idea of trending topics, which may facilitate quick and wide dissemination of hateful messages, however, if topics are ignored, discussion rapidly fades; Facebook on the other hand, provides the opportunity for longer lasting discussion threads. Notwithstanding, online hate speech content may particularly be itinerant, which means that even when it is removed from one platform it may find expression elsewhere, possibly on the same platform under a different name or on different online spaces. If a website is shut down, it can quickly reopen using a web-hosting service with less stringent regulations or via reallocation to a country with laws imposing higher threshold for hate speech. The itinerant nature of hate speech also means that poorly formulated thoughts that would not have found public expression and support in the past may now arrive on spaces where they can be visible to large audiences. Regarding anonymity or pseudonymity (false names), the possibility of anonymous posting on online social media networks tend to make perpetrators of hate speech more comfortable to express their feelings, because their hidden identities dissipate their fears of having to deal with any consequences of their action. Anonymity especially on social media may also be an obstacle to prosecution. Citron & Norton<sup>29</sup> added that the internet itself facilitates anonymous and

---

<sup>27</sup> Hate Speech, in *Extreme Speech and Democracy* Oxford University Press 2009

<sup>28</sup> *Countering Online Hate Speech* (2015), France. UNESCO Publishers

<sup>29</sup> *Intermediaries and Hate Speech: Fostering Digital Citizenship for our Information Age* (2011). Boston University Law Review, Vol. 91

pseudonymous discourse, which can just as easily accelerate destructive behaviour as it can fuel negative public discourse. It should be borne in mind that despite legal position in Nigeria on whether social media articles of any nature is admissible in court to hold against perpetrators, the US case of *the People of the State Illinois v Lore Nzo Kent JR*<sup>30</sup> held that facebook posts and comments in instagram, pictures, twitter tweets or YouTube videos can be admissible in evidence for both public and private social media content but that depends on how the evidence is captured.

Lastly, the transnational reach of the internet enhances the effect of hate speech and poses complications regarding legal mechanisms for combating online hate speech since the climate of online hatred is characterised by targeted discrimination, prejudice and violent attacks, which tends to cluster in time and space and drastically increase after so called 'trigger events'.

In Nigeria, there is no specific court decision on hate speech and the problem will be multiplied if such a case comes to the court because there is no specific legislation on hate speech and as such recourse will be made to the constitution in respect. In the United States of America, the US Supreme Court has repeatedly ruled that hate speech no matter how bigoted or offensive is free speech. In the recent case of *Metal v Tam*<sup>31</sup> which involved application trademark the name “The slants” an Asian band of which Simon Tam was a member. Tams attempt to trademark the bands name was rejected by the trademarks office, but a federal appeals court rules that the rejection was illegal because the US's Lanham Act (1946) under which the application was made prohibits trademarks that disparage individuals or groups. The initial rejection was, I think based on the fact that “slant” is a slur on Asians, referring to their eye shape

---

<sup>30</sup> (2016) IL APP (2d) 14034-illinois courts

<sup>31</sup> 582. US

(they have an epicanthal fold) and thus that the name disparage an ethnic group. The appeals court ruled that rejecting the name violates the First Amendment's provision for free speech. The government appealed, and on 18th day of June 2017, the Supreme Court voted to uphold the appeals court ruling.

In England hate speech is not protected. The constitutional protection of free speech as in the US requires a constitutional protection. The so called “unwritten constitution” of the UK is, in reality no such thing. For example, incitement was an offence under common law of England and Wales. Common assault was an offence under common law of England and has been held now to be a statutory offence in England and Wales. It is committed by a person who causes another person to apprehend the immediate use of unlawful violence by the defendant.

## **6. Conclusion**

One of the major distinctions between the social media and the other forms of traditional media is that it is virtually unrestricted in scope and outreach. It has access to multiple degrees of users that have the ability to receive and disseminate information within seconds all over the world without recourse to traditional borderline and geographical limitations and delimitations. While the social media is seen as new by many, it must be pointed out that the basic operational ability of disseminating information is the same as the traditional media such as television, radio and print media. As such, in the absence of a specific legal framework, it relies on the legal framework regulating traditional media of disseminating information in Nigeria.

It is unfortunate that there are no specific laws in Nigeria with regards the social media. We therefore recommend that the National Assembly amend all laws with respect to media law and practice to immediately accommodate the social media and the internet. As a matter of urgency, it

has become imperative for the House of Representative to pass the 'Digital Rights and Freedom Bill' already before it which provides for the protection of human rights online. Also, as a matter of urgency, particular laws with regards to the guarantee of the right to use the social media without restriction should be passed so as to protect the rights of the Nigerian citizens who are users of social media. Right of access to the internet and the social media should be enshrined into the Constitution either separately or as part and parcel of fundamental right to freedom of speech and expression, because the social media has evolved into our daily lives and has become an extension of our arm and physical body and as such must be protected as a constitutional right or freedom.

The recent drive by the Federal Government to diversify the economy is laudable and in that light, entrepreneurs and businessmen should be encouraged to invest financial and professional resources into capacity building of the internet and communication technology system as it is the future of information just as Linda Ikeji, Jumia, Konga and other websites owners making ample use of social media have done. The use of social media in politics and elections in several countries, including the United States and Nigeria, cannot be overlooked. Strategic use of the print and electronic media in general and the social media in particular has proved vital to securing victory. The social media and the internet has the potential of creating millions of jobs and the provision of other essential services and contributing largely to the overall Gross Domestic Product(GDP) of the country through e-commerce and social media networking.