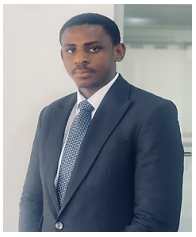
Fundamental Human Rights

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Opeyemi Ojebode,[1] Ahmad Dasuki,[2] Kenechukwu Chibueze[3]

THE NEXUS BETWEEN THE RIGHTS TO FREEDOM OF EXPRESSION AND DEFAMATION

1. Introduction

As humans, we are entitled to certain rights designated as fundamental human rights. Without these rights our society will be marred by warring co-existence, hence, these rights form the bedrock of a free society. This is why they are seen as universal (applicable everywhere), indivisible (as they are viewed as a collective and all rights must be respected) and inalienable (as they cannot be abrogated or taken away and humans are entitled to fundamental human rights regardless of their status).

The fundamental human rights are set out in the Universal Declaration of Human Rights 1948 ("UDHR").[4] Shortly after gaining independence, Nigeria became a member of the United Nations on October 7, 1960. As a member state, Nigeria adopted the UDHR. Also, Nigeria as a member State of the African Union has also ratified the African Charter on Human and Peoples' Rights 1986 (ACHPR), which

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[1] **Opeyemi Ojebode, Associate,** Dispute Resolution Department, S.P.A. Ajibade & Co. Lagos, Nigeria.

[2] **Ahmad Dasuki, Associate,** Dispute Resolution Department, S.P.A. Ajibade & Co. Lagos, Nigeria.

[3] **Kenechukwu Chibueze, Associate Trainee**, Dispute Resolution Department, S.P.A. Ajibade & Co. Lagos, Nigeria.

[4] The UDHR was adopted by the United Nations General Assembly on December 10, 1948. It consists of a preamble and 30 articles, detailing the rights to which all human beings are entitled.

also details more rights. Nigeria has inculcated some of these rights provided by the UDHR and ACHPR in its constitution. One of these rights is the right to freedom of expression and the press, which shall be the focus of this article.

2. Right to Freedom of Expression

The right to freedom of expression is guaranteed under the Constitution of the Federal Republic of Nigeria 1999 (as amended) ("CFRN"), Chapter IV, Section 39, thereof. That section provides as follows:

> *Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.*

However, it must be noted that like every other right, the right to freedom of expression is not absolute. It is limited by the law in order to forestall the excesses that may arise to the detriment of other people if it is exercised without restrictions. Thus, for humans to co-exist amicably, the exercise of one's right must end where that of another starts.

3. Limitations to Right to Freedom of Expression

Whilst we have all been guaranteed the right to freedom of expression by the aforementioned laws, these laws have equally made provisions to protect against any unjust intrusion or attack on the character, honour and reputation of other people.[5] This means that, our rights to freedom of expression end at the point where it may unjustly affect another's reputation or honour. It is against this background that the law of defamation and other restrictions imposed by local laws on the exercise of free speech as can be found in **Section 39 (2)**[6] **& (3) (a)**[7] **and (b)**,[8] **and Section 45**[9] **of the CFRN** can be justified.

4. Defamation

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5 See, Article 12 of the UDHR.

6 Restriction as to the establishment, ownership or operation of a television or wireless broadcasting station.

7 Laws reasonably justifiable for the purpose of preventing the disclosure of information received in confidence; maintaining the authority and independence of courts; regulating broadcasts/exhibition of cinematograph films.

8 Laws reasonably justifiable for the purpose of imposing restrictions upon government office holders, members of security forces or agencies.

9 Laws reasonably justifiable in the interest of defence, public safety, public order, public morality or public health; for the purpose of protecting the rights and freedom of other persons.

Defamation entails the publication to a third person or persons of any words or matter which tend to lower another person in the estimation of right-thinking members of the society generally, to cut him off from the society, to expose him to hatred, contempt, opprobrium or ridicule, to injure his reputation in his office, trade or profession, or to injure his financial credit. See **Salaudeen v. Okunloye**[10] and **Section 373 of the Criminal Code Act, 1990 (CC)**.[11]

5. Defamation: A Crime or a Tort?

Defamation is both a crime and tort in Nigeria. This means an affected individual may choose to pursue civil remedies, criminal prosecution, or both. As a crime, the Defendant may, if found guilty, be sentenced (to a term of imprisonment, community service or fine), while as a tort, damages may be awarded against the Defendant.[12]

6. The Objective/Reasonable Man's Test

The test of whether an alleged defamatory publication is actually defamatory is objective. That is, whether the publication is capable of lowering the Plaintiff in the estimation of a reasonable member of the society. Defamation is established through the testimony of a witness (a person present when the utterance was made or a person who read the libellous written publication). See, **Daily Times v. Emezuom**.[13]

7. Who can sue for defamation?

It must be noted that it is not only natural persons that can sue and be sued for defamation. Juristic persons such as companies are also included. **Edem & Anor v. Orpheo Nigeria Ltd. & Anor**.[14]

8. Ingredients of Defamation

In **Abalaka v. Akinsete,**[15] the Supreme Court held that the plaintiff in an action for defamation has the onus of proving six coterminous ingredients, which are:

a. publication of the offending words by the defendant;

b. the words complained of refer to the plaintiff;

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10 (2019) LPELR-48469(CA).
11 (2019) LPELR-48469(CA).
12 See, Salaudeen v. Okunloye (supra); Section 373 of the CC.
13 (1990) 2 NWLR (Pt. 132) 340.
14 (2003) LPELR-SC.171/199 (pp. 22-24, paras. G-C).
15 (2023) 13 NWLR (Pt. 1901) 343 at 368.

c. the words are defamatory to the plaintiff;

d. publication to third parties;

e. falsity or lack of accuracy of the words complained of;

f. absence of justifiable legal grounds for the publication of the words.

9. Types of Defamation

a. **Slander:** Here, the defamatory word is published by word of mouth. Slander is generally actionable per proof of damages.

b. **Libel:** Here, the defamatory word must be published in written form. Libel is actionable per se. This means that the Claimant in an action for libel need not prove that the publication of the defamatory words has caused him some attendant harm/injury. This means that libel is viewed as more serious in the eyes of the law. This is because of the permanent nature of the written defamatory words.

The distinctive feature between libel and slander is the permanence of the former. Hence, there are some instances where a defamatory word, which ordinarily should be considered as slander, will be held to be libel. This is usually applicable where the slanderous word has some sought of permanence to it. These instances include when the slanderous statement is; recorded through electronic means, or otherwise involves an imputation of crime, sexual misconduct, the presence of a loathsome disease, or professional/business incompetence.[16]

10. Freedom of Expression and Defamation: The Nexus

In **Aviomoh v. COP & Anor,**[17] Yahaya, J.C.A., properly enunciated the nexus between freedom of expression and defamation as follows:

> The Constitution entitles a person to freedom of expression and imparting ideas and information; it is not a blanket right. It must not be utilised or invoked in such a way, that it offends public safety, order, morality and health, and it must not be injurious to the rights and freedom of other persons. Once a person lives in a community, his rights stop where the rights of the other members of the community begin. He has to behave according to the norms of that society, otherwise his conduct will be injurious to the well-being and

[16] Bekee & Ors v. Bekee (2012) LPELR-21270(CA); Ogbara v Ogbara LPELR-59307 (CA).
[17] (2014) LPELR-23039(CA), (pp. 15-17 paras. F).

> continued existence of that community. He cannot, in the guise of exercising his freedom of expression or imparting information, trample upon the rights of other persons in the society. He must not act in such a way, that he defames their character or endanger their safety, health, order or morality.

Following from the above, it can be seen that there is only a thin line between the exercise of the right to freedom of expression and defamation as the former could easily metamorphose into the latter. Therefore, freedom of expression is not an absolute right. Where it is exercised to the detriment of another person's reputation, it becomes actionable. Nonetheless, the law strives to strike a balance between both by equally protecting free speech and guaranteeing the right to express opinions, share ideas, and disseminate information freely.

For this reason, the law recognizes certain exceptions to defamation. Hence, an individual shall not be held accountable in defamation for exercising his freedom of expression if such exercise falls within any of these circumstances:

a. Justification/truth[18]

b. Fair Comment

c. Consent[19]

d. Privilege; and

e. Innocent dissemination[20]

11. Conclusion

This article has discussed fundamental human rights, with a focus on the right to freedom of expression and its limitations, the concept, types, and elements of defamation, and the relationship that exists between the exercise of the right to freedom of expression and defamation.

Article 1 of UDHR states that "all human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood."

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[18] It is not defamatory to call a spade a spade.

[19] *Volenti non fit injuria* – a person who volunteers for/consents to an act cannot be heard to complain if he suffers any injury from such act.

[20] See, Ilegieuno S.M. et. al., 'Online Defamation: Rethinking the Liability of Internet Intermediaries for Third Party Defamatory Contents in Nigeria', (2021) 12 (13) *The Gravitas Review of Business & Property Law* 118.

Conclusively, the right to freedom of expression must be exercised in accordance with the law – in such a way and manner that does not affect the reputation and esteem of other people, for a person's rights and freedom end where those of others begin.

For further information on this article and area of law,
Please contact **Opeyemi Ojebode, Ahmad Dasuki,** and
Kenechukwu Chibueze at: S. P. A. Ajibade & Co., Lagos by
Telephone (+234 1 472 9890), Fax (+234 1 4605092)
Mobile: +2348165558660, +2349087355889, 2347038832733, +2348150882799
Email: **ojebode@spaajibade.com, adasuki@spaajibade.com,**
kchibueze@spaajibade.com
www.spaajibade.com