SEDITION UNDER NIGERIAN CRIMINAL CODE: EFFECTS ON THE RIGHT TO FREEDOM OF EXPRESSION

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Abstract
Right to freedom of expression is protected and enjoyed in civilized and democratic societies. Yet, the reality is that this right is by no means absolute anywhere in the world as it is riddled with a number of restrictions and derogations. One of such derogations is provided by the law creating the offence of sedition. This paper exposed the relationship between the right to freedom of expression and the crime of sedition. The paper found that no society can function effectively without the guarantee of the right to freedom of expression. It also discovered that the exercise of this right can be curtailed in the interest of public peace, order, morality, security and sovereignty of the state. The methodology adopted in this study was essentially doctrinal involving the analysis of the primary and secondary sources used. In order to strike a balance, the study identified the need to amend section 51 (1) and (2) of the Criminal Code to ensure that a conviction under the section would only be allowed where the conduct of the accused lends itself to incitement of violence and of course where the requisite mens rea is established. The paper further recommends amendment of relevant provisions of the Criminal Code in order to accommodate adequate punishment in deserving circumstances in view of the heinous harm done to the fabric of society by seditious publications/comments. It further strongly recommended that any form of limitation period be removed in relation to the prosecution of sedition since 'time does not run against the state.

Keywords**: **Freedom of Expression, Sedition, Criminal Code, Mens Rea, Nigeria.

Introduction

Sedition is created an offence in the Criminal Code in order to preserve public order and safety of the state. Even as all crimes are in one way or the other offences against the state, sedition, just as treason and treachery, is specifically targeted against the state. Yet by its very nature, sedition is probably one offence which most seriously impinges on the liberty of the citizen to freely express himself. However, a vexed issue is how to strike a balance between an individual's freedom of expression on the one hand, and the criminality of sedition in view of the security of the state on the other hand. The court in *D.P.P v. Obi* clearly painted a scenario to illustrate the limit beyond which free speech must not extend: '. . . a person has a right to discuss any grievance or criticize, canvass and censure the act of Government and its public policy. He may do this with a view to effecting a change in the party in power or to call attention to the weakness of a Government, so long as he keeps within the limits of fair-criticism.'

Sedition is defined as an overt conduct, such as speech and organization, which tends toward insurrection against the established order. The Concise Law Dictionary defines the term sedition as:

> any act done or words spoken with the intention of exciting disaffection, hatred or contempt against the sovereign, or the government and constitution of the United Kingdom, or either House of Parliament, or the administration of Justice, or of exciting Her Majesty's subjects to attempt, otherwise than by lawful means the alteration of any matter in Church or State, or of exciting feelings of ill-will and hostility between different classes of Her Majesty's subjects, or inciting persons to any crime in disturbance of the Peace.

It is submitted that the above dictionary definition serves just a little practical purpose as far as the Nigerian context or jurisprudence of the offence is concerned. The definition is at best suited more to the legal system and circumstances prevalent in the United Kingdom. In *Wallace Johnson v The King*, the Judicial Committee of the Privy Council noted that the law of sedition of Ghana must be construed in its application and meaning to the facts of their case free from any glosses or interpolations derived from any expositions, however authoritative, of the law of England or Scotland'. It is submitted that this is equally applicable to sections 50 and 51 of the Criminal Code of Nigeria which sections and provisions are somewhat on all fours with the Ghanaian Code in respect of the subject. A more elaborate meaning and understanding of the offence of sedition in Nigeria and the circumstances under which the offence can be committed are enshrined in the Criminal Code vide sections 50 and 51.

This study seeks to do an exegesis of the offence of sedition under the Criminal Code and relate the fruits of the study to the fundamental right of freedom of expression in Nigerian democracy. Some suggestions would peter out from the study that may provide a confortable safe ground.

Exegesis of the Offence of Sedition under the Nigerian Criminal Code

The offence of sedition is created in Nigeria pursuant to sections 50 and 51 of the Criminal Code. Section 51 provides thus:

1. Any persons who –
   a. does or attempts to do, or makes any preparation to do, or conspires with any person to do, any act with a seditious intention or
   b. utters any seditious words
   c. prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication
   d. imports any seditious publication, unless he has no reason to believe that it is seditious.
   e. Shall be guilty of an offence and liable on conviction for a first offence to imprisonment for two years or to a fine of N200 or to both such imprisonment and fine and for a subsequent offence to imprisonment for three years and any seditious publication shall be forfeited.
2. Any person who without lawful excuse has in his possession any seditious publication shall be guilty of an offence and liable on conviction, for a first offence to imprisonment for one year or for a subsequent offence to imprisonment for two years and such publication shall be forfeited.

An insight into the above provision reveals clearly that the *actus reus* (action) of the offence of sedition can arise in either of five ways namely;

a. by any act or attempt or conspiracy carried out (with a seditious intention) or
b. by spoken words (uttering seditious words) or
c. by printing, publishing, selling, offering for sale, distributing or reproducing any seditious publication or
d. by importing any seditious publication

e. by being in possession of a seditious publication without lawful excuse.

It goes without saying that once the prosecution establishes that any of the acts or words or attempt or publication of the accused was done or said with a seditious intention, the accused may be guilty of the offence of sedition provided too that the requisite *mens rea*, (mental element) if any, is established. In *D.P.P v. Chike Obi*, for instance, a publication which read: '…down with the enemies of the people, the exploiters of the weak and oppressors of the poor…' being directed against the Federal Government was held to amount to seditious publication

Terms like publication, publish, seditious words, seditious publication, seditious intention as used in the definition of the offence of sedition are clearly defined in the Code. A publication, in the context of the offence of sedition includes all written or printed matter and everything, whether of a nature similar to written or printed matter or not, containing any visible representation, or by its form, shape, or in any manner capable of suggesting words or ideas, and every copy and reproduction of any publication'. It is manifest from the tenor of this provision that both the original work (whether written or printed or in any manner or form) and any of its copy or reproduction may amount to publication if published. To publish has however been defined by the court in *Ogbuagu v. Police* to mean to make known to another and every time this is done a distinct offence is committed. On the other hand, terms like seditious words and seditious publication have been defined by the Code to mean words or publications having a seditious intention. At this very juncture, it may be apt to underscore what seditious intention really represents.

Seditious intention is an important requirement of the offence of sedition. Section 50 (2) of the Criminal Code defines the term as an intention;

a. to bring hatred or contempt or excite disaffection against the person of the president or of the Governor of a State or the Government of the Federation, or
b. to excite the citizens or other inhabitants of Nigeria to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Nigeria as by law established, or
c. to raise discontent or disaffection amongst the citizens or other inhabitants of Nigeria, or
d. to promote feelings of ill-will and hostility between different classes of the population of Nigeria.

Thus, any act, attempt, publication, words or anything done or said with any of the above-stated intention is clearly a thing said or done with a seditious intention. It is however trite to note that an act, speech or publication is not seditious by reason only that it intends;

i. to show that the President or the Governor of a State has been misled or mistaken in any measure in the Federation or a State, or
ii. to point out errors or defects in the Government or Constitution of Nigeria or of any State thereof, as by law established or in a legislation or in the administration of justice with a view to the remedying of such errors or defects, or
iii. to persuade the citizens or other inhabitants of Nigeria to attempt to procure by lawful means the alteration of any matter in Nigeria, or
iv. to point out with a view to their removal, any matter which is producing or has a tendency to produce feelings of ill-will and enmity between different classes of the population of Nigeria.

Some authors have argued that the above provision, more or less, safeguards the right of the citizen to offer his fair assessment and criticisms of the Government, as a publication, for instance, by virtue of this provision, cannot be said to be seditious if all it does is to point out errors or weaknesses in the government with a view to remedying such errors or effecting a change of the party in power. The above notwithstanding, it is possible for a publication to have a seditious intention while containing parts which point out errors in government with a view to remedying such errors. Such parts would not excuse the publication from being seditious. In *I.G.P v. Anagbogu*, it was held:

> He who writes an article with a seditious intention as defined in section 50(2)a – d by including in the article criticism which is legitimate under (i-iv) may not be excused from a charge of writing a seditious article . . . often enough a seditious article does contain parts which are not seditious. These parts do not excuse the article from being seditious.

It is pertinent to stress that where a seditious intention is clear and manifest, a publication does not cease to be seditious simply because it does not tend to incite people to violence. The court gave credence to this view in *R v. Wallace Johnson*. The implication of this is that the prosecution does not need to prove an intention to excite or incite violence to establish seditious intention within the meaning of the Code. In *D.P.P v. Chike Obi*, one of the contentions of the accused was that his publication was never calculated to incite violence. The court, inter alia, held that what the section was concerned with was 'attacks which by their nature tend to affect the public peace . . . acts, which if unchecked and unrestrained, might lead to disorder, even if those acts would not themselves do so directly.' In *Ogidi v. Police*, a telegram sent to a regional Minister of Justice and published in a newspaper accusing the Customary Courts of a Division of being the creatures of a political party and of discriminating against the opponents of that party and denying them justice was held to be a seditious publication. In *African Press Ltd v. R* , an article warning the public to beware of administrative officers and alleging that they were clearly disguised enemies of the struggle for freedom, mostly incompetent dictators working against nationalists, was also held to be seditious publication.

A newspaper article accusing a regional government of reckless squandermania, abuse of office, misuse of money held in trust for private purpose, and inciting one ethnic group against another, was also held to amount to seditious publication. On the other hand, a telegram sent to a regional premier accusing leaders of his party of acts which brought discredit on the government and calling on him to restrain them, has been held not to be seditious.

How then does one prove seditious intention in order to ground a conviction? Section 50 (3) of the Code provides that:

> In determining whether the intention with which any act was done, any words were spoken, or any document was published, was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself.

In re-echoing the opinion of the court in *DPP v. Chike Obi*, Aguda argued that the purpose of the above section 50(3) of the Code is to enable the prosecution rely on the act or the words of the document itself without calling any extrinsic evidence to prove the intent. The learned author however stressed that the section cannot be construed to deprive an accused of his right to show that his only intention was one of those set out in the exceptions under subsection (2) of section 50. Okonkwo and Naish, on their own part, argued that a strict interpretation of the

section would require that once a person utters seditious words, for instance, he would be convicted even though he honestly did not intend to commit that offence. Consequently, the authors maintained that an element of foresight must be read into the subsection so as to exculpate an accused where he did not foresee that his words are calculated to have a seditious effect/intention. Seditious intention can be proved or inferred from the manner in which the article is published. To publish to the world at large as was done in *Ogidi v. Police* instead of confining publication to the appropriate person concerned with the matter and able to remedy the error as was done in *Nwobiala v. Police* may be evidence of seditious intention. In the Ogidi's case, the court in holding the accused guilty of seditious publication held inter alia: '…we might have taken a different view of the publication which is now in question if it had been communicated only to the minister'.

Generally, words and phrases used are to be interpreted in the light of the surrounding circumstances and in determining whether the language used was calculated to raise discontent or disaffection, it is necessary to examine its effect on the mind of the ordinary people of the country or the audience. In *R v. Agwuna*, it was held that on a charge of uttering seditious words, the audience addressed and the state of public feeling are material.

Be that as it may, sedition is neither a strict nor absolute liability offence. Hence, a number of defences have been identified to avail an accused person charged with the offence under deserving circumstances. A publication is not seditious if all it does is to point out errors or weaknesses in the Government with a view to remedying such errors. However, it is possible for a publication to have a seditious intention whilst containing parts 'which point out errors in Government with a view to remedying these errors. Such parts will not excuse the publication from being seditious.' The truth of the seditious matter published is no defence where seditious intention is apparent. Nevertheless, truth can be 'a relevant consideration for the purpose of ascertaining or to show the real intention of the person charged in considering the exceptions in section 50(2) of the Criminal Code.'

It is equally a good defence to say that the prosecution of the offence of sedition was begun after six months of the commission of the offence or that it was begun without the written consent of the Attorney-General of the Federation or of the State concerned. Furthermore, where an accused is charged with being in possession of a seditious publication, he has an onus to prove lawful excuse. 'The purpose or circumstances of how he came into possession can offer evidence of lawful excuse'. An accused 'may rely on other passages in the same publication to prove the non-seditious character of the publication. 'It is arguable that a person who sells a seditious publication without knowing it to be seditious has a defence under section 24 because the act of selling 'a seditious publication' occurred independently of the exercise of his will.'

Is Truth a Defence to a Charge of Sedition? The answer is No. Once a seditious intention is proved, it is no exculpatory defence to show that the allegations made are true, and evidence as to the truthfulness of such allegations has been held to be inadmissible by the court in *Service Press v. Attorney–General.* In *DPP v. Obi*, the court noted however that the truth of the allegations may, in certain circumstances, be relevant in showing the real intention of the accused when considering the exceptions contained in the second paragraph of section 50 (2). Some other defences are however available (whether in part or full) to an accused who is charged with sedition. For one, an accused may give evidence to show that the words are not seditious by relying on other passages in the same publication. More so, a newspaper proprietor who is charged with publishing a seditious matter in an issue in a newspaper may rely on the defence that the newspaper was printed and published contrary to his express orders.

There is also the defence of lawful excuse available to a person charged with being in possession of seditious publication. Fakayode pointed out that 'a person charged with the offence of sedition can plead lawful excuse… This lawful excuse can be easily found in the proviso to section 50 (2) of the Criminal Code Act which is reproduced verbatim below:

But an act, speech or publication is not seditious by reason only that it intends:

(i) to show that the President or the Governor of a State has been misled or mistaken in any measure in the Federation or a State, as the case may be; or
(ii) point out errors or defects in the Government or constitution of Nigeria, or of any State thereof, as by law established or in legislation or in the administration of justice with a view to the remedying of such errors or defects; or
(iii) to persuade the citizens or other inhabitants of Nigeria to attempt to procure by lawful means the alteration of any matter in Nigeria as by law established; or
(iv) to point out, with a view to their removal, any maters which are producing or have a tendency to produce feelings of ill-will and enmity between different classes of the population of Nigeria.

The burden of proving lawful excuse however rests on the accused. It is also a defence to a charge of importing seditious publication if the accused has no reason to believe that it is seditious. Lastly, one who sells or distributes a seditious publication may have a defence if he can show that he does not know that same contains seditious material. The Code of course, never expressly used the term 'knowingly' in its definition under section 51(1) (c). It is however submitted that there is nothing either in that said definition showing that the offence is one of strict liability or displacing the operation or application of the general mens rea vide section 24 of the Criminal Code Thus, by virtue of section 24, which, *mutatis mutandis*, imports general *mens rea* in every offence in the Code, the term 'knowingly' ought to be read into the said definition so as to exculpate an accused who sells or distributes a seditious publication without knowledge of its seditious content since the act of selling or distributing 'a seditious publication' merely occurred independently of the exercise of the will of the accused.

How do legal proceedings in the offence of sedition go? Section 52 of the Code provides for some mandatory requirements in the prosecution of the offence of sedition, and they are as follows.

a. The legal prosecution for the offence must be commenced within six months after the commission of the offence.
b. The consent of the A.G.F or the A.G of the state is a condition – precedent to a valid commencement of prosecution. This consent can be given by simply signing the information or charge sheet and can be delegated to an appropriate officer duly authorized.
c. No conviction can be passed on an accused charged with uttering seditious words on the uncorroborated testimony of one witness.

Sedition is not created an offence only in Nigeria. It is a crime against the state in any civilized nation. In India, section 124A of the Indian Penal Code defines sedition as follows: 'Whoever, by words, either spoken or written or by signs, or by visible representation, or otherwise, brings or attempts to bring to hatred or contempt or excites or attempts to excite disaffection towards the government established by law in India shall be punished with imprisonment for life, to which fine may be added, or with imprisonment which may be added or with fine'. It appears that the offence of sedition is stricter in India than it is in Nigeria. Credence to this proposition

lies in the words of Mahatma Gandhi who was charged with sedition. During his trial, he stated thus:

> Section 124A, under which I am happily charged, is perhaps the prince among the political sections of the Indian Penal Code designed to suppress the liberty of the citizen. Affection cannot be manufactured or regulated by law. If one has no affection for a person or system, one should be free to give the fullest expression of his disaffection, so long as he does not promote or incite violence. But the section under which mere promotion of disaffection is a crime. I have endeavoured to outline the reasons for my disaffection. I have no personal ill-will against any single administrator; much less can I have any disaffection towards the king's person. But I hold it to be a virtue to be disaffected towards a Government which in its totality has done more harm to India than any previous system . . . I consider it a sin to have affection for the system.

Another support for the proposition lies in the severity of the penalty prescribed by the Indian Penal Code for the offence which could be as severe as life imprisonment with fine.

In the United Kingdom, sedition was a Common Law offence. Stephen's 'Digest of Criminal Law' defines sedition in the United Kingdom to be 'an intention to bring into hatred or contempt or to excite disaffection against the person of His Majesty, his heirs or successors, or the government and constitution of the U.K . . .' The last prosecution for the offence of sedition in the U.K was in 1972 when three people were charged with seditious conspiracy and uttering seditious words for attempting to recruit people to travel to Northern Ireland to fight in support of Republicans. The men were acquitted of conspiracy but received suspended sentences for uttering seditious words. In 1977, the U.K Law Commission recommended for the abolition of the offence of sedition in England and Wales for being redundant and oppressive. This proposal was not implemented however until 2009 when the Common Law offences of sedition and seditious libel were abolished by section 75 of the Coroners and Justice Act 2009. Notwithstanding, sedition by an alien still remains an offence in England by virtue of section 3 of the Aliens, Restriction (Amendment) Act 1919.

In the United States, the Espionage Act of 1917 made sedition a Federal crime punishable by up to 20 years imprisonment and a fine of 10,000 dollars especially where same is done by willfully spreading false news of the American Army and Navy with intent to disrupt their operations or foment mutiny in their ranks or to obstruct recruitment. The sedition Act of 1918 amended the Espionage Act by expanding its scope to cover statements criticizing the Government of the United States. The Alien Registration Act a.k.a 'Smith Act' passed in 1940 made it a federal crime to advocate or to teach the desirability of overthrowing the U.S government, or to be member of such organization. Under this Act convictions of some eleven Communist leaders were secured in 1951 in *Dennis v. United States*. Six years later, the U.S Supreme Court reversed itself in *Yates v. United States*, wherein the court held that an ideal or teaching no matter how harmful it may seem, does not equate to advocating or planning its implementation. The 'Smith Act' till date still remains a Federal law in the U.S.

Since punishment is the object of any criminal law, there is, in Nigeria as in other jurisdictions, a penalty for a convict in relation to sedition. Hence, any person convicted for the first time for committing an offence under section 51 (1) of the Criminal Code Act would be liable to imprisonment for two years or to a fine of two hundred naira or to both such imprisonment and fine. However, a convict under section 51 (1) of the Criminal Code who has committed the offence more than once shall be liable to imprisonment for three years without any option of

fine. In both circumstances, the seditious publication shall be forfeited to the State. On the other hand, any person convicted of an offence under section 51 (2) of the Criminal Code as a first offender shall be liable to imprisonment for one year or to a fine of one hundred naira or to both such imprisonment and fine. However, if the convicted has committed the said offence for more than once, he shall be liable to imprisonment for two years without an option of fine. In both circumstances, the seditious publication shall be forfeited to the State.

Right to Freedom of Expression in Nigeria *versus* the Offence of Sedition

Notwithstanding the sanctity attached to the right to freedom of expression under the Constitution, sedition is one of the restrictions that have been placed on it in the overriding interest of the society. That was why the Federal Supreme Court per Ademola C.J.F. held that sections 50 and 51 of the Nigerian Criminal Code were not in conflict with the right to freedom of expression and the press. However, it has been held that for a statement to constitute sedition, it must be made against the government and not against the individuals therein. Many a people have raised an outcry against the law of sedition as being brutally restrictive of the right to freedom of expression. Antithetically, some still believe that this law of sedition is a necessary evil in a democratic society. For instance, Fakayode reeled some justifications for retaining the law of sedition: it is germane for the maintenance of public peace, order and stability in the society; and that 'there is nothing like absolute freedom: every freedom is relative' as every right carries a corresponding duty. Ademola C.J.F. (as he then was) rationalized the gist of the law of sedition thus:

> … a person has a right to discuss any grievance or criticize, canvass and censor the acts of Government and their public policy. He may even do this with a view to effecting a change in the party in power or to call attention to the weakness of a Government, *so long as he keeps within the limits of fair criticism*. It is clearly legitimate and constitutional *by means of fair argument* to criticize the Government of the day. *What is not permitted is to criticize the Government in a malignant manner* …, for such attacks, by their nature tend to affect the public peace.

'Thus … what the law of sedition seeks to achieve is to prevent an unconstitutional overthrow of Government or a breach of the peace through virulent and malignant attacks on the Government or a class.'

Yet, 'the need to balance the interest of other members of the society and that of the government … with that of the individual citizen appears to create some restrictions on the enjoyment of this right under our constitution.' Most of the fundamental rights in Nigeria are not absolute; and the right to freedom of expression is not an exception as it is clogged by numerous limitations. 'If this freedom is left unfettered, it is sure to be abused by members of the society.' 'The Constitution guarantees to every individual the right to free speech… but the right is not absolute subject, as it were, to certain limitations necessary in a democratic state'. For instance, the latitude inherent in this right is curbed by section 45 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended) which provides that:

(1) Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society
(a) in the interest of defence, public safety, public order, public morality or public health; or
(b) for the purpose of protecting the rights and freedom of other persons.

Section 45, therefore, explicitly allows the breaching of the right enshrined in section 39 of the Constitution under certain circumstances. Adumbrating on derogations found in section 39 (3) of the Constitution of the Federal Republic of Nigeria, 1999, Igwenyi noted that:

> Thus, a law which is reasonably justifiable in a democratic society can be allowed to curb this right if it is aimed at preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematographic film or imposing restrictions on persons in security services of the government.

However, 'a government poor in promoting or projecting … the right to freedom of expression and the press … may capitalize on the leeway offered by the above derogation clause to unleash human right abuse and ambush individuals' enshrined rights'. It appears that the framers of the said section foresaw the imminent harm that would ensue if the derogation clause was not qualified; hence, they overtly inserted the phrase 'reasonably justifiable' therein. Bate J. did an apt consideration of the import of the expression 'reasonably justifiable' by stating that a restriction on a fundamental human right can only be said to be reasonably justifiable where it is:

(a) … necessary in the interest of public morality or order and
(b) not excessive or out of proportion to the object which it is sought to achieve.

In Nigeria, the tort of defamation and the crime of sedition are two notorious derogations from the freedom of expression. In fact, one can safely say that 'sedition is probably the one offence which most seriously impinges on the liberty of the citizen to express himself freely. Odike candidly advised that any derogation from the right to freedom of expression should only be seen as reasonably justifiable if it is 'justified or prescribed by law'. He equally observed that aside the reliance on derogation clauses in the derogation from the right to freedom of expression, military juntas in Nigeria have often resorted to 'outright suspension of the provisions of chapter of the Constitution of the Federal Republic of Nigeria.

Notwithstanding the reservations expressed against the interference with the freedom of expression, it is irrefutable that an unqualified right to freedom of expression and the press in Nigeria is a ready recipe for anarchy which would translate to the undermining of the nation's sovereignty and sanctity. That is why it is material to note that the right to freedom of expression is a right encumbered with 'a duty to respect the rights and privacy of others, to help in maintenance of peace and order.

Conclusion and Recommendations

This paper has studied the law of sedition and juxtaposed it with the right to freedom of expression in Nigeria. Among other findings in this study, it is apparent that the respect for the right to freedom of expression and the press is a *sine qua non* for sustainable democracy. However, it was equally observed that this right is not absolute but riddled with some restrictions which are in the best interest of the society. One of such restrictions is the law of sedition which is in subsistence basically to ensure continuity in and smooth administration of the society.

The question begging the answer is whether or not the law of sedition is reasonably justifiable as an interference with the right to freedom of expression and press under section 39 of the Constitution of the Federal Republic of Nigeria, 1999 (as amended). The answer is in the affirmative. However, the evergreen lament of Mahatma Gandhi highlights the yawning need to balance the right to freedom of expression and the press with the law of sedition so as to suppress the notion that the government is keen on stifling freedom of speech in the country. In the light of the foregoing, it may be proper to make the following suggestions:

There is an equitable need to amend section 50 (2) (a) of the Criminal Code by including the Government of a State and local government areas in the list of persons or entities that should be protected from excitement of disaffection and enmity/contempt. It would also be proper if section 51 (1) and (2) of the Nigerian Criminal Code is amended to ensure that a conviction under the section would only be allowed where the conduct of the accused lends itself to incitement of violence. This would ensure that the position in the Code will be in tandem with what is obtainable in most proactive societies including India and also enhance the status of the constitutional right to freedom of expression.

More still, there is room for possible amendment of section 51 of the Code with a view to providing for a requirement of a particular *mens rea* element in the offence of sedition. Section 51(1) (c) for instance, would not reasonably be construed or have the effect of punishing a man for printing or publishing or selling or distributing a seditious publication, whether or not he is aware of such fact. Such an inference does not stand to reason. If the intention of the draftsman is to make liability under that subsection strict, the section should reflect same; otherwise *mens rea* element should be provided for expressly.

There has been expressed concern that the Criminal Code 'does not appear to provide a defence for one who sells or distributes a seditious publication without knowing that it is seditious' The worry of this study is that a vast number of Nigeria's population is still illiterate and hence it is 'unreasonable to expect every vendor to know the contents of what he sells'. It would be unjust to punish illiterate vendors of 'seditious articles' who do not know that they are peddling seditious matters. It is therefore recommended that section 51 (1) (c) of the Criminal Code should be amended by reading the word 'knowingly' into the said section. This is particularly so since *mens rea* should be an ingredient of the offence of sedition.

The power inherent in a Minister of the Federation of Nigeria to prohibit the importation of seditious articles under the Penal Code of the Northern Nigeria is laudable as it is a preventive measure aimed at complementing the usual curative measure of penalties. This paper recommends that this should be incorporated into the Criminal Code by way of an amendment. The Indian position on punishment (life imprisonment) is far preferable because of the serious harm often done to the society by sedition and hate speech. The punishment of imprisonment ranging from 2 years to 7 years under both the Criminal Code and the Penal Code is too meagre. Hence, there is a need to amend the relevant sections of the codes to accommodate life imprisonment in deserving circumstances just as it is obtainable under the Penal Code of India. The value of the fine under section 51 of the Criminal Code is too meagre and a sheer mockery. This paper recommends an upward review of the value of fine options via an amendment of both the Criminal Code. This would make the fines to be in line with the current economic realities.

Section 52 of the Criminal Code should also be reviewed as regards the limitation period for commencing sedition proceedings. Whatever might have been the intention of the draftsman for making it six months, it is submitted that such duration may not be enough in certain circumstances. Human factors like Judiciary strike, beaureucratic bottlenecks, and protocols in obtaining requisite consent, among others, may be exceptional circumstances that may lead to difficulties and impediments. It is strongly suggested that any form of limitation period be removed since 'time does not run against the state.' The Criminal Code should be reviewed in relation to the meaning and definition of the offence of Sedition. What the Code contains *vide* Section 51 are merely acts or things which could amount to sedition, and this by implication falls short of capturing the real meaning or definition of the offence to the ordinary reader. Awareness should be created on the scope and operation of this offence vis-à-vis the constitutional right to freedom of expression guaranteed citizens under the Constitution. This

was one area the accused got it all wrong in *DPP v Chike Obi*, when he argued inter alia that his right to freedom of expression is protected by the Constitution, and that being the case, the Code's provisions are null and void for being inconsistent, without having to advert to the derogation clauses and limitations sanctioned in the same Constitution respecting acts or infringements which are reasonably necessary in a democratic setting in the interest of security, peace and order of the nation and the states.

The Criminal Code provides that 'in determining whether the intention with which any act was done, any words were spoken, or any document was published, was or was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstance in which he so conducted himself.' A strict interpretation of this provision seems to suggest that 'if a person utters seditious words, but has no seditious intention, he would be convicted because his intention must be inferred from the words. That presupposes that 'a person may be guilty of sedition even though he honestly did not intend to commit that offence.' It is therefore recommended that section 50 (3) of the Criminal Code should be amended 'to include an element of foresight'.

In the Criminal Code as in the Penal Code, the fact that a publication does not have the tendency of inciting violence does not exculpate the publisher from being guilty of sedition once the seditious intention is clear. 'There can be no doubt that the absence of the need to prove an intention to excite violence is a great impediment to freedom of speech.' This paper suggests a radical amendment of the relevant sections of the Code which would make it mandatory for the prosecution to prove intention to excite violence before a person can be convicted of sedition. The cardinal aim of criminalizing sedition under the Code is to protect the Government and its institution from unguarded and unrestrained comments or publications capable of inciting violence or hatred or disaffection towards the machinery of administration or causing breach of public peace and order. It is immaterial that the publication or seditious words used were true; if they are uttered or made with seditious intention, they are punishable sedition. The burden of establishing that the words or publication was done or said with seditious intention however rests on the shoulders of the prosecution and it is open to the accused to lean on any of the defences afforded him by the Code including but not limited to lawful excuse, ignorance of fact, mistake, accident and so on.

There should be no conflict between the right to freedom of expression under and the law of sedition. Focusing on the relevant Indian jurisprudence, Singh espoused that 'a citizen under his fundamental right of freedom of speech and expression …can express or show even disaffection and disapproval towards the government as it would not amount to sedition unless he brings or attempts to bring or excites hatred or contempt or disaffection in others towards the government established by law… It is worthy of note, however, that any restriction on the right to freedom of expression under Article 19 (1) (a) of the Indian Constitution must of necessity be reasonable; that is to say, in the interests of the security of the State, friendly relations with foreign States, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. It would be laudable if one of the grounds for restricting the right to freedom of expression and the press includes the need to preserve the friendly relations between Nigeria and other foreign states. Hence, there is a need to amend sections 39 and 45 of the Constitution of the Federal Republic of Nigeria, 1999 to reflect this recommendation. The result of this amendment would elevate Nigeria's reputation in the eyes of the international community. Again, even as derogations or limitation clauses are essential for the smooth running of the state, it would be very prudent if the courts would adopt a liberal approach in the interpretation of the right to freedom of expression and the press so as to retain its essence. This view was echoed by the Supreme Court when it held that: 'one of the basic

principles of interpretation of the Constitution and statutes is that the legislature will not be presumed to have given a right in one section of a statute and then take it in another'.

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