A CASE FOR THE REPEAL OF THE LAWS ON SEDITION IN NIGERIA-A CRITICAL LEGAL APPRAISAL

BY

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ABSTRACT

This paper discusses the early origin of laws on sedition, its aims and its export by the British imperial power to her former colonies including Nigeria. The paper argues that the main aim of the law was to suppress criticism of the monarchy in Britain and the colonial administrators in the colonies. The paper exposed the development of sedition laws in some countries and discovered that laws on sedition have been repealed in the United Kingdom hereinafter referred to as 'the UK', the United States of America hereinafter referred to as 'the USA', Australia, New Zealand, Scotland, Uganda and Canada but has not been repealed in Nigeria. The paper argues that sedition suppresses criticism of public officials which is a fundamental necessity in a true democracy, hinders freedom of thought and expression and promotes corruption, ineptitude and mediocrity in governance and makes the responsibility of the government to the people impossible. Furthermore, the paper argues that sedition is no longer in vogue in civilized true democracies and the Nigerian courts up to the Federal Court of Appeal have demonstrated their willingness to do away with this law. The paper therefore recommends its repeal by the National Assembly.

KEY WORDS: CASE, REPEAL, LAWS, SEDITION, NIGERIA, APPRAISAL

Introduction

The aim of this paper is to examine the origin, nature, scope, limitation and adverse effect on freedom of speech of sedition laws in Nigeria and to make a case for its repeal in Nigeria as has occurred in some other jurisdictions.

The law of sedition as applied in Nigeria is a heritage from the colonial past without reference to the tendency to violence of words alleged to be seditious, and was used to suppress criticisms of the government. Seditious libel is seditious publication in written form.

The law of sedition in the United Kingdom first developed at a period when it was considered that adverse criticisms of the monarch and his authority was injurious to the public good and deserved punishment. Sedition may be defined as the offence of publishing orally or otherwise any words or document with the intention of exciting disaffection, hatred or contempt against the sovereign or the government and constitution of the Kingdom, or either House of Parliament, or the administration of justice, excitation of persons 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.[1]

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[1] E. Jowitt, C. Walsh: *Jowitts Dictionary of English Law* 2nd ed., London Sweet and Maxwell 1977 p. 1626

Early origin in the British Empire and the USA

The doctrine of seditious libel first entered British American Jurisprudence in a 1275 statute out-lawing "Any false news or tales whereby discord or occasion of discord or slander grow between the king and his people or the great men of the realm".[2]
Violations were punished in the king's council sitting in the Court of the Star Chamber. The point of departure for the modern law of sedition was Sir Edward Coke's report of a Star Chamber case of 1606, which stated three central propositions:
a libel against a private person may be punished criminally because it may provoke revenge and thus result in a breach of the peace. A libel against a government official is an even greater offence, "for it concerns not only a breach of the peace, but also the scandal of government" and although the essence of the crime as fixed by the statute of 1275 was the falsity of the libel, even a true libel may be criminally punished.[3]

As government became more a matter for the king's ministers, and less a matter for the king's personal decisions, the view that those exercising authority should not be criticized was maintained. Holt C.J. explained the theory underlying sedition in 1704 in the case of R. v. Tutchin[4] in the following terms:
If people should not be called to account for possessing the people with an ill opinion of the government, no government can subsist. For it is very necessary for all governments that the people should have a good opinion of it.
Thus a true libel against the government is especially dangerous for unlike a false libel, the dangers of truthful criticism cannot be diffused by disproof. It was thus an often quoted maxim after 1606 that: "the greater the truth, the greater the libel.

Trials for sedition in colonial America

In the USA, the most famous of these trials involved the prosecution of John Peter Zenger in New York in 1733. Zenger, a publisher of a New York weekly journal, was charged with seditious libel by the Governor General of New York, whom he had criticized. Zenger was defended by Alexander Hamilton and James Alexander, who argued that the truth of the libel should be an absolute defence, and that the jury rather than the judge, should decide the question of seditious tendency and intent. Although these propositions were rejected by the trial judge, the jury responding to the popularity of Zenger's cause, disregarded the judge's instructions and returned a verdict of not guilty.[5]
The Sedition Act of 1798 was enacted by Congress dominated by federalists at a time when the United States was on the verge of war with France and many of the ideas generated by the French revolution aroused fear and hostility in segments of the U.S. population. The Act prohibited the publication of false, scandalous and malicious writings against the government of the United States, or either House of Congress of the United States, or the President of the United States with intent to defame (them); or to bring them (into) contempt or disrepute; or to excite against them, hatred of the good

[2] G. R. Stone, L.M. Seidman, C.R. Sustein, M.R. Tusret, *Constitutional Law*, Boston Little Brown and Company 1986 p. 926.
[3] G.R. Stone, et al op cit. p. 16
[4] 14 Howell's State Trials, 1095, 1128 (1704).
[5] G.R. Stone, et al op. cit. p. 927.

people of the United States, or stir up sedition within the United States, to excite any unlawful combinations therein, for opposing or resisting any law of the United States, or any (lawful) act of the President of the United States. [Brackets are mine]

The Act provided further that truth would be a good defence, that malicious intent was an element of the crime and that the jury "shall have the right to determine the law and the fact under the direction of the court as in other cases". Thus as the federalists emphasized, the Act eliminated those particular aspect of the English common law of seditious libel that had been the focus of attack on both sides of the Atlantic during the eighteenth century.

Moreover in the hands of these federalist judges, the procedural reforms of the Act proved largely illusory. For instance in Matthew Lyon's Case,[6] Lyon was a Republican congress man from Vermont and during his re-election campaign, Lyon published an article in which he attacked President Adams' administration thus: "Every consideration of the public welfare was swallowed up in a continual grasp for power in an unbounded thirst for ridiculous pomp, foolish adulation, and selfish avarice."

Lyon was convicted and sentenced to a fine of 1,000 dollars and four months imprisonment. The federalist press rejoiced but Lyon became an instant martyr and was re- elected while in jail.

The Supreme Court did not rule on the constitutionality of the Seditious Act at the time, and the Act expired of its own force on March 3, 1801. President Jefferson, who succeeded Adams as President on the Republican ticket, pardoned all those who had been convicted under the Act and congress eventually repaid most of the fines.

The U.S. Supreme Court in New York Times Co. v. Sullivan[7] decided that the Sedition Act of 1798 was unconstitutional for violating First Amendment rights. Shortly afterwards, the court in Garrison v. Louisiana,[8] voided on its face a state criminal libel statute. Congress did not enact another seditious libel law until 1918 but some states did.

Enactment and Repeal of Sedition Laws in the USA

While the First World War was still raging in 1918 Congress enacted the Sedition Act of 1918. This Act, which was repealed in 1921 when the war had ended, made it criminal among other things for any person to say anything with intent to obstruct the sale of war bonds, to utter, print, write or publish any disloyal profane, scurrilous or abusive language intended to cause contempt or scorn for the form of government of the United States, the constitution, or the flag; to urge the curtailment of production of war materials, with the intent of hindering the war effort or to utter any word supporting the cause of any country at war with the United States or opposing the cause of the United States.[9] Espionage Act 1917 was expanded by the Sedition Act 1918 in scope, to include any statement criticizing the government of the U.S., to willfully spread false news about the government. As a result of the expiration of the Sedition Act 1798 and the repeal of the Sedition Act 1918 after the end of the 1st World War, it would seem that the laws of seditious libel, against the government of the United States, no longer exist. Annand who also holds this view stated: "It would be unconstitutional to penalize libel upon government, as there is no such statute in the American States today".[10] However, it is a federal crime, punishable by up to 20 years of

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[6] 15 F. Cas. 1183 (D. Vermont 1798) (No. 8646)

[7] 376 U. S. 254 at 270 (1964)

[8] 379 U. S. 64 (1964)

[9] Sedition Act of May 16, 1918, Ch. 75, S. I., 40 stat. 553

[10] C.L. Annand, *The Constitution of India,* Law Book Company, 1966 . p 136.

imprisonment and a fine of up to $10,000 American army and navy with intent to disrupt their operations, to foment mutiny in their ranks, or to obstruct recruiting.[11]

Reforms to the British Libel Act

Reforms to the British law of seditious libel were introduced by the Fox Libel Act of 1772. These enabled the jury to decide whether or not the publication complained of had seditious tendency. Both the United States and Britain from whom Nigeria borrowed a lot of legal and constitutional principles have used the instrumentality of seditious libel to gag freedom of expression but have since abandoned the practice. Restrictions on grounds of national security still exist but criminal punishment of expression on this ground have been restricted by the adoption of Freedom of Information Acts to only designated areas of national security.[12]

Repeal of British, Scottish, Australian and New Zealand Laws on Sedition

Following the recommendations of a Law Commission Working Paper, sedition and seditious libel (as common law offences) were abolished in England and Wales with effect from 12th January 2010.[13] However, sedition by an alien is still an offence.[14] Sedition is also a punishable offense under the United States Uniform Code of Military Justice.[15]

In Scotland, the common law offences of sedition were abolished in 2010.[16]

In Australia, the Anti Terrorism Act 2005 were amended on the 19th September, 2011 and the 'sedition' clauses were repealed and replaced with 'urging violence'.

Following a recommendation from the New Zealand Law Commission[17], The Crimes (Repeal of Seditious Offences) Amendment Act 2007 was passed on 24 October 2007, and entered into force on 1st January 2008 repealing all sedition laws.

Invalidation of the Ugandan Law on Sedition by Her Constitutional Court

In Uganda, the Constitutional Court led by the Deputy Chief Justice Leticia Kikonyogo have ruled unanimously that the provisions on sedition in the Ugandan Penal Code are a breach of the freedom of expression provisions contained in the Ugandan 1995 Constitution and are therefore unconstitutional null and void. This was sequel to a petition written by a journalist Mr. Andrew Mwenda to the court[18] seeking declarations of nullification of the offences of sedition and promoting sectarianism preferred against

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[11] The Espionage Act 1917, Section 3

[12] G.R. Stone, et al. op. cit. p. 936

[13] Coroners and Justice Act 2009, Section 73

[14] Aliens Restriction (Amendment) Act 1919, Section 3

[15] Article 94

[16] The Criminal Justice and Licensing (Scotland) Act 2010, Section 51

[17] Law Commission recommended abolition of seditious offences on 5th April 2007.

[18] *Andrew Mujuni Mwenda and 1 Other* v *The Attorney General* [2010] UGCC 5 Judgment Date: 25 August 2010 See also Weinformers newspaper dated 23rd October, 2011 p.1, http//www.ulli.org/judgment constitutional court/2010/5/*N* Andrew Mujuni Mwenda and 1 Other v The Attorney General [2010] UGCC 5 Judgment Date: 25 August 2010

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him in the Chief Magistrate's Court contending that they were unconstitutional. About 1st August 2005, the 1st Vice president of Sudan, the late Lt General John Garanga died in a Ugandan Presidential helicopter crash together with a number of officers and men of Uganda Government. Two Public holidays were declared in Uganda to mourn the deceased.

Allegedly, the President of Uganda a chief mourner, in his speech, warned the 1st petitioner and threatened to close the core business of Monitor publications Ltd, the then employers of the 1st petitioner. Following the President's speech, the 1st petitioner hosted a debate by prominent Politicians on a radio program entitled: "To night is a Public Holiday. What justifies a Public Holiday?" Following what was said by the petitioner in the debate, he was with the consent of the Director of Public Prosecutions, charged before the Chief Magistrate, Nakawa with the offence of sedition contrary to sections 39 (1)(a) and 40(i)(a) of the Penal Code Act for saying the following during the programme:

... the President is becoming more of a coward and every day importing cars that are armor plated and bullet proof and you know moving in tanks and mambas, you know hiding with a mountain of soldiers surrounding him, he thinks that, that is security. That is not security. That is cowardice" Actually Museveni's days are numbered if he goes on a collision course with me." You mismanaged Garang's Security. Are you saying it is Monitor that caused the death of Garang or it is your own mismanagement? Garang's security was put in danger by our own Government putting him first of all on a junk helicopter, second at night, third passing through Imatong Hills where Kony is ?.....Are you aware that your Government killed Garang?

Being aggrieved by the said prosecution, he petitioned this Court alleging that the prosecution was inconsistent with the constitution. "The petition of Andrew Mujuni Mwenda was in part worded as follows:

(a) That sections 39 and 40 of the Penal Code Act (Cap 120) under which your petitioner is charged are inconsistent with the constitution in so far as they limit the enjoyment of the rights and freedoms prescribed in Article 29 (I) (a) and are not demonstrably justifiable in a free and democratic society as provided in Article 43(2) (c) of the Constitution.

(b) That sections 39 and 40 of the Penal Code Act are inconsistent with the provisions of Articles 29(I) (a) and 43 (2) (c) of the Constitution and are therefore null and void;

(c) He prayed for a declaration that the action of the State in criminally prosecuting your petitioner under the provisions of sections 39 and 40 of the Penal Code for his expressions is inconsistent with the provisions of Articles 29(1) (a) and 43(2) (c) of the Constitution and is therefore null and void;

Article 29 (1)(a) provides:- "Every person shall have the right to freedom of speech and expression which shall include freedom of the press and other media" The above freedom is restricted by Article 43(1) which provides:- " In the enjoyment of the rights prescribed in this chapter, no person shall prejudice the fundamental or other human rights and freedoms of others or the public interest.

(2) Public interest under this Article shall not permit.

(a) Political persecution.

(b) Detention without trial.

(c) Any limitation of the enjoyment of the rights and freedoms prescribed by this chapter beyond what is acceptable and demonstrably justifiable in a free and democratic

society or what is provided in this Constitution."
The court after hearing both the petitioner and the prosecution made the following declarations.
(i) Sections 39 and 40 of the Penal Code on sedition are inconsistent with provisions of the Articles 29(1) (a) and 43(2) (c) of the Constitution and are null and void. They are struck out of the Penal Code.
(ii) Sections 42, 43 & 44 of the Penal Code which relate to sedition are redundant.
(iii) The 1st petitioner be relieved of criminal prosecutions in Chief Magistrate's Court Nakawa Criminal case N0. 417/2005.

Introduction of Sedition Law to Pre-independent Nigeria

In Nigeria, the Seditious Offences Ordinance of 1909 criminalized the publication of false reports or statements that exposed a government official or the government itself to ridicule or contempt. Published in September 1909 in the official gazette and reprinted in an extra- ordinary issue of the government gazette dated October 1, 1909, the Seditious Offences Ordinance[19] provided that anyone who "brings or attempts to bring into hatred or contempt ...the government established by law in Southern Nigeria, shall be punished with imprisonment which may extend to two years or with a fine or with both imprisonment and fine."
This was introduced to stem the growing challenge to colonial rule by the rising educated class[20]. The rationale behind the law of seditious libel is the protection of state security, public order, as well as the shielding of the governing regime and its officials, as well as important individuals in the society from public ridicule and embarrassment that may result in a breach of public peace. Many States have abandoned the instrumentality of seditious libel because of its unpopularity, but have adopted the more fluid and all encompassing category called subversion[21].

In Nigeria, truth is no defence to a charge of sedition. The standard used is the "tendency of the publication to cause" harm. It was not necessary for conviction to prove that actual harm was caused to any official or the State. Obviously, the security which the colonial authorities sought to protect was not the security of Nigerians, but the security of an exploitative and repressive colonial government.

But rather than subside, the prosecution of seditious libel intensified after independence, suggesting that what happened was not true independence but mere change of guards. The heat of repression was turned on the same masses upon whose back the political elite rode to power. The leaders cleared the street of politics of the masses as the masses now became mobs and strikes were renamed riots. The law of seditious libel became an effective tool to silence the voices of the opposition and the masses and to trample on their fundamental right to freedom of speech[22].

Sedition in the Nigerian Criminal Code

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[19] Section 3

[20] Aduba . N "The changing features of the Law Relating to Seditious publications in Nigeria" Vol. 3 UJLJ (1986 1990) pp. 100-109

[21] P. Gill, "Defining subversion, the Canadian experience since 1977" Public Law Journal (1987) p. 617

[22] Constitution of the Federal Republic of Nigeria 1999, Section 39

Seditious intention is defined in S. 50(2) of the Criminal Code Act 1916 Chapter C38 Laws of the Federation of Nigeria 2004, applicable in the Southern States of Nigeria as: an intention, to bring into 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

(a) to excite the citizens or other inhabitants of Nigeria to attempt to procure the alteration, otherwise than by lawful means, of any other matters in Nigeria as by law established; or

(b) to raise discontent or disaffection among the citizens or other inhabitants of Nigeria ;or

(c) to promote feelings of ill-will and hostility between different classes of the population of Nigeria. But an act, speech or publication is not seditious by reason only that it intends-

(d) 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

i. to point out errors or defects in the Government or constitution of Nigeria, or any State thereof, as by law established or in legislation or in administration of justice with a view to the remedying of such errors or defects ; or

ii. 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

iii. to point out, with a view to their removal, any matters which are producing, or have a tendency to produce feelings of ill-will and enmity between different classes of the population of Nigeria.

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 circumstances in which he so conducted himself.

Then Section 51 (1) defines seditious offences thus:

Any person who-

(a) does or attempts to do, makes any preparation to do, or conspires with any person to do, any act with seditious intention;

(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, shall be guilty of an offence and liable on conviction for a first offence to imprisonment for two years or to a fine of two hundred naira or both such imprisonment and fine and for a subsequent offence to imprisonment for three years and any such seditious publication shall be forfeited to the state.

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 to a fine of one hundred naira or both such imprisonment and fine, and for a subsequent offence to imprisonment for two years; and such publication shall be forfeited to the State.

Incitement to Violence

Provided that the seditious intention is clear a publication does not cease to be seditious merely because it does not tend to incite people to violence as was held in R. v. Wallace

Johnson:[23]
Violence may well be and no doubt often is, the result of wild ill-considered words, but the code does not require proof from the words themselves of any intention to produce such a result.
After contrasting British laws on sedition with Nigerian colonial laws on this subject, a learned writer commented that:
The privilege of pointing out errors and defects must often be illusory, if the intention to excite violence need not be proved, since the dispassionate pointing out of errors may well excite hatred and contempt against those responsible for them. And the more grievous the error or defect, the more likely it is that hatred and contempt will be excited.[24]
Once seditious intention is proved, it is no defence to show that the allegations made are true and evidence as to the truth of such allegations has been held inadmissible.[25]

Defences
It is open to the accused to show, if he can, that the words are not seditious. He may rely on other passages of the same publication to prove the non-seditious nature of the publication.
Where a newspaper proprietor is charged with publishing a seditious matter in an issue of the newspaper, it is a good defence for him to show that the newspaper was printed and published contrary to his express orders.[26]
Furthermore, an accused person cannot be convicted on the uncorroborated testimony of one witness for this offence.[27]
It is also a defence to show that the alleged seditious publication comes within the statutory exceptions contained in Section 50(2)-(d) i-iv, quoted above.

Prosecutions for sedition in Nigeria
In Ogidi v. Police,[28] 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 denying them justice was held to be seditious.

Also declared seditious was 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.[29] In Africa Press Ltd. v. Attorney General Western Region[30] a newspaper article accusing a Regional Government of reckless squandermania, abuse of office, misuse of money held in trust for the people, fraudulent diversion of public money for private purpose and inciting one

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[23] (1939) 5 W.A.C.A. 56 at p. 61; See also *Inspector General of Police* v *Anagbogu* (1954) 21 N.L.R. 26, *D.P.P* v *Chike Obi* (1961) All N.L.R. 139.

[24] D.C. Holland, *Equality before the law*, (1955) 8 Current Legal Problems, 74 at 87.

[25] *Service Press* v *Att. Gen.* (1952) 14 W.AC.A. 176

[26] *Ogbuagu* v *Police* (1953) 20 N.L.R. 139

[27] Criminal Code Act Section 52 (3)

[28] (1960) 5 F.S.C. 251.

[29] *African Press Ltd* v *R.* (1952) 14 W.A.C.A. 57

[30] (1965) 1 All NLR 12,

ethnic group against another was declared seditious. But in Nwobialla v. Police[31] 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 was held not to be seditious.

To criticize the government in such a malignant manner as is capable of creating widespread disaffection and disrupting public peace would amount to sedition. In D.P.P. v. Chike Obi,[32] the defendant Chike Obi, a member of the House of Representatives and leader of the Dynamic Party was charged with publication and distribution of seditious matter contrary to section 51 (1) (c) of the criminal code. The seditious pamphlet complained of was titled: 'The people: Facts you must know' and contained in part:

Down with the enemies of the people, the exploiters of the weak and oppressors of the poor... the days of those who have enriched themselves at the expense of the poor are numbered. The common men in Nigeria can today no longer be fooled by sweet talk at election time only to be exploited and treated like dirt after the booty of office has been shared among politicians...[33]

The charge was found proved but no conviction was recorded as the judge referred the following questions to the Federal Supreme Court:

whether the provision in the criminal code relating to sedition as contained in sections 50 and 51 of that code has been invalidated by the provisions of sections 1 and 24 of the constitution of Nigeria 1960 (S.24 guaranteed freedom of expression) and

if the answer to (1) is negative whether those provisions of the criminal code have been modified by section 24 of the constitution of Nigeria 1960, and if so, to what extent.

Ademola C.J. sustained the conviction of the defendant and was of the view that:

...it is clearly legitimate and constitutional by means of fair argument to criticise the government of the day. What is not permitted is to criticise the government in a malignant manner as described above, for such attacks by their nature tend to affect the public peace... I would sum up by saying that the position today in Nigeria in my view is that the provision of the constitution relating to fundamental human rights, has not in any way invalidated the law of sedition as contained in Sections 50 and 51 of the criminal code in so far as these sections relate to matters under consideration in this reference...[34]

This decision which has been termed reactionary and retrogressive by many writers,[35] can be contrasted with the decision in the case of the State v. Ivory trumpet and Others.[36] The accused persons were charged with sedition under S. 51 (1) (a) of the criminal code. They had published in the 'Weekly Trumpet' an article titled: 'Just Before the Battle', in which they referred to the incumbent Governor of Anambra State, Chief Jim Nwobodo in the following words:

He has been keeping and spending party money without account and has in the past three

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[31] (1960) 5 F.S.C. 243.

[32] (1961) 1 All N.L.R. 186

[33] Ibid. pp. 189-190.

[34] Ibid p. 194 at 196.

[35] D.O. Aihe, P.A. Oluyede, *Cases and materials on Constitutional Law in Nigeria* Ibadan University Press 1979, p. 117;

[36] (1984) 5 NCLR 736.

months paid out staff salaries direct through the secretary and has refused to pay the chairman. We have called him to give account of election expenses, more particularly the foundation membership certificate signed by Dr.. G.O. Mbanugo, himself as the gubernatorial candidate, myself as the chairman and Mr. T.C. Chugbu as the Secretary. The State executive settled the election dispute in Njikoka on the 4th March 1980 and the Governor supports the dissident minority. He does same in the women's wing through financial emissary. Nearly 2 million naira has been paid from party sales of 'Premier Beer'. He has not paid the money with party account nor render statement to the executive.[37]

Araka C.J. (as he then was) on discharging and acquitting the accused persons stated thus:

I feel no doubt that any construction of the law on sedition in this country should be against the background of profound national commitment to the principle that debate on public issues should be uninhibited, robust and wide open, and that it may well include vehement, caustic and sometimes unpleasantly sharp attack on government and public officials...[38]

Justice Okara set out the standard for analyzing seditious libel thus: The sedition law does not punish anyone who makes a publication that merely embarrasses the government. The sedition law prohibits publication which has a tendency to create disorder, or causes or has a tendency to causes incitement to violence having due regard to the right of free speech guaranteed.[39]

Another very interesting and educative case decided during the second republic is The State v. Nwankwo.[40] The accused in 1982 published a book titled: 'How Jim Nwobodo Rules Anambra State'; in which he stated in part:

Today, leaders are chosen for their ability to spit out the right words in a conniving manner whenever called upon to do so. Brainwashing and misinforming the electorate is a priority matter and independent thinking press members are coerced, cajoled, threatened and removed when necessary. The Federal Government is confronted, abused and disgraced upon every available occasion and party politics take precedence over the welfare of the electorate. Unfortunately the Nwobodo administration is not a government of the people but of a selected group of unproductive, uninformed, money hungry, favour seeking, paranoid, power brokers interested only in scratching each other's back, inflating their bank account and apportioning the state lands, God help the people of Anambra State if this administration manages to maneuver itself back to power in 1983.[41]

At Onitsha High Court, Justice F.O. Nwokedi found the accused guilty of a seditious offence under section 51 of the Criminal Code. His appeal to the Federal Court of Appeal was allowed by a unanimous decision of the court. Belgore J.C.A. in allowing the appeal stated as follows:

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[37] Ibid. pp. 738-739.

[38] Ibid. p. 756.

[39] Ibid. p 737

[40] (1985) 6 NCLR 645.

[41] Ibid. pp. 646-647.

It is my view that S. 50 (2) and Ss. 51 and 52 which covers them (seditious offences) are inconsistent with the provisions of sections 36 and 41 of the Nigerian constitution of 1979, and are by implication repealed from 1st of October 1979.[42]

Olatawura J.C.A. also allowing the appeal cautioned:

Those who occupy sensitive posts must be prepared to face public criticisms in respect of their office so as to ensure that they are accountable to the electorate. They should not be made to feel they live in an Ivory tower and therefore belonging to a different class. They must develop thick skin and where possible plug their ears with cotton wool if they feel sensitive or irascible. They are within their constitutional rights to sue for defamation but they should not use the machinery of government to invoke criminal proceedings to gag their opponents as the freedom of speech guaranteed by our constitution will be meaningless ... Let us not diminish from the freedom gained from our colonial masters by resorting to laws enacted by them so suit their purpose ... Those in public office should not be intolerant of criticism. Where a writer exceeds his bounds, there should be resort to the law of libel where the plaintiff must of necessity put his character and reputation in issue. Criticism is indispensable in a free society.[43]

This writer agrees entirely with the Federal Court of Appeal decision in Nwankwo v. The State and its rationalisation by Olatawura J.C.A. But it is pertinent to point out here that these laws though declared unconstitutional were included in Chapter C38 of the Revised Laws of the Federation of Nigeria, 2004. It is hoped that all sedition laws including those in the Penal Code will be repealed as soon as possible by an Act of the National Assembly to reflect the decision in Nwankwo's case. The Supreme Court of Nigeria is yet to pronounce on the fate of sedition laws. Unfortunately, too the governments of Nigeria have demonstrated a common unwillingness to pursue seditions libel litigations to the Supreme Court; they have tended to abandon such cases midstream thus leaving no clear precedent behind.[44]

Sedition under the Penal Code

The Penal Code Law 1960 Chapter 89 Laws of Northern Nigeria applies to the Northern Nigerian States. Section 416 of that Code which creates the offence of inciting disaffection against the government provides:

Whoever by words either spoken or reproduced by mechanical means or intended to be read or by signs or by visible representation or otherwise excites or attempts to excite feelings of disaffection against the person of the President, his heirs or successors or the person of the Governor of a State or the government or constitution of Nigeria or State thereof or against the administration of justice in Nigeria or any state thereof shall be punished with imprisonment for a term which may extend to seven years or with fine or with both.

Then section 417 creates the offence of exciting hatred or contempt against any class of persons so as to endanger public peace while section 418 creates the offence of the publication of news which is false or which the writer has reasons to believe to be false with intent to cause fear or alarm to the public and whereby any person is induced to commit an

[42] *Nwankwo v. the State* (1985) 6 NCLR 228 at 237.

[43] Ibid. p. 252.

[44] G.A. Christian, "Core Freedoms in Nigeria and US Constitutions: A study in Differences" (e RADIC 1991) pp. 276-338

offence against the public peace; section 419 makes the possession of seditious publications or articles unlawful while section 421 makes unlawful the importation of such publications or articles intentionally.

(f) Explanatory Notes

The explanatory notes to the Code define "disaffection" as contained in section 416 as including disloyalty and all feelings of enmity. It is further explained that "comments expressing disapprobation of the measures of the government of Nigeria with a view to obtaining their alteration by lawful means, without exciting or attempting to excite hatred, contempt or disaffection, do not constitute an offence under this section. Similarly, comments expressing disapprobation of the administrative or other action of the government of Nigeria without exciting or attempting to excite hatred, contempt or disaffection do not constitute an offence under this section. Consequently, anyone charged under Section 416 could plead these as defences.

Conclusion

The common law misdemeanor of sedition in Britain was initially meant to protect the king and his council of ministers from virulent attacks in the press. But when Britain became an imperial power, she ensured that sedition became part of the laws vigorously enforced in her colonies including Nigeria, the USA, Canada and New Zealand to mention a few.

However, the British law on sedition is different from that enacted in Nigerian statutes books by the British colonial authorities in many respects. While in contemporary English common law on sedition, it is a requirement to prove intention to excite violence or disorder before a conviction can be secured, such a requirement was absent in the Nigerian and American colonial laws and truth of the publication was not a defence. But when the United States became independent, she enacted the Sedition Act of 1798 which made proof that the accused person maliciously intended to incite violence a must before conviction could be had, and also made truth of the libel a defence. However, as discussed earlier, sedition has been repealed in the U.S.A. the U.K. Scotland, New Zealand and Australia. Furthermore, the Constitutional Court in Uganda has declared null and void the laws of sedition of that country on the ground that it is inconsistent with the freedom of expression provisions in the country's Constitution.

Recommendations

It is the opinion of this writer that the law of sedition as it relates to crime should be abolished in Nigeria because it is counterproductive in the sense that honest hardworking persons who have elected some people to govern them will not be able to criticize such people when they embark on the course of looting the state treasury to satisfy their personal greed, for fear of being prosecuted for sedition. If this ugly trend is allowed to continue sedition will make nonsense of the freedom of expression guaranteed by the Nigerian Constitution as well as render the the press incapable of performing its constitutional duty of making the government accountable and responsible to the people. This will not only limit but will drive the freedom of expression and the press underground in this country. Any government official

aggrieved should resort to filing a civil action for defamation in the law court instead of resorting to the use of state machinery to suppress criticism from citizens who elected him or her into office.

Furthermore, Nigeria should be seen to be moving in the same direction as the civilized world. Many democratic countries in the civilized world including the ones mentioned earlier have repealed sedition laws because they have been found to be counterproductive in the sense that they stifle criticism and do not enhance the responsibility of the government to the people.

In addition to this, sedition laws, like military regimes, are no longer in vogue in the civilized world.

The law was brought in by the British as one of the many draconian laws enacted to stifle voices of dissent during her colonial in Nigeria. The law under section 51 of Criminal Code criminalizes 'disaffection' towards the government by words, either spoken or written, or by signs or by visible representations. This goes against the very nature of democratic process which relies on active consent and dissent. The law goes against the inalienable fundamental right to expression enshrined in the Nigerian constitution and the Universal Declaration of Human Rights, which guarantee freedom of speech and expression. The law is being abused by the central and state governments to suppress legitimate criticisms of policies and actions by the State, being invoked against media personnel, human rights activists, political dissenters and intellectuals.

All major modern democracies in the world have either repealed this law or discontinued prosecution under it. United Kingdom and New Zealand have abolished the sedition law, and prosecutions for sedition have largely fallen into disuse in United States. The case for repealing the draconian law of sedition is rooted in its implied threat and direct impact on the ability of citizens to freely express themselves as well as to constructively criticise or express dissent against their government. The existence of sedition laws in Nigeria's statute books and the resulting criminalization of 'disaffection' towards the state is unacceptable in a democratic society where public opinion should act as a check on governmental excesses.

Therefore, the National Assembly is urged to repeal all sedition laws in both the Criminal and Penal Codes in Nigeria in consonance with the Federal Court of Appeal decision in Nwankwo's case discussed earlier.