

AN APPRAISAL OF THE RIGHTS TO PRIVACY AND FREEDOM OF EXPRESSION UNDER THE NIGERIAN LAW*

Abstract

It has become a truism that the protection of the freedom of expression is an indispensable attribute of a democratic society. On the other part, the right of personal privacy is said to be quintessential to the preservation of human dignity, self-determination, self-development and safety. These rights are provided by the Nigerian constitution as well as the African Charter on Human and peoples' rights which is part of Nigerian law. This article x-rayed the meaning and scope of these rights of expression and privacy as expounded by the Nigerian courts. The methodology employed is doctrinaire as it examined the provisions of the Constitution and the African Charter on Human and people's rights as well as judicial decisions connected thereto. It found the scope of the provisions adequate but recommended enactment of specific legislations that will give more meaning to the privacy rights guaranteed by the Constitution.

Keywords: Freedom of Expression, Rights to Privacy, Nigerian Constitution, African Charter on Human and Peoples' Rights

1. Introduction

The rights to freedom of expression and that of privacy are intrinsically linked. Everyone enjoys these rights and desires more of it. We are all interested in our everyday life; to communicate, to listen, to observe and to read. Free speech is indispensable in a democratic society. To what extent may a limit be placed on this right? Unfortunately, there is a lack of agreement as to the extent of such limitation. In this era of digital technology, freedom of expression and privacy are mutually interdependent. Both are essential for a free and democratic society. Both promote personal growth and self-fulfilment. Both promote democratic values like accountability and good governance and as well protective of the governmental and corporate authority. Freedom of expression is desirable for multicultural expression, creativity and innovation. It is a promoter of bonding between and among humans at the community level and at the individual level it as well promotes self-development, personal autonomy, personal sense of self-worth and dignity. For example, online privacy protects online freedom of expression. Lack of privacy stunts expression and free thoughts. Freedom of expression promotes self-autonomy and freedom of interaction among human beings. On the other hand, unrestricted right of expression may jeopardise personal privacy since in this digital era, the unrestrained exercise of right to seek and disseminate information may impact negatively on another's personal right to private life, thus the need for a restriction on the right of expression. On the other hand, the application of data protection laws and other checks on free expressions in an attempt to preserve privacy rights will automatically affect legitimate exercise of free speech. The rights to freedom of expression and privacy are essential fulcrum of a free and democratic polity and a standard qualification for societal progress that further ensure fuller enjoyment of other rights. These indispensable twin rights have been provided by the Constitution of the Federal Republic of Nigeria 1999 as amended.¹ It is as well provided by the African Charter on Human and Peoples rights,² which is part of Nigerian law as well as in other international human rights instruments.³ This work therefore intends to review the meaning and scope of these rights under the Nigerian law.

2. The Concept of Freedom of Expression

It was Euripides who said long ago that 'this is slavery, not to speak one's thought'.⁴ John Milton in the same vein said; 'Give me the liberty to know, to utter, and to argue freely according to conscience, above all liberties'.⁵ The concept of free speech can be found in early human rights documents such as the England's Bill

*By Emmanuel Ibiam AMAH, PhD, Senior Lecturer, Faculty of Law, Ebonyi State University, Abakaliki, Nigeria. Email: amaibiam@gmail.com

¹ Section 37 and 39 of the CFRN, 1999 (as amended)

² Article ix African Charter on Human and People's Rights, 1981. It appears that the charter did not provide for right of privacy.

³ Other international Human Rights instruments include the Universal Declaration of Human Rights (UDHR), the International Covenant on Civil and Political Rights (ICCPR), the African Charter on Human and Peoples' Rights, and the American Convention on Human and Peoples' Rights; the European Convention on Human Rights and the EU Charter of Fundamental Rights and Freedom.

⁴ Euripides, the Phoenician Women, line 392 in, David Gene and Richmond Lattimore, (1958) 4, 392; <<https://www.bartleby.com/73/1699.html>> accessed 23 March 2023

⁵ John Milton, *Areopagitica* (1644), <<http://www.freespeechhistory.com/timeline/1644-john-miltons-areopagitica/>>; J. Idumanje, 'Freedom of Expression in Nigeria: Navigating a Meeting Point between the Old and New

of Rights of 1689, the French Revolution in 1789 and the Universal Declaration of Human Rights of 1948.⁶ Freedom of Expression is a principle that supports the freedom of an individual or a community to articulate their opinions and ideas without fear of retaliation or repercussion, censorship or legal sanction.⁷ It is broadly of the connotation to the right of every individual or group to, not only express their ideas and opinions and impart information but also to seek information and received it.⁸ The free communication of ideas and opinions is one of the most precious of the rights of individuals and as such every citizen should be allowed to speak, write, inform, listen, read and print information without interference. Freedom of expression is sometimes used synonymously with freedom of speech and it includes an act of seeking, receiving and imparting information or ideas, regardless of the medium used. Also, it refers to the right to speak, write or do anything in order to allow for one's feeling, opinions and ideas expressed without any restriction.⁹ Generally, freedom of expression connotes the liberty of every person to openly discuss issues, hold opinions and impart ideas without restrictions, restraints or fear of punishment. It is undoubtedly, a right to be enjoyed by every person who is not under any bondage or disability. In every human society, the right and freedom of an individual to hold an opinion and share the same with a listener of his choice is a fundamental one. This is because a person has the right to have a perspective of the world around him and the people he interacts with.¹⁰ This right can be expressed as one of the fulcrums of a democratic society. The Constitutions of most countries of the world, including Nigeria,¹¹ have expressly provided for the protection of this right. It is also copiously enshrined in different International Human Rights instruments¹² and all regional Instruments and Conventions on human rights, including the African Charter on Human and Peoples Rights¹³.

3. Scope of Freedom of Expression under Nigerian Law

The freedom of expression guaranteed in the Nigerian Constitution and the various regional and International Instruments on human rights and fundamental freedom has three constituent elements; namely;¹⁴

- i. the freedom to hold opinions;
- ii. the freedom to receive information and ideas; and
- iii. the freedom to impart ideas and information

Freedom to Hold Opinion without Interference

This is the first constituent element of the right to freedom of expression. Having opinion means that one must be able to make choices for himself without undue or arbitrary influence of another. This right allows individuals to have an opinion on a subject or issue whatsoever and to express this opinion. In relation to government activities, citizens must be able to show their satisfaction or dissatisfaction with the acts of the government and this freedom to hold opinion should be absolute and not to be restricted.¹⁵ A person can hold opinion on various subject matters, for example, personal views on polygamy, homosexuality, religion, etc. A

Media' <<https://www.thenigerianvoice.com/news/113184/freedom-of-expression-in-nigeria-navigating-a-meeting-point.html>> accessed 6 September, 2022.

⁶Article II of the French Declaration states; 'The free communication of ideas and opinions is one of the most precious of the rights of man. Every citizen may, accordingly, speak, write, and print with freedom, but shall be responsible for such abuses of the freedom as shall be defined by law, <<http://www.hrcr/docs/frenchdec.html>> accessed September 6 2022

⁷ F. James, 'Today's Speech, *Book reviews*', <https://en.wikipedia.org/wiki/Freedom_of_speech> accessed 6 September 2022

⁸ E. Odike, Right to Freedom of Expression and the Press, in O. Okpara, Human Right Law and Practice (Enugu: Chenglo Ltd, 2015) 249

⁹ F. Odibe, Cases and Materials on Human Rights Law, (Port Harcourt: Pearl Publishers 2011)67

¹⁰ E. Odike, *n37*

¹¹ See Chapter IV of the 1999 constitution of the Federal Republic of Nigeria which provides; 'Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference'.

¹²See Article 19 of the UDHR 1948 which provides; '...everyone shall have the right to hold opinions without interference' and 'everyone shall have the right to freedom of expression; this right shall include freedom to seek, receive, and impart information and ideas of all kinds, regardless of the frontiers, either orally, in writing or in print, in the form of art, or through any media of his choice'.

¹³Article 9 of the African Charter on Human and Peoples Rights also provides; 'Every individual shall have the right to receive information. Every individual shall have the right to express and disseminate his opinion within the law'

¹⁴ I. J. Udofa, 'Right to Freedom of Expression and the Law of Defamation in Nigeria', in *International Journal of Advanced Legal Studies and Governance*, April 2011, 2(1) 77

¹⁵ O. Williams-Ilemobola and others, 'Examination of the Right to Freedom of Expression in Nigeria', in *Journal of Human Rights Law and Practice*, 2, 11 (n.d.)

person's opinion is usually based on his dimension, ethics, beliefs, ideals or principles. One has the right to hold opinions and to express them freely without government interference.¹⁶ This right was protected by the Nigerian court in the case of *Ogwuche v. Federal Republic of Nigeria*¹⁷ where the National Broadcasting Commission had issued a regulation requiring all broadcasting houses, to have any proposed live programme vetted by the Commission prior to broadcasting on the grounds that some programs were broadcasting content which threatened the peace and unity of the country. The Court examined international and regional human rights instruments to find that the Government of Nigeria failed to establish proof that Ogwuiche's media programs constituted a sufficient threat to justify the restriction and that the restriction, as such, was an excessive burden and a restriction to their right to hold opinions on any media outlet. Therefore, the Court ordered that the Regulation be withdrawn. The freedom to hold opinions is manifested when it is expressed or communicated without adverse consequences. It can also be said to incorporate the right to hold and express dissenting views, and the right to comment on matters of public interest,¹⁸ accessing results of scientific investigation and moulding and scrutiny of public opinions.¹⁹ Thus except in a state of declared emergency or war, it cannot be right for any agency of the executive to suppress the free expression of any opinion, however unpopular that opinion maybe. The believer in absolutism, and the anarchist, those who support and those who oppose equal rights, for women, lesbianism, and homosexuals too-are all entitled to the free expression of their views and the right to assemble and demonstrate in support of those views and to propagate those views.²⁰ Any law that tends to deny people of the right to express their opinion would be regarded as undemocratic and tyrannical and would portray the government of the day in bad light.²¹

Freedom to Receive Ideas and Information without Interference

This is the second constituent of the right to freedom of expression. To receive information means to take or acquire information given or offered, or to experience such information.²² The freedom to receive ideas and information is also an aspect of the right to freedom of expression and the press. It forbids the government and individuals from denying or hindering the access by any person to information and ideas that are available to the public;²³ thus it embodies the freedom of speech and the freedom to access information.²⁴ Individuals or group of individuals should be able to receive information on a particular subject matter so that they would understand, retain, communicate and be able to hold opinion and air their view on what they think. An individual should be allowed to receive ideas and information to keep him conversant with the activities of government and individuals around him. An individual also has the right to request access to recorded information held by the

¹⁶ Human Right Watch, 'Crackdown on Freedom of Expression in Nigeria' <www.hrw.org/reports/2003/Nigeria//203> accessed 16 December 2022.

¹⁷ (ECW/CCJ/APP/09/15) [2018]

¹⁸ E. Osita, Dissent in a Democratic Polity: Options in a Presidential System in, Y. Osinbajo and A. Kalu Democracy and the Law, Lagos (1999)79

¹⁹ The US Supreme Court stated of these rights; 'the principle that debate on public issues should be uninhibited, robust and wide and it may well include vehement, caustic and sometimes unpleasant sharp attacks on government and public officials...', *New York Times v Sullivan* (1964)37 US 254

²⁰ *New patriotic party v. IGP Accra* (2000) 2 HRLRA 1 Sup. CI, Ghana

²¹ Ibid

²² <<https://www.collinsdictionary.com/dictionary/english/receive-information>> accessed 12 December, 2022

²³ E. Odike, n37, 21

²⁴ Pursuance to this, the Nigerian government enacted the Freedom of Information Act 2011 (Laws of the Federation of Nigeria. This Act was enacted to make public records and information more freely available, provide for public access to public records and information, protect public records and information to the extent consistent with the public interest and the protection of personal privacy, protect serving public officers from adverse consequences of disclosing certain kinds of official information without authorization and establish procedures for the achievement of those purposes and for related matters.

Section 2(1) of the Act provides that a Public Institution shall ensure that it keeps records about all its activities, operations and businesses. The act also made provision for the publication of certain activities going on in the institution to wit:- responsibilities of the organization, functions of each division, branch and departments of the institution, a list of classes of records under the control of the institution, manuals used by employees of the institution in administering their programmes or activities, a description of documents containing final opinions and orders made in adjudication cases, and the title and address of the officer to whom the application for information shall be sent. In order to guarantee the freedom of information, the act provided that the aforementioned information should be widely disseminated and made readily available to members of the public through various means including print, electronic and online means. This means that the act permits and requires that information pertaining to public institutions be made accessible on the cyberspace

government organization.²⁵ This information may appear on any form and they are not limited to papers, microfilm or disk, photographs and maps. However, such information may be withheld for various reasons especially because the information could be sensitive or personal.

Right to Impact Information without Interference

This is the third of the constituent elements of the rights to freedom of expression and the press. To impact here means to share; to communicate knowledge or disclose information between individuals in whatever medium.²⁶ Information may be impacted through speech, expression or publication.²⁷ Speech and expression usually involves the physical interaction between two parties who communicate information between each other, while publication is subject to different meanings.²⁸ In one sense, publication refers to information that has been publicly circulated in printed form as in newspaper publication, magazines, pamphlets, letter, telegraph, computer modem or program, posters etc. In another sense, it also includes information published through radio or television broadcast,²⁹ orally made with or without the aid of public address system like microphone, loudspeakers etc. The idea of 'blogging'³⁰ by individuals as means of sharing information is also regarded as an exercise to the freedom of expression in Nigeria. With such activities, it is certain that information is made easily accessible. This right is exercised between individuals too as between the government and citizens. This right is important for the purpose of education, publication and accessing of result of scientific investigations and efforts.

In *Din v. African Newspapers of Nig. Limited*,³¹ A Nigerian court noted that the freedom guaranteed under section 39 of the Constitution includes the freedom to hold an opinion and pass information without interference; and that this freedom presupposes the sharing of or the free flow of opinion and ideas essential to sustain the collective life of the citizenry. The right to disseminate information; whether oral or written through any medium whether traditional or modern; electronic, computer, internet and so on are constitutionally guaranteed and protected.³² Therefore, any individual is free to own, establish and operate any medium for the dissemination of such opinions, ideas or information, be it educational, religious, or any other form.³³ The Nigerian Court in the notable case of *Akinrisola v. Attorney-General, Anambra State*³⁴ held that the publication made relating to court proceedings without any specific reference to the trial court was merely an exercise of the right to freedom to hold opinions and disseminate same and therefore is constitutionally protected. The Exercise of this freedom can however be restricted for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts, by regulating telephony, wireless broadcasting, television or the exhibition of cinematography films; or imposing restrictions upon persons holding office under the Government of the Federation or of a state, members of armed forces of the federation or members of the Nigeria Police Force or other Government security services or agencies established by law.³⁵

Freedom of the Press

The freedom of the Press is based on the principle that communication and expressions through various mediums, including printed and electronic media, especially published materials, should be considered a right to be exercised freely.³⁶ Such freedom implies the absence of interference from an overreaching state; its preservation may be sought through constitutional or other legal protections.³⁷ The scope of Freedom of

²⁵ Section 1, Freedom of Information Act, 2011.

²⁶ <<https://open.lib.umn.edu/communication/chapter/1-1-communication-history-and-forms/>> accessed 12 December 2022

²⁷ US legal Inc, 'Publication Law and Legal Definitions', <<http://definition.s.uslegal.com/p/publication>> accessed 16 December 2022.

²⁸ J. Odoh, 'Journalism and Democracy: Concept of free press' <<http://catarina.udlap.mx/u/dla/tal>> accessed 16 December 2022

²⁹ ibid

³⁰ ibid

³¹ (1990) LPELR-947.

³² N. O. Ogbu, *Human Rights Law and Practice in Nigeria: an introduction, (Enugu, Cidjap, 1999)*181

³³ Section 39(1) however has a proviso to the effect; '...provided that no person, other than the government of the federation or of a state or any other person or body authorized by the president on the fulfilment of conditions laid down by the Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for whatever purpose whatsoever; Momoh v State (1984)4NCLR 269 CA, *Adikwu v Federal House of Representatives* (1981)1 NCLR 21HC

³⁴ (2000) 6 NWLR (pt. 660)

³⁵ Section 39(3) CFRN as amended

³⁶ Section 39(2) ibid

³⁷ J.D. Yakubu, *Press Law in Nigeria, (Ibadan: Malta Press Ltd, 2007)*21

Expression as stated earlier offers citizen the freedom to own any medium for the dissemination of information and this includes social media outlets, newspapers, websites, television, radio etc. thus pursuant to this constitutional guarantee, a journalist cannot be required to disclose his sources of information.³⁸ This freedom was re-emphasized by the Community Court of Justice of the Economic Community of West African States in the case of *Federation of African Journalists (FAJ) & others v The Gambia*³⁹ where the court declared the criminal sanctions imposed on the applicants as disproportionate and not necessary in a democratic society where freedom of press is a guaranteed right under international and domestic instruments. It reiterated the right of persons to own any medium of dissemination of information.

The Limit to Right to Freedom of Expression

The right to freedom of expression, like most other rights, is not absolute. There are recognized restrictions and exceptions to this right; Common limitations relate to libel, slander, cyber bullying, pornography, sedition, incitement, hate speech, classified information, copyright violation, non-disclosure agreements, and the right to privacy, dignity, public security, and perjury. For example, the International Covenant on Civil and Political Rights (ICCPR)⁴⁰ provides that the exercise of these rights carries 'special duties and responsibilities' when necessary 'for the respect of the rights or reputation of others' or for the protection of; national security, public health or morals. The Nigerian Constitution has also provided for circumstances where this right may be restricted or derogated from. The right to freedom of expression could be restricted by a law reasonably justifiable in a democratic society, for the purpose of preventing the disclosure of information received in confidence or for the purpose of maintaining the authority and independence of the courts.⁴¹ Thus with respect to governmental information, any government may distinguish which materials are public or protected from disclosure to the public.⁴² State materials are protected due to either of two reasons: the classification of information as sensitive, classified or secret, or the relevance of the information to protecting the national interest.⁴³ Also, by virtue of *Section 45(1) of the 1999 Constitution*, the right to freedom of expression and some other fundamental rights guaranteed in the Constitution could be restricted or curtailed by any law that is reasonably justifiable in a democratic society; In the interest of defence, public safety, public order, public morality, public health or for the purpose of protecting the rights and freedoms of other persons.⁴⁴ For example, the right to impact information does not allow a medical doctor to disclose the health status of his patient to the public on any account except in exceptional cases which is required for public policy. Another limitation is placed on banks from disclosing bank statement of account of her customer to another individual. The same goes to Lawyers to maintain client confidentiality. Furthermore, the fact that the social media is a platform for imparting information does not allow for the spread of false or distorted information for the purpose of instigating violence or promoting immorality injurious to the public.⁴⁵

Under the Freedom of Information Act,⁴⁶ a public institution has the right to deny an applicant who requests information pursuant to the Act, information that contains trade secrets and financial information that may affect the interest of a person,⁴⁷ information involving confidentiality or privileges',⁴⁸ like research materials of faculty members,⁴⁹ academic qualifications for an employment,⁵⁰ or architects and engineers plans for building constructed with public funds which may compromise security,⁵¹ or an application for information that contains personal information.⁵² In essence, while the Act permits that access to information be made available in online platforms where it can be accessed by all citizens, it also regulates some information which shouldn't be made

³⁸ See *Tony Momoh v. Senate* (1981) 1NCLR 394

³⁹ ECW/CCJ/JUD/04/18.

⁴⁰International Covenant on Civil and Political Rights (ICCPR). <<https://treaties.un.org/doc/Treaties/1976/03>> accessed 6 March 2023

⁴¹*Section 39(3) of the 1999 CFRN as amended*

⁴² See Freedom of Information Act, 2011.

⁴³ See Cybercrimes (Prohibition, Prevention Etc.) Act, 2015.

⁴⁴Section 45 (1) CFRN 1999 as amended

⁴⁵ Cybercrime Act *ibid*

⁴⁶ *ibid*

⁴⁷ Section 15 *ibid*.

⁴⁸ Section 16 *ibid*

⁴⁹ Section 17 *ibid*

⁵⁰ Section 19(a) *ibid*

⁵¹ Section 19(b) *ibid*

⁵² Section 14 *ibid*

available on the internet as it may compromise the security of persons involved or lead to the commission of a crime.

4. The Concept of Right to Privacy

Right of privacy emerged as a common law right in the 18th century and developed through judicial decisions until it was legislated in the 20th century under the European Convention on Human Rights and later integrated into the English law by the Human Rights Act of 1998.⁵³ The right to privacy is shrouded with complexity thus making it difficult to define and determine its scope. In order to establish the right to privacy, common law sought to explore whether the individual could establish a breach of confidentiality.⁵⁴ It is then not surprising that the Nigerian courts being strongly connected to the English common law have found it increasingly difficult to find an adequate definition of the concept. In Nigeria, the right to privacy is one among many of the fundamental human rights guaranteed by the Constitution.⁵⁵ The right to privacy guaranteed by the Constitution entails the right to private life encompassing the right to live in isolation of others, (a reclusive life if you like), the right to protect one's social, interpersonal relationships, (inclusive of sexual and marital relationships) the right of concealment of one's nudity, (body anatomy) from public glare and the right of an individual over his own body (inclusive of what goes in and out of his body).⁵⁶ It follows that the right to privacy implies the right to protect one's body from unauthorized intrusion or invasion. In the case of *Ojoma v State*⁵⁷ the court held the act of invading the house of a native doctor by the police as a violation of his right to the privacy of his person and his home as guaranteed by S.37 of the 1999 Constitution of Nigeria. The right to privacy is essential to the sustenance of a modern democratic society and it is also imperative for individual welfare and well-being.⁵⁸ Despite obvious violations of this right, it is not a well litigated area in Nigeria. This is due to the fact that Nigerians tolerate a lot of things which normally should constitute a violation of their privacy.

5. Scope of the Right to Privacy under the Constitution

The right to privacy is one of the fundamental human rights entrenched in the Nigerian Constitution. Section 37 of the 1999 Constitution provides that: 'the privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.'⁵⁹ It will be right to say that in these days of internet and smart phones, the privacy of data and communication therein are as well guaranteed and protected under this section.⁶⁰ Construing the scope of the right to privacy is not an easy one. This fact was alluded to in the Australian case of *Australia Broadcasting Commission v. Lenah Game Meats Pty. Ltd*⁶¹ where the court stated as follows:

...There is a large area in-between what is necessarily public and what is necessarily private. An activity is not private simply because it is not done in public... Certain kinds of information about a person, such as information relating to health, personal relationships or finances may be easy to identify as private... The requirement that disclosure or observation of information or conduct would be highly offensive to a reasonable person of ordinary sensibilities is in many circumstances a useful practical test of what is private.

The scope of right to privacy covers a wide range of issues such as confidential correspondence, email and internet use, medical history, personal data, eavesdropping, sexual orientation and personal life styles.⁶² The right to privacy may be classified into six components; (i) personal autonomy; (ii) limited access to the self; (iii)

⁵³ This Act came into force in the year 1998.

⁵⁴Ibid

⁵⁵Section 37 of the 1999 Constitution provides that: 'The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected'. See also article 12 UDHR, 1948, Article 17(1) ICCPR 1966

⁵⁶L. Megwara, *The Law and Practice of Human Rights in Nigeria*, (Akure: Olive Printing &Publishing House, 2000)13

⁵⁷ (2014) LPELR-22942(CA)

⁵⁸ Per Justice Cobb in *Pavesich v. New England Life Insurance Company* (1904) 122, Ga. 190, 201.

⁵⁹ 1999 CFRN as amended

⁶⁰ Prior to the entrenchment of fundamental rights in the Nigerian Constitution, Nigeria being a common law country did not have an effective legal regime for the protection of the rights of persons. At common law, the only existing actions were; trespass, copyright infringement and probably passing off. These could not have granted an effective remedy to victims of privacy rights violations. Also, modern developments like telephone tapping and hacking would not have been remedied had this provision not been included in the Constitution. See, J.O Akande, *Introduction to the Constitution of Federal Republic of Nigeria*, (Lagos: MIJ Publishers, 2000)

⁶¹ [2001] 185 ALR 1.

⁶² Y. Olomjobi, *Right to Privacy in Nigeria*, <<https://ssrn.com/abstract=3062603>>accessed 6 December 2022.

confidentiality; (iv) the management of personal information; (v) the right of individuality; and (vi) relationship.⁶³ It follows that the right to privacy implies the right to protect one's body, one's way of life, one's information, and one's family from unauthorized intrusion or invasion. Simply put, the right of privacy is considered as any activity that is intended to be excluded from the knowledge of others. This right as guaranteed in the Constitution may as well be divided into two arms, namely; the right to private life and the right to the privacy of home and correspondence.

Right to Private Life

The right to a private life is connected to human dignity and personal autonomy as it derives from the 'right to be let alone'.⁶⁴ It is the right of people to live to the exclusion of the public and the ability to control the boundaries of public interference.⁶⁵ This aspect of privacy right is constantly threatened by modernity and globalization; with the world shrinking to a global village and the complexity of life, it seems that the individual is perpetually connected to the world.⁶⁶ It is not surprising that the individual has become more sensitive about his/her private life and in many ways attempts to set boundaries where he/she 'wants to be let alone. It implies the exclusion of the public eye from prying into an individual's affair.⁶⁷ Another crucial aspect of this right involves the right to protect one's image and personality and to have unfettered access to control one's zones of exclusivity, space and confidential information.⁶⁸ The right to privacy lies within the realm of self-ownership.⁶⁹ It is the moral liberty of doing what an individual deems fit to be done with his/her individualism and keeping others outside the sphere of his/her self-ownership. In the case of *Barber v. Time Inc.*⁷⁰ the plaintiff suffered from a disease which makes her to eat voraciously without it affecting her weight. The defendant published an article in its magazine which referred to the plaintiff as a 'starving glutton'. In an action brought by the plaintiff for breach of right to privacy the court held that her right of privacy was violated by the publication which discloses the identity of the plaintiff. Inherent in the right to privacy is the right of an individual to choose which treatment a hospital should give him, whether to undergo surgery or not, which type of medication that must be used in his treatment and the right to refuse blood transfusion.⁷¹ Also, a person has the right to choose what he wants to be uploaded on the media/social platforms/Internet. It also involves the right to establish and develop relationship with other human being.⁷²

Privacy of Home and Correspondence

Section 37 of the Constitution guarantees the right of every person to his home and correspondence. Homes, correspondence, telephone conversations and telegraphic communications of individuals are protected under this section and are inviolable.⁷³ Personal data and information posted in the internet and intended to be restricted from the public view and so restricted are so protected. By virtue of this, it is illegal and unconstitutional for the police or any other security official to search any person's residence without lawful warrant, they have no right to search any individual's body on the road, seize and search a person's telephone etc. To invade a person's home or correspondence, the authorities must obtain a warrant. It is unconstitutional to carry out surveillance activities in and around a person's home or over his telephone and other correspondences except such is justifiable under section 45 of the 1999 Constitution. Another extent of the right of privacy worthy of examination is as it relates to Anton Piller Orders.⁷⁴ Anton pillar order is an injunctive relief available mostly in

⁶³ Solove, *Understanding Privacy* (Cambridge, MA: Harvard University Press, 2008)21

⁶⁴ Referred to as such by Justice Louis D Brandei in case of *Olmstead v US* 277 US 438 (1928).

⁶⁵ M. Miller, 'Dignity as a New Framework, Replacing the Right to Privacy' 30 T.

⁶⁶Ibid

⁶⁷ O. Ogbu, *Human Rights Law and Practice in Nigeria*, (Enugu: Snaap Press Ltd, 2013) 280-281

⁶⁸Ibid in *Melvin v. Reid* (1931)1/2 Cal. App. 285, the plaintiff was a prostitute and was tried by a California Court for murder but was acquitted. Thereafter she changed her way of life. After many years, her past life was exposed in a film. In a suit filed by her on the ground of breach of privacy the court held that she was entitled to damages for violation of her right.,

⁶⁹ Lloyd Megwara, n73

⁷⁰ (1942) 348 MO 1199

⁷¹ See, *Medical and Dental Practitioner Disciplinary Tribunal v. Okonkwo* (2002) AHRLR (NgSC 2001) where the court exonerated medical practitioner of professional negligent because patient lawfully exercised his right to privacy and religion by refusing blood transfusion.

⁷² *Niemietz v. Germany* (1992) 16 EHRR 97

⁷³*Ezeadukwa v Maduka* [2008] 8 NWLR [Pt. 1038] 338.

⁷⁴ Took its name from the English case where it was invented *Anton Pillar v Manufacturing Process Ltd*, (1976); It is an order of court which permits the plaintiff or his agents and his solicitors to gain access to the premises of the defendant and conduct a search for any evidence of infringement of copyright that may be found there. See, O. Ogunkeye, *The Legal Remedies for Copyright in E. E. Uvieghara, Essays in Copyright Law and Administration in Nigeria*, (Year Books 1992)110.

intellectual property proceedings.⁷⁵ Questions have been raised as to whether it is compatible with the right to privacy under section 37 of the 1999 Constitution. This is because it allows the plaintiff to conduct search in the homes and offices of the defendant without putting him on notice.⁷⁶ However, Lord Denning justifying the order had stated as follows: 'Many frauds or other wrongs have been committed in secrets; the offenders have the papers or things in their possession. If forewarned, they will dispose of them. To prevent this, the court has had recourse in the flexible remedy of injunction.'⁷⁷ Such court order however comes within the permissible derogation under the Constitution as we shall discuss hereunder.

The Limit to the Right of Privacy

However, just like every other right, the right to privacy is not absolute.⁷⁸Section 45 provided for some derogation. This derogation section of the Constitution received judicial endorsement in the case *Ojoma v State*⁷⁹ where the court further stated that for any act of invasion of privacy to be legitimate, it must be carried out under any of the restrictions stated in section 45, that is to say in the interest of; defence, public safety, Public order, Public morality, Public health; or to protect the rights and freedom of other persons.

6. Conclusion

This work has extensively analysed the meaning and scope of the rights to freedom of expression and privacy enshrined in the Nigerian constitution. While the rights of freedom of expression is a well-developed right in Nigeria, it appears that the scope of right of privacy remains hazy as a result of dearth of litigation in this field of human right. This is notwithstanding the fact that infraction of privacy right is everyday occurrence in Nigeria. We therefore recommend the enactment of legislations that will guarantee specific privacy rights. just like the enactment of the Freedom of Information Act which gives impetus to the protection of rights to freedom of expression, a pro- privacy legislative provisions will expand and define the scope of privacy right. Such pro-privacy legal framework for instance can provide for a legal authority that is competent to authorise the use of surveillance technology. The legal authority should be entrusted upon the court of law in order to separate authorisation and executory duties and to create for checks and balances within the system. It can as well indicate the potential specific privacy infringement that may be derogated. it will also be essential that the legal framework clearly delineate the crime for which the use of such technology is allowed. The severity of the crime or the gravity of the conduct being sought to be curbed should be a prima facie indicator for which potential privacy infringement and digital surveillance is allowed. It may also be required that before the use of digital surveillance by security agencies consideration must be given to urgency, reasonable needs and the general interests of the ongoing investigation. For example, the standard of need ought to be specified for instance, the requirement to disclose probable cause or reason to believe that such intrusive act is necessary for the purpose of the investigation. Further the legislation must specify the object of the investigation in order to narrow the scope of power and delineate the relationship between the suspect and the crime and the probability that the surveillance is able to target only the suspects without infringing on the privacy rights of non-suspects. for example, the power to intercept voice communication differs from the power to intercept all forms of communication. In legislating a criminal justice privacy legal regime there is need for subsidiarity. the subsidiarity will take care of the extent which such power may be used in comparison with other less intrusive powers. In all the Nigerian Constitution has guaranteed the rights of expression and privacy. Individuals are free to assert their rights and as the scope of these rights are tested in the court of law. Their scope will continue to be defined and made more meaningful for the enjoyment of all.

⁷⁵ Section 22 of Copyright Act, Cap.C28 LFN 2004

⁷⁶Chief Afe Babalola, SAN admitted that section 22(1) of the Copyright Act which empowers the court to grant Anton Pillar Order conflicts with section 37 of the 1999 Constitution. The learned silk however noted that the provision is saved by the by section 45 of the 1999 Constitution which qualifies the right by making it subject to any law which is reasonably justifiable in a democratic society for the purpose of guaranteeing the freedom and rights of other people. Afe Babalola, *Injunctions and Enforcement of Orders*, (Ife: OAU Press, 2004) 141, see also Peter Ocheme, *The Law and Practice of Copyright in Nigeria*, (ABU, 2000)99-104

⁷⁷ Lord Denning, *Due Process of Law*, (London: Butterworths, 1980)125

⁷⁸The Constitution under section 45(1999 Constitution of the Federal Republic of Nigeria, as amended) contemplates the restriction on and derogation from fundamental human rights under the chapter. The section reads:

'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 or other persons.

⁷⁹*Ojoma v State* (n 68).