

Balancing the Bounds of Tamed Freedom in the Freedom of Information Act, 2011: Contempt and Subjudice as Anti-thesis for Judicial Correspondents in Nigeria

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ABSTRACT

The paper examines several matters arising for judicial correspondents in the light of the Freedom of Information Act (FOI Act) with special bias towards highlighting the key indices for ensuring a fair and balanced reportage of judicial proceedings in Nigeria by Judicial correspondents. It is restated that whilst the purpose of the Act is to make public records and information more freely available to the public, including all and sundry, it is not a free-for-all avenue to share fake news, untrue reports, manipulative or misleading reports of facts especially from the court rooms or to report complete falsehood to sensationalise news to the general public. Thus, whilst the Act seeks to protect serving public officers against any adverse consequences from the unauthorised disclosure of certain kinds of official information and establish procedures for the achievement of these purposes, it is posited that it should equally be used to enhance the capacity of news reporters to adequately and effectively give fair, balanced, unbiased and objective reportage of news and information, especially from the courtrooms. The paper notes that the Act will enable citizens to hold the government accountable in the event of misappropriation of public funds or failure to deliver public services on one hand, whilst it will aid judicial correspondents give timely, fair and unbiased reports, even though the Act provides that a public institution may deny an application for information that is subject to the following privileges – legal practitioner-client privilege; health workers- client privilege; journalism confidentiality privilege; and any other professional privileges confidently by the Act.¹ The paper further assesses amongst other things, the extent of the implementation of the FOI Act 2011, the challenges confronting its applicability, the right of access to government (executive and judicial) information; the role of the FOI Act in positively affecting effective journalistic practice, especially on judicial reporting, as well as highlighting the prospects of the Act. The paper further contends that Freedom of Information is a fundamental indicator of economic development and progress, a step in the right direction towards stimulating effective journalism practices towards fair, balanced, accurate and objective judicial reporting, even though not all access can be had to all government or court-held information in spite of the passage of the Act. The paper recommends that judicial correspondents should go beyond just being aware

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¹ Section 16, Freedom of Information Act, 2011.

of the passage into law of the FOI Act 2011, but be well acquainted with relevant provisions of the Act, get trained, towards the effective and balanced reportage of judicial information, continuous and effective implementation of the FOI Act, especially as a strengthened Freedom of Information regime will enhance a fair and objective reportage of judicial pronouncements.

Keywords: *Freedom, Information, Implementation, Media, Contempt, Subjudice, Judicial Proceedings, Reportage, Challenges, Nigeria.*

1.0 BACKGROUND

The Media is one social institution that requires freedom to effectively function in any given functional society. It plays a crucial role to society, serving as the watchdog of the society, and providing constant stream of information, education and socialization. Soeze² elucidates that the media as the watchdog of the society has the responsibility of keeping the public informed, educated and socialized. This involves making people know the day-to-day activities and dealings of those in governments whether military or civilian, including effectively reporting judgments held in the courtrooms. In addition, the media also helps to ensure that the government knows the feelings and yearnings of those it governs, but for the media to perform these functions effectively and efficiently, then there must be freedom of the Press. It was against this context that Ogunkwo in Suntai and Vakkai's study³ asserted that "The mass media ought to play the role of gathering, analyzing and disseminating news and information about people, events, court sitting reports, judgments and issues in society which could be in form of news, commentaries, editorials, advertorials, news analysis, profiles, columns, cartoons, pictures or magazine feature via mass communication medium such as radio, television newspapers, magazine, digital TV, face book, you tube, 2go and other numerous social media to a heterogeneous audience simultaneously or about the same time."⁴ It is instructive to note as judicial correspondents that Journalism sets agenda, organizes public debates and discussions, and interprets issues to put them in proper perspectives to make meaning to people. Through these roles, journalism not only educate, inform and socialize; it also confers status, values and significance to issues, thereby serving as the mouth-piece and defender of the voiceless and the oppressed in society.⁵ Since the emergence of modern journalism in Nigeria in 1859 according to Aliede,⁶ it has been struggling to achieve the needed freedom that would enable it discharge its social responsibilities creditably. The journalistic task

² Soeze E, An Evaluative Study of the Freedom of Information Act on Journalism Practice in Nigeria in A.D Oberiri *NMMC Journal Volume 53*, 2016 <<https://www.core.ac.uk/pdf>> Accessed 8th July, 2023.

³ Suntai and Vakkai 2014, Media and Ethical Issues in Photo-Journalism, <<https://www.researchgate.net/3257.html>> Accessed 8th December, 2022.

⁴ *Ibid.*

⁵ Sambe, 2008 Mass Communication Edo University Lecture Series, P.28 <<https://www.edouniversity.edu.ng/pdf>> Accessed 7th August, 2023.

⁶ Aliede, 2003, Mass Media and the Nigerian Political Class: Partners in Progress or Strange Bedfellows? *Journal of Mass Communication*, Igbinedion University, Okada, IJMC Volume 5, 2020, P.1.

of gathering and disseminating news has not been an easy one from time immemorial in Nigeria, largely due to limited freedom occasioned largely by government firm grip and control of the mass media. It was on this premise that it was noted that “relationship between the mass media and the government in Nigeria has been a cat and mouse affair.”⁷ This implies that, the free flow of information has been trampled upon. Journalists have had no access to vital information, let alone the masses, especially in times past. In struggling to get detailed, factual and balanced reportage from government agencies, including the courts, journalists have had to continue to nose around for information, relying on hearsays and conjectures, exposing themselves to high levels of risk that got them victimized, jailed, tortured and sometimes killed.⁸

It is stated that in a participatory democracy, the roles of the public, the media and the judiciary are key to democratic sustainability. The public determines the direction of governments through elections, public protests and acting through pressure groups, shapes governments’ policies. The media usually supplies the public with the information that forms the basis of the decision on whether to support the government (including the judiciary) or not, and it also, as a primary stakeholder, either directly influences the government with its reports or opinions on government policies and laws. Furthermore, the public and the media are generally speaking gratuitous social ombudsman over the activities of the judiciary. They check the excesses of the judiciary and publicize their opinions on their performance – the presence of the public and the media in court, for instance, serves as a check on the likelihood of biased trials or compromise on the part of the judicial officers concerned. This helps strengthen the system or entrench the concept of accountability in the dispensation of justice.⁹

The independence of the judiciary,¹⁰ press freedom¹¹ and the freedom of speech accorded the public¹² by the 1999 constitution are conjunctive rights and freedoms, with corresponding duties on all “rights-holders.” There can be no independent judiciary without a corresponding free press and a public that is entitled to the right to freedom of speech. The purpose of this, if exploited in relation to the attainment of justice and accountability across board, would be to establish and sustain a system of checks on the excesses of public institutions, including the judiciary, (the courts). Thus, it is restated that the independence of the judiciary needs to be constantly kept in check so as to protect against all acts that would amount to travesty of justice. Public access to court trials and media report of judicial proceedings as effectively

⁷ Uche L.U, Mass Media, People and Politics in Nigeria, <<https://www.worldcat.org>title>oclc>> Accessed 7th May, 2023.

⁸Ezeah, G.H 2005, Media Ownership, Control and Development in Nigeria. <<https://www.researchgate.net3257.html>> Accessed 8th July, 2023.

⁹Lugard B.S, The Role Of The Public And The Media In Civil Court Proceedings In Nigeria. <<https://www.researchgate.net3257.html>> Accessed 8th June, 2023.

¹⁰ Sections 6 and 17(1)(e) of the 1999 Constitution of the Federal Republic of Nigeria.

¹¹ Sections 22 and 39 of the 1999 Constitution of the Federal Republic of Nigeria.

¹² Section 39 (1) of the Constitution of the Federal Republic of Nigeria.

carried out by judicial correspondents, give a sense of confidence to the public on the prospect of free and fair trials, especially where such proceedings are reported in the mainstream media. The public access to civil judicial proceedings and media report of same serve as a check on the likelihood of biased trials on the part of the judicial officers. Undeniably, finding an acceptable balance among free press, fair trials, and the personality interests of trial participants is a difficult task in every legal system.¹³ The three check the activities of one another and vice versa.

In adding to the jurisprudence of the historical struggle for a free and informed society, Malayo¹⁴ asserted that over the years, the agitation for the emergence of a free press society has been on the front burner of national discuss, especially among journalism practitioners in Nigeria with no apparent end in sight till the promulgation of the Freedom of Information Act in 2011. This owes largely to the fact that the expediency of having a legislation that guarantees a high level of press freedom cannot be ignored, apparently against the backdrop of the attendant positive effect it could have on any given society. It is thus noted that even before the passage and subsequent signing of the Freedom of Information Bill into law, there were strong views that the Act was going to facilitate journalism practice in Nigeria and assist with prompt reporting and unbiased judgment reportage. Even though the Act is not a journalism law, it is posited here that journalists, including judicial reporters were at the fore-front in the agitation for its passage; Nigeria Union of Journalists (NUJ) and Media Rights Agenda (MRA) were among the three civil society organizations that began the campaign of a law of this nature.¹⁵ This is not surprising as the FOI bill was presented to the National Assembly two times by journalists: Tony Anyanwu and Nduka Irabor for the first time and Abike Dabiri for the second time.¹⁶

2.0 ABOUT THE FREEDOM OF INFORMATION ACT 2011

It is stated that Nigeria's Freedom of Information (FOI) Act was signed into law on May 28, 2011, after arguably Nigerian legislature's longest legislative debate. The debate lasted for over 12 years. The law was ostensibly passed to enable the public freely and timeously access government information, in order to ensure transparency and accountability in governance. The bill was developed by the Freedom of Information Coalition, which is a network of over 180 civil society organisations in Nigeria, comprising civil rights, grassroots and community-based Non-Governmental Organisations, (NGOs) campaigning to herald a Freedom of Information (FOI) Act to ensure accountability and transparency in public

¹³Giorgio Resta, "Trying Cases in the Media: A Comparative Overview" (2008) 71(31) *Law and Contemporary Problems* 65.

¹⁴Malayo A.K, An Evaluative Study of the Freedom of Information in Nigeria. <<https://www.researchgate.net/3257.html>> Accessed 18th August, 2023.

¹⁵ The FOI Coalition of 2003.

¹⁶ Ojebode Ayobami, Nigeria's Freedom of Information Act: Provisions, Strengths and Challenges, *African Communications Research*, Vol. 4, No 2, (2011).

institutions in Nigeria.¹⁷ The FOI Act aims to make public records and information more freely available and to protect public records and information, in accordance with the public interest and protection of personal privacy. It also seeks to protect serving public officers against any adverse consequences from the unauthorised disclosure of certain kinds of official information. It is noteworthy that the Act further regulates conflicts between its provisions and those of other enactments, for instance, the Criminal Code, Penal Code and the Official Secrets Act that prescribe criminal penalties for actions connected to the disclosure of information, thus drawing an interesting balance between maintaining the oath of secrecy and confidentiality by public servants with the need to disseminate to the public freely any information of interest to. The Act also enables citizens to hold the government accountable in the event of the misappropriation of public funds or failure to deliver public services and maintaining press freedom as an internationally acceptable human right of the Nigerian citizenry.

Against this information, the need for a Nigeria Freedom of Information Act (FoIA) had been emphasized by many media scholars. For instance, Ogbondah¹⁸ noted that prior to its enactment that the National Assembly should enact or guarantee the press and members of the public the right of access to government-held information including computerized records of government agencies and the courts. Similarly, the Media Right Agenda at some point, wrote thus about the FOI Bill when passed into law as an Act of Parliament, that it will make public record and information in the custody of any government (Executive, Legislative and the Judiciary) or at the Federal, State or Local, available to every person in Nigeria. Accordingly, the right of access of official information, which the Bill grants will be legally enforceable; with the Freedom of Information Act, it will be possible to find out from Governors, Council Chairmen, Ministers, the President or other public officers, details of any transaction conducted in those offices. The law, is believed will give protection to public officers who discover the perpetration of a fraudulent act and reveal same, thereby discouraging corruption among public office holders on one hand and discourage the incidences of fake news, where false news is peddled in the absence of real news on the other hand.¹⁹

It was thus on this premise that Ogbondah stated that a democracy works best when the people have all the information that the security of the nation permits, no one should be able to pull curtains of secrecy around decisions which can be revealed without injury to the public interest.²⁰ Curiously, it is submitted that the challenges posed by anti-press laws that inundate the Nigerian constitution, have made the process of news-sourcing, gathering and dissemination, seemingly impossible for journalism, most especially correspondents in filing in their reports without fear,

¹⁷ Other sponsors include the Civil Liberties Organization (CLO), the Nigerian Union of Journalists (NUJ), etc.

¹⁸ Malayo. *supra*.

¹⁹ Ojebode, *supra*.

²⁰ Malayo, *supra*.

favour or bias. This was well codified by the Nigerian Guild of Editors, NGE²¹ when it observed that we are conscious of the responsibility of the press, but we cannot perform our role creditably unless the shackles wrought by repressive laws are erased from our law books, the realization of this objective is contingent on the freedom of the press to function without any hindrance.²²

Unfortunately, the media being the fourth estate of the realm and the watch-dog of the leaders and the led cannot successfully carryout this sacrosanct function, without the ample freedom to seek, gather and disseminate information. Taking a cue from the functional aspect of the freedom of Information Act, Yalaju²³ averred that: “the right of access to information is aimed at strengthening the media by securing and protecting freedom of expression and the press particularly.” It is against the above grounds that the enacted Freedom of Information Act 2011 seeks to make information more available to Journalists and judicial correspondents in the same way it would be available to every other person who might request any such information. It is also expected that with the law in effect, the media would have access to more accurate information, including enhancing access to correct, fair, unbiased and accurate court reports and judgments, true news, not sold to political biases and prejudices or sensational and otherwise patronizing or news capable of unduly heating up the polity, thus improving the quality of media practice in Nigeria in general and the judiciary in particular.

3.0 AIM OF THE PAPER

The primary objective of this paper is to critically review and assess the content and application of the FOI Act in relation to its effect on judicial correspondents’ capacity to achieve a free, fair, unbiased, balanced and accurate reporting of judicial proceedings in Nigeria, whilst the overall objective of this paper is to determine the extent to which the Freedom of Information Act can assist judicial correspondents in their media practice towards achieving a fair, balanced, accurate and objective reporting of news and information generally and addressing the various challenges affecting the administration of the Act in relation to the correct representation of facts and reports from the courts and government agencies.

²¹ Nigerian Guild of Editors’ Reports. (2001:96).

²² Nigerian Guild of Editors’ Communique on the Freedom of the Press, 2020.

²³ Yalaju A, 2001, Assessment of Press Freedom in Attaining True Democracy in Nigeria. <<https://www.researchgate.net/3257.html>> Accessed 25th June, 2023.

4.0 STRUCTURE OF THE PAPER

This paper is divided into nine (9) sections including the background, information about the Freedom of Information Act 2011, the aim and objectives of the paper, the structure of the paper, international affirmation and proclamation of the right to information and press freedom as fundamental human rights' rationale; the role and relevance of the media (judicial correspondents) to democracy, justice and fairness, the applicability or otherwise of the Act; the limitation and the challenges of the Act; an examination of the Freedom of Information Act 2011 in light of effectively and correctly reporting judicial proceedings by judicial correspondents; the conclusion and lastly, the recommendations.

5.0 SIGNIFICANCE OF THE PAPER

This paper is significant as it attempts to reveal the point of convergence between the effective administration and running of the Freedom of Information Act 2011 and effective, balanced and unbiased media reportage of judicial proceedings. Aside its immense potency to contribute to the body of knowledge, this paper also provides a variable insight into the otherwise unexamined provisions of the Act, thereby creating awareness about the law and its attendant prospects, including exploring its capacity to enhance a robust media report of judicial proceedings. It will be a veritable resource material for judicial correspondents in particular, journalists, editors, lawyers, judges and judicial officers, specialized groups, the larger Nigerian society, government, etc. in their collective quest for good governance, eradication of misleading reports and fake news, national progress and development and enthronement of transparency in government.

6.0 THE INTERNATIONAL AFFIRMATION OF FREEDOM OF INFORMATION AS A HUMAN RIGHT

It is contended that Freedom of Information refers to the right, which the public in any society has to access information held by government officials and institutions. It is a fundamental human right established under international Law. This right is proclaimed in Article 19 of the Universal Declaration of Human Rights (UDHR) and protected in international human rights treaties, such as the International Covenant on Civil and Political Rights²⁴ (ICCPR) and the African Charter on Human and Peoples' Rights.²⁵ (ACHPR).

Article 19 of the ICCPR provides that everyone shall have the right to hold opinion without interference. This seems to suggest some measure of absoluteness to the freedom of expression, which in reality has some derogation like the tort of defamation. Thus, everyone shall have the right to freedom of expression: this right

²⁴ ICCPR is a multilateral treaty adopted by the United Nations General Assembly on 16 December 1966, and came into force on 23 March 1976.

²⁵ This is an international human rights instrument that is intended to promote and protect human rights and basic freedoms in the African continent. It came into effect on 21 October 1986.

shall include freedom to seek, receive and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of choice. In addition, Article 9 of the African Union Convention on Preventing and Combating Corruption²⁶ requires all state parties to adopt such legislative and other measures to give effect to the right of access to any information that is required to assist in the fight against corruption and related offences. This is relevant as every judicial proceeding, most especially on breach of public trust and corruption ought to be brought to the attention of the public whose resources were frittered away in the first place.

Also, Article 13 of the United Nations' Convention against Corruption²⁷ requires governments to ensure citizen participation in anti-corruption measures through: (a) enhancing the transparency of and promoting the contribution of the public to decision-making processes; and (b) ensuring that the public has effective access to information. Access to information held by public authorities is a fundamental element of the right to freedom of expression as provided under Section 39 of the Constitution of the Federal Republic of Nigeria.²⁸ Without doubt, this right is vital to the proper functioning of any country's democracy. Access to information is an important aspect of the universal guarantee of freedom of information, which includes the right to seek and to receive as well as to impart information, thus, it is contended that this extends to the right of the public to have access to any judicial proceedings of public interest.

It is further noted that access to information is one of the fundamental requirements of having a viable democracy in any country. The tendency to withhold information from the people at large should thus be limited and the quest to refrain from reporting public interest litigation should be discouraged at all levels.

According to Abdul Waheed Khan:²⁹

*'The concept of true flow of information and ideas constitute the nucleus of democracy and is also critical to the respect for Human rights. Without the right to freedom of expression, which incorporates the right to seek, receive, and impart information and ideas, the right to vote is undermined, human rights abuses are perpetrated in secret and it becomes impossible to expose corrupt and inefficient governments. Therefore, the essence of free flow of information and ideas is predicated upon the truism that public bodies hold information not for themselves but on behalf of the public. If public bodies with a vast of information hold them in secret, the right to freedom of expression, guaranteed under international law in many constitutions and other extant law would be seriously undermined.'*³⁰

²⁶ (Adopted by the 2nd Ordinary Session of the Assembly of the Union in July 2003).

²⁷ (Adopted by Resolution 58/4 of the General Assembly of the United Nations in October 2003).

²⁸ Cap C23, Laws of the Federation of Nigeria, 2004.

²⁹ Assistant Director-General for Communication and Information of UNESCO.

³⁰Forward to Toby Mendel's book on *Freedom of Information: A Comparative Survey*<<http://portal.unesco>.

Public institutions in this case will include the judiciary, including the court proceedings which should ordinarily be public records in the first place. It is reiterated that information dissemination, which is the right to receive and impart information without any inhibitions or restraint, has remained the major need of every society in a bid to ensure lofty ideals of democracy. Right to receive and impart information without restraint is commonly referred to as 'freedom of information' or 'freedom of expression and the press.' Blackstone³¹ describes 'freedom of the press' as the liberty of the press consisting in laying no previous restraints upon publication and not in freedom from censure for criminal matters where published. Every man has the undoubted right to lay what sentiment he pleases before the public. . . to forbid that is to destroy the freedom of the press, but if he publishes what is illegal or mischievous, he must face the consequences of his own temerity.

Article 19 of the United Nations' Declaration of Human Rights further provides as follows: "everyone has the right of freedom of opinion and expression, this right includes freedom to hold opinion without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers."³² It was the reason the Late sage, Chief Obafemi Awolowo, former Premier of Nigeria's Western Region, stressed the importance of press freedom when he opined³³ thus: Freedom to know the truth is the first among all freedoms. To know the truth, and to disseminate untruths to the ignorant, or to disseminate news carelessly as to whether it is true or false, is the most heinous of all sins in a democracy. Truth and liberty are twin sisters. Where there is truth, there is liberty.³⁴ Thus, false judicial proceeding report is evil and inimical to democracy, truth and justice.

Under the Constitution of the Federal Republic of Nigeria,³⁵ freedom of expression and the press is considered a fundamental and inalienable right. Section 39³⁶ provides as follows:

- (a) every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference;*
- (b) Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information ideas and opinions.*

[org/ci/en/files/26159/12054862803freedom_information_en.pdf/freedom_informati_on_en.pdf](https://www.civilrights.org/ci/en/files/26159/12054862803freedom_information_en.pdf/freedom_informati_on_en.pdf)> Accessed 28th December, 2022.

³¹ T. Cooley, *Blackstone Commentaries on the Laws of England* (2nd Revised Edition 1872) 151-152.

³² Article 9 of the African Charter on Human and Peoples' Rights, Cap A9, Laws of the Federation of Nigeria 2004 has a similar provision.

³³ Awolowo O., 'The press in the service of the state' *Voice of Reasons* p. 174-175.

³⁴ *Ibid.*

³⁵ CFRN 1999 (as amended).

³⁶ *Ibid.*

However, section 39(3)(b) provides *inter alia* that nothing in the section shall invalidate any law that is reasonably justifiable in any democratic society with respect to certain issues concerning government security services or agencies established by law.

Section 22 of the constitution further provides that the press, radio, television and other agencies of the mass media shall at all times be free to uphold the responsibility and accountability of the government to the people. It should be noted that, by virtue of section 6(6)(c),³⁷ judicial powers do not extend to the provisions of this section.

The constitution makes it abundantly clear that every person has the right to receive and disseminate ideas and information. The French philosopher,³⁸ Voltaire, underscored the importance of the right to freedom of expression thus: "I may not agree with what you say, but I will defend to the death your right to say it." It is important to note that an essential ingredient of press freedom is free and unrestricted access to information particularly from government agencies, the courtrooms, ministries and parastatals.

Lord Denning emphasised the aforesaid in *British Steel Corporation v Granda Television Ltd.*,³⁹ when he held as follows:

'The public has a right of access to information, which is of public concern and of which the public ought to know. The newspapers are the agents, so to speak, of the public to collect that information and to tell the public of it. In support of this right of access, newspapers should not in general be compelled to disclose their sources of information. Neither by means of discovery before trial. Nor by questions or cross-examination at the trial. Nor by subpoena. The reason is that, if they were compelled to disclose their sources, they would so be bereft of information, which they ought to have. Their sources would dry up. Wrongdoing would not be disclosed. Charlatans would not be exposed. Unfairness would go unremedied. Misdeeds in the corridors of power, in companies or in government departments would never be known-Investigative journalism has proved itself as a valuable adjunct of the freedom of the press.'

In addition, commenting on the significance of unfettered access to information by members of the fourth estate of the realm and the public at large, Patrick Henry⁴⁰ stated that:

³⁷ *Ibid.*

³⁸ Cited in *Mass Comm Law* by Amber Neito & John F. Schmitt, Rowman & Littlefield Publishers Inc, Lanham, Maryland, USA, 2005, P. 14.

³⁹ (1981) 1 All ER 417 at 441.

⁴⁰ His comments at the debates preceding the adoption of the United States Constitution in 1775.

*'The liberties of a people never were, nor ever will be, secure, when the transactions of their rulers may be concealed from them... I am not an advocate for divulging indiscriminately all the operations of government, though the practice of our ancestors, in some degree, justifies it. Such transactions as relate to military operations or affairs of great consequence, the immediate promulgation of which might defeat the interests of the community, I would not wish to be published, till the end which required their secrecy should have been effected. But to cover with the veil of secrecy the common routine of business, is an abomination in the eyes of every intelligent man...'*⁴¹

6.1 EVALUATING THE ROLE AND RELEVANCE OF THE MEDIA (JUDICIAL CORRESPONDENTS) TO JUSTICE AND FAIRNESS

It is expedient to note that access to information from government bodies is essential to the media. Banisher⁴² admits it when he says that “without an ability to seek and gather information from government, including all her institutions and the courts, the media is hampered in its ability to gather reliable information. In consequence, the society is harmed since important actions of government are not available to public scrutiny.”⁴³ In every free democratic society, the mass media ensures that the government is accountable to the people by providing information of essence and relevance. Banisher equally advocates that information based on foreign policy issues, the economy, education and civic rights need be made available to the people so as to avail them the opportunity to better understanding government, its direction, role and impact on their daily lives. This commitment is based on “ethics and morals, upon which the media is obliged to be honest, sincere, critical and give laurels where and when expedient.

It is noted that most countries keep track neither of actual numbers of requests nor of the users of their Freedom of Information laws. This is why it was asserted that “in those that do, journalists are not the largest users of the Freedom of Information laws; in general, they make up only 10% to 20% of those making the request. Most requests are from individuals who are seeking information relevant to their daily lives, such as schools or development.”⁴⁴ This however, contradicts the insinuations from our parliamentarians that the FOI Act is a media Act purported to empower the press so as to increase their terrorisms and quest for the truth to be leaked to the general public. A study to find out the history of Freedom of Information Acts (FoIA) in Australia, United Kingdom and United States of America shows that while citizens, groups, lobbyists, civil

⁴¹ Justice William O. Douglas, *The Right of The People* (Pyramid Books NY) 52.

⁴² *Ibid.*

⁴³ The Government and the Media in Perspective. <<http://www.osce.org/form>> Accessed 17th August, 2023.

⁴⁴ *Ibid.*

servants, academic and others campaigned for Freedom of Information, the mass media in the three countries generally proved reluctant to push for reform. From the perspective of the leaders and parliamentarians, mass media would appear to gain the most from the Freedom of Information Act; but from the perspective of the media in those countries, making government more accessible to the public threatened their professional status and their exclusive relationships with politicians. However, the study did note that the case was less in America, because the American Association of Newspaper Editor did advocate the Freedom of Information Act.⁴⁵

In any given society, the role of the mass media is distinct and enormous. It is the duty of the media as the watchdog of the society to comment upon and constructively criticize all individuals and institutions whose activities have a bearing on public interest. According to Lasswell, the mass media perform three major functions: surveillance of the environment, correlation and transmission of social heritage.⁴⁶ Charles Wright, thus adopted the Lasswellian functions but added entertainment which he thought, was missing. The expansion continues and gives the media a more embracing role in society including: News and information dissemination; Analyses and interpretation of social events; Education of the masses; Persuasion and public relations; Advert and sale of products (goods and services); Entertainment of the people, etc.⁴⁷

Thus, the role of the media in the society justifies the fight for the free flow of information. This was why Banisher⁴⁸ outlined three essential requisites of democracy to include: “a well-informed citizenry, participation of the citizens in the day-to-day governance of the society and accountability to the citizens of those who exercise power on their behalf”. He further argued that unless citizens have adequate and accurate information on all the issues and problems confronting them, they will be unable to make enlightened decision on them and they will be unable to comprehend the day-to-day working of the government and to participate in it. Answering the question: who can furnish such information to the people at large? Banisher submits that the Media reaches the largest section of the society directly or through secondary leadership and viewership, regularly, constantly almost every hour of the day, and also intimately.

Consequently, it is the media which enables the people to perform their three-fold functions in democracy: to participate in the day-to-day affairs of the society, to make informed decisions and to keep a check on the authorities who rule on their behalf. The media also provide debates and discussions which is

⁴⁵ Dominick A, Evaluating Press Freedom in Attaining True Democracy in Nigeria. <<https://www.researchgate.net/3257.html>> Accessed 16th June, 2023.

⁴⁶ *Ibid.*

⁴⁷ Lugard B.S, The Role of The Public and the Media in Civil Court Proceedings in Nigeria. <<https://www.researchgate.net/3257.html>> Accessed 15th December, 2022.

⁴⁸ *Ibid.*

absolutely necessary in any democracy. The media can equally act as a channel between the people and the authorities. The grievances, the needs, the problems, the hopes and aspirations of the authorities may in turn be conveyed by the media to the people. The most important role of the Freedom of Information laws is to help establish the presumption that information should be made public and that older laws favoring secrecy should be over-ruled. This improves the atmosphere for access by the media practitioners and makes it easier for them to obtain information. It will also help to promote justice and fairness in the activities of governments.

It is further submitted that affirmative disclosure provisions are important to keep track of the activities of government bodies and to ensure that one type of media (such as government-owned or government controlled) is not given exclusive access to information, while less favoured media are excluded. It is pertinent to note that the proceedings in the legislature including the bills which come before it does require a critical analysis, by the media, before, during and after their passage. It is contended that the legislators and the citizens do require being properly educated on the implications of the legislative measures, on the response of the executive to the queries, resolutions, notice, etc, of the legislators, the stand taken by the different political parties and their spokesmen on various issues, the implications of a court ruling, etc. Furthermore, Freedom of Information (FOI) provides an important tool for the media to gather in-depth information on how government is working and what the optics are about a new law or judicial pronouncement.

It is against this background that it is opined that ‘journalists’ and indeed ‘judicial correspondents’ request under FOI are often more detailed than those of the general public, particularly where these relate to in-depth investigation pieces or difficult questions on local or national decisions of some complexity. In the essence of the authentic information, the media is required either to speculate on the subject or rely upon secondary sources which may be misleading, motivated and biased, hence the need for a FOI law. Writing on the imperatives of the media in sustainable democracy, Akinfeleye⁴⁹ explains that the basic imperatives of the press in the promotion and preservation of national interest and sustainable democracy will include, but not limited to the following: ‘common carrier of ideas; representative pictures of the society; truth and meaning of truth in democracy; classification of the values and goals of the society; uncovering of truths and never to cover up; monitoring the government; making the government accountable to the people: informing, educating and entertaining the people; promoting the concept of accountability, integrity, honesty, fairness and equity; giving voice to the voiceless in the society; society agenda setting; forging national unity and integration; promoting sustainable

⁴⁹ Akinfeleye A, The Dynamics of Law and Information Dissemination, <<https://www.researchgate.net/3257.html>> Accessed 14th July, 2023.

national interest at all time; promoting journalism integrity and correctly reporting judicial proceedings.’

It is further noted that in Nigeria, the media is much more involved in civil proceedings than the members of the public generally. The media is the most visible non-party stakeholder in civil trials in the country. They relate information to the public on goings-on concerning civil trials, sometimes real time information as the courts’ proceedings is on-going. Sahara Reporters, Premium Times, and The Cable, among others play this high premium social responsibility.

It should be noted that the role of the media has been hampered to an extent by issues bordering on sub judice and defamation trials. Sub judice and contempt proceedings. *Subjudice*, a Latin expression referring to a matter being before the court or judge for determination. It means that when a legal matter or controversy has come under the jurisdiction of a court (sub judice), nobody, including the press and other media should interfere by publication or public clamor with the courts’ proper handling of the proceeding.⁵⁰ The rule applies where court proceedings are ongoing and through all stages of appeal until the matter is completed. It may also apply where court proceedings have not yet been started, but are imminent. The sub judice rule restricts comments and disclosures pertaining to judicial proceedings to avoid prejudging the issue, influencing the court, or obstructing the administration of justice.⁵¹ As highlighted in criminal cases, the sub-judice rule prevents the possibility of undue influence that could prejudice the accused person’s constitutional right to a fair trial. The principal purpose of the sub-judice rule is to preserve the impartiality of the judicial system by protecting it from undue influence by published materials or public clamor.

6.2 ENSURING PROMPT AND TIMELY REPORTING THROUGH THE SOCIAL MEDIA

Social media is one medium for the proper reporting of judicial proceedings that the Nigerian court system has not fully exploited in order to reach the public with correct and easily appreciable information regarding civil trials and their outcomes, rulings or judgments as they are dispensed. Nigeria must evolve with the rest of the world where everyone has gone digital and global. Apart from technology aiding with writing court judgments, the social media should be used to reach the world with court rulings and reports of judicial proceedings. The Public heard about the celebrated case of *Roe vs Wade* on abortion rights mostly from social media. For instance, the Nigerian Supreme Court has no verified

⁵⁰ The Judicial Right to Know Act, S.1357, 14th Cong., cited in THE SUB JUDICE RULE Rule 13.02.

⁵¹ *Lejano v People*, G.R. No. 176389 (December 14, 2010). Separate Opinion of J. Brion., cited *ibid*.

Twitter account, unlike other Supreme Courts of other countries like India, US, and Canada, among others. However, the Nigerian Court of Appeal has an inactive Twitter Account (but with only few followers. It has no record of a tweet at all, much less a reply). A couple of High Courts have Facebook accounts: the Federal High Court, High Court of the FCT, Plateau State High Court, etc. The problem however is with poor contents or the total lack of contents in these courts' social media accounts.

This means the social media is not being properly engaged by the Nigerian judicial system as a platform for the dissemination of credible information concerning ongoing trials in general and civil trials in particular. This is an opportunity that can be exploited for the betterment of public judiciary relationship as it has been done in other climes like the United States of America and India. Already, there is a disconnect between the public's idea of justice and courts' version of same, as shown in their judgements, hence the need to educate the public on their *modus operandi* and the basis for some of their key judgements. The most important benefit of social media is in promoting public understanding of the courts, which are "institution[s] that inevitably decide things in ways the public does not like."⁵² The public does not care to know the rationale for some of the court's decisions and how decisions are reached. Therefore, where the judgements of courts do not fit their idea of justice, there is the assumption that the court system was compromised. The purposeful use of social media can help address some of these preconceived and largely misconceived views of the judiciary as being corrupt and unlikely to grant "justice" to an underprivileged person as conceived in the open parlance.

6.3 DISSEMINATING JUDICIAL PROCEEDINGS VIA THE MAINSTREAM MEDIA

The Mainstream Media and Judiciary have a somewhat robust relationship. Rebecca Kourlis⁵³ contends that a positive public view of the judiciary, including its civil proceedings, might trickle up impact on funding for the courts, but more importantly, a citizenry that believes in courts, believes the courts are fair and that anybody gets a fair shake who walks through the [courthouse] door."⁵⁴ A positive public view of the judiciary is key to gaining public support and confidence. The mainstream media plays a great role in furnishing the public with the information necessary for public perception on the judiciary and its civil proceedings. The media performs the following roles, including serving as Gatekeepers of the free-way or toll-way to justice. The qualified privilege for reporting court proceedings generally exonerates judicial correspondents from any liability for defamation, hence empowers them to investigate judicial proceedings and report events that happen in court. The mainstream media can also function well as Whistle blowers: You serve as public informant on goings-

⁵² The "New Media " and the Courts: Journalists and Judges Consider Communications By and About Courts in the Internet Era (2009) Rehnquist Center, university of Arizona 10.

⁵³ *Ibid.*

⁵⁴ *Ibid*

on in the courts and the system as it affects the judiciary and the public. Judicial correspondents are also the voice of the judiciary. Where the courts are not properly funded as evident in lack of modern tools like teleprompter, public address system, security of judges and litigants in and around the court premises, remuneration, courtroom structure, etc., it is the job description of judicial correspondents to leak it first. For instance, it was reported in the mainstream print media that Imo State Government of Nigeria has not paid judicial officers for 16 months.⁵⁵ This drew public sympathy towards the judges and has the potential to ignite public action that could compel the executive to pay these judges.

The importance of a proactive media in judicial proceedings can therefore not be overemphasized as they are traditionally saddled with the following responsibilities

- i. Report (awareness about public rights and responsibilities);
- ii. Enhances public confidence in the judicial system;
- iii. Accountability by the judicial system to the public.

In Nigeria, it is noted that the courts do not allow the coverage of their trials on camera. The cameras usually cover the courtroom before the commencement of the trial. There is however a bill before the National Assembly seeking to mandate the live coverage and video recording of judicial proceedings in the country as it is the case in South Africa, New Zealand, etc. This is long overdue as it makes judicial accountability even more visible to the public. It is noted that some judges nurse the fear that when their faces are easily recognizable in public, it might have implications for their personal safety. This paper does think this assumption is not unfounded as there is so much insecurity in the land and a high level of vulnerability, unlike that experienced in the climes where live coverage of judicial proceedings are permitted, but the solution to this is to beef up the security around them, as televising judicial proceedings can ensure more transparency and fairness on the part of the judicial officer who thinks and rightly too that the whole world is watching. Besides the constitutionally carved out duties for the public and the media regarding civil proceedings, there are also social and moral duties that they both play in upholding the independence of the judiciary, yet making accountability by this arm of government, especially in Nigeria necessary and expedient.

7.0 CHALLENGES CONFRONTING THE EFFECTIVE IMPLEMENTATION AND ADMINISTRATION OF THE FOI ACT

In discussing the matters arising from the Administration of the Act and its attendant challenges, an important question needs to be asked. If indeed the rationale for the enactment of the FOI was for the public to have access to information kept by public institutions, why does the Act have a lot of exemptions to access to information?

⁵⁵ Thisday Newspaper – 5th January 2018.

This only leads to the conclusion that some ill-intentioned public officers can use these exemptions for unjust and mischievous purposes. However, considering the omnibus proviso against denial of information that provides that “where the interest of the public would be better served by having such record being made available, this exemption to disclosure shall not apply”, it will be very difficult for such public officers to use the exemptions unjustly. The effectiveness of the Act also depends largely on a vibrant and active judiciary, being the final body that has the responsibility of determining what kind of information should be made available to the public, but then the topical question remains- who will compel the courts to disclose the content of its proceedings when the court refuses to disclose or publish same?

Other challenges of complying with the Act include the poor culture of record keeping, maintenance and retrieval, capacity challenge in many public institutions, frustrating and time-consuming bureaucracy in the public service, widespread corruption and the high level of ignorance about the provisions of the Act among the work force in the public sector, etc.

This is apart from other fundamental issues that might affect the Act which is the continued operation of some existing laws, which are still operational. For instance, the Evidence Act,⁵⁶ the Public Complaints Commission Act,⁵⁷ the National Securities Agencies Act;⁵⁸ all have some sections that are aimed at suppressing the free flow of information in the country. All these laws may affect the effectiveness of the Act in the long run as they are loopholes that can be utilised to avoid fulfilling obligations under the FOI Act. Some mischievous public officers may also use such laws for their selfish purposes. It may be argued that there is no country with an absolute fundamental right of freedom of information as such may have an adverse effect on the security of a country.

8.0 CONCLUDING REMARKS

It is submitted that there is a growing awareness of journalists on the Freedom of Information Act. This is not coming as a surprise as journalists and indeed judicial correspondents have been alongside other civil society organizations at the forefront for the passage into law of the Freedom of Information Act. This awareness, it is discovered, is necessary for the maximization of the latent prospects of the Act in Nigeria. Again, that the Act will indeed create access to government-held information and somewhat further facilitate the unbiased and timely reports of judicial proceedings remain cheering news. This is against the backdrop of the fact that the law provides a platform for participation and interaction between the government and the governed – these are veritable indices of a true democracy. However, the 1999 Constitution of Nigeria as it is, and as it is currently constituted and operated is one of the greatest banes to the workability of the Act in Nigeria. To

⁵⁶ Act No. 18 of 2011

⁵⁷ Cap. P37, Laws of the Federation of Nigeria, 2004.

⁵⁸ Act No. 19 of 1986.

this end, the advocacy for the repelling of some of these anti-press laws in our statutes if the FOIA must continually work is a step in the right direction. Also, laudable is the fact that the Act has been seen as one of the ingredients for the sustenance and strengthening of our nation's democracy and maintaining judicial independence. This owes largely to the fact that the Act has been seen as engendering responsibility, transparency and accountability in government and court matters. Interestingly, the Act has been seen as an indispensable agent catalyst to effective journalism practice. This is true in that, it provides the necessary platform for objective, factual, fair, accurate, unbiased and balanced reporting of judicial proceedings. It also ushers in an era of freedom with responsibility in which the journalists are saddled with the task of reporting court rulings and proceedings that would only be true, fair and factual, yet engendering national development, without unduly heating up the polity.

It is further submitted that the Freedom of Information Act has the potency to enhance the journalism practice in Nigeria, national development, guarantee national security, transparency and good governance and press freedom if judicial correspondents will live up to their expectation. The Act is indeed a catalyst for freedom with responsibility. This is so because the media now is made to assume the full states of the change agents they have often been denied. The Act places on the shoulders of the journalists and judicial correspondents a rather "heavy burden" – the task to correctly report court proceedings, without fear or favour and in accordance with the good ethos of their profession. It is in the journalist's adherence to journalism tenets that they would avoid the pitfall of irresponsible journalism practice – to whom much is given, much is required. It is in this light that judicial correspondents must know that freedom must be matched with responsibility.

It is equally noted, that notwithstanding the pitfalls and lacuna identifiable in the FOI Act, 2011, the Act has set a template for the advancement of the ideas of democracy and development upon which Nigerians could demand for probity, transparency and accountability in governance. Freedom of information in itself is a *sine qua non* for the fulfillment of all other rights and it is also important as a vital tool for democracy to thrive. Information held by public authorities including the courts is not acquired for the benefit of officials or politicians but for the public as a whole. Unless there are good reasons for withholding such information or court proceedings, everyone should have access to it; as the Act is not a law for the Nigerian media alone.

Similarly, the success of implementation of the Act is the co-responsibility of both the government and the governed which includes the citizens, civil societies, judicial correspondents and community organizations. The media and the private sector, must therefore take responsibility for using the law as well as monitoring government efforts. The attitude of public administrators is critical to the successful implementation of the Act because public administrators, who are the face of government, will determine the quality of, and access to requested information.

Thus, since the FOI Act is a crucial tool for socio-economic development in the country, we should not forget that democracy depends on an empowered, well-informed public who can hold their government accountable and gaining more access to court proceedings, reduces the ignorance of the public about our laws and rulings. Effective implementation of the Act is therefore the greatest test of Nigeria's democracy or civilian rule. If well implemented, it will facilitate open government at the federal, state and local governments, because it makes more information and knowledge known to be in public domain. No doubt, access to information is one essential pillar and a strategy towards improving governance, reducing corruption and strengthening democracy through enhanced participation and sustainable development.

Finally, the media plays a great role in checkmating judicial proceedings in Nigeria with a view to guaranteeing free and fair judgements. The public sometimes plays this role as encouraged by an informing and effective media through organized pressure groups in the form of NGOs. The NGOs, collaborating with the media are the key public watchmen in civil proceedings in any country. This noble role would be better undertaken if the media is thus permitted to carry out live broadcast of total coverage of civil judicial proceedings in the country as it is the case in other jurisdictions like South Africa, Australia, among others. It is on this note that the bill at the National Assembly which sets out to make it mandatory for willing media organizations to cover judicial proceedings in the country is deemed a welcome development.

9.0 RECOMMENDATIONS

Having brought to perspective the challenges of the Freedom of Information Act in Nigeria, it is important to give the following recommendations: It is advised that the federal government and its agencies should take steps to ensure that necessary regulations or procedure are put in place for the effective implementation of the Act. For instance, the Attorney- General of the Federation (AGF) should ensure that regulations already produced for the smooth implementation of this Act are swiftly added in the official gazette. More campaigns need to be done to increase the level of awareness of the public about the Act even amongst media practitioners and judicial correspondents. The media as a core partner should increase public awareness and understanding of the Act. It must be emphasised that it is the responsibility of all Nigerians to carry out the oversight function of ensuring compliance with the provisions of the Act and not that of the National Assembly alone.

Judicial correspondents must consciously go for training and re-trainings to learn registered words in law, understand the court language and its various terminologies, to prevent mis-construal and misrepresentation as no one can give an adequate reportage of what he has limited knowledge of.

That journalists should go beyond just being aware of the passage into law of the FoIA, but to be well acquainted with relevant provisions of the Act. It is when they do that, that they can make the most of the Act.

That the workability of the law in Nigeria, remains a concern. Allaying this concern will be highly predicated on how well strict compliance is made to the relevant provisions of the law.

The judiciary should adopt a new public relations approach. They need to educate the public through the engagement of public relations officers who are lawyers or properly trained in the law who would simply read and interpret court judgements for reporters, upload such simplified summary on their websites, etc. The public ignorance or misinformation on the nature and exercise of judicial powers in civil proceedings is not peculiar to Nigeria. The League of Women Voters' Zaida Arguedas said the public does not have enough information about the three branches of government, especially about state and local courts. It is "hard to assume we will have a knowledgeable citizenry that will be ready to defend the courts if they do not appreciate the value of the courts and what they have to defend."⁵⁹ They need to know that what the courts dispense is justice according to law. They only interpret laws made by the other organs of government. They only declare their actions or inactions null and void through judicial reviews. If there are bad laws, they should be ascribed to the parliament and not the judiciary. The law remains the law even if they are bad, till they are changed or amended. They need to also know that most courts operate based on set precedents by higher courts. They do not have the powers to deviate from such established authorities. There should also be a cut down in time spent in determining cases generally. Attempts have been made in the criminal justice sector, but much is still left undone regarding civil trials.

There must be an intentional balancing act between the law concerning defamation (as a private legal remedy) and contempt of court *ex facie curiae* (as a criminal law remedy) for publishing sensational or sensitive information that could prejudice the outcome of the trial.

Similarly, court reporters and judicial respondents should be trained on the basic law regarding defamation and contempt of court for commenting excessively on issues that are *subjudice*, lest they commit an offence in the throes of over-analysing and pre-empting the courts in the guise of enhancing access to information on a court matter to the prying public. Alternatively, all reports of judicial proceeding and the likes should be vetted by the in-house legal practitioners of the media organizations or their private solicitors before they are unleashed to cause havoc in the polity on one hand, whilst purveyors of fake news must be punished in order to serve as deterrence to other perpetrators on the other hand.

⁵⁹ John Basten, "Court and Media Relationships" National Judicial College, Beijing, Conference - 30 October to 4 November 2005 Court and Media Relationships.