

**The Regulation of the Right to Freedom of Expression on Social Media in Nigeria**

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**Abstract**

The issue of whether or not the social media and its use should be regulated has been on the front burner for quite a while all over the world, Nigeria inclusive. This is no doubt connected with the fact that the social media has been one of the greatest avenues where the right to freedom of expression is highly exercised. Recent statistics reveal that there are about 4 billion social media users all over the globe with about 33 million being Nigerians. The social media has been attributed with commendable roles in world's history, most especially the role it played during the Arab Spring and ENDSARS protests that took place in the Middle-East and Nigeria respectively. As pleasant as its good side is, the social media is not completely devoid of some ills that have plagued it, ranging from misinformation/fake news, cyberbullying, to cyberstalking, etc. These ills, if left unchecked may undermine peace and order in the society.

While it is correct that the right to freedom of expression is fundamental and it is a means through which other rights can be enjoyed and articulated, it is agreed in all human rights instruments, both international and national that this right is not absolute. As it stands, Nigeria does not have a legislation in place to regulate the social media, although in the year 2019, "The Protection from Internet Falsehood and Manipulation Bill" was proposed.

This work intends to show that there is an imminent need for the regulation of social media in Nigeria in the wake of the extreme uses it has been put to. This will be done by examining the impact of social media in the light of its pros and cons. This work will then examine and recommend ways to balance this right with its regulation on social media.

**Keywords: Human Rights, Expression, Social Media, Content Regulation**

## **1.0. History and Meaning of the Right to Freedom of Expression**

The history of the right to freedom of expression predates modern international human rights instruments.<sup>1</sup> The right to freedom expression is a democratic value that dates back to ancient Greece. It is believed that the ancient Greeks pioneered this right as a democratic principle.<sup>2</sup> The ancient Greek word “parrhesia” which first appeared in Greek literature around the end of the fifth century, B.C means “free speech,” or “to speak candidly”.<sup>3</sup>

During the classical period, “parrhesia” would become a basic part of the Athenian democracy. Athenian leaders, philosophers, playwrights and the citizens generally had the freedom to openly discuss politics and religion and to criticize the government in some settings, however some speeches like speaking against the dead and the living were prohibited.<sup>4</sup>

Everyone has the right to freedom of expression and the right is universal in nature. The right to freedom of expression, with the accompaniment of the right to receive and impart information, is a fundamental value of any democratic society deserving of the utmost legal protection.<sup>5</sup> The right to freedom of expression serves as a safeguard for the protection of the right of people to hold and express an opinion. Given this position, it is prominently recognized and entrenched in virtually every international and regional human rights instruments.

The right to freedom of expression is recognized in International and Regional/National Human Rights Law. On the international scene, the right is enshrined in Article 19 of the United Nations’ Universal Declaration of Human Rights (UDHR) adopted in 1948. It provides thus:

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<sup>1</sup> A&E Television Networks. 2019. United States constitution: freedom of speech. Retrieved May 16, 2022 from <https://www.history.com/topics/united-states-constitution/freedom-of-speech>

<sup>2</sup> Ibid.

<sup>3</sup> Ibid.

<sup>4</sup> Democracy web. Freedom of expression: history. Retrieved May 16, 2022 from <http://democracyweb.org/freedom-of-expression-history>

<sup>5</sup> Carver, R. 2020. Training manual on international and comparative media and freedom of expression law. Retrieved May 18, 2022 from

[http://www.academia.edu/27961726/Training\\_manual\\_on\\_international\\_and\\_comparative\\_media\\_and\\_freedom\\_of\\_expression\\_law](http://www.academia.edu/27961726/Training_manual_on_international_and_comparative_media_and_freedom_of_expression_law)

Everyone has the right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers.

Article 19 of the International Covenant on Civil and Political Rights (ICCPR)<sup>6</sup> also provides thus:

1. Everyone shall have the right to hold opinions without interference.
2. 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 frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice.

And in the same vein, Article 9 of the African Charter on Human and Peoples' Rights (ACHPR)<sup>7</sup> copiously provides thus:

1. Every individual shall have the right to receive information.
2. Every individual shall have the right to express and disseminate his opinions within the law.

Article 10 of the European Convention on Human Rights (ECHR)<sup>8</sup> equally provides thus:

1. Everyone has the right to freedom of expression. This right shall include freedom to hold opinions and to receive and impart information and ideas without interference by public authority and regardless of frontiers. This article shall not prevent States from requiring the licensing of broadcasting, television or cinema enterprises.

Similarly, Article 13 of the American Convention on Human Rights (ACHR)<sup>9</sup> provides as follows:

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<sup>6</sup> Adopted in 16th December, 1966 but came into force 23rd March, 1976.

<sup>7</sup> It was adopted June, 1981 but came into force in October, 1986. This human rights instrument equally became operative and enforceable in Nigeria following the enactment of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 2004 by the National Assembly.

<sup>8</sup> Adopted in 1950 but entered into force in 1953.

1. Everyone has the right to freedom of thought and expression. This right includes freedom to seek, receive, and impart information and ideas of all kinds, regardless of frontiers, either orally, in writing, in print, in the form of art, or through any other medium of one's choice.

On the national scene, in the United States of America for instance, by the instrumentality of the First Amendment<sup>10</sup>, the right to freedom of expression is incorporated in the Bill of Rights. The right is equally recognized in the United Kingdom (UK) under the Human Rights Act, 1998 after the incorporation of the ECHR into UK laws in the same year. In France, by Article 11 of the Declaration of the Rights of Man and of the Citizen, 1789, the right to freedom of expression is given effect. Coming to Nigeria, this right is recognized and guaranteed under Section 39(1) of the Constitution of the Federal Republic of Nigeria 1999. As noted earlier<sup>11</sup>, the right is further strengthened by the coming into effect of the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 2004 and the enactment of the Freedom of Information Act, 2011. Section 39(1) provides as follows:

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

On the interrelation of the right to freedom of expression and the right to freedom of information, the Victorian Civil and Administrative Tribunal of Australia has held that 'freedom of information is in the blood which runs in the veins of freedom of expression'<sup>12</sup>In the case of *Gauthier v Canada*<sup>13</sup>, the United Nations Human Rights Committee held that the protection of the right to freedom of expression by the ICCPR "implies that citizens, in particular through the media, should have wide access to information and the opportunity to disseminate information

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<sup>9</sup> Also known as the Pact of San Jose. It was adopted 22nd November, 1969.

<sup>10</sup> Adopted 15th December, 1791

<sup>11</sup> Footnote 9

<sup>12</sup> XYZ v Victoria Police [2010] VCAT 255 (16 March 2010).

<sup>13</sup> Communication No 633/1995 (1999).

and opinions about the activities of elected bodies and their members.”<sup>14</sup> The Committee made this decision by reference to its General Comment 25 on the right of all people to take part in the conduct of public affairs, the right to vote, and the right to have access to public service. The Human Rights Committee held that “the full enjoyment of rights protected by Article 25 of the ICCPR, the free communication of information and ideas about public and political issues between citizens, candidates and elected representatives is vital.<sup>15</sup> Similarly, in the case of *Toktakunov v Krgyzstan*<sup>16</sup> the Human Rights Committee considered whether the right of individuals to access State-held information imposed a corollary obligation on the State to provide that information. It held thus:

In this regard, the Committee recalls its position in relation to press and media freedom that the right of access to information includes a right of the media to have access to information on public affairs and the right of the general public to receive media output. The Committee considers that the realization of these functions is not limited to the media or professional journalists, and that they can also be exercised by public associations or private individuals.<sup>17</sup>

In Nigeria, the Freedom of Information Act of 2011 was given effect by the decision of the court in the case of *Boniface Okezie v Attorney General of the Federation*<sup>18</sup>. The Plaintiff had requested for information regarding the operations of the Federal Ministry of Justice and the Economic and Financial Crimes Commission (EFCC) but was not obliged, hence the action. The court held, among other things that public institutions must comply with requests for information within seven days of request.<sup>19</sup> Where they would not comply, notice of refusal with specific reasons as provided under the Freedom of Information Act 2011 (FOIA 2011) must be

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<sup>14</sup> Southern African Litigation Centre and Media Legal Defence Initiative. 2016. Freedom of expression: litigating cases of limitations to the exercise of freedom of speech and opinion. Retrieved May 21, 2022 from <https://www.southernafricalitigationcentre.org/wp-content/uploads/2017/08/Chapter-2.pdf> 18

<sup>15</sup> Ibid.

<sup>16</sup> Communication No 1470/2006 (2011)

<sup>17</sup> Southern African Litigation Centre and Media Legal Defence Initiative. 2016. P. 19

<sup>18</sup> FHC/L/CS/514/2012

<sup>19</sup> Section 4, Freedom of Information Act 2011

communicated to the Applicant within seven days.<sup>20</sup> In the same vein, in the case of *Owei v Nigeria Stock Exchange*<sup>21</sup>, the court held that the plaintiff had the right under the Freedom of Information Act 2011 to request information from the Nigerian Stock Exchange regarding companies that had defrauded the Plaintiff, whether or not the Defendant receives public funds. The court held further that the Defendant was a public institution within the context of the FOIA 2011.

From the provisions gleaned from the human rights instruments as well as case law, this right is multifaceted in dimension in that it is not limited to the right to freedom of expression of ideas and opinions, it extends to the right to seek, receive and impart information and ideas through any media, regardless of the frontiers.<sup>22</sup> In essence, the right to freedom of expression is a fundamental human right that seeks to guarantee the right of individuals to freely express ideas, opinions, seek, receive and impart information and ideas through any media. Thus, it has been opined that when this right is violated, it is not only the right of that particular person that has been trampled on but also the right of all others who would have received the ideas or information through that person.<sup>23</sup>

## **2.0. Role and Purpose of the Right to Freedom of Expression**

The role and importance of the right to freedom of expression cannot be overemphasized in a society. The rate and level of protection accorded this right both internationally and at the regional level lends credence to this fact. It has been opined that this right constitutes one of the vital foundations of a democratic society and it is one of the principal conditions for its progress and the development of humans.<sup>24</sup> Consequently, its continuous guaranty is crucial for the proper

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<sup>20</sup> Columbia University. 2022. Global freedom of expression. Retrieved July 7, 2022 from <https://globalfreedomofexpression.columbia.edu/cases/boniface-okezie-v-attorney-general-federation/>

<sup>21</sup> FHC/L/CS/685/17

<sup>22</sup> Article 19 of the UDHR

<sup>23</sup> Southern African Ligation Centre and Media Legal Defence Initiative. 2016. P. 14

<sup>24</sup> Carver, R. 2020. Training manual on international and comparative media and freedom of expression law. Retrieved April 4, 2022, from <https://www.mediadefence.org/wp-content/uploads/2020/06/MLDI.FoEManual.Version1.1.pdf>

functioning of democracy as a whole as it will ensure an avalanche of ideas and holding authorities accountable.<sup>25</sup>

Another crucial role and importance of this right is that it gives everyone the opportunity to consider a wide variety of opinions about the issues on which citizens of a given society make collective decisions, and makes it possible for decision-makers to reach more well-founded and well-informed decisions.<sup>26</sup> The right to freedom of expression also helps strengthen democracies. It does this by giving voters a means of making their voices heard and make knowledgeable choices about candidates in an election. Thus, this right is essential to democracy, transparency, accountability and the rule of law.<sup>27</sup>

It is also by the instrumentality of this right that other fundamental human rights can be advocated and achieved. It is a precondition for taking advantage of other rights. Fundamental human rights like the right to freedom of thought, conscience and religion<sup>28</sup>, the right to peaceful assembly and association<sup>29</sup>, the right to freedom of movement<sup>30</sup>, and a host of others cannot be advocated and enjoyed without upholding the sacrosanctity of the right to freedom of expression in a society.

### **3.0. Legal Restrictions and Limitations to the Right of Free Speech and Expression**

All human rights instruments both national and international have all recognized the fact that the right to freedom of expression is not an absolute right. This right, not being absolute by nature presumes an assumption of personal responsibility and observance of mutual respect.<sup>31</sup> It has been opined that as much as the right to freedom of expression is a matter of law, it is equally a

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<sup>25</sup>Okeke, O.S. 2018. The importance of freedom of expression in a democratic society. Retrieved May 20, 2022 from [https://www.researchgate.net/profile/Ogechukwu-Okeke/publication/333967776\\_The\\_Importance\\_of\\_Freedom\\_of\\_Expression\\_in\\_a\\_Democratic\\_Society/links/5d0f91ce458515c11cf2c3ce/The-Importance-of-Freedom-of-Expression-in-a-Democratic-Society.pdf?origin=publication\\_detail](https://www.researchgate.net/profile/Ogechukwu-Okeke/publication/333967776_The_Importance_of_Freedom_of_Expression_in_a_Democratic_Society/links/5d0f91ce458515c11cf2c3ce/The-Importance-of-Freedom-of-Expression-in-a-Democratic-Society.pdf?origin=publication_detail)

<sup>26</sup>Carlsson, U. and Weibull, L. 2018. Freedom of expression in the digital media culture: a study of public opinion in Sweden. Retrieved May 20, 2022 from <https://www.diva-portal.org/smash/get/diva2:1229692/FULLTEXT01.pdf> 11

<sup>27</sup> Ibid.

<sup>28</sup> Section 38, Constitution of the Federal Republic of Nigeria 1999.

<sup>29</sup> Section 40, Constitution of the Federal Republic of Nigeria 1999.

<sup>30</sup> Section 41, Constitution of the Federal Republic of Nigeria 1999.

<sup>31</sup>Carlsson, U. and Weibull, L. 2018. P. p.12

question of ethics and morality.<sup>32</sup> In essence, the basis for the need for limitation or restriction of this right relates to the intrinsic equality of human beings, as set out in the United Nations' Universal Declaration of Human Rights and other human rights instruments both Internationally and nationally/regionally. The right to freedom of expression is based on the fundamental value and rights of individuals. Utterances, no doubt can wreak untold injury on individuals, groups of people and societies, hence the need for interventions to limit or restrict this right where necessary and appropriate.

The ICCPR makes provision on the grounds upon which the right to freedom of expression may be limited. Article 19(3) of the ICCPR provides thus:

The exercise of the rights provided for in paragraph 2 of this article carries with it special duties and responsibilities. It may therefore be subject to certain restrictions, but these shall only be such as are provided by law and are necessary: (a) For respect of the rights or reputations of others; (b) For the protection of national security or of public order (ordre public), or of public health or morals.

Coming to Africa, although the African Charter on Human and Peoples' Rights does not expressly detail grounds for the limitation or restriction of the right to freedom of expression as contained in the ICCPR, ECHR and ACHR, by its Article 9(2), it provides that every individual's right to disseminate ideas or information must be exercised within the confines of the law.

The European Convention on Human Rights (ECHR), by its Article 10 (2) also provides for the conditions or grounds on which the right to freedom of expression may be restricted thus:

The exercise of these freedoms, since it carries with it duties and responsibilities, may be subject to such formalities, conditions, restrictions or penalties as are prescribed by law and are necessary in a democratic society, in the interests of national security, territorial integrity or public safety, for the prevention of disorder or crime, for the protection of health or morals, for the protection of the reputation or rights of others, for preventing the disclosure of information received in confidence, or for maintaining the authority and impartiality of the judiciary.

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<sup>32</sup> Ibid.

The American Convention on Human Rights (ACHR), by its Article 13 (2), (4) and (5) equally detailed grounds for the limitation of the right to freedom of expression thus:

2. The exercise of the right provided for in the foregoing paragraph shall not be subject to prior censorship but shall be subject to subsequent imposition of liability, which shall be expressly established by law to the extent necessary to ensure: a. respect for the rights or reputations of others; or b. the protection of national security, public order, or public health or morals.
4. Notwithstanding the provisions of paragraph 2 above, public entertainments may be subject by law to prior censorship for the sole purpose of regulating access to them for the moral protection of childhood and adolescence.
5. Any propaganda for war and any advocacy of national, racial, or religious hatred that constitute incitements to lawless violence or to any other similar action against any person or group of persons on any grounds including those of race, colour, religion, language, or national origin shall be considered as offenses punishable by law.

In Nigeria, the right to freedom of expression equally has specific derogation as provided by the Nigerian Constitution 1999. Section 39(3) and section 45 provide thus:

39(3) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society - (a) for the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films; or (b) imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agencies established by law.

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

The superior courts in Nigeria have at various occasions made judicial pronouncements giving effect to the foregoing provisions of the Constitution. In the case of *Dokubo-Asari v. Federal Republic of Nigeria*<sup>33</sup>, the Supreme Court held thus:

The pronouncement by the court below is that where National Security is threatened, human rights or the individual right of those responsible take second place. Human rights or individual rights must be suspended until the National Security can be protected or well-taken care of. This is not anything new. The corporate existence of Nigeria as a united, harmonious, indivisible and indissoluble sovereign nation, is certainly greater than any citizen's liberty or right. Once the security of this nation is in jeopardy and it survives in pieces rather than in peace, the individual's liberty or right may not even exist. - Per Ibrahim Tanko Muhammad, JSC, page 38.

Furthermore, on the issue of whether the right to freedom of the press as guaranteed by the Constitution is absolute, the Supreme Court had long settled it in the case of *The Amalgamated Press (of Nig) Ltd. & Anor. v. Queen*<sup>34</sup> where it held as follows:

Suffice it to say that Section 24 of the Constitution of the Federation relating to Fundamental Human Rights guaranteed nothing but ordered freedom and that the section of the Constitution cannot be used as a licence to spread false news likely to cause fear and alarm to the public...Per Adetokunbo Ademola, C.J.F. page 3.

The Court of Appeal in the case of *Federal Republic of Nigeria v. Daniel*<sup>35</sup> made a pronouncement on the validity of Section 41(1) of the National Drug Law Enforcement Agency Act which appears to curtail or restrict the right to privacy of citizens. The court held, taking into consideration Section 45(1) of the Nigerian Constitution 1999 thus:

Notwithstanding the provision of Section 37(supra), Section 45(1) of the 1999 Constitution has provided in unequivocal terms that nothing in Sections 37, 38, 39, 40 and 41 thereof shall invalidate what appears to be reasonably justifiable in a democratic society- (a) in the interest of defence, public safety, public order, public morality or public health; or (b) for the purpose of protecting the rights and freedom of other persons. In view of the unequivocally far-reaching provision of Section 45(1) of the 1999 Constitution as alluded above, I think it would be apt to hold, as rightly contended by the Appellant's learned counsel, that Section 41 of the National Drug Law Enforcement Agency Act is reasonably justifiable in the

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<sup>33</sup> (2007) LPELR-958(SC)

<sup>34</sup> (1961) LPELR-25124(SC)

<sup>35</sup>(2011) LPELR-4152(CA)

interest of public safety and public health...thus, not in conflict with provisions of Section 37 of the 1999 Constitution. - Per Ibrahim Mohammed Musa Saulawa, J.C.A, page 18.

These foregoing provisions of international and regional/national human rights instruments which have equally been given effect by the courts have detailed grounds and purposes for which the right to freedom of expression may be restricted. It can be deduced from the foregoing that these laws are in agreement on the fact that this right is not an absolute one and could be restricted in accordance with the laid down principles and conditions. The grounds as enunciated by these laws are equally closely related as they all point to the fact that all human beings are equal and as such there must be respect for the rights of others in the process of a person exercising their own right.

#### **4.0. Definition, Meaning and Evolution of Social Media**

There appears to be no formal or generally accepted definition of social media.<sup>36</sup> There are however various attempts at defining the term. Merriam-Webster attempted to define social media as forms of electronic communication, such as websites for social networking and microblogging through which users create online communities to share information, ideas, personal messages and other contents, such as videos and images.<sup>37</sup> It has equally been defined as internet-based applications that carry consumer-generated content which encompasses media impressions created by consumers, typically informed by relevant experience, and archived or shared online for easy access by other impressionable consumers.<sup>38</sup> It is to be noted that social media, as online applications and websites enable users share information or content generated either by themselves or by other persons.

There are various types or categories of social media that have been identified. They have been listed to include social networking websites, blogs/microblogging, and picture and video sharing

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<sup>36</sup> Xiang, Z. and Gretzel, U. 2010. Role of social media in online travel information search. Retrieved June 2, 2022 from [https://www.academia.edu/14317838/Role\\_of\\_social\\_media\\_in\\_online\\_travel\\_information\\_search](https://www.academia.edu/14317838/Role_of_social_media_in_online_travel_information_search)

<sup>37</sup> Merriam-Webster. Definition of social media. Retrieved June 2, 2022 from <https://www.merriam-webster.com/dictionary/social%20media>

<sup>38</sup> Xiang, Z. and Gretzel, U. 2010. P. 180

websites.<sup>39</sup> It is to be noted further that some social networking sites combine blogging with picture and video sharing features. Some of these social networking sites/applications/platforms that are popular are Facebook, Twitter, Instagram, TikTok, Whatsapp, Snapchat, Flickr, and a host of others. These social networking sites allow users share personal information about themselves, search for other users and then communicate with them. Social media has equally been described as the new “public sphere” where people could share and exchange views and opinions on matters of public interest.<sup>40</sup> Social media has to do with human communication, and it possesses characteristics of participation, openness, conversation, community, and connectedness.<sup>41</sup> Thus, social media, being an instrument of communication give conversations a wider reach.

There exist several ideas about when social media first occurred in history. It is true that technologies that facilitate and make communications easier have been developed almost at every point of human history.<sup>42</sup> Instead of pinpointing a particular year as the point of origin, the formation of World Wide Web and the subsequent increase in instantaneous connectivity of the internet is believed to be the starting point of social media, although the introduction of the telegraph in the 1840s which connected the United States has also been somewhat linked with its origin.<sup>43</sup> Before the advent of the internet, modern accounts about the origin of the internet and social media point to the emanation in 1969 of the digital network innovated by the United States Department of Defence known as ARPANET- Advanced Research Projects Agency Network.<sup>44</sup> This digital network so created was a means to allow four interconnected universities to share all

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<sup>39</sup> Ali, H. A. 2011. The Power of social media in developing nations: new tools for closing the global digital divide and beyond. Retrieved May 11, 2022 from <https://harvardhrj.com/wp-content/uploads/sites/14/2009/09/185-220.pdf> 211

<sup>40</sup> Bayer, J. 2019. Between Anarchy and Censorship: Public discourse and the duties of social media. Retrieved April 29, 2022 from [https://www.ceps.eu/wp-content/uploads/2019/05/LSE2019-03\\_Between-Anarchy-and-Censorship.pdf](https://www.ceps.eu/wp-content/uploads/2019/05/LSE2019-03_Between-Anarchy-and-Censorship.pdf) p.3

<sup>41</sup> Bowie, S. Social work and the role of social media best practices. Retrieved June 3, 2022 from <https://www.csus.edu/faculty/b/bowies/docs/what%20is%20social%20media%20use%20this.pdf>

<sup>42</sup> Das, S. 2016. The origin and history of social media. Retrieved June 6, 2022 from <https://www.digit.in/features/internet/the-origin-and-history-of-social-media-31655.html>

<sup>43</sup> Ibid.

<sup>44</sup> Maryville University. The evolution of social media: how did it begin and where could it go next? Retrieved June 8, 2022 from <https://online.maryville.edu/blog/evolution-social-media/>

manner of data including software and hardware.<sup>45</sup> The National Science Foundation of the United States of America (NSFNET), launched in 1987 is also believed to be the direct forerunner of modern day internet because it had more hard-wearing quality and nationwide reach than any other connectivity launched in the past.<sup>46</sup> The growth of the internet paved the way for the popularization of digital communication through email, Bulletin Board Messaging, and real-time online chatting as enabled by online communication services like Compuserve, America Online (AOL), and Prodigy.<sup>47</sup> This invariably gave rise to the first full blown social media networks, their forerunner being Sixdegrees which was launched in the year 1997.<sup>48</sup>

Although Sixdegrees was short-lived, the 21st century witnessed a surge in the growth of social networking sites by the launching of Friendster in 2001, Fotolog in 2002, Photobucket in 2003, Flickr in 2004, Orkut in 2004.<sup>49</sup> Other popular social media networks are Facebook, launched in 2004, YouTube- launched 2005, Twitter- launched 2006, WhatsApp – 2009, Instagram – 2010, and a host of others. Social media has come a long way since the days of the telegraph to the ARPANET, even after the advent of the internet, it continues to evolve. In the last few years, social media has become a forum of sorts of the online terrain. Most social networks and social media websites bring updates and improvements on a reasonably regular basis, in this way, its evolution in the coming years is indisputably certain.

### **5.0. Impact of Social Media: Pros and Cons**

Since the evolution of social media and particularly in more recent times, social media has made tremendous impact in the world as a whole. However, this impact has been both positive and negative. Beginning from its positive impact, social media, because of its inherent nature to reach and attract wide range of audiences, has become a tool for activism, facilitating political

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<sup>45</sup> Ibid.

<sup>46</sup> Ibid.

<sup>47</sup> Das, S. 2016. P.

<sup>48</sup> Ibid.

<sup>49</sup> Baruah, T. D. 2012. Effectiveness of social media as a tool of communication and its potential for technology enabled connections: A micro-level study. *International Journal of Scientific and Research Publications*, Vol. 2:5, 1-10

discussion and the organization of political demonstration.<sup>50</sup> Instances of this are numerous in history. First, during the Arab Spring that took place between the year 2010 and 2012 in North African countries and the Middle East, the social media played the significant role of facilitating political discussions and demonstrations about the oppressive regimes and poor standard of living of the people.<sup>51</sup> The demonstrations and protests began in Tunisia, then later spread to several other countries including Algeria, Lebanon, Jordan, Oman, Yemen, Saudi Arabia, Egypt, Syria, Iran, Israel, Morocco, Qatar, Turkey, The United Arab Emirates, Bahrain, Libya, Kuwait, and Western Sahara.<sup>52</sup> These protests and demonstrations not only led to change of government heads as in Egypt and Tunisia, but also led to composition of social movements and unrests in some other countries.<sup>53</sup> The social media has been pinpointed as the driving force behind the swift spread of revolution across these territories.<sup>54</sup> In a survey conducted, it was revealed that nearly nine out of ten Egyptians as well as Tunisians commented that they were using Facebook to organize protests or spread awareness about them.<sup>55</sup> It was also revealed through the survey that many activists primarily made the calls and announcements to protest on Facebook.<sup>56</sup>

The social media has undoubtedly brought to citizens of these territories a sense of self-empowerment — by means of the capacity to speak (post) and assemble, which was previously not the case.<sup>57</sup>

The Arab Spring situation was not the first time social media was used as a tool for political activism and to oust a political leader. In the year 2001, thousands of Filipinos with the aid of text messaging organized a protest during the trial of President Joseph Estrada by the country's Legislature, when the Legislature proposed to set aside a key evidence that was against the

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<sup>50</sup> Ali, H. A. 2011. P. 217

<sup>51</sup> Kassim, S. 2012. Twitter revolution: how the Arab spring was helped by social media. Retrieved June 10, 2022 from <https://www.mic.com/articles/10642/twitter-revolution-how-the-arab-spring-was-helped-by-social-media>

<sup>52</sup> Hwang, K.J., Laing, N., and Holder, C.T. 2016. The right to freedom of expression on the internet as it applies to social media in Africa. Retrieved June 9, 2022 from <https://www2.nycbar.org/pdf/report/uploads/20073028-FreedomofExpressionontheInternetAfrica312016.pdf> 1

<sup>53</sup> Ibid.

<sup>54</sup> Kassim, S. 2012. P.

<sup>55</sup> Hwang, K.J., Laing, N., and Holder, C.T. 2016. P. 1

<sup>56</sup> Ibid.

<sup>57</sup> Ali, H. A. 2011. P. 187

erstwhile President.<sup>58</sup> The protest and demonstrations brought about by the text messages sent eventually achieved its purpose when the Legislature rescinded its decision to set aside the key evidence against Joseph Estrada.<sup>59</sup>

In Nigeria, the social media has also been considered as playing a pivotal role during the ENDSARS protests that lasted for weeks. Nigerians, especially the youth took their destiny into their hands when they began demanding for an end to the era of impunity and ruthlessness that was synonymous with the Special Anti-Robbery Squad, also known as SARS and the Police generally. The SARS had over the years been accused of violating the rights of Nigerians, ranging from extortion, kidnaping, rape and extra-judicial killing.<sup>60</sup> The call to disband this unit of the Nigeria Police Force had previously been made but the call usually fell on deaf ears of the government. The straw that eventually broke the camel's back was on 3rd October, 2020 when a video was shared on Twitter purportedly showing SARS officials murdering a man and bolting away in his car in Delta State, Southern Nigeria.<sup>61</sup> This led to series of protests that took place within and outside the shores of Nigeria. The infamous Police unit was eventually disbanded by the Inspector General of Police on the 11th day of October 2020.<sup>62</sup> The youths were however cynical about the supposed disbandment, considering that the unit had previously been declared proscribed on many occasions in the past while they still continued to operate.<sup>63</sup> Before and during the protests, the social media was used to disseminate information about the modus operandi of the protest as well as information regarding venues and breaking news events.<sup>64</sup> It would have been extremely difficult to coordinate a protest of that magnitude that spread all across the country, without the aid of social media. The social media, especially Twitter was also employed to amplify conversations around the issue in a bid to making the rest of the world

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<sup>58</sup> Hwang, K.J., Laing, N., and Holder, C.T. 2016. P. 3

<sup>59</sup> Ibid.

<sup>60</sup> George, E.O. 2022. The role of digital technology in the endsars protest in Nigeria during the covid-19 pandemic. Retrieved June 10, 2022 from <https://link.springer.com/article/10.1007/s41134-021-00161-5>

<sup>61</sup> Obia, V.A. 2020. #Endsars, a unique twitterspere and social media regulation in Nigeria. Retrieved June 11, 2022 from <https://blogs.lse.ac.uk/mediase/2020/11/11/endsars-a-unique-twiterspere-and-social-media-regulation-in-nigeria/>

<sup>62</sup> Ibid.

<sup>63</sup> Ibid.

<sup>64</sup> George, E.O. 2022. P.

aware, most especially the international community.<sup>65</sup> It was reported that conversations or “tweets”<sup>66</sup> around the ENDSARS issue and the ENDSARS hashtags<sup>67</sup> were around 2 million, thereby making the issue trend worldwide.<sup>68</sup>

Flowing from the foregoing, social media has invariably fostered the universally guaranteed right to freedom of expression, both in developed and developing countries of the world. Social media’s capacity to contribute to communicative freedom comprises dissemination of information, information acquisition, as well as public discourse.<sup>69</sup> Persons of varying age groups visit the popular social networking sites or applications like Facebook and Twitter to acquire information and get breaking news of events around the world.<sup>70</sup> In the communication terrain, social media has been instrumental to people’s discovery of previously unknown facts - in many cases with digital video evidence and in the political realm, made governments more accountable.<sup>71</sup> Little wonder governments with dictatorial tendencies have been reacting with suspicion, anxiety, and methods in a bid to trying to clamp down on social media.<sup>72</sup> Furthermore, it has been validly opined that the social media is a tool that foster participation and democratization in developing nations.<sup>73</sup> Comparing and contrasting the internet, and by extension social media to the traditional mass-media public sphere, the internet has been termed “a liberalizing technology”, which has the capacity to transform its users from mere listeners to functional contributors in public discourse.<sup>74</sup> Thus, the social media is not to be viewed merely

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<sup>65</sup> Ibid.

<sup>66</sup> Tweets are posts made on the Twitter online message service. Definition retrieved June 11, 2022 from <https://www.meriam-webster.com/dictionary/tweet>

<sup>67</sup> An hashtag is a word or phrase preceded by a hash symbol(#), used within a message, especially on social media, to identify a keyword or topic of interest and facilitate a search for it. Definition retrieved June 11, 2022 from <https://www.dictionary.com/browse/hashtag>

<sup>68</sup>Obia, V.A. 2020. P.

<sup>69</sup> Hwang, K.J., Laing, N., and Holder, C.T. 2016. P. 3

<sup>70</sup> Kim, K. and Sin, S. J. 2015. The use of social media in different contexts of information seeking: effects of sex and problem-solving style. Retrieved August 31, 2022 from <http://www.informationr.net/ir/20-1/isic2/isic24.html#.YS8PGEuSnIU>

<sup>71</sup> George, E.O. 2022. The role of digital technology in the endsars protest in Nigeria during the covid-19 pandemic. Retrieved June 10, 2022 from <https://link.springer.com/article/10.1007/s41134-021-00161-5>

<sup>72</sup> Hwang, K.J., Laing, N., and Holder, C.T. 2016. P. 10

<sup>73</sup> Ali, H. A. 2011. P. 216

<sup>74</sup> Ibid.

as a tool to network and socialize, it has been elevated to the realm where weighted political conversations are had and a platform for organizing political demonstrations.<sup>75</sup>

Social media or social networking tools have also been highlighted as platforms that have the prospects of increasing citizen engagement, advancing social inclusion and generating opportunities for employment, entrepreneurship and development.<sup>76</sup> Furthermore, social media has educational advantages as it has been identified as a tool that has the potential to advance learning at all levels of education.<sup>77</sup> It has been opined that the effective administration of any learning encounter is contingent on effective communication between instructors and their students, among other things.<sup>78</sup> Where there is poor communication between the teacher and students, the whole process of teaching and learning would be a daunting one. Consequently, social media tools have been highlighted as playing the fundamental role of facilitating communication between teachers and students, considering that teachers have been able to monitor the progress of their students more in their learning process and have been able to cater for their academic needs while off campus, especially in pandemic situations like it was experienced in the year 2020 when Covid-19 ravaged the whole world making physical learning difficult and practically impossible.<sup>79</sup> The social media has not only been helpful for effective teacher-student communication, it also has the capacity to facilitate and improve communication among students. Students have been able to interact more with themselves regarding school activities, disseminate information about assignments and tests, while those having difficulties with topics can also reach out to their classmates for help.<sup>80</sup>

As earlier stated, the social media, despite its impressive positive sides which includes its capacity to foster the right to freedom of expression, that in turn facilitate meaningful public discourse, information acquisition, information dissemination, to mention but a few, has some

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<sup>75</sup> Ibid. 217

<sup>76</sup> Hwang, K.J., Laing, N., and Holder, C.T. 2016. P. 3

<sup>77</sup> Faizi, R. et. al. 2013. Exploring the potential benefits of using social media in education. Retrieved August 31, 2022 from

[https://www.researchgate.net/publication/272998596\\_Exploring\\_the\\_Potential\\_Benefits\\_of\\_Using\\_Social\\_Media\\_in\\_Education](https://www.researchgate.net/publication/272998596_Exploring_the_Potential_Benefits_of_Using_Social_Media_in_Education) 51

<sup>78</sup> Ibid.

<sup>79</sup> Ibid.

<sup>80</sup> Ibid. 52

dark side that has plagued it. First, one of the ills of social media is that it has been used to spread false information or fake news, as much as it has facilitated the dissemination of genuine and verifiable information.<sup>81</sup>

Misinformation, disinformation or fake news on social media have continually become notable problems in the last couple of years.<sup>82</sup> Recent advances in digital media and its ease of use, among other prominent features of social media have permitted a greater connection between millions of users globally, which have contributed to this particular problem and many others associated with social media.

Consequently, the vulnerabilities in the nature of social media have been taken advantage of by some users, most especially unscrupulous elements such as violent non-state actors, including terrorists, violent extremists and organized criminal groups, when they generate and augment misleading contents on a large scale.<sup>83</sup>

It has been reported recently that terrorists, violent extremists and organized criminal groups have mischievously made use of social media to circulate conspiracy theories about the origin of COVID-19.<sup>84</sup> These conspiracy theories customarily attribute the origin of the virus to governments, religious or ethnic groups, secret networks, companies or businessmen who, according to these interpretations, are trying to advance covert agendas such as globalist depopulation, the control of the world or the generation of financial earnings through the sale of already manufactured covid-19 vaccines and drug treatments.<sup>85</sup>

Nigeria has also had its “fair share” of the menace of fake news diffused on social media. A significant instance of fake news that influenced the social media space in Nigeria was the rumoured demise of President Muhammadu Buhari not too long after he embarked on a health

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<sup>81</sup> Wilson, F. and Umar, M.A. 2019. The effect of fake news on Nigeria’s democracy within the premise of freedom of expression. *Global Media Journal*. Vol.17:32:179. 181

<sup>82</sup> Ibid.

<sup>83</sup> United Nations Interregional Crime and Justice Research Institute (UNICRI). 2020. Stop the virus of disinformation\_ the risk of malicious use of social media during COVID-19 and the technology options to fight it. A report of the United Nations Interregional Crime and Justice Research Institute (UNICRI). Retrieved June 11, 2022 from <http://www.unicri.it/sites/default/files/2020-11/SM%20misuse.pdf> 3

<sup>84</sup> Ibid.

<sup>85</sup> Ibid.

leave to the United Kingdom on 19 January 2017.<sup>86</sup> A massive number of Nigerians shared and spread on social media the untrue news that the President was deceased and was already cloned or replaced by one “Jubril”, a Sudan national.<sup>87</sup> This undoubtedly resulted in uproar and bewilderment among many people, causing many to lose faith and trust in the Nigerian government. Another hilarious instance of disinformation or misinformation was in October 2019, when it was widely circulated on social media that the President was making plans to take another wife, and in a bid to substantiate this rumor, invitation cards for the wedding were also circulated.<sup>88</sup> After a couple of days, the Presidency debunked the rumour stating that the President had no plans of taking another wife.<sup>89</sup> Incidents of this manner without fail reveal how viral fake news could be diffused among the citizenry without much confirmation. When fake news is spread, it has the capacity to continually destabilize the system, hamper political stability, unwarrantedly incite people to violence and weaken the people’s confidence in the present government.<sup>90</sup>

Another menace or ill associated with social media is cyberbullying. Cyberbullying has been described as a form of bullying or oppression which takes place online; via social networking sites, gaming or chat rooms or through mobile phones and tablets.<sup>91</sup> Cyberbullying has also been defined as the repeated use of technology to harass, humiliate, or threaten.<sup>92</sup> Cyber bullying takes many forms, some of which are: harassment or trolling which involves sending intimidating or offensive messages by a person to their victim(s); sharing humiliating photos and videos or posting upsetting or threatening messages on social networking sites; identity theft, hacking into

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<sup>86</sup>Apuke, O.D. and Omar, B. 2020. Fake news proliferation in Nigeria: consequences, motivations, and prevention through awareness strategies. *Humanities & Social Sciences Reviews*. Vol 8:2, 318-327. 321

<sup>87</sup> Ibid.

<sup>88</sup> Ibid.

<sup>89</sup> Oriental Times. 2019. Presidency finally breaks silence on reports about Buhari marrying another wife. Retrieved June 12, 2022 from <https://orientaltimes.co/2019/10/11/presidency-finally-breaks-silence-reports-buhari-marrying-another-wife/>

<sup>90</sup>Apuke, O.D. and Omar, B. 2020. P. 321

<sup>91</sup> Williams, M. and Pearson, O. 2016. Hate crime and bullying in the age of social media. Retrieved June 12, 2022 from [https://orca-mwe.cf.ac.uk/88865/1/Cyber-Hate-and-Bullying-Post-Conference-Report\\_English\\_pdf.pdf](https://orca-mwe.cf.ac.uk/88865/1/Cyber-Hate-and-Bullying-Post-Conference-Report_English_pdf.pdf) 10

<sup>92</sup> Smith, J.A and Yoon, J. 2013. Cyberbullying presence, extent, & forms in a midwestern post-secondary institution. Retrieved June 12, 2022 from <https://files.eric.ed.gov/fulltext/EJ1145015.pdf> 53

someone's website or social media pages; and sending uncensored pictures or pestering others to send sexual images.<sup>93</sup>

Another ill of social media that is related to cyberbullying is cyberstalking. Cyberstalking, which is similar to offline stalking is described as "using the Internet as part of a targeted campaign that causes fear, distress, or alarm".<sup>94</sup> Cyberbullying like cyberstalking has tremendous negative effects on their victims such as psychological, emotional and physical distress.<sup>95</sup>

The social media has equally been considered a tool that has been maliciously used over the years by terrorists, violent extremists and organized criminal groups such as Al-Shabaab, Islamic State of Iraq and Levant (ISIL also known as Da'esh), Boko Haram, and a host of others to radicalize new members, recruit foreign fighters and raise, move and channel funds.<sup>96</sup> A number of these terrorist groups have set up specific component units whose task is to magnify, extol, and reinforce their messages, while some other organizations have used social media to position themselves online.<sup>97</sup> Other identified malicious uses and ills of social media are hate speech, defamation, and a host of others.<sup>98</sup>

All of these ills as noted earlier take advantage of the very nature and vulnerabilities of social media, some of which include its ease of use, accessibility, interconnectedness with other users and its capacity to attract wide audiences. These malicious uses, if left unchecked have the capacity to undermine peace and development in the society and paint the social media in bad light despite its good and promising sides.

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<sup>93</sup> Williams, M. and Pearson, O. 2016. P. 10

<sup>94</sup> Swenson-Lepper, T. and Kerby, A. 2019. Cyberbullies, trolls, and stalkers: students' perceptions of ethical issues in social media. *Journal of Media Ethics*. Vol. 34:2. 102-113. 105

<sup>95</sup> Williams, M. and Pearson, O. 2016. P. 12

<sup>96</sup> United Nations Interregional Crime and Justice Research Institute (UNICRI). 2020. P. 3

<sup>97</sup> Ibid.

<sup>98</sup> Marwick, A. E. 2014. Online harassment, defamation, and hateful speech: a primer of the legal landscape.

Retrieved June 12, 2022 from <https://ir.lawnet.fordham.edu/cgi/viewcontent.cgi?article=1002&context=clip> 7 and 19

## **6.0. Meaning of Censorship in Relation to Free Speech on Social Media**

It would be recalled, as earlier on established, that in spite of the laudable use to which social media can be put, it is not devoid of some ills that require some level of censorship or regulation according to law.

Censorship has been defined as the proscription of speech or writing that is deemed obscene, indecent or unduly controversial.<sup>99</sup> According to the Oxford Dictionary, the word “Censor” denotes “an official who examines books, films, news etc. that are about to be published and suppresses any parts that are considered obscene, politically unacceptable, or a threat to security”.<sup>100</sup> More broadly, Harold Lasswell defines censorship thus:

The policy of restricting the public expression of ideas, opinions, conceptions and impulses which have or are believed to have the capacity to undermine the governing authority or the social and moral order which that authority considers itself bound to protect.<sup>101</sup>

Censorship has equally been described as the process of imposing checks, whether directly or indirectly, governmental or otherwise, on the exercise of one’s right to free speech.<sup>102</sup> According to the Black’s Law Dictionary, censorship is defined as the “review of publications, movies, plays, and the likes for the purpose of prohibiting the publication, distribution, or production of material deemed objectionable as obscene, indecent, or immoral.”<sup>103</sup> The term “censorship” has been further described as one encompassing all socially structured proscriptions or prescriptions which curb or prohibit communication of ideas, information, images, and other messages through the mechanisms of communication of a society whether these obstructions are secured

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<sup>99</sup> Free Legal Dictionary. Censorship meaning. Retrieved June 16, 2022 from <https://legal-dictionary.thefreedictionary.com/censorship>

<sup>100</sup> Oxford Dictionary. Censor. Retrieved June 16, 2022 from at: <http://www.oxforddictionaries.com/definition/english/censor>

<sup>101</sup> Lasswell, H. 1930. “Censorship” in *III Encyclopedia of the social sciences*. New York: MacMillan. 290 cited in Sen, S. 2014. Right to free speech and censorship: a jurisprudential analysis. *Journal of Indian Law Institute*. 56:175-201. 177

<sup>102</sup> Sen, S. 2014. Right to free speech and censorship: a jurisprudential analysis. *Journal of Indian Law Institute*. 56:175-201. 175

<sup>103</sup> Black, H.C. et al. 1990. *Black’s law dictionary: definition of the terms and phrases of American and English jurisprudence, ancient and modern*. 6th ed. Minnesota: West publishing company. 224

by political, economic, religious, or other systems of authority.<sup>104</sup> According to another author, these prescriptions/proscriptions or codes are there to measure, supervise and correct the abnormal.<sup>105</sup> Censorship, mostly is set in motion in view of either anticipated inimical impact or any negative impact that might have occurred in the past on account of sharing related information or content. As it relates to social media, censorship can be described as the process whereby the government or other authorities impose checks on the expression or dissemination of opinions, ideas or information that are contrary to the established law or social decorum on social media. It is correct that millions of people make use of social media to generate business and connect with clients, so also many public entities engage social media to design and create blogs or social networks to keep workers, citizens, or associates informed of events and news. Nonetheless, complications may occur when users of social media disseminate ample amounts of information unrestrained. Such information or communication on social media has the possibility of affecting political and social institutions, leading to intercultural or cross-cultural conflicts.<sup>106</sup>

Censorship or limitation of the right to freedom of expression was recognized by the Supreme Court of Colombia in the case of *González v. Serrano*.<sup>107</sup> In that case, a detailed analysis of the conditions under which the right to freedom of expression may be limited under the standards of the International Covenant on Civil and Political Rights, the American Convention on Human Rights, and the Constitution of Colombia was developed. The Court held that limitations to the right to freedom of expression may be constitutionally admissible, in the following terms:

(1) they are provided by law, specifically and exhaustively, (2) they pursue certain compelling aims, (3) they are necessary for the accomplishment of such aims, (4) they are subsequent and not prior to the expression, (5) they do not constitute censorship in any of its forms, which includes the requirement to maintain neutrality with respect to the content of the expression that is limited,

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<sup>104</sup> Jansen, S.C. 1991. *Censorship: the knot that binds power and knowledge*. New York: Oxford University press. 221 cited in Sen, S. 2014. Right to free speech and censorship: a jurisprudential analysis. *Journal of Indian Law Institute*. 56:175-201. 175

<sup>105</sup> Foucault, M. (Allan Sheridan transl.). 1977. *Discipline and punish: the birth of the prison*. New York: Penguin. 199. Cited in Sen, S. 2014. Right to free speech and censorship: a jurisprudential analysis. *Journal of Indian Law Institute*. 56:175-201.178

<sup>106</sup>Sangsuvan, K. 2014. Balancing freedom of speech on the internet under international law. *North Carolina Journal of International Law and Commercial Regulation*.39:3,2. 702-755. 737

<sup>107</sup> No. 38.909, Judgment of July 10, 2013.

and (6) they do not interfere excessively with the exercise of this fundamental right; that is, they are proportionate.<sup>108</sup>

The Inter-America Court has also held in the case of *Herrera Ulloa v. Costa Rica*<sup>109</sup> that States that impose limitations on freedom of expression are required to show that those limitations are necessary in a democratic society for the attainment of the compelling objectives they pursue.<sup>110</sup>

### **7.0. Purpose of Censorship of Free Speech on Social Media**

The purposes or justification for censorship of the right to freedom of expression on social media are not far-fetched, considering that the social media may be subject to abuse if limits are not defined or prescribed. It is evident that this phenomenon can be considered as an unnecessary restraint on an individual's basic right to liberty, but on a painstaking assessment, it can be perceived in the form of a "necessary evil", that is a restriction on one's human rights, the right to freedom of expression particularly, with the aim of upholding the community's human rights.<sup>111</sup> Censorship, and by extension censorship of social media can be employed as an instrument to regulate the society and forestall intercultural or cross-cultural conflict resulting from online communication or expression. This kind of censorship is justifiable in that public utilization of such information or idea might result in hampering the integrity or harmony of the State, or a particular set of individuals or community.<sup>112</sup>

It has equally been proposed in support of censorship that the notion that censorship is more or less about institutional proscription is not correct, censorship is not always about repression but is a result of a productive process rather than a forced silence.<sup>113</sup> Some other social justifications or purposes of censorship are to guarantee that ordinary members of the community are not provoked by the display of material to which a majority of reasonable adults would object; to

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<sup>108</sup> Ibid.

<sup>109</sup> Series C N0. 107, Judgment of July 2 2004

<sup>110</sup> Inter-American Commission on human rights. 2017. National case law on freedom of expression. Retrieved July 8, 2022 from [http://www.oas.org/en/iachr/expression/docs/publications/jurisprudencia\\_eng.pdf](http://www.oas.org/en/iachr/expression/docs/publications/jurisprudencia_eng.pdf)

<sup>111</sup> Sen, S. 2014. P. 175

<sup>112</sup> Govindarajan, G. and Ravindar, N. 2016. Freedom of expression on social media: myth or reality. *Global Media Journal – Indian Edition*. Vol. 7:1. 1-7. 1

<sup>113</sup> Sen, S. 2014. P. 178

maintain a certain degree of public decorum, and to avoid the unpleasant social consequences which may flow from the “normalization”, occasioned by its use in entertainment or other dissemination or publication of undesirable material.<sup>114</sup>

There might be element of truth in the proposition that more often than not, censorship has been used as a sword rather than as a shield.<sup>115</sup> However, the fundamental value of the need for “checks” on free speech cannot be overemphasized, most especially on social media which has become the new public sphere where there are more than three billion active users, according to latest statistics.<sup>116</sup>

### **7.1. Censorship by the State**

Different countries of the world have begun beaming their focus on censoring or regulating the social media space. This is largely due to the tendency of some users of social media to take advantage of its vulnerabilities, thus abusing its use. The regulation of social media by government have generated controversies regarding the perceived clamp down on the right to freedom of expression.

Many governments are finding ways to restrict internet freedom without being noticed, most times this is done by increasing their technical capacity or administrative authority to monitor online behavior or communications of individuals.<sup>117</sup> Some democratic governments have also heightened their surveillance capacities in recent years while some others have announced their intentions to do so.<sup>118</sup> Although, the need for censorship is of great importance considering the level of misuse and the havoc that such misuse may occasion as a result, some governments have been exploiting this power to suit their selfish political needs.

This increased surveillance, especially in autocratic countries where the rule of law is not the governing principle, often leads to self-censorship, as users fear to risk the consequence of

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<sup>114</sup> Sen, S. 2014. P. 175

<sup>115</sup> Ibid.

<sup>116</sup> Sen, S. 2014. P. 176

<sup>117</sup> Freedom of Expression Institute. 2014. *Internet freedom and freedom of expression in South Africa*. Module series. Houghton: Raith foundation. 19

<sup>118</sup> Ibid.

criticizing the authorities by online means.<sup>119</sup> A handful of governments get in touch with the content hosts of social media sites and request that the content be taken down. While “take-down” notices can be a reasonable process of controlling illegal content, with the right rules being in place, many governments are taking advantage of this practice.<sup>120</sup>

China is considered to be following the path of extremity in a bid to deal with offensive content, employing a nation-wide internet firewall to deny its people access to certain websites and information.<sup>121</sup> China’s censorship regime is popularly known as the “Great Firewall of China”.<sup>122</sup> The Great Firewall is the combination of legislative actions and technologies enforced to regulate the internet and social media. The laws enabling this censorship regime in China lists nine categories of information which should be censored. These categories include any information or speech opposing the basic principles enshrined in the Constitution; capable of undermining national security; harming the honour or the interests of the nation; inciting hatred and racism against people, among others.<sup>123</sup> The Chinese government collaborates with internet service providers and social media companies in carrying out censoring activities.<sup>124</sup> China equally has hundreds of thousands of cyber-police, who have the duty to keep track of social media platforms and filter messages that are deemed to be politically sensitive.<sup>125</sup>

Specific foreign websites and social media applications blocked in China are Google/Google Search, Facebook, Wikipedia, Twitter, YouTube, WhatsApp, and have replaced them with their homegrown ones like Weibo, Baidu and WeChat, Qzone, Tencent Video, and a host of others.<sup>126</sup>

The Great Firewall has been considered to have impacted or boosted China’s economic prospects

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<sup>119</sup> Ibid.

<sup>120</sup> Ibid.

<sup>121</sup> DiLeo, D. 2017. Social media terms and conditions - the delicate balancing act between online safety and free speech censorship. Retrieved June 21, 2022 from

[https://scholarship.shu.edu/cgi/viewcontent.cgi?article=1925&context=student\\_scholarship](https://scholarship.shu.edu/cgi/viewcontent.cgi?article=1925&context=student_scholarship) 27

<sup>122</sup> Ibid.

<sup>123</sup> Ibid.

<sup>124</sup> Ser, K.K. 2016. How China has censored words relating to the Tiananmen Square anniversary. Retrieved June 22, 2022 from <https://www.pri.org/stories/2016-06-03/how-china-has-censored-words-relating-tiananmen-square-anniversary>

<sup>125</sup> Reality check team- BBC news. 2020. Social media: How do other governments regulate it? Retrieved June 22, 2022 from <https://www.bbc.com/news/technology-47135058>

<sup>126</sup> Ibid.

in the sense that it has created room for local social media company initiatives to grow and thrive.<sup>127</sup> Some “offensive” keywords or phrases are automatically censored outright, such as Tiananmen Square protest of 1989 or any reference to such.<sup>128</sup>

In Russia, the censorship regime appears to be as strict and severe as that of China as there are a myriad of legislation that censor social media or online activities.<sup>129</sup> Social media companies or websites are obligated by these laws to block “illegal” content. According to Russian authorities, illegal content among other things, includes calls for youth to participate in unsanctioned protests; exaggerating the number of protesters and circulating false information about police violence at such gatherings.<sup>130</sup> Failure of these platforms to comply with these legislation attracts fine of up to ten (10) percent of their annual revenue. Companies like Facebook, Instagram, Twitter, TikTok, YouTube among others have been fined in recent times for failing to block posts allegedly calling for “action”.<sup>131</sup>

Similarly, in Australia, her government passed the Sharing of Abhorrent Violent Material Act in 2019, imposing criminal penalties for social media companies, likely prison sentences for executives of tech companies of up to three years and financial penalties worth up to 10% of a company's global turnover.<sup>132</sup> Australian authorities had also in 2015 enacted the Enhancing Online Safety Act, which created the office of an e-Safety Commissioner with the power to demand that social media companies take down harassing or abusive posts.<sup>133</sup> In 2018, the powers were expanded to include revenge porn. The e-Safety Commissioner's office has the power to issue companies with 48-hour "takedown notices", and fines of up to 525,000 Australian dollars, as well as impose fines on individuals of up to A\$105,000 for posting the

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<sup>127</sup>DiLeo, D. 2017. P.

<sup>128</sup> At the Tiananmen Square, Beijing in the year 1989, there was a massacre of pro-democracy protesters by the military, and so the Chinese government takes every step to try to erase the knowledge of the incident in history, most especially among the new generation. Retrieved June 21, 2022 from <https://www.pri.org/stories/2016-06-03/how-china-has-censored-words-relating-tiananmen-square-anniversary>

<sup>129</sup> Human rights watch. 2022. Russia: social media pressured to censor posts. Retrieved from June 22, 2022 from <https://www.hrw.org/news/2022/02/05/russia-social-media-pressured-censor-posts>

<sup>130</sup> Ibid.

<sup>131</sup> Ibid.

<sup>132</sup> Reality check team- BBC news. 2020. P.

<sup>133</sup> Ibid.

content.<sup>134</sup> The decision to enact these laws was informed by the death of Charlotte Dawson, a TV presenter and a judge on Australia's Next Top Model, who took her own life in 2014 following a campaign of cyber-bullying against her on Twitter.<sup>135</sup>

In Nigeria, several attempts have been made at censoring or regulating social media. In the year 2015, there was an initial attempt to regulate social media in Nigeria by the introduction of the Frivolous Petitions (Prohibition) Bill 2015 in the 8th National Assembly.<sup>136</sup> Unfortunately, it did not scale through to become a law. The 2015 Bill seem narrow in scope as it did not cater extensively for the regulation of social media. As stated in its explanatory memorandum, the Bill is basically to prohibit frivolous petitions intended to report the conduct of any person for the purpose of an investigation or inquiry without a duly sworn affidavit to confirm the veracity of the petition. Sanctions of imprisonment and fines are prescribed upon conviction for offences of presenting or publishing a petition without a duly sworn affidavit or making use of it, and sending of false information with the aid of social media, among others.<sup>137</sup> By 2019, another bill titled “The Protection from Internet Falsehood and Manipulation Bill 2019” was equally presented before the National Assembly.<sup>138</sup> This bill has also been largely criticized for its extreme stance on prohibiting and criminalizing hate speech and other ills of social media, as well as empowering the government to clamp down on its critics.<sup>139</sup> However, taking a painstaking look at the 2019 Bill<sup>140</sup> divided into 36 sections, although it contains some unjustifiable provisions that have made it to be largely criticized for its perceived extreme stance against the right to freedom of expression, the proposed law is believed to be a step in the right direction considering that it largely prescribe regulations of the right in question in the wake of

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<sup>134</sup> Ibid.

<sup>135</sup> Ibid.

<sup>136</sup>Fadare, A. A. 2020. Media censorship in Nigeria: implication of the regulation of social media and digital rights. Retrieved April, 4, 2022 from <https://aanoip.org/media-censorship-in-nigeria-implication-of-the-regulation-of-social-media-and-digital-rights/>

<sup>137</sup> Sections 1,2 and 3 of the 2015 Bill.

<sup>138</sup>Fadare, A. A. 2020. P.

<sup>139</sup> Amnesty International. 2019. Bills on hate speech and social media are dangerous attacks on freedom of expression. Retrieved April 8, 2022 from <https://www.amnesty.org/en/latest/news/2019/12/nigeria-bills-on-hate-speech-and-social-media-are-dangerous-attacks-on-freedom-of-expression/>

<sup>140</sup> The Protection from Internet Falsehood and Manipulation Bill 2019. Retrieved July 9, 2022 from <https://guardian.ng/wp-content/uploads/2019/11/Protection-from-Internet-Falsehood-and-Manipulation-Bill-2019.pdf>

the detrimental uses of social media over the years. On a positive note, the aims and objectives of the Bill set out in Section 1 of the first part as well as other sections like section 3 show that it was proposed for a good cause- viz to deal with prejudices against the security, public health, finances, tranquility and relationship of other countries with Nigeria. Furthermore, sanctions prescribed upon conviction for offences committed under the Bill, range from imprisonment of three to five years, payment of fines of varying amounts- #150,000, #200,000, #5 million and #10 million, all depending on the gravity of the offence committed.<sup>141</sup> These sanctions are considered to be fair, justifiable and commensurate with the offences. It is also commendable that recourse to judicial process is provided for in the Bill in the event that a person feels aggrieved about actions taken against them by the authority prescribed. This right is however exercisable only after the exhaustion of administrative remedy.<sup>142</sup> A person who is aggrieved by the decision of the Law Enforcement Department may appeal to the High Court and further appeal to the Court of Appeal.<sup>143</sup>

However, this provision regarding appeal appears to be inconsistent with provisions of the Constitution that allows the right of appeal up to the Supreme Court.<sup>144</sup> There is no justification for this since the Bill relates to the limitation or regulation of the fundamental right to freedom of expression.<sup>145</sup> The Bill in its interpretation section further provides that the Law Enforcement Department that is saddled with the responsibility of carrying out or giving effect to the Bill is the Nigeria Police Force.<sup>146</sup> The Nigeria Police Force is given enormous power and authority to take unilateral decisions and to also make regulations regarding the enforcement of the Bill.<sup>147</sup> For instance, the Bill provides that one of the conditions for the issuance of a regulation is when the Law Enforcement Department is of the opinion that it is in the interest of the public to issue such regulation on a person.<sup>148</sup> The idea of making the Nigeria Police the enforcing authority of the Bill seems anachronistic considering that the subject of regulation – social media is a vast

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<sup>141</sup> See generally sections 3, 5, 11 and 12 of the Bill.

<sup>142</sup> Sections 13(2) and 20(6) and (7) of the Bill

<sup>143</sup> Sections 13, 24(7)(9), 30(7) of the Bill

<sup>144</sup> Section 233 (2) (c) of the Nigerian Constitution 1999

<sup>145</sup> Ibid.

<sup>146</sup> Section 35 of the Bill

<sup>147</sup> Sections 6(1)(b), 6(3), 23(2), 28 and 29 of the Bill

<sup>148</sup> Section 6(1)(b)

and technical area that requires essential knowledge and expertise about its workings and dynamics. Specially trained law enforcement agents ought to have the responsibility of giving effect to the Bill. It is also opined that the enormous discretionary powers given to them under the Bill may be subject to abuse and arbitrariness if they are without checks. Another drawback of the Bill relates to its provision on the time frame for bringing an appeal at the High Court. It provides that the time allowed within which to file an appeal would be as provided by the Rules of Court.<sup>149</sup> This means that the relevant Rules of Court would need to be amended to accommodate this item relating to a novel area of litigation, bearing in mind that amendment of legislations in Nigeria are not carried out as a matter of urgency which may leave an aggrieved person hanging with no remedy for a long while. Another downside, furthermore, relate to provisions about the issuance of regulation on a person, whether the person is in Nigeria or outside Nigeria.<sup>150</sup> These provisions appear to be rather presumptuous as drafters of the Bill failed to put into perspective the fact that the issue of social media governance is a transnational one, that will require reciprocity obligations and pacts between Nigeria and other countries of the world. Without this in place, enforcing the Bill outside the shores of the country might be difficult.

As it stands currently, there is no legislation enacted to regulate or censor social media in Nigeria. The closest of all attempts was the enactment of the Cybercrimes (Prohibition, Prevention, etc) Act 2015. This Act criminalizes online harassments like cyberstalking, child pornography, and racist or xenophobic attacks, among other computer related fraud.<sup>151</sup> Although the Cybercrimes Act of 2015 is a step in the right direction in that among other provisions it prohibits some of the ills of the online world, however, it is not sufficient to fully help regulate the social media. For instance, provisions that would address the rights and duties of social media platform providers within the Nigerian landscape, among others are of vital importance to the regulation or censorship of social media. For emphasis' sake, a legal regime that would be tailored towards bringing sanity to the social media and that would at the same time not curtail

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<sup>149</sup> Sections 13 and 24(3) of the Bill

<sup>150</sup> Sections 9(1) and 20 of the Bill

<sup>151</sup> Sections 24, 23, and 26, Cybercrimes (Prohibition, Prevention, etc) Act 2015, respectively.

illegally the right to freedom of expression of Nigerians is what is necessary. Without a proper law or legislation being in place, any agenda towards regulating social media would undoubtedly be undemocratic and repressive in nature. This was a method employed recently by the Federal Government of Nigeria when it banned the operations and use of Twitter in Nigeria and threatened to prosecute anyone who flouts the order.<sup>152</sup> This decision might not be unconnected with Twitter's move to delete, a couple of days earlier President Buhari's tweet which breached its rules. The government alluded to the above fact but stated other reasons for suspending Twitter was due to the "litany of problems with social media platform in Nigeria, where misinformation and fake news spread through it have had the real world violent consequences".<sup>153</sup> The role Twitter played as well as its Chief Executive Officer (CEO) -Jack Dorsey during the ENDSARS anti-police brutality protests which took place in 2020, is also believed to have contributed to Twitter's row with the Nigerian government.<sup>154</sup> The Platform is believed to have been used widely to organize and coordinate the protests, while its CEO encouraged donations to the protest organizers. The executive arm of government, through its Minister although may proscribe the use of Twitter under Section 45 of the Nigerian Constitution 1999, it is opined that detailed legislations on the regulation of social media need to be put in place. The practice of censorship/regulation by impulse or censorship to meet political ends is undemocratic and may thus lead to anarchy.

### **8.0. Balancing the Protection of the Right to Freedom of Expression and its Censorship on Social Media**

Having examined in the previous chapter the role and importance of the right to freedom of expression, how this right is at the very heart of the enjoyment and advocacy for other rights, it is important to examine ways by which its protection can be balanced alongside censoring or regulating same on social media. It is to be noted that there is hardly any right that is absolute in

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<sup>152</sup> BBC News. 2022. Nigeria's Twitter ban: Government orders prosecution of violators. Retrieved June 22, 2022 from <https://www.bbc.com/news/world-africa-57368535>

<sup>153</sup> Ibid.

<sup>154</sup> Ibid.

nature.<sup>155</sup> This means that there are certain circumstances that the curtailing of those rights would be allowed, provided it is so permitted by law. This notion is widely acknowledged as can be gleaned from international and regional or national human rights instruments, how that specific derogation clauses have been provided spelling out circumstances or reasons that such restrictions may be justifiable. This derogation also invariably applies to the right to freedom of expression as provided for in the fourth chapter of the Nigerian Constitution 1999 as well in other human rights laws. Some of the established and acknowledged circumstances or reasons for the curtailing of this right are: for the respect of the rights or freedom of others; for the meeting of the just requirements of morality and public order; to prohibit war propaganda and advocacy of national, racial, or religious hatred; on the grounds of national security and public emergency, amongst others.<sup>156</sup>

It is to be noted that human rights instruments only recognize general limitations on the exercise of freedom of speech, which may be used as the ground to censor or restrict online speech or content on the Internet.<sup>157</sup> Since freedom of speech is accepted and protected in the traditional media under international and national human rights law, one may reasonably assume that limitations under international human rights treaties can apply to freedom of speech on the Internet.<sup>158</sup> However, this is without prejudice to the fact that specific legislation that spell out these restrictions as they relate to social media are necessary. The already established restrictions in various human rights instruments would then set its tone for alignment with international standard and to avoid arbitrariness.

United Nations' Special Rapporteur on the right to freedom of opinion and expression in his 2011 report to the United Nations Human Rights Council<sup>159</sup>, has pointed out that any limitation to the right to freedom of expression must pass the following three-layered, cumulative test: a) the law must provide for it, which should be clear and accessible to everyone, in line with the

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<sup>155</sup> It is to be noted that section 34 of the Nigerian Constitution 1999 which relates to the respect for dignity of humans is absolute.

<sup>156</sup> See generally Sections 39 (3) and 45, Nigerian Constitution 1999; Articles 19(3) and 20(2) ICCPR; Article 29(2) UDHR; Articles 10(2) and 13(5) ECHR; and Articles 9(2) and 27 ACHPR

<sup>157</sup>Sangsuvan, K. 2014. P. 746

<sup>158</sup>Sangsuvan, K. 2014. P. 747

<sup>159</sup> A/HRC/17/27

principles of predictability and transparency; and b) It must pursue one of the purposes or justifications set out in Article 19 (3) of the ICCPR, namely (i) to protect the rights or reputation of others, or (ii) to protect national security or of public order, or of public health or morals (principles of legitimacy); and c) It must be proven as necessary and the least inhibitive means required to achieve the purported aim, in line with the principles of necessity and proportionality.<sup>160</sup> Similarly, the Canadian Supreme Court in the famous case of *R v. Oakes*<sup>161</sup> propounded “The Oakes Test” in determining whether a restriction on a particular human right is justifiable. The Court held thus:

To establish that a limit is reasonable and demonstrably justified in a free and democratic society, two central criteria must be satisfied. First, the objective, which the measures responsible for a limit on a Charter right or freedom are designed to serve, must be “of sufficient importance to warrant overriding a constitutionally protected right or freedom”: *R. v. Big M Drug Mart Ltd.*, *supra*, at p. 352. The standard must be high... It is necessary, at a minimum, that an objective relate to concerns which are pressing and substantial... Second... the party invoking [the limitation] must show that the means chosen are reasonable and demonstrably justified. This involves “a form of proportionality test”: *R. v. Big M Drug Mart Ltd.*, *supra*, at p. 352... There are, in my view, three important components of a proportionality test. First, the measures adopted must be carefully designed to achieve the objective in question. They must not be arbitrary, unfair or based on irrational considerations. In short, they must be rationally connected to the objective. Second, the means, even if rationally connected to the objective in this first sense, should impair “as little as possible” the right or freedom in question: *R. v. Big M Drug Mart Ltd.*, *supra*, at p. 352. Third, there must be a proportionality between the effects of the measures which are responsible for limiting the Charter right or freedom, and the objective which has been identified as of “sufficient importance.”<sup>162</sup>

It is important, therefore that limitations on freedom of speech should be premised on the particular purposes established in the various human rights laws and must be necessary to those

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<sup>160</sup>Asward, M.E. 2018. P. 41

<sup>161</sup> (1986) 1 SCR 103

<sup>162</sup>Attoh, N. R. 2016. Frivolous petitions bill and restrictions on freedom of expression and opinion in Nigeria. Retrieved July 10, 2022 from <https://opinion.premiumtimesng.com/2016/01/02/frivolous-petitions-bill-and-restrictions-on-freedom-of-expression-and-opinion-in-nigeria-by-nonso-robert-attoh/>

purposes.<sup>163</sup> When restrictions are administered or applied outside of those purposes it would create room for States to restrict freedom of speech freely, which would endanger and distort freedom of speech in the society.<sup>164</sup> Therefore, limitations on this right must be strictly and narrowly applied.

The business of regulating speech in the social media should not be left entirely in the hands of governments as well as Social Media Platform providers. Through co-regulation, government and social media platforms can work together concertedly to have joint responsibility and accountability for regulating the social media space in a way that protects public interests. This would go a long way in warding off arbitrariness by either the government or the social media companies.

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<sup>163</sup>Sangsuvan, K. 2014. P. 748

<sup>164</sup>Sangsuvan, K. 2014. P. 749