

# The Press and Freedom of Information in Nigeria and the United States of America: An Analysis

Obinna Johnkennedy Chukwu

Department of Linguistic and Communication Studies, University of Port Harcourt, Port Harcourt, Nigeria

**Email address:**

Obinnakennedy@yahoo.com

**To cite this article:**

Obinna Johnkennedy Chukwu. The Press and Freedom of Information in Nigeria and the United States of America: An Analysis. *International Journal of Law and Society*. Vol. 1, No. 1, 2018, pp. 24-33. doi: 10.11648/j.ijls.20180101.14

**Received:** November 6, 2017; **Accepted:** November 23, 2017; **Published:** December 24, 2017

---

**Abstract:** Freedom of information is germane to a free state, and, often, seen as the bulwark for democracy. It obliterates secrecy, and by extension, engenders the culture of openness in government. This can only be possible where there is a clear-cut law or legislation that guarantees or extends the freedom to elicit, access/or obtain and disseminates government-held information without let or hindrance. In Nigeria and United States of America (US), these laws: Freedom of Information Act 2011 and Freedom of Information Act 1966, respectively, exist, with a singular purpose of engendering freedom of information. This study critically examined these laws with the aim of sieving-out, comparing and deciphering the similarities, differences, flaws and the likely effects it has on the two countries. From the analysis, the laws have similar exemptions, but dissimilar, among others, in the institutions and offices to be covered by the Act. Similarly, It was also observed that press freedom and freedom of information are greatly enhanced in the United State of America than in Nigeria. Furthermore, the study showed that the Executive Orders, randomly, promulgated and enacted by the successive presidents of the United States of America serve as impediments to freedom of information in the United States of America. However, despite the above, extant literature revealed that the United State of America's society is more predisposed to freedom of information than the Nigerian society. This is seen in the decided cases, several laws, enactments and amendments so far made on and in response to the Freedom of Information Act 1966. Amongst other, it is recommended that the US Congress should amend and enact a law banning and/or restricting issuance of Executive Order. Similarly, the Nigerian National Assembly should, as well, repeal the Official Secret Act of 1976.

**Keywords:** The Press, Freedom of Information, Freedom of Information Act

---

## 1. Introduction

According to Noelle-Neumann [8], "people who perceive that they hold a minority view will be less inclined to express it in public". This postulation tacitly lends credence to the French political Scientist; Alexis De Tocqueville's [1] view that:

Once an opinion has taken root among a democratic people and established itself in the minds of the bulk of the community, it afterwards persists by itself and is maintained without effort, because no one attacks it.

The above suffice that when a society attains this level (where freedom of expression is hampered), that society is at its lowest ebb of development. Only a legal regime that allows for freedom of access and dissemination of information, can extricate it from this doldrums. The press in

Nigeria and the citizens cannot perform this task without a strong legal backing, as is in the case of United States of America, where in the first Amendment to its Constitution clearly adumbrated, among others, that "the Congress shall make no law abridging the freedom of the press". However, this is not the case in Nigeria.

In Nigeria, there is no clear-cut or expressed constitutional frame-work for freedom of information and effective practice of journalism profession. Rather, so many laws are made to create impediments to the later: laws like Official Secret Act, Censorship laws and others that this work will espouse in the proceeding chapters. The press in Nigeria draws its power to source for information ostensibly from the amorphous Section 39, which guaranteed for freedom of expression for all citizens, and Section 22 which provides for the duties of the mass media to the Nigerian society thus:

The press, radio, television and other agencies of the mass

media shall at all times be free to uphold the fundamental objectives contained in this chapter and uphold the responsibility and accountability of the Government to the people.

Again, section 22 does not contain the required legal framework for the journalism profession, and by extension, freedom of information. Interestingly; 'chapter II of the Constitution of Federal Republic of Nigeria 1999 [4], wherein, this section is contained is not justiceable. A free press is the mouthpiece of the people and a veritable source of information for the people. Walter Lippmann observed in support of free press thus: "a free press is not a privilege, but an organic necessity in a great society". Indeed, as society has grown increasingly complex, people rely more and more on the press to keep abreast with world news, opinion and political ideas hence the need for an unhindered access to information and freedom of sources of information.

Flowing from the above, this work is concerned with the freedom of information in Nigeria and United States of America, the laws promoting same, particularly, the Freedom of Information Act 2011 and 1966 respectively, and with a bid to highlighting the similarities, dissimilarities and the flaws, among others. It also looked at case law and other laws, including the several amendments made to the United States of America's Freedom of Information Act.

## 2. Methodology

Data for the study was elicited from primary and secondary sources. Comparative method was adopted and used to critically analyze the primary and secondary sources relating to freedom of information. The primary sources include: the Constitution of the Federal Republic of Nigeria; United States of America Constitution; First Amendment, the Freedom of Information Act 2011; the Freedom of Information Act 1966; Executive Orders and various amendments to the United States of America's Freedom of Information 1966, etc. Similarly, the secondary sources include the journal articles on United States of America and Nigeria Freedom of Information Act, commentaries, and policy statements regarding the procedure and implementation of the Freedom of Information Act, etc.

### 2.1. Statement of Problem

The role of the media is vital; it goes beyond ordinary art and science of news gathering and dissemination, to shaping opinions and attitude of people through proper and accurate analyses and interpretation of news events. This can only happen where freedom of information is guaranteed under the law and given preference by the society.

In Nigeria, the society is riddled with vices, which, scholars argued, have their root in the lackadaisical way access to information and freedom of sources of information is treated despite the enactment of the Freedom of Information Act in 2011. In the United States of America, freedoms of sources of information and access to information are treated differently and given preferential impetus owing

to the protection and/or guarantee provided for, in the First Amendment and the various amendments to the Freedom of Information Act, 1966. What is the position of the law regarding freedom of information in Nigeria and United States of America? Has freedom of information fared better in the two countries? What are the flaws, similarities and dissimilarities therein? These seeming challenges and disparity shall be the focus of this work. Furthermore, this work seeks to bring to the fore the position of the law regarding freedom of information in Nigeria and United States of America. And also, to expose the differences, similarities, dissimilarities, and the flaws inherent in the Nigeria and United States of America's Freedom of Information Act 2011 and 1966, respectively.

### 2.1.1. Objectives and Limitation

This research is intended to examine and discuss the following issues, while also providing relevant suggestions on the way forward:

1. To compare freedom of information in Nigeria and United States of America
2. To expose the similarities, differences and flaws in the Nigeria and United States of America's Freedom of Information Act 2011 and 1966.
3. The effect of freedom of information in Nigeria and United States of America.
4. The position of freedom of information in Nigeria and United States of America

It also, did not study all the problems arising from it, but rather restricted itself, specifically, to comparison of Freedom of Information in the two countries: Nigeria and United States of America, and to expose the flaws, similarities and the differences therein, etc. In other words, the scope of this work did not cover all the issues of freedom of information, but was restricted to freedom of information in Nigeria and United States of America and the various legislations promoting same, especially, the Nigeria Freedom of Information Act, 2011 and United States of America's Freedom of Information Act, 1966, and others, that promote and/or hinder it.

### 2.1.2. Significance of the Study

The study would have a far reaching significance to the improvement of law in Nigeria and United States of America, the media and the society at large. It would show the extent of the freedom of information and the freedom enjoyed by the press in the two countries. Similarly, this work may form the basis for further academic research. The conclusion and recommendations of this study would assist the legislatures to amend/or enact new laws that will strengthen the existing laws, and by extension, improve freedom of information and press freedom.

### 2.2. Literature Review: Concept of Free Press

The concept of free press requires that journalists and media practitioners should have the freedom to probe, obtain and publish news and opinions for public information and

knowledge, without hindrance or constraint. This encompasses the right to hold opinions and to receive and impart ideas and information without interference. Undoubtedly, also, press rights are one of the most fundamental rights to a free citizen. In American for instance, it is firmly established in the American Constitution that freedom of speech and the press are accorded priority over the right to life. As well as the opinions and views of the citizens, no matter how foolish or inciting such opinion may be. Justice George Sutherland noted in corroboration with the above in 1935, when he stated that: "A free press stands as one of the great interpreters between the government and the people, to allow it to be fettered is to be fettered ourselves". Similarly, and on need to uphold the fundamentality of the freedom of expression and the press, First amendment to the United States of America Constitution states clearly, among others, that "Congress shall make no law abridging the freedom of the press".

However, in Nigeria, press freedom is enshrined and expressed in section 39 (1) of the Constitution [4], it provides as follows:

Every person shall be entitled to the freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference... and operate any medium for the dissemination of information, ideas and opinions. This is certainly at variance with the provisions (for free press) made in the First Amendment to the United States of America, and the postulations, writings and contributions of some scholars and jurist regarding to free press. A famous jurist Blackstone [2], in the 18<sup>th</sup> century stated, in respect to the press, thus:

The rights of the press consist of laying no previous restraint upon publication and censure for criminal matters where it published. Everyman has the undoubted right to lay whatever sentiment he pleases, for the public... to forbid that, is to destroy the freedom of the press.

Furthermore, the United Kingdom Royal Commission Report [15] declared as follows:

We define freedom of the press as that degree of freedom from restraint which is essential to enable proprietors, editors, and journalists to advance the public interest by publishing facts and opinions, without which a democratic electorate cannot make a responsible government.

Olunloyo [9] sees liberty of the press as "a right to publish without obtaining permission, without censorship or public control, without threat of punishment, intimidation or molestation, but modified only by laws that protect the fundamental rights of fellow individual members of the society". Nwabueze (1982) posited that "the press is not an institution comprising special members. It is simply a vehicle, an organ for the dissemination of ideas, or opinions to the public through the medium of printed words". In essence, Nwabueze (1982) [7] portrayed that press freedom covers both the media workers and the general public.

However, in spite of these flowery definitions, free press is still elusive, has yielded to fruitless ventures, and dichotomous definitions of the concept of free press. This has

left free press with no-universally acceptable definition, and it, been treated with utmost abandonment, as captured in the notable statement of Hamilton Alexander, where he quipped thus: "what is freedom of the press, who can give it any utmost latitude for evasion? I hold it to be impracticable". The essence of situating the press freedom in this work is to properly explain the meaning and their importance in a society and clearly adumbrate the imperative of freedom of information to a free press.

### ***2.2.1. Highlight of Constitutional Guarantee on the Freedom of Expression and the Press***

The principle of freedom of expression and freedom of the press were first included as a part of the social contract in Article II of the French Declaration of the Rights of Man in 1789, and two years later, in the First Amendment to the Constitution of the United States of America [3].

In Nigeria, the emergence of the principle could be traced to the recommendations of the Minorities Commission of 1957, which stated that Fundamental Human Rights, which freedom of expression is a necessary part of, should be inserted in the Constitution. This led to the entrenchment of the freedom of expression in section 24 of the 1960 independence Constitution. Since then, virtually every democratic nation has acknowledged the fundamental nature of the right to freedom of expression, and has, accordingly, recognized the freedom of the press and included same in their Constitution. Same is also provided for, in section 39 (1) of the Constitution of the Federal Republic of Nigeria 1999 [4], as amended. This section, amongst others, provides thus: "Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference".

From the foregoing provision of the Constitution, three issues become very apparent: that the freedom of the press to receive and impart idea and information is guaranteed; that the purpose of this section is to provide to all persons, including the press, the right to write and publish as they will; and to gather information for such publication without interference.

Osinbajo and Fogan (1991) [11] provided the right answer to what constitute freedom of the press thus: "freedom of the press is, really, freedom under the law". They add that "since the press finds its ultimate freedom and protection in the law, it must also conform to the boundaries established by law. Even though, a few voices have urged absolute freedom for the press".

It should be noted that in spite of the clamour for absolute freedom for the press, the legislatures, the courts, and governments in Nigeria have continued to limit the freedom through various formulations. Particularly, the same Constitution [4], which, in section 39 (2) and (3) provides for limitations. First by prohibiting any person (except by a presidential permission) other than the government of the federation or state from operating a television station or wireless station; the section provides in part, thus:

Without prejudice to the generality of sub-section (1) of this section, every person shall be entitled to own, establish, and operate any medium for the dissemination of information, ideas and opinion. Provided that no person, other than the government of the Federation or of a state or any other person or body authorized by the President on the fulfillment of conditions laid down by an Act of the National Assembly, shall own, establish or operate a television or wireless broadcasting station for any purpose whatsoever.

And secondly, by making the freedom subject to any law that is reasonably justifiable in a democratic society: "Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society".

### 2.2.2. Right to Freedom of Information

The position of freedom of information in many countries, including Nigeria, is that journalists, as well as, any other citizen do not have a special right of sourcing information. What they have is a right to seek information, subject to the basic restriction imposed by law, in the interests of the individual and the nation. However, where there is a statute which guarantees right to source of information, such as the Access to Information Act 2000: South Africa; Freedom of Information Act, 2000: United Kingdom; and the Freedom of Information Act 1966 of United States of America, the mass media and members of the general public would have a right to obtain and source, from government and its agencies, such information as they need. Upon default by an agency, an applicant may go to court for an order of mandamus, to be issued by the court to compel the disclosure of such public information. However, with the coming on stream of the Nigerian Freedom of Information Act 2011 [6], particularly, the wordings of section 2 (1), the right to freedom of information is guaranteed. It provides thus:

Notwithstanding anything contained in any other Act, Law or Regulation, the right of any person to access or request information, whether or not contained in any written form, which is in the custody or possession of any public official agency or institution however describe is hereby established.

### 2.2.3. Judiciary and Press Freedom in United States of America and Nigeria

The press in United States of America enjoys much more freedom. Same is derived from the right guaranteed by the First Amendment to the United States of America's Constitution, which empowers it, to access and disseminate information without government restriction. This right has been stated to encompass freedom from prior Restraints on publication and freedom from Censorship.

The said amendment to the United States of America's Constitution [3] reads in part, "Congress shall make no law abridging the freedom of speech or of the press". Instructively, the courts have long struggled to determine whether the framers of the Constitution intended to differentiate press freedom from speech freedom. Most have concluded that freedom of the press derives from freedom of speech. Although some cases and some scholars, including Justice Potter Stewart, of the United States of America's

Supreme Court, have advocated special press protections distinct from those accorded to speech. Also, most justices believe that freedom of the press clause has no significant independence from the freedom of speech clause.

The court explained this reasoning in the case of *First National Bank of Boston v Bellotti* [21], where Justice Warren. E. Burger, the then Chief Justice, held that "conferring special status on the press requires that courts or government to determine who or what the press is and what activities fall under its special protection". Burger concluded that "the free speech guarantees of the First Amendment adequately ensure freedom of the press and that there is no need to distinguish between the two rights". He further adds that:

Because the First Amendment was meant to guarantee freedom to express and communicate ideas, I see no difference between the right of those who seek to disseminate ideas by way of a newspaper and those who give lectures or speeches and seek to enlarge the audience by publication and wide dissemination.

This has become the position of the Courts, and has, audaciously, stated that there is no bases upon which the requests to extend the press privileges and immunities beyond those available to ordinary citizens can be sustained. In *Branzburg v Hayes* [22], it (the court) held that a journalist's privilege to refuse to disclose information such as the names of informants is no broader than that enjoyed by any citizen. As long as an inquiry is conducted in good faith, with relevant questions and no harassment, a journalist must cooperate.

Justice Stewart's dissent in *Branzburg's* case should be noted, especially, where he urged the Court to find that a qualified journalistic privilege exists, unless the government is able to show three things: (1) Probable Cause to believe that the journalist possesses information that is clearly relevant; (2) an inability to obtain the material by less intrusive means; and (3) a compelling interest that overrides First Amendment interests.

In an unusual break with tradition, several circuit courts have applied Stewart's test and ruled in favor of journalists seeking special First Amendment protection. Nonetheless, the Supreme Court has steadfastly held-on to its decision in *Branzburg's* case, and shows no sign of retreating from its position that the First Amendment confers no special privileges on journalists.

Similarly, in *Cohen v. Cowles Media Co* [23], reporters for two Twin-Cities newspapers were sued for breach of contract when they published the name of their source after promising confidentiality. They (reporters) claimed that the law infringed their First Amendment freedom to gather news unencumbered by state law. The Court held that "the law did not unconstitutionally undermine their rights, because its enforcement imposed only an incidental burden on their ability to gather and report information". Writing for the majority, Justice Byron R. White, said that:

The laws that apply to the general public and do not target the press do not violate the First Amendment simply because

their enforcement against members of the press has an incidental burden on their ability to gather and report the news: Enforcement of such general laws against the press is not subject to stricter scrutiny than would be applied to enforcement against other persons or organizations.

The decision in *Cohen's* case indicates the Court's continued unwillingness to extend First Amendment protection to journalists.

It should be noted that the First Amendment prohibits prior restraint - restraint on a publication before it is published. In a landmark decision in *Near v Minnesota* [24] the Court held "that the government could not prohibit the publication of a newspaper for carrying stories that were scandalous or scurrilous". It identified three types of publications against which a prior restraint might be valid: those that pose a threat to national security; those that contain obscene materials; and those that advocate violence or the overthrow of the government.

Even in the so-called Pentagon Papers, and *New York Times co. v. United States* [25], where the government argued that publication of certain material posed a threat to national security and sought an Injunction against the newspapers that were planning to publish classified material concerning United States of America's policy in Vietnam. The Court found that "the government had not proved an overriding government interest or an extreme danger to national security if the material were to be published". The justices reiterated their position that a request for a prior restraint must overcome a heavy presumption of unconstitutionality. This case justifies the fact that Press freedom is at its' highest ebb and shows the extent of press freedom in the United States of America. Similarly, in *Nebraska Press Ass'n v Stuart* [26], the Court overturned a state court's attempt to ban the press from a criminal trial. The Court held that gag orders, although not per se invalid, are allowable only when there is a clear and present danger to the administration of justice.

However, it should be borne in mind that freedom of the press, like freedom of speech, is not absolute. Notwithstanding the limitations placed on it, the press exercise enormous power and influence and is burdened with commensurate responsibility. Because journalists generally have access to more information than does the average individual, they serve as the eyes, ears, and voice of the public. Some legal scholars even argue that the press is an important force in the democratic system of checks and balances. In the wake of the September 11th Attacks in 2001, the White House placed pressure on the five major television networks not to broadcast videotaped statements by terrorist mastermind, Osama bin Laden, and his associates. The networks had shown a videotape of bin Laden, and this angered the White House. In early October 2001, the networks agreed not to show such statements again without reviewing them first. The decision came after a conference call among U. S. National Security Adviser, Condoleezza Rice, and the heads of the networks. The White House feared that broadcasts from suspected terrorists could contain anything from incitement to coded messages. This agreement

aroused concerns that the press was forfeiting its responsibility to report all of the news. Commentators noted that the rest of the world would see the bin Laden tapes via television and the Internet, and that the security concerns raised by the U. S. government thus would have little impact.

#### *Judiciary and Press Freedom in Nigeria*

There have been very important cases, which established and affirmed the total freedom of the Nigeria press under the 1979 Constitution. These cases include *Innocent Adiukwu & Ors v. Federal House of Representatives* and *Tony Momoh v. The Senate of the National Assembly*. In *Innocent Adiukwu v. Federal House of Representatives* [17], the court was called upon to resolve the conflicting claims of legislative power and of press freedom. The House of Representatives through its Legislative Investigating Committee summoned the editor and three others to appear before it. The main question in this case was whether requiring newsmen to appear and testify before a legislative committee abridges the freedom of speech and press guaranteed under S. 36 of the 1979 Constitution of the Federal Republic of Nigeria, which contains similar provisions with section 39 of the current Constitution (1999 Constitution) [4]. In his ruling, the Hon Justice Balogun said:

The purpose of S. 36 of the Constitution (1979) is not to erect the press into a privileged institution, but it is to protect all persons (including the press) to write and to print as they will and to gather news for such publications without interference, but it does not authorize any person to publish false news.

Further in the judgment, the learned judge said:

It must be remembered at all times that a free press is one of the pillars of freedom in this country as indeed in any other democratic society. A free press reports matters of general public importance, and cannot, in law, be under an obligation, save in exceptional circumstances, to disclose the identity of the persons who supply it with the information appearing in its reports. Section 36 of the Constitution, which guarantees freedom of speech and expression (and press freedom), does provide a constitutional protection of free flow of information. In respect of the press, the editor's reporter's constitutional right to his source stems from that constitutional guarantee.

Similarly, Hon. Justice Ademola-Johnson, acting Chief Judge of the High Court of Lagos, (as he then was) also delivered a very significant judgment on the freedom of speech under the 1979 Constitution in the case of *Tony Momoh v. Senate of National Assembly* [19]. He declared the resolution of the Senate, inviting a journalist to appear before them, as unconstitutional on the ground that it was an interference with the fundamental rights of Mr. Tony Momoh, conferred upon him by S. 36 (1) of the 1979 Constitution. The learned judge said at page 113:

It is a matter of common knowledge that those who express their opinions, or impart ideas and information through the medium of a newspaper or any other medium for the dissemination of information enjoy by customary law and convention a degree of confidentiality". How else is a

disseminator of information to operate if those who supply him with such information are not assured of protection from identification and disclosure?

The judge further held that the 49 wise men who formulated the Constitution wanted to discourage any attempt “to deafen the public by preventing a hindering of the free flow of information, news and or ideas from them”. This would explain why the provisions of S. 36 (1) of the Constitution 1979 gives freedom of expression, subject only to the laws of the country as libel, slander and injurious falsehood. It is necessary, to state that the above decisions were significant for the preservation of freedom of speech and the press under the 1979 Constitution and the courts deserve commendation in this regard.

However, on appeal, the Court of Appeal, per Nnaemeka Agu, who read the lead judgment overturned the decision of the Lagos High Court and said that:

Section 36 does not carry with it either expressly or by implication, the right not to disclose the source of information of pressmen nor does the section protect the disseminator of the information from legal disabilities or liabilities such as are imposed by the law of libel.

In agreeing with Nnaemeka Agu JCA, Adefenekan Ademola said:

Nowhere throughout the judgment did the learned trial judge make clear what the customary law and convention were. There was no reference to any sources of customary law and convention either in books or by acknowledgement of accepted writers. There was no expert witness before him to found such conclusion on evidence.

It would appear that the attitude of the courts on this provision in the Constitution has not changed fundamentally, since the section was interpreted by the Supreme Court in *R v. Amalgamated Press of Nigeria Limited* [18]. In that case, the defendants were charged with publishing a seditious publication contrary to Section 51 (1) of the Criminal Code, and also publishing false news likely to cause fear and alarm contrary to Section 59 (1) of the Criminal Code. The Supreme Court held that Sections 1 and 24 of the Constitution had not abrogated the law of Sedition in Nigeria, as contained in the provisions of Sections 50 and 51 of the Criminal Code. It also held that Section 24 of the Constitution guarantees nothing, but ordered freedom and it cannot be used as license to spread false news likely to cause fear and alarm to the public.

It should be noted that the provisions of Section 24 of the 1960 Constitution became Section 25 of the 1963 Republican Constitution and later Section 36 of the 1979 Constitution and currently Section 39 of the Constitution of the Federal Republic of Nigeria 1999 [4], as amended.

It is submitted that our courts have all the learning and insight of the United States of America’s Supreme Court to draw from, and what they need in order to be able to rise to the challenge is courage. The kind of courage I am referring to is the type exhibited by the High Courts of Lagos State in their separate judgments, in the case of *Adiukwu v. Federal House of Representatives*, and *Tony Momoh v. The Senate of*

*the National Assembly* earlier cited, and certainly not, with the greatest respects to their lordships, the kind exhibited by the court of Appeal in the case of *Tony Monoh v. The Senate of the National Assembly*, and the judgment of the Supreme Court in *R v. Amalgamated Press of Nigeria Limited* [18], where the court sustained the Sedition Law.

#### 2.2.4. Benefit of a Free Press and Freedom of Information

Those who believe in freedom of speech and press have long argued that only freedom of information, information sources and expressive freedoms will ensure that government becomes responsive to the needs of the people. Among the leading proponents of this view has been the Supreme Court of United States of America, holding repeatedly that, “debate on public issues should be robust, unhindered and wide open”. This view is consistent with the provision of article 19 [15], which has find expression in most countries Constitution. It states that:

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

Flowing from the above, it is an inevitable fact that there is no nation without a press and that freedom of information aids the press in providing, the much needed information to the citizens on the efforts of their government in ensuring a better society. On the other hand, the press provides balanced information with which to evaluate the performance of government, serves as a veritable source of information and the platform from which government and most public officials generate information; and keep abreast of the current events in the society. Yalaju [16], in support of the press, posited that “our society must yearn for press freedom (an intrinsic part of freedom of information) in order to fight (reduce) corruption, ethnicity, favouritism, cynicism, egotism...”.

Based on the foregoing, one can posit that, it is only when access to information enjoys unrestricted freedom that the press can disseminate unhindered information to the society, and only such press that is free from all forms of repression and subjugation can really bring about sanity and positive change in the socio-economic and political development of the nation.

### 2.3. Theoretical Framework

This study is predicated on Social responsibility theory of the press.

Social Responsibility Theory presupposes that the press is responsible to the society. It further adds that freedom carries obligation and that the press, which enjoys privileged position under the Constitution is obliged to be responsible to the society. Similarly, Peterson [12] considered the following as Social responsibility:

- i. Servicing the political system by providing information, discussion and debate on public affairs.
- ii. Enlightening the public so as to make it capable of self-

governance.

iii. Safeguarding the rights of the individuals by serving as watchdog against government (p. 20).

From the foregoing, one could rightly state that the press can only perform these tasks enunciated by Peterson in a society where freedom of information is prevalent and clearly expressed in a statutory legislation, and same given judicial effect by the courts.

### 3. Result

After a thorough analysis of the United States of America and Nigeria's Freedom of Information act, and the consequent amendments, the following similarities and Dissimilarities were, respectively, identified. They are in the areas of: Definition of record; Limitation of Request; third party Request (request can be made on behalf of any person); A requester does not need to give reason for the request; Sustenance of previous laws; Disclosure of information requested; Abolition of request for future record; and Requirement for each agency to make its disclosable records promptly available upon request. Also identified are the following dissimilarities, they are in the areas of: Dispute Resolution; Amendments; Payment of Fee; Electronic release of information; Limitation of Public bodies with intelligence community; Regulatory/limitation of institutions to be covered by the FoIA; Tracking system; Concept of Deemed refusal; Time frame within which information/record requested should be released; Provision of position of Special Counsel for application of disciplinary measures; Oral application for record; State/State agencies application for record/information; Exemption/exclusions of certain persons from request and receipt of record; and Provision of central location (reading room) where the information/record requested will be made available. These areas are further explained, in details, below.

Similar provisions found in the United States of America and Nigeria's Freedom of Information Act is as follows:

1. Definition of record - Section 2 (F)(2) of the United State Open Government Act (OGA) 2007 [10], as well as, section 31 of the Nigeria's Freedom of Information Act 2011, defines 'Record' as any information maintained by an agency in any format.
2. Limitation of Request: There is no limitation to the number of times request for release of information/record under the Freedom of Information Act 1966 (FoIA 1966) can be made by a citizens or residence or foreigners. This is similar to the Freedom of Information Act 2011 (FoIA 2011).
3. Third party request: In FoIA 1966, a request can be made on behalf of any person. Same is, also, provided for in section 3 (3) FoIA 2011.
4. A requester does not need to give reason for the request: The FoIA 1966 and FoIA 2011 provide that a requester of information/record does not need to give reason for the request. However, the FoIA 1966 states that provision of reason (s) will, however,

expedite the process, provides for waiver of fees, and awards of attorney fee, etc.

5. Sustenance of previous laws: The third exception in paragraph (b) (3), FoIA 1966, sustains other laws provisions that support and promote secrecy, but same is not subject to the FoIA 1966. Similar provision also exists in the FoIA 2011.
6. Disclosure of information requested: The FoIA 1966 does not permit or provides for a mechanism that would allow only the requester to see the requested information. This means that once an agency discloses the information requested, same becomes public. Same also applies to information released under the FoIA 2011.
7. Abolition of request for future record: The FoIA 1966 provides that a requester cannot make requests for "future" records not yet created. The FoIA 2011 has similar provisions.
8. Requirement for disclosure of information: The FoIA 1966, as well as the FoIA 2011, requires each agency to make its disclosable records promptly available upon request.

Dissimilar provisions found in the United States of America and Nigeria's Freedom of Information Act

9. Dispute Resolution: Dispute arising from the application of the United States of America Freedom of Information Act (FoIA) can be resolved at three levels: Administratively; through mediation; and/or be heard in court. Whereas the Nigeria Freedom of Information Act (FoIA 2011) provides for only one – the court.
  10. Amendments: The United States of America Freedom of Information Act [5] has undergone several amendments: 1974, 1976, 1986, 1996, 2007 and 2016. These amendments introduced the following: Full/partial disclosure of previously unreleased information and documents controlled by the United States of America's government; defined Agency records subject to disclosure; outlined the mandatory disclosure procedures; provides nine exceptions to the Act. Whereas the Nigeria Freedom of Information Act 2011 [6] has never been amended, and has no such provisions. Scholars opined that these amendments gave the FoIA 1966 (United States of America Freedom of Information Act) the needed force and impetus to ensure agencies compliance to the law.
- Similarly, section 2 of the Open Government Act 2007 (OGA 2007) [10], one of the amendments to the United States of America Freedom of Information Act, provides for the congress to regularly review the law to determine whether further changes are required or necessary, in order to give effect to the "right to know". Same is not provided for, in the FoIA 2011.
11. Payment of Fee: The United States of America Freedom of Information Act 1966 (FoIA 1966) provides for payment of Fee for the release of the

- information requested, while the Nigeria Freedom of Information Act 2011 (FoIA 2011) has no such provision.
12. Electronic release of information: The United States of America Freedom of Information Act (FoIA 1966) provides for electronic provision of information, while the Nigeria Freedom of Information Act (FoIA 2011) has no such provision.
  13. Limitation of Public bodies with intelligence community: Sub-paragraph (a)(3)(e) of the Electronic Freedom of Information Act 1996 (eFoIA 1996), an amendment to the FoIA 1966, limits public-bodies with the intelligence community, as defined in the National Security Act 1974, from making certain information available to the requester. There is no such limitation in the FoIA 2011, except under the exceptions.
  14. Regulatory/limitation of institutions to be covered by the FoIA: The FoIA 1966 covers the executive bodies, government-controlled-corporations, other agencies established by the executive branch, and/or independent regulatory Agencies. It exempts the legislative branch, the courts, the executive office of the president, National Security Council, the White House and private bodies substantially public funded or which undertake public functions. Whereas in the FoIA 2011, section 31, provides that the law covers the following public institution: legislative; executive; judicial, administrative or advisory body of the government, including board, bureau, committees or commissions of the state, etc. This is dissimilar to the FOIA 1966.
  15. Tracking system: The FoIA 1966 requires public-bodies to establish tracking system for requests, and to provide applicants with tracking number for their request with ten days of it being lodged. This is not provided for, in the FoIA 2011.
  16. Deemed Refusal: The FoIA 1966 provides for deemed refusal. This is not provided for in FoIA 2011.
  17. Time Frame: The FoIA 1966 provides for 20 working days within which to release the information requested, and an extension of 10 days in unusual circumstances. Whereas the FoIA 2011 provides for 7 days (Section 4 FoIA 2011).
  18. Special Counsel: The Act (OGA 2007) provides for the establishment of the position of a Special Counsel, who shall initiate proceedings to determine whether disciplinary action is warranted against personnel of a public-body who acted arbitrarily or capriciously. The FoIA 2011 does not have similar provision.
  19. Oral application: Similarly too, oral application can be made under the FoIA 2011, Section 3 (4), but same is not provided for in the FoIA 1966.
  20. State/State agencies application for record/information: State or state agencies may make FoIA request under the FoIA 1966. This is not provided for in the FoIA 2011 (Section 1 FoIA 2011).
  21. Exemption/exclusions of certain persons from request and receipt of record: Two categories of persons are excluded from making a request under the FoIA 1966 - fugitive requesting information relating to his/her fugitive status; a foreign government or international organization directly or through a representative requesting for information from United States of America intelligence agency. This is not provided for, in the FoIA 2011.
  22. Provision of Central location (reading room): The FoIA 1966 provides that information can be made available in one central location, such as a reading room. This is not provided for in the FoIA 2011.

#### 4. Discussion

Freedom of Information Act has been said to be the bulwark of a virile society. It engenders the culture of openness in government and ensures citizens' participation in governance. So enactment of laws, especially, one with the requisite provisions and capacity to provide unfettered access to information/records, is germane to the society. Same as analyzing those laws, with a bid to proffering or identifying areas of discord, and for amendment, hence this study to analyze the United States (U. S) and Nigeria's Freedom of Information Act, enacted, respectively, in 1966 and 2011. From the analyses, the Nigeria Freedom of Information Act 2011 has similar provisions with that of the U. S., as seen in paragraph (P) 1 – 7 above. It also shows in paragraph 8 – 22 above that the two countries have distinct/dissimilar provisions in their Freedom of Information Act. Paragraph 10 showed that the U. S. Freedom of Information Act has undergone several amendments: 1974, 1976, 1986, 1996, 2007 and 2016. Also, section 2 of the Open Government Act 2007 (OGA 2007), one of the amendments to the United States of America's Freedom of Information Act, provides for the Congress to regularly review the law. Scholars opined that these amendments gave the U. S. FoIA the needed force and impetus to ensure agencies compliance to the law.

Regarding to the similar provisions contained in paragraph (P) 1 – 7 above, the two FoIA (the Nigeria and U.S FoIA 1966 and 2011 respectively) defined the term 'record' as "any information maintained by an agency in any format". It also provides no limitation as to the number of time request for information/record will be made. Also, that a requester does not need to give reason for the request, and that request can be made on behalf of any person. Furthermore, it requires agencies of government to make their disclosable records promptly available; abolished request for future record (records that are not in existence, but may be available in future); and sustained previous laws/enactments, etc. The author argues that sustaining previous enactments that place restrictions to access to information/records hampers the efficacy of the Freedom of Information Act.



## 5. Conclusion

The importance of the press and free press is sine-qua-non to the existence of a virile democratic society. The liberty of the press is indeed essential to the nature of a free states (where freedom of information is manifestly prevalent) as observed by Sir William Blackstone. At the root of this liberty is the freedom of sources of information to make information/records available and unhindered to the press, for the benefit of the citizens and the society at large. Therefore, a clear cut expression or enactment of laws that empower the sources of information to freely give out information to the press and the public would add impetus to the drive to enthrone a better society, where corruption is completely eradicated and obliterated. It would further, no doubt, bring government close to the people, especially, in Nigeria where freedom of information is not guaranteed and expressed in the Constitution, like in the Constitution of the United States of America.

Political bureau [13], observing the situation in Nigeria, recommended that:

Freedom of the press (freedom of information) should be clearly enshrined in the Constitution. This freedom should adequately guarantee to the press the right to receive and disseminate information. Any existing legislation which tends to unduly strangle this freedom should be reviewed.

This recommendation, up till today, has not been implemented. Kofi Anan, one time, Secretary General of United Nation [28], Stated in support of the press that:

The world should spare a thought to the imperiled journalist and newspapers whose only crime has been to tell the truth.... Where their rights are denied, no one can be free, where their voices are silenced, no one can rely be heard.

Finally, freedom of information gleaned from the United State of America's perspective, shows that more is required in Nigeria, in order to be at par with the United States of America. However, in spite of this, certain opprobrious limitations engendered by the numerous Executive Orders promulgated by successive Presidents of United States of America exist in the U. S., as seen in the analysis so far made in this work. One can safely say that the desired freedom of information is not yet in place in the two climes. To this end, efforts need to be exerted in the two climes, so as to attain the much-desired level, where freedom of information is accorded its rightful place, same, prevalent and entrenched, both in the law and in practice. Furthermore, the researcher posits that only this will embolden and energize the sources/containers of information – agencies, to freely provide all government-held information to the people, who deserve and reserve the right to be informed of the activities of their government.

## Recommendations

It is recommended, therefore, that for the press to continue in ensuring a more viable democratic society in Nigeria; the government should see the press as partner in progress than a

threat. It (Government) should stop the ostensible reliance on national security and interest, to deny the press and the sources of information the much needed liberty to function effectively.

i. There should be a clearly expressed enactment that guarantees freedom of information in the Constitution of United States of America and Nigeria. These will clothe it (Freedom of Information Act) with the supremacy flavor that makes its amendment and derogation stringent. And will also curb, stem and/or obliterate the confusion currently festering in Nigeria regarding whether or not the states need to ratify or domesticate the Freedom of Information Act 2011.

ii. All laws or enactments that hamper the freedom of information and the press in Nigeria should be repealed. For example: Official Secret Act of 1962, etc.

iii. The exemptions in the Nigerian Freedom of Information Act 2011 should be reviewed/amended, particularly, section 12, to include the disclosure of investigatory records compiled for law enforcement purposes; and one, which would deprive a person of a fair trial or an impartial Adjudication. As this will be at par with the United States of America's Freedom of Information Act amendment made sequel to the decision in *Sieverding's* case.

iv. There should be a law or an amendment to the United States of America's Constitution banning the issuance of Executive Order [29] or any other law or practice that whittles or hampers the effectiveness of the Freedom of Information Act 1966. As this will curb the arbitrary promulgation of Executive Orders that, in some instances, limit the efficacy of the Freedom of Information Act. It will also forestall the application of unilateral approaches often employed by the United of States of America's President in countermanding freedom of information, For example: the instruction by the then President, Ronald Reagan, to his Attorney general: "To inform the Executive branch department heads to comply with the 'letter of the law, but not the spirit of the law'. He further instructed that "If there was any reason a document might be withheld from public scrutiny, withhold it".

v. Section 39 (3) of the United States of America's Freedom of Information Act [5] that protect the office of the president, the senate, the White House and the court absolutely, should be repealed and clearly draw a distinction between the activities of the occupiers or officials of these establishments that should be covered by the protection and those that should not be covered.

vi. Denial of information should be made an offence, especially, information that falls outside the exemptions. This would send signal of seriousness to the officials that harbour government information.

## References

- [1] Tocqueville, A. (1835). In: Amadi, F. (2002). *Site of Struggle in Nigerian Development Communication*. Port Harcourt: Sinart Publishing.

- [2] Blackstone, W. (1765-1769). Commentaries on Laws of England. Chicago: University of Chicago Press. vol. 4, 151 – 152.
- [3] Constitution of United States of America; First Amendment, December, 15, 1791.
- [4] Constitution of Federal Republic of Nigeria 1999, As Amended, also referred to as 1999 Constitution.
- [5] Freedom of Information Act 1966, United States of America.
- [6] Freedom of Information Act 2011, Nigeria
- [7] Nwabueze. B. (1982). The Presidential Constitution of Nigeria. London: C Hurst, 460.
- [8] Noelle-Neumann. E. (1974). The Spiral of Silence: Public Opinion-Our Social Skin. Chicago: University of Chicago press; 44.
- [9] Olunloyo. V. (1977). The Great Debate. Lagos: Time Publishers Ltd, 125.
- [10] Open Government Act 2007.
- [11] Osinbajo. Y. and Fogan. K. (1991). Nigerian Media Law. Lagos: Gravitas Publishers, 8.
- [12] Paterson, C. (2005). Development Communication. Chicago: The Museum of Broadcast Communication. Retrieved from <https://www.museum.tv/eotvsection.php?entryode=development>, para. 1-8 on August 10, 2016.
- [13] Political Bureau Report (1987), Published by MAMSER, 1987), P. 214, Para 12.031 (a) & (b).
- [14] United Kingdom Royal Commission Report, 2015.
- [15] Universal Declaration of Human Rights, 1948.
- [16] Yalaju G. (2001). Media Law. Port Harcourt: Minson publishers.
- [17] Innocent Adikwu v. Federal House Representative (1982) 3 NCLR, 94.
- [18] R v. Amalgamated Press Ltd & Anor (1961) ANLR 209.
- [19] Tony Momoh v. Senate (1984) NCLR, 269; (1982) 3 NCLR p. 394.
- [20] Associated press v. N. L. R. U. S pp. 103, 132-2 (1937).
- [21] First National Bank of Boston v. Bellotti 435 U. S. 765, 98 S. Ct 1407, 55 LED. 2d 707 (1978).
- [22] Branzbury v. Hayes (1972) 408 U. S. 660.
- [23] Cohen v. Cowles Media Co. 501 U. S. 663, 111 S. Ct. 2513, 115 L. Ed. 2d 586 (1991).
- [24] Near v. Minnesota 283 U. S. 697, 51 S. Ct. 625, 75 L. Ed. 1357 (1931).
- [25] New York Times Co. v. U. S. 403 U. S. 713, 91 S. Ct. 2140, 29 L. Ed. 2d 822 (1971).
- [26] Nebraska press Association v. STUART, 427 U. S. 539, 96 S. Ct. 2791, 49 L. Ed. 2d 683 (1976).
- [27] New York Times Co. v. Sullivan 376 US 254.
- [28] [www.un.org](http://www.un.org). retrieved 25/09/17.
- [29] Executive Order 13392, 2005: [http://www.usdoj.gov/oip/04\\_6.html](http://www.usdoj.gov/oip/04_6.html). Accessed September 25, 2017.