



National Security: Social Media and the Freedom of Expression

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Abstract

This paper “National Security: Social Media and the Freedom of Expression” explores the difficulties in finding a balance between security and freedom of expression as a fundamental human right. The security situation in Nigeria today has brought the country face-to-face with the need to work out a balance between these two important variables in any democratic nation such as Nigeria. Proponents and opponents of this have argued their cases in various forums, but the need to find this vital balance remains. The paper employs Ad hoc Balancing Theory as a way to create a balance between these variables. The paper argues that freedom of expression and the public's right to know can be adjusted in extreme situations that put the national security of Nigeria in grave danger. The paper concludes that security and freedom of expression are both important for the survival and development of Nigeria as a united entity. It recommends among other things that security supersedes freedom of expression. Media literacy should be introduced at all levels of education in Nigeria, as every Nigerian with smart devices (phones, computers, etc.) are potential media content creators and consumers via social media (citizen journalist). Through this policy of media literacy, it is hoped that the vast majority of Nigerians on social media will know and apply responsible and security-conscious media ethics as well as self-censorship where necessary in the interest of national security.

Key words: Freedom of expression, Human right, National security, Ad Hoc Balancing Theory and Social Media.

Introduction

The media has been regarded as the bedrock of democratic societies, considering the cardinal role it plays in providing a free marketplace where divergent ideas and opinions are accommodated for citizens' engagement. However, it is only in a free media environment that the true significance of media to society can be widely perceived. Without a free media, the information people receive would often be incomplete, biased, unverifiable and largely ineffectual (Agba & Adomi, 2018, p.23).

Freedom of expression is one of the fundamental human rights, which is universally recognized and protected. Indeed, the constitutions of most countries of the world, including Nigeria have expressly provided for the protection of this right because of its importance to the enhancement of personal liberty and democracy (Kris, 2021, p. 41).

In the Nigerian context, the right to freedom of expression is enshrined in section 39 (1) of the 1999 constitution of Nigeria where it states that “every person shall be entitled to freedom of expression,

including freedom to hold opinions and to receive and impart ideas and information without interference” (Chapter 4 Section 39 of Constitution of the Federal Republic of Nigeria, 1999). Relatedly, Article 19 of the Universal Declaration of Human Rights unequivocally guarantees the right to freedom of opinion and expression to every human being anywhere on earth when it states that:

Everyone has the right to freedom of opinion and expression. This right includes freedom to receive and impart information and ideas through any media and regardless of frontiers, either orally, in writing or in print, in the form of art, or through any other media of his choice (United Nations 1984).

The emergence of the social media not only allows citizens exercise their right to freedom of expression but it also facilitates the public's right to know. These two then present the problem of how much information, and what types of expression are

necessary to keep the media space and country safe, considering the fact that social media could also be used to promote negative agenda that may have adverse effects on Nigeria's security architecture (Chukwuere & Onyebukwa, 2017).

Even though social media has been embraced as providing ample opportunities for the freedom of expression, it has also created new and highly accessible channels for spreading disinformation and contributing to real-world harm in the form of discord, violence, persecution and exploitation. Given the above discussion, it is evident that there is indeed the need to strike a balance between upholding freedom of expression and abusing same. There is therefore an urgent need to ameliorate the threat of violence and insurrection due to evolving nature of social media as well as safeguarding freedom of expression, and the right to know is the salient theme this paper seeks to explore:

Statement of Problem

In recent years, Nigeria's national security has been threatened by different kinds of terrorist activities which have affected the lives and properties of many Nigerians. Researchers such as Sodiq, No'Orzai and Guta (2011) and Nsudu and Onwe (2017) have established that the heightening insecurity situation in Nigeria has been attributed to the ubiquity and ease of use of social media tools which have become arsenals in the hands of extremists for fuelling and aiding activities that are inimical to public safety.

Social media has been indicted by several studies as a catalyst to the rise of terrorism and insecurity in Nigeria (Sodiq, No'Orzai & Guta, 2011; Nsudu & Onwe.,2017). In fact, social media has become increasingly useful facilitators of the promotion, incitement, intimidation of a much wider and previously unreachable audience. Even though, speech advocating violence and terrorism is prohibited by the terms of service of Facebook, Twitter and YouTube amongst social media outlets; it is not clear how comprehensive or successful these efforts have been (Killion 2019, p.6). This explains why Murrays (2021, p.57) argue that "there is no absolute freedom anywhere in the world, and that, too title liberty brings stagnation and too much

brings chaos". The question then is at what stage is freedom of expression considered a threat to national security and at what stage is there a need to strike a balance between the right to know and freedom of expression especially in this age of social media in Nigeria. This among others is what this paper seeks to explore. Freedom of Expression and Terrorism in Nigeria: An Indictment of social media

Scholars such as Enibehe (2016), Tomiwa (2016) and Vareba, Nwinaene and Theophilus (2017) have all established that freedom of expression is the livewire upon which a sustainable democracy rests. For instance, according to Barak (1990, p.4) it is the "freedom of the individual or community to illuminate the truth through free and unending struggle between truth and falsity. It is the freedom of the society's members to exchange opinions and views in a spirit of tolerance, without fear, with respect to the autonomy of every individual, and to persuade one another in order to strengthen, secure and develop the democratic regime". By implication, information is pivotal to the sustainability of democracy. Khan (2019) emphasized that the "free flow of information and ideas lies at the heart of the very notion of democracy and is crucial to effective respect for human rights." Freedom of expression as guaranteed by the constitution of Nigeria is a core right that promotes the enjoyment of other rights and this consequently powers the engine that ensures a democracy functions properly in a given society or context.

The dawn of the 21st century led to the emergence of a new form of media. The emergence of social media has significantly altered the media landscape and presents individuals with novel opportunities to access information on trendy issues as well as disseminate same for the well-being of individuals and the society at large (Pavlik, 2001, p.11).

Emphasizing the need to create a free virtual world which will continue to serve as a market place of ideas and information, Barlowin (1996) cited in Spinner (2011, p.53) states that "We are creating a world where anyone anywhere may express his or her beliefs, no matter how singular, without fear of

being coerced into silence or conformity.” The Article 10 of Freedom of expression by European Convention on Human Right captured the significance of the protection of freedom of expression thus: “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.”

Even though the importance of social media is obvious, according to the European Consortium for Political Research (ECPR) (2019) in recent times, the significance of freedom of expression and speech has been challenged by political scientists, jurists and politicians alike. Hiding under the shield of freedom of expression, Nigerians have capitalized on that to spread fake news, hate speech and post-truth information which has oftentimes, degenerate into information overload and even security challenges in the country.

Studies have shown that social media platforms have contributed to outbreaks of violence and terrorism acts in Myanmar, the Philippines, Nigeria and elsewhere (Nsudu & Onwe, 2018). In Nigeria for instance, the insecurity situation has been attribute to the influx and diffusion of social media which cannot be easily controlled or censored from the general public as a result of social freedom and lack of cyber space laws (Chukwuere & Onyebukwa, 2018, p. 53). Social media platforms such as Facebook, Twitter and YouTube are constantly being used by terrorists to disseminate videos of its fighters executing prisoners and claim responsibility for attacks around the globe. Social media has reportedly been accused of playing a key role in uncertain individuals' personal journeys to terrorism, of violent extremism, a process often referred to as 'radicalization' (Killion, 2019, p.6).

Schoeman (2017) contends that the media is seen as a key component of democratization only when they are free to share information of public interest; nevertheless they are often criticized for providing a platform for extremists to spread their ideologies. Social media sites are used by terrorist groups with dedicated servers and websites to spread their propaganda (Chukwuere &

Onyebukwa, 2018, p. 53). In Nigeria for instance, according to Omede and Alebiosu (2020) Boko Haram use social media platforms such as Facebook, Twitter, YouTube among others to issue threat, shape public perception, propagate their ideology, raise fund, recruit and radicalize members. Social media, as Chukwuere and Onyebukwa (2018) have noted is not only used by terrorist groups to challenge the peace and stability of a country but the citizens themselves are using the medium to render terror on each other by means of peddling fake news, misinformation and fake posting which are capable of promoting propaganda, hatred and fear (p. 53).

According to Dario (2017), social media is a potent tool in the hand of unidentified users who tend to manipulate trending issues that can pose as a threat to national security of a nation as well as breed deception. Conceding to this contention is UNESCO (2018, p.15) which observed that the 21st century has seen the weaponisation of information on an unprecedented scale. Powerful technology makes the manipulation and fabrication of content simple and social networks dramatically amplifies falsehoods peddled by individuals and shared by uncritical publics. The platforms have become fertile grounds for computational propaganda capable to ferment uprising and insecurity.

Social media platforms have increasingly become a playground for misinformation and fake news especially in the midst of a terrorist attack or instances of violence. The circulation of some gory videos and pictures on social media by members of the proscribed Indigenous People of Biafra (IPOB), claiming they were pictures of their members killed by the Nigerian Army and dumped at a refuse site at Obinwa-Asa- Aba axis of Abia State to raise tension and support from members of the public was described by the Nigerian Army as false and misleading. The spokesman for the Nigerian Army, Col. Sagir Musa insisted that the corpses were suspected to be victims of road accidents, jungle justice or ritual killers (www.vanguard.com). Who is telling the truth is not really important at this point. The most important thing here is that social media platforms were used in circulating the

messages which were capable of heightening violence in the country.

Schoeman (2017) argues that social media has the potential to link people of like-mind for the purpose of exchanging information as a pivotal element of democratization or threaten national security and integration. It is, therefore, important to establish a balance between freedom of expression and public safety for the common good of all. *Freedom of Expression and National Security Protection in the Age of Social Media*

Freedom of expression is a right in itself as well as a component of other rights protected by law. Freedom of expression as a principle extends to any expression, notwithstanding its content, disseminated by any individual, group or type of media. The Constitution of the Federal republic of Nigeria in chapter 2, section 22 acknowledges this when it states that, the media should be free to uphold the responsibility and accountability of government to the people (Ogah & Otor, 2012, p.91).

However, because the government too has a duty to protect lives and properties of its citizens, the right to freedom of expression is sometimes curtailed for the sake of national security. This means that, freedom of expression as a right, when exercised should not jeopardize the security of a nation. This also portends that the right to freedom of expression, and even of the press is not absolute. According to Pool as cited in Ogah and Otor (2012, p, 92), “no nation of the world will tolerate freedom of the press that tends to divide the country or open the floodgates of criticism against a freely chosen government that leads it.” In this age of social media where propaganda and misrepresentation are used as instruments of hate and division, there is need to tune down such excesses.

The suspension of Twitter by the Nigerian government which seemed to be a violation of chapter 2, section 22 of the 1999 Constitution as amended in 2011 was however, defended on the grounds of national security. The Nigerian government accused Twitter for being biased for not applying the same sanctions it applied on President Muhammadu Buhari's tweet to tweets posted by the

leader of the Indigenous People of Biafra (IPOB), Mazi Nnamdi Kanu, whose posts the government argued were capable of inciting violence and disintegration of the country (Kris, 2021, p.20).

Even though many critics have considered the ban on Twitter as a gross violation of the fundamental human rights to freedom of expression, it is also a constitutional duty of the state to restrict freedom of expression under certain strict circumstances including national security and serious public threats (Global Expression Report, 2022). The clampdown on free speech by the Nigerian government, citing hate speech, fake news, international interference and national security as reasons for the recent ban on Twitter on June 5, 2021 has similarly been criticized by Amnesty International as a means of muting the voices of the estimated 40 million people who use the site for voicing and sharing their opinions on important issues in their lives and society noting that it amounts to an infringement on the fundamental human rights of freedom of expression and access to information of Twitter users in Nigeria (<https://www.amnesty.org>).

Majority of journalists interviewed during the Sri Lanka's Easter Sunday attack in 2019 where more than 250 people were killed in the carnage which led to the shutting down of social media felt that:

social media can be more harmful, making the events on the ground and the government response less transparent, making it harder to keep those in power accountable. Some felt this lack of transparency was intentional and the government benefited from ensuring that they were the only voice providing information during the crisis, adding that shutting down any form of expression is problematic (Amarasingam & Rizwie, 2020, p.4).

The Sri Lanka's government had defended its actions arguing that the government was to limit the spread of fake news and misinformation,

particularly narratives targeting the Muslim community (p.4).

Previous Studies

The issue of freedom of expression has long been debated among researchers even before the proliferation of social media and more salient in the face of global security challenges. For instance, McGoldrick (2013) investigated the limits of freedom of expression on Facebook and social networking sites with a focus on United Kingdom perspective and found that legal regulation of SNSs is challenging because it does not fit with the paradigms on which laws relating to freedom of expression have been built. The line between individual and small group communications on one side and mass communication on the other is gradually fading. So also is the line between individual communications and those by organisations and institutions. According McGoldrick, “It is not really credible to apply the high standards of journalism and broadcasting imposed by human rights law on mass communication organisation and institutions to individuals.” Obiaje (2021) analyzed Nigeria Twitter Ban as an erosion of freedom of Information and found that the Nigerian government is apprehensive on account that citizens are championing the cause for the respect of their fundamental human rights; for due process and constitutional jurisprudence. Obiaje recommended that government should shed its antagonistic toga and open the media space in order to enable freedom of expression and deepen democracy.

In similar vein, Omede and Alebiosu (2020) investigated social media and Boko Haram insurgency in Nigeria and that the Boko Haram sect adoption of social media to radicalize young Nigerian youths and propagate its ideology with propaganda and misinformation of the public is worrisome especially to the Nigerian military. This is because it threatens national security and challenges the military counter-insurgency operation. Omede and Alebiosu also found that social media have also become a tool for the military to counter the narrative of the Boko Haram

insurgents; effectively communicate its counter-insurgency operations and other military activities directly to the people thereby boosting public confidence in the military. Omede and Alebiosu recommended that a social media directorate should be established in the military with adequate infrastructure, personnel and funding for the purpose of gathering data from social media for intelligence, monitoring and analysis.

Malefakisc (2019) examined social media dynamics in Boko Haram's terrorist insurgency and found that a major factor enabling the spread of social media in Nigeria is the power it confers on its user. The 'attention economy' as the back-bone of social media consequently fuels the 'vanity of the self' and has led to the popularity of social media influencers who have operationally crafted social media to become opinion shapers. Malefakisc concluded that Boko Haram's use of social media for recruitment is contemporarily not sophisticated enough but the contacts and connection which ISWAP enjoys with the Islamic State can change this trend. Before this happens, tech companies could maximise social media usage through social media influencers and flagship activities like the SMW to re-orient youth values and spread counter-terrorist narratives. Malefakisc recommended that Civil Society Organisations could take social media activism offline to connect with relevant stakeholders and ensure that necessary legislation that fulfills social media hashtag activism are passed.

Theoretical Framework: Ad Hoc Balancing

The ad hoc balancing concept/theory first rose to prominence in the United States Supreme Court's 1972 *Branzburg v. Hayes* trilogy of cases. *Branzburg* was a reporter who published an article about drug use. *Branzburg* interviewed drug users and producers who did not want to be identified in the article (Study.Com, March 15, 2022). According to Bernstorff (2014) the concept of Ad Hoc Balancing applied as the third and last subcomponent of the proportionality test in human rights adjudication. Judicial proportionality tests which include this component is a particular form of judicial reasoning

which can be are generally structured as follows:

- i. Is the measure a suitable means of achieving the desired end?
- ii. Is the measure necessary to achieve the desired end?
- iii. Does the measure have an excessive impact on the interests of the rights holder?

In this last stage, “which is also known as proportionality *stricto sensu*, judges often apply a methodology of ad hoc balancing. Its central idea is to 'balance' or 'weigh' the public interests pursued by the disputed public measure at hand against the interests of the affected rights-holder. More and more, constitutional, supreme, and international courts rely on this form of reasoning as a decisive last element of their proportionality analysis” (Bernstorff, 2014, p.63).

Bernstorff (2014) further maintain that on a more abstract level proportionality analysis in general is also a pragmatic judicial response to an intractable conflict in human rights adjudication: rights claims can potentially collide with the rule of the majority as expressed in parliamentary legislation. Yet, the constitutional commitment of liberal democracies to both the protection of individual liberties and democratic majority rule makes it conceptually difficult, if not impossible, to generally prioritise one over the other. As to the textual basis of judicial reasoning in this area, many constitutions and international covenants explicitly allow for restrictions of individual rights on a statutory basis, thereby incorporating the Kantian insight that one's freedom is always limited by the like freedom of everyone else (Bernstorff, 2014, p.64).

In many countries, ad hoc balancing has been applied to protect the abuse of freedom of expression especially in the conflicted interest. This is because the reason for freedom of expression is not for self-actualization of an individual but the protection of democracy. This explains the need for balancing constitutional right of an individual and safety of the public. According to Aleinikoff (1987, p.100) balancing is not inevitable. To balance the interests is not simply to be candid about how our

minds and legal analysis must work. It is to adopt a particular theory of interpretation that requires justification. Aleinikoff further argues that under a balancing approach, the Court searches the landscape for interests implicated by the case, identifies a few, and reaches a reasonable accommodation among them. In so doing, the Court largely ignores the usual stuff of constitutional interpretation, the investigation and manipulation of texts (such as constitutional language, prior cases, even perhaps our ethical tradition (p.988).

The concept of ad hoc balancing is used as a theoretical framework for this paper because of its relevance in balancing conflicting interest in a democratic setting. As such ad hoc balancing helped in the understanding of the controversies associated with interest of social media users as guaranteed by the constitution of Nigeria and Article 19 of Universal Declaration of Human Right and the need for democratic sustainability. Accordingly, the concept is quite appropriate for this paper and today's media (social media) in addressing the challenges of balancing free expression and cutting down harmful contents on our media spaces.

Methodology

The research design used for this study was basically library method which involved eliciting information from previous studies and literature. Thus, this paper solely sourced data from secondary data to arrive at the conclusions made. Data and conclusions reached were elicited from extensive consultation of textbooks, journals, periodicals, magazines newspaper and a host of other online materials. Therefore, explanation is built mostly on the work done by others.

Discussion

Balancing Interests in the Face of Competing Rights: Towards a Theoretical Viewpoint. At this critical moment where freedom of expression and national security are grossly at crossroads, several factors should be weighed in determining the greater good for the society. This has become sacrosanct due to the fact that free speech and press is not so absolute.

In this period of insecurity in the face of fake news, hate speech, misinformation and threats, there is need to sacrifice certain rights such as the right to freedom of expression and the right to access to information for the sake of national security - which portends the greater good for a greater number.

This paper explains the nexus between balancing safety with freedom of expression using the ad hoc balancing theory which assumes that when a conflict arises between our freedom of expression as guaranteed by section 39 of the 1999 Constitution of the Federal Republic of Nigeria and other rights, the ad hoc balancing theory is applied to determine which right should take priority. As indicated earlier in the theoretical framework, ad hoc balancing theory seeks to reconcile conflicting interests, securing the most overwhelming and sacrificing the least. The theory works by examining which constitutional right is overwhelming and more important to society to protect. A competing constitutional interest must be compelling in order to justify a limitation on free speech (Study.Com, 15 March, 2022).

The relevance and applicability of this theory to this paper is due to its instrumentality in addressing the persistent clashes between freedom of expression and national security threats posed by social media and its users. The ad hoc balancing theory demands that, when the right to freedom of expression and the public's right to know are exercised in such a way that threatens national security or public health, restraining freedom of expression for the common good of the society should take priority. In other words, Ad hoc theory prescribes that while social media users may abuse their constitutional right to freedom of expression, instigate unrest, peddle terrorist activities and cause a breach in national security, restraining such rights is imperative in the interest of national security and safety.

Conclusion

The freedom, reach, flexibility, anonymity, ease of operation as well as affordability social media provides makes it the likely fertile ground for terrorists to network and further their clandestine

agenda across frontiers to the detriment of national security.

Creating a workable balance between freedom of expression, the right to know and national security cannot be undermined to achieving meaningful and sustainable national security and development in Nigeria. No nation can make meaningful development without security, just as freedom of expression and the public's right to know form a basis for democracy to find expression and thrive.

Therefore, national security and these two fundamental human rights are all important for the survival and development of Nigeria as a united entity. However, where there is a clash between these variables, a workable balance should be sought after weighing both sides of the bargain critically. These rights can be adjusted in extreme situations that put the national security of Nigeria at stake. It is also the constitutional duty of the government to protect its citizens and properties. The exercise of this responsibility towards limiting publicity to terrorism has also been seen as a violation of the fundamental human rights of citizens. Balancing the right to freedom of expression and national security is the best approach to finding decorum in a free world weaponized by social media.

Recommendations

Considering the security challenges currently facing Nigeria and the quest to maintain and uphold freedom of expression and public's right to know of social media users in Nigeria, this paper makes the following recommendations:

- i. Security supersedes Freedom of expression in so far as the fair restriction of Freedom of expression will strengthen national security.
- ii. The principle of ad hoc balancing should be applied to create a workable balance between national security, Freedom of expression and the public's right to know. This should be done only after critically weighing both on a case-basis- according to their unique features as each situation may have its peculiar characteristics and require a different approach to balance.
- iii. Media literacy should be introduced at all levels

of education in Nigeria, as every Nigerian with smart devices (phones, computer, etc.) is a potential media content creator and consumer via social media and will know and apply responsible and security conscious media ethics as well as self-censorship where necessary in the interest of national security.

- iv. Some level of censorship should be put in place to check harmful, terror-inciting communication contents that are capable of undermining the peace, security and sovereignty of Nigeria.

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