AN APPRAISAL OF LEGAL AND INSTITUTIONAL FRAMEWORK FOR BROADCASTING INDUSTRY IN NIGERIA: A CASE STUDY OF NATIONAL BROADCASTING COMMISSION (NBC)

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Department of Public Law

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DECI 'ION

I declare that this dissertation titled ***An Appraisal of Legal and Institutional Framework for Broadcasting Industry in Nigeria: A case Study of National Broadcasting Commission*** has been carried out by me in the Department of Public Law. The information derived from the literature has been duly acknowledged in the text and a list of references provided. No part of this dissertation was presented for another Degree or Diploma at this or any other Institution.

……. ……..

Sani Suleiman Sign/Date

CERTIFICATION

This dissertation titled An ***Appraisal of Legal and Institutional Framework for Broadcasting Industry in Nigeria: A case study of National Broadcasting Commission*** by Sani Suleiman meets the regulation governing the award of Degree of Master of Law – (LLM) of the Ahmadu Bello University, and is approved for its contribution to knowledge and literary presentation.

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DEDICATION

This dissertation is dedicated to my father Alhaji Sani Buhari.

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With praise to Allah (SWT) who has spared my life to this moment, it is worthy while to say that many persons have contributed immensely and significantly either directly or by implication in pursuit of lively objectives from my childhood to this stage of life, and therefore they are worthy of acknowledgement.

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Fa'iza, Maimuna, Sabiu, Kabiru, Abdullahi, Maryam, Aisha, Rahamatu, Aliyu, Usman, Yahaya, Fatima, Yusuf, Abdul-Hakeem and Sa'adiya.

ABBREVIATION

ABJ	Abuja
AC	Appeal Cases
AER	All English Report
BON	Broadcasting Organisation of Nigeria
CAP	Chapter
CS	Case
CAMA	Company and Allied Matters Act
CONS	Constitution
CC	Criminal Code
FHC	Federal High Court
FRCN	Federal Radio Corporation of Nigeria
FNLR	Federation of Nigerian Law Report
FWLR	Federation Weekly Report
Ibid	Ibidem
JSC	Justice of the Supreme Court
LFN	Laws of Federation of Nigeria
LTD.	Limited
NBC	National Broadcasting Commission
NCC	Nigerian Copy Right Commission
NCC	Nigerian Communication Commission
NIPC	Nigerian Investment Promotion Council
NWLR	Nigerian Weekly Law Report
NLR	Nigerian Law Report
NTA	Nigeria Television Authority
WT	Wireless Telegraphy
Op.cit	Operecitator
P	Page
Pt	Part
PC	Penal Code

S	Section
SCNJ	Supreme Court of Nigeria Judgement
Supra	Full citation of material given earlier in the chapter

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ABSTRACT

Broadcasting Organisations are not perceived as watch-dogs of the society promoting transparency, accountability and good governance for socio-economic and infrastructural development. Works of Broadcasting Organisations are generally construed in narrow term confining its works to the propagation of government policies and programmes. This problems still prevails despite the need for change that necessitated for paradigm shift in the role of Broadcasting organisation. An objective of this dissertation is to educate and enlighten the public on the roles of Broadcasting Organisations toward promoting unity, peaceful coexistence, transparency and accountabilities, socioeconomic and infrastructural development for good governance in Nigeria. Using the doctrinal method of research the dissertation bring out the role of Broadcasting Organisations in the 21st century in Nigeria. The dissertation found that Broadcasting organisation become agents of disseminating government selfish interest which contribute to lack of credibility among Nigerians. The Nigerian Broadcasting organisation should change towards performing it duties as watch-dog of the society to ensure sustainable development and the legislature should amend laws that hinders the operations of Broadcasting Organisations. Broadcasting organisation should channel their activities towards disseminating the voices of common man for solutions to their problems. It should also served as link between the government and the people towards peaceful and sustainable development devoid of selfish interest.

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CHAPTER ONE

GENERAL INTRODUCTION

1.1 Background of Studies

Communication plays critical roles in our society, ever since the invention of language, man has evolved socially, politically and technologically in leap and bounds. It is convincible that the society would not achieved sustainable development without communication, as human society development and become so complex so do nature and role of communication.

It become apparent that the society was not a monolithic but a conglomeration of conflicting interest and concerns, on the one hand you have the ruling class on the other hand you the rest of the society which was subdivided into smaller group.

Mass media is the channel of communication which is divided into two, the broadcasting organisations and the press but dissertation would focused on broadcasting organisations.

Broadcast is to disseminate information through mechanical means, simultaneously to a wide area and heterogenous audience made up individual within and outside a society.[1]

Broadcast law is the field of law that pertains to broadcasting. These laws and regulations pertain to radio stations, Television stations and are also considered to

[1] Oxford Advance Learners Dictionary 8th edition University Press, p.178

include closely related services like cable TV, cable radio as well as satellite radio and satellite TV.

National Broadcasting Commission was established to regulate Broadcasting Industry which pave way for private entrepreneur to express ideas and experiences that will enrich his life and help him live in a complex dynamic life.

The legal instrument, the Decree[2] that established the National Broadcasting Commission has provides for its functions and the National Broadcasting Commission Act takes cognizance of the development in the industry regarding technology operators and attempts to regulate the industry to meet the socioeconomic, political, technological and operational dictates of the society.

It is probably not contentious to say that one of the most highly valued of the fundamental liberties guaranteed to members of a free and democratic society is the freedom of expression. The liberty to comment freely and publicly on matters of common concern is in alienable right of membership of a free society. The liberty of discussion is the right to make critical observations and useful suggestions without at the same time subverting the continued existence of the governing authority. [3] The right to make comment has as its correlative, a duty not to subvert where the consequence of a comment is an incitement to change the government and the means advocated for it must adhere to the legitimate methods prescribed by the society itself.

The liberty of discussion is guaranteed within these limits in the interest of the state and the citizen. This is why the constitution of the federation provides that everyone is entitled to freedom of expression, including freedom to hold opinion and to receive and impact ideas and information without interference. [4]

[2] Decree 38 of 1992
[3] Gani F., *Nigerian Press Law*, (1969), Nigerian Law Publication Ltd. Lagos, Nigeria p. 67
[4] S.39(1) of 1999 Constitution as amended

Every citizen has an inherent right to give every public matter a candid, full and free discussion. While the constitution guarantees free speech it also insist that the freedom should not be exercised against the interest of the society which has granted it.

The desire to censor or limit information is universal urged that's hard to condone as it is impossible to eliminate, but it is not only government who practice it, there are other monopolies exercise by powerful individuals, groups, religious organisation and by commercial interest often for selfish reason, as we all known control over Broadcasting means control over the society and intellectual freedom of man.

Broadcast industry in Nigeria albeit an offspring of its environment has always struggled to assert its independence. If an efficient modern broadcasting is to thrive in Nigeria then such a practice must be viewed against the back ground of Nigerian, historical social and political realities.

1.2 Statement of Problems

The effectiveness or otherwise of the various legal regimes in Nigeria regulating Broadcasting law and practice in Nigeria.

Whether the NBC as the apex regulator is performing its statutory duties as provided under the NBC Act and the challenges.

Adequacy or inadequacy of various legal instruments regulating Broadcasting practice in Nigeria/need for review to accommodate new trends in this 21st century.

Absence of abundant and sufficient literature in the field of Broadcasting law and practice. It's a novel area as evidenced by little or no judicial precedents.

Whether various broadcasting outlets lincensed and operating in Nigeria abide with the broadcasting codes and other ethics of the profession as laid down by statutes/level of compliance.

1.3 Aim and Objectives of the Study

This work is set to achieve the following purposes:

Examine the nature of legal regulation on broadcasting in Nigeria by broadcasting regulation.

Examine the effect or otherwise of the application of the broadcasting code to the broadcasting operations in Nigeria.

It is also aimed at making those exercising their freedom of speech to be cautious not to infringe on the rights of others and the society at large.

It is also aimed at xraying the legal and institutional framework for broadcasting in Nigeria towards providing broadcast industry that will meet the international standard.

It is also aimed at enlightening the broadcasting organization on the need to strike a balance between parties so as to maintain fairness while discharging their duties.

1.4 Scope of the Study

The scope of this research is basically to cover legal and institutional frame work for Broadcasting in Nigeria and to discuss the historical development of broadcasting law in Nigeria, the evolution and function of National Broadcasting commission as well as the challenges face by media organization in Nigeria. The dissertation will cover the period from 2012 – 2017.

1.5 Research Methodology

The method to be used for this dissertation involves doctrinal method of research for the collection and analysis of data and information.

Doctrinal research would involve gathering of research material by consulting books, statute, and cases to analyze their findings for suggestions and recommendations.

1.6 Justification of the Study

These theses become necessary in view of the perception of Nigerians on the role of media law. In the 20th Century there is the need for change of this perception about media organization, Nigerians need to understand the Education, Enlightenment and Entertainment responsibilities which media organization owes to Nigerians.

To make media organization established control mechanisms in its working to avoid enforcement of sanction through due process of law.

To educate the public and the media organizations on the need to safeguard the rights of individuals and the society at large.

The dissertation would also educate the public on the functions and challenges faced by the National Broadcasting Commission in the discharge of its constitutional responsibilities.

To make lawmakers have a rethink on some laws that impact negatively on regulation of media practice in Nigeria.

The Dissertation would enlighten media organization in Nigeria to move with the global trend associated with the discharge of their duties in accordance with the law.

It is also expected to benefits the Judges, Lawyers, Journalist, Legislators, Student of law and Journalism, Sociologist, Legal Luminaries, Academicians and the public in general.

The expected outcome of this dissertation is to educate, enlighten and broaden the knowledge of Nigerians on the modern trend of journalism which become necessary to entail a change in the old attitude to meet the global standard, Western Europe and united states media organization have taking a giant leap forward in which Media organization are actively involved in the formulation of

government policies and serves as independent monitors for effective implementation of those policies.

1.7 Literature Review

Some respectable Nigerian scholars have written extensively on media law in Nigeria. Yemi Osinbanjo and Kodingan Fogam in their book Nigeria Media Laws[5] have given an extensive expose on media law such as the liberty of press, freedom of expression under the constitution and its limitations, press law and restriction, access to government information as well as the National Broadcasting Commission establishment and duties in regulating media organization and enforcing media law in Nigeria.

In B.N. Ekweluwa, Nigerian Press Law[6] discuss extensively on source of media law In Nigeria modern Journalism and the law, ethics of the profession and freedom of media against globalization policy.

Also in his book Mike Egbon Journalism in two world a comparative study of press freedom in America and the Nigerian mass media[7] talk extensively on freedom of expression in historical perspective, concept of press freedom ethical consideration, mass media and Assault on press freedom in Nigeria.

In a book edited by T.O. Elias title law and ethics of media law practice[8] discussed on evolution of press law in Nigeria, constitutional guaranty and restriction of performance of press, ethics of Journalism. Media Association and offences committed by media organizations, legal requirement for publishing newspaper, defamation and the media, contempt of court, report of parliamentary and judicial proceedings.

Also in his book Ifedayo Daramola, law and ethics of media practice discussed extensively on ethics of journalism profession in Nigeria.

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[5] Osinbanjo Y. and Fogam K. *Nigeria Media Law*, (1999) Gravital Publishing Ltd. Lagos
[6] B.N. Ewelukwa, *Nigeria Press Law*, (2004) Varsity Publishing Ltd. Onitsha
[7] Egbon, M. *Journalism in Two World* (2001) Tamaza Publishing Ltd. Zaria
[8] Elias, T.O. *Nigerian Press Law* (1969) Evans Brothers Publishing Ltd. Lagos

In National Broadcasting Commission publication, broadcast regulation in Nigeria[9] discusses the origin of broadcast history of broadcasting the establishment of Broadcasting Commission, its duties and challenges, National Broadcasting Code, Broadcast Regulation in Nigeria.

The book also extensively discussed commercialization era of broadcasting, the role broadcasting in democracy. The book captured broadcasting and crisis management, election coverage, as well as coverage of religious and communal crisis.

The book also discussed characteristics of foreign broadcast stations, direct satellite broadcasting and globalization of broadcasting as well as broadcasting technology in Nigeria.

Also in National Broadcasting Commission Publication. Deregulation of broadcasting in Africa, [10] the book discusses on broadcasting and the challenges of party politics, history of broadcasting in Nigeria which is practically the history of Nigerian politics, the British government setup the broadcasting in the 1930's with the stated objectives of promoting local and imperial interest and early operation were carried out by regular civil servants under the public relation Department of Government.

Gani Fawehinmi in his book Nigerian law of libel, [11] discuss how to determine libel, publication to public and private interest, defence of qualified privilege, damages and instances of actionable libel.

The book also discussed on how to succeed in an action for libel against the writer of a script used for broadcasting which requires the plaintiff to produce the script.

It also explained that an oral broadcasting without written script is slander and is not actionable without special damage alleged and proved.

The dissertation will further discuss on areas that were not covered by the above writers such as the freedom of information Act (2011).

[9] *Broadcast Regulation in Nigeria* (2002) NBC Pub Abuja
[10] *Deregulation of Broadcasting in Africa* (1997) NBC Pub, Lagos
[11] G. Fawehinmi *Nigerian Law of Libel* (1996) Nigerian Law Publication Lagos, Nigeria

1.8 Organizational Layout

The work is made up of five chapter, chapter One, which is the opening chapter give the general introduction to the work, it outline statement of problems, aims and objective, Justification for the research, it scope, the research Methodology used, the literature review and the organization layout of the work.

Chapter two contains the history of broadcasting in Nigeria from its inception to present day. It discusses the pre-independence broadcasting, post-independence broadcasting, development of broadcasting under the military and broadcasting under the era of privatization.

Chapter three discusses on various legal framework for broadcasting in Nigeria. It contains the constitutional framework, legal framework under the National Broadcasting Act, the National Broadcasting Code as legal framework for broadcasting in Nigeria and freedom of information. It also discussed National Broadcasting Commission as regulatory framework for Broadcasting in as in Nigeria.

Chapter four highlighted the challenges faced in regulating broadcast industries in Nigeria. The dissertation identified challenges of enforcement, commercialisation, political interference, poor production of programmes, and analogue transmission of broadcast, copyright as some of the challenges facing broadcasting in Nigeria.

The chapter will also try to provide solution to some of the challenges discussed.

Chapter five is the concluding chapter, it summarizes the work, state the findings of the research, make recommendation and conclusion.

CHAPTER TWO

HISTORICAL DEVELOPMENT OF BROADCAST MEDIA IN NIGERIA

2.1 Introduction

This chapter gives a comprehensive analysis of the historical development of Broadcast media in Nigeria which is practically the history of Nigerian politics from colonial era to post colonial era.

The chapter also highlighted the development of broadcasting media during pre-independence period, post independence and during military regime. The chapter would also discussed the era of privatization of Broadcast media in Nigeria.

2.2 History of Broadcasting in Nigeria

History of Broadcasting in Nigeria is practically the history of Nigerian politics, the colonial government had setup broadcasting in 1932 with stated objective of promoting local and imperial interests with early operations carried out by regular civil servants under the public relation department. [12]

Broadcasting in Nigeria emanated from United Kingdom in 1932 when British Broadcasting Corporation (BBC) launched the first regulatory schedule short waves programme service in Lagos. Broadcasting earnestly commenced with the launch of the re-diffusion Broadcast system on 01/12/1935 the radio distribution service extended to other part of Nigeria between 1935 – 1950.

[12] *Deregulation of Broadcasting in Nigeria* Op.cit p. 21

It is worthy to note that December 19th, 1932 will remain a significant day in the history of broadcasting in Nigeria. It was the day the British empire via British Broadcasting Commission launched the world's first regulatory scheduled short wave for Broadcast[13] The service made it possible for packaged programmes from Daventry in England to be relayed to Lagos which was one of the centres chosen.

The experimental station was designed and intended to serve as the eye and ear of Her Majesty's Government and to help poster closer political cultural and economic link between Britain and Nigeria. [14]

In 1951 Nigerian Broadcasting Service (NBC) by National Legislative Council NBS established its own Radio in 1951 as the first public service Broadcasting Organisation. In 1957 witness the establishment of NBC due to political and nationalists pressure NBC was not run by the government nor controlled by the Ministry.

Nigerian Broadcasting in 1950 was basically entertaining radio, which was criticized by Nigerian politicians and nationalist as the mouth piece of colonial government and an instrument of colonial subjugation. [15]

Under the Richardson Constitution, Nigerian politicians were granted some autonomy in the government of the three regions of the country namely, east, north and west. Central administration remained in the hands of the British and the monopoly radio belongs to the Central Government. It become a target of criticism among some of the regional politicians, they argued that the radio did not carry their views especially when those views were divergent from those of the colonial masters at the centre.

As a result of this criticism Mcpherson Constitution provided for broadcasting to become a concurrent subject thereby paving the way for the emergence of the

[13] Laden, S. (2002) Op.cit p.160
[14] Ibid
[15] Ibid

three broadcasting organisations each in competition in the region with the reconstituted Central Government Radio.

Regional Broadcasting predates NBC in 1957 it was constitution sanction in the Macpherson Constitution in 1954. Due to the existence of Regional Radio and TV Stations, the Federal Government established the Nigerian Television Authority and NBS which was renamed NBC on 06/10/1956.

1960 – 1963 all the Regional Station were broadcasting during the period of 1960 – 1966 was parochial, self centred and not nationalistic. Broadcast Organisations sought to serve self-interest of the owners based on political lineage e.g. Action Group, Northern Peoples Congress (NPC).

In 1959, the Western Nigerian Broadcasting Corporation, was established followed by the Eastern Nigerian Broadcasting Service in 1960, and the Broadcasting company of Northern Nigeria in 1962.

In 1979, the Nigerian Broadcasting Corporation was renamed Federal Radio Corporation of Nigeria but remained synonymous in structure and operation with the state owned stations. [16]

As at December, 1998 there were a total of 74 radio stations in the country. Eleven stations owned by the Federal Government, fifty two owned by State Governments while eleven stations belong to various private organisation. [17]

In December 1998, the number of Television stations across the country was 62. Federal Government owned 27 while 26 belong to various State Governments and 9 to private individuals and organisation. [18]

2.3 **Development of Broadcast in Nigeria**

Broadcast Development in Nigeria is the process of moving the country toward self improvement for all aspect of National progress. The Broadcast media are the

[16] Brief History of Broadcasting in Nigeria retrieved on 18th May 2016 from http//www.Doublegist.com.
[17] Ibid
[18] Ibid

most vital instrument for influencing the masses. In developing countries an issue which does not appear in the Radio or Television does not even exist. [19]

Therefore the research would discuss in detail the Development Broadcast Industry had undergone from pre-colonial period, post-colonial period, during the military regime to the era of privitisation.

2.3.1 Pre-Independence period of Broadcasting

During this period broadcasting media, has to fight for its freedom as there were no legislations on broadcasting in Nigeria. The colonial masters made some law to stop freedom of expression being turned into licence to criticize their administration. They felt that the relationship with foreign states most be protected. [20]

It is pertinent to point out that in all civilized countries of the world media organisation have always acted to check the excesses of the government security, of government policies oppressions and abuses by colonial masters.

Broadcasting was a very active agent in the colonial administrations attempts to influence Nigerians thought and aspirations. The colonial administration systematically use media organisation to build the desire image of life, development, culture and modernization in accordance's with metropolitans country's plan for the colony. [21]

The Broadcast organisation during colonial times were manipulated to serve colonial interests and promote British culture, economic and political domination of Nigeria. However, a section of Broadcasters occupy a parallel position working as opposition to the colonial government. Broadcast organisations become a formidable instrument in the hands of these Nigerians Nationalist to fight for freedom. Broadcast organisations played tremendous role in awakening Nigerian Nationalist.

[19] www.Role of Broadcasting in nation Building last access on 17th May, 2016
[20] B.N. Eweluklua Op.cit p.62
[21] Mike, E. Op.cit p. 53

During the colonial period, the Broadcast used civil servants to source for confidential information concerning the government which were purely for internal administration of the government which resulted to the enactment of the official secret ordinances to punish civil servants who expose government secret to media broadcast. [22]

It is interesting and encouraging to note that despite all these persecutions, the Broadcast has the support of the majority of the people. This support by the majority encouraged the journalist to continue with their work despite the multiple enactment to embarrass, intimidate, harass and disorganize them. The Broadcast determination for freedom particularly during the struggle for Nigeria's independence. It is worthy to note that the entertainment aspect of broadcast station was a political trick calculated to stop any anti-colonial tendencies.

2.3.2 **Post Independence period of Broadcasting in Nigeria**

In view of the huge size of Nigeria, linguistic and cultural differences, the Nigerian Broadcasting service, the harbinger (NBC) of the Nigerian Broadcasting Corporation NBC born in 1967, was organized on regional basis. Its National Headquarters was situated in Lagos, Ibadan for the West, Enugu for the East and Kaduna for the North.

This arrangement followed closely the colonial administrative structure of Broadcasting in the country. Nigerian Broadcasting change considerably in the hands of Nationalists and politicians. The Nationalist who agitated for independence now reversed the inherited order of broadcasting which was mainly to the advantage of the British. [23]

The National Broadcasting Commission was now modeled after the BBC in policy and functions. Upliftment and enlightenment of the Nigerian populace became the paramount concern of the corporation.

[22] Ibid p.66
[23] Ibid

The NBC was consequently enjoined to provide public service, independent and impartial broadcasting services to the nation as the planners emphasized this aspect because of their major preoccupation with national integration.

Post Independence Broadcasting was influence by politicians as those in power consider airwaves as their exclusive right. When broadcasters allow the opposition on those airwaves, government politicians feel betrayed especially if that broadcaster is a government employee, they will charge him with partisanship and with taking money from the opposition. [24]

Broadcaster who insisted on doing their jobs according to the dictates of the professional ethics did so at the expense of their jobs.

The National Broadcasting Commission currently has six hundred and twenty eighty (628) licence media outfit made up of 97 private radio stations, 43 private Television, 53 Federal Radio, 133 Television, 112 State Radio, 68 State Television. [25]

2.3.3 **Development of Broadcasting under the Military**

Military regimes in Nigeria are those period in the history of Nigeria when the military seized political power and rule the country without the mandate of the people.

The military for the first time took over governance from the civilians by force in a military coup on the 15th January, 1966 thereby suspending some sections of the 1963 Republican Constitution that deal with the freedom of expression. During this period many decree were promulgated to curtail the functions of Journalist, in 1976 the military government, promulgated the obnoxious Decree known as the Public Officers Protection Decree which made it a serious offence for News media or anybody to broadcast or publish anything even if true that could cause embarrassment to a public officer.

[24] *Deregulation of Broadcasting in Africa* Op.cit p. 24
[25] *Your Right to Quality Broadcasting* (2015) NBC Publication p.10

The military government of that period by this Decree made more setback to freedom of media broadcast by curtailing it from broadcasting anything that pertain to government as there was no proper enlightenment on what constitute embarrassment to public officer.

In 1984 the Military Government took over from the civilian Government promulgated a Decree making it an offence punishable by imprisonment, fine or both for the Broadcast houses or press to broadcast anything whether true or false that cause some embarrassment or is unlikely to bring the government or government official into ridicule, contempt or disrepute. [26]

Reporters were arrested, charged to court and convicted under this Decree. This conviction brought condemnation within and outside Nigeria, but being a military regime that had no respect to the rule of law and natural justice they failed and neglected to repeal this Decree.

During this period another Decree was also promulgated to empower state security to detain any person for three month without charges or trial.

National building has often been described as essentially a matter of developing patterns of communication which transcend rather than coincide with communal divisions.

At the eve of the Nigeria Civil War broadcasting had become a veritable instrument of hate and discord. It become an instrument of disintegration rather than of National cohesion as each state executive of the broadcasting station took full measures to make the medium a mouth piece of their states.

The political flame of hostilities which eventuated in civil war was fanned by broadcasting which also nurture and sustained the armed conflict. During this political development which subsequently engulfed the nation in a civil war, regional stations come into open competition and conflict with the Federal

[26] *Deregulation of Broadcasting in Africa*, Op.cit p. 119

stations. For example while the National Broadcasting Corporation was putting the unity of the federation, the various regional stations were busy tearing the country into asunder with divisive programmes.

This necessitated the Federal Military Government to restructure the whole broadcasting system in the country[27] The role played by the Broadcast media of the respective region become an eye opener to the government. Immediately after the war each of the twelve states wanted to own a television station in tune with the pre-civil war sectional interest while re-echoing divisive attitudes that brought the war in the first place[28]

The Federal Military Government of the day noticed that this kind of competition was another divisive force pulling after the fragile unity in the emerging Nigerian nation. It therefore took step to stave it off at once by taking over all the television stations in the country in the overall national interest.

The Federal Government restructure the radio system and called it Federal Radio Corporation of Nigeria and the various television station taken over from state government by the Federal Government called the Nigerian Television Authority.

The Federal Military Government made a move to make the country speak through the broadcasting media with a monolithic voice. This called for reduction in the transmission capacity of all other stations except FRCN Lagos. An attempt to reduce the powerful shortwave frequency of FRCN Kaduna failed due to the fact that the entire Northern looked up to the station as a source of political direction, a symbol of unity and standing legacy of the late Sir Ahmadu Bello Sardauna of Sokoto.

Surprisingly, despite the unitary command structure of the military regime in power the then military governor of Kaduna State defied the Federal Military

[27] Ibid p.63
[28] Broadcast Regulation in Nigeria Op.cit p.94

Government and stood firmly behind the non reduction of the powerful shortwave of the station in question. [29]

It is therefore important to note that despite the effort of the media, local and international bodies to see that freedom of expression was respected in Nigeria, the military leadership tried everything within their means to destroy it through Decree for them to be able to discharge their dictatorship without hindrance and respect to human right.

During this period media practitioners suffered with many of them arrested and detained, life was insecure as broadcasters were trailed and harass for them not disseminate information that was against the government and likely to educate the people on the negative programmes of government.

2.4 The Era of Privatization of Broadcast Media in Nigeria

Considering the immense capacities of broadcasting as a fulcrum of economic empowerment for both human and societal institutions, its catalytic role is not in doubt.

The broadcast media are in fact crucial to the business life of a country at both the National and Local levels of production and sales by providing channels for advertising messages.

In shaping the economic fabric of a country, they bring people from industrial leaders to labourers, the necessary information upon which their business and personal decisions are base and help the public to crystallize its attitude on matters of national economic policy. [30]

The deregulation of the broadcast industry was accelerated as a response to the Structural Adjustment Programme (SAP) of the Babangida Administration, thus ushering in the era of commercial broadcasting which must bow to the dictates of free enterprise and the dynamics of economic broadcasting in global market.

[29] Ibid p. 94
[30] Eddy, E. Op.cit p.57

Broadcasting is no doubt a big business with serious economic implication for government, broadcast entrepreneurs, advertising agencies, multinational corporations and the audience. In Nigeria media broadcast have to be paid for by those who want to be heared. Broadcast is no longer about reporting timely occurances or events, it is now about packaged broadcast or reports sponsored or paid for by interested parties.

By this practice individuals, communities, private and public organisations, Local Government State Government and Ministries gain access to the mass media for a prescribe fee[31] We observed that the commercialization of broadcast stations has assisted in selling the integrity of the stations by compromising the truth to the so called sponsors which may resulted to insulting of their audience.

It is worthy to note that must broadcast station use commercial fees as source of funding for the survival of their organisation. Commercialisation of broadcast outfits centre on financial gains or poverty so until the problem of poverty is seriously addressed with concrete solution, no law or code of ethics or any other body or association for that matter can adequately discipline or regulate broadcasting in Nigeria.

The global economic slow down of the 80's and the International Monetary Fund (IMF) conditionalities triggered a lot of changes in the broadcast industry. In 1986, the Minister of Information disclose Government intention to deregulate the broadcast industry. [32]

Academicians and public commentators were quick to air their divergent views on the deregulating of the highly sensitive media to the polity. The proponents of private sector participation argued it would sanitize and enhances growth of the industry. Also comercialisation would give way to healthy competition among broadcast stations while some argued that commercialisation would mean a

[31] Retrieve from http/www.Commercial Broadcasting in Nigeria last access on 23rd May, 2016
[32] Broadcast Regulation in Nigeria Op.cit p. 97

substitution of government influence with that of the business men as the case may be. [33]

The monolithic broadcast culture was punctuated by a Decree, it abrogated the monopoly of ownership of electronic media by the government and allow private entrepreneurship. The Decree that established the National Broadcasting Commission empower it to grant licence to private broadcast stations.

Commercialisation leads to multiplicity of private ownership of radio and television organisations. Invariably and to a large extent understanding, these organisation in order to make some profits from investments places emphasis on quantity of audiences and at such concentrate on popular entertainment programme and consumer advertising. [34]

In Broadcast stations were commercial activities were giving preference there has to be an increase in the amount of non informational programmes at the detriment of controversial issues that affect the public interest.

The profit based broadcasting often motivates broadcaster to seek way of translating the vague concept of public welfare.

An effective and socially beneficial commercialization is one which creates an environment in which broadcasters must find a happy balance among regulatory mandates, social obligation and financial stability.

With the growing concern for broadcast commercialisation which many believe negates all fundamental principles of fairness, equity and balance required in broadcast practices. Many scholars have explored its ethical implication as follows:

[33] Ibid
[34] Andrew, A. Op.cit p.141

1. Commercialisation violate the ethics and code of conduct of Broadcasting which state it is the duty of journalist to refuse any reward for publishing or suppressing news or comments.

2. Commercialisation has affected information flow tremendously as the majority of news are paid for, therefore the news that sees the light of the day has to be induced by somebody or an organisation while those news that are genuine and authoritative are dropped because of lack of inducement from where such news emanate from.

3. Commercialisation makes broadcasting susceptible to abuse by interest groups who can pay their way into the media to project an idea they want people to accept whether it is positive or not.

4. Commercialisation can lead to news distortion, the person who pays the piper often dictate the tune. Since the media would not like to lose a major customer, they will do all within their reach to satisfy such client that pay them huge money to have his view projected in return the client may dictate what and how he or she want out of the news packaging of the media house. This can extend to dictating to the media what makes news there by emasculating opposing views. This usually occurred during election times as contestants often buy air time to praise their candidate and crush his opponents.

5. With the zeal to acquire more money through commercialisation, many broadcast organisations have lost their focus on investigative journalism. This has led to loss of variety in the broadcasting. Many have also lost their mission turning to praise, singing and propaganda which have consequences for the Nigerian society. [35]

Commercialisation lead to loss of credibility among broadcast stations due to the fact that money determines their direction.

[35] http/www.Estudos Em Communicacao Communication Studies access on 24th May, 2016

Today many enlightened Nigerians drift away from local broadcast outfits as they seek other credible sources. The researcher observed that no matter the constraints with in which broadcast profession is practice, society should have the right to reserve spaces free of commercialisation where citizens can exchange ideas on equal footing.

It is worthy to note commercialisation is a practice that has unfortunately come to stay in the Nigerian society as a result of the economic and psychological consideration public service broadcast supposed to serve the interest of the public through which both the rich and the poor can express themselves freely. The media operators should know that by charging money they are reducing their credibility in the eyes of the public. Instead of them to be controller of news they become an gents of advert companies determining what to broadcast.

CHAPTER THREE

BROADCASTING REGULATION IN NIGERIA

3.1 Introduction

With the advent of Democracy in 1999, Nigeria has witnessed the proliferation of media broadcast houses, these ranges from Broadcast and satellite communication.

This trend is an exhibition of the freedom of expression as embodied in chapter four of the 1999 Constitution of the Federal Republic of Nigeria (as amended).

Broadcast law is the field of law that pertains to broadcasting. These laws and regulation pertain to radio stations, TV stations and are considered to include closely related services like cable TV, cable radio, as well as satellite TV and satellite radio.

The legal framework for Broadcasting in Nigeria has been define by four major instruments, the constitution, the National Broadcasting Commission Act, National Broadcasting Commission Code the Freedom of Information Act. The National Communication Act and the wireless telegraphy Act. These would be discussed in detail.

The above expression provides the primary platform for Nigerians to express themselves in which ever form including the establishment and operation of

Broadcast outfits of varying types. There are however another legal framework which regulate the operation of Broadcast media outfit such as Radio Television and satellite broadcasting.[36] As well as freedom of Information.[37] There are however practical challenges facing Broadcast practitioners in their operations despite the enabling environment that is provided by numerous legal framework for broadcasting in Nigeria.

The chapter would analyse the legal framework for Broadcasting in Nigeria. In order to x-ray their shortcomings toward creating a perfect environment for broadcast outfits.

3.2.1 Legal Framework for Broadcasting under the National Broadcasting Act

The National Broadcasting Commission Act provided for the establishment of the National Broadcasting Commission which shall be a body with perpetual succession and a common seal and may sue and be sued in its corporate name.[38] The National Broadcasting Commission is mandated by the Act establishing it to carry out the following functions.[39]

a. Advising the Federal Government generally on the implementation of the National Mass Communication policy with particular reference to broadcasting

b. Receiving processing and considering application for the establishment, ownership or operation of radio and television stations including:

    i. Cable station services, Direct satellite broadcast and any medium of Broadcasting.

    ii. Radio and Television stations owned, established or operated by the Federal, State or Local Government.

[36] Regulated by the National Broadcasting Commission Act, Cap NII, LFN 2004
[37] Freedom of Information Act 2007
[38] Section 1 NBC Act
[39] Ibid Section $2^{(1)}$

c. Recommending applications through the Minister to the President for the grant of Radio and Television licences.

d. Regulating and controlling the Broadcast Industry.

e. Undertaking research and development in the broadcasting industry.

f. Receiving, considering and investigating complaints from individuals and bodies corporate or incorporate regarding the contents of a broadcast and the conduct of broadcasting station.

g. Upholding the principles of equity and fairness in broadcasting.

h. Establishing and disseminating a National Broadcasting Code and setting standards with regards to the content and quality of materials for broadcast.

i. Promoting Nigerian indigenous culture, moral and community life through broadcasting.

j. Promoting authenticated Radio and Television audience measurement and penetration.

k. Initiating and harmonizing government policies on trans-border direct transmission and reception in Nigeria.

l. Regulating ethical standards and technical excellence in public, private and commercial broadcast station in Nigeria.

m. Monitoring broadcast for harmful emission interference and illegal broadcasting.

n. Determining and applying sanctions including revocation of licences of defaulting stations which does not operate in accordance with the broadcast code and in the public interest.

o. Approving the transmitter power, the location of station, areas of coverage as well regulate type of broadcast equipment to be used.

p. Ensuring qualitative manpower development in the broadcasting industry by accrediting curricular and programme for all tertiary training institutions that offers mass communication in relation to broadcasting.

q. Intervening and arbitrating in conflicts in the broadcasting industry.

r. Ensuring strict adherences to the National Laws, rules and regulation relating to the participation of foreign capital in relation to local capital in broadcasting.

s. Serving as National consultant on any legislative or regulatory issues on the broadcasting industry.

t. Guaranteeing and ensuring that liberty and protection of the broadcast industry with due respect to the law.

u. Carrying out such other activities as are necessary or expedient for the full discharge of all or any of the functions conferred on it under or pursuant to this Act.

The National Broadcasting Commission is not discharging it duties in accordance with law establishing the commission considering the issue of fairness and equity as provided by the Act establishing the commission. It is worth to look at roles of broadcast out fit during the 2015 general election by not allocating airtime to opposition parties and even engaging in malicious campaign against the Presidential candidate of the opposition party. It was on the day the election result was declared in favour of the opposition party that the National Broadcasting Commission begins to exercise the power provided by the Act establishing it of ensuring equity and fairness by showing the general public that Nigerian Television Authority and African Independent Television have violated the law.

National Broadcasting Commission saddle with the responsibility of recommending application through the Minister to the President for grant of

licence compromise the Independence of the Commission by subjecting it to the control of the Minister and the President which may lead to monopoly and politics in the grant of licence to establish Radio and Television station in *Senator Mohammed Muktar Aruwa v NBC and Two Others*.[40] The case arose out of the directive issued by the NBC, Abuja Zonal Office to FRCN and NTA Kaduna ordering the stoppage of the plaintiff's programme *Ciki da Gaskiya* for contravening the provision of the NBC code.

The plaintiff who is a Senator paid FRCN and NTA Kaduna to air his weekly phone in programme for a period of thirteen weeks. However, the programme contravene the provision of paragraph 4.4.5, and 7.8.2 of the NBC code.

The defendant took the plaintiff to Federal High Court Abuja asking it to declare the NBC action of stopping the phone in programme by the second and third defendant a contravention of the plaintiff's constitutional right and inconsistent with the provision of provision of the constitution.

External forces are undermining the effort of National Broadcasting Commission by allowing Radio Biafra to operate in London without considering the hatre generous nature of the country and content of the broadcast capable of causing disunity among Nigerians hence the need for the National Broadcasting Commission to use technical expertise towards stopping Radio Biafra from transmitting in Nigeria for unity and peaceful coexistent.

The Act provided for the Minister to give the National Broadcasting Commission directives of a general character relating generally to particular matters with regard to the exercise by the commission of its function under the Act and it shall be the duty of the commission to comply with such directive.[41]

Subjecting the National Broadcasting Commission to comply with the Directives of the Minister in political dispensation would amount to involving the

[40] FHC/Abj/C5/38 2001
[41] Section 6 NBC Act

commission into politics of ruling party toward protecting the interest of government at the detriment of the common man which may be the reason behind the commission failure to sanction Broadcast stations for violating the law.

3.2.2 **Power of the Commission to Grant Licence**

The Act empowers the Commission to consider application for grant of licence after satisfying that the Applicant.[42]

(a) Is a body corporate registered under the companies and allied matters Act or a station owned, established or operated by the Federal, State or Local Government.

(b) Can demonstrate to the satisfaction of the commission that he is not applying on behalf of any foreign interest.

(c) Can comply with the objectives of the National Mass Communication Policy as is applicable to the electronic media that is Radio and Television.

(d) Can give an undertaking that the licensed station shall be use to promote National interest, unity and cohesion and that it shall not be used to offend religious sensibilities or promote ethnicity, sectionalism and hatred among the people of Nigeria.

Applying on behalf of foreign interest should not be a problem provided the interest would comply with the relevant law regulating broadcasting in Nigeria and the station would be use to promote peaceful coexistence, unity and cohesion, allowing foreign participation in Broadcasting industry would greatly help in the nation socioeconomic development by the providing employment and revenue generation. The National Broadcasting Commission disqualified grant of licence to:

(A) Religious Organisation

[42] Ibid Section 9

(B) Political party[43] this provision of the Act is in contradiction with the Constitution Right for people to practice their religion without hindrance.

"Every person shall be entitled to freedom of thought, consciousness and religion, including freedom to his religion or belief and freedom either alone or in community with others and in private or in public to manifest and propagate his religion or belief in worship practice teaching and observation." [44]

Going by the above Constitutional provision, it will be proper to state here that the provision of the National Broadcasting Commission which prohibit the grant of licence to own Broadcast organisation by religious organisation is a violation of Constitutional Right of propagating religious activities.

National Broadcasting Commission cannot stop religious organisation from getting air time to broadcast in the satellite direct to the receiver, as they cannot control satellite transmissions. *Vincent Omegba and 40RSV DG, NBC and Anor*[45] The applicants applied to the commission for a broadcast licence to own, operate and run a wholly and exclusively religious radio and television station. But the commission refused to grant the licence in consonance with the provision of Section 10 of NBC Act which prohibit grant of licence to religious organisations and political party.

Consequently the applicants went and obtained on order from Federal High Court Lagos to enforce their fundamental right to freedom of thought, conscience and religion and of expression under the 1999 Constitution of the Federal Republic of Nigeria. The court dismissed the applicants action in its entirely.

So many programmes are aired through satellite channels with even phonographic sites that are against the religious, cultural and moral values of the society.

If the National Broadcasting Commission cannot stop the broadcasting of satellite programmes that are detrimental to societal moral values, then there is no reason

[43] Ibid Section 10
[44] Section 38 of the 1999 Constitution
[45] FHC/L/CS/99

for stopping religious organisations from propagating their activities in accordance with the law, devoid of selfish interest, capable of causing chaos.

This has impacted negatively to the nation's socioeconomic development because allowing religious organisation to operate Broadcast station would provide government and the commission with revenue and reduce unemployment among Nigerians. It would also inculcate good moral behaviour capable of promoting good governance for socioeconomic development.

Not allowing foreigners to operate a media outfit is in violation of the Nigerian investment promotion act[46] and the company and allied matters act.[47] Which allow participation of foreigners to the economy and detrimental to the nation economic growth.

The National Broadcasting Commission need to be reviewed to enable it meet with the present day Global Journalism and Broadcasting by including social media within the regulatory function of the Commission.

The National Broadcasting Commission should only served as regulatory agency for ensuring compliance with laid down procedure capable of promoting good governance, unity, peaceful co-existence and development of the nation.

Once a Broadcast organisation would abide by the law governing transmission in Nigeria, it should be allowed to operate irrespective of whether it is a religious or foreign body and should be sanctioned appropriately for violating the law.

A non Nigerian, whether company or individual may invest and participate in the operation of any enterprise except those in the negative list.[48]

Subject to the provisions of any enactment regulating the right and capacity of alien to undertake or participate in the trade or business an alien or foreign company may join in forming a company.[49]

[46] Section 17 Nigerian Investment Promotion Council Act CAP N17, LFN, 2004
[47] Section 20(4) Company and Allied Matters Act CAP C14 LFN, 2004
[48] Section 17 NIPC Act

In view of the above enactment, one will rightly say not allowing foreign investors after meeting the provisions of the law for establishing a business in Nigeria is a violation of the above laws since establishment of a media organisation does not fall under the negative list of the Federal Government and is not detrimental to the nation's economy.

National Broadcasting Commission Act need to be reviewed to allow foreign participation in the establishment of media organisation in the country but subject to compliance with the laws regulating media practice in Nigeria as this will help greatly in meeting international standard of media practice and help in providing employment opportunities for poverty eradication.

3.2.3 **Power of the Commission to Revoke Licence**

The National Broadcasting Commission Act has also provided the cases that the commission may revoke licence as follows:[50]

a. Where the prescribed fee has not been paid on the due date.

b. Where the licence has not been put to use within a period of two years after issuance.

c. Where in the opinion of the commission the station has been used in a manner detrimental to national interest or where a complaint from the public has been upheld after a public hearing instituted by the Commission and whose decision is upheld by a majority of members of the commission.

d. For false statements knowingly made either in the application form or in any statement of fact.

3.2.4 **Consequences of Revocation**

[49] Section 20(4) CAMA
[50] Section $12^{(10)}$ Third Schedule of the NBC Act

1. Any licencee whose broadcast licence has been revoked shall not be entitled to any compensation in respect thereof and damages arising there from[51]

2. On the revocation of a licence no part of any fee paid or due to be paid shall be refunded or written off by the commission[52]

3. The holder of a revoked licence shall not be absolved from its responsibilities or obligations where they arise prior to the date of the revocation[53]

4. Reapplication for a broadcast licence shall not be considered from a company who licence had been revoked[54]

5. Where a licence is suspended or revoked, the police and other security agencies shall assist the commission to immediately shut down the station[55]

3.2.5 **Fines**

The following provisions of fines as stated below shall apply in respect of a breach committed by a broadcast station and may be applicable in the various classes of sanction[56]

(a) Light fine N50,000 to N499,999

(b) Heavy fine N500,000 to N1,999,999

(c) Severe fine N200,000 and above

(d) A fine of N50,000.00 for every 1% in excess of religious content limit shall apply[57]

[51] Section 14.2.1 NBC Code
[52] Ibid
[53] Ibid
[54] Ibid
[55] Ibid
[56] Section 1.4.3.1 NBC Code
[57] Ibid Section 1.4.3.2.2

(e) A fine of N100,000.00 shall apply for every 1% in excess of the foreign content limit[58]

(f) A graduated fine shall apply for breach not remedied within the time given[59]

(g) A fine shall be paid by the due date failure to comply shall lead to a higher fine

It is our observation that despite the huge fine been imposed by the NBC, the commission still depend on government for funding.

3.3 Legal Framework for Broadcasting under the Constitution of the Federal Republic of Nigeria

In Nigeria the concept of freedom of speech is embodied in the Constitution as follows:

i. Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.[60]

ii. 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 dissemination of information ideas and opinions.[61]

The freedom of expression clause of the constitution has given rise to the traditional problem of interpretation one of the points of controversy has been weather the guarantee of the freedom of expression is sufficient for the protection of Broadcasts industry.[62]

[58] Ibid Section 1.4.3.2.4
[59] Ibid Section 1.4.3.2.5
[60] Section 39 of the 1999 Constitution as Amended
[61] Ibid Section 39(2)
[62] Akande, J.O. *Introduction to the Nigerian Constitution* (1982) Sweet and Maxwell p.36

Inference from the above provision infer that although a Broadcast media is not specifically mention, it is clearly covered in the freedom of expression clause and therefore enjoy the freedom due to the fact that the freedom to impact ideas and information can only be effected by speech or printed words.[63]

Freedom of speech as enshrine in 1999 Constitution prohibit government from unnecessarily interfering with one's personal opinion or speech. It foster a sense of shared responsibility as well enhance frankness and better sense of liability.

The freedom of speech also help in nurturing social evolution and enhances self esteem as it help people to develop poise to express their views without fear of being molested. *Inspector General of Police v All Nigerian Peoples Party and others*.[64] This is an appeal against the judgment of the Federal High Court, Abuja the respondents in this matter are twelve political parties registered in Nigeria. The respondents seek a declaration that refusal by the Police to grant them authority to hold rallies contravene Section 39 of the 1999 Constitution which provided for the freedom of expression and a declaration that the defendant is not competent under the public order Act or under any law to issue permit of holding rallies to express opinions.

An order of perpetual injunction restraining the defendant whether by himself, his agents, privies and servants from preventing the plaintiff and others aggrieved citizens of Nigeria from organizing or convening peaceful assembly and rallies to express opinion against unpopular Government Measures and Policies. The court held that, that public order Act does not only impose limitation of the right to freedom of expression which is guaranteed under S.39 of the 1999 Constitution, it leaves unfettered the discretion of certain officials including the Police. The public order Act as so far as it effect the right of citizens to express. Opinion is an abbretion to a Democratic society. It is in consistent with the provision of 1999 Constitution which made it void to the extent of it consistency.

[63] Osinbanjo Y. Op.cit at P.7
[64] 2007 ANLR p. 179

The right to freedom of expression as provides in the 1999 Constitution is bone of any Democratic form of government, beside it embodiment in the supreme law of the land, the 1999 Constitution and the African charter on human and people rights locally adopted, some decision of the court have endorse same freedom of speech is part of Democratic Right of every citizen which deserved to be guarded as they are part of the foundation upon which government itself rests.

The freedom of expression could be exercised orally or in writing through electronic media[65] in this regard the Constitution further provides that the freedom extend to owing, establishing and operating any medium what so ever, however, Radio and Television can only be own by a State or Federal Government except if authorize by the President on the fulfillment of the condition laid down by an Act of the National Assembly.[66]

Freedom of expression is the substantive law which gave a person right to express his idea, opinions or convey information by any means available to him. The Constitution did not restrict the means of conveying such information and ideas, the medium could be by words, even signs, writing printing, drawing, sculpture or even through signs or gesture like miming.[67]

The ideas and opinions that a person is free to hold may relate to any subject matter be it social, economic, politically, cultural weather moral or immoral ethical, religion. The right has been extended to receive generally may be in negative form as there is no restriction preventing a person from receiving particular information or ideas.

In the case of *Innocent Adikwu V. House of Representatives*[68], the House of Representatives invited him demanding him to disclose the source of information of a publication he made in Punch newspaper concerning the House of

[65] Jamoh N. (2000) *Human Right in Nigeria*, PhD Thesis P.174
[66] Surpra p.8
[67] Jamoh N. Op.cit p. 176
[68] (1982) 3 NCLR, p.394.

Representatives, Innocent Adikwu refused to disclose his source of information and instead went to court to seek redress and the court gave the judgment in his favour and held that it was improper for anyone including the House of Representatives to compel for the disclosure of the source of information except on exceptional circumstances. According to Justice A.L.A. Balogun, it will be tantamount to probing censuring or interfering with press freedom.

Also in the case of *Tony Momoh V. Senate of the National Assembly*,[69] the court of first instance ruled in favour of Prince Tony Momoh who was the editor of the Daily Times Newspaper who went to court contesting that the Senate has no power to request to know the source of information from him.

The Senate was not satisfied with the decision of the court of first instance and went to the Court of Appeal and the judgment of the Lower Court was reversed in favour of the Senate[70] it should always be noted that media organization have always been on attack by the executive and legislatures.

These two cases shows how legislatures try to interfere with the freedom of the press through instituting action in court.

The government may take a positive form of the obligation to inform the public on the true state of affairs in matters of public life, working of the government and whatever is necessary to keep the public informed.

In Nigeria the Constitution while guarantying freedom of expression is also quick to provide some limitation first by prohibiting any person (except by a Presidential permission) other than the government of the federation or state form operating a television or wireless Broadcasting station on fulfillment of condition laid down by an Act of the National.[71]

[69] (1984) NCLR, p.295
[70] (1984) NCLR P.295
[71] Supra p.8

Secondly by making the freedom subject to any law that is reasonably justifiable in democratic society.[72] Government politely withdraws the freedom. The implication is that the Government and its agencies i.e. NBC will grant licenses for broadcast stations to anybody that satisfied their bidding.

Broadcast media organisation in Nigeria flagrantly abuse the existing freedom by broadcasting slanderous and false information. In 2006 AIT was closed down for airing National Assembly 3rd Term allegation broadcast.

Apart from this law, there are cases instituted by the executives, legislature, judiciary and individuals against journalist during the discharge of their duties. Can be seen in the case *Umaru Musa 'YarAdua V. Leadership Newspaper*.[73] Umaru Musa 'YarAdua had lodged a complaint before the Magistrate bordering on alledged defamation of his character in a report published by leadership weekend. The Leadership Weekend had on several occasions apologized to the President via a series of rebuttal which border on the President health published in its Saturday, November 8, 2008 edition.

The Leadership Newspaper's admission of guilt before the fact, compromised its case. Newspapers and other media of public communication have a duty of care to verify the accuracy of the stories before publishing.

The case made the Chairman and Editor in Chief of the Leadership Newspaper group to undergo a difficult time in the hand of state security agents and the police. The security operative also stormed the corporate headquarters of the organisation where they confiscated Computers containing documents vital to the Leadership Newspaper.

[72] Section 39(3) of 1999 Constitution
[73] www.Umaru Musa Yar'adua V. Leadership Newspaper last access on 17th June, 2015

Freedom of information may be of different kinds, certain expression may be harmless in their nature while others may express opinion in the right direction and of interest to others. [74]

Extending the freedom of speech to propagate harmless ideas would cause chaos in the society hence the need for regulatory agencies to sanction propagation of harmless opinions.

Constitutional provision which give the President the power to grant permission to operate Broadcast outfit is aimed at providing monopoly to the government to control and obstruct any public opinion at any given point of time on any issue by restricting private hands to operate powerful media capable of influencing the mind of the people on matters of national interest.

Constitutionally right to privacy is another restriction on freedom of expression. The privacy of citizens, their homes, correspondence, telephone conversation and telegraphic communication is hereby guaranteed and protected.[75]

It is the constitutional provision that limit freedom of broadcasters because while discharging their duties, they also have a duty not to infringe on privacy of others.

In chapter two of the 1999 Constitution, the fundamental objectives and directive principles of the policy the Constitution provided for Broadcast to serve as watch dogs of the society. 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.[76]

As the 4th estate of the realm, broadcast organisations are constitutionally regarded as part and parcel of governance or the eye of the people in whom sovereignty

[74] Jamoh N. Op.cit p. 176
[75] Section 37 of the 1999 Constitution
[76] Section 22 of the 1999 Constitution

resides and through the constitution the government is expected to drive all its powers. Broadcast supposed to keep government on its toes to do the right thing.

Clearly stated in the Constitution of the Federal Republic of Nigeria are major national objectives of Nigeria referred to as broad objectives of broadcasting which include political, economical, social, cultural and technological spheres. It is specifically stated that broadcasting shall contribute to the development of national unity and participatory Democracy.

Broadcasting should create and promote awareness among the people, inculcate in the people the spirit of tolerance of all shades of opinions and promote social justice base on responsibilities and right of individuals in the society.

The constitutional right of freedom of expression are not been exercise in Nigeria as it use to be in other parts of the world. It is in writing but not in practice. It is worth to note that the Military junta uses all forms of oppressive machineries against broadcast industries to prevent them from performing their assign role effectively.

The Nigerian media practitioners were very conscious of these provisions in the Nigerian Constitution and made attempts to confront government on issues or areas where the freedom was being infringed upon.[77] Sometimes they were successful at other times they failed and were seriously hurt.

Information through broadcasting was managed and manipulated badly to the advantage of powers that be as broadcasting media was so important to the military who quickly seize it during and after coup to serve themselves and so it is under Democracy if use positively.

3.4 **Legal Framework under the National Broadcasting Commission Code**

[77] *Broadcast Regulation in Nigeria* Op.cit p.82

Nigeria has started the process of transmitting from analogue to digital terrestrial transmission. This is to ensure that the whole country is not caught napping by 2015 when the whole world is expected to have gone digital.

The advent of digitalization with its emerging new media, no doubt posses a new set of challenges to the industry, therefore to meet up with the challenges of the emerging trend in the broadcast industry, there is the need to have a proper and workable regulatory framework that will guide the operators in the industry.

The fifth edition of the Nigeria broadcasting code 2012 update the rules and regulations of broadcasting in the country to make operators responsive to the developments that are currently affecting the industry.

The code is to assist broadcasters make sound judgement and provide the public with information. It also provide rules and regulation on community broadcasting. The code would also enable stakeholders discharge their responsibility more effectively and provide a transparent tools for the commission to adequately regulate the industry.[78]

The code represents the minimum standard for broadcasting in the Federal Republic of Nigeria which shall be applied in accordance with the professional ideals of broadcasting.

The cardinal responsibility of broadcasting is to inform, educate and entertain shall not be at the expense of national interest, unity and cohesion of Nigeria's diverse social, cultural, economic, political and religious configuration, therefore no broadcast shall intentionally encourage or incite to crime, lead to public disorder, be repugnant to public feeling or contain an offensive reference to any person alive or dead or generally be disrespectful to human dignity.[79]

For National Broadcasting to monitor and regulate satellite programmes which were aimed at encouraging crimes and public disorder among Nigerians.

[78] NBC Code p.6
[79] O.O.2.1.2.2

Broadcasting shall be guided by the following which are in line with the fundamental objective and directive, principles of state policy.[80]

Broadcasting shall provide an efficient professional and comprehensive services to the entire people of the Federal Republic of Nigeria by influencing the society toward setting the agenda for the social, cultural, economic, political and technological development of the nation for the public good.

The National Broadcasting Commission Code also provides regulation to ensure that broadcasting plays a pivotal role toward achieving the set objectives. Therefore:

a. Broadcasting shall adhere to the general principles of legality decency, truth, integrity and respect for human as well as the cultural, moral and social values of the people within the provision of the Constitution.

b. Nigerian Broadcasting shall meet the best in professional standards.

c. The framework for the regulation of Broadcasting in Nigeria shall meet local need without compromising international standards.

d. Broadcasting in Nigeria shall provide the sound and vision services that cater to and reflect the diverse range of Nigerian cultures and communities through effective distribution of public, commercial and community broadcasting services.

e. Broadcasting in Nigeria shall be substantially owned and operated by Nigerians.

f. Broadcasting shall ensure the protection and development of women, children and other persons requiring special care and consideration.

[80] Chapter Two of 1999 Constitution as amended

g. Broadcasting shall be mind full of the degree of harm and offence likely to be caused by the incursion of any material in programme in general or in specific terms.

h. Broadcast frequency band a scarce resource shall be efficiently utilized in line with the international best standards, assignment, registration and monitoring of Broadcast spectrum.

i. Universal access to broadcasting including, technologies, content and services shall be promoted.

j. Providers of broadcasting services should respect community standard in the provision of programme materials.

k. The mechanism for addressing complaints as well as feedback should be established.

The National Broadcasting Commission is derived from the provision of the National Broadcasting Commission Act.[81]

The code contains the universal aims and objectives of Broadcasting with specific application to Nigeria, the purpose is to guide broadcasters to apply the provisions of the code and assist the public to uphold them as the benchmark for their right to quality broadcasting.[82]

3.4.1 **Licencing** is the process of conferring legal authority to operate broadcasting under specific conditions as set out by the law.[83]

It shall be illegal for any person to operate or use any apparatus or premises for transmission of sound or vision by cable, television, radio or satellite or other medium of broadcast from anywhere in Nigeria unless licence by the Commission.[84]

[81] Section 2(1) (h)
[82] Section 1(1)(b) of the NBC Code
[83] Ibid Section 2.0.1
[84] Ibid Section 2.0.2

The National Broadcasting Commission should ensure fairness in the grant of licence for Broadcasting and avoid politics to ensure that qualified applicants were not denied licence for the people to be able to exercise their freedom of expression.

National Broadcasting Commission is not independent as their recommendation for grant of licence has to go through the Minister to the President and they can set aside their recommendation for their own political interest.

Licence are delayed or refused for unknown reasons the National Broadcasting Commission Code provide for programmes to adhere to the principles of legality, decency and truthfulness[85] Materials likely to incite or encourage to the commission of crime or lead to public disorder shall not be broadcast.[86]

The Broadcaster shall recognize expression as an agent of society, therefore, he shall not use his medium for any personal or sectional rights, privileges and needs of his own proprietors, relatives, friends and supporters.[87]

The above provisions of the NBC Code were aimed at ensuring good ethnical baheviours capable of promoting peaceful coexistence using Broadcast medium. Hence the need for ensuring compliance. Any information given in a programme in whatever form should be presented accurately.[88]

A Broadcaster should acknowledge his or her own inherent biases and prejudices and transparently rise above subjective mindset. All side to any issue of public interest shall be equitably presented to ensure fairness and balance.

Language or scene likely to encourage or incite to crime or lead to disorder shall not be broadcast[89] Broadcasting is highly susceptible to limitation especially by

[85] Ibid Section 3.1.1
[86] Ibid Section 3.1.2
[87] Ibid Section 3.1.3
[88] Ibid Section 3.3.1
[89] Ibid Section 3.3.2

children, therefore the portrayal of violence, cruelty pain and horor that has the potential of causing moral and psychological harm should not be broadcast.

It is worthy to note that religious values are essential to unity and peaceful coexistence of the society. The National Broadcasting Commission has provided for religious programmes. Religious believes and practices are central to coexistence and capable of evoking strong passions and emotions. Nigeria is a country with different faiths and varying sensibilities and sensitivities to avoid offending any religious belief or practice[90] Broadcaster shall adhere to the following:

a. Equal opportunities and equitable airtime should be available to all religious groups in the community it serves.[91]

b. Religious programmes should be presented respectfully and accurately.[92]

NBC code also allows for 10% airing of religious programmes notwithstanding the above, religious broadcast shall not exceed 10% of the total weekly airtime of any broadcaster. But in 2008, about 46% of Radio Kano AM programme were religious, mostly during the Ramadan period.

Religious programmes are now been paid for as commercial in Broadcasting industries which may affect the provision of NBC code for equality in the allocation of airtime because while some religious group can afford sponsoring religious programmes other groups may not afford.

The National Broadcasting Code also provided regulation for political broadcast. Political programmes should observe the provision of the code and other extant laws relating to broadcasting[93] Broadcaster should in using political materials for

[90] Ibid Section 3.9.1
[91] Ibid Section 4.3.1
[92] Ibid Section 4.3.1 (a)
[93] Ibid Section 4.3.1 (b)

news should avoid taking inflammatory and divisive matter in it provocative form.[94]

In adherence to the principles of pluralism, equal airtime should be provided to all political parties to air their views with particular regard to amount of airtime during political campaign period.[95]

Equality in the distribution of political airtime to political time were not been adhere to as opposition parties were denied airtime by some Broadcasting Organisation and laid complaint with authority but nothing was done by the National Broadcasting Commission which may be attributed to directives by the Minister of Information as provided by the NBC Act.

Also on the issue of broadcaster to avoid using an inflammatory and divisive matter in its provocative form, the researcher observed that National Broadcasting Commission is not enforcing the provision of its code, considering the campaign of blackmail by some broadcasting industries against the opposition parties without sanction during the 2015 electioneering campaign.

2003 election, NTA breached of the NBC code[96] (2012) which compels Broadcasting Organisation to give equal chances to political oppositions for political advertisement where Obasanjo was given full coverage and Buhari's ANPP was denied.

NBC code provide that, an advertisement shall not be broadcast if it contain an offer of a medicine or product or an advice relating to the treatment of serious diseases, complaints, conditions, indicating or symptom what should rightly receive the attention of a regulated medical practitioner but radio station given traditional medicine seller advertising medicine for serious diseases like HIV/AIDS.

[94] Ibid Section 5.2.1
[95] Ibid Section 5.27
[96] Ibid Section 7.6.5

3.4.2 **Community Broadcasting**

The National Broadcasting Commission code has provided for the establishment of community broadcasting. Community broadcasting is a key agent of Democratization for socio-cultural, educational and economic development. It is a non profit grassroot public broadcast service medium through which community members are able to contribute and foster civic responsibilities and integration.[97]

A community for the purpose of this tier of broadcasting should be a group of people residing in a particular geographical location or sharing a strong interest which the community desires to develop through broadcasting such community include:

a. Local non profit organisation
b. An educational institution
c. A cultural association
d. A cooperative society
e. Partnership association[98]

Community broadcasting is a vital tool for educating entertaining and enlightening the community on what is happening within their community in accordance with their cultural and religious value but it seems as the public where not aware of the Community Broadcasting which will assist greatly in enhancing the living standard of the people which necessitated the need for communities to have broadcast stations.

3.4.3 **Sanction**

The Commission shall impose sanctions for any breach arising from monitoring and complaints received on the content or conduct of a Broadcast station.

The Commission shall have the responsibility of determining and applying sanctions including revocation of licences of defaulting stations which do not

[97] Ibid Section 9.0.1
[98] Ibid Section 9.0.2

operate in accordance with the National Broadcasting Code and in the public interest.[99]

The NBC Act also provide that any station which contravene the provisions of the Nigeria Broadcasting Commission Code or any other law, shall be liable to sanction.[100]

The commission prescribe the following classes of sanction shall apply for breaches committed by any broadcast station.

i. The sanction for class A are[101]

a. Immediate suspension of broadcast services pending the provision of detail of breaches complained of and the right of reply by the broadcaster.

b. Suspension of licence and immediate shut down of transmitters.

c. Revocation of licence, seizure and forfeiture of transmitting equipment.

In the case of suspension of broadcast, licence a recommencement fee in the form of severe fine for public and commercial broadcaster.

ii. The sanction for class B are[102]

a. Written warning to remedy a breach within a reasonable timeframe failing which a fine shall be impose.

b. Failure to comply with the provision of "a" above attract a reduction of the daily broadcast hours for a given period. The recommencement of full broadcast hours be subject to a heavy fine for public and commercial broadcasters and light fine for community broadcasters has to be paid.

[99] Section 2(1)(n) of the NBC Act
[100] Ibid Section 21
[101] Section 1.4.1.2.1 of NBC Code
[102] Ibid 5.1.4.1.41

c. Further failure to comply with the provision of "A" and "B" above lead to suspension of broadcast licence for a given period with a recommencement fee of a severe fine for public and commercial broadcast station and a light fine for community broadcast stations.

The sanction for class C are[103]

a. A written admonition or warning depending on the severity of the breach for a remedy within a reasonable time.

b. Failure to comply with the provision of "A" above lead a light fine.

c. A further failure to comply with the provision of "A" and "B" above will automatically graduate to class B sanction.

National Broadcasting Commission may not be fair in imposing sanction for allege violation of the provision of the NBC Code, NBC Act and other law regulating broadcasting industry due to the fact that it comply with Directives of a Minister who may influence the decision of the commission when the violation affect government interest. Therefore, the need to prosecute the broadcasting outfit to court for trial. *In LPDC vs Fawehinme*[104] where the Supreme Court held that vesting in a body the powers of both investigating and trial amount to a breach of rule of fair hearing "Nemo Judex in causa sau" you can not be a Judge in your own case.

3.5 Legal Framework of Broadcasting under the Freedom of Information Act

The Act was signed into law in 2011 as a result of long advocacy campaign led by civil society groups and media practitioners to guarantee Nigerian citizen the Right to public information.

The Act provide subject to the provisions of this Act but not withstanding anything contained in any other Act, law or regulation, every citizen of the Federal Republic of Nigeria has a legally enforceable right to and shall on application be

[103] Ibid Section 1.4.1.5.1
[104] (1985)2 98 v NLR

given access to any record under the control of a government or public institution.[105]

The Act also mandated Head of every government or public institution to which the Act applies to publish in the Federal Gazette a description of[106]

(a) The organisation and responsibilities of the institution including details of programmes and functions of each division, branch and department of the institution.

(b) Document containing information relating to the receipt, of expenditure of public or other funds of the institution.

(c) Document containing the right of the state, the public subdivision of the state or of Local Government or of any private person.

Access to information held by public authorities is a fundamental element of the right to freedom of expression and vital to the proper functioning of a democracy. It is an act that make provision for the disclosure of information held by public authorities.

The researcher observed that the culture of secrecy had become entrenched in Nigerian Government and members of the public including the media are always denied access to official information. The freedom of information Act also provided for situation where information may not be made public as follows:

1. The Head of a Government or Public Institution may refuse to disclose any record, the disclosure of which may be injurious to the conduct of international affairs or the defence of the Federal Republic of Nigeria.[107]

2. However, in the interest of the public the court may override the refusal by the Head of the Government or public institution.[108]

[105] Section 2(1) Freedom of Information Act 2007
[106] Ibid Section 3(1)
[107] Section 13(1) FOI Act

We observed that the denial of access to information and the attendant wide spread ignorance in the society does more harm to the society than any harm that could possibly arise from granting access to members of the public.

The Head of a Government or any public institution may refuse any information applied for of which would:

1. Interference with pending or actual and reasonably contemplated law enforcement proceedings conducted by any law enforcement or correctional agency.[109]

2. Interfere with pending administrative enforcement proceedings conducted by any Government or public institution.[110]

3. Deprive a person of a fair trial.[111]

4. Disclose the identify of a confidential source.[112]

5. Constitute an invasion of personal privacy, however where the interest of the public would be better served by having record being made available this exemption should not apply.[113]

The Head of Government or public institution may refuse to disclose any information applied that contains:

a. Trade secret, financial, commercial or technical information that has substantial economic value or is likely to have substantial value.

b. Materials that could reasonably be expected to prejudice the competitive position of a government or public institution.

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[108] Ibid Section 13(2)
[109] Ibid Section 14(1)
[110] Ibid Section 14(2)
[111] Ibid Section 14(3)
[112] Ibid Section 14(4)
[113] Ibid Section 14(5)

c. Scientific or technical information obtained through research by an officer or employer of a government or public institution which could deprive the officer or employee of priority of publication.

d. Information the disclosure of which could reasonably be expected to be materially injurious to the financial interest of the Federal Republic of Nigeria or any State or Local Government.[114]

Freedom of information Act contain more exemption clauses than the sections that grant access to information this means that some public officers can use these sections for unjust and mischievous purposes.

The provision against denial of information that said where the interest of the public would be better served by having such record been made available this exemption to disclosure shall not apply, this is commendable as it would help in addressing the issue of hidden under some of the exemption to denied access to public information.

Freedom of information Act has been said to be the right that enable members of the Nigerian Public to access to information because of this it is now recognized as the fundamental human right to which Nigerians are entitle to:

The public is entitled to the truth and only correct information can form the basis for sound broadcasting and ensure the confidence of the people with the freedom of information Act.

The success of the implementation of the Act is the co responsibility of both the Government (supply side) and Governed (demand side) the demand side includes the citizens, civil society, community and organisations.

Broadcasting outfits and the private sector must take responsibility for using the law as well as monitoring government efforts. The attitude of public

[114] Ibid Section 15

administrators who are the face of the government would determine the quality of and access to information.

The head of every government or public institution to which this Act Applied shall cause to be published in the Federal Gazette, a description of[115] (A) the organisation and responsibilities of the institution including detail of programmes and function of each division branch and department of the institution.

(a) All classes of record under the control of the Institution in sufficient details of facilitate of the Right to access under the Act.

(b) All manuals used by employees of the Institution in administering or carrying out any of the programmes or activities of the Institutions.

(c) Document containing substantive rules of the Institutions.

(d) Document containing final opinions including concurring and dissenting opinions.

(e) Document containing statements and interpretations of policy which have been adopted by the Institution.

(f) Document containing final planning, policies recommendations and decisions.

(g) Document containing factual reports, inspection reports and studies whether prepared by or for the Institution.

(h) Document containing the names, salaries, titles and date of employment of all employees and officers of the Institutions.

(i) Document containing the name of every official and the final record of voting in all proceedings of the Institution.

[115] Section 3(1) of FOI

(j) Files containing application for any contract permits, grants or agreement.

(k) A list of reports, documents, studies, or publications prepared by independent contractors for the Institution.

Any person entitle to the Right of access conferred by this Act shall have the Right to Institute proceeding in a court to compel the head of any government Institution or public body to comply with the provision of this section.[116]

Many Nigerians were not aware of their right under the freedom of information Act to Institute an action in court for Refusal by an organisation to provide them with documents hence the need for more public enlightenment where access to record is applied for under this Act the Head of the Government of public Institution to which the application is made shall not later than fourteen (14) working days from the date of receipt of the application.

(a) give written notice to the person who made the application as to whether or not access to the record or part thereof will be given

(b) if access is to be given, give the person who made the application access to the record or part thereof[117]

Most public Institution do not respond to application to access information which may be attributed to lack of Institutional frame for the enforcement of the provision of the Act.

Any person who has been refused access to a record apply for, or part thereof may apply to the court for a review of the matter within thirty days after the Head of the Government or public institution has refuse or is deem to have refuse the application or within such further time as the court may either be or after the expiration of those thirty days fix or allow.[118]

[116] Ibid Section 3(2)
[117] Ibid Section 5(1)
[118] Ibid Section 22(1)

The thirty days period given within which to apply to the court is not enough as the Head of organisation deserved to be given adequate time to prepare the document sought for in their organisation.

Notwithstanding anything contained in the criminal code, penal code, the official secret Act or any other enactment, no civil or criminal proceedings shall lie against any government or public institution or against any person acting on behalf of the government or public institution and no proceedings shall lie against the federal, state or local government or any institution thereof, for the disclosure in good faith of any record or any part of a record pursuant to this Act, for any consequences that flow from that disclosure or for the failure to give any notice required under this Act.[119]

Where there is conflict between the freedom of information Act with any other enactment like the penal code, criminal code, and the official secret Act the Freedom of Information Act take precedence this is clear from the provision of Act which provide subject to the provisions of this Act but not withstanding any things contained in any other Act, law or regulation, every citizen of the Federal Republic of Nigeria has a legally enforceable right to, and shall on application be given access to any record under the control of a Government or public Institution.[120]

Nothing contained in the criminal code or official secret Act shall prejudicially affect any public officer who without authorization discloses to any person any public record or information which he reasonably believes to show.

(a) A violation of any law, rule or regulation
(b) Mismanagement, gross waste of funds, fraud and abuse of authority
(c) No civil or criminal proceedings shall lie against any person receiving the information for further disclosing it.[121]

[119] Ibid Section 29(1)
[120] Ibid
[121] Ibid Section 29(2)

The Act provides exemption to the freedom of information Act as follows:

(a) Published material or material available for purchase by the public.[122]

(b) Library or museum materials made or acquired and preserved solely for public reference or exhibition purposes.[123]

(c) Materials placed in the National Library, the National Museum or the non public section of the National Achieves of the Federal Republic of Nigeria on behalf of any person or organisation other than a government or institution.

It is our observation that private materials were adequately protected from disclosure even when in the custody of government which is a step towards ensuring the protection of individual privacy.

Freedom of information Act has provide defence for public officer to disclose information in good faith hence the need to make good use of the defence toward exposing corruption, mismanagement of fund, fraud and abuse of authority in government agencies.

3.6 Legal Framework under the Nigerian Communication Commission Act

The Nigerian Communication Commission Act provided for the establishment of Nigerian Communication Commission which under that name shall be a body corporate with perpetual succession and a common seal and may sue and be sued in its corporate name. [124] The commission is created with the following objectives:

a. To create a regulatory environment for the supply of telecommunications services, facilities and to promote fair competition and efficient market conduct.

[122] Ibid Section 29(2)(a)
[123] Ibid Section 29(2)(b)
[124] S.I Nigerian Communication Commission Act CAP N97 LFN 2004

b. To facilitate the entry into markets for telecommunication services and facilities of person wishing to apply such services and facilities.

c. To ensure that licensees or authorized carriers and other providers of telecommunication services and infrastructure meet their commercial obligations and such other obligations specified under this Act in a manner which promote cooperation and fairness.

d. To protect licensees and the public from unfair conduct of other providers of telecommunication services with regard to the quality of service and to the payment of tariff.

e. To ensure that licensees achieve the highest possible level of accountability and responsiveness to customer and community needs.

f. To ensure that standard telephone services are supplied as efficiently and economically as possible and at such performance standards which reasonably meet the social, industrial and commercial needs of the community.

g. To promote the development of other sectors of the Nigerian economy through the commercial supply of modern telecommunication services within the frame of this Act.

h. To establish technical standards and promote the of Nigeria's telecommunication capabilities, industries and skills

i. To ensure that the Nigerian public have growing access to telecommunication facilities.

j. To optimize the use of telecommunications facilities in Nigeria with due consideration for the right of the licensees and the public interest[125]

[125] Ibid S.2

The Act establishing the commission saddle it with the following function[126]

a. The responsibility for economic and technical regulations of the privatized sector of the telecommunication industry.

b. To ensure the safety and quality of telecommunications services by determining technical standard and regulating technical execution and performance.

c. To manage Nigeria input into the setting of international technical standard for telecommunications within the provision of this Act.

d. The responsibility of giving advice and assistance to the entire Nigerian telecommunication

e. The responsibility of giving report and assistance to the Minister in relation to the telecommunication industry

f. The promotion of competition in the telecommunication industry.

g. The protection of suppliers of telecommunications services or facilities under this Act from unfair practices of other telecommunications supplier which are damaging to competition.

h. To facilitate the entry into the market for such services and facilities by person wishing to supply such services and facilities.

i. To undertake studies into space technology and manage the utilization of satellite facilitates for the benefit of Nigerian operators and users.

j. The protection of licensees from misuse of make power by other carriers.

k. The arbitration of dispute between licensees and other participants in the telecommunication industry.

[126] Ibid S. 4

l. To receive and investigate complaints from licensees, carriers, consumers and other person in the telecommunications industry.

m. To advise the Minister on ways of promoting competition with in the telecommunication within the telecommunications industry.

n. The responsibility for the protection of public interest by ensuring that the provision of this Act are carried out with due regard to public interest.

o. The projection of consumers from unfair practices of licensees and other person in the supply of telecommunication services and facilities.

p. To develop performance standards and indices relating to the quality of telephone and other telecommunication services and facilities supply to consumers having regard having regard to the best international performance indicators and Nigerian conditions.

q. To monitors and report to the Minister on charges paid by consumers, the performance of licensees and persons in meeting the standards developed under paragraph of this section.

r. The issuance of telecommunication licensees in accordance with the provision of section II of the NCC Act.

s. To monitor the conduct of holders of the licensees and to enforce the condition included in the licence.

In the discharge of it duties order the Act the Commission shall have the power to[127]

a. give written directions to a licensee or authorized carrier in connection with the function of the commission

[127] S.5 of NCC Act

b. have regard to the right of the licensee referred to in paragraph (a) of this section

c. consult where appropriate with the president commercial and industrial organisations as well as other relevant bodies

d. delegate any of its powers to a committee properly constituted by it in accordance with the provision of this Act

e. require any person to appear before the commission or any committee of the commission

    i. To discuss any matter which the commission deems necessary in the discharging the commissions duties under the Act.

    ii. To give evidence or produce any document which is likely to assist the commission or any of it committees in the discharge of the duties of the commission under this Act.

f. Enter into contracts or partnership with any company, firm or person which in the opinion of the commission is intended to facilitate the duties specified in this Act.

g. Establish and maintain subsidiaries for the discharge of such functions as the commission may determine.

h. Do anything which in the opinion of the commission is calculated to facilitate the carrying of the function of the commission licence of telecommunication company.

As from the commencement of this Act and subject to subsection 4 of this section, no person shall operate a telecommunications service in Nigeria unless the person[128]

[128] Ibid S.10

a. Is registered as a body corporate under the Company and Allied Matter Act.

b. Is licensed as telecommunications service operator under the provisions of this Act.

2. An authorized provider of telecommunications infrastructure other than a licensee may provide and maintain only such facilities and services as are required to connect it own external line plant to the nearest terminal in the customer's location and not beyond.

3. The authorized provider of telecommunications infrastructure other than a license may be licenced exceptionally to provide and maintain such specialised terminal equipment as may be considered unique to it operation.

4. Notwithstanding subsection(1) of this section any person operating a telecommunication service may apply to the commission within one year of the commencement of this Act to be licenseed under the provision of this Act.

5. Any person not licensed under this section shall cease to operate telecommunication services in any part of Nigeria.

3.6.1 **Application for licence**[129]

The procedure for application of Communication licence has been provided by the National Communication Commission Act as follows:

i. Any application for licence under this Act shall be written addressed to the commission.

ii. The commission may before the consideration of an application under this Act required the applicant to produce such evidence or information as to

[129] Ibid S.11

show the capacity to operate a telecommunications service as it may deem fit to enable the commission to reach a decision on the matter.

iii. The licence granted under subsection(1) of this section shall be subject to such term as the commission man deem fit in each circumstance of NCC Act.

3.6.2 **Power to revocation of licence**

1. The commission may revoke any licence granted under subsection 12 of this Act. If it is satisfied that a condition of the licence has been breached or the licensee has cease to be eligible or it is in the interest of the public to do so.

2. Any licence revoked under subsection(1) of this section shall not effect the obligation of the holder of the licence if the obligation arose before the revocation.

3.7 **Legal Framework for Broadcasting under the wireless Telegraph Act**

Wireless telegraphy means the eminitting or receiving over paths which are not provided by any materials substance constructed or arranged for that purpose of electro magnetic energy of a frequency not exceeding three million mega cycles a second being energy which either:

a. serves for the conveying of messages, sound or visual images (whether the massages, sound or images are actually received by any person or not) for the actuation or control of machinery or apparatus or

b. is used in connection with the determination of position, bearing or distance or for the gaining of information as to the presence, absence position, or motion or of any objects of any class[130]

In this Act unless otherwise requires commission in the case of matter relating to[131]

[130] S.2 wireless Telegraphic Act CAP W5 LFN 2004
[131] Ibid S.3

A. Telecommunications the Nigerian communication commission established under the Nigerian Communication Act.

B. Broadcasting the National Broadcasting Commission established

3.7.1 **Licence required for use of Wireless Telegraphy**

1. No person shall established or use any station for wireless telegraphy or install or use any apparatus for wireless telegraphy except under and in accordance with a licence on that behalf

2. Any person who contravene the provision of subjection(1) of this section shall be guilty of an offence[132]

3.7.2 **Licence required for dealing in Wireless Telegraphy Apparatus**

1. No person shall offer for sale, sell or have in his possession with a view to sale in the course of his business any installation mechanism, instrument, material or other apparatus constructed for the purpose of or intended to be use for wireless telegraphy unless under and in accordance with a licence in that behalf.

2. Anybody who contravene subsection(1) shall be guilty of an offence

3.7.3 **Grant of licence**

The commission may grant licences for the purpose of this Act in the prescribed form or in such other for any particular as he may approve and may renew licence so granted.

2. The grant of licence shall be in the discreation of the commission[133]
3. A licence may be issued subject to such terms, provisions and limitations as the commission may think fit, including in particular in the case of a licence to establish a station, limitation as to the position and nature of the station,

[132] Ibid S.4
[133] Ibid S.5

the purpose of which, the circumstances in which and the person by whom the station may be used and the apparatus which may be installed or use therein and in the case of any other licence, limitation as to the apparatus which may be installed of used, and the places where the purpose for which the circumstances in which the person by whom the apparatus may be used. [134]

4. A licence shall unless previously revoked continue in force for such period as may be specified in the licence.

5. A licence may be revoked or the terms, provision or limitation there of varied by a notice in writing of the commission served on the holder of the licence or by a general notice applicable to licences of the class to which the licence in question belong publish in the federal gazette[135]

3.7.4 **Regulations as to wireless telegraphy**

The commission may with the approval of the Minister make regulation[136]

a. prescribing the things which are to be done or are not to be done in connection with the use of any station for wireless telegraphy or wireless telegraphy apparatus and in particular requiring the use of any such station or apparatus to cease on the demand in that behalf of any such persons as may be prescribed by or under the regulations.

b. Imposing on the person to whom a wireless telegraphy licence is used with respect to any station for wireless telegraphy apparatus or who is in possession or control of any station for wireless telegraphy apparatus obligation as to permitting and facilitating the inspection of the station and apparatus are as to the condition in which the station and apparatus in the case of a station or apparatus for the establishment, installation or use of which a wireless telegraphy licence is necessary as to the production of the

[134] Ibid S.11
[135] Ibid S.11
[136] Ibid S.11

licence and such other evidences of the licencing of the station as may be prescribed by the regulation. [137]

c. Where sums are or may become due from the person to whom a wireless telegraphy licence is issued after the issue or renewal thereof requiring that person to keep and produce such account and record as may be specified in the regulations.

d. Requiring the person to whom a wireless telegraphy licence has been issued to exhibit at the station.

e. For preserving the secrecy of communications by wireless telegraphy.

Any person who contravenes any regulation made under this section, or cause or permits any station for wireless telegraphy apparatus to be used in contravention of any such regulation shall be guilty of an offence. Misleading messages and interception and disclosure of message.

a. No person shall by means of wireless telegraphy send or attempt to send any message which to his knowledge is false or misleading and is likely to prejudice the efficiency of any safety of life service or endanger the safety of any person or of any vessel, aircraft or vehicle which to his knowledge falsely suggest that a craft is in distress or in need of assistance or is not in distress or in need of assistance. [138]

b. Otherwise than under the authority of the commission or in the course of his duty as a servant of the state either:

    i. use any wireless telegraphy apparatus with intent to obtain information as to the contents, sender, or address or any message whenever sent by means of wireless telegraphy or not which neither the person using the

[137] Ibid S.11
[138] Ibid S.11

apparatus nor any person on whose behalf it is acting is authorized by the commission to receive or[139]

ii. except in the course of legal proceedings or for the purpose of any report thereof, disclose any information as to the contents, sender or addresses of any such message being information which would not have come to his knowledge but for the use of wireless telegraphy apparatus by him or by another person[140]

The telegraphic wireless Act has provided subject to the provisions of part VI of this Act relating to offences committed in relation to apparatus on Board of foreign ship or foreign aircraft, any person committing any offence under this Act.

A. Shall if the offence is under part II of this Act and consist:

i. In the installation or use, otherwise than under and in accordance with a licence of any apparatus not designed or adapted for emission (as opposed to reception) or[141]

ii. In a failure or refusal to cause any licence or authority to be surrendered to the commission, be liable in the case of the first such offence to a fine of N20 and in the case of any subsequent offence to a fine of N100[142]

B. Shall, if the offence is under part III of this Act and consistent the use or in the causing or permitting for the use or in the selling, offering or advertising for sale, or letting on hire, of apparatus in contravention of notice of the commission, not being apparatus the use of which is likely to cause undue interference with any wireless telegraphy use for the purpose of any safety or life service or any purpose on which the safety of any person or of any vessel, aircraft or vehicle may depend, be liable in the case of the first such

[139] Ibid S.11
[140] Ibid S.11
[141] Ibid S.11
[142] Ibid S.11

offence to a fine of N20 and in the case any subsequent such offence to a fine of N100. [143]

C. Shall in the case of any other offence, be liable to imprisonment for three months or to a fine of N200 or to both such imprisonment and such a fine.

3.8 Institutional Framework for Broadcasting in Nigeria

National Broadcasting Commission is one of the instrument use by the government to check Broadcast content and portrayal, the political system of a country determine the direction of its regulation of broadcasting.

Broadcasting is regulated in Nigeria by the National Broadcasting Commission which was created in 1992 with the promulgation of the National Broadcasting Commission Decree.[144]

This Decree which brought and end to 60 years government monopoly in broadcasting by opening the door for private participation through ownership and operation in the broadcast industry.

3.8.1 National Broadcasting Commission

National Broadcasting Commission was established by Decree 38 of 1992, to register regulate and control broadcasting in Nigeria. It regulation and approaches include licensing, monitoring, sanctioning defaulters, interviewing and arbitrating in conflicts and other control measures.

NBC is sole authority. Established by Decree 38 of 1992, latter amended by NBC (amendment) Decree No.55 of 1999.

The 1999 decree did the following:

a. Ended State monopolisation
b. Introduced media deregulation

[143] Ibid S.11
[144] Decree 38 of 1992

c. Foreign investors were allowed to participate for the first time in the establishment, ownership and operation of broadcasting something initially prohibited by the wireless telegraphy Act.

The commission was saddle with the responsibility of ensuring that every Nigeria including private entrepreneur could partake ideas and experience that would help the society.

The powers of the commission are spelt out in[145] the commission shall consist of Chairman and ten other members as may be approve to represent the following interest group[146] law, business, culture, education social science, broadcasting, public affairs than to leave it to ministry of information or it equivalent.[147]

National Broadcasting Commission still under the control of Government as it has the final authority in the appointment of positions and the minister has the power to issue directive of a general character to the commission which must be complied with.[148]

When you compare the National Broadcasting Commission of Nigeria with the United States Broadcast Regulatory Agency, you will find out that US Federal Communication Commission is an independent agency of the United State Government saddle with the responsibility of regulating interstate communication by Radio, Television, wireliness broadcasting, satellite and cable in all the fifty states, the district of Columbia and the US territories.

The Commission was funded entirely by regulatory fees with a budget of three hundred and fifty four point two million Dollars in twenty twelve.[149]

The Commission shall have power to grant licences and shall have power to refuse same.[150] It also provide person who are disqualified from the grant of licence.

[145] Section 2 of NBC Act Supra
[146] Ibid Section 3
[147] *Broadcast Regulation in Nigeria* Op.cit p.28
[148] Section 6 NBC Act
[149] www.US Federal Communication Commission last visited on 17th July, 2016
[150] Ibid

The establishment of the Commission is a very important innovative which has a very far reaching implication for the broadcasting industry in Nigeria. For the first time in the history of the country, a national body comprising of a broad group of various professions, cultural groups, opinion groups have been created by the government to control and regulate broadcasting.

In establishing the commission, the government was of the view that even though it has extensive and adequate facilities to control and reserve broadcasting but due to the nature of the operations of broadcasting, the government felt it will be better to create a separate agency to do that, the Federal Communication Commission of the United States issued licence for stations to meet public interest, convenience and necessity as well as sanction media stations who violated the law through fines and revocation of licence.

National Broadcasting Commission of Nigeria is not independent and solemnly relies on government for funding and operations. The establishment of National Broadcasting has brought to an end government monopoly in broadcasting by opening the door for private participation through ownership and operation in the broadcast industry.

3.8.2 **Broadcasting Organisation of Nigeria**

Broadcasting Organisation of Nigeria (BON) is a broad coalition of public and private broadcasters as the nation umbrella union of territorial radio, television, direct to home digital territorial television and multi-media distribution system. Established in 1973 the Broadcasting Organisation of Nigeria is today comprised of over 100 members and they collectively over 250 radio and television stations.

Broadcasting organisation vision is to foster a future proof environment for radio, television and new media broadcasters to serve their audiences and contribute to the development of the society while it mission is to continue to be the voice of broadcasting industry in Nigeria. [151]

[151] www.Broadcasting organisation of Nigeria last access of 21/03/17

The function of the Broadcasting Organisation of Nigeria is to protect peculiar interest of Journalist, Advance their welfare, save them from integration by the print Journalist and help in covering National event like Presidential speech, inauguration, election and sport festivals.

Broadcasting organisation of Nigeria comprises of:

1. Nigerian Television Authority
2. Federal Radio Corporation of Nigeria
3. Voice of Nigeria
4. DAAR Communication

CHAPTER FOUR

CHALLENGES OF NATIONAL BROADCASTING COMMISSION IN REGULATING BROADCAST MEDIA IN NIGERIA

4.1 Introduction

In every organisation despite the progress made, there most be some challenges hindering the realization of achieving the set objective of the organisation. In broadcast organisation despite the provision of the enabling environment for broadcast organisations to practice in Nigeria the sector is still been faced with challenges.

This dissertation has identified some of the challenges facing the broadcast sector to include, political intervention, copyright problems, commercialisation of broadcast, poor production of programmes, lack of fund, lack of enforcement of sanction, non compliance with digitalization and lack of awareness and among the public.

4.2.1 Challenge of Politics in Broadcasting

It need to be asserted that the National Broadcasting Commission should be an Independent Regulatory body devoid of partisanship. In this regard, a

depoliticisation of appointees to its headship should be on merit on a strong neutral term.

Objectively looking at this, we observe that chief executives of government owned broadcast outfits at state and federal level who by virtue of being appointed by chief executives, of states who are indeed politicians tend to see media station as an arm of the political party in power.

Securing neutral status for the heads of such stations and their board would enable it operate as neutral fourth estate of realm. The usage of broadcasting as a vehicle of politicking can be perplexing due to the anxieties of partisanship it imposes upon broadcasters.[152]

The mass media have become very vital in the life of individual and the society. Radio and television constitute a formidable source of information, entertainment and argument that now a days shape the intellect and emotion of the people. Broadcasting is veritable source of passing order and projecting authority to subject. Victorious politicians use broadcast stations for announcing election result while the success of military coup detat seems to depend on the execution of its radio strategy.[153]

The broadcaster primary objectives is to win and retain the attention of audience, so that a person wishing to transmit a certain interest and elicit a desired response can through the medium reach the minds, heart or soul of practically all the target audience.

Radio and television are the most persuasive medium of communication because of the dominance in the formation of people views, attitudes and taste. Broadcast media should therefore be seen by political leaders as a veritable instrument for continuous orientation, education, information and entertainment.

[152] *Broadcast Regulation in Nigeria* Op.cit p.20
[153] *Deregulation of Broadcasting in Africa* Op.cit p.20

We observe that democracy grows well in an environment where political office holders see broadcasters as partners in progress and hence the need for broadcasters to uphold the tenet of their profession by being vibrant, firm and upright.

Political party in power try to monopolize government media organisation to propagate their selfish interest and not allowing people to make constructive criticism. At such broadcasting should be about people and their activities and not always about the leaders as it is happening in Nigerian Broadcast stations. A situation where stories about the President, Governor or other government officials lead the bulletin even if nothing tangible is been done should be avoided for people to have a sense of belonging. In other word stories should reflect the interest and need of their audiences rather than the political interest of their rulers.

For Democracy to thrive in Nigeria, broadcasting of religious bigotry or fanaticism, ethnic and communal conflict as well as political hooliganism or thurgery be avoided. The researcher observed that for broadcast outfits to be neutral and impartial, politicians in management position of Broadcast station should be made to renounce membership of their political parties likewise politicians should stop interfering with the day to day running of broadcast stations.

4.2.2 **Challenges of Copyright in Broadcasting**

A major indiscipline that the broadcast regulatory agency always has to contend with is the ambit of copyright. Station tend to use content without authorization believing they would not be found out and not paying royalties to the artists who creative property they use.

Prior to Rome Treaty 1961 when cable and internet had not even being invented there was no copyright in broadcasting. Now digital copies of TV programme can be transmitted and signal theft has become a big commercial headache for broadcasting, signal, piracy include:

1. Unauthorised recording of Broadcast on video tapes, DVD or USB sticks

2. Visual unauthorized redistribution of signals over the air or online

3. Hacking into pay TV signals with equipment designed to circumvent

4. Piracy of line sport[154]

The National Broadcasting Commission in its bid to stem monopoly and encourage cooperative competition discourage the excusive acquisition of broadcast right.[155] However, where right have been so acquired, right owners are encouraged to share by way of leasing or subletting to third parties. The Nigerian copy right Act[156] which deals with the nature of copy right in a broadcast state that the copy right in a broadcast shall be the exclusive right to control by the right owner or its agent any broadcast that take place in Nigeria. It lists the following as acts that the right owner is entitled to control:

a. The recording and the rebroadcasting of the whole or a substantial part of a broadcast.

b. The communication to the public of the whole or substantial part of a television broadcast, either in its original form or in any form recognizably derived from the original.

c. The distribution to the public for commercial purposes of copies of the work, by way of rental, lease, hire, loan or similar arrangement.

Channels Incorporation TV Africa Nigeria Limited v John Momoh[157] The plaintiff obtained an interim injunction experts from Federal High Court Lagos restraining the defendants, its agents or privies from interfering with the business and copyright of the plaintiff and its affiliate station on Euro Football Championship.

[154] *Deregulation of Broadcasting in Africa* Op.cit p.106
[155] *Broadcast Regulation in Nigeria* Op.cit p.19
[156] Section 7 Nigerian Copyright Act LFN CAP C28
[157] FHC/CS/80/2002

The NBC had asked the TV Africa to register its operation in Nigeria but refused, consequence the commission declared the company illegal and ordered the closure of the station. The case was however settled out of court TV Africa later accepted to registered with the commission. Similarly, in the case of *NCC v Nwore Anayo*, [158] Federal High Court in Abuja sentenced the accused person to six months as well as a fine of N63,310 the accused was charge for being in possession of infringing copies of copy right work under[159] notably, the court pronounced a sentence of both fine and imprisonment against the accused.

The importance of these cases lies in the sentences impose by the court for instance the sum of N250,000 levied against the accused person by the Federal High Court sitting in Kaduna is the highest fine impose by a court in a single copy right infringement in the recent history of the commission prosecution efforts. [160]

The local broadcast stations not to broadcast programmes from TV Africa most especially Euro Football.

This section of the copy right Act also deals with the broadcasting of works incorporated in film or cinema. The Act provides that where the owner of the copy right in any work does not give permission for his work in a cinematography as a broadcast, the broadcast station infringes copy right.[161]

NCC V Sunday Ayodele[162] the Federal High Court sitting in Kaduna has convicted the accused person for the offence of being in possession of distributing for commercial purposes infringe copyright work.

The court sentence him to six months imprisonment on for each of the count while a cumulative fine of N25,000 was levied against the accused person and the imprisonment term ran concurrently, the fine was cumulative.

We examine a scenario where an artist like musician produces a work and store it in his library, he does not make the work available for use by society through the

[158] FHC/ABJ/CR/10/2012
[159] Section 20(2) of the Copyright Act
[160] www.NCC.Cases.org last accessed on 15th July, 2016
[161] Section 7 of the Nigerian Copy Right Act
[162] FHC/KD/8C/2012

dissemination, obviously no body would know about this work, the work would therefore not be appreciated. If no body appreciate and uses the work, the owner of the work may not expect any remuneration. If the artist receives no reward, no economic benefit for the energy, time and any other inputs invested to produce the work, then he has no reason for being in the business of creating the work.

The world today is doing everything possible to protect intellectual property in consequence therefore Intellectual Property Right is recognized by laws of many states. The reason of such recognition is to encourage, stimulate and enhance the creativity of the producers of intellectual work.[163]

The most important aspect of copy right law is the recognition that writers and authors should enjoy the right ownership in their creation. The purpose is to protect work from exploitation by others[164] *NCC v Ebeneze Ogundele*[165] The Federal High Court in Lagos convicted the accuse person on a four count charge of infringement and sentence him to a six month term of imprisonment in each count without an option of fine. Also the mandatory imprisonment terms in the two cases of Lagos and Abuja Division are the most stringent ever given. These judgement reflect the underlying objectives of the enforcement drive of the Nigerian Copy Right Commission which is to render the business of piracy not only unprofitable but their consequence are sufficiently addressed.

4.2.3 **Challenges of Enforcement of Sanction**

During the existence of National Broadcasting Commission, it has been reluctant in applying sanctions on some broadcast stations found contravening the provision of the NBC Act, Code and other laws guiding broadcast industry.

For many years the policy of the commission has been to nurture the stations, despite many offences committed by the stations apart from the occasional warning letter and meetings with the operators the commission refrained from

[163] *Deregulation of Broadcasting in Africa* Op.cit p.109
[164] Ewelukua, B.N. Op.cit p. 264
[165] FHC/L/459C/2011

applying any serious sanction on the stations that violate relevant laws regulating Broadcasting Industry in Nigeria.

The researcher observed that this may be the reason behind breach of relevant broadcasting laws by broadcasters.

However, because of the great increase in number of the stations, the increase in the offences and blatant disregard to the provisions of the laws by the stations, the commission has no choice than to clamp down on them. Many cases of such sanctions abound all over the country.

The first of such sanction was applied in 1996 on cable stations all over the country that persistently refused to adhere to local content requirement. The other major station applied by the Headquarters was the suspension of broadcast licences to all station that have refuse to pay their licence despite several pleading and warning. [166] Non payment of licence fees is a very serious offence that may led to revocation of licence as provided by law.[167]

The failure of some of the broadcast stations to pay their licence fees even after operating for many year show the contempt some of the broadcast stations and licences had for the commission and the industry.

In Maiduguri zone ABG cable was shut down for persistently airing content not compatible with Nigerian Culture and moral values. It was later ordered to reduce its broadcast hours for failure to pay renewal licence fee, airing programmes with obscenity and non encryption of logo. The station was closed down for refusal to comply with the law.

4.2.4 **Challenges of Establishing Community Broadcasting**

Community Broadcasting will greatly assist in educating enlightening and entertaining the rural populace as it would cater for their interest. This is solely

[166] *Broadcast Regulation in Nigeria* Op.cit p.36
[167] Ibid p. 37

lacking in Nigeria as of now there is no broadcast station mainly for the rural areas unlike what is obtain in other African countries like Mali.

Although the National Broadcasting Commission has granted some organisations special licences, they are not specifically for rural areas. This area of broadcasting deserved special attention taking into cognizance the population in the rural areas.

The establishment of broadcast station for rural areas especially radio is vital considering the fact that radio is cheaper and reaches more people than television. This is necessary considering the role broadcasting plays in the promotion of national integration and development of the country.

The development of this area of broadcast has become even more necessary as most of the programmes broadcast are either from urban areas or imported from foreign countries which in most cases not suitable to the rural communities.

4.2.5 **Challenges of Poor Production of Programmes**

The commission is faced with the challenge of encouraging the production of good programmes. This is one of the ways to help improve the standard of the broadcast station and counter the barrage of criticisms against the performance of the station from the viewing public. Most of the criticism against the television and radio stations in Nigeria are that they broadcast a lot of foreign programmes which are not only irrelevant and unsuitable for the cultural and moral life of the people but are in most case counter productive to national objectives.

These imported programmes are seen as avenue for the promotion of cultural invasion by the television stations. Some of the stations have even go far by relaying foreign news and in some instance even programmes to viewers live directly from those foreign station.

Radio Niger, Minna was transmitting BBC Hausa and sometime BBC English news while Ray Power 2, Lagos is also transmitting BBC news and Focus on Africa live which was against the law regulating the broadcast industry.[168]

It is our observation that these local stations served as conduit pipes of those foreign stations. The cost of producing programme is too high and therefore not easy for a station to produce all programmes, it broadcast. To solve this problem, the National Broadcasting Commission should advised the government to allocate budgetry provisions for programmes production just as they do for the purchase of equipment, it is a truism that broadcast does not only consist of equipment, programmes also play a very important as one cannot do without the other.

In addition government should also be advised to provide adequate resources for the recruitment and training of personnel as well integrate the planning of broadcasting in the interest of national development. The plan should incorporate the development of rural radio and television broadcasting so as to incorporate the rural people in the national development fold. In the same vein the National Broadcasting Commission should encourage the stations to as a matter of urgency engage in programmes exchange by way of bicycling for proper distribution and the commission should act as clearing house.

4.2.6 **Challenge of Digital Technology**

Technological evolution has given the broadcaster around the world a strong incentive to digitalise their network. By using digital technology more than 200 channels would be made possible. Digital technology also offers other advantages to the viewer such as wide screen pictures, CD Quality sound.

Digital Broadcasting is the most efficient method of transmission with the ability to squeeze several television channels into the space used to carry a single analogue channel thereby creating opportunities for many more new channels and programme services.

[168] Ibid p. 49

Most broadcast stations in Nigeria still use analogue systems and the change to digital is necessary because broadcast equipment especially the studio production, new and state of the art transmitters are of digital technology and it is progressively becoming difficult to acquire spare parts of the old analogue equipment.

The National Broadcasting should ensure that broadcast outfit meet with the international standard by providing modern equipment. The commission should also be actively involve in assisting the stations in the purchase of their broadcast equipment. If left on their own the stations would turn to equipment manufacturers to choose for them which in most case are in appropriate and ended up been cheated, as at now, there is no coherent policy on digitalization of broadcasting services in Nigeria. The general consensus amongst experts however, is that there is need for a coherent policy on digital technologies. A formidable and lasting policy would require inputs by taking into account interest of various stakeholders like, Broadcast engineers, manufacturers, financial experts, professional from the academic community and other relevant stakeholders.[169]

Digitalisation in Nigeria, like in any other country should evolve by consensus between the regulators and all stakeholders so as to arrive at a time table for digitalization and what digital standard to be used in Nigeria. This should consider Nigeria's National Development priorities and strategy.

In view of this concern, NBC needs to look into issues affecting digitalization of broadcasting in Nigeria such as:

1. Economic implications did the country has the economic power for this change. To reduce the cost of transmission, the committee must be able to talk with manufactures both within and outside the country toward getting a standard.

[169] Ibid p. 84

2. Transition period considering the rate of digitalization, a time span should be provided for migrating from analogue to digital transmission.

3. Phases of digitalization in terms of signal processes, signal transmission and reception, determine what to do with the broadcast equipment which life span has not been expanded.

4. Evaluation of existing system whatever system or standard is adopted most in the first instance be comparable with existing system.

5. Appraisal of National Policy on Broadcasting in line with current national development plan hence the need to suggest suitable standard to be adopted in Nigeria.

4.2.7 **Challenges of Commercialisation**

In normative terms, considering especially the immense capacities of broadcasting as a fulcrum of economic empowerment for both human and societal information, its catalytic role is not in doubt. The mass media are in fact crucial to the business life of a country at both the national and local levels of production and sales by providing channels for advertising messages. In shaping the economic fabric of country, broadcast organisation bring people from industrial leaders to labourers with the necessary information upon which their business and personal decisions are based and help the public to crystallize its attitude on matters of national economic policy that is the norm, the ideal.

Contemporary broadcasting in Nigeria is quite different from what hitherto existed. Broadcasting now is no doubt a big business with serious economic implications for government, broadcast entrepreneurs, advertising agencies, multinational corporations and the audience. It is no more a public service but a product that attracts big spending from whatever perspective of its multi faceted ramifications it is viewed.[170]

[170] *Broadcast Regulation in Nigeria* Op.cit p. 52

It is worthy to note the fact that the era of public broadcasting is gone unless the trend is reversed. If we admit that it is the responsibility of the broadcast media to assist in not only building a great and dynamic economy but a country of bright and full opportunities for all citizens, it must also be admitted that the media ability is contingent on the media economic status.

To build a culturally and ideologically strong media requires huge capital to develop infrastructure, acquire modern technology, procure equipment, produce quality programmes and hire qualified personal to compete in the national and global market.

The state of the economy therefore separates the men and the boys. In other world a Kwashiokor media with no capital base, dilapidated equipment and staff with low morale can neither contribute significantly to the economy of a country nor create better life for citizenry.

Considering the context of American commercial broadcasting, the principal aim is not to entertain, enlighten or provide a public service, it is to make profit. The US commercial broadcasting involves nearly 1,100 stations, four principal programming networks, dozens of programme suppliers, tens of thousands of companies with products or services to sell and hundreds of advertising agencies.[171]

We observed that even where a station is not designed as commercial station it still has to operate like a business since it most source for funds to operate and run efficiently to remain in business.

4.2.8 **Challenges of Broadcasting under the Social Media Era**

Social media are computer mediated technologies that allow the creating and sharing of information, ideas, career interests and other forms of expression via

[171] Ibid p. 61

virtual communities and networks. The variety of stand alone and built in social media services currently available introduces the challenges of defining. [172]

However, there are some common features[173]

1. Social media are interactive web 2.0 internet based application.

2. Users generated content such as text posts or comments, digital photos or video and data generated through all online interactions are the life blood of social media.
3. Users create service specific profiles for the website or application that are designed and maintained by the social media organisation.

4. Social media facilitate the development of online social networking by connecting a user's profile with those of other individual or groups.

Social media use web-based technologies desktop computer to create highly interactive platforms through which individuals, communities and organisation can share, co-create discuss and modify user generated content or pre-made content post online, they introduce substantial and pervasive changes to communication between business, organisation, communities and individual[174]

Social media changes the way individuals and large organisations communicate, these changes are the focus of the emerging field of techno in America a survey reported that 84 percent of adolescents in America have a face book account[175] over 60 percent of 13 to 17 yeas old have at least one profile on social media with many spending more than two hours a day on social networking sites.

Internet users continue to spend more time on social media sites than on any other type of site. At the same time the total time spent on social media in the United

[172] www. Social media.com last on 10/03/17
[173] Wild man, Steve (2015) *Social media definition and the Governance challenges*: An introduction to special issue
[174] Jan, Kristopher (2011) *Understanding the functional building block of social media*
[175] Okereke, Gwen (2011) *the impact of social media on children, adolescence and families pediatrics* the official journal of the American Academy of padeatric p.801

States as well as on mobile devices increased by 99 percent to 121 billion on minutes in July 2012 compared to 66 billion minutes in July 2011[176]

For content contributors, the benefits of participating in social media have gone beyond simply social sharing to building a representation and bring career opportunities and monetary income. Social media differ from paper base or traditional electronic media such as Television broadcasting in many way including quality reach, frequency, usability, immediacy and permanence. Social media operate in a dialogic system many sources to many receivers[177] This is in contrast to traditional media which operates under a monologic transmission (model one service to many receivers).

Some of the most popular social media websites are face book (and its associated face book messengers) Whats App, Tumbir, Instagram, Twitter, Baid Tieba, Printest, Linkedin, Gab, Google, You tube, Viber Snap chart, Weibo and We chart.

There have been a range of positive and negative impacts of social media use. Social media can help to improve individual sense connectedness with real and or online communities and social media can be effective communication or marketing tool for cooperation, entrepreneurs, non profit organisations including advocacy groups and political parties and government.

At the same time there have been concern about possible links between heavy social media use and depression and even the issue of cyber building, online harassment and trolling. Currently about half of young, adult have been cyber bullied and of the 20 percent said they have been cyber bullied a regular basis[178]

Another survey was carried out among 7th grade students in America which is known as the precaution process adoption model. According to this study, 69

[176] www.state of media and social media report assess on 17/03/17
[177] Agutatein Eugine (2008) finding high quality in social media: International Conference on Web search and data mining
[178] Pavlik and Maclntoch (2015) *Convergin media* 4th edition New York Oxford University Press, p. 89

percent of the student claim to have experienced cyber bulling and also said it is worse than face to face bullying.

Although social media platform offer users the opportunity to cross simultaneously some social network platforms have been criticized for poor interoperability between platforms which leads to the creation of information silos viz isolated pockets of data contained in one social media[179]

However, it is also argued that social media have positive effect such allowing the democratization of internet whole also allowing individuals to advertise themselves and form friendship.

The term social cannot account for technological features of a platform alone, hence the level of sociability should be determined by the actual performance of its users. There has been a dramatic decrease in face to face interactions as more and more social media platforms have been introduced with the threat of cyber bullying and online sexual predators being more prevalent.

Social media may expose children to image or alcohol, tobacco and sexual behaviours.

[179] www. Cyber buying.com last assess on 22/03/17

CHAPTER FIVE

SUMMARY AND CONCLUSION

5.1 Introduction

This chapter would summarized the dissertation, make findings and recommendations as well as conclusion on the topic.

5.2 Summary

Communication plays critical role in our society, ever since the invention of languages, man has evolve socially, politically and technologically. It is convinced that the society would not achieve sustainable development without communication as human society developed and become so complex so did nature and role of communication.

It become apparent the society was not a monolithic but a conglomeration of conflicting interest and concerns, on the one hand, you have the ruling class on the other hand the rest of the society which was divided into smaller groups and classes.

As broadcast developed to serve this group in evitable conflict may ensued. It is paramount important to know that everyone who offer a service to other and claim expertise to do what he offers has a responsibility to the society in general and his

client in particular which deserve to know that ignorance of the law is never a defence.

The broadcasting been regarded as an avenue for the exercise of the right for free speech make it mandatory for those who exercise them to respect the right of others and safeguard the interest of the society as a whole.

The history of media law can be looked at from the 18th century when the media has to fight for its freedom. Reverend Henry Townsend of Church of Missionary established and began the publication of a newspaper in Nigeria called the Voice of the People in 1850 at Abeokuta.

The colonial master during the period made some laws like the official secret ordinance 1891, newspaper ordinance 1903 and seditious offence ordinance 1909 with the aim to stop freedom of expression being turned into licence to criticized their administration.

The colonial masters at that time became so much afraid of media organisations most especially in the southern protectorate who were educated influencing the native against government programmes.

In 1960 when Nigeria got her independence, the media enjoyed some freedom due to the fact that some of the leaders like Dr. Nnamdi Azikiwe were journalist joining the corridors of power.

In 1966, Nigeria experience the first military coup which brought army into governance to rule by force which affected adversely on freedom of the media, thereby making Governor of States to constitution themselves as editors of their state media organisation towards disseminating government selfish interest at the detriment of the public.

In 1976, the military government at that time promulgated a law which made it an offence for any person or organisation to publish or broadcast anything whether

true or false that could cause embarrassment to a public officer. In 1979, when democratically elected government took over the mantle of leadership all these decrees that affected the freedom of information became non functional and media organisation resorted to court for the enforcement of their freedom when ever it was tampered with.

On the 31st December, 1983, the military returned to power by a coup d'état the government promulgate a decree due to fear of criticism that make an offence to broadcast any information likely to bring government into ridicule, contempt or disrespect.

In order to ensure editorial independent some ethics must be observe which include accuracy privacy, decency privilege or non disclosure, non discrimination, national interest, social responsibility.

Formerly apart from the federal and state governments no other agency was allowed to engage in broadcasting in the country but today the old order has changed. The national broadcasting commission now lincenses private broadcasting station, thus breaking the erstwhile government monopoly of broadcast ownership in the country.

It is usually a claimed that pre-independence media in Nigeria was nationalistic because of patriotic citizens took firm stand against colonial administration in the struggle for independence. After the attainment of independence however a major shift in emphasis occurred in the Nigerian-media with paramount ethical imperative cease to be the ideal of freedom and become the ideal of unity.

The broadcasting, sector does not operate in vacuum as there are laws regulating its conduct and operation. Some of this legislation includes the constitution. The freedom of information Act 2011, the National Broadcasting Code 2012. In order to manage conflict regarding the operation of media organisation rules and regulations were made by organisations and laws as well as policies by nations.

These legislations above have explicitly set out mechanism for the settlement of problems regarding the activities of media organisations.

National Broadcasting Commission was established in 1995. Due to recommendation of the committee on National Mass Communication Policy and saddle with, the responsibility of advising the Federal Government on the implementation of the National Mass Communication Policy.

The role of media organisation in Nation Building cannot be over emphasized. The benefits Nigerian enjoys towards ensuring transparency and good governance is nothing to write home about but it can be said that with effective media organisations the country would benefit from good governance capable of moving the nation forward.

5.3 **Findings**

The National Broadcasting Corporation just like any organisation has its own challenges which hinders the realization of its objectives to the media organisation and the society at large. This dynamism or socio-economic and political variables has its effect on the Broadcasting Industry in this 21st century which it needs to urgently address. It is in line with this that this dissertation make the following findings:

5.3.1 It has been found that the National Broadcasting Commission has not been publicizing its activities. This make the public unaware of any regulatory agency for media practice in Nigeria which resulted in non channeling of complaint on breach of the law and contribution to Broadcast Business.

5.3.2 It has also been found that some of the laws regulating media practice in Nigeria constitutes an impediment to the development of media practice in Nigeria, for example.

(a) Section 10 of the National Broadcasting Commission Act places an outright disqualification of granting of licence to religious organisations and

political parties and section 5 of the Act make it illegal for any person to have controlling shares in more than two of each of the broadcast sector of the economy despite satisfying all the requirement set out in S.12 of this Act and section 6 subjected the commission to comply with the directive of the Minister of Information.

(b) Section 39(2) of the Nigerian Constitution prohibit any person from operating a broadcasting station except with a Presidential permission. Section 39(3) also imposes restriction on person holding position under government to disclose information. Section 37 of the Nigerian Constitution also provide for the privacy of citizens, their homes, correspondence, telephone and conversation.

(c) It was found that the Freedom of Information Act contain more exemption clauses than the clauses that grant access to information Section 13 provide for Head of Public Institution to refuse to disclose information which many be injurious to the conduct of international affairs or defence Section 13 provide for refusal to disclose information that contains secret in trade, financial, commercial or technical information that have substantial value. Some public officers can use this exemption for unjust and mischievous purposes.

5.3.3 It has been found that National Broadcasting Commission been a media practice regulatory agency lacks adequate fund and manpower to pursue it mandate as provided by the law as it rely on government for funding and also failed in ensuring that Nigeria media organisation meet international dateline of June 17, 2015 to change from analog to digital in conformity with international best standard practice.

5.3.4 It is observed that the number of private broadcasting stations in Nigeria are inadequate which can be attributed to the requirement put in place for the grant of licence and this affect revenue and employment generation which

resulted in the failure of media organisations to serve as watch-dog of the society towards transparency, accountability and good governance.

5.3.5 It has been observed that National Broadcasting Commission been a government agency always defend the interest of Government e.g. during the 2015 General Election Campaign, Nigerian Television Authority (NTA) and African Independent Television (AIT) shows documentaries at the detriment of the opposition Presidential Candidate but National Broadcasting Commission failed to sanction them and also commercialisation policy make it difficult for religious organisations and political parties to have equal airtime as it involve payment of money.

5.3.6 It has been found that the activities of social media were not been regulated which provide an avenue for propagating false, malicious and deformatory broadcast.

5.4 **Recommendations**

The following recommendations are made to address the observation raised in this dissertation.

5.4.1 The National Broadcasting Commission should embark on a massive public enlightenment campaign of its activities. Nigerians are still not educated on the functions of the commission. Radio and Television programmes and interactive forums in all the six geopolitical zones of the country should be conducted to achieve the desired goals of making the public educated on the activities of the National Broadcasting Commission and ensure the participation of the general public in broadcasting business.

5.4.2 Some contentious provision of the National Broadcasting Act, the constitution, the freedom of information Act and the NBC Code should be amended to ensure effective media organisation in Nigeria for sustainable development and National Broadcasting Commission should also ensure compliance with the change from analog to digital in line with international best practices.

5.4.3 The National Broadcasting Commission should strive for alternative source of fund apart from Government, fund should be source through granting licence to more media organisation and imposing fines for breach of law by any media organisation while discharging its duties.

5.4.4 Adequate media organisations such as community broadcast stations should be granted licence to operate by reviewing the requirement for the grant to allow communities to establish their broadcast station easily to serve their interest and to enable them serve as watch-dog of the society toward good governance for socio-economic and infrastructural development.

5.4.5 The National Broadcasting should be independent without interference from government and should be able to sanction any media organisation that breach law irrespective of its status and that an avenue for political parties and religious organisations that cannot afford payment for commercial programmes should be provided for them to air their views freely.

5.4.6 National Broadcasting Commission Act should be amended to cater for activities in social media.

5.5 **Conclusion**

Broadcast organisations have been an indispensable factor in ensuring and guaranteeing the education, enlightenment and entertainment of public toward unity, peaceful coexistence and socio-economic development of the country. The primary objectives of media organisation is to disseminate information that would promote peaceful coexistence in the society. These objectives have been fully discussed in this dissertation with roles been played by the media organisations to the nation sustainable development.

The dissertation has shown that through Broadcast organisation, good governance can be achieve for the enhancement of democracy and sustainable nation development.

In recent times, there is a paradigm shift from the traditional media organisation during the colonial era which focus on fighting for freedom to modern system of ensuring unity and peaceful coexistence for sustainable development and good governance. Thus, the country now expect media organisations to discharge its duties as watch dogs of the society by exposing anomalies in government devoid of propagating selfish interest for solution towards the nation security, infrastructural and socio-economic development.

The role of Broadcast organisation in Nigeria today cannot be over emphasized, it has been an indispensable element of communication between government and the public towards ensuring the implementation of effective policies that would uplift the living standard of the people. Media organisations are integral towards achieving unity and peaceful coexistence to developing country like Nigeria.

The present unity, peace, infrastructural development and political stability that Nigeria enjoys is nothing to write home about, but it can be asserted to a large extent that these were made possible because of the role Broadcast organisation play.

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