

# Associated Discount House Limited

Booshop House, 7th Floor, 50/52 Broad Street, P.M.B. 12511, G.P.O. Lagos, Nigeria.  
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NIGERIAN CURRENT LAW JOURNAL

International Journal of  
Comparative Legal Systems

Editor-in-Chief  
J.O. Omosefunmi Esq

CURRENT LAW PUBLICATIONS LIMITED

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Bishop Aboyade Cole Street  
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An International Journal  
Of Comparative Legal Systems.

To, Mrs Bangbose Olujemisi  
Lecturer  
Faculty of Law, University of Ibadan

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With the compliments and affectionate  
regards of the Editor - In - Chief.

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CONTRIBUTORS

- (1) Hon. Justice P. Nnaemeka-Agu  
Justice of Supreme Court, Lagos
- (2) Dr. Olu Onagoruwa LL.B (Lond) LL.M, PHD  
Constitutional Lawyer  
International & Comparative Legal Scholar
- (3) Prof. J.O. Anifalaje LL.B, LL.M (Penn) MBA  
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Teslim Elias Professor of Jurisprudence and  
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International Law, University of Lagos
- (8) Prof. Jadesola Akande (Mrs) LL.B, LL.M PH.D  
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Lagos Based Legal Practitioner

EDITORIAL COMMENT

The Nigerian Current Law Journal, as its name implies, was formed to feed the teeming populace (both legal and non-legal minds alike) with a current, stable and consistent legal prodical and thus fill the vacuum created by seeming non-existence and inadequacies witnessed in the production of a learned law journal. The Journal is set to achieve this by discussing, evaluating and analysing topical current legal issues that runs through Nigerian legal scenario today in a reasonably dispassionate manner.

The society travels fast, it is not static. Its cosmopolitan nature is daily breeding new dimensions to criminality. The technical and technological development are revealing daily many things hitherto considered incomprehensible, unfathomable and mysterious. It is interesting to note however that the legal profession in itself is multi-dimensional. In effect, in spite of the wonders performed by science and technology with its astounding achievements the foundation of its modus operandi workings and operations is solidly built on law. They operate within the dictates and prescriptions of law. Failure to observe these rules might render one liable criminally or civilly or get an attained with illegality in course or effect or both.

The thrust of our argument is that law plays a pivotal roles in the life of any Nation and indeed it forms the societal nucleus and animates it. Thus, while under-developed nations have underdeveloped laws, developed nations daily aspires to maintain the status of their civilized and foresightful laws. We are of the opinion that societal development is predicated and deeply rooted on the development of its law. Destroy the law therefore and the society is doomed.

In the light of the foregoing, it goes without saying that the principal actors and operators of the legal department of any nation (i.e. lawyers) require an indept knowledge not only of the laws, but also must be abreast with all the latest discoveries in legal literature analytically and objectively examined in a superlative manner by legal titans. This is indispensable for any lawyer and perhaps non-legal minds to forge ahead and operate efficiently. The Nigerian Current law Journal is therefore set to unravel the legal intricacies patently or latently embedded in legal literatures, acts, legislations and judicial authorities.

We regard the importance and the unique roles of law in any society as sacrosanct. Its violation is therefore sacrilegious. We may pardon and leave aside the many intrusions of plethora of decrees promulgated by the military government that is nearly overtaking the organic law. No doubt, they fall short of what can be called "Law" as known to the civilized minds.

Happily, since we are now witnessing military disengagement from the Nigerian political terrain, it is our candid opinion that the judiciary particularly in the third republic and beyond must be structurally repaired and rejuvenated in view of their prolonged sojourn, contamination by and cohabitation with the military so that the sanctity of the rule of law and all the variables needed to operationalize it can flourish. Anything short of this, it is submitted, will be counter-productive and incongruous and can not guarantee the much needed justice while the last hope of the common man will be ridiculed.

Put differently, it will be a revival of the anarchical period of the Hobbessian cra when life was poor,

nasty brutish and short.

The Editorial Board of the Nigerian Current Law Journal is on the threshold of contributing to the progressive development of the law by producing a journal that would not only be highly competitive in Nigeria but will also earn it a pride of place among the forward looking journals all over the world.

This enviable mission has been accomplished judging from the calibre of the distinguished scholars, seasoned practitioners and eminent jurist whose brilliant articles are herein contained in this issue "Reps ipsa loquitur".

No doubt, the Nigerian Current Law Journal is the most current legal periodical in Nigeria today. We carefully planned for this, and we promise to maintain the status-quo.

Thank You.

JAPHET OLUWAFUNMI OMOSEFUNMI, ESQ.

EDITOR-IN-CHIEF

### OUR GOAL

The drive by man to search for more meaning into his mediate and immediate environment is eternally infinite. The upsurge of discoveries and inventions leading to the emerging world of profound sophistry is a product of Man's consistent assiduous task of every day research. These inventions and discoveries however palpable, must be cloth in the protective values of the law in order to have meaning.

The need to meet these upsurges and coupled with man's intrinsic nature of irrationality predicate the need to strive for more and consistent legal research to enhance the law. The emerging world era is dynamic and as such law as a mirror of society cannot fathom to sleep away. The thrust of such law, however, must be toward the attainment of ultimate good of Man. The birth of the Nigerian Current Law Journal is therefore not an accident. It is yet another veritable instrument in the search and research for growth and development of the law to crown human endeavours.

Upon inauguration, the Editorial Board through its team of articulate and seasoned lawyers and other professional experts set the following as the objectives of the Journal:

- To serve as a centre-point for disseminating ideas on current legal issues and advancing legal education;
- To serve as a forum for expressing contemporary views on latest current laws and development on critical areas of the law with a view to enhance its better knowledge;
- To serve as a forum for cross-fertilisation of ideas and dissemination of legal knowledge;
- As a Publication of contemporary legal issues, it will focus on issues that touch on latest development in all facets of life with a view to unravel or solve their intricate legal problems;
- and finally the journal will serve as a pivotal for the realisation of societal values and ideals.

Adequate measures are in place to ensure the achievement of these modest objectives. While we are not unaware of the untimely death of several journals whose initial production lacks solid foundation and prospects for continuity, ours is a continuous process. For as lucidly put by Justice Jackson "we are not final because we are fallible, but we are infallible because we are final."

To the agile and noble minds whose search for knowledge are insatiable, we pronounce the birth of yet another periodical which seeks to critically venture into all facets of our legal system and even beyond.

Welcome on board.

LANRE FALOLA ESQ.,  
DEPUTY EDITOR-IN-CHIEF

### THE PERSPECTIVE OF THE LEGAL PROFESSION IN NIGERIA IN THE NEXT CENTURY BY HON. JUSTICE P. NNAEMEKA-AGU J.S.C\*

I consider this topic a more difficult and challenging endeavour because it carries with it an built implication of prophesy: the often difficult task of trying to peer into the future.

But I have as my consolation that there have been at different ages in history visionaries and prophets in different fields of human endeavour. Let me emphasize that what I intend to do today is not the prophecy of the type we have been reading about in the Bible or the Quoran. Nor of the mysticism of H.B Wells or Jean Dixon. Nor of the seeing into the future by Nostradamus who was born in 1503 but was able to foresee and foretell all the major events in world history, including the French and American Revolutions, the two world wars the assassination of President Kennedy and Pope John Paul I and even the recent encounter between scud and patriarch missiles in the Gulf. What I propose to do is to attempt a cool, calculating and rational analysis of the legal profession in Nigeria and try to visualise its structure and content, successes and failures, aims and aspirations, strength and weakness, in the next century.

### OUR ULTIMATE GOAL

Before I can effectively do this, I must recall that the ultimate goal of the Nigerian nation is to build a society where peace, truth, justice and fairness will reign in the words of the preamble to our Constitution we want to build a country founded "on the principles of Freedom, Equality and Justice for the purpose of consolidating the Unity of our people". All these will be impossible of attainment without just laws, and the members of the legal profession form the indispensable linchpins for the attainment of that noble goal. The members of the legal profession are necessary partners in the promulgation of such laws. It is their exclusive responsibility to interpret, administer, enforce, and jealously guard such laws. For the only true freedom is freedom according to law. Sir Winston Churchill of blessed memory recognized this where he said:

"The people of any country have the right and should have the power by constitutional action, by free unfettered elections, ..... to choose or change the character or form of government under which they dwell that freedom of speech and thought should reign; that Courts of justice, independent of the Executive, unbiased by any party, should administer laws which have received the broad assent of large majorities or are consecrated by time and custom. Here are title deeds of freedom which should lie in every cottage home. Here is the message of the British and American people to mankind. Let us preach what we practice - let us practise what we preach" <sup>1</sup>

Sir Winston was not a lawyer. He was a soldier, politician and statesman. Yet he was able to see vividly that the only path to real freedom was through the law. If he were a lawyer he would have put it in the language of that distinguished jurist and constitutional lawyer, A.V. Dicey, the Vinerian Professor of English Law at Oxford when he wrote his Law of the Constitution in 1885. Sir Winston would have called it Rule of Law. This concept, according to Dicey means the absolute supremacy of the regular laws of the land, as opposed to the influence of arbitrary power and the equality of all men and women before the law, irrespective of their status, wealth, influence or position. The Nigerian Constitution has in no uncertain terms embraced the concept of the rule of law. For it is enacted in section 17 of the Constitution of 1979, thus:

"17. (1) The State social order is founded on ideals of Freedom, Equality and Justice.

\*Hon Justice P. Nnaemeka-Agu is a justice of the Supreme Court of Nigeria, Lagos.

1. Sir Winston Churchill: "The Title Deeds of Freedom" a speech at Westminster College Fulton, Missouri. on 5th March. 1946

**PROSPECTS FOR THE REFORM OF NIGERIAN LAW OF SEDITION**  
**OLUYEMISI BAMGBOSE (Mrs)\***

**INTRODUCTION**

It is well known that the smooth running of the political order in a society is essential to peace, order and progress. Public discussions and fair criticisms by the people normally assist the government in functioning well. However, human beings may in certain cases overstep their bounds. It is without doubt, that any attempt to destabilize the tranquillity enjoyed in a society, is vehemently resisted by the government through the enactment at times of various laws. The law of sedition may be one of such laws.

The Law of sedition is one of the diverse statutes Nigeria inherited from England.<sup>1</sup> Law, which is not static, should be subject to review and if possible reform and this has been the attitude in many jurisdictions of the world. Unfortunately, this has not been so in Nigeria with reference to our current law of sedition.

It is evident that the Nigerian Law Reform Commission have been active over the years reviewing and reforming various laws.<sup>2</sup> The law governing land<sup>3</sup> has been reviewed extensively by the Law Reform Commission, similarly the statutes governing companies<sup>4</sup> and Banking<sup>5</sup> in Nigeria have benefited from the various Law reform efforts in the country. However, the law of sedition has not been subjected to any significant reform in Nigeria.<sup>6</sup> While it is conceded that the areas of law enumerated above are important in the development of a nation, it is hardly in doubt that an aspect of law, such as the sedition law which touches on the freedom of expression provision<sup>7</sup> a fundamental right under chapter IV of the 1989 constitution of Nigeria is equally important.

In substance, our law of sedition has been in existence in its present form for the past three decades<sup>8</sup> and it is obvious that with the political and social changes in Nigeria, this area of law has been adversely affected and is in dire need of reform.

The procedure whereby this reform may be done is the primary focus of this paper. This will obviously call for a vivid examination of the current law of sedition vis a vis the problem created by the statutory provisions. It is hoped that an analysis of the sedition laws of other countries would assist the lawmakers in shaping a better law of sedition for our country.

**CURRENT LAW OF SEDITION IN NIGERIA**

Sedition, a crime in Nigeria has its direct provisions embodied in two statutes. In Southern Nigeria, the crime of sedition is provided for in sections 50-52 of the Criminal Code.<sup>9</sup> The Penal

Code contains the provisions of the offence in Northern Nigeria.<sup>10</sup> The meaning of the offence is found in Section 51 that provides

- (a) "Any person who does or attempt to do or make any preparation to do or conspire with any person to do any act with a seditious intention;
- (b) Utters any seditious words;
- (c) Prints, publishes, sells, offers for sale, distributes or reproduces any seditious publication;
- (d) Imports any seditious publication unless he has no reason to believe that it is seditious; Shall be guilty of an offence...<sup>11</sup>

The gist of the offence is the intent to do one or another of the matters enumerated above. This provision is made clearer by Section 50 of the same Code which gives the interpretation of some phrases used.<sup>12</sup> The terms Seditious Publication and Seditious Words connote publications or words with seditious intentions. "Seditious Intention" is the most important aspect of the offence of sedition and it can manifest in various forms. Thus in Section 50(2), it is provided

"A "Seditious Intention" is an intention -

- (a) to bring hatred or contempt or excite disaffection against the person of the President or of the Governor of a State or the Government of the Federation; or
- (b) to excite the citizen or other inhabitants of Nigeria to attempt to procure the alteration, otherwise than by lawful means, of any other matter in Nigeria as by law established;
- (c) to raise discontent or disaffection amongst the citizen or other inhabitants of Nigeria; or
- (d) to promote feeling of illwill and hostility between different classes of the population of Nigeria."<sup>13</sup>

A guiding principle is provided for in the law, to assist the court in determining the intention behind a publication spoken word. The principle is that a person is deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself.<sup>14</sup> It should be pointed out meanwhile, that the courts in the course of their judgements in some cases laid down certain principles which may guide them to determine the natural consequences of the conduct of an accused person at a particular time. The principles enumerated below, which were first laid down by the West African Court of Appeal in *R v. AGWUNA*<sup>15</sup> are as follows:

- (i) "The audience addressed, "because language which would be innocuous, practically speaking if used to an assembly of professors ... might produce a different result if used before an excited audience of young and uneducated men"
- (ii) "The state of public feeling. "There are times when a spark will explode a powder magazine; the effect of language may be very different at one time from what it would be at another."

Unfortunately, the above points laid down by the court was overruled by the same court in the later case of *Service Press Ltd v. Attorney General*<sup>16</sup> where it was held that once a publication is seditious by the definition of seditious intention in Section 50(2) of the Criminal Code, no extraneous evidence is needed to prove intention. Similarly in *D.P.P v. Oji, Ademola C.J.F* also noted "In my view the purpose of this subsection is to enable the prosecution to rely on the act or

\*Oluyemisi Bamgbose (Mrs), Lecturer, Faculty of Law, University of Ibadan, Nigeria.

1. See *Belgore J. in NWANKWO V THE STATE*. 1985 6 N.C.L.R. 228 where he held that "the whole idea of sedition is connected with divine right of kings which was transplanted into our laws. It is based on the notion that the King or Queen regnant does no wrong and his or her person and those of the heir and successors must be protected from acts of mischief or truth which would bring them to contempt and excite disaffection against them.

2. See The Nigerian Law Reform Commission Act, 1979, No. 7.

3. See The Land Use Decree 1973 No. 6 now Cap 202 1990 Law of the Federation of Nigeria. Vol XI.

4. See also The Companies and Allied Matters Decree Cap 1990 No. 59 Laws of the Federation of Nigeria Vol II which replaced The Companies Act 1968 No. 51.

5. See The Banking and other Financial Institutions Decree 1991 No. 25 which replaced The Banking Act 1969.

6. Cosmetic changes took place in the provisions of the law of sedition during the compilation of the 1990 Laws of the Federation, words like "Her Majesty" The Governor-in-Council were amended to suit the current political situation in Nigeria.

7. See Section 36 C Constitution of the Federal Republic of Nigeria (Enactment) Act Cap 62 1990 Laws of the Federation of Nigeria, Volume IV.

8. See Criminal Code 1958 Cap 42. Although there has been amendments of the Criminal Code the provision on sedition was not amended.

9. See Criminal Code 1958 Cap 42. Although there has been amendments of the Criminal Code the provision on sedition was not amended.

10. See Sections 416-421 Cap 345, 1990 Laws of the Federation of Nigeria Volume XIX.

11. See Section 416-419 and 421 of the Penal Code *Supra*.

12. Criminal Code *Supra*.

13. Criminal Code *Supra*; See also the Privy Council case of *The King v. Wallace Johnson* (1940) 5 W.A.C.A. 56.

14. See Section 50(2) Criminal Code *Supra*.

15. (1960) 12 W.A.C.A. 456. *The Judge in the case of...*

16. (1960) 12 W.A.C.A. 175.

the words or the document itself without calling any extrinsic evidence to prove the intent"<sup>17</sup>

Indeed, the Federal Supreme Court in *D.P.P. v Chike Obi*<sup>18</sup> went on to explain the meaning and purpose of Section 50(3) of the Criminal Code. The court held that the purpose of the Section is to enable the prosecution rely upon the words or publication of the accused to prove intent, without having to call extrinsic evidence. The court further added that the subsection cannot be interpreted to deprive an accused of his right to show that he had no seditious intention.

In the proof of the offence of sedition, the intention to cause violence by the words, acts or publication are not necessary elements<sup>19</sup> and regrettably the truth of such words of publication are no defences to the charge.<sup>20</sup> However, a person charged with having in his possession seditious publications may be exonerated in a charge of sedition if he has a lawful excuse.<sup>21</sup>

It is clear from the law, that not all acts, speeches or publications are seditious. Candid and reasoned discussions of any public matter including discussions of social injustice with a view to remedying of such errors or defects, persuasion of other Nigerians to attempt to procure by lawful means the alteration of any matter in Nigeria, or an intention to show that the president or governor of a State is mistaken or has been misled in any measure will not be seditious.<sup>22</sup>

In Southern Nigeria, the prosecution of the offence of sedition cannot commence unless the Attorney General of the Federation or the State concerned gives his written consent.<sup>23</sup> Moreover, Sedition is an offence that has a statutory limitation period for the commencement of its prosecution. The law is that within six months after the commission of the offence, prosecution must commence.<sup>24</sup> In addition, a conviction cannot be sustained in a charge of sedition upon the uncorroborated testimony of one witness.<sup>25</sup> It is submitted, that the foregoing provisions in Section 52 of the Criminal Code are in line with the principles of fairness and justice.

The contravention of the provisions of the law of sedition attracts a punishment. This may be the imposition of a fine, or a sentence to a term of imprisonment or both. Moreover, the seditious publication is also forfeited to the Government.

Arising from the law analysed above are some problems and it is these problems we shall next be concerned with.

### PROBLEMS IN THE LAW

While it is true that sedition has been an offence in Nigeria for the past three decades, it is unfortunate that there still exists large disparity in the provision of the laws governing the Northern and Southern States of Nigeria. The truth of the matter, is that two different statutes contain the provision of the offence in Nigeria and more importantly, a detailed examination of the two codes surprisingly shows that there are more provisions spelt out in the Criminal Code than the Penal Code.<sup>26</sup>

The sedition law in Nigeria is part of our colonial heritage though Nigeria attained independence more than thirty years ago. The problem that arises from this fact is that the law of sedition in

Nigeria is obsolete.<sup>27</sup>

It seems there is a confusion in the Criminal Code in the chapter relating to sedition. This is because the offence is under chapter VII of the code which is titled "Sedition and the importation of seditious or undesirable publication". With only ten sections under this chapter, only five sections are on the offence of sedition.<sup>28</sup> It is noted that the other five sections are on other offences such as the publication of false news with intent to cause fear and alarm to the public<sup>29</sup> and the offence of Defamation of foreign princes<sup>30</sup> which it is submitted are not related to the offence of sedition and for reasons not known were lumped together with the offence of sedition. Surprisingly there is still a whole chapter in the Criminal Code devoted to the offence of Defamation.<sup>31</sup> It is submitted that this confusion, shows that the draftsmen did not really understand the underlying object of the sedition law and the mischief of evil it was aimed at preventing.

It is important to point out that there are the civil remedies of slander and libel which are direct actions that can be taken against any person who utters words or prints or publishes any publication against the president or the governor.

A critical appraisal of the sedition provisions in Nigeria, and the Fundamental Human Right Freedom of Expression provision shows the extent to which the former has encroached on the latter to such an extent that it has whittled down the freedom of expression provision. If the goal of the lawmakers under Section 50(2) (1)-(iv) of the Criminal Code was to safeguard the rights of persons to constitutional freedom of expression,<sup>32</sup> it is submitted that the goal has not been achieved. This is moreso when truth of words, acts or publications are no defences to the offence of sedition. It ought to be stressed again that sedition has stretched beyond its function of protecting public order, because the offence covers areas such as intention to bring hatred or contempt to the President or any Governor of a State in Nigeria and other areas like promoting feelings of ill-will and hostility between different classes of the population in Nigeria.<sup>33</sup> It is submitted that the sedition law in its present form is deadly weapon which may be used at will by a corrupt government.

It is asserted that the function of the court is to interpret laws and administer justice. They have no right to usurp the duties of the legislature by redrafting the law. Regrettably the interpretation given by the court to the meaning of "Seditious Intention" in *Service Press v Attorney General*<sup>34</sup> brought confusion into the sedition law and rendered uncertain the actual meaning of the "Seditious Intention". It was unfortunate that the West African Court of Appeal in the above case overruled its earlier decision in *R v Agwuna*<sup>35</sup> where it laid down principles to guide the courts in determining if an intention is seditious. The effect of the decision in *Service Press v Attorney General* is that no extraneous evidence is needed to prove sedition. However, more than a decade after the *Service Press* decision, the Nigerian Court in *D.P.P. v Chike Obi*<sup>36</sup> cleared the mist in the interpretation of the term "Seditious Intention" when it held that by the provision of Section 50(2)

17. (1961) 1 A.N.L.R. p. 186 at 195.

18. *Supra*.

19. *Police v Anabonu* (1954) 21 NLR 26; See also the Ghanaian case of *The King v Wallace Johnson* *Supra*. This case was based on Section 330 of the Criminal Code of Gold Coast (now Ghana) which was similar to Section 50 of the Nigerian Criminal Code and Sections 416-417 of the Penal Code. A new Criminal Code has been enacted in Ghana.

20. See *D.P.P. v Chike Obi* *Supra*.

21. Section 51(2) Criminal Code *Supra* and Section 419 Penal Code *Supra*.

22. Section 50(2) Criminal Code *Supra*. See also Section 416 - explanations 2 and 3 of the Penal Code *Supra*. See further *D.P.P. v Chike Obi* *Supra* p. 199; *The State v The Ivory Trumpet Publishing Co Ltd and ors* 1984, 5 N.C.L.R. p. 736; *Arthur Nwankwo v State* 1983 6 N.C.L.R. 228.

23. Section 52(C) Criminal Code *Supra*. Surprisingly there is no corresponding provision in the Penal Code *Supra*.

24. Section 50(2) Criminal Code *Supra*. Surprisingly the Penal Code has no corresponding provision.

25. Section 52(C) Criminal Code *Supra*. Surprisingly there is no corresponding provision in the Penal Code *Supra*.

26. Section 50(2) Criminal Code *Supra* and Section 416 - explanations 2 and 3 of the Penal Code *Supra*.

27. The provisions of the law of sedition in Nigeria was adopted from the English case of *R v Burn* (1888) 16 Cox CC 355; See the case of *Nwankwo v The State* *Supra*. See also *Nwabueze; Constitutional Law of the Nigerian Republic*, (Butterworth London) p. 397 cited with approval in *Nwankwo v State*. See *Nigerian Law of the Press* under the constitution by Gani Fawehinmi p. 513 where it is said that the definition of sedition based on the Stephens digest of the criminal law is believed to have been specially designed to strengthen the hands of the colonial administration in dealing with the possibility that a handful of educated natives might incite the gullible populace of hatred, disloyalty or violence against the government.

28. See Sections 50-53, part of Section 54 and Section 56 Criminal Code *Supra*.

29. Section 59 Criminal Code *Supra*. See Section 418 Penal Code *Supra*.

30. Section 60 Criminal Code *Supra*. There is no corresponding provision, under the offence of sedition in the Penal Code *Supra*.

31. See chapter XXXIII, Section 375-381.

32. See Section 36 of the 1989 Nigerian Constitution.

33. See *Ogidi V C.O.P* 1960 W.N.L.R. 201. See also the decision of *Olatuwura J in Nwankwo v State* *Supra*.

34. *Supra*.

35. *Supra*. The reasoning in this case found support in the East African case of *R v Chona* 1962 Rhodesia and Nyasaland Law Report page 156 where Chief Judge Conroy said "The law of sedition is necessarily a reflection of the political attitude which may be seditious".

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of the Criminal Code, the accused is not deprived of the right to show that he had no seditious intention as provided for under Section 50(2). It is submitted that the decision in Chike Obi's case, is more in line with the principle of fairness and justice which the provision of Section 50(3) brought out clearly -

"In determining whether the intention with which any act was done, any words were spoken or any document was published was or was not seditious, every person shall be deemed to intend the consequences which would naturally follow from his conduct at the time and under the circumstances in which he so conducted himself"<sup>37</sup>

Finally, it is important to note that the law of England from where Nigeria inherited its sedition law has been reviewed and reformed in relation to modern times. Therefore the need for a reform of the sedition law cannot be over emphasised.

It would appear that the appraisal of the development in the sedition law in other jurisdiction, especially England from where our law was inherited, would assist in the reformation of the law.

## THE PROGRESS IN COMPARABLE JURISDICTIONS

Sedition has its roots in England and it dates back to the 18th Century when it was punished by the extension of the law of libel.<sup>38</sup> It however became a common-law offence when the Star Chambers were abolished.<sup>39</sup>

There has been progress in the English law of sedition. In England, it is not sufficient to assume that the accused intended the consequence of his act, but such intention which must be proved and not presumed is a matter for the Jury to decide upon. It is however instructive to point out that the Jury may infer that the accused had seditious intention if there is nothing to the contrary to show that in fact he did not intend it. On the other hand, if it is clear that the accused had no such intention, then there is nothing for the Jury to deliberate upon.<sup>40</sup> It is submitted that this is a good principle of natural justice because the court cannot infer an intention where the facts of the case before it does not show intention. Furthermore, in England, the test of intention in a case of sedition is not the truth of the matter, but whether the language was calculated to promote public disorder or physical force or violence<sup>41</sup> and Sedition is now synonymous with the law relating to violence.<sup>42</sup> Coincidentally, this is also the law in Canada.

An important element of any offence is the *mens rea* literally interpreted as the guilty mind. However, the issue of *mens rea* as it relates to sedition differ from one country to the other. Under the common law, the mental element is required for the offence of sedition.<sup>43</sup>

In England and Canada, the task of deciding if a person has any seditious intention is a matter that is left to the Jury. An advantage of the Jury system is that the objective opinion of an impartial panel of credible persons is given on the issue and any element of bias which may arise from a judge

sitting alone is removed.<sup>44</sup> However, despite the absence of the Jury system for good reasons<sup>45</sup> in Nigeria, a properly constituted court that restricts itself to its function of upholding justice without fear or favour is equally up to the task.

It may be noted, that in modern times in England, prosecution for sedition are rarely successful and the common law has been supplemented by more specific statutory enactments. Some of these legislations are The Incitement to Disaffection Act 1934,<sup>46</sup> The Race Relations Act 1965<sup>47</sup> and The Public Order Act 1936.<sup>48</sup>

In Democratic countries like the United States of America, there has been development in the sedition law especially as it relates to the constitutional freedom of expression provisions.

This fact was clearly shown in New York Times v Sullivan<sup>49</sup> where Justice Brennan said "Although the sedition Act was never tested in this court, the attack upon its validity has carried the day in the court of history. Fines levied in its prosecution were repaid by Act of Congress on the ground that it was unconstitutional". Justice Brennan in this Supreme Court decision further stated that "Jefferson, as President, pardoned those who had been convicted and sentenced under the Act and remitted their fines stating: "I discharge every person under punishment or prosecution under the sedition law, because I considered, and now consider that law to be a nullity". The invalidity of the Act has also been assumed by Justices of this court. These views reflect a broad consensus that the Act, because of the restraint it imposed upon criticism of government and public officials, was inconsistent with the First Amendment"<sup>50</sup>

In Watts v United States,<sup>51</sup> a case based on a statute in 1917, which prohibited persons from knowingly or wilfully threatening to take the life or to inflict bodily harm upon the President, the court held "though the 1917 statute is constitutional on its face, but a statute such as this one, which makes criminal a form of pure speech must be interpreted with the commands of the first Amendment clearly in mind". However it must be pointed out that the position in the United States is that situations that create a clear danger of disorder or violence may derogate from the freedom of expression provisions.<sup>52</sup> However, a significant progress has also been made in the United States in this area. The right of free expression of thought and criticism of public men and affairs are so well recognised<sup>53</sup> and before a charge of sedition can succeed, the word, acts or publications would

44. See the Federal Court of Appeal decision in Nwankwo v State. *Supra* where Belgore J.C.A. denounced the attitude of the trial judge in the case.

45. The repeated weaknesses of the inherited Jury system which were manifested in persistent misdirections by judges and led to grave injustice of acquitting accused who were otherwise guilty had caused widespread disenchantment with the jury system and served as its death knell.

46. The Act makes it an offence to maliciously or adversely endeavour to seduce any member of the armed forces from his duty or allegiance to the crown.

47. It is an offence under this Act to do acts intended likely to stir up hatred against any section of the public in Great Britain distinguishing colour, race, ethnic or national origin such acts include publishing or distributing written matters which is threatening, abusive or insulting in a public place.

48. This Act is similar to the Above Act see note 45. See a general discussion by Carvell, Criminal Law and Procedure. (Sweet and Maxwell, London 1970.) p.145.

49. (1964)376. U.S. 254 at p.276.

50. *Supra* at p. 276.

51. (1969) 394. U.S. 705 at p.708.

52. See Kunz v New York 340 U.S. p.290 at 295 (1951) In the course of a speech, the defendant referred to President Truman as "a bum"; the Mayor of St. Louis as a "campaign sipping bum who does not speak for the negro people". The defendant went on to say that the negro people do not have equal rights and they should rise up in arms and fight. The American Court of Appeal held that such statements were made with the intent to provoke a breach of peace and with knowledge of its consequence.

53. See Whitney v California (1927) 274 U.S. 375 where the court said that freedom to speak as you think is a means indispensable to the discovery and spread of political truth and that without free speech, discussion would be futile. The court added that discussion is a political duty and it should be a fundamental principle of the American government. See also Brandenburg v Ohio 395 U.S. 839 (1970).

37. Criminal Code *Supra*. Emphasis supplied.

38. See William G.L. Criminal Law (Stevens and Sons Limited London 1953) p. 133.

39. *Ibid*: See also the 1774 decision of Lord Mansfield in Jones v Randall Lofft 98 E.R. 706.

40. R v Burn 1886 16 Cox C.C. 355.

41. Certain factors were laid down to guide the courts. This was in R v Aldred *Supra*. It was on this case the Nigerian case of R v Awunna *Supra* was based. The test of intention in a case of sedition in Canada is similar to the test used in England. In Canada, the test of intention is not the truth of the matter but whether the language was calculated to promote public disorder or physical force or violence. See generally Criminal Law, Criminal Code of Canada (The Carswell Company Ltd Law Publishers, Toronto 1959) p. 110. See also Boucher v R (1951) Supreme Court of Canada Report p.265.

42. See King v Aldred *Supra*: See also King v Sullivan 11 Cox p. 49-50. However this is not the law in Nigeria.

43. See Cave J. in R v Burn *Supra*: This is not the case in the East and Central African countries like Rhodesia and Nyasaland, see generally Collingwood, Criminal Law of East and Central Africa (Sweet and Maxwell London 1967). In these countries it is said that once a document is shown to be seditious, it does not matter whether the publisher knows or does not know of the seditious intent. The question is that the publisher has the necessary knowledge of the document by careful examination before publishing.

have to be of an extremely vicious, inflammatory and dangerous character to form the base of a successful prosecution.<sup>54</sup> To buttress this point further, the Supreme Court in America has formulated some tests and has also drawn a line between the right of expression and words or publications going beyond the right. Analysing one of such tests known as the "Present Danger Test", the Court said that the pertinent question that should be raised in every case is whether the words used are of such a nature and in the circumstance will create a clear and present danger which will bring about the evil the legislative has a right to prevent.<sup>55</sup> Furthermore, the court said that the danger alleged must be imminent and that immediate serious violence must be expected or advocated or by conduct there is a reason to believe that such advocacy was contemplated. The summary of the state of affairs in the United States of America is that mere advocacy is no longer punishable, but direct incitement to imminent action is however punishable.<sup>56</sup> It is clear from the analysis above, that the law of sedition in Nigeria has remained stagnant and in the process, obsolete, compared with some other jurisdictions where the law reflects current political attitude. Therefore suggested path of reform to be followed by the Nigerian Law Reform Commission is presented below.

#### PROPOSAL FOR LAW REFORM

It is not in doubt that a law reform Commission was set up in Nigeria some years ago to look into the various Nigerian laws and to carry out changes where necessary. There is also no doubt that if such a commission dutifully carries out its functions, there will be less obsolete laws in our statute books. As a matter of urgency, we suggest that the sedition law be put on the priority list of laws to be reviewed and reformed by the functional commission.

It is further suggested that the sedition law in Nigeria should give way to more direct legislation as it has been done in England and the United States.

There is obviously a need to bring about harmony between the laws in Southern and Northern Nigeria by unifying the provisions of the Criminal Code and Penal Code. A system whereby two discordant laws are applicable in different parts of the country is not ideal. One hopes that the much talked about unified laws in Nigeria will soon be in force and the disparity in laws will be a thing of the past.

It should be noted, that if sedition is to remain an offence in Nigeria, it is suggested that the meaning of Seditious Intention under the law should be amended to include the intention to promote public disorder or physical violence or cause violence of any kind.<sup>57</sup> The amendment will reinforce the provisions in Section 50(2) (1)<sup>58</sup> and will bring our law in harmony with the laws of democratic countries like England and United States of America.

It is necessary again to stress that the judiciary at all times should confine itself to the letters of the statute books especially where the provisions are clear and unambiguous.<sup>59</sup>

Moreover, the law of sedition should be amended to conform with the constitutional provision of freedom of expression as any inconsistency.<sup>60</sup> Though it is conceded, that the constitutional freedom of expression cannot be absolute in any country, it is also important that this right be

54. See *R v Malatesta* 7 C.A.R. 273. *Emphasis mine.*

55. See *Schenck v United States* 249 U.S. 47 (1919). See also *Abram v United States* 250 U.S. 619 (1919).

56. See *Hess v Indiana* (1973) 414 U.S. 105.

57. See Coleridge J. in *R v Aldred* *Supra* and *R v Burns* *Supra*: Such violence may include rebellion, public disorder, insurrection assassination or rage.

58. Criminal Code *Supra*: See also explanations 1 and 2 of Section 416 Penal Code. *Supra*.

59. See the confusion caused in *R v Aewuna* *Supra* and *Service Press v Attorney General* *Supra* but see the later case of *Chike Obi v D.P.P.* *Supra*.

60. Section 1(3) 1989 Nigerian Constitution *Supra*.

protected to the widest degree humanly possible without any encroachment from any other law.

Finally, we confidently look up to our courts that in dispensing justice, a line should be drawn between the freedom of expression provision and the law of sedition.

#### CONCLUSION

This paper has analysed the current law of sedition in our statute books, the problems, and the need for a reform in the law. It is hardly in doubt that the present law of sedition need to be amended to fit into our present political order.

The judiciary is highly commended for upholding and maintaining the balance of justice in Nigeria. However, our courts should continue to see themselves as the custodian and guarantor of the fundamental right of the citizens and strike down any law which restricts the freedom of speech guaranteed to citizens under the constitution.

Finally, the way the law of sedition should be constructed in a democratic country like ours is well stated by Araka C.J when he said "Any construction of the law of sedition in this country should be against the background of a national commitment to the principle that debate on public issues should be uninhibited robust and wide open and that it may well include vehement, caustic and sometimes unpleasantly sharp attack on government and public officials".<sup>61</sup>

It is fervently hoped that appropriate action will be taken soonest to effect the necessary changes.

61. *The State v The Ivory Trumpet Publishing Co Ltd and ors* *Supra* also cited in Nigerian law of the Press under the constitution by Gani Fawehinmi p. 6157 at 6160.