

**Journalists, The Law Of Obscene And Indecent Publication: Nigeria  
Journalists Perspective**

**BY**

**ABDULMUHMEEN TAYO MOYOSORE**

**DEPARTMENT OF MASS COMMUNICATION  
SCHOOL OF INFORMATION AND COMMUNICATION TECHNOLOGY (ICT)  
KWARA STATE COLLEGE OF ARABIC AND ISLAMIC LEGAL STUDIES,  
ILORIN**

**ABSTRACT**

*The paper is aimed at accessing the law of Obscene and indecent publication with emphasis on the Nigeria Journalists perspective of such aspect of the law. The paper found out that Nigeria Journalists have rarely come under the whip of the law of obscenity and indecent publication which media analysts attributed to the cultural value of Nigeria society and the ethical principles of the profession of Journalism.*

## **Introduction**

The law of obscene exist to punish those who involve in the publication of matters which tend to corrupt those who are likely to read see or hear such matter or to corrupt public moral or to outrage public decency. Obscene means been morally disgusting something that corrupt morally.

The obscene and indecent publication Act of 1961 is one of those provisions in the statute book that emphasize morals, ethics, good taste and peoples' conscience concerning what is decent. It originated from the English publication Act of 1959. The first obscenity legislation was passed in Britain in 1859. Malami (2009). This gave rise to subsequent laws on obscenity and indecency passed in Britain and its colonies of which Nigeria is one. The main body of Nigerian Law is based on English Common Law. This problem arising from this as Yakubu (1999) corroborated Nwosu (1990) that "modern Nigerian political leaders, some legal•, experts and scholars seem to be dogmatically holding on to some aspects of English law that should belong to history". A look at Nigeria's law of obscene and indecent publication will confirm this assertion.

Observers of events stressed that obscenity laws hitherto governed by the common law. \* History also has it that the first known case on obscenity was in *R. vs Cur* in 1972 Brahima (1990), confirmed that Anthony General of Britain successfully argued, "obscene is label as an offence under common law since it is intend to corrupt the moral of the king's subjects and it against public peace". The obscene publication act of Nigeria 1959 thereafter repealed the common law.

Nigeria has also passed some laws on obscenity the law prohibit the publication, possession, importation, and distribution of obscene and indecent matters. The offences of obscenity are mostly criminal in nature. The fundamental characteristics of crime is that, it is an injurious act which is regarded as sufficiently misbehaves to justify punishing the doer. The scale of punishment depends however on the particular society's view of the seriousness of the offence in question and the other related considerations. Other relevance statute in Nigeria is the cinematography act No. 7 1961. The statute does not specifically mention obscenity but provides for censorship and approval by the federal Board of censorship on firms, postals, slides etc.

before they can be exhibited or shown. The breach of this provision is an offence. The other relevance statute on obscenity include. The young person Harmful publication act 1961 and other relevance section of

TheNigeria Government come out and formulate our own law of obscenity and indecency based on our cultural perspective. It is only when this is done that we will have a proper concept of what should constitute obscenity and indecency and what should not. Even the law enforcement agents do not really regard the issue of obscenity and indecency and the Act enacted on it has a serious issue. Unfortunately, little or no judicial activity is reported on the subject.

### **Definition of Key Concepts**

It has not been easy even at the international level to come up with a suitable meaning for the word “obscenity”. A typical case was the confusion experienced by the Geneva conference on the suppression of the Circulation or Traffic in Obscene Publication 1964. Adaramaja (1989).

Despite the acknowledge difficulties in finding appropriate definition of obscenity some scholars have come up with some broad classifications of the subject in order to help one appreciate the scope. According to Osibanjo, Adeyemi (1991) “there are three distinct forms of obscenity namely:

- (a) Pornography
- (b) Erotic realism and
- (c) The ambiguous classification of other erotica.

Pornography as defined by them here is the explicit discussion of sex for purposes of sexually stimulating the reader, viewer or listener. It is the most objectionable of these groups.

Erotic realism is described here as sex in the context of reality. It presents a truthful description of man’s sexual behaviour. Example is Cyprain Ekwensi’s Jaguar Nana and Dililbe Onyeama’s “Sex is a Nigger’s Game”. Other erotica may come by way of non-literary obscenity. Example is obscene nudes.

Obscenity as defined by the BBC English Dictionary means behaviour that relates to sex that shocks and offends people. And the same dictionary defines indecency as something that is morally or sexually disgusting. Also the Oxford English Dictionary defines obscenity to mean “filthy, indecent, offensive to modesty or decency, expression or suggestion of lewd thoughts”. From this last definition, it means therefore, that the word obscene is not limited to sex. Sex is only a category of obscenity. The celebration of horror, violence or drugs or other vices may also be described as obscene.

### **The Tendency to Corrupt and Deprave**

The meaning of obscenity is difficult enough to agree on. That it is defined as a tendency to “corrupt and deprave” merely worsens the problem since this would require the definitions of the words “corruption” and “depravity”. The decision as to whether an article has a tendency to deprave or corrupt is left to the judge.

Opinions differ as to the meaning of these words and often are at far extremes to each other. Judicial suggestions have varied from a view of “corruption” as being something capable of destroying the fabric of society to the capability of the offensive matter to lead its audience morally astray. The court in *R V Calder and Boyars* (1969) warned that when statute lays down a definition of a word or phrase in plain English, it is rarely necessary and often unwise for the judge to attempt to improve upon or redefine the definition.

In *D.P.P V. White* (1972) Lord Pearson took the view that to “deprave and corrupt” in the statutory definition as in the judgment of Cock Burn C.J. in *R.V. Hicklin* refers to the effect of pornographic articles on the mind, including the emotions and it is not essential that any physical sexual activity should result.

In the reported Nigerian case on obscenity *C.O.P (Mid-West) V. Igene*, (1964) the accused person ran to a bookshop and collected magazines therefore, the magazines, which bore the following titles. “Ways of Loving”, “Foreplay”, “Sex n Marriage”, “Responses and Senses”, had nude photographs. The magazines. purported to teach the techniques of sex and family planning

illustrating their teaching with different positions of population to give sexual satisfaction to adults and iriarriéd couples. Some of the magazine were marked: “Educational materials for adults only. “Sale to minors prohibited”. The accused persons were charged uñde Section 175(1) of the Mid-Western state with being in possession of obscene printed and publicly exhibiting obscene printed matters, which tend to corrupt morals.

In dismissing the prosecution case, the learned Judge C. Begho adopted the “Corrupt and Deprave Test” and wondered whether photographs, books and magazines could actually corrupt or deprave; since if it were that easy to corrupt by this means thousands of television viewers who regularly see violent films would already be criminals. The test of obscenity under the obscene publication Act 1961 depends not only on the nature of the article but also on the susceptibility of those likely to read, see or hear its corrupting influences.

Another prominent example is the defunct “lolly”, a soft sell newspaper in the 70s in Nigeria. The newspaper was defunct in early 80s when the N1JJ gone against the continue publication of the said newspaper. The newspaper often printed pictures of a character “Dauda the sexy guy” whose major action was to emotionally carried way whenever he set his eyes on any woman. The picture often shown how the private part of “Dauda” constantly bulges out from the underneath of his trouser. The ethic of Journalism and the rule of the profession in Nigeria go against such publication. The keyword of media ethics is just the moral principle that guide media profession. According to Omode (2000). Ethics is the share normative values which any society holds dear and are use to judge the behaviour or performer of any member of that society.

An interesting off shoot of the definition of obscenity is the argument that where the obscene article in question is too “obscene”, it might have the effect of putting off the audience from the activity depicted. For example, it has been held that depicting “bestiality” was not obscene since it is such a disgusting and revolting act that it can only give rise to revulsion. To be obscene therefore, a film or article should depict normal sexual responses.

This argument has been tagged the “Aversion theory” UNchukwu (2000), and was successfully presented by the accused persons in R.V. Anderson (172) where a magazine titled “OZ No. 28

SCHOOL KIDS ISSUE” was alleged to contain obscene matter. The magazine contained salaciously written articles on the joys of oral sex and some graphic pictures ‘and cartoons of various heterosexual and homosexual sex. It also contained a vulgarly worded advertisement inviting readers to join homosexual or heterosexual club for “erotic minorities”. One of the arguments of the defence, which the judge accepted as sound, was the Aversion theory”, that is, the material was repulsive that it only put readers off the depicted act.

### **Indecency**

#### **Harmful Publication**

- a) The children and young Pearson’s (Harmful Publications) Act of 1961 is the law on indecent publication. A distinguishing feature of the law is that it applies only to books or magazines, which are of a kind likely to fall into the hands of children or young persons.

It is clear that the Act is concerned mainly with pictorial stories or comics. It is also significant that no mention is made of pornographic comics except of course where such can be described as being publication of a filthy or repulsive nature. Describing the Act, as the law on indecent publication is not entirely correct because some of the incidents listed under the law can be described as obscenity. Obscenity is punished because it is a public nuisance. The offences of indecency are not concerned with the dangers of corruption but with outrage to public susceptibility. It is therefore, the views of Osibanjo and Adeyemi (1991) that harmful publications are more akin to obscenity than indecency.

#### **Offences of Obscene and Indecent Publication**

It is an offence under the Act to print, publish, sell or let or hire any book or magazine to which the Act applies. It is an offence to be in possession of such publications for purposes of sale or letting or hire.

Other obscenity offence include:

- a) Conspiracy: It is unlawful. to conspire to corrupt public moral or to outrage public decency. In Shaw Vs. .D.P.P (1912) Shaw had published a ladies directory, i.e. a booklet

listing the addresses, telephone number, body statistic and services of prostitute in London. He was convicted of conspiring with prostitute to corrupt public moral.

- b) Sending indecent material through the post: it is an offence under the post office act 1953, the customs and exercise act 1901 to send or procure a postal package which contain any obscene material.
- c) Importing indecent material: The customs and exercise act 1968 prohibited importation of indecent obscene word.

The importance of harmful publications or plates of photographic films prepared for purposes of printing copies of such publications is prohibited. The ingredients of obscene and indecent publications are:

- A. There must be an article
- B. It must be obscene/indecent
- C. It must be published

**A. There must be an article**

An “article” publish means any description of article or write-up to be read or look at or both or any sound record or any film or other record of a picture or pictures photograph or negative. Thus, for any offence of obscenity, the act must covers a wide range of printing, recording and picturing.

**B. It must be obscene/indecent**

For someone to commit an offence of obscenity, the content must be indecent and must have the ability to corrupt the moral of those people who may likely come in contact with. Its composition must be full of language. However, indecency, obscenity and corruption are the same in meaning but different in degree and not in kind. In R vs

Stanley (1947) Lord Parke (CJ) said that “These words convey one idea, namely, offending against recognized standard of propriety, morality and public decency”.

### **C. It must be published**

If a person publishing an indecent materials, he or she is liable to be punish under the law of obscenity. A person publishing an article, if he distributes circulates, sells or lets it, or hires it for sale or letting on air or for example, in the case of the record or film, if the plays or shows it.

Since all offences in obscenity are criminal in nature, that means that all the rule applying in the case of criminal law in general also apply with the respect to obscenity publication. Thus all defences in criminal law should apply i.e. either fines or imprisonment. The punishment in obscenity are of two types (a) infliction of punishment on the offender (b) seizure of the obscene and indecent materials.

### **Conclusion**

It is not common to journalists in Nigeria to come under the whip of the law of obscenity and indecent publication. This could be attributed to the following reasons. Though the law on obscenity and indecency exists in Nigeria yet it is very difficult to really determine what constitutes obscenity and indecency.

Nigerian journalists are guided by the ethical principles of their profession and these principles they guard jealously. They therefore, hardly derail to such promiscuous levels in their publications. Ethical issue is hold so dear by Nigerian journalists. Ethics set out the minimum acceptable behaviour which any member should attain to be regarded as a good ambassador, of journalists. Ethics compel journalists in Nigeria to consider it as basic, the principles and rules of the professional as obligation to himself and to others. It compel him to decide how he will lives, how he will conduct his professional affairs. How he will think, act and react to isles and people around him. It should be noted that ethics is the part and parcel ‘of the whole process of mass



communication concern for ethics is indispensable in journalist practice, because it inculcate in the journalist a continuous sensitivity to all his actions and his decisions.

The journalists are also watched by other communication bodies like the Nigerian Broadcasting Commission (NBC) whose codes they must adhere seriously to or face proscription. Such principles include: Journalists should refrain from the use of offensive, abusive or vulgar language. Journalists should not present lurid details either in work or picture of violence, sexual acts, abhorrent of horrid scenes. But where any journalist knowingly or unknowingly falls victim to obscene and indecent publication, the following defences are within his reach.

He may plead that he has not examined the article and has no reason to suspect it of obscenity or indecency.

He may plead the article in question was played in a private home where the public was that not invited.

He may also plead that the publication was for the promotion of science, history, art and learning.

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