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**OF LAW, MILITARY RULE AND CLOSURE/PROSCRIPTION OF
NEWS MEDIA IN NIGERIA**

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It is not every act, legislative in form, that is law.

Law is something more than mere will exerted
as an act of power Arbitrary power, enforcing

~~as an act of power ... Arbitrary power, enforcing its edicts to the injury of the persons and property of its subjects, is not law whether manifested as the decree of a personal monarch or of an impersonal multitude ...~~

- Mr Justice Mathews, 1884.

Introduction

With increasing recurrence over the years, forcible closure/proscription of news media - in most cases temporary - by both Federal and State governments, has become a regular feature of military rule in Nigeria. Genesis with the ban of *Nigerian Daily Standard*, published in Cross River State, by the military governor of the state, Brigadier-General U.J. Esuene, during the Gowon regime, it has extended to eighteen newspaper and magazine stables and to one radio station in twenty three years of military rule.

The process of closing down or proscribing these news media whenever the military governments feel that they err consists in armed soldiers and or police men forcibly marshalling out the media's workers, combing their offices for whatever they want and could seize and, without prior notice, occupying their premises. Some, if not all of the time, the principal editorial and or managerial officers of the media are also arrested and detained. Where the closure or proscription is intended for a long time, a retrospective decree is usually rolled out days or weeks after the occupation to cloak the action in a toga of legality and stop the usually attendant public agitation. Such retroactive decrees always debar the courts of law from entertaining any redress - seeking action from the news media or their agents or even inquiring into the closure and or proscription.

The primary concern of this paper is to examine whether, under our law, a military government has the right, for any reason whatsoever, to close down or proscribe a news medium without recourse to the due process of law. In so doing, we shall examine the context of and rationale for the closure/proscription, explore the dictates of the due process of law, inquire into the ideal relationship between military rule and rule of law and appraise Nigerian military governments' closures/proscriptions of news media vis-a-vis the rule of law.

A Chronicle of Closures/Proscriptions

- (i) The closure, during the Gowon regime and for 'offensive' publication, of the *Nigerian Daily Standard* by Brigadier - General U.J. Esuene; mentioned earlier.
- (ii) In November 1969, also during the Gowon regime, the *Daily Times* group of newspapers was shut down for six days on the orders of the military government, and its editor, news editor and managing director detained in a police cell for three hours, apparently for 'offensive' publications.
- (iii) In 1978, the Obasanjo administration, through Decrees 12 of 1978, prohibited the publication and circulation in Nigeria, for two years, of the *Newbreed* magazine. The proscribing decree specifically banned any challenge of the proscription in any court of law. The magazine had published in its mid - January and mid - March 1977 editions which the government impounded, and article entitled "The Drift Continues" and a critical appraisal of the Nigerian Security Organisation (NSO).
- (iv) On April 6, 1987, the Babangida regime proscribed the *Newswatch* magazine for six months for publishing the details of the recommendations of a Political Bureau set up by it (the government) ahead of official government pronouncements.

- (v) On October 14, 1988, the *Nigerian Observer* offices in Benin was, in a gangsteristic manner, sealed off by the police after the paper's staff had been ejected and dispersed with teargas! Thousands of copies of that day's edition of the newspaper were also confiscated. The newspaper had earlier written an editorial, critical of the state's Commissioner of Sports.
- (vi) On April 29, 1990, the *Punch* group of publications were besieged and sealed off by armed security men because of *The Punch's* 'offensive' editorial comment of Friday April 27, 1990 which was on the April 22, 1990 abortive coup against the Babangida government. The siege lasted till May 20.
- (vii) On May 1, 1990, the Ikeja premises of John West publications, the holding company for the *Lagos Daily News*, *Evening News*, *Sunday News* and John West Publishing Company Limited were also sealed off by armed security operatives because of the editorial comment on Sunday April 29 in the *Sunday News*. A government source, according to *Newswatch*, described the editorial which was also on the April 22 coup as "negative and critical of the government". The siege was called off on June 11.
- (viii) The plot 14 Western Avenue premises of the *Newbreed* magazine, also housing Ihaza Co. Ltd., H. Hannal Holdings Ltd., *Newbreed* Printing and Packaging Co. Ltd. and Chris Okolie Chambers were similarly sealed off on June 8 1990 on account of *Newbreed's* publication of Ogboru's 'letter' to Babangida.
- (ix) The *Champion* newspapers were compulsorily shut on Saturday June 9 1990 and Mr. Emma Agu, Editor, *Daily Champion*, arrested. Before the enforced closure, the newspaper's offices were ransacked by security agents who took away *Daily Champion's* printing plates of April 9 and 11, 1990. The meaning connoted by this action was that the April 9 and 11 editions of the *Daily Champion* contained the 'offensive' publications for which the *Champion* newspapers were closed down.
- (x) For two days, from June 7 to 9, 1990, the *Vanguard* newspapers were closed on the orders of the then military governor of Lagos State, Col. Raji Rasaki, apparently for the *Vanguard's* report on clashes between traders and security men at the Alaba market in Lagos. Till today, the paper is yet to know where it had gone wrong.
- (xi) The *Champion* newspapers were also sealed off in June by armed search-and-seal - warrant - carrying Lagos State security agents who said they were after seditious materials published in one of the editions of the *Daily Champion*. This week sources however confirmed that "the Lagos State government was angered by the paper's editorial of June 8 over the Alaba Market traders - police fracas and the paper's promise (in the issue) to give its readers an in-depth analysis of the crisis in the *Sunday Champion* of June 9.
- (xii) On March 8, 1991, the offices of the newspapers of John West publications were again sealed off for 13 days over what was termed "embarrassing publications" against the then Head of State, General Ibrahim Babangida, and his wife, Maryam, by the *Lagos Evening News*. The paper had, under a front-page lead titled "IBB, Maryam named in Jennifer's deal", published the contents of a letter said to have been written by Oyakhilome to the Vice President, Augustus Aikhomu, on the need to

detain Madike under the Detention of Persons Decree 2 of 1984.

(xiii) On May 29, 1991, the entire publications of the Guardian including the Guardian Financial Weekly, Guardian Express, Lagos life and African Guardian magazine were forced off the streets when their premises were shut down on the orders of, again, the Lagos State military governor, Col. Raji Rasaki. Their 'offence' was a report in the *Guardian Express* evening paper of May 29 that two students of the Yaba College of Technology, Lagos were shot dead by state security agents during a students' demonstration. *Guardian Express* editor, Bayo Oguntimehin, and three other reporters, Taiwo Akerele, Tunde Suleiman and Ben Akparanta were arrested and detained. They were subsequently charged for publishing "false news with intent to cause fear and alarm to the public". The newspaper stood by its story while the arrested journalists remained in custody until June 11 when they were released on bail. The charges against them were later dropped.

(xiv) On April 9, 1992, armed anti-riot policemen shut down the offices of the Concord group affecting thirteen publications of the group. The *African Concord*, in its April 13 edition which appeared on newsstands on April 6 had published a cover story titled "Has IBB given up?" The story was anchored on a published interview granted the Sunday Times by General Ibrahim Babangida in which the military president was reported to have wondered why the Nigerian economy had not collapsed. He told the *Sunday Times* that he repeatedly asked his economic advisers what had kept the economy going since "it was not any of our theories or anything we have read."

Following the occupation of the Concord offices, a military decree - the Concord Group Newspapers Publication (Proscription and Prohibition from Circulation) Decree 14 of 1992, was quickly prepared, but was withdrawn after Concord Press Chairman, Chief M.K.O. Abiola, publicly apologised to the President. The African Concord editor, Bayo Onanuga, who was directed to equally apologise resigned instead. Four of his colleagues, Dapo Olorunyomi, who wrote the story in contention, Babafemi Ojodu, Seye Kehinde and Kunle Ajibade also resigned with him.

(xv) On Tuesday June 15, 1993, security agents sealed off the premises of *Good Times Glamour* monthly magazine over its June edition titled "CIVIL WAR AGAIN? Generals lace their boots". Also three workers of the magazine's circulation department, Sunday Francis, Isaac Adeduro and Adeleye Joel, were arrested and detained without charge.

(xvi) Amidst the tension generated by his controversial annulment of the June 12 1993 presidential elections, the Babangida government sent armed soldiers and policemen to close down and occupy the premises of five newspapers, a magazine and a radio station. The newspapers were the *National Concord*, *Punch*, *Sketch*, *Abuja Newsday* and the *Observer*. The magazine involved was the *African Concord* while the radio station was the Ogun State Broadcasting Corporation (OGBC)

The OGBC was reopened forty two hours after it was closed down while all the other news media, (including all other publications from their stables) except the *Abuja Newsday*, were on Monday August 16, 1993 retroactively proscribed via the Newspapers Proscription and Prohibition from Circulation Decree 48 of 1993. The *Tell*

and *The News* were also forcibly closed in the fleeing days of the Babangida administration. The magazines, of course were publishing embarrassing truths the dying government did not want published.

The Due Process of Law.

We shall, at this juncture, explore the due process of law. The due process, as explained by Luis Kurtner, is:

... that methodological application of the Rule of Law which guarantees the individual (and corporate entities) protection on the basis of equality before the law against the exercise of arbitrary power by the State or fellow citizens.

A. V. Dicey identifies three aspects of the doctrine of the rule of law. These are equality before the law and the Common Law of Right not ascribable to a constitution. The third aspect, as expounded by Dicey, is:

the absolute supremacy or predominance of regular (or general) law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness, or prerogative, or even of wide discretionary authority on the part of the government.

The regular or general law itself is:

a law which hears before it condemns, which proceeds upon inquiry and renders judgement only after trial.

Under the general or regular law, an accused is presumed innocent and should not be punished until he has been found guilty after a fair trial by an impartial jury. Francis L. Dale, describing extensively the American concept of fair trial, a concept with the same yardsticks in all countries of the world where the Rule of Law holds sway, puts it this pungent, comprehensive way:

The accused in a criminal case is presumed to be innocent; he may not be punished unless a fair and impartial jury has been convinced of his guilt beyond a reasonable doubt; he is entitled to present in open court, and only in open court, the matters that will influence the decisions of the jury; he is entitled to confront and cross-examine and be confronted in open court by his accusers; he must be allowed the assistance of a lawyer (free if necessary) as soon as the interest of the state in him turns from investigation to accusation; he is fully protected from compulsory self incrimination and in gathering evidence, the state must have due regard to his right to be free of unreasonable search and seizure.

Military Rule and Rule of Law:

The Ideal Position

In consonance with the universally acknowledged but often abused principle of non - interference in the internal affairs of states and despite the principle's inherent defects, international law recognises that there could be a revolutionary or unconstitutional change of government within a state. As expounded by Hans Kelson:

A national legal order begins to be valid as soon as it has become on the whole - efficacious The government brought into permanent power by a revolution or coup d'etat is, according to international law, the legitimate government of the state.

But having installed itself in power, such a government according to international law, also has the obligation of ruling in accordance with the due process of law. Hence a military government anywhere in the world is duty bound to follow the rule of law in governing its people and in its relationship with other vital societal institutions.

Military Governments, Rule of Law and Closure/Proscription of News Media in Nigeria

Military governments in Nigeria and their apologists have always contended that they follow the rule of law in dealing with the press. They usually cite, for example, the use of the judiciary in the dispensation of 'justice' in matters relating to the vital social institution. On forcible closure and or proscription of news media without recourse to the courts of law, they, in all cases, maintain that their actions are always validated by law. They are apt, for instance, to refer to the retroactive decrees which their ministries of 'justice' often promulgate to back up the orally ordered actions. In addition, they proffer that the closures and proscriptions are always done in the 'national interest', chiefly to protect 'national security'.

From our preceding discussion of the rule of law, it is vividly clear that while the unilateral and forcible closures and proscriptions of news media by Nigeria's military governments may sometimes be lawful - that is done in line with an existing law - they are glaringly arbitrary, autocratic, despotic and antithetic to the rule of law. Under a rule of law, as distinct from a rule of force, a government cannot be the complainant, the prosecutor, the judge and the judgement's enforcer in its own cause as occurred in all the listed cases.

Moreover, the Babangida government, in closing down or proscribing state government - owned news media, namely the *Sketch* and *Observer* group of newspapers and the OGBC, violently violates the basis of the Nigerian federation. Under a Federal system of government which Nigeria runs and which is proclaimed by the 1979 and 1989 Constitutions, the Federal Government - military or civilian - has no constitutional or legal right, except under a declared state of emergency, to close down or proscribe a state government - owned news medium.

This is why, under a federal system of government, the important subject of press law is always a residual subject, that is one, which is within the exclusive legislative competence of each state.

Additionally, there is, generally and fundamentally speaking, no provision for retroactive offences under our legal system. As such, any retrospective decree which seeks to close down, proscribe or, in any form, punish a news medium for committing an offence not known to law as of the time of its commission is totally anti - rule - of - law. To borrow the words of Sir John Lathan, the famous jurist and former Chief Justice of Australia:

It is not our law that what is done officially is law, our law is that what is done officially must be done in accordance with law.

Ethical Implication

The negative ethical implication of arbitrary and despotic closures/proscriptions of news media by military governments is gargantuan in degree and calamitous in repercussions for any nation.

Self-imposed military governments always come as 'corrective' regimes. After entrenching themselves in power, they then begin to whimsically clamp down on the critical and the independent press. From hypocritical 'corrective' posture. Invaluable but perceptibly antagonistic contributions to national discourse immediately begins to dry up from citizens who dare not imperil their wives, children and jobs and from news media that are still interested in remaining in business.

Within a few months, total hypocrisy takes over. Whatever ethical Zeal or fervour is engendered in any citizen by the coming to power of such governments automatically withers. The message is too striking and pungent to be lost on anyone. A government which detests opposing views and truths cannot be genuinely interested in any moral correction or revolution.

Implications on Press Freedom

Press freedom - that is every individual's freedom to publish his or her views through the instrumentality of the news media - simply does not exist where a government, any government, exercises the unsavoury and monstrous power of whimsically and unilaterally closing down or proscribing news media without recourse to the due process of law.

Nigerian military governments and inferentially men seem to have a warped idea of the meaning and functions of government in society. They also appear to have a simplistic and perverted understanding of the fine and complex relationship between the institution of government and citizens on one hand and between government and important societal institutions on the other. These, perhaps are due generally to the autocratic command structure and life - style operative in the armed forces but, more importantly, to the low level of socio - political education and sophistication of 'Third World' military men. The late Major General Mamman Jiya Vatsa, while defending the promulgation of (the Public Officers Protection Against false Accusation) Decree 4 of 1984 an abnoxious enactment which illegalises the publication of truth if it "embarrasses" the Federal Government or a state government or a public officer - provided a vivid and instructive though negative insight into the thinking of soldiers about government and law and about the interrelationship of the two important institutions in society.

In an article titled "Be Wise, Fear Decree 4", he submits:

The basic role of government is to govern. Its shade or colour or professed ideology or lack of it exists to regulate the affairs of men and women in a polity, be it in a country, a state or local government or village level. Its existence is contingent on the existence of every other human institution including the press. *What it says is the law.* What it does is assumed to be in the best interest of the people it governs. The press therefore is a government institution.

With this kind of warped and lower-than-intelligent perception of the meaning and functions of government, and of the interrelationship between government and important social institutions coming from a Nigerian soldier of Vatsa's educational calibre, it is no surprise that the news media are constantly arbitrarily and despotically closed down or proscribed during military rule in Nigeria.

Contrary to Vatsa's archaic view which seems to express the general thinking of most Nigerian soldiers about government, law and society however, every word or action of government *is not and should not* be perceived or interpreted as law under a rule of law. The 1984 positive submission of Mr Justice Mathews on the subject, used in troductorily in this paper, is worth emphasising for its outstanding logic and eternal relevance:

It is not every act, legislative in form that is law. Law is something more than mere will exerted as an act of power Arbitrary power, enforcing its edicts to the injury of the persons and property of its subjects, is not law whether manifested as the decree of a personal monarch or of an impersonal multitude.

If this eternal truth holds sway for all civilised humanity, then it must hold sway for Nigeria. Any Nigerian news medium which allegedly infringes against any law under any self-imposed military junta must be charged to court and be tried by an independent and impartial jury rather than being unilaterally and crudely closed or proscribed. Our courts of law and judges of justice must also always employ the law exactly as an instrument of establishing justice. These are the very minimum conditions appertaining to the rule of law.

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