

FREE SPEECH: BENEFITS CHALLENGES AND THE FUTURE

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Abstract. No government can be termed ‘democratic’ if it does not give its citizens extensive freedom of speech. Free speech is not only limited to the spoken word: it also refers to freedom of expression such as use of the written word, plays, novels, cartoons, photographs, use of such other symbols like ribbons of various colors, public demonstrations, etc. ‘Free speech’ may also involve such other overt acts like burning flags or effigies. The context of the ideas expressed in whichever form determine the meaning and interpretation adduced. Free speech has its benefits and challenges as well. When free speech becomes a threat to other individuals or a threat to national security, it works against the common good and must therefore be confined within certain parameters.

Keywords: *Free speech, free expression, universal rights, democracy.*

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1. Introduction

The Universal Declaration of Human Rights by the United Nations (UN) in 1948 declares: “Everyone has a right to freedom of opinion and expression; this right includes freedom to hold opinions without interference and to seek, receive and impart information and ideas through any media and regardless of frontiers”. All countries that are members of the UN are therefore obliged to grant their peoples this right as free expression is also a key component to good governance. The Kenya constitution (2010) Chapter One; Article 2(5) acknowledges: “The general rules of international law shall form part of the law of Kenya”.

2. Constitutionalism, Free speech and Democracy

Many countries’ constitutions including the US, Great Britain, Kenya, South Africa, Egypt, etc. emphasize that they are members of the UN and that whatever rights and freedoms the UN advocates for, their people are obliged to receive the same. It is also for this reason that such powerful countries as the US, Britain and others have not shied away from pointing out the unpleasant instances when freedom of expression or the right to information has been interfered with in some countries.

The US which is seen as the pace setter in democracy and free speech has the First Amendment in its constitution which states: “Congress shall make no law...abridging the freedom of speech or the press or of the people peaceably to assemble and petition the

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government for redress of grievances”. This therefore creates a strong case against censorship in any way. For this reason, there have been several instances of open criticism and open defiance of government including the election of former US president Barrack Obama by some white supremacists and that of his successor Donald Trump by those who believe that the election was stolen for him by Russia.

In Africa, there have been and continue to be a series of open defiance to government. Such examples abound and have been witnessed in Nigeria, Egypt, Kenya, South Africa, etc. Within the African countries, there have also been many other cases of open defiance or demonstration by the citizenry against corruption in high places, insecurity, demand for better infrastructure, etc. All these are thanks to the UN and its declaration that free speech and governance are inseparable.

In 1960, Nelson Mandela led an open defiance against government by publicly burning the hated pass books that were seen as oppressive and a tool used by the apartheid government to advance separateness to the disadvantage of the majority blacks in their own homeland. In 1964, after his conviction to a life sentence in jail, Mandela concluded:

“During my lifetime I have dedicated myself to this struggle for the African people. I have fought white domination and I have fought black domination. I have cherished the ideal of a democratic and free society in which all persons live together in harmony and with equal opportunities. It is an ideal which I hope to live for and to achieve. But if needs be, it is an ideal for which I am prepared to die”.

In Burma, Nobel laureate Aung San Suu Kyi fought for the right to democracy and free speech and was imprisoned for it. Suu Kyi stated at a mass rally in 1989: “We must make democracy the popular creed... Democracy is the only ideology which is consistent with freedom...” There is therefore no democracy without free speech. In her acceptance speech of the Nobel Peace Prize in Oslo in 1991, Suu Kyi emphasized: “...The quest for democracy in Burma is the struggle of a people to live whole, meaningful lives as free and equal members of the world community...”

There is no doubt that the US is the supreme example of a democratic culture. What tends to be overlooked, however, is that the US also represents many cultures - among these is the ‘I-want-it-all’ consumer culture, the megacity culture, the superpower culture. There is also a strong media culture which constantly exposes myriad problems of American society from such issues as street violence, drug abuse, matrimonial difficulties of celebrities, etc. it is also on record that the media in the US has been used to announce Presidential results without dispute or contention. The media therefore acts as the cog to free speech and expression.

Warbuton (2009) notes that government without extensive freedom of speech would not be legitimate at all and should not be called ‘Democratic’.

Ronald Dworkin (1977) argues thus:

“Free speech is a condition of legitimate government. Laws and policies are not legitimate unless they have been adopted through a democratic process and a process is not democratic if government has prevented anyone from expressing his convictions about what those laws and policies should be”.

Kenya, still considered a young democracy, adopted a new constitution in 2010; this particular document was subjected to the popular vote by all registered voters before it was adopted. As concerns free expression, the Kenya Constitution Chapter Four; Article 33(1) clearly states that every person has the right to freedom of expression which includes freedom to seek, receive or impart information. The adoption of this particular document through public participation has opened up the democratic space although there are still hurdles to be overcome. This country's constitution has it that any amendment to the document must again be by popular vote. A popular vote is in essence the voice of the people.

Voltaire, the great scientist, argued: "I despise what you say, but will defend to death your right to say it". This principle is at the core of democracy, a basic human right and its protection is a mark of a civilized tolerant society.

Many writers worldwide have either been arrested and faced long periods of detention in prison or been forced into self-exile for expressing their views even in artistic form. In Kenya for instance the internationally acknowledged novelist Professor Ngugi wa Thion'go was detained and later forced into exile after the publication of his novel *Petals of Blood* in 1977. Ngugi fled to the US where he has continued to receive many international accolades. The novel was perceived as being anti-establishment for painting the picture of people who have been exploited and whose fight to remove white colonial masters had ended with fellow countrymen becoming new masters who were more vicious in the oppression of the countrymen. Sadly, this has been replicated in many places. In Tanzania, a renowned scribe was arrested and detained incommunicado for allegedly being a non-citizen then finally charged in court with non-payment of taxes - all this for criticism against the late President John Pombe Magufuli. In the era of the novel Covid-19 virus, the Tanzania government banned any form of reporting on the state of the virus. This in essence not only jeopardized the universal fight against the disease but also misinformed the citizenry of the true picture that would help in making informed choices on how to conduct daily activities.

There are two broad arguments that are used to defend free speech: The instrumentalist arguments that claim that preserving free speech produces such tangible benefits as increased personal happiness, a flourishing society or even economic benefits. It has been argued that in order to make good judgment, citizens need to be exposed to a range of ideas: free speech allows people to be informed about a variety of views and issues - including exposing corruption. The moralist arguments for free speech typically move from a conception of what it is to be a person, to the idea that it is an infringement of someone's autonomy or dignity. This assumes that it is wrong to prevent me speaking or listening to others.

3. Control

Warbuton (2009) states that those who defend free speech also realize that there is need to set limits to the freedoms they advocate and cherish. Liberty should not be confused with license. Complete freedom of speech would allow freedom to slander, freedom to engage in misleading advertising, freedom to publish child pornography, freedom to reveal state secrets, etc. he argues.

Alexander Meiklejohn stated as follows: "When self-governing men demand freedom of speech, they are not saying that every individual has an inalienable right to

speak whenever, wherever, however he chooses. They do not declare that any man may speak as he pleases, what he pleases, about whom he pleases, to whom he pleases”.

Free speech therefore involves expressing one’s views at appropriate times, in appropriate places; not any time that suits you. John Stuart Mill set the boundary at the point where speech or writing was an incitement to violence. To him, freedom only applied to ‘human beings in the maturity of their faculties’. US Judge Oliver Wendell Holmes Jr (1919) observed that freedom of speech should not include freedom to shout “Fire!” in a crowded theatre. Defenders of free speech must therefore set limits. Most legal systems which preserve freedom of speech, including the Kenyan constitution, still respect free expression but have set a caveat where for instance libelous, slanderous, where it would result in state secrets being revealed, where it would jeopardize a fair trial, where it involves intrusion into a person’s private life without good reason, where it results in copyright infringement and in cases of misleading advertising. Many countries have also set limits on the kind of pornography or sexually explicit material that may be used or published.

4. The present

There have been calls to curb pornography, hate speech disguised as free speech, etc. In 1988, Salman Rushdie’s book *Satanic Verses* was banned in all Islamic states and copies of the book burned. In 1989, Iran’s supreme leader, Ayatollah Khomeini declared a “Fatwa” against Rushdie. A prize was put on his head; Rushdie was forced into hiding and given police protection.

In 2005, a Danish newspaper published cartoons depicting Prophet Muhammad with a bomb in the shape of a turban on his head. This was seen as a criticism of the relationship between Islam and terrorism. There were riots in many parts of the Islamic world as the cartoon was viewed as an affront on Islam; was racist, blasphemous and offensive. The cartoonists were issued with death threats.

In Rwanda, a presidential candidate who denied the 1994 massacre as a genocide was arrested and thrown into prison. The candidate was subsequently banned from contesting the election. In the Democratic Republic of Congo, protesters against former president Joseph Kabila were met with violence from state agencies and police leading to several deaths. In Cameroon, it is reported that from 2018, many Anglophone separatists have been killed in conflict with government agencies: this is because the separatists have demanded for independence from the larger Francophone speaking regions of that country. Such and many other wars have been visited on people demanding greater freedom and democratic space. Reportedly, information from this region has not been reported - it only comes to the fore in bits and pieces: either the pro government media gives skewed information or the opposition and any independent person risks imprisonment or the pain of death for giving “classified information”.

In the Democratic Republic of Congo, social media which has been used extensively, has been shut down by the government on numerous occasions as it has been used extensively to propagate hate speech and fake news. This latter case has also been true in Kenya and some other countries where hate speech against certain tribes and communities has been used to sow seeds of discord and has worked against national cohesion. In spite of all these, freedom of speech/ expression is still a right to all people; equally, all people have the right to receive information in real time. Watchdogs have defended the right to information and have raised the red flag since the crackdown on

social media breaches media freedom, stifles political debate and this act in the Congo only adds to volatility in what is already a powder-keg country.

The emergence of fake news is yet another challenge to free speech and democracy. It has been reported on numerous occasions that a lot of the information trending could either be fake news or incomplete information. *Al-Jazeera* news channel defines fake news as ‘false stories that appear to be news’. The media-print, radio and digital has been accused of peddling misinformation on matters such as those concerning the novel Covid-19, economics, politics, education, etc. the effect of the fake news leads to loss of money, loss of integrity for those mentioned, discord in otherwise cohesive groups, conflict, court cases, etc.

The right to receive information has also been interfered with by some governments in the guise to preserve state security or ostensibly to raise more funds for the government. In Kenya for instance, in 2018, when opposition leader Raila Amollo Odinga staged a mock swearing in attended by millions in Nairobi, the government retaliated by switching off air media houses that had gone to cover the event, albeit though the Kenyan constitution gives such rights as freedom to speech, assembly and the right to information. This media shutdown was again replicated with the President Ruto administration in July 2024 when there was a popular uprising against harsh tax proposals by his government in Kenya. In Uganda, the minister for information announced on July 17, 2018 that the Uganda cabinet had passed that all social media users would have to pay a tax of 200 Uganda shillings (0.05 US dollars) on each day they use the platforms such as Facebook, WhatsApp, Instagram and Twitter. Similar proposals had been floated in Kenya. All these go against the spirit envisioned in the UN charter since access to information is hampered. In 2019, there was a total shutdown of digital information channels in Ethiopia during a period of political crisis.

An ironic twist in the freedom of speech is where a former US President Donald Trump was on many occasions accused of statements that bordered on racism and incitement to race hatred. Incidents of mass shootings against minorities in the US were associated to the US president’s rhetoric. Leadership involves responsibility and promotion of equality, truth and justice and when a person in high office endangers the lives of weaker groups then free speech loses its meaning.

In the fight against the novel Covid-19 pandemic, there are numerous reports of decline in free flow of information from various countries. The International Peace Institute (IPI) report released at the end of April 2020 documents that freedom of press has grown worse with the spread of coronavirus in both democratic and autocratic governments. Reports of journalists being physically attacked, arrested, cases of information censorship including verbal attacks have been increasingly reported. This is perhaps on guise of governments seeking to control the spread of disinformation. In democracies too, efforts to control the public narrative and restrict access to information around the pandemic are on the rise.

Free speech, despite being a democratic right also has the tendency to ignite passions and anger. The most recent example is in the United States where a black man, George Floyd, was murdered in the glare of the camera by a white policeman kneeling on his neck causing his death by strangulation. Because of free speech and the right to information, widespread and destructive riots have been witnessed in many cities in the United States.

5. The future

Plato, the philosopher, in *The Republic*, argues for severe curbs on the freedom of expression; to him any representation of the real world in any other form is a distortion of reality. He further argues that pure and accurate judgment is to be preserved by removing potentially damaging influences.

Socrates, Plato's teacher, was executed by being forced to drink hemlock- a deadly poison for asking questions which the state could not accept; he was judged as corrupting the youth with his 'bad teachings'. Socrates valued freedom of the individual to debate ideas above his own life.

Many governments in the current world seem more sympathetic to the spirit of Plato than Socrates: they want to control outcomes by controlling expression. A good example of this is in Egypt where many scribes have been imprisoned or detained for 'informing' the masses by seemingly dining with 'terrorists' and 'advancing their cause'.

The future of free speech is uncertain. Corrupt people who import contraband and other illicit and substandard goods, thereby dumping and endangering lives of millions in African countries will continue to go free as exposing them would be considered libelous. Looters of public coffers in many African countries have remained faceless; such cases can only be alluded to in cartoons and graffiti. The use of cartoons is part of the freedom of expression and in Kenya the constitution grants the right to freedom to artistic creativity. In many countries, including Kenya and Britain, the government's readiness to sacrifice free speech for the sake of other values such as national security is a worrying sign.

In an unexpected turn of events in 2024, the youth in Kenya, otherwise referred to as the Gen-Z used this freedom of speech and expression to not only reject government policy but also put a stop to the harsh taxation measures put forward by the IMF and other donor communities. In order to curtail freedom of speech, several deaths were reported. These occurred in the hands of the security services, abductions were also witnessed. This apparently continues to this date with reports of persons missing after questioning government policies. A recent example of this was reported in the media on 25th August where a University of Nairobi student, Rocha Madzao went missing after issuing an ultimatum on the unpopular new funding model for universities in Kenya.

This unexpected and tragic curtailment on free speech has come under harsh criticism in Kenya from the human rights bodies, policing oversight authorities, members of the clergy, a number of prominent personalities such as the Cabinet Secretary for Civil Service Honorable Justine Muturi and many other Kenyans. It is noteworthy that Honorable Muturi is the immediate former Attorney General, the chief legal advisor to the government and that his own son was abducted by the regime he is serving in. The apparent reason for this is the use of cartoons as a satirical device against those in power. To this, many defenders of the current regime in Kenya led by Honorable William Ruto have come out blazing and openly encouraged the increased spate of abductions in public places by unknown persons who are claimed to be undercover police officers.

The rise of Artificial Intelligence (AI) has also rapidly been used in expression of personal or political opinion. It must be argued that AI can impact the freedom of expression in both positive and negative ways. This is because AI can help share information and ideas more quickly and rapidly and also help with the creation of contents. On the other side, AI can be used negatively to interfere with information, create fake news and be inconsistent with the UN Charter especially with human rights

standards. In order to address these issues, policy makers, lawmakers and the public ought to have a conversation on free speech on what is acceptable or not.

There is also the morality aspect in discussing freedom of expression: should pornography be tolerated under the guise of free speech? Martin Luther paid the ultimate price for championing human rights for the oppressed blacks in the US; among these is freedom of expression. Luther argued that the quest for democracy - read free speech - must not be stopped since it is an inalienable right. Hellena Kennedy wrote: "Free speech is one of the core values in a democracy and it should be championed with a vengeance". Some governments will attempt or continue to stifle free expression in the name of state security and national unity; activism for free speech will continue.

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