NAVIGATING THE THIN LINE BETWEEN FREEDOM OF EXPRESSION AND DEFAMATION LAWS IN NIGERIA

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Abstract

Freedom of expression is upheld as a fundamental human right, protected by various statutes such as the 1999 constitution. However, this right is not absolute as it faces several limitations such as defamation which serves as one of its limits. The poser is when does the exercise of one's freedom of expression become defamation and how has the courts juxtaposed both? This paper seeks to identify the limits of the freedom of expression, examine how criminal defamation discourages public discourse, how the courts handle the overlaps between the two conflicting rights when giving judgment, as well as identify the challenges faced by the courts when interpreting and balancing the two concepts at hand. Adopting the doctrinal methodology, the paper conducted an analysis of statutes and case laws in Nigeria as well as other jurisdictions. The paper finds that the courts often place priority on protecting the reputation of individuals when deciding defamation cases. The paper recommended that legislative reforms should consider decriminalizing defamation to align Nigeria with international human rights standards while the courts should adopt structured guidelines for adjudicating digital defamation cases among others. This paper positioned a normative foundation for understanding the thin line between the freedom of expression and defamation through various judicial attitudes.

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1.0 INTRODUCTION

Freedom of speech gives citizens the freedom to speak out against injustice in society, advocate for their rights, engage with like-minded individuals, etc. It allows for the press to communicate and comment on things happening in our society, therefore keeping us informed and up to date. It allows citizens to openly criticize other individuals in society, including the government, thereby promoting accountability for all citizens. This includes the freedom of speech which allows individuals to freely communicate their thoughts, beliefs and ideas to their fellow members of society.

This freedom protected under the Nigerian Constitution and it entails that individuals are entitled to freedom of expression including freedom to hold opinions, and impart ideas without interference[1]. It is also protected by several international treaties such as the Universal Declaration of Human Rights[2] and the African Charter on Human and People's Rights[3]. It is truly a blessing to all, but like every right, it has limitations. Where one person's right stops, another's begins. When does freedom of expression cross the line? When does the exercise of one's freedom of expression affect others negatively?

The constitution of the Federal Republic of Nigeria, 1999 provides that citizens may express themselves freely, but various laws such as the criminal code and torts law provide for the crime or tort of defamation.

[1] CFRN 1999 as amended, Section 39

[2] United Nations (1948) Universal Declaration of Human Rights, Article 19 <https://www.un.org/en/about-us/universal-declaration-of-human-rights > accessed 16 October 2025

[3] African Charter on Human on Human Rights, Article 9 <https://au.int/sites/default/files/treaties/36390-treaty-0011_-_african_charter_on_human_and_peoples_rights_e.pdf > Accessed 16 October 2025

This implies a need for restriction on freedom of expression to prevent such. How then can these two be regulated? On one hand, if there is too much lenience on the freedom of expression, it could lead to the uncontrolled spread of false and harmful information about others. On the other hand, if there is a complete restriction on freedom of expression, there would be no outlet for individuals to communicate their ideas and issues such as violations of human rights may remain hidden from the attention of the public therefore giving rise to impunity and continuous violations. [4] The role of balancing these two is therefore left to the courts.

2.0 Conceptual Clarifications

2.1. Freedom of Expression.

Freedom of expression is a fundamental right protected under *section 39(1)*[5] *of the 1999 Constitution*. It provides that 'every individual has the right to freely hold opinions, and receive and impart ideas without any interference'. Freedom of expression refers to a fundamental right which enables the free exchange of ideas, opinions and information thus allowing individuals in society to form their opinions and beliefs. It is the fundamental right of individuals to freely express their ideas, beliefs, feelings, with other members of society. It allows citizens to express themselves without fear of judgment or censorship and protects how citizens express themselves and communicate their ideas.

[4] Freedom of Expression and the Media- National Human Rights Commission <https://www.nigeriarights.gov.ng/focus-areas/freedom-of-expression-and-the-media.html> Accessed 18th October 2025

[5] CFRN 1999(as amended) Section 39(1)

2.2 Defamation

Defamation refers to any statement that damages the reputation of another person[6]. the publication of a statement which lowers a person of publishing false information about a person which, as a result, lowers their reputation and standing in the estimation of right-thinking members of society. Right thinking members of society here refers to individuals who have the capacity to understand and obey the laid down laws of society.

In the case of *Chilkied Security Services and Dog Farms Limited v Schlumberger Nigeria Limited & Anor*[12], the court defined defamation as an injury to a person's reputation by spoken words that lowers them in the estimation of right-thinking members of society, exposing them to hatred, contempt, ridicule, or harming their profession/trade. This principle illustrates that defamation only occurs when one's reputation is damaged before right thinking people, meaning that it cannot occur when the statement is published to regular members of society. Defamation is made up of certain elements such as a false statement, publication, reference to the claimant and damaged reputation. This means that for defamation to occur, one must prove that a false statement was made, it was published, it referred to the claimant and it damaged their reputation as a result and publication here, refers to the act of communicating the statement to a third party.[7] This can occur either by written statements, known as libel, or spoken word, known as slander.

Libel refers to a defamatory statement published in a permanent form such as in a book, photo, song, etc[8]. This differs from slander which refers to the oral publication of defamatory statements by word of mouth

[6] Ese Malemi, *Law of Tort,* (Revised edition), (Princeton Publishing Co., 2013) [12] (2018) JELR 48683 (SC)
[7] Linus Nnabuike Malu, 'Media Law and Policy in Nigeria'
[8] Ese Malemi (n 12)

which also damage a person's reputation. The way these two types of defamation differ is by their mode of publication. Since libel is published in a permanent form, its effects are more severe, as it can easily be shared and accessed whilst slander is less severe as it can only be published to a certain number of people, since it is not in a permanent form.

3.0 LEGAL AND INSTITUTIONAL FRAMEWORK FOR DEFAMATION AND FREEDOM OF SPEECH

3.1. Legal Framework

3.1.1. Constitution of the Federal Republic of Nigeria, 1999

The 1999 Constitution of the Federal Republic of Nigeria (as amended) is the supreme legal framework that governs the balance between the freedom of expression and the protection of one's dignity under defamation laws. It provides for both the right to freedom of expression and the right to human dignity, as well as restrictions on certain fundamental rights such as the aforementioned freedom of expression.

Section 39(1)[9] of the constitution provides for "the right of every person to freely express themselves as well as hold and share their views, ideas and opinions with other members of society without facing any interference of any kind whatsoever". This establishes the freedom of individuals to share their views and opinions with other members of society without facing any form of intrusion or persecution for simply speaking out.

[9] CFRN 1999(as amended)

However, this right is not absolute, as section 45(1)[10] provides that "certain rights, including the right to freedom of expression, shall not invalidate any reasonable laws put in place". This means that reasonable restrictions on the freedom of expression may be put in place as long as they are justifiable to a democratic society. One of these restrictions can be seen in *Section 34(1)*[11] which protects the dignity of all individuals, meaning that a person's freedom of expression will be limited where it could infringe on another person's dignity. Since where one's right stops, another right begins, these restrictions help to prevent an infringement of another person's right to dignity all in the name of exercising their right to freedom of expression. Such restrictions must be lawful as seen in *Director of State Security Services v Olisa Agbakoba*[12] where the court emphasised the essential role of freedom of speech in a democratic society, affirming that any attempt to unduly limit it must be viewed with suspicion. Therefore, although the freedom of expression can be limited by restrictions put in place by the legislature, it must only be done so if it is truly necessary and just to do so.

Defamation also serves as a restriction on the freedom of expression as it occurs when a person takes that right too far, therefore tarnishing someone else's reputation in the process of expressing themselves, which may also be an infringement of their right to dignity[13]. When a person pushes the extremes of this right, they tend to speak or act out of turn, therefore tarnishing another person's reputation. This is often done by the press where journalists, in an attempt to put out an intriguing headline, publish defamatory articles.

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[10] CFRN 1999(as amended) Section 45(1)
[11] Ibid. s 34(1)
[12] (1999) 3 NWLR (Pt. 595) 314
[13] Imo Udofia, '*Right to Freedom of Expression and the Law of Defamation in Nigeria'*, Department of Public Law, University of Uyo

This was seen in the case of *Vanguard Media Limited & Ors v Otunba Adebiyi O. Olafisoye (2011)*[14] where the defendant was accused of libel for publishing a libelous newspaper article with a title that read 'This man could commit murder.' The court held that the article was defamatory as it contained several sentences alleging that the plaintiff could commit murder and get away with it, which caused millions of readers to develop a negative view of the plaintiff, therefore damaging his personal and business reputation.

3.1.2 The Criminal Code

The Criminal Code Act[15], applicable in the southern region of Nigeria, contains several sections which establish defamation as a criminal offence.

Section 373 of the Criminal Code[16] defines 'defamatory matter' as "anything which could cause harm to a person's reputation by exposing them to hatred, ridicule, or damage their profession or trade by harming their reputation". This provision establishes the scope of defamatory matter, entailing that it is not limited to written statements or word of mouth. It may also include pictures, out of context videos, articles, etc.

Section 375 of the Criminal Code [17] outlines the punishment for publishing defamatory matter as one-year imprisonment, and two-years imprisonment if the publisher was aware that the defamatory matter was false. This provision entails that defamation will be punishable by law even if the publisher was unaware that the information they published was false. The fact that the publisher was under the impression that the

[14] (2011) LCN/4453(CA)
[15] Criminal Code Act CAP 38 LFN 2004
[16] S 373 Criminal Code Act
[17] s 375

information, or rather, matter was true, will merely serve as a mitigatory defense.

Section 377[18] of the Criminal Code may serve as a defence where the publication is true and it was made for the benefit of the public. This establishes that statements which damage a person's reputation shall not be deemed defamatory if it was truthful and made with good intent which is for the purpose of informing the public.

3.1.3 The Penal Code

The Penal Code Act[19], is the equivalent of the Criminal Code Act for the Northern states of Nigeria. The Penal Code is the principal criminal legislation in Northern Nigeria. Introduced in 1960, it replaced the mix of colonial, customary, and Islamic criminal laws previously operating in the region. It remains in force in all nineteen northern states and the Federal Capital Territory[20].

The Penal Code, which governs criminal law in Northern Nigeria and the FCT, defines a wide range of offences including defamation reflecting a blend of Islamic and common-law influences. Defamation under Sections 391–399[43] covers any false statement published or communicated to a third party with intent to harm another's reputation, and the prosecution must prove publication, defamatory meaning, intent, and falsity. Although punishable by up to two years' imprisonment or a fine under Section 393[21], the Penal Code also recognises important defences such as truth, public good, qualified privilege, and fair comment, ensuring a balance between reputation and

[18] s 377
[19] Cap P3 LFN 2004
[20] Rufus Akinyele and Ton Dietz, 'Crime, Law and Society in Nigeria. Essays in Honour of Stephen Ellis', (Brill, May 15, 2019). 241, Penal Code Act.
[21] Penal Code Act, Sec. 393

honest public discourse. Unlike the Criminal Code in the South, which separates libel and slander, the Penal Code treats defamation as a single offence and adopts a more social-harmony-oriented approach. However, Nigerian courts, especially in cases like *Arthur Nwankwo v State*[22] and *Bamaiyi v. State*[23], have cautioned against using criminal defamation to suppress legitimate speech, emphasising that Penal Code provisions must operate consistently with the constitutional guarantee of freedom of expression under Section 39[47].

Section 391 of the Penal Code[24] contains a similar definition of defamation. The section provides that anyone who publishes harmful information with the intention of harming another person's reputation commits defamation. Subsequently, *Section 392*[25] sets out the punishment for defamation, which can include imprisonment for up to two years, a fine, or both. This is Subsequently, *Section 392*[26] sets out the punishment for defamation, which can include imprisonment for up to two years, a fine, or both.

3.1.4 The Cybercrimes Act of 2015

The Cybercrimes Act of 2015 recognises the technological aspect of defamation. It focuses on the use of electrical devices and measures to publish defamatory statements which damage the reputations of the individuals they are published about. *Section 22(4)*[27] criminalises the act of creating a false written statement with the intent of it being relied upon by another party. It also provides that this offence is punishable by 5 years imprisonment or a N700,000 fine. Although this provision

[22] Arthur Nwankwo v. The State (1985) 6 NCLR 228.
[23] *Bamaiyi v. State* (2001) 8 NWLR (Pt. 715) 270. [47] CFRN 1999(as amended) s 39.
[24] Penal Code Act, s 391
[25] Penal Code Act Section 392
[26] Ibid. s 392
[27] Cybercrimes (Prohibition, Prevention, etc.) Act, s 22(4)

mostly deals with financial fraud, it provides for the offence of defamation, as it includes the elements of defamation which are publication of fraudulent information, and damage to a person's reputation. *Section 24(1)*[28] of this Act addresses online defamation in the form of bullying and harassment. This provision makes it an offence to knowingly send false messages via computer systems for the purpose of causing annoyance, insult, injury, or needless anxiety to another person. *Section 24(1)(b)*[29] criminalizes the act of sending false messages for the purpose of causing annoyance, inconvenience, or other subjective harm to a person.

3.1.5 Tort Law

The tort of defamation generally requires that for defamation to be established, a defamatory statement about a person must be published to a third party, harming their reputation in the process. Publication here refers to the communication of a defamatory matter to a third party. According to Cardozo CJ in *Ostrowe v Lee*[53], 'In the law of defamation, 'publication' is a term of art … A defamatory writing is not published if it is read by no one but the one defamed. Published, it is however, as soon as read by anyone else.' This authority established that publication can only occur when it is communicated to a third party, not just the person it is referring to. It is only when another person reads such defamatory matter, that the subject person's reputation can be diminished.

Akintan JCA (as he then was) in *Ugbomor v Hadomeh*[54], also said,

> *"By 'publication' it is meant the making known of the defamatory or slanderous matter to some person other than the person of whom it is written or uttered. If the statement is made straight to the person of whom it is*

[28] Ibid. s 24(1)
[29] Ibid. s 24(1)(b)

> *written or uttered, there is said to be no publication of it. This is because the uttering of a libel or slander to the party libelled is clearly no publication for the purpose of a Civil action in that a communication of the defamatory matter to the person defamed cannot injure his reputation, though it may wound his self-esteem."*

A defamatory statement cannot be said to have been published if it was communicated only to the person who is the subject matter of the statement. The claimant must also show that the defamatory statement lowers them in the eyes of right-thinking members of society, exposes them to hatred, contempt, or ridicule, or causes financial loss. If in the eyes of right-thinking members of society, the statement does not hold enough weight to be believable, such a statement will not count as defamation.

Common defences used under the tort of defamation include justification or truth of the statement where the defendant claims that the alleged defamatory statement is true, the consent of the plaintiff, fair comment, privilege, etc. These defences either reduce or remove the liability from the defendant[30]. Persons affected by defamation may also be given the following remedies: damages, injunctions to prevent further publication, etc.

In Nigerian law, criminal sanctions for defamation exist under the Criminal Code Act and Penal Code Law, with imprisonment for publishing defamatory matters knowingly or with the intention to extort. Civil remedies primarily involve damages and injunctions. An offer of amends may also be used as a defense if the defamation was innocent.

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[30] Ese Malemi, *Law of Tort,* (Revised edition), (Princeton Publishing Co., 2013) pp. 574-604 [56] [1929] 2 KB 331

In the case of *Cassidy v Daily Mirror Newspapers Ltd*[56], where the claimant sued the newspaper of defamation as they published a picture of her husband with another woman, implying that they were engaged and that Ms Cassidy, the claimant, was living with a man that she was not married to, thereby damaging her reputation, as it suggested to its many readers that she was an immoral woman. Although the defendant claimed that they did not explicitly mention the claimant's name, the court held that defamation had occurred even though the statements did not directly refer to the claimant. On appeal, it was held that a publication can be defamatory through reasonable inference even if it does not explicitly mention the plaintiff. This case illustrates that defamation does not need to outrightly mention the person, but as long as it points to them, it will be defamatory.

3.2 Institutional Framework

3.2.1 The Courts

The courts have to do with the judicial system which consists of the judges, and lawyers. The High Court has jurisdiction to handle matters concerning the breach of human rights such as the right to freedom of expression, as well as various torts including defamation.

Section 272(1)[31] of the constitution gives the High Court jurisdiction over both civil and criminal defamation suits. Nigerian courts play a decisive role in shaping how defamation is understood and enforced, drawing heavily on common-law principles while interpreting statutory provisions such as the Criminal Code and Penal Code through a constitutional lens. In both civil and criminal matters, the judiciary determines whether a statement is defamatory by asking how an

[31] s 272(1) constitution of the Federal Republic of Nigeria, 1999

ordinary, reasonable person would interpret it not what the defendant intended, the courts also balance this standard with the right to freedom of expression under *Section 39* of the 1999 Constitution, a tension that features prominently in the case law[32]. In *Arthur Nwankwo v. The State*[33], the Court of Appeal made clear that criminal defamation laws must not become tools for silencing political criticism, insisting that public officials must tolerate more scrutiny than private citizens. Similarly, in *Bamaiyi v State*[34], the court criticised the misuse of legal processes to intimidate journalists and reaffirmed that press freedom is integral to democratic accountability.

In civil defamation, courts presume falsity and require the defendant to establish a defence such as justification, fair comment, or qualified privilege. These defences are interpreted liberally especially in matters of public interest to prevent defamation law from chilling legitimate criticism. In criminal defamation, however, the prosecution must prove falsity and malicious intent beyond reasonable doubt, and courts often emphasise caution due to the severity of criminal sanctions. Although the law did not originally anticipate digital communication, Nigerian courts have begun applying traditional principles to social-media publications, treating tweets, posts, and viral messages as valid forms of "publication" capable of grounding liability. Remedies vary widely, including damages, injunctions, retractions, and sometimes aggravated or exemplary awards, though courts frequently stress proportionality[35]. Across these developments, the judiciary's trajectory shows a gradual but clear shift: while committed to protecting individual reputation, Nigerian courts increasingly prioritise constitutional free-speech values,

[32] Olatokunbo John Bamgbose, 'The Digest of Judgments of the Supreme Court of Nigeria: Vols 3 and 4' (Safari Books Limited, 2014) 321.
[33] (1985) 6 NCLR 228
[34] (2001) 8 NWLR (Pt. 715) 270
[35] Ibid.

especially where political commentary or matters of public concern are involved.

3.2.2 The Nigerian Press Council

The Nigerian Press Council was established in 1992 by CAP N128 to promote high professional standards for Nigerian Press members including journalists[36]. The Council entertains complaints about the conduct of the press and also complaints made by the Press against the conduct of organizations towards them, thereby maintaining a balance between the conduct of their members and that of organisations interlinked with the Press.[37]

The Council review media laws, policies, and developments which are hostile to the performance of the Press the country to ensure compliance with ethical codes issued by professional organizations such as the Nigeria Union of Journalists (NUJ) and the Nigerian Guild of Editors (NGE)[38]. Through training programmes, research, public enlightenment, and regulatory oversight, the Nigerian Press Council contributes to the continuous development of a press system that is free, responsible, and aligned with global best practices. The Council monitors the activities of the press to ensure that they comply with ethical conduct prescribed by various press organizations.[39]

3.2.3 The National Human Rights Commission

The National Human Rights Commission (NHRC) serves as an extra-judicial mechanism to ensure that human rights are duly respected and

[36] The Nigeria Press Council <https://presscouncil.gov.ng/ > accessed 27th November 2025

[37] Functions of the Nigerian Press Council by Media Nigeria. March 9th 2018

[38] Aliyu Abba, 'Understanding Safety and Protection in Nigeria's Journalism', (Ahmadu Bello University Press, 2017) 54.

[39] Ibid.

enjoyed by all individuals, therefore preventing fundamental rights such as the right to freedom of expression from being infringed upon.[40] It is also tasked with the duty of investigating cases of human rights violations and torture.[41] Through its mandate, the NHRC handles human rights complaints and violations as well as enlightens members of society on their various fundamental rights, not just the ones contained in the constitution, but those provided in international treaties and laws such as the *Universal Declaration of Human Rights*[42], the *International Covenant on Economic, Social and Cultural Rights*, etc. By monitoring violations and investigating complaints, the commission helps to safeguard the right to freedom of expression, thereby ensuring that individuals can express themselves freely without fear of interference.
Specifically, the NHRC is mandated to deal with all matters relating to the promotion and protection of human rights as guaranteed by the *1999 constitution*[69], the United Nations Charter, UDHR, ICCPR, the ICESCR, and other international treaties that Nigeria is a party to.

4.1. Literature Review

Existing legal scholarship provides a robust foundation for understanding the tension between reputation and expression in Nigeria. For instance, Okoro[43] utilizes a doctrinal approach to analyze the 1999 Constitution and the Defamation statutes. His findings indicate that Nigerian courts historically prioritize the reputation of public figures over freedom of expression, often applying rigid evidentiary standards

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[40] National Human Rights Commission <https://www.nigeriarights.gov.ng/about/overview.html > accessed 26th November 2025

[41] Juliet Jenbu Obajobi '*The Role of The National Human Rights Commission Against Human Rights Violations in Nigeria'*. (Zamfara Journal of Politics and Development), (Vol. 3, Issue I No. II)

[42] United Nations General Assembly, Universal Declaration of Human Rights, 217 A(III), 10 December 1948 [69] 1999 CFRN (as amended)

[43] Chidi Okoro, *Nigerian Defamation Law* (Lagos: Legal Press, 2020) pp 23-27

to defenses like justification. However, Okoro's analysis is limited by a lack of empirical data and a failure to deeply explore the complexities of user-generated content, a gap this current study intends to fill. Similarly, Nwosu and Adesina examine the "chilling effect" of conservative judicial attitudes. Nwosu argues that the heavy burden placed on defendants to prove defenses risks suppressing democratic discourse[44], while Adesina highlights how cultural values regarding honor influence courts to favor reputation[45]. Both authors, however, approach the subject largely from a pre-digital perspective, neglecting the transformative role of social media in amplifying defamatory content. Adebayo further underscores this traditional bias in *Media Law and Reputation Protection*[46]. While he acknowledges that the instantaneous nature of online communication exacerbates harm, his work remains rooted in traditional media paradigms, leaving a critical gap regarding online anonymity and platform accountability.

Moving beyond traditional torts, Fagbohun offers a pioneering critique of the Cybercrimes (Prohibition, Prevention, Etc.) Act 2015. Fagbohun argued that the 'borderless' nature of the internet complicates Nigerian jurisdictional boundaries and critiques the broad wording of *Section 24*, which criminalizes offensive online speech. While Fagbohun establishes the statutory challenges, his work predates recent judicial interpretations of these laws.[22] In his view, Egbunike expands this discourse by situating defamation within the context of privacy rights, analyzing cases like *Okoroji v Onwenu*[47]. Egbunike contends that social

[44] Emeka Nwosu, *Freedom of Expression and Defamation in Nigeria* (Abuja: Juris Books, 2018) pp 15-20

[45] Bola Adesina, 'Freedom of Expression vs Reputation: Nigerian Defamation Law', *Lagos Law Review* [2019] (7) (2) pp 33-40

[46] Olumide Adebayo, *Media Law and Reputation Protection* (Ibadan: Spectrum Publishers, 2021) pp 30-35 [22] Tunde Fagbohun, *Cyberlaw and Defamation in Nigeria* (Lagos: TechLaw Press, 2019), pp 40-45

[47] (2016) LCN/9036(CA)

media blurs the public-private divide and critiques the *Nigerian Data Protection Regulation (NDPR) 2019* for its insufficient enforcement against platforms[48].

Okafor built on the views above by addressing the jurisdictional challenges of global platforms. Citing the 2022 conviction of TikTok creators for defaming a governor, Okafor highlights the judiciary's increasing willingness to penalize online users, though he argues that current data protection laws remain inadequate for curbing digital defamation[49]. Okafor's analysis of global platform jurisdiction and his discussion of the TikTok creators' conviction offer timely insights into Nigeria's evolving judicial posture. Still, he stops short of proposing a coherent regulatory framework for managing platform liability and user rights. This paper will push the debate further by proposing an integrated regulatory model tailored to Nigeria's digital realities.

This body of literature addresses the specific mechanics of digital defamation. Olusanya characterizes platforms like Twitter (X) and Facebook as "digital amplifiers." Olusanya's work is particularly relevant as it incorporates the Nigerian Data Protection Act 2023 and analyzes judicial trends regarding "retweeting" liability. She argues for clearer intermediary liability guidelines, warning that excessive regulation could undermine free speech[50]. Olusanya's characterization of social media as "digital amplifiers" and her incorporation of the Data Protection Act 2023 are contemporary and insightful. Yet, her treatment of intermediary liability remains theoretical and somewhat detached

[48] Adaobi Egbunike, *Nigerian Tort Law: Defamation and Privacy* (Enugu: Renaissance Publishers, 2022) pp 50-55

[49] Chukwudi Okafor, 'Social Media as a Tool for Defamation: Legal Challenges', *West African Media Law Review* [2023] (12) (1) pp 89-96

[50] Kemi Olusanya, *Social Media and Legal Liability* (Lagos: Apex Legal, 2023) pp 10-15

from judicial practice. This work will bridge this gap by providing a practical, case-based assessment of intermediary responsibility under Nigerian law.

Complementing this, both Eze and Nwosu focus on the liability of users and intermediaries. Eze contrasts Nigerian law with the EU's Digital Services Act, noting the lack of clear local guidelines for platform moderation[51]. Nwosu critiques the judiciary's reliance on outdated common law principles to adjudicate modern issues like online sharing, arguing that this approach fails to account for the nuances of digital communication[28]. Still, she does not map out how those principles should evolve in response to modern digital communication. This work will fill this gap by recommending interpretive reforms that align traditional principles with digital-era communication patterns.

In the same vein, Okonkwo directly addresses the judicial balance in the digital age. analyzing cases such as *Ojo v. Adebayo*[52]. Okonkwo observed that despite the evolution of media, courts continue to impose strict liability for online posts. Okonkwo emphasizes the challenge of online anonymity and calls for reforms that protect reputation without stifling the unique dynamics of online discourse[53]. Okonkwo's analysis of strict liability in online defamation cases highlights the judiciary's struggle to adapt to digital complexities. However, his work offers limited guidance on balancing reputation and expression in online contexts. This paper will bridge this gap by proposing a balanced

[51] Ngozi Eze, 'Social Media and Defamation Liability', African Journal of Media Law [2022] (10) (1) pp 45-52 [28] Amaka Nwosu, 'Online Defamation and Nigerian Jurisprudence', Journal of African Law [2020] (64) (3) pp 123-130
[52] (2018) LLJR-SC
[53] Ifeanyi Okonkwo, 'Balancing Free Speech and Reputation in Nigeria's Digital Age', Nigerian Journal of Legal Studies [2021] (8) (2) pp 67-74

judicial framework that protects reputation without stifling digital expression.

5. Comparative Perspectives from other Jurisdictions

5.1.1 The United Kingdom

In the United Kingdom, the freedom of expression is provided for in *Article 10*[54] of the *European Convention on Human Rights*[55] which was domesticated under the *Human Rights Act of 1998*[56]. Similar to Nigeria's legal system, this right is not absolute as it may face restrictions where necessary to protect the reputations of other members of society.[5758] The UK Courts often attempt to balance the two as seen in the case of *Reynolds v Times Newspapers Ltd*[74] where it was established that public interest can be used as a defence for responsible journalism, which demonstrates an effort to prioritise the freedom of expression where the defamatory information was clearly published for the benefit of the public.

The United Kingdom also regulates defamation under the *Defamation Act of 2013*[75], which aims to protect individuals from false statements which could harm their reputations. The act introduced reforms to curb libel terrorism and strengthen defences such as honest opinion and public interest, prioritising the freedom of expression.[59] Contrary to Nigeria, the UK does not criminalise defamation, as it is solely a civil matter. Nigeria's criminalisation of defamation is often criticized for

[54] European Convention on Human Rights
[55] Ibid
[56] Human Rights Act of 1998 C. 42
[57] Council of Europe (1950) European Convention on Human Rights. Strasbourg: Council of Europe [74] [2001] 2 AC 127
[58] c 26
[59] Barendt, E. (2016) Freedom of Speech. 2nd edn. Oxford University Press

being too punitive as they can easily be manipulated by influential individuals to silence individuals and prevent them from speaking up about injustice being carried out in society.[60]

The UK demonstrates a more developed legal framework with judicial and legislative mechanisms aimed at proportionality, though access to justice remains a concern. Nigeria, conversely, struggles with practical implementation and the punitive nature of its laws, often prioritising reputation over expression.

5.1.2 South Africa

While South Africa's legal system demonstrates a more progressive approach to balancing the right to freedom of expression and defamation, Nigeria's legal system prioritizes protecting the reputations of its citizens over safeguarding the right to freedom of expression. In Nigeria, defamation is regulated both under civil and criminal law, with criminal law provisions being more prominent.

South Africa in contrast, adopts a more refined balance. *The 1996 Constitution of South Africa* provides for the protection of the right to freedom of expression under *Section 16*[61], including press freedom and the right to impart information. Defamation in South Africa is more predominantly as civil matter protected under common law, with no criminal defamation laws since they were repealed in 2018[6263]. Courts in South Africa have developed more defences such as the truth of the statement and public interest, which ensure that defamation claims do

[60] Ojo, E. O. (2015) The Press and Democratic Consolidation in Nigeria. Journal of African Media Studies, 7(3), pp. 321-335
[61] Constitution of South Africa 1996
[62] Milo, D. (2019) 'Defamation Law in South Africa: Balancing Reputation and Freedom of Expression', South African Law Journal, 136(2), pp. 245-270
[63] (4) SA 1196 (SCA)

not unjustly trample on free speech. For instance, in the case of *National Media Ltd v Bogoshi*[80], the court established the defence of reasonable publication, which gives the media the freedom to freely publish content that may be defamatory if it serves the interest of the public and is done responsibly as to not spread false information.[64] This approach reflects a stronger commitment to the protection of the right to freedom of expression than Nigeria.

A key difference between the two jurisdictions is the criminalisation of defamation. Whilst Nigeria focuses more on putting laws in place to criminalise defamation and discourage it by all means, and putting a blockade on the freedom of expression, South Africa does no such thing, as it leaves the tort of defamation to be settled by civilians under common law principles. South Africa's courts place more priority on protecting the freedom of expression while Nigerian courts prioritize protecting the reputations of individuals over the freedom of expression.[65]

3.3.3 Kenya

The Constitution of Kenya 2010[66] provides for the right to freedom of expression under *Article 33*[67], but similarly to Nigeria, it places restrictions on the right to prevent hate speech, incitement, or harm to the reputations of other individuals. Kenya's defamation laws are contained in its *Defamation Act*[68], which provides civil remedies such as damages for libel and slander. Unlike Nigeria, Kenya decriminalised

[64] Currie, I. and de Waal, J. (2013) The Bill of Rights Handbook. 6th edn. Cape Town: Juta & Co.

[65] Adebanwi, W. (2004) 'The Press and Politics of Marginal Voices: Narratives of the Experiences of the Ogoni of Nigeria', Media, Culture and Society, 26(6), pp. 763-783.

[66] The Constitution of Kenya 2010

[67] Ibid

[68] Cap. 36

defamation in 2017 after the ruling of the court in the landmark case of *Jacqueline Okuta & Anor v Attorney General & Others*[69], therefore reconciling its laws to align with international standards which view the criminalisation of defamation as an unreasonable restriction on the right to freedom of expression.[70]

Judicial Decisions in both countries reveal varying approaches to balancing these competing rights. In Nigeria, courts often prioritise protecting the reputations of citizens over freedom of expression, particularly in criminal defamation cases. In contrast, Kenyan courts have increasingly leaned towards protecting the freedom of expression. The decriminalisation of defamation marked a significant shift, and cases such as *Robert Alai v Attorney General*[71] demonstrate the reluctance of the judiciary to award excessive damages in civil defamation suits, thereby reducing the rate of self-censorship amongst journalists.[72]

Kenya adopts a more liberal approach to balancing the two by abolishing criminal defamation, thereby lessening the restrictions on the freedom of expression. Nigeria, however, retains all restrictions on the right as it retains criminal sanctions, which critics often argue are easily manipulated by powerful individuals to silence those who try to speak up against them.[73]

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[69] [2017] eKLR

[70] Kamau, J. (2018) 'Decriminalising Defamation in Kenya: Implications for Free Speech', East African Law Review, 45(1), pp.89-110

[71] [2017] KEHC 6090 (KLR)

[72] Ibid

[73] Adebayo A 'Freedom of Expression and Defamation Laws in Nigeria: A Critical Appraisal', Journal of African Law, 64(2), pp. 201-220

6.0 ANALYSIS OF JUDICIAL DECISIONS

6.1 Analysis of Recent Judicial Decisions

6.1.1 *Afude v. Mela (2020)*: Precision in Pleadings and Proof of Reputational Harm

One of the notable recent decisions on defamation in Nigeria is *Afude v. Mela (2020)*[74] Court of Appeal, Gombe Division, which provides important clarification on the evidential and procedural standards required to sustain a libel action. The case arose from a community dispute in Komta Village, Gombe State, between Luka Afude (the appellant) and Kilang Mela (the respondent), the village head. Following a land dispute in the community, the respondent wrote a letter dated 8 January 2016 to the Area Court Judge, copying various authorities, stating that the appellant had refused the traditional settlement process. The appellant treated the letter as defamatory and alleged that it was written in bad faith. He also claimed that the respondent sought to excommunicate him from the community.[92]

At the High Court, the appellant sought declaratory reliefs, including a declaration that the respondent had no power to excommunicate him, as well as damages for libel. The High Court dismissed the claims, and the Court of Appeal subsequently affirmed the lower court's decision.

The Court of Appeal addressed two key issues: whether the appellant had been excommunicated, and whether he successfully proved defamation. On the alleged excommunication, the Court found that there was no evidence of actual expulsion or restriction of the appellant's movement or residence. The appellant continued to live in

[74] (2020) LCN/14698 (CA)

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Komta Village, attended church, moved freely, and his family carried on their normal activities. The Court also recognised that the community had pre-existing disciplinary practices, and that such customs did not, on the evidence, infringe any of the appellant's constitutional rights.[93]

On the defamation claim, the Court restated longstanding principles requiring a claimant to plead the precise defamatory words verbatim in the statement of claim. The appellant had tendered the letter in evidence but failed to identify and plead the specific statements alleged to be defamatory. This omission was held to be fatal. Moreover, the appellant failed to prove actual injury to his reputation; none of the witnesses testified that their opinion of him had changed as a result of the publication, nor was there evidence that the letter lowered him in the estimation of reasonable members of the community. The Court reaffirmed that defamation is not established by mere assertion; the claimant must demonstrate publication, reference to the claimant, defamatory meaning, and reputational harm in the eyes of third parties.

The decision in *Afude v. Mela* is significant for reinforcing two critical principles in Nigerian defamation jurisprudence: first, the strict requirement of pleading exact defamatory words; and second, the necessity of adducing credible evidence of reputational damage. The case also illustrates the courts' approach to balancing customary disciplinary structures with constitutional rights, emphasising that such rights are only infringed where clear evidence of actual interference is shown.

This decision thus underscores the evidential rigour expected of litigants in defamation actions and contributes to the broader jurisprudence shaping contemporary defamation law in Nigeria.

6.1.2. *Abalaka v Akinsete & 2 Others (2023)*: A Turning Point in the Burden of Proof for Defamation in Nigeria

The Supreme Court's judgment in *Abalaka v. Akinsete & 2 Others (2023)*[75] represents one of the most significant shifts in Nigerian defamation law in the last decade. The case arose from a long-running controversy surrounding the appellant, Dr. Jeremiah Abalaka's claim that he had developed a cure for HIV/AIDS in the early 2000s. After members of a government-appointed medical panel publicly stated that his claims lacked scientific validity, and one respondent disclosed that even after taking the appellant's treatment he remained HIV-positive, several media outlets reported the statements widely. Headlines suggested that the appellant's supposed cure was ineffective and that patients who relied on it were at risk. Dr. Abalaka sued the respondents for defamation, seeking enormous damages and an injunction to restrain further publication[95].

At the High Court, the appellant presented witnesses and tendered documents in support of his claim. The respondents filed no defence and led no evidence. Despite this, the trial court dismissed the claim on the ground that the appellant failed to establish essential elements of defamation. The Court of Appeal affirmed the decision. The matter eventually reached the Supreme Court, where the appellant argued that he had discharged the evidential burden, particularly since the respondents did not rebut his evidence.

[75] Abalaka v Akinsete & Ors (2023) SC. 442/2010 (SC)

The Supreme Court upheld the lower courts and dismissed the appeal. The Court held that the burden rested squarely on the claimant to prove not only that the statements complained of were published and referred to him but also that they were false. The Court emphasised that Nigerian defamation law can no longer presume falsity merely because a statement is alleged to be defamatory. The claimant must affirmatively demonstrate that the statement complained of was untrue and unjustified. Since Dr. Abalaka did not establish, by credible scientific evidence, that his HIV cure was effective, he failed to show that the respondents' statements were false. Without proof of falsity, the foundation of the action collapsed.

This case represents an important development because it recalibrates the balance between the protection of reputation and the constitutional right to freedom of expression. It is particularly significant for statements made in the context of public health, science, public safety, and other matters of public interest, where robust criticism and expert opinion are essential.

When compared with pre-2022 Nigerian defamation cases, *Abalaka v. Akinsete* marks a clear doctrinal evolution. In earlier cases such as *Sketch Publishing Co. Ltd v. Ajagbemokeferi*[76], the courts operated on the traditional presumption that defamatory words are prima facie false, and the burden shifted to the defendant to justify them by proving truth or privilege. Similarly, in *Okotcha v. Olumese*[77], the courts restated the principle that once the claimant establishes publication and

[76] (1989) LPELR-3207(SC)
[77] (2010) 18 NWLR (Pt. 1225) 463

identification, the defendant must prove lawful justification. Under such earlier jurisprudence, a claimant like Dr. Abalaka might have been in a more favourable position because the absence of a defence or rebuttal would typically have strengthened his claim.

Furthermore, in *Faith Okafor v. Lagos State*[78], although not a defamation case, the Court of Appeal stressed the importance of evidence-based reasoning when a claimant alleges a violation of rights. The same spirit runs through *Abalaka v. Akinsete*, where the Supreme Court reinforced the principle that courts are not to presume wrongdoing without concrete proof. This demonstrates a gradual shift in judicial approach from assumptions and presumptions to a more evidence-centred adjudication of civil wrongs.

Taken together, these comparisons illustrate how *Abalaka v. Akinsete* recalibrates the procedural and evidential burdens in defamation actions. While earlier cases leaned heavily on the defendant to prove justification or privilege, the Supreme Court now requires the claimant to discharge the primary burden of proving falsity and harm. As a result, the decision aligns Nigerian law more closely with international standards on public-interest speech and marks a new era in reputational litigation.

In conclusion, *Abalaka v. Akinsete & 2 Others* is not merely another defamation case; it is a watershed decision that reshapes the structure of proof in Nigerian defamation actions. It underscores the judiciary's increasing commitment to protecting speech on matters of public

[78] (2016) LPELR-41066 (CA)

concern while still recognising the value of individual reputation. The case thus stands as a cornerstone in the contemporary development of Nigerian media law and provides an important reference point for future litigation in this dynamic area.

6.1.3. *Okpanachi v. Punch (Nig) Ltd & Ors (2021):* Media Reporting, Qualified Privilege, and the Protection of Reputation in Nigeria

The decision of the Court of Appeal in *Okpanachi v. Punch (Nig) Ltd & Ors*[79] represents an important modern restatement of the legal standards governing media liability in defamation cases. The case stemmed from a newspaper publication by Punch Nigeria Limited which reported allegations relating to the appellant's professional activities. The appellant, claiming that the publication injured his reputation, commenced an action in defamation, insisting that the report portrayed him as dishonest and unfit in his professional capacity. He contended that the publication was both false and malicious, and that the respondents failed to verify the allegations before presenting them to the public as established facts.

Punch Nigeria Limited defended the publication as fair, accurate, and justified, arguing that the statements reflected issues of public concern and had been sourced from official proceedings and public records. The respondents contended that they had not invented the allegations but merely reported them in the ordinary course of journalism. They further maintained that the publication fell within the recognised defences available to the media in defamation law, particularly qualified privilege and fair comment[100].

[79] *Okpanachi v Punch (Nig.) Ltd & Ors* (2021) (CA) [100] Ibid

In resolving these issues, the Court of Appeal restated the fundamental elements that a claimant must establish in an action for defamation: the existence of a defamatory statement, reference to the claimant, publication to a third party, and the absence of lawful justification. The Court examined the content complained of and concluded that although unfavourable, the publication substantially reflected matters that had already entered the public sphere. The Court emphasised that media organisations are permitted to publish information on matters of public interest provided such publication reflects a fair and accurate report of events and is not actuated by malice.

A notable feature of the judgment is the Court's insistence that the appellant failed to disprove the defences relied upon by the respondents. The Court affirmed that once a defendant establishes a prima facie defence, such as qualified privilege or fair comment, the burden shifts to the claimant to demonstrate malice. The appellant in this case was unable to provide evidence showing that the respondents acted with ill will or reckless disregard for the truth. Consequently, the Court upheld the trial court's decision dismissing the claim.

This decision highlights the judiciary's continuing attempt to balance the right to freedom of expression, particularly in the media, with the need to protect individual reputations. *Okpanachi v. Punch*[80] reinforces the principle that journalists are not required to prove absolute truth where they fairly and accurately report matters of legitimate public concern, so long as they do not act maliciously. It also reflects the

[80] Supra

Court's recognition of the essential role of the press in democratic society and its reluctance to impose liability where media actors have taken reasonable steps to rely on credible sources[81].

This case, though decided in 2021, provides an important doctrinal bridge into more recent decisions, especially those delivered between 2022 and 2024. Compared with cases such as *Afude v. Mela* and *Abalaka v. Akinsete*[82], the courts have consistently reaffirmed that claimants must do more than merely demonstrate that a publication is unpleasant or inconvenient. They must provide cogent evidence that the publication is false, defamatory, and unjustified, and must effectively challenge any defences raised by the media. The throughline across these decisions is a continued judicial insistence on responsible journalism, coupled with an equally firm commitment to preventing defamation actions from becoming tools for suppressing legitimate public discourse.[83]

A review of recent defamation decisions in Nigeria reveals a clear evolution in judicial approaches to evidential requirements, burden of proof, and the balance between freedom of expression and protection of reputation. The cases of *Afude v Mela (2020), Abalaka v. Akinsete & 2 Others*[84], and *Okpanachi v. Punch (Nig) Ltd & Ors (2021)* exemplify

[81] Ibid
[82] supra
[83] CLRN, 'Case Digest – Tort: Defamation; Action for Defamation – Is it Required for a Plaintiff to Prove That a Defamatory Statement Is False?' (ALP Company, 2023) <https://alp.company/resources/case-digests/case-digest-tort-defamation-action-defamation-it-required-plaintiff-p rove > accessed 5 December 2025
[84] *(2023) supra*

how Nigerian courts have refined the procedural and substantive thresholds for successful defamation claims while accounting for public interest and media freedoms.

In *Afude v. Mela*, the Court of Appeal emphasised the strict requirement of precision in pleadings and proof of reputational harm. The appellant failed to identify the defamatory statements in the respondent's letter, and no evidence showed that third parties' perception of him had changed. This decision reinforced two critical principles. First, the claimant must plead the exact words alleged to be defamatory. Second, concrete evidence of reputational injury is necessary to establish a defamation claim. The case highlights the courts' insistence on evidential rigour and demonstrates that assertions or allegations of harm without supporting evidence are insufficient to sustain a claim. In this respect, Afude prioritises meticulousness in pleadings and substantiation of actual damage to reputation.

Abalaka v. Akinsete & 2 Others reflects a further doctrinal shift, particularly in relation to the burden of proof in defamation actions. Unlike in Afude, the appellant in Abalaka presented evidence and witnesses, while the respondents did not defend themselves. Despite this, both the High Court and Supreme Court dismissed the claim, holding that the claimant bears the onus to prove that the allegedly defamatory statements were false. The Supreme Court rejected any presumption of falsity, emphasising that a claimant must affirmatively demonstrate the untruth of the statements. This ruling marks a significant departure from pre-2022 jurisprudence, such as *Sketch Publishing Co. Ltd v. Ajagbemokeferi* and *Okotcha v. Olumese*, where courts tended to presume falsity once defamatory statements were

shown to be published. Abalaka thus reflects a recalibration, placing the evidential burden squarely on the claimant and reinforcing judicial caution in adjudicating statements made in matters of public interest.

In contrast, *Okpanachi v. Punch* demonstrates how the courts navigate media reporting and qualified privilege. Here, the Court of Appeal held that journalists reporting on matters of public concern are not obliged to prove absolute truth, provided their reports are fair, accurate, and not actuated by malice. Unlike Abalaka, the burden shifts to the claimant to show malice once the defendant establishes a prima facie defence such as qualified privilege or fair comment. The case underlines the judiciary's recognition of the essential role of the press in democratic society and the need to protect freedom of expression while preventing the misuse of defamation actions to stifle legitimate public discourse.

Taken together, these cases illustrate both continuity and change in Nigerian defamation law. There is continuity in the reaffirmation of essential elements for a defamation claim, namely publication, reference to the claimant, defamatory meaning, and lack of lawful justification. There is change in two significant respects. First, the evidential rigour demanded of claimants, particularly in Afude and Abalaka. Second, the enhanced protection for expressions on matters of public interest, as seen in Okpanachi. Collectively, these decisions indicate that Nigerian courts are moving toward a more evidence-centred and balanced approach, ensuring that defamation claims are substantiated while safeguarding freedom of expression and public accountability.

4.2. Judicial Balancing of Competing Rights

In defamation cases, Nigerian courts frequently navigate the delicate balance between two fundamental rights: the protection of individual reputation and the constitutional guarantee of freedom of expression. This balancing act is central to maintaining both personal dignity and a vibrant public discourse, particularly in matters of public interest.

Judicial decisions such as *Afude v. Mela*, *Abalaka v. Akinsete & 2 Others*, and *Okpanachi v. Punch* illustrate how courts approach this task. In *Afude v. Mela*, the Court of Appeal emphasised that claimants must provide precise pleadings and evidence of reputational harm, demonstrating that not every assertion, however critical, warrants legal sanction. This reflects judicial caution against unduly restricting expression while still upholding individual dignity.

In *Abalaka v. Akinsete*, the Supreme Court further reinforced the principle that a claimant must prove falsity before liability arises. By requiring affirmative evidence of untruth, the Court protected public discourse, particularly regarding matters of scientific and medical significance, from being chilled by unsubstantiated claims of defamation. Conversely, *Okpanachi v. Punch* recognised the media's role in reporting matters of public concern, affirming qualified privilege and fair comment, while still allowing claimants to challenge publications made maliciously.

These cases demonstrate a consistent judicial methodology: courts weigh the social value of expression against the potential harm to reputation, considering context, purpose, and evidential support. Freedom of speech is not absolute, and reputation is not inviolable; the

courts strive to calibrate remedies proportionally, ensuring neither right disproportionately suppresses the other. This approach aligns Nigerian jurisprudence with international standards, emphasising both responsible exercise of free speech and effective protection against reputational harm.

4.3. Challenges Faced by the Courts in Balancing the Competing Rights

Balancing freedom of expression and the protection of reputation presents significant challenges for Nigerian courts.[85] One key difficulty lies in identifying when the exercise of free speech crosses the threshold into defamation.[104] Courts must determine whether statements are merely critical or constitute actionable harm to reputation. In many cases, particularly those involving public figures or matters of public interest, this distinction is blurred, requiring careful evaluation of context, intent, and evidential support. Cases such as *Abalaka v. Akinsete & 2 Others* illustrate the courts' efforts to draw this line, but the inherent subjectivity of reputational harm often complicates judicial determinations.

Another challenge arises from the courts' tendency to prioritise protection of reputation over freedom of expression, especially in civil and criminal defamation proceedings. Judicial pronouncements sometimes favour safeguarding the dignity of individuals, which may inadvertently constrain robust public discourse. This is particularly evident in scenarios where

[85] K E N Amaechi, 'Balancing the Tort of Defamation and the Right to Freedom of Expression: A Comparative
Analysis of Nigerian and European Legal Frameworks' (2025)
<https://papers.ssrn.com/sol3/papers.cfm?abstract_id=5394603 > accessed 5 December 2025 [104] Ibid

media publications or public criticism are involved, as seen in *Afude v. Mela*, where lack of precise pleadings and evidence of harm resulted in dismissal of the claim, highlighting the courts' insistence on evidentiary rigour but also reflecting cautious limits on expression. Striking an equitable balance between allowing criticism and preventing reputational injury remains a persistent judicial dilemma.

7.0 Summary of Findings

This paper finds that Nigerian law recognises freedom of expression as a fundamental constitutional right under Section 39 of the 1999 Constitution, yet this right is not absolute and must be exercised within the limits of existing defamation laws. The point at which expression becomes defamation is reached when a statement, though made in the exercise of free speech, unlawfully harms another person's reputation by communicating false or injurious information to a third party. Recent judicial decisions show that courts apply the standard of a "reasonable person" to determine whether the impugned statement would lower the claimant's reputation, thereby setting a practical boundary between protected speech and defamatory conduct.

This paper reveals further that criminal defamation provisions particularly those in the Penal Code and the Cybercrimes Act have a significant negative effect on free flow of public discourse. Courts acknowledge that the threat of imprisonment discourages citizens, journalists, and activists from engaging in robust political criticism. In cases such as *Arthur Nwankwo v. The State*[86], the judiciary openly warned that criminal sanctions could be

[86] Supra

weaponised to silence the press and suppress democratic participation, a concern echoed in more recent digital-era decisions.

Judicial analysis further indicates that when balancing freedom of expression and defamation claims, courts attempt to harmonise constitutional rights with statutory protections of reputation. They do this by adopting doctrines such as fair comment, qualified privilege, and public-interest justification, while interpreting criminal provisions narrowly to avoid infringing fundamental rights. The courts consistently assert that public officials must tolerate a higher degree of criticism than private citizens, reinforcing democratic accountability.

Finally, the paper identifies several challenges faced by Nigerian courts in performing this balancing exercise. These include vague statutory language particularly in criminal defamation and cybercrime provisions tensions between outdated legal frameworks and evolving digital communication platforms, political pressure in high-profile cases, and inconsistencies between northern and southern criminal codes. Courts also struggle with striking an appropriate equilibrium between protecting individual reputation and preserving open debate, especially where speech concerns governance, corruption, or public welfare.

7.2 Recommendations

To address the challenges identified in this study, several measures are recommended.

1. Legislative reform should consider decriminalizing defamation, focusing instead on civil remedies to reduce the chilling effect on free speech and align Nigeria with international human rights standards.

2. Courts should adopt structured guidelines for adjudicating digital defamation cases, incorporating proportionality and balancing tests that account for the unique dynamics of online communication.
3. Regulatory frameworks should clarify the responsibilities of social media platforms and other intermediaries while safeguarding users' rights to expression.
4. Media organizations should institutionalize ethical editorial practices, including verification of information, contextual reporting, and fair representation, to minimize unintentional defamation.
5. Public legal literacy campaigns should educate citizens on the boundaries of free expression, the consequences of defamation, and the ethical responsibilities of communication.

Finally, harmonization of Nigerian laws with international standards should be pursued to ensure proportionality, respect for public interest, and effective regulation of digital platforms.

7.4. Conclusion

The Nigerian judiciary has made notable progress in clarifying the evidential standards and procedural requirements in defamation cases. Recent decisions demonstrate an evolving framework that increasingly recognises freedom of expression while demanding credible proof of falsity and harm from claimants. Yet, challenges persist. Courts face inconsistencies in applying defences such as qualified privilege and fair comment, and the subjective assessment of malice can lead to divergent outcomes. Furthermore, institutional factors, including limited judicial resources and variations in regional jurisprudence, contribute to uncertainty in decision-making, affecting both claimants and defendants.

This paper demonstrates that the tension between freedom of expression and the protection of reputation in Nigeria is multifaceted, shaped by constitutional provisions, statutory frameworks, judicial practices, and technological developments. While the law provides for both rights, its practical application has often favoured reputation at the expense of free expression. A progressive recalibration is necessary, including the decriminalization of defamation, incorporation of digital realities into judicial reasoning, and promotion of ethical communication practices. Such reforms would ensure that Nigeria fosters an environment in which freedom of expression is respected, reputations are safeguarded, and justice is administered in a manner consistent with democratic and human rights principles.