

ONLINE DEFAMATION IN NIGERIA: PROTECTING REPUTATION OR SHIELDING THE POLITICAL CLASS FROM DEMOCRATIC SCRUTINY?

Boniface Ebele Ewulum*

Damian O. Obiejesi**

Abstract

The existence of modern digital communication technologies has comprehensively altered public discourse in Nigeria. Social media platforms have democratized access to information and expanded opportunities for citizen participation in governance. However, these developments have also facilitated the rapid dissemination of defamatory content capable of causing substantial reputational injury. Nigerian law addresses these challenges through a combination of constitutional guarantees, criminal statutes, civil remedies, and cybercrime legislation, most recently augmented by the Cybercrimes (Prohibition, Prevention, etc.) (Amendment) Act 2024. This article interrogates the extant legal framework governing online defamation in Nigeria and the increasing use of defamation actions and cybercrime complaints by members of the political class. It argues that while reputation remains an important legal interest deserving protection, the practical operation of online defamation laws increasingly favors political actors and public office holders in a manner that can undermine democratic accountability. Drawing on recent judicial decisions and comparative jurisprudence, the article concludes that legislative and judicial reforms are necessary to preserve freedom of expression while adequately protecting genuine reputational interests.

* Bonface Ebele Ewulum, PhD, Department of Public Law, Faculty of Law, Nnamdi Azikiwe University, Awka, Nigeria; E mail: be.ewulum@unizik.edu.ng

** Damian O. Obiejesi Esq, Private Legal Practitioner of Max Trust Attorneys, 45 Dr. Billy Okoye Boulevard, Agu, Awka, Anambra State, obiejesidamian@gmail.com,

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1. INTRODUCTION

The internet has renewed communication and information dissemination across the globe. In Nigeria, social media platforms such as Facebook, X (formerly Twitter), Instagram, WhatsApp, TikTok, Telegram and YouTube have transformed political engagement and democratic participation. The emergence of these platforms has given citizens unprecedented opportunities to engage with public officials, criticize government policies, expose corruption, and participate in public affairs.¹

While these developments have strengthened democratic engagement, they have also generated new challenges. Information capable of injuring reputation may now be disseminated instantaneously to millions of persons and preserved indefinitely in digital form. Consequently, online defamation has become one of the most significant legal issues confronting contemporary Nigerian jurisprudence.²

The increasing use of defamation actions and cybercrime complaints by politicians, public officials and politically exposed persons raises a fundamental constitutional question: do contemporary online defamation laws genuinely protect reputation, or are they now mechanisms for insulating political actors from democratic scrutiny? The enactment of the Cybercrimes (Prohibition, Prevention, etc.) (Amendment) Act 2024 has sharpened this question, introducing provisions with significant implications for online speech. This article

¹ E Barendt, *Freedom of Speech* (2nd edn, Oxford University Press 2005) 12; see also T Gibbons, *Regulating the Media* (2nd edn, Sweet & Maxwell 1998) 57.

² U Iwobi, 'Online Communication and Defamatory Liability in Nigeria' (2020) 12 *UILJ* 101, 103.

examines these issues through an analysis of constitutional provisions, statutory frameworks, recent judicial decisions, and comparative jurisprudence, before recommending a principled framework for reform.

2. CONCEPTUAL FRAMEWORK

2.1 Defamation

Defamation generally refers to the publication of a false statement concerning another person which tends to lower that person in the estimation of right-thinking members of society.³ The Supreme Court in *Benue Printing and Publishing Corporation v Gwagwada* defined a defamatory statement as one which exposes a person to hatred, contempt, ridicule or causes that person to be shunned and avoided by right-thinking members of society.⁴

Traditionally, defamation is divided into libel and slander. Libel refers to defamatory matter published in permanent form, while slander concerns defamatory matter published in transient form.⁵ Since online publications are electronically stored and accessible to an indefinite audience, defamatory statements made through social media platforms generally constitute libel — a classification which carries important procedural and evidentiary consequences.

2.2 Reputation as a Legally Protected Interest

The law protects reputation because it constitutes an integral dimension of human dignity. A person's reputation influences social standing, professional opportunity, commercial relationships and

³ IE Sagay, *Nigerian Law of Defamation* (Spectrum Books 1996) 8; *Parmiter v Coupland* (1840) 6 M&W 105.

⁴ *Benue Printing & Publishing Corporation v Gwagwada* (1989) 4 NWLR (Pt 116) 439, 451 per Nnaemeka-Agu JSC. See also *Sketch Publishing Co. Ltd v Ajagbemokeferi* (1989) 1 NWLR (Pt 100) 678 (SC)

⁵ Sagay (n 3) 10; *Nsirim v Nsirim* (1990) 3 NWLR (Pt 138) 285 (SC); *Youssouf v MGM Pictures Ltd* (1934) 50 TLR 581.

community acceptance. Consequently, the protection of reputation has long been recognised as a legitimate objective of law, justifying circumscribed restrictions upon freedom of expression. In *Ogbonnaya v FBN Plc*⁶ Obaseki Adejumo JCA stated that reputation ‘*is the impression a third-party forms of the Plaintiff allegedly defamed hat is relevant and not that which the Plaintiff forms of himself*’. In *Duyile v Ogunbayo & Sons Ltd*,⁷ reputation was seen as the estimation in which others hold him as against the good opinion, he has of himself.

2.3 Freedom of Expression and Democratic Accountability

Freedom of expression occupies a central position within constitutional democracies. It facilitates political participation, governmental accountability, the exposure of wrongdoing and the conduct of open public debate. Democracy thrives where citizens can question public officials, challenge government policies, and disseminate information without fear of disproportionate legal retaliation. It is actually the position that, in Nigeria currently, citizens are asking questions about the security of lives and property, which has so far characterized the government of the day. Any legal framework regulating speech must therefore carefully balance the protection of individual reputation against the constitutional imperative of preserving democratic accountability. This tension lies at the heart of this present discourse.

3. CONSTITUTIONAL DIMENSIONS OF ONLINE DEFAMATION

Section 39(1) of the Constitution of the Federal Republic of Nigeria 1999 (as amended) affirms the right to freedom of expression. The provision grants every person the right, as a matter of freedom, to hold opinions and to receive and impart ideas and information without

⁶ (2015) LPELR-24731(CA)

⁷ (1988) 1 NWLR (Pt 72) 601

interference.⁸ It is the position of the Court of Appeal in *Aviomoh v COP & Anor*⁹ thus,

It is correct that the freedom of expression and freedom to hold opinions are rights accruing to Nigerian Citizens. Section 39(1) of the 1999 Constitution as amended provides:
- "Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

The right, however, is not absolute. Section 45 of the Constitution authorizes restrictions that are reasonably justifiable in a democratic society, especially as it relates to the interest of defence, public safety, public order, public morality and the protection of the rights and freedoms of others.¹⁰ In *Aviomoh's* case,¹¹ it was held that,'

Section 45(1) of the Constitution is very clear in its limitations. It states thus - "Nothing in Sections 37, 38, 39, 40 and 41 of the Constitution shall invalidate any law that is reasonably justifiable in a democratic society, in the interest of defence, public safety, public order, public morality or public health; or for the purpose of protecting the rights and freedom of other persons." What the above means is that Section 39 of the 1999 Constitution as amended, which is relevant for our purposes here, cannot operate to invalidate any law promulgated by any legislative body when that law is made in the interest of defence, public safety, public order, public morality, public health or for the purpose of protecting the rights and freedom of other persons. So, while Section 39(1) of the Constitution entitles a person to freedom of expression and imparting ideas and information, it is not a blanket right. It must not be utilized or invoked in such a way that it offends public safety, order, morality and health,

⁸ Constitution of the Federal Republic of Nigeria 1999 (as amended) ('CFRN') s 39(1).

⁹ (2014) LPELR-23039(CA)

¹⁰ CFRN s 45(1).

¹¹ *Supra*

and it must not be injurious to the rights and freedom of other persons.¹²

The challenge confronting courts is therefore to determine the point at which legitimate criticism becomes actionable defamation. In *DPP v Chike Obi*, the Supreme Court emphasized the importance of the right to criticize government within democratic societies, cautioning against an overbroad criminalization of political speech.¹³ The decision remains significant because it underscores the constitutional value of political expression and the heightened standard of justification required before such speech may be suppressed.

One can safely submit that public officials voluntarily place themselves in positions of public trust and, in doing so, accept a greater degree of public scrutiny than ordinary citizens. Thus, their conduct in office, the discharge of public funds and the exercise of governmental power are matters of legitimate public interest. Consequently, restrictions upon political speech directed at public office holders must be approached with particular caution and measured against a rigorous standard of constitutional proportionality.

4. STATUTORY REGULATION OF ONLINE DEFAMATION IN NIGERIA

4.1 Criminal Code Act

Sections 373 to 381 of the Criminal Code Act regulate criminal defamation in Southern Nigeria. Section 373 defines defamatory matter as any matter likely to injure the reputation of another person by exposing that person to hatred, contempt or ridicule or likely to damage that person's professional reputation.¹⁴ Section 375 criminalizes the publication of defamatory matter and prescribes

¹² Per ABUBAKAR DATTI YAHAYA, JCA (Pp 15 - 17 Paras F - D)

¹³ *DPP v Chike Obi* [1961] 1 All NLR 186, 191 per Brett Ag CJF.

¹⁴ Criminal Code Act, Cap C38 LFN 2004, s 373.

punishment for offenders.¹⁵ The existence of criminal defamation alongside civil remedies has long been criticized as disproportionate, particularly where the primary victim is a public figure seeking to suppress critical commentary. Instances of this abound in Nigeria.¹⁶

4.2 Penal Code Act

In Northern Nigeria and the Federal Capital Territory, criminal defamation is governed by sections 391 to 395 of the Penal Code Act, the provisions of which are substantially similar to those contained in the Criminal Code.¹⁷ These statutory provisions predate the internet and make no express provision for the distinctive features of online communication — including virality, anonymity and cross-jurisdictional reach.

4.3 Cybercrimes (Prohibition, Prevention, etc.) Act 2015 and the 2024 Amendment

The Cybercrimes Act 2015 represent the most significant statutory intervention in the regulation of online conduct. Section 24 of the original Act criminalized cyberstalking and the transmission of electronic communications intended to cause annoyance, intimidation, hatred, ill will or needless anxiety.¹⁸ The Cybercrimes (Prohibition, Prevention, etc.) (Amendment) Act 2024 — enacted in response to widespread criticism of section 24's breadth — modified the provision, purportedly narrowing its scope to target genuinely harmful conduct while affording greater protection to legitimate expression. Practitioners and civil society organizations remain divided as to whether the amendment sufficiently addressed the constitutional

¹⁵ Ibid, s 375; see also R Cooray, *Defamation and Freedom of Speech in the Commonwealth* (Martinus Nijhoff 2010) 88.

¹⁶ See the cases involving *Erisco Foods Ltd* and *Chioma Okoli*; *David Umahi* and *Tracy Ohiri* among others.

¹⁷ Penal Code Act, Cap P3 LFN 2004, ss 391-395.

¹⁸ Cybercrimes (Prohibition, Prevention, etc.) Act 2015, s 24(1)(b).

objections or merely repositioned the same chilling apparatus under revised language.¹⁹

The broad language of section 24 (as originally enacted and as amended) has generated considerable controversy. Critics have argued persuasively that the provision extends beyond cybercrime properly understood and overlaps, dangerously, with traditional defamation law creating cumulative exposure for online speakers that no analogous speaker in print media would face²⁰.

5. JUDICIAL APPROACH TO ONLINE DEFAMATION

In *Benue Printing and Publishing Corporation v Gwagwada*, the Supreme Court articulated the classical Nigerian definition of defamation and clarified the circumstances under which a publication becomes actionable.²¹ In *Sketch Publishing Co Ltd v Ajagbemokeferi*, the Supreme Court reaffirmed that words must be interpreted according to the meaning which reasonable members of society would attach to them, taken in their natural and ordinary sense.²² Similarly, in *Nsirim v Nsirim*, the Court emphasized that defamatory meaning may arise not only from express words but also from insinuations and innuendoes.²³

The constitutionality of section 24 of the Cybercrimes Act was considered by the Court of Appeal in *Okedara v Attorney-General of*

¹⁹ Cybercrimes (Prohibition, Prevention, etc.) (Amendment) Act 2024, s 24 (as amended); see E Akintunde, 'Cybercrime Law Reform in Nigeria: Assessing the 2024 Amendments' (2024) 6 NJCL 44, 49.

²⁰ Nnaemeka Onyekachi, 'SERAP asks ECOWAS Court to 'repeal' Section 24 of Nigeria's Cybercrimes Act, published on Nairametrics on January 12, 2025 available online at <https://nairametrics.com/2025/01/12/serap-asks-ecowas-court-to-repeal-section-24-of-nigeriass-cybercrimes-at/>? accessed on 12 June, 2026.

²¹ *Benue Printing & Publishing Corporation v Gwagwada* (supra) 453

²² *Sketch Publishing Co Ltd v Ajagbemokeferi* [1989] 1 NWLR (Pt 100) 678, 690 per Karibi-Whyte JSC.

²³ *Nsirim v Nsirim* [1990] 3 NWLR (Pt 138) 285, 297.

the Federation, where the Court upheld the provision as a permissible restriction upon freedom of expression under section 45 of the Constitution.²⁴ The reasoning has attracted scholarly criticism for its failure to apply a rigorous proportionality analysis and for insufficient engagement with the chilling effect doctrine²⁵.

A significant development occurred in *Aviomoh v Commissioner of Police*, where the Supreme Court recognized, per Ogunwumiju JSC that criminal defamation had been abolished under the Criminal Law of Lagos State 2011 which is in line with modern global trends²⁶ The decision reflects an emerging decriminalization trend within Nigerian states, several of which have enacted reformed criminal laws excising defamation from the catalogue of criminal offences.²⁷

6. ONLINE DEFAMATION AS AN INSTRUMENT OF POLITICAL POWER

One of the most controversial developments in contemporary Nigerian legal practice is the increasing reliance upon defamation laws and section 24 complaints by political office holders. While politicians possess the same right to protect their reputation as other citizens, serious concerns arise where legal processes are utilized primarily to discourage criticism and suppress public discourse. The combination of substantial financial resources, political influence and access to

²⁴ *Okedara v Attorney-General of the Federation* (2019) LPELR-47298 (CA); critically discussed in F Okoye, 'Section 24 of the Cybercrimes Act and Constitutional Rights' (2020) 8 *NIALS JIL* 77.

²⁵ F. Okoye, 'Section 24 of the Cybercrimes Act and Constitutional Rights' (2020) 8 *NIALS JIL* 77

²⁶ *Aviomoh v Commissioner of Police* (2021) LPELR-55203 (SC) per Saulawa JSC.

²⁷ Criminal Law of Lagos State 2011, ss 212-215; see also Criminal Law of Rivers State 2015, Criminal Law of Edo State 2022

state institutions places politicians in a position qualitatively different from that of ordinary plaintiffs.²⁸

The threat of criminal investigation, prolonged civil litigation or ruinous damages awards may discourage journalists, bloggers, civil society actors and ordinary citizens from engaging in legitimate criticism. The result is a chilling effect upon democratic participation of the most corrosive kind: one that operates not through formal censorship but through the rational calculation of legal risk.

Where citizens become reluctant to question government conduct, democratic accountability suffers irreparably. Defamation law may thus inadvertently function as a shield protecting political actors from legitimate scrutiny rather than merely protecting genuine reputational interests. This instrumentalization of the law has been documented in a number of reported proceedings ostensibly outside Nigeria.²⁹

The public figure doctrine, as developed in the United States Supreme Court's landmark decision in *New York Times Co v Sullivan*, represents one influential approach: it requires a public official plaintiff to establish that a defamatory statement was made with 'actual malice' — that is, with knowledge of its falsity or with reckless disregard for the truth.³⁰ While Nigeria has not adopted this doctrine, its underlying logic is consonant with section 39 of the Constitution and with the principle, affirmed in *DPP v Chike Obi*, that political speech attracts heightened constitutional protection.

²⁸ *New York Times Co v Sullivan* 376 US 254 (1964); see generally A Lewis, *Make No Law: The Sullivan Case and the First Amendment* (Random House 1991).

²⁹ *Reynolds v Times Newspapers Ltd* [2001] 2 AC 127 (HL); *Jameel v Wall Street Journal Europe Sprl* [2006] UKHL 44.

³⁰ 376 U.S. 254 (1964)

The deployment of section 24 of the Cybercrimes Act against online critics of public officials has generated particular concern. This is because it more or less has put a check on the constitutional rights of citizens or activists against political actors.

7. COMPARATIVE PERSPECTIVES

The tension between defamation law and freedom of expression is not peculiar to Nigeria. Under the jurisprudence of the European Court of Human Rights, member states are required to ensure that their defamation laws do not impose disproportionate restrictions upon freedom of expression, particularly in relation to political speech. In *Lingens v Austria*, the Court held that the limits of acceptable criticism are wider with regard to politicians acting in their public capacity than in relation to private individuals.³¹ The Court in *Sunday Times v United Kingdom (No 2)* further affirmed that any restriction upon expression must be prescribed by law, pursue a legitimate aim and be necessary in a democratic society.³²

At the regional level, the African Commission on Human and Peoples' Rights has, through its Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019), called upon member states to repeal criminal defamation laws and to ensure that civil defamation law is not used as a weapon against legitimate criticism of public officials.³³ The Commission's decision in *Media Rights Agenda v Nigeria* earlier established that restrictions upon press

³¹ *Lingens v Austria* (1986) 8 EHRR 407, para 42; see also *Castells v Spain* (1992) 14 EHRR 445.

³² *Sunday Times v United Kingdom (No 2)* (1992) 14 EHRR 229; *Handyside v United Kingdom* (1976) 1 EHRR 737.

³³ African Commission on Human and Peoples' Rights, Declaration of Principles on Freedom of Expression and Access to Information in Africa (2019) Principle 20.

freedom must meet a strict standard of justification under the African Charter on Human and Peoples' Rights.³⁴

In the United Kingdom, the Defamation Act 2013 introduced the requirement that a claimant must demonstrate serious harm to reputation before a claim may proceed, and created a new 'public interest' defence substantially extending Reynolds qualified privilege.³⁵ These reforms reflect a deliberate legislative recalibration of the balance between reputation and expression — a recalibration that Nigeria has yet to undertake in comparable form.

8. FINDINGS AND ANALYSIS

The foregoing analysis discloses several structural deficiencies in the Nigerian legal framework governing online defamation.

First, the retention of criminal defamation alongside civil remedies creates a disproportionate burden upon online speakers. Criminal prosecution, with its attendant consequences for liberty, livelihood and social standing, constitutes a qualitatively more severe restriction upon expression than civil liability. Where the plaintiff is a public official, and the alleged defamation concerns the discharge of public functions, the case for criminal liability is particularly difficult to sustain.

Second, section 24 of the Cybercrimes Act — despite the 2024 amendment — continues to deploy language sufficiently broad to capture legitimate political criticism. The provision's lack of a public interest defence, its failure to distinguish between public and private figures, and its exposure to prosecutorial deployment against online critics of the powerful remain sources of justified concern.

³⁴ *Media Rights Agenda v Nigeria* (2000) AHRLR 200 (ACHPR 1998).

³⁵ Defamation Act 2013 (UK) ss 1, 4; see E Descheemaeker, 'Three Errors in the Defamation Act 2013' (2015) 6 *JETL* 24.

Third, the Nigerian judiciary has not yet developed a coherent and principled doctrine governing defamation claims by public figures. The 'actual malice' standard remains unadopted; qualified privilege in the political domain remains underdeveloped; and the proportionality principle — while constitutionally mandated — is applied inconsistently.³⁶ The recent Court of Appeal decisions in *Tukur* represents tentative steps in the right direction, but fall short of a comprehensive doctrinal framework.

Fourth, the structural asymmetry between politically exposed persons and ordinary online speakers — in terms of financial resources, access to legal representation and institutional relationships — makes the formal availability of defences insufficient without substantive reform to reduce the costs and risks of litigation for defendants.³⁷

9. RECOMMENDATIONS

On the basis of the foregoing analysis, the following reforms are commended to the attention of the legislature, the judiciary and the legal profession.

a. Decriminalization of Defamation: The National Assembly should, following the example of Lagos State and other reformed jurisdictions,³⁸ repeal the criminal defamation provisions of the Criminal Code Act and the Penal Code Act. Civil remedies afford adequate protection for genuine reputational injury without the disproportionate chilling effect attendant upon criminal prosecution.

³⁶ O Eze, 'Decriminalizing Defamation in Nigeria: The Path Not Taken' (2021) 15 *AJLS* 211, 228.

³⁷ A Hutchinson, 'Democracy and Defamation: Public Figures and Freedom of Expression' (1989) 65 *Notre Dame L Rev* 843, 857.

³⁸ Rivers and Edo States

b. Reform of Section 24 of the Cybercrimes Act: The legislature should further amend section 24 to introduce an explicit public interest defence, to require a threshold showing of serious harm, and to exclude from its ambit commentary — however critical or disagreeable — upon the public conduct of persons holding or seeking public office.³⁹

c. Judicial Adoption of a Public Figure Doctrine: The Supreme Court should develop, through its inherent constitutional jurisdiction, a doctrine analogous to the public figure principle⁴⁰. Such a doctrine would require a public official plaintiff alleging defamation in respect of the discharge of official functions to demonstrate, at minimum, that the defendant acted in bad faith or with reckless disregard for the truth.

d. Costs Reform: Courts should exercise their discretion to award costs against politically exposed plaintiffs who bring defamation proceedings that are found to have been motivated principally by a desire to suppress criticism rather than to vindicate genuine reputational injury.

e. Judicial Education: The National Judicial Institute should incorporate training on the constitutional framework for freedom of expression, the chilling effect doctrine and the principles of proportionality into programmes for judges handling defamation and cybercrime proceedings. Sound judicial reasoning in this domain requires an understanding of the democratic stakes involved in the regulation of online speech.⁴¹

³⁹ National Information Technology Development Agency Act 2007; see also the proposed amendment to the Cybercrimes Act presently before the National Assembly (HB 1203 of 2024).

⁴⁰ Defamation Act 1961, s 10; see also United States Restatement (Second) of Torts, s 580A (1977) (qualified privilege for public official plaintiffs).

⁴¹ O Amucheazi, 'Judicial Creativity and Defamation Law in Nigeria' (2022) 9 *NULJ* 1, 16.

10. CONCLUSION

Online defamation law in Nigeria stands at a crossroads. The digital public sphere has created conditions of unprecedented democratic possibility: citizens may now participate in political discourse, expose governmental misconduct and engage public officials in ways unimaginable a generation ago. Yet the law has not kept pace with the democratic promise of these developments. Instead, existing legal frameworks — criminal defamation, civil libel, and cybercrime legislation — are increasingly deployed by the politically powerful to silence the voices of the relatively powerless.

This is not to suggest that reputation is unworthy of legal protection. It is, and the law rightly provides remedies for genuine reputational injury caused by false and malicious publication. The difficulty is one of balance and of institutional design: who bears the burden of proof, at what threshold does liability attach, what defences are available, and critically what mechanisms exist to prevent legal processes from being weaponized against democratic accountability?

The reforms proposed in this article are modest in ambition but significant in potential effect. Decriminalization of defamation, amendment of the cybercrime legislation, judicial adoption of a public-figure doctrine, and costs reforms designed to deter strategic litigation would, in combination, restore the constitutional balance between reputation and expression that the Nigerian legal framework currently fails to maintain. The moment for such reform is propitious: judicial awareness is growing, comparative models are available, and the democratic need is acute. The task of implementing principled reform falls upon all organs of the Nigerian state — the legislature, the judiciary, and the legal profession alike.