AN ANALYSIS OF THE *SUB JUDICE RULE* IN NIGERIAN LEGAL JURISPRUDENCE*

Abstract

This study explores the character of court authority by examining the common law offence of contempt, with exclusive focus on the rule of Sub Judice in the Nigerian jurisprudence; but first a brief account of the use and enforcement of rule is introduced in some countries jurisprudence. This research is undertaken to show that the Sub Judice rule represents a form of authority premised on the role of courts in democratic societies in relation to the Mass Media and Free speech. Even though the rule strikes a balance between the rights to freedom of speech and fair trial, protecting the integrity of the legal process from undue influence by the press, the courts still face a plethora of difficulties occasioned by the free press and social media. The researcher is of the view that Sub Judice rule alone is insufficient to reign in the tendency towards potentially prejudiced perceptions of the proceedings of a case occasioned by the ever growing, dynamic and expansive local and global media environment even if it is conceded that it still has a hugely important role to play.

Keywords: Analysis, Sub Judice, Rule, Nigeria, Legal Jurisprudence.

1. Introduction

In the broadest sense, the principle of *Sub Judice* as a branch of law prohibits the publication of material likely to prejudice or influence the outcome of proceedings which are pending in the court of law; or rather, in actual progress. For a more statutory description of the rule, *Sub Judice* as a legal principle is a derogation from the right to freedom of expression guaranteed by the Constitution of the Federal Republic of Nigeria 1999(as amended)[1], for the purpose of maintaining the authority and independence of the courts in matters brought before the courts, from comments likely to prejudice the determination of the case.[2]The rule which is Latin meaning; 'under judicial consideration', or 'before the court or judge for determination', or likewise 'under judgment', in some instance is considered as part of the common law doctrine of Contempt of Court, which essentially is concerned with interference in the administration of justice, specifically in comments made *ex facie*, which refers to contemptuous acts committed outside the court. In this sense, it places all matters which are the subject of proceedings (whether criminal or civil) in a cocoon for what may be a period of months, possibly years; and anyone who publishes comments on such issues during this period does so at his peril – being subject to conviction for contempt, not because he intended to or has in fact, caused prejudice to the proceedings, but merely because prejudice might objectively and potentially have resulted.[3] For instance, in criminal law, the *Subjudice* rule seeks to prevent the negative pre-trial publicity which can affect the rights of the accused person such as the right to a fair trial, to protect the independence and the dignity of the judiciary, to protect the rule of law and to prevent the obstruction of justice.[4]

The rule can be further buttressed by the practical consideration that; were it not to apply, a person in fact guilty of, for instance, an indictable offence, might as well - if his trial had been surrounded by wide ranging media publicity in discussing the substance of his case outside the court and pushing the narrative that the accused committed the offence[5] – be able to have his conviction quashed on the grounds of prejudice to the proceedings.[6]

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[1]Which hereinafter shall be referred as the 1999 Constitution (as amended)

[2]E Azinge (SAN), 'Professional Ethics and Matters of Subjudice: The Limits of Public Commentary' (2016). Guardian Newspaper (Online) <http:// guardian.ng/features/law/professional-ethics-and-matters-subjudice-the-limits-of-public-commentary>accessed on 14th August, 2022.

[3]A J Jeffery, 'Media Freedom in an African State: Nigerian Law in its Historical and Constitutional Context, (Vol.3). A Doctorate Thesis submitted to the University of London (1983) p.754-755 <https://core.ac.uk/download/pdf/334948276.pdf>accessed on 14th August, 2022.

[4]E Nhachi, 'The Subjudice Rule,'<https://www.academia.edu/33345368/THE_SUBJUDICE_RULE>accessed on 11th August, 2022. p. 2.

[5]O Ekeh, 'The Nnamdi Kanu Arrest Saga' *Daily Sun Newspaper* July 9,2021, p. 32

[6]A J Jeffery, *Ibid*; p. 757.

This study is primarily concerned in critically analyzing the principle of the *Subjudice* Rule in the Nigerian Legal Jurisprudence, as it affects freedom of expression which restricts comments on pending judicial proceedings and criticisms of the judges and the courts. The research will further establish whether the rule is a justifiable limitation to the freedom of speech and dissemination of information.

2. The Principle of Sub Judice: A Global View

The doctrine of *Sub Judice* Rule dates back as early as 1742 when Lord Hardwicke described three (3) types of contempt of court; the third of which consists of prejudging mankind against persons before the cause is heard. Various scholars have suggested that the rule is invoked too broadly in some contexts and too narrowly in others.[7] In the former, it is invoked where the mere existence of litigation or even intent to litigate or the possibility of litigation is used as a justification by the media or the government for refusing to address an issue. This ultimately would preclude responses to almost every question. Again, it can be applied narrowly where attempts are made to undermine the integrity of an impartial proceeding by attempting to influence a court tribunal through public pronouncements.[8]

In his statement on Sub Judice rule, Lord Hardwicke justified the rule as follows;[9]

> Nothing is more incumbent upon courts of justice than to preserve the proceedings from being misrepresented, nor is there anything of more pernicious consequence, than to prejudice the minds of the public against persons concerned as parties in causes, before the case is finally heard.

The rule took its modern shape in the 1970s, after the British House of Commons passed the two (2) Resolutions of 23 July, 1963 and 28 June, 1972[10] in England. The latter resolution was a relaxation of its 1962 counterpart which was perceived as more rigid in application.[11]Even though the House is abstained from discussing the merits of disputes about to be tried and decided in the courts of law, the resolution of 1972 allows that in civil proceedings and subject to the discretion of the chair – Speaker of the House of Commons or the Lord Speaker of the House of Lords -, reference might be made to matters relating to ministerial decisions which cannot be challenged in court except on grounds of misdirection or bad faith.[12] Hence the rule of Sub Judice is not absolute. This can be explained in the position of the Joint Committee on Parliamentary Privileges in outlining the rules in which they were of the view that the rule tries to strike a balance between two sets of principles. On the one hand, the rights of parties in legal proceedings should not be prejudiced by discussion of their case in parliament, and parliament should not prevent the courts from exercising their functions. On the other hand, parliament has the constitutional right to discuss any matters as it pleases.[13]

The rationale behind the rule of *Sub Judice* was laid down by the House of Lords, per Lord Diplock, in the case of *Attorney-General v Times Newspapers Ltd*[14],

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[7]L Sossin, 'The Subjudice Rule and the Accountability of Public Officials in the 21st Century,' *Dalhousie Law Journal* (Vol. 36) No. 2 (2013) p. 537-538

[8]Ibid; p. 538.

[9]*Roach v Garvan* (1742)2 Atkyns 469 at 471, 26 ER 683 (Ct. of Chancery).

[10]Kelly R, 'The Subjudice Rule' (2007) <https://researchbriefings.files.parliament.uk/documents/SN01141/SN01141.pdf> accessed on 12th August, 2022.

[11]Ibid; The 1962 Resolution stated that matters awaiting adjudication in a court of law should not be brought in motions, debates, questions or supplementary questions. It maintained two (2) important qualifications; one was that the rule was subject to the discretion of the chair; i.e., the Speaker in the Commons and the Lord Speaker in the House of Lords. The second was that it was subject to the right of the House to legislate on any matter.

[12]E May, 'Matters Subjudice,'<https://erskinemay.parliament.uk/section/5176/matters-sub-judice/Pg25.74> accessed on 12th August, 2022. The Lord Speaker exercises a general power of waiver and also a power of waiver in specific circumstances.

[13]R Kelly, no.10.

[14] (1973) 2 All ER 54 at p.72; (1974) A.C 273 (H.L[E]). Also referred to as the St James Evening Post Case.

> the due administration of justice requires that all citizens…should be able to rely upon obtaining in the courts the arbitrament of a tribunal which is free from bias against any party and whose decision will be based upon those facts only that have been proved in evidence adduced before it in accordance with the procedure adopted in courts of law; and…that once the dispute has been submitted to a court of law, they should be able to rely upon there being no usurpation by any other person of the function of the court to decide it according to law…

From the above pronouncement, the first requirement is self-explanatory. The second has been interpreted to mean that other persons must desist from prejudging the issues which the court will be called upon to determine. Both requirements are essential to ensure a fair trial: meaning, a trial conducted free from prejudice and which the court tries the case impartially after considering all the available evidence which have been properly submitted to it.[15]The above case concerned two newspaper articles commenting on litigation against the pharmaceutical company "Distillers", which marketed a sedative containing Thalidomide to pregnant women. Tragically, hundreds of children whose mothers had taken the drug while pregnant were born with serious birth defects. At the time the first article was published, over three hundred claims were pending against Distillers, and settlement negotiations were underway. The first Sunday Times article described Distillers' settlement offers as "grotesquely out of proportion to the injuries suffered," and urged Distillers to make a more generous offer. The second article, which was not published due to an injunction, described the incomplete steps Distillers had taken to test the drug before putting it on the market. The Court of Appeal found that the articles did not breach the *Sub Judice* rule, reasoning that the litigation was 'dormant,' as settlement was expected, not a trial. As Lord Scarman stated, 'the issue of a writ cannot stifle all comment.' The House of Lords, however, unanimously held that the second article did breach the *Sub Judice* rule, finding that the rule applies equally to interference with settlement negotiations as with trials. The House of Lords settled on a "prejudgment" test,[16] making it impermissible to "prejudge issues in pending cases" if it presents a real risk of prejudice to the administration of justice.

The Kenyanlegal system went further to addin its jurisprudence the doctrine of 'Multiplicity of Cases'; in that where an issue is pending in a court of law for adjudication between the same parties, any other court is barred from trying that issue so long as the first suit goes on.[17] In such a situation, order is passed by the subsequent court to stay the proceedings and such order can be made at any stage. The Ugandan High Court in addition, restated this rationale on *Sub Judice* rule, in the case of *Nyanza Garage v Attorney-General*,[18] where it held that;

> In the interest of parties and the system of administration of justice, multiplicity of suits between the same parties and over the same subject matter is to be avoided. It is in the interest of parties…that could be resolved in suit. Secondly, a multiplicity of suits clogs the wheel of justice, holding up resources that would be available to fresh matters, and creating or adding to the backlog of cases the courts have to deal with. Parties would be well advised to avoid a multiplicity of suits."

[15]AJ Jeffery, *Op cit*; p. 757. This is coming from the backdrop of the ever-growing power of the media; it has come increasingly to be recognized that the fundamental right to a fair trial may be destroyed if trial by the media were to be countenanced, for such trials ignore the basic rules of evidence and do not provide any right to reply to cross-examine. They tend in short to usurp the power of the court without any of the safeguards provided by the rules of criminal procedure and evidence. See also Atkins v London Weekend Television Ltd (1978) JC 48 at page 52.

[16] It is worthy of note that this test has not prevailed in some commonwealth countries.

[17]Section 6 of the Civil Procedure Act of Kenya.Kiletyen G, 'The Doctrine of Subjudice: A Lame Duck or Weapon Against Vexatious Litigants,<https://www.linkedin.com/pulse/doctrine-sub-judice-lame-duck-rule-weapon-against-godwill-kiletyen> accessed on 17th August, 2022. The basic purpose and the underlying object of subjudice is to prevent the courts of concurrent jurisdiction from simultaneously entertaining and adjudicating upon two (2) parallel litigations in respect of the same cause of action, same subject matter and same relief. This is to pin down the parties to one litigation so as to avoid the possibility of contradictory verdicts by several courts in respect of the same relief and is aimed to prevent multiplicity of proceedings.

[18] Civil Suit No. 450 of 1993.

In the Canadian legal jurisprudence, aspects of the rule have been codified resulting in the term, 'Statutory Sub Judice' which restricts the publication of certain details relating to court proceedings.[19] For instance the criminal code prohibits the publication of information which may reveal the identity of a sexual assault complainant if the victim requests that his/her identity be concealed.[20] This particular aspect of *Sub Judice* which in contrast to the common law rule, does not require proof that a breach of the rule was intentional or motivated by the desire to prejudice or influence a criminal prosecution. Nor is it necessary to show that the published information may prejudice a matter before the courts; but similarly, both rules are concerned with the possibility that a juror, witness or judge may be influenced by the material which is published about legal proceedings. The case of *R v Robinson-Blackmore Printing & Publishing Co*,[21] exemplified this position. A reporter brought a constitutional challenge to a charge against him of contempt *Sub Judice*. He had published an article which mentioned that an individual accused of murder had threatened to spread AIDS in prison, as well as other details which may not have been admissible at the trial. The Newfoundland trial court rejected the reporter's claim that the *Sub Judice* rule violated his freedom of expression. The judge found that a breach of the *Sub Judice* rule occurs in either of two situations: where an article is published with the "clear intent to influence the fair trial of an accused" or where there is a "real risk" that it will do so.

The common law rule is more concerned over publicizing information about a case related directly to the potential prejudice to the parties and to the possibility of inappropriate influence over the judge or decision maker.[22] From the decision of the trial judge in the above case, the intention to prejudice is the key though an honest mistake would be a complete defense to any breach. Likewise, a publisher in statutory contempt can argue lack of knowledge of the content of the material published or that the proceedings were active; and to succeed in his defense, he must show that he/she took reasonable care to confirm the status of the material.[23]

3. Sub Judice Rule and Limitations to Freedom of Expression and Speechin the Nigerian Legal Context.

As earlier stated, the rule of Sub Judice is essentially tied to the derogation of right to freedom of expression and press as provided in s.39, subsection (1) of the 1999 Constitution, which states: '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 above constitutional provision guarantees the rights of the citizens to freely air or express their opinions without hindrance of any sort. A further perusing at the same section under subsection (3) in limitation provides that: 'Nothing shall invalidate any law that is reasonably justifiable in democratic society, (a) for the purpose of preventing the disclosure, of information received in confidence, maintaining the authority and independence of court.'

In view of the above statutory provision, the exercise of freedom of speech has the potential to cause prejudice to the administration of justice in various ways.[24]Now even though courts acknowledge the importance of a free and unfettered press, they also wish to preserve their authority not because they hold themselves in higher esteem than other social institutions, but rather because they are well aware of the dangers associated with public speech. It is under the common understanding that prejudicing the trial refers to exposing the participants of the legal process to publicized comment or information that may risk the impartiality and fairness of the legal decision making. It is also prejudicial to prejudge issues that are under the judicial consideration or trials conducted through media or other various social network means. In respect to criminal proceedings, it is forbidden for parties, their counsel or newspaper commentators to freely offer opinions in respect of matters pending in court, including any situation

[19]L Sossin,*Op cit*; p. 539
[20]Section 486(3) of the Criminal Code of Canada. L Sossin, ibid.
[21](1989), 73 Nfld& PEIR 46, 1989 CarswellNfld 159.
[22]L Sossin, *Op cit*; p.540.
[23]P Mason, 'The Subjudice Rule and Contempt of Court', (2009);<https://www.pinsentmasons.com/out-law/guides/the-sub-judice-rule-and-contempt-of-court> accessed on 15th August, 2022.
[24]E Nhachi, no.4 ;p. 2-3.

where a conviction has been entered but the convict's appeal is pending at the appellate court.[25]The courts have always stressed that anything in the nature of prejudging of a case or of specific issues is objectionable not only because of its possible effect on the particular case, but also because of its side effects which may be far-reaching. In other words, trial by newspaper or trial by television or trial by any medium other than the courts must be disallowed.[26]Eko JCA in the case of *Kalu v Federal Republic of Nigeria*[27], exemplified this position in stating accordingly that:

> It is the common ideal that once a writ is issued, it puts a stop to discussion; except if it is a matter of public interest, canvassing the matter in the press or public cannot be permitted. The law on this subject is and must be founded entirely on public policy. It is not there to protect the private rights of parties to litigation or prosecution. It is there to prevent interference with the administration of justice and it should be limited to what is reasonably necessary for that purpose. Since the law on public policy is used to prevent interference with administration of justice, it cannot also be used to prevent due process of law or administration of justice.

Essentially it was noted that statements are allowed to be made on matters before the court except those statements that are likely to impugn on the authority or integrity of the courts.[28] Thus, this right of free speech as guaranteed by the constitution must be properly guarded but nevertheless, it should be recognized that it must not be abused or be permitted to destroy or impair the efficiency of the courts and public confidence and respect therein.

4. Subjudice Rule and Contempt of Court in the Nigerian Legal Jurisprudence

To establish contempt, the courts must be satisfied that any speech made or writing published not merely has the tendency to prejudice the trial, but has a real and substantial tendency to so.[29] A Contempt of Court can either be committed *in facie curiae*, which is in the face of the court, or *ex facie curiae*, meaning out of the face of the court. One of the attributes associated with the law of contempt is that of prohibiting conducts likely to interfere with the due administration of justice by prejudicing a fair trial in proceeding which are Sub Judice before the court.[30] Such conducts may take the form of attempting to bribe or intimidate the judge, juror or witness. In the case of contempt *in face curiae*, the court has the power to deal with it summarily because it is a contempt made right before the judge; thus, he needs no evidence or to call witnesses. Whereas, in cases of contempt made *ex facie curiae*, which is the focus of this sub-topic, it includes when a writer misinterprets judicial proceedings or when a write-up is capable of prejudicing any person in favor of, or calculated to lower the authority of any person before it when such proceeding is being taken or heard; or commits any act of intentional disrespect to any proceedings or any person who such proceeding is being heard or taken.[31] In essence, the guarantee of

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[25] This position extends to all stages of appeal until the matter is completed. Evelyn Okakwu, 'Nigeria's Chief Justice Threatens to Punish Media Discussion of Cases Pending in Court (2018); <https://www.premiumtimesng.com/news/headlines/255040-nigerias-chief-justice-threatens-to-punish-media-discussion-of-cases-pending-in-court.html> accessed on 16th August. 2022. It may also apply where the court proceedings have not started but are imminent.

[26] Lord Denning in *AG v Times Newspaper Ltd* (1973) All ER at 821,822. His view on comments in pending legal proceedings which purports to prejudge the issues which are to be tried by the court are intrinsically objectionable as being usurpation of the proper function of the court.

[27] (2014) 1 NWLR (Pt 1389)479 at 525-526, pgh B-D (CA)

[28]*Kalu v Federal Republic of Nigeria, Op cit*;also,*Bello V AG Lagos State* (2007)1 FWLR (Pt 347) pg. 39.

[29]J Lockhart, 'Contempt of Court – The Subjudice Rule,' (1987), <http://classic.austlii.edu.au/au/journals/UNSWLawJl/1987/19.pdf>accessed on 19th August, 2022. The Law of Contempt does not prevent discussion in the press or on the radio, of matters of public interest merely because they may arise whilst the cases are pending. The question is whether the publication in question tends to prejudice the fair conduct of the proceedings.

[30]E AIsabella, 'Judicial Attitudes to Freedom of Speech and Press with Particular reference to Contempt of Court,' (1986); <http://www.nials-nigeria.org/Editedbookcovers/j.pdf>pg. 6. accessed on 17th August, 2022

[31]A Richar, 'Freedom of Expression and Contempt of Court': The Justice Okon Abang's Order Against Channels Television in Perspective,' (2018); <https://www.vanguardngr.com/2018/07/freedom-of-expression-and-contempt-of-court-the-justice-okon-abangs-order-against-channels-in-perspective/akinoola>accessed on 16th August, 2022.

free speech is not an absolute one, and it must be weighed against other competing interests;[32] and in the center of it, the courts on how by the use of their jurisdiction to punish contempt they maintain a balance between the public interest in freedom of speech and the public interest in non – interference with the due administration of justice.[33]

From the above statement, it must be observed that in the first place, there must be a pending proceeding.[34] The second is that the offender must have made use of any such speech or writing misinterpreting such proceeding or capable of prejudicing any person in favor of or against any party to such proceedings;[35] or again, the write-up must have been calculated to lower the authority of the person before whom such proceeding is being heard. The independence of the judiciary must be kept in check so as to protect against all acts that would amount to travesty of justice. This rule does not only apply to the media, even lawyers involved whether directly or indirectly with a case or proceeding are frowned upon making comments on a matter being handled in court, especially where the lawyers appear in the media to comment on a matter in court and in an attempt to protect the interest of his client, make statements that are reasonably capable of prejudicing or interfering with the proceedings before the court. In a sense it is reasonable to frown at such attitudes by defaulting lawyers, for professional conduct encourages all to act responsibly, respectfully, diligently, courteously, and with competence and skill and maturity. To buttress my point, even the rules forthwith provides that a lawyer or law firm engaged in or associated with the prosecution or defense of a criminal matter or associated with a civil action, shall not, while the litigation is anticipated or pending in the matter, make or participate in making any extra – judicial statement that is calculated to prejudice or interfere with or is reasonably capable of prejudicing or interfering with the fair trial of the matter or the judgment or sentence.[36]

Even where a person is charged to court, he/she is still guaranteed protection under the Constitution which protects his or her right to a fair hearing and a fair trial,[37] and backed by the notion that any person accused of committing a crime, is presumed innocent by the authority until proven guilty by a competent court of law exercising jurisdiction. Such a person is innocent regardless of the weight and magnitude of the charges levied against him/her. This comes against the backdrop of the authority which at-times tend to detract from this constitutional provision, which Oputa JSC of blessed memory stated in *Godwin Josiah v The State*,[38] that the task of preventing pretrial conviction of the accused person to the prejudice of his constitutional right to presumption of innocence and fair trial, has never been more daunting.[39] Another incident worthy of mention is the case of the alleged "Looters List" which contained alleged names of persons believed to have looted the country's treasury. Such a list again prejudices and impugns on the authority and integrity of the courts when some of the alleged looters were already facing criminal trial, and the government should have in accordance with the Sub Judice rule, not prejudged matters that were already in the courts.[40]

[32]E AIsabella.
[33] Even the truth ofpublished facts is not a defense against accusation of contempt of court.
[34]B L Sunday, 'The Role of the Public and Media in Civil Court Proceedings in Nigeria,' (2018);<https://www.nomos-elibrary.de/10.5771/2363-6262-2018-1-111.pdf?download_full_pdf=1- KAS African Law Study Library> accessed on 17th August, 2022.
[35]Ibid.
[36] Rule 33 of the Rules of Professional Conduct for Legal Practitioners. 2007. Also *Bello v Lagos State* (*Supra*)
[37] S. 36 (4).
[38](1985)1 SC 406
[39]O Oghenahogie, 'Media Trial versus Fair Trial,' (2021), <https://securitykingng.org/security/media-trial-versus-fair-trial/>accessed on 17th August, 2022. Kolawole J of the Federal High Court was forced to suspend hearing in a trial of case involving a serving Colonel Nicholas Ashinze& 40 others as a result of false media publication by the Economic and Financial Crimes Commission (EFCC) alleging that the accused was charged with N36.8billion public fund diversion in an on-going trial. The accused was charged with N1.5billion public fund diversion.
[40]E Obioma, 'Looter's List: Incompatible with the Subjudice Rule, (2018);<https://barristerng.com/looters-list-incompatible-with-the-sub-judice-rule-by-obioma-ezenwobodo/>accessed on 17th August, 2022. The Colonel Nicholas Ashinze case.

The then Chief Justice of the Federation, Justice Walter Nkanu Onnoghen (rtd) even drew attention to provision of the Criminal Code, that any person who while a judicial proceeding is pending makes use of any speech or writing, misinterpreting such proceeding, or capable of prejudicing any person in favor of or against any party to such proceeding, or calculated to lower the authority of any person before whom such proceeding is being heard or taken; or commits any other act of intentional disrespect to any judicial proceeding or any person before whom such proceeding is being heard or taken, is guilty of a simple offence liable to imprisonment of three (3) months.[41] The retired Chief Justice not only cautioned the public against making prejudicial statements on matters before the courts, but also enjoined judges to exercise their discretionary powers to punish contempt over unguarded statements that impugn on court's integrity. Understandably, it is fair to state that the offender can be guilty of a crime which is provided in a written law or statute, and again he can be found guilty of contempt of court.

Going further, Nnamani JSC (as he then was) was of the view that it is not contempt of court to criticize the conduct of the judge or the conduct of a court, even if such criticism is strongly worded, provided that the criticism is fair, temperate and made in good faith. As part of his decision in the case of *Sunday Okoduwa & 6 Ors v The State*[42], the learned justice believed that there can be comments made on cases in court, as long as such comments do not prejudice the trial.

Indeed, what the *Sub judice* rule protects is not the court's decision and its enforcement, but rather the judicial process. Challenging the court's decision is perfectly legitimate once the legal process has been concluded. Once the courts have had their final word, any writer may raise whatever doubts he/she wishes about the decision. Since the authority of the courts – more often than any other branch of intellectual activity, lies in the power of its words,[43] it is clear why contempt of court has become so central to protecting the authority of the courts.

5. Conclusion and Recommendations.

Many scholars have questioned whether the *Sub Judice rule* is still relevant due to the fact that it has become difficult to prevent people from publishing prejudicial information both online and in the newspapers. Apparently, *Sub Judice* rule protects the trials as a distinct event of public adjudication in which legal adversaries debate questions of justice and in which the power of words, not violent force, is at stake. More importantly, people disseminate, share, consume information in this modern digital era, resulting in conflicting judicial opinions and research on the difficulties of whether or not people still trust and follow the directions and judgment of court, regardless of the prejudicial material. Some maintain that a prejudiced society, on which has established its opinion on a case, will not be able to take the judicial process serious.

Indeed, giving the dire need of a true democracy, there is need to respond to the changing media by augmenting the tools that manage the risks to a fair hearing, because in this age of social media, it is no longer realistic to expect *Sub Judice* rule to control the risks of prejudice. Judges on their part should have a broad range of choices in dealing with risks to fair hearing; for instance, they should make sure that interested parties not only limit what they read about a trial, but also make advances in dealing with the exposure to prejudicial information, including information that is prejudicial but lawfully published at the time.

More so, the law of contempt, which is a discretionary power exercised by the judge, should be codified into our statutes, as is practiced in the United Kingdom. Even when all this is taken into account, and regardless of the immense power the court wields in any democratic society, the ever changing, eternally

[41]S. 133(1)(4)(5)(9) of the Criminal Code Act CAP C38 Laws of the Federation of Nigeria, 2004. Also s.22 of the 1999 Constitution (as amended).

[42](1986) 2 NWLR (Pt 76) 333 at 335.

[43]G Schneebaum, S J Lavi, 'The Riddle of Subjudice and Modern Law of Contempt,' <https://papers.ssrn.com/sol3/papers.cfm?_id=3057546> accessed on 19th August, 2022.

dynamic landscape of media form, content and patterns of ownership means peace must be made with the fact that the fourth estate of the realm will never be brought to heel by Court processes alone. Can the Court indeed hold an entire nation in contempt when the current social media space and climate allows the temptation, however inconceivable, of that very possibility?

As a final recommendation, in addition to court process, proactive engagement with the citizenry through the same channels that are having an insidious effect on the erosion of the *Sub Judice* rule must be employed by the Judiciary to attempt a longer-term re-socialization of the diffuse self-appointed information gate-keepers and influencers on social media and a re-sensitization of the initiated members of traditional media.