UNIVERSALITY AND CUTURAL RELATIVISM OF HUMAN RIGHTS VIS-A-VIS THE LGBT RIGHTS IN NIGERIA

BY

Aiyevbosa Mirabelle URHOGHIDE
LAW1504425

FACULTY OF LAW
UNIVERSITY OF BENIN
BENIN CITY

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Aiyevbosa Mirabelle URHOGHIDE
MAT. NO: LAW1504425

BEING A LONG ESSAY WRITTEN IN, AND SUBMITTED TO THE FACULTY OF LAW, UNIVERSITY OF BENIN IN PARTIAL FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF BACHELOR OF LAWS (LL.B HONS) SUBMITTED TO THE FACULTY OF LAW OF THE UNIVERSITY OF BENIN, BENIN CITY, NIGERIA.

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CERTIFICATION

I, Aiyevbosa Mirabelle Urhoghide with Matriculation Number: **LAW1504425** hereby certify that apart from references to the work of other writers which have been duly acknowledged, this entire work is a product of my personal research and that this project has neither in whole nor in part been presented for another degree certification elsewhere.

_____

Aiyevbosa Mirabelle Urhoghide
LAW1504425

APPROVAL

We certify that the project was completed by **Aiyevbosa Mirabelle URHOGHIDE** with Matriculation Number**: LAW1504425** in partial fulfillment of the requirement for the award of the Bachelor of Laws Degree (LL.B)

Dr. (Mrs.) A.I. Ofuani-Sokolo
Project Supervisor _____ **Signature & Date**

Barr. Daniel T. Achi
Project Coordinator _____ **Signature & Date**

Prof. (Mrs.) V. Aigbokhaevbo
Dean, Faculty of Law _____ **Signature & Date**

DEDICATION

This long essay is dedicated to Almighty God, my creator, source of help and strength. I also dedicate this long essay to my family for encouraging me throughout this journey, and making sure I stand for Truth always. Lastly, this long essay is dedicated to all things right and moral, regardless of its magnitude.

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LIST OF ABBREVIATIONS

ACHPR	-	African Charter on Human and Peoples Right
ASEAN	-	Association of Southeast Asians Nations
CFRN	-	Constitution of the Federal Republic of Nigeria
ECHR	-	European Convention on Human Rights
GALZ	-	Gays and Lesbians of Zimbabwe
ICCPR	-	International Convention on Civil and Political Rights
ICESCR	-	International Convention on Economic, Social, and Cultural Rights
LFN	-	Laws of the Federation of Nigeria
LGBT	-	Lesbians, Gay, Bisexual, Transgender
NGO	-	Non Governmental Organisation
OHCHR	-	Office of the High Commissioner for Human Rights
UDHR	-	Universal Declaration of Human Rights
UN	-	United Nations
UNC	-	United Nations Charter
UNGA	-	United Nations General Assembly
UNT	-	United Nations Treaties

ABSTRACT

Human Rights are commonly understood as inalienable fundamental rights to which a person is inherently entitled simply because he or she is a human being. Right from the evolutionary point of Human Rights, there have been arguments as to its natural existence, also its applicability across places and spaces within the context of their socio-cultural, political, and economic realities. Thus, the discourse of the Universalism and Cultural Relativism of human rights is one of great controversy in both domestic and international levels. Essentially, most if not all the Human Rights instrument provide that Human Rights are Universal, for instance the provisions of the UDHR[1] preamble, which declares itself a 'standard of achievement for all people'. The cultural relativist argue that human rights or at least certain human rights are a result of Western influence, and as such should not be imposed on other cultures, it promotes the tolerance of other cultures and challenges the universality of human rights. With respect to the subject of gay rights which has provoked a lot of outburst from Africans and the Westerners on its implementation and practice universally. While many Africans consider LGBT as immoral to their culture, the Westerners consider it as part of human rights.

This long essay would attempt to distinguish between the universalism and cultural relativism of human rights, and within the context of LGBT rights in Nigeria as a focus, its legislation; Prohibition and Punishment of LGBT practice, the implication of such in the society, noting that nowhere in sight is the political consensus on LGBT rights equating with human rights in Nigeria.

[1] Universal Declaration of Human Rights 1948

CHAPTER ONE

GENERAL INTRODUCTION

1.1 Introduction

The inception of International Human Rights Law in the second half of the 20th century is largely related to the aftermath of the Second World War. Over the years, there has been a long-standing philosophical debate over the nature, categorisation and prioritisation of rights. There has also been a debate about the universality of human rights norms. On one side of the debate, the Universalists, have criticised the cultural rights backlash against Western values as another rationale for repressing domestic minorities. On the other side, the cultural rights advocates have argued that universalism remains another mechanism for the West to impose its values, regardless of indigenous patrimony[2]. At the forefront of this debate remains the question of whether or not the content and scope of rights are variable according to regional, religious and political background and whether or not there is a single set of human rights applicable to every individual. While legitimate variations exist between diverse views of human rights and its implementation in various nation states, there is a central core of all human rights values. This central core represents the most fundamental of human rights from which no derivations are permissible[3].

Thus this long essay is an attempt at succinctly examining these views of the concept of human rights and its universality or relativism in articulating the concept of the LGBT rights. It examines whether or not the LGBT right is regarded as a universal one or is culturally relative, distinctively in the Nigerian Legal System. The various legislations enacted in relation to the LGBT rights in Nigeria are also examined.

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2 Micheline Ishay*, The Human Rights Reader;(*Special Indian edition:2nd edn)

3 Javaid Rehman, *International Human Rights Law,* (2nd edn, Longman Publishers).

1.2 Aims and objectives

The aim of this study is to examine the concept of universalism and cultural relativism of human rights in relation to LGBT rights in Nigeria. This study examines the Same Sex legislation- its origin and evolution; whether such legislation is universal or is culturally relative in relation to the rule of law in Nigeria, and its relationship with human rights implementation in Nigeria. The specific objective of this study is to examine the concept of universalism and relativism under human rights and to critically articulate the concept of LGBT/ gay rights and homosexuality; analysing whether it falls under the sphere of universalism of human rights or it is culturally relative.

1.3 Scope of long essay

This long essay focuses on the concept of universalism and cultural relativism of human rights in relation to LGBT rights in Nigeria. It gives an overview of the Universalists and the relativists views and ideologies on whether or not rights are universally accepted. It also discusses the position of Nigerian laws with regards the recognition, legality, prohibition and punishment LGBT rights as well as whether the laws depict universalism or cultural relativism.

1.4 Methodology

The Long Essay employs the desk research method. It involves an analysis of primary sources of law such as statutes, cases, and conventions as well as secondary sources of law such as textbooks, journals, internet materials, articles and newspapers.

1.5 Definition of terms

The terms which would be further elaborated upon are listed below;

1. Human Rights.
2. Universality.

3. Universality in Human Rights.

4. Cultural Relativism.

5. LGBT Community.

6. Anti-Gay Laws in Nigeria.

1.5.1 Human Rights

Human Rights are those privileges given to every individual by virtue of their being human. These rights are attributed to every one for the simple fact of their existence and not as a result of any condition or conditions to be compulsorily fulfilled by the individual before he can be entitled to any such rights[4]. They cannot be taken away, except in some situations where they are restricted, like where for instance a crime has been committed by the individual, and as such restricting that person from exercising those rights attributed to him, for the time provided. More specifically, in a robbery incident for example, any individual caught in such act would be punished according to the laws of the state by virtue of the provisions of the criminal code[5], therefore such individual would not be allowed to exercise his human rights to freedom of movement[6], being that he would be sentenced to imprisonment for the time specified in the code.

Human rights are those basic rights and freedoms that belong to every person in the world, from the time of their birth until death, and they apply to every individual regardless of origin, belief, or way of life. These basic rights are based on shared values like dignity, fairness, equality, respect and independence, and values are defined and protected by law and are

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4 Universal Declaration of Human Rights 1948, art 30

5 Criminal Code, s 402

6 CFRN 1999, s 41(1)

inherent to all human beings, whatever our nationality, place of residence, sex, national or ethnic origin, color, religion, language, or any other status[7].

Human rights also entails both rights and obligations on States, as they are obligated under international law to respect, to protect and to fulfill human rights. The obligation to respect has to do it the fact that States must refrain from interfering with the enjoyment of human rights of every individual within their territory. The obligation to protect requires States to protect individuals and groups against human rights abuses and violations. Lastly the obligation to fulfil means that States must take adequate steps in ensuring the facilitation of the enjoyment of basic human rights. It is worthy to note that at the individual level, every person has a duty to respect the rights of others[8].

1.5.2 Universality

The word 'Universality' means the quality of involving or being shared by all people or things in the world or in a particular group[9]. It is the character or state of being universal; existence or prevalence everywhere;[10] pertaining to all without exception[11].

Universality in philosophy is the idea that there are universal facts in existence, and such facts can be discovered and understood, opposing relativism which claims that facts are relative, depending one a person or groups perspective view on that fact or facts[12].

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7 UNICEF, 'Rights of a Child Convention; What are Human Rights' (2015) <www.unicef.org/child-rights-convention> accessed June 2021

8 Office of the United Nations High Commissioner for Human Rights 'International Human Rights Law' <***www.ohchr.org***> accessed 7 May 2020.

9 www.oxfordlearnersdictionary.com (2020) Oxford University Press, accessed 7 March 2020.

10 Rogets 21st Century Thesaurus (2013), 3rd edn <www.Thesaurus.com> accessed 7 March 2020.

11 Black's Law Dictionary (4th edn 1968) pg1704

12 Stanford Encyclopedia of Philosophy, 'Relativism' (2020)< www.plato.stanford.edu/entries/relativism> accessed June 2021

1.5.3 Universality of human rights

Universality of human rights describes a system whereby human rights must be the same everywhere and for everyone by virtue of being human. Every individual is entitled to inalienable rights and freedoms. This universality appears to be generally accepted as most states have ratified the UN Charter or any other International Human Rights law instruments pertaining to the universality of Human Rights, as most of this legal instruments express the view that human rights are universal[13]. For example, the provisions of the preamble of the UDHR 1948 which says;

The General Assembly proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and nations.

These rights ensure the dignity and worth of the human person and guarantee human well-being all around the world.

Human rights universality has different meanings and is used in multiple ways to indicate various phenomena including: that there must be a universal adherence to international human rights standards, and the coverage of human rights monitoring mechanisms will occupy a more global geographic, plus equal cognizance be given to each of the rights recognized in the UDHR, and the adoption of substantive protection mechanisms for internationally-agreed human rights at the national level[14].

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[13] Yuval Shany, 'The Universality of Human Rights; The Jacob Institute for the Advancement of Human Rights' 2018 < www.jbi-humanrights.org > accessed June 2021

[14] Geneva Academy, 'Universality in the Human Rights Council; Challenges and Achievements' (Research Brief December 2016).

1.5.4 Cultural Relativism

The idea of Cultural relativism was developed by Franz Boas (1858-1942) in 1911[15]. The term 'Cultural relativism' means the theory that beliefs, customs, and morality exist in relation to the particular culture from which they originate and are not absolute.[16] Cultural relativism is the idea that human rights should be view in a contextual manner, that is, it should depend on the relevant culture, beliefs and experiences of the society in which the rights are to be implemented.[17] A person's beliefs, values, and practices should be understood based on that person's own culture, rather than be judged against the criteria of another, which means that any opinion on matters regarding such society is subject to the perception of each person within their particular culture.

The goal of this is promote understanding of cultural practices that are not typically part of one's own culture, therefore from the perspective of cultural relativism the view that no one culture is superior than another culture when compared to systems of morality, law, politics, etc is established.[18]

1.5.5 LGBT Community

LGBT is an acronym for lesbian, gay, bisexual, and transgender. These terms are used to describe a persons sexual orientation or gender identity. The phrase "LGBT community" refers to a broad coalition of groups that are diverse with respect to gender, sexual orientation, race/ethnicity, and socioeconomic status.[19] The LGBT persons are not just homosexuals-those sexually attracted to persons of their same sex-but has broadened to include the

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15 Franz Boaz, 'Museums of Ethnology and their classification'1887

16 www.oxfordlearnersdictionary.com accessed 8 March 2020.

17 n 12

18 Philosophy home (2009) < http://www.cultural-relativism.com/> accessed 8 March 2020.

19 < www.gaycenter.org >

transgender persons too, those persons whose gender identity differs from the sex the person had at birth.

However, these coalition of groups popularly known as the gay community or LBGT community are not generally accepted round the world at large, for example Nigeria does not accept the LGBT community as it goes against the moral ethics and uprightness, as such strict punitive measures have been laid down against the prevalence of such community in the country.

1.5.6 Anti-Gay Laws in Nigeria

These refer to the various laws in place in Nigeria that criminalise the practices of the LGBT community, which includes homosexuality, same sex marriages amongst others. They contain punitive measures to discontinue such practices. The most prominent law in Nigeria in this regard is the Same Sex Marriage Prohibition Act 2013.

1.6 Conclusion

The Universalism and Cultural relativism of human rights as regards LGBT in Nigeria for the purpose of this long essay has been marginally conceptualised, accordingly the various definitions, explanations of the terms and general outline expanciated upon, gives a more detailed understanding of this essay.

Thus, subsequently in the next chapter of this long essay is an attempt at examining the concept of human rights in a broad perspective; its meaning, origin and history, scope and evaluation, and lastly its enforcement mechanisms on various treaty states.

CHAPTER TWO

THE CONCEPT OF HUMAN RIGHTS

2.1 Introduction

Human rights being a generic term embrace civil rights, civil liberties, social, economic and cultural rights, they are norms that seek to aspire to protect all persons. Nevertheless, to say that there is a widespread acceptance of the definition and principle of human rights does not mean that there is complete agreement about its nature and scope or, definition. It is sometimes said that there exists no universally agreed upon theory or even understanding of human rights. Despite this lack of consensus, a number of widely accepted presuppositions can assist in defining human rights.

In this chapter we would be discussing on the general concept and meaning of human rights, how it originated, its history, scope and evolution, and enforcement mechanisms on the treaty states.

2.2 Meaning of Human Rights

Human rights are rights which all human beings have by virtue of their humanity, such as the right to life, dignity of human person, personal liberty, fair hearing and freedom of thought, conscience and religion.[20] These rights are inherent to all human beings, regardless of race, sex, nationality, ethnicity, language, religion, or any other status. It embodies the standards without which individuals cannot realize their inherent human dignity.[21] Everyone is entitled to these rights, without discrimination. They are moral principles or norms that describe

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[20] Dr Ifeanyi Onwazombe, '*Human Rights Abuse and Violations in Nigeria: A Case Study of the Oil-Producing Communities in the Niger Delta*' Annual Survey of International and Comparative law (vol22: Iss 1, Art 8 2017) < https://digitalcommons.law.ggu.edu/annlsurvey/vol22/iss1/8 > Accessed 15 August 2020

[21] United Nations, '*Human Rights*'< www.un.org > Accessed 15 August 2020

certain standards of human behavior and are regularly protected as natural and legal rights in municipal and international law.

Human rights entail both rights and obligations. Accordingly, it is a states' obligation and duty under international law to respect, to protect and to fulfil human rights, which means that the state should desist from interfering with the enjoyment of human rights, protect individuals and groups against human rights abuses and violations, and must take positive action to facilitate the enjoyment of basic human rights.[22]

According to the Human Rights Education Handbook, Human rights are those rights that belong to every individual—man or women, girl or boy, infant or elder—simply because she or he is a human being. Human rights are universal as they are inherent in every member of the human family from birth. Human rights are inalienable, in other words, you cannot lose these rights, even though there are instances where they could be restricted as explained in the previous chapter. Human rights are also indivisible that is to say that you cannot be denied a right because someone decides that it is "less important" or "non-essential." Human rights are interdependent: as all human rights are part of a complementary framework.[23]

Because human rights are not granted by any human authority such as a monarch, government, or secular or religious authority, they Human rights are not the same as civil rights, such as those in the Nigerian Constitution and various acts because they are not granted by a particular human authority, such as a monarch or government. Constitutional rights are granted to individuals by virtue of their citizenship or residence in a particular country whereas human rights are inherent and held as attributes of the human personality[24].

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22 Office of the High Commissioner, '*United Nations Human Rights'* < www.ohchr.org > accessed 7 May 2020

23 '*Human Rights Education Handbook'* part 1 < http://hrlibrary.umn.edu > accessed August 2020

24 UN Office of the High Commissioner, *Human Rights; Handbook for parliament* (inter-parliamentary union Courand et Associes 2006)

2.3 Origin and History of Human Rights

Human rights are considered the offspring of natural rights, which themselves evolved from the concept of natural law. Natural law, which has played a dominant role in Western political theory for centuries, is that standard of higher-order morality against which all other laws are adjudged. To contest the injustice of human-made law, one was to appeal to the greater authority of God or natural law.[25]

The origin of human rights is closely tied to the development of moral universalism. The history of the philosophical development of human rights is featured by a number of specific moral doctrines which, though not themselves adequate expressions of human rights, have nevertheless provided a number of philosophical requirements for the contemporary doctrine. These include a view of morality and justice as emanating from some pre-social domain, the identification of which provides the basis for distinguishing between 'true' and merely conventional' moral principles and beliefs. The essential prerequisites for a defense of human rights also include a conception of the individual as the bearer of certain 'natural' rights and a particular view of the inherent and equal moral worth of each rational individual. While some have discerned intimations towards the notion of rights in the writings of Aristotle, the Stoics, and Christian theologians, a concept of rights approximating that of the contemporary idea of human rights most clearly emerges during the 17th and 18th centuries in Europe and the doctrine of natural law.[26] The basis of the doctrine of natural law is the belief in the existence of a natural moral code based upon the identification of certain fundamental and objectively verifiable human goods. Natural rights were thereby presented as ultimately valid irrespective

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[25] The Levin Institute *'Origins of Human Rights*' The State University of New York (2016)< http://www.globalization101.org/human-rights-vs-natural-rights/> accessed August 17 2020

[26] Burns H. Weston, 'Human Rights'< www.britannica.com/topic/humanrights> accessed June 2021

of whether they had achieved the recognition of any given political ruler or assembly. The quintessential exponent of this position was the 17th Century philosopher John Locke.[27]

Locke argued that natural rights flowed from natural law. Natural law originated from God. At root, each of us owes a duty of self-preservation to God. In order to successfully discharge this duty of self-preservation each individual had to be free from threats to life and liberty, whilst also requiring what Locke presented as the basic, positive means for self-preservation: personal property. He proceeded to argue that the principal purpose of the investiture of political authority in a sovereign state was the provision and protection of individuals' basic natural rights. For Locke, the protection and promotion of individuals' natural rights was the sole justification for the creation of government. States were presented as existing to serve the interests, the natural rights, of the people, and not of a Monarch or a ruling cadre. Analyses of the historical theory of human rights typically accord a high degree of importance to Lockes contribution.[28]

However, the 18th Century German philosopher, Immanuel Kant, argues that the philosophically adequate completion of theoretical basis of human rights requires an account of moral reasoning, that is both consistent with the concept of rights, but which does not necessarily require an appeal to the authority of some super-human entity in justifying human beings' claims to certain, fundamental rights. Kant provides a means for justifying human rights as the basis for self-determination grounded within the authority of human reason. His moral philosophy is based upon an appeal to the formal principles of ethics, rather than, for example, an appeal to a concept of substantive human goods. Kant provides a formulation of

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27 Nickel James, 'Making Sense of Human Rights: Philosophical Reflections on The Universal Declaration of Human Rights' (Berkeley; University of California Press, 1987)

28 ibid

fundamental moral principles that, though exceedingly formal and abstract, are based upon the twin ideals of equality and moral autonomy.[29]

The philosophical ideas defended by the likes of Locke and Kant have come to be associated with the general Enlightenment project initiated during the 17th and 18th centuries, the effects of which were to extend across the globe and over ensuing centuries. These ideals effected significant, even revolutionary, political upheavals throughout the 18th. Century, enshrined in such documents as the United States' Declaration of Independence and the French National Assembly's Declaration of the Rights of Man and Citizen.[30]

Originally, people had rights only because of their membership in a group, such as a family. Then, in 539 BC, Cyrus the Great, after conquering the city of Babylon, did something totally unexpected he freed all slaves to return home. Moreover, he declared people should choose their own religion. The Cyrus Cylinder, a clay tablet containing his statements, is the first human rights declaration in history.[31] These and other precepts were recorded on a baked-clay cylinder known as the Cyrus Cylinder, whose provisions served as inspiration for the first four Articles of the Universal Declaration of Human Rights.

Based on these decrees, civilizations in India, as well as Greece and Rome, expanded on the concept of 'natural law' and society continued to make progress, leading to another cornerstone of the history of Human Rights: the Magna Carta of 1215, accepted by King John of England, considered by many experts as the document that marks the start of modern democracy. Also known as the Great Charter, this document covered, among other things, the

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29 n16

30 Andrew Fagan, *'Human Rights*' Internet Encyclopedia of Philosophy < https://iep.utm.edu/hum-rts/ > accessed August 17 2020

31 Youths for Human Rights *'History of Human Right*' < www.youthsforhumanrights.org > accessed 20 August 2020

right of widows who owned property to choose not to remarry, and established principles of equality before the law.[32]

Though one could argue that the conceptual prerequisites for the defense of human rights had long been in place, a full Declaration of the doctrine of human rights only finally occurred during the 20th century and only in response to the most atrocious violations of human rights, exemplified by the (World War II) Holocaust. The Universal Declaration of Human Rights (UDHR) was adopted by the UN General Assembly on 10th. December 1948 and was explicitly motivated to prevent the future occurrence of any similar atrocities.

2.4 Scope and Evolution of Human Rights

The grave upheavals produced by the two World Wars led to the creation of the UN and to enactment of international laws to safeguard human rights, beginning with the Universal Declaration of Human Rights of 1948. The Declaration ushered in a new era in the evolution of human rights that would drive the development of the consciousness of human security. The Declaration is not a legally binding document. However, through the general acceptance and practice of its principles as law, it has become the Magna Carta and internationally recognized legal and ethical framework for international, regional and national human rights mechanisms. It also serves as a source for other international and regional declarations and conventions on human, civil, political, economic, social and cultural rights.[33] This task was accomplished by the Commission on Human Rights, whose main objective was to design a document that will clearly define the human rights and freedoms in the charter. Eleanor Roosevelt was commissioned to perform the task. The Universal Declaration of Human Rights (UDHR) was adopted by 56 members. This declaration has been incorporated in the

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32 Acciona Sustainability for all, *'A brief History of Human Rights'* < https://www.activesustianbility.com > Accessed 20 August 2020

33 Leonir Chiarello, *'Evolution of the Concepts of Human Rights and Human Security'* Scalabrini International Migration Network(2015) < https://cmsny.org/publications/chiarello-human-rights-and-human-security/ > Accessed 21 August 2020

constitution of 185 countries. The declaration also achieved the status of customary international law because people regard it as the bases for establishing a common standard for all people and nations. After the Universal Declaration of Human Rights, the Human Rights Commission drafted two treaties, the International Covenant on Civil and Political Rights (ICCPR) and its Optional Protocol and the International Covenant on Economic, Social and Cultural Rights (ICESCR). Together they are known as the International Bill of Human Rights. In addition to the treaties, there were 20 principle bills that were adopted by the UN which focus on protecting the individuals from torture and genocides. At the same time protect the minorities, women and the vulnerable populations (refugees). These conventions include the Convention on the Elimination of All Forms of Racial Discrimination; the Convention on the Prevention and Punishment of the Crime of Genocide; the Convention on the Political Rights of Women; the Slavery Convention of 1926 amongst others.[34]

Following the adoption of the Universal Declaration of Human Rights, several regions of the world have established their own systems for protecting human rights, which exist alongside that of the UN. To date, there are regional human rights institutions in Europe, the Americas and Africa. In Africa, the African Charter on Human and Peoples' Rights[35] was adopted and came into force in October 1986 and by 2021, it had been ratified by 54 states. [36]Some steps are also underway in the Arab world and the ASEAN (Association of Southeast Asian Nations) towards institutionalizing regional human rights standards. However, most countries

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34 UNGA, 'International Convention on the Elimination of All Forms of Racial Discrimination' Treaty Series (1966) A/RES/34/180; UNGA, ' Prevention and punishment to the crime of genocide' (1948) A/RES/260; UNGA, 'Convention on the Political Rights if Women' (1952) A/RES/640; League of Nations, ' Convention tp Suppress the Slave Trade' (1926) 60LNTS 253, reg no. 1414

35 Oraganisation of African Unity, 'African Charter on Human and peoples right (1982) CAB/LEG/67/3/rev.5,21 I.I.M 58

36 African Commission on Human and Peoples' Rights 'Ratification Table: African Charter on Human and Peoples' Rights' <https://www.achpr.org/ratificationtable?id=49> accessed 31 May 2021.

in this part of the world have also ratified the major UN treaties and conventions - thereby signifying their agreement with the general principles, and voluntarily becoming bound by international human rights law.

2.5 Implementation and Enforcement Mechanisms

The numerous human rights conventions under the framework of the United Nations and the regional systems in Africa, the Americas and Europe have led to the creation of a wide range of mechanisms for monitoring compliance with international human rights laws. These different procedures have been instituted at the international and regional levels to monitor compliance with human rights treaties, this however is still in development[37]. Bodies created under the UN Charter, including the Human Rights Council and its Special Procedures; and Committees set up by international human rights treaties and made up of independent experts mandated to monitor State parties' compliance with their treaty obligations. The Office of the High Commissioner for Human Rights (OHCHR) works to offer the best expertise and support to the different human rights monitoring mechanisms in the United Nations system.[38]

Enforcement mechanisms are usually categorized by the type of UN body that receives communications or carries out the monitoring process. There are three broad categories of enforcement mechanisms;

1. Charter-based mechanisms, such as the UN Commission on the Status of Women,
2. Convention or treaty-based mechanisms, such as the Committee on the Elimination of Discrimination against Women; and

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37 European Law Students Association, 'Human Rights Handbook' 2015 <https://www.elsa.org> accessed June 2021

38 United Nations Human Rights; Office of the High Commissioner of Human Rights, '*Making Human Rights a reality: The Human Rights Mechanisms*' (United Publishing Service, United Nations, Geneva GE.08.13248 2009 1,000 HRC/NONE/2008/109)

3. Mechanisms contained in UN specialized agencies, such as the International Labor Organization or the World Health Organization.

Each of these bodies monitors either a specific human rights issue or particular treaties.

The classification of enforcement mechanisms into these categories clarifies the workings of the UN structure.

Individuals or non-governmental organizations (NGOs) can bring information about human rights violations, or non-compliance with human rights obligations, to the UN bodies mentioned above through two procedures: complaint mechanisms and reporting/ monitoring mechanisms. Each procedure has its own requirements, limitations and outcomes. In choosing to seek enforcement of human rights obligations, advocates should carefully evaluate, first, the mechanisms available to them based on the treaty ratification of their national government, and, second, the desired remedy or outcome for the victims of human rights violations. There are also specific differences between the procedures, such as whether the communication remains confidential, that must also be considered.

Advocates should consider the remedies available at the international level, under the UN, as part of a larger strategy to combat violence against women. For many reasons, the international enforcement mechanisms should only be addressed after attempting to obtain redress through the national legal system.

First, the UN enforcement bodies that accept direct complaints require exhaustion of domestic remedies before a case can be considered admissible. Secondly, and perhaps more importantly, the remedies available under international law may not always be advantageous to the individual victim. The UN mechanisms are often very slow and time-consuming and confidentiality of the complainant cannot always be ensured and victims of violence may have limited resources in which to invest in a lengthy procedure. Furthermore, safety for the

victim should be a paramount concern, and the UN is limited in its ability to intervene and protect individual victims of human rights violations.[39]

Human rights are often expressed and guaranteed by law, in the forms of treaties, customary international law, general principles and other sources of international law. International human rights law lays down obligations of Governments to act in certain ways or to refrain from certain acts, in order to promote and protect human rights and fundamental freedoms of individuals or groups. Also special Procedures is referred to as the mechanisms established by the Commission on Human Rights to address either specific country situations or thematic issues in all parts of the world. Treaty bodies are made up of 18 to 23 independent experts who, after examining reports from States, will give their recommendations. Treaty bodies usually meet in session twice a year in Geneva, with the exception of the Human Rights Committee which additionally meets once a year in New York.[40]

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39 *'Enforcement Mechanisms in the United Nations*', Minnesota Advocates for Human Rights (2003) < http://hrlibrary.umn.edu/svaw/law/un/unenforce.htm > Accessed 21 August 2020.

40 n24

2.6 Conclusion

Human beings are rational beings and by virtue of their being human, possess certain basic and inalienable rights which are commonly known as Human Rights. However, human rights being a generic term embrace civil rights, civil liberties, social, economic and cultural rights. As such, the rights that all people have by virtue of human existence are human rights. Since these rights belonged to them because of their very existence, they become operative with their birth. Human rights being the birth right are therefore, inherent in all individuals, irrespective of their, religion, sex, and nationality. These rights are essential for all the individuals as they are consonant with their freedom and dignity and are conductive to physical, moral, social and spiritual welfare. Because of their immense significance to human beings; Human rights are also sometimes referred to fundamental rights, basic rights, inherent rights, natural rights and birth rights.

Human rights are rooted in ancient thought and in the philosophical concepts of natural law' and 'natural rights'. This chapter has succinctly elaborated on human rights as a concept; understanding its definition, origin, history, and enforcement mechanisms like through the different international agreements and conventions the principles of human rights came to be recognized and adopted as the fundamental laws of national frontiers in the shape of Constitutional drafts. The United Nations finally adopted, in 1948, the Universal Declaration of Human Rights as moral principle in the shape of legal provisions.[41]

The next chapter would shed more light on the universalism and cultural relativism of human rights, how both concepts originated, various philosophical debates on the subjects and lastly how it connects with the idea of LGBT community as either universal or culturally relative.

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41 *'Human Rights Origin and development'* < https://shodhganga.inflibnet.ac.in > Accessed 22 August 2020

CHAPTER THREE

UNIVERSALISM AND RELATIVISM OF HUMAN RIGHTS

3.1 Introduction

> "The General Assembly Proclaims this Universal Declaration of Human Rights as a common standard of achievement for all peoples and all nations, to the end that every individual and every organ of society, keeping this Declaration constantly in mind, shall strive by teaching and education to promote respect for these rights and freedoms and by progressive measures, national and international, to secure their universal and effective recognition and observance, both among the people of Member States themselves and among the peoples of territories under their jurisdiction."[42]

The above content of the Universal Declaration of Human Rights (UDHR) possess an assertion of the universality of the rights contained in the article. Similar statements appear in subsequent instruments which couch the beneficiaries of rights in terms such as 'everyone' and 'all persons'. Nevertheless, an issue which has long plagued academics and practitioners alike is whether human rights are truly universal or they are subject to cultural differences.[43] Globalization has both homogenized and sharpened national and cultural identities, creating controversies between universalism and cultural rights proponents (relativist). Obviously there is no unanimous consensus regarding these controversies as there are indeed different cultures with different values. But at the same time, there is more similarity in different cultures than a perfunctory glance would disclose. According to Micheal Walter 'every human society is universal because it is human, particular because it is a society.'[44]

The strong cultural relativism holds that the primary source of moral right or rule which could also be tagged as basic or fundamental human rights is 'culture'. However, proponents

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42 Excerpt from the Preamble of the 1948 Universal Declaration of Human Rights

43 Rhona K.M Smith, *Texts and materials on international human rights* (3rd edn, Routledege 2013).

44 Micheal Walzer, *Thick and thin: Moral Argument at Home and Abroad*, (University of Notre Dame Press, 1994).

of universalism contend such as Jack Donnelly contend that universality of human nature and rights serves as a check on the potential excesses of cultural relativism.[45]

The perspective on cultural relativism came about during the establishment of the Universal human rights doctrine in 1948. The conflict arose due to the theory that there was some kind of dominance of human rights over some cultures, and that the universal human rights doctrine come from European or Western philosophy. This doctrine was the Universalist approach to human rights that placed value on individuals. Some theorists however believe that the enactment of these human rights is not the only way that human rights exist. There is the theory that people are born with natural, God-given rights and that God is the absolute law-maker who bestowed upon us some basic human rights. For this reason, itself, cultural relativism critics therefore argue that there should be no exception to the universal claim to human rights as some of these rights are already natural and God-given.[46]

Another basic conflict between these two extreme perspectives lies in the degree to which either should be the chief underlying consideration when dealing with the great diversity of peoples worldwide. One of the most important and difficult questions in the domain of the international promotion and protection of human rights still remains the question of the relative influence of factors which are common to various societies on the one hand, and factors which are different on the other hand.[47]

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45 Jack Donnelly, 'Cultural Relativism and Universal Human Right' (1984) vol 6 human rights quarterly

46 All Answers ltd, 'The Issue of Cultural Relativism Human Rights Essay'<https://www.ukessays.com/essays/human-rights/the-issue-of-cultural-relativism-human-rights-essay.php?vref=1> accessed 19 May 2021

47 Rein Müllerson, *Human Rights Diplomacy* (Routledge 1997).

3.2 What is Universalism and Relativism?

3.2.1 What is Universalism?

The concept of universalism is used in various contexts and with different meanings. On one side, universalism is the philosophical and theological concept that some ideas have universal application or applicability. The belief in one fundamental 'truth' is an important tenet in universalism as that 'truth' is seen more far reaching than national cultural or religious boundaries or interpretations of that one truth.[48]

Universalism of human rights as described in a more modern context could mean the 'pursuit of unification of all human beings across the geographical boundaries envisaging freedom and entitlement as mutually reinforcing sides of the same coin of human aspirations, drawing principles from many diverse traditions and making them more robust through a uniform codification'.[49]

The use if the terminology universalism is not limited to the sphere of ethics and law. The word universalism is derived from the Latin word 'universalis' meaning 'general', this ideal indicates a claim that all the diversities flowing from different ideologies and cultures as a whole can be traced to a single principle or law of order. So therefore universalism is then regarded from a perspective that prioritizes the whole of an entity above singularity and generality above specificity.

Examined in less cumbersome terms, the concept of universalism holds that each human being possesses certain inalienable rights because such individual is a human, regardless of the national background, religious or political views, gender or age. Despite of a variety of

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48 Vedanta Society, 'Harmony of Religions' < www.vendanta.org > accessed July 2021

49 United Nations, Are human rights universal <www.un.org/en/chronicle/article/are-human-rights-universal> accessed May 2021.

definitions and practices, universalism retains an essential core. It always refers to something that is common to all people.

Some proponents of the concept of universalism are of the notion that its bases are on three fundamental jurisprudential theories- the natural law theory, the theory of rationalism, and the theory of positivism. The proponents of this concept delineated the roots of natural law theory to go back to the ancient times. Thus the main point of this theory is that natural law is standing above manmade positive law and defines the eliminable human rights, which are necessary for all the nation-states. However, rationalism supersedes the idea of divine origin of natural law with the theory that each individual is endowed with certain rights due to the universal capacity of all individuals to think rationally. Theory of positivism demonstrates the existence of universal human rights noting the acceptance and ratification of human rights instruments by vast majority of states regardless of their cultural background.[50]

Universalism with its supporting theories of natural law, rationalism and positivism would seem to finds the source of human rights in international law, rather than in individual cultures, therefore claiming that the origin of human rights cannot therefore be termed based on cultural relativism.

Anneli Anttonen & Jorma Sipilä[51] both observed that the roots of universalism are deeply located in the development of modernisation and democracy of industrial societies, which before any kind of citizenship-based universalism is possible every person must be recognized legally as a subject with human and political rights. Flowing from this observation it can be said that universalism can only be provided by the state, access for all cannot be

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50 All Answers ltd, 'Universalism and Cultural Relativism in Human Rights' < www.lawteacher.net/free-law-essays/international-law/universalism-and-cultural-relativism-in-human-rights > accessed 17 May 2021

51 Anneli Anttonen & Jorma Sipilä, 'Varieties of Universalism' (United Nations Research Institute for Social Development Conference April 2014)

guaranteed without approval from the legislation that is being legally recognized and accepted as a human with its rights.

Jack Donnelly rightly observed that, while human rights have not been part of most cultural traditions, or even western traditions, until white recently, there is a striking similarity in many of the basic values of most cultures. This is particularly true when these values are expressed in relatively general terms, 'Life, social, order, prohibition of inhuman treatment, and access to an equitable share of the means of subsistence are central moral aspirations in nearly all the cultures.[52]

3.2.2 What is Cultural Relativism?

The term cultural is taken to mean of or relating to a particular group of people, their habits beliefs and traditions. According to the Cambridge dictionary, culture is defined as the way of life, especially the general customs and beliefs of a particular group of people at a particular time.[53] The way of life of a people, including their attitudes, values, beliefs, arts, sciences, modes of perception, and habits of thought and activity. Cultural features of forms of life are learned but are often too pervasive to be readily noticed from within.[54] Relativism according to the Merriam Webster dictionary relativism to mean a view that ethical truths depend on the individuals and groups holding them. The Collins dictionary defines it to be the belief that the truth is not always the same but varies according to circumstances, it is any theory holding that truth or moral or aesthetic value and so on is not universe absolute but may differ between individuals or cultures.[55]

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52 Donnelly (n 4) 414-15.

53 Cambridge dictionary, (Cambridge University press 2021).

54 The oxford dictionary of philosophy <https://www.oxfordreference.com> accessed May 2021

55 <www.collinsdictionary.com> accessed May 2021

Relativism is also referred to as a family of philosophical views which deny claims to objectivity within a particular domain and assert that facts in that domain are relative to the perspective of an observer or the context in which they are assessed[56].

3.2.3 Types of Relativism

1. Cultural Relativism: describes the simple fact that there are different cultures and each has different ways of behaving, thinking and feeling as its members learn such from the previous generation. There is an enormous amount of evidence to confirm this claim. It is well known by just about every human on the planet that people do things differently around the globe. People dress differently, eat differently, speak different languages, sing different songs, have different music and dances and have many different.

2. Descriptive Ethical Relativism: Describes the fact that in different cultures one of the variants is the sense of morality: the mores, customs and ethical principles may all vary from one culture to another. There is a great deal of information available to confirm this as well. What is thought to be moral in one country may be thought to be immoral and even made illegal in another country.

3. Normative Ethical Relativism: is a theory, which claims that there are no universally valid moral principles. Normative ethical relativism theory says that the moral rightness and wrongness of actions varies from society to society and that there are no absolute universal moral standards binding on all men at all times. The theory claims that all thinking about the basic principles of morality (Ethics) is always relative. Each culture establishes the basic

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[56] Stanford encyclopedia of philosophy <https://www.plato.stanford.edu/entries/relativism/> accessed May 2021

values and principles that serve as the foundation for morality. The theory claims that this is the case now, has always been the case and will always be the case[57].

The idea of Cultural relativism was developed by Franz Boas in 1911.Boas introduced the idea of cultural relativism, which holds that cultures cannot be objectively ranked as higher or lower, or better or more correct, but that all humans see the world through the lens of their own culture, and judge it according to their own culturally acquired norms. For Boas, the object of anthropology was to understand the way in which culture conditioned people to understand and interact with the world in different ways and to do this it was necessary to gain an understanding of the language and cultural practices of the people studied[58].

Robert Redfield described cultural relativism as values expressed in any culture are to be both understood and valued only according to the way people who carry that culture see things. Melville Herskovits gives an even more elaborate definition of cultural relativism as a philosophy which, in recognizing the values set up by every society to guide its own life, lays stress on the dignity inherent in every body of custom, and on the need of tolerance of conventions though they may differ from ones own. He continues by going on to say that each culture is said to constitute a total social world that reproduces itself through enculturation, the process by which values, emotional dispositions, and embodied behaviours are transmitted from one generation to the next.[59]. Therefore, it can be inferred that cultural relativism could be said to be the principle(s) by which the beliefs of individuals should be perceived to be, that is to say as regards his or her own culture.

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57 Ibid

58 Parker Robbins, 'Boasian Anthropology: Historical Particularism and Cultural Relativism' (PB Works, October 2001) < http://anthrotheory.pbworks.com/page/29518607/ > accessed May 2021

59 (n 5)

3.3 Philosophical Ideologies of Universalism and Cultural Relativism

Author Henry Robertson and John Merrills wrote:

The idea of I individual worth can be found in the work of stages, philosophers, prophets and poets from different countries and many faith's in all continents, including India, China, Japan, Persia, Russia, Turkey, Egypt, Israel, several countries of black Africa and pre-Columbian civilization of South America[60].

In order to be able to outline some of the philosophical ideologies of both concepts, it is necessary to reveal the major contending views of both the universalism and cultural rights proponents. These views can be traced to different theoretical approaches which sociologist Stephen Luke's has described in form of Weberian ideal types as "Five Fables about Human Rights"[61].

- First is that of the utilitarian approach which originally defined human rights as the "greatest happiness for the greatest number ". The utilitarians all agree on the principle that what counts is what can be counted, with technocrats, bureaucrats and judges as the most powerful in the utilitatia.
- The second is that of the communitarian that treats beliefs and practices of all subcommunities as equally valid, and resulting from that positing that there are no universally valid principles of human rights.
- The proletarian approach is the third, and they view human right from the perspective of the social class status. Conflicts over rights depicts the division of labour, also the unequal distribution of wealth among both the nations and the individuals.

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60 A.H Robertson and J.G Mereills, '*human rights in the world*,'(3rd edn, Manchester university press 1993) 8

61 Luke Steven, '*5 Fables About Human-Rights*', (Filozofski Vestnik-Acta Philosophica, Political Science Sociology Filozofski Vestnik 1994) 111-126

- The fourth approach according to him is the libertarian, these in relations with their market value and cost benefit analysis applauds universal human rights, and maintains a fundamental distrust toward the state.
- The fifth approach by Luke's rather rejects the previous four to advocate this egalitarian approach. Which defends basic liberties and equality of opportunity. Thoughts on the feasibility and viable of this egalitarian society have However been doubted by the sociologist. All these according to Luke's should be guaranteed constitutionally, regardless of religion, class, ethnicity or gender.

In philosophy, universality is the notion that universal facts can be discovered and is therefore understood as being in opposition to relativism. On this side British historian Eric Hobsbawm condemned the socialist support for rights based on particular identities or cultural allegiance.[62]According to him "human rights can never be realized by adding the sum total of minorities' interests". He explained that promoters of "identity groups, are about themselves, for themselves and nobody else", and that they have failed to highlight and emphasize the common ground that holds the various identity groups together, an occurrence that leads to the fragmentation of the human rights agenda. He calls for the universalism of the people, and that if there is no people as a whole but just peoples then there's no left.

Again other scholars with a liberal perspective on universalism are Rhoda Howard-Hassmann and Jack Donnelly. They both maintain that internationally recognised liberal and human rights, as laid out in the UDHR and the international human rights covenants, are the only legitimate human rights standards. They state that although, 'All societies embody conceptions of personal dignity... human rights represent a distinctive approach to realizing a particular conception of human dignity'.

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[62] Eric Hobsbawm, '*Identity politics and the left*' (New Left Review, May/June 1996) <https://newleftreview.org/i217/articles/eric-hobsbawm-identity-politics-and-the-left > accessed June 2021.

They contended that the heart of liberalism is expressed in the basic political right to equal concern and respect. Forfending a liberal view of individual rights, they argued against both the libertarian strand of liberalism whom they opined failed to take human rights seriously relating to distinctively libertarian rights and the conservative communitarian rights which according to them is found 'primarily in the cultural sphere' that for example, that individuals' right to property are constrained by individuals' right to social justice. Ultimately they were of the notion that when individuals are treated with equal concern then communities can and will thrive[63].

However, on the cultural relativist side, but from a pragmatist perspective, is philosopher Richard Rorty[64] who characterized western rationalism and foundationalist positions of universalism of rights as defended by Plato Kant and others as obsolete. Those views in his opinion, are, despite their theoretical and Universalist claims, are exclusively for only rational individuals regarded a fully human. According to him, he claimed, Muslims and women may be excluded from the rationalist equation of rights. He said this that rather than following the so-called command of reason, those who oppose oppression should concentrate on promoting sentimental education, that this attitude would favour the possibility of "powerful people gradually ceasing to oppress others, or ceasing to countenance the oppression of others out of mere niceness, rather than out of obedience to the moral law".

Also on the relativist side stands the Malaysian political scientist scholar and human rights activist Chandra Muzaffar, he condemned neo-imperalism Western domination and its human rights double standards as a cause for great skepticism about western values in the developing world. According to him, though formal colonial rule has ended, Western domination and

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63 Rhoda E. Howard and Jack Donnelly, *Human Rights, Human dignity and political regimes* (American Political Science Review 80 September 1986)

64 Richard Rorty, *Human Rights, Rationality, and Sentimentality. In Truth and Progress: Philosophical Papers*(Cambridge: Cambridge University Press 1993) 167-185

control continues to impact upon the human rights of the vast majority of the people of the non-western world in ways which are more subtle and sophisticated but no less destructive and devastating... and it is because of this that many people in the non-western world now know that dominance and control is the real motive of the West, that they become skeptical and critical of the West's posturing on human rights. He opined that the great challenge before man is developing the vision of human dignity culled from our religious and spiritual philosophies into a comprehensive charter of values, principles, rights and responsibilities acceptable to human beings everywhere. In lieu of Western secular individualism, he offered a vision of God-guided human dignity drawn from religious and spiritual philosophies[65].

The debacle between universalism and cultural relativism has also been sprung up in the contention for gay rights. In the *Same-sex Sexuality and Globalization of Human Rights Discourse 2004*, legal and social theory scholar Carl F. Stychin[66] observed that, despite significant legal achievements for the international gay movement, non-Western gay activists have traveled between the universalizing and making essential the discourse of sexual identity. In his words, the story of success can be explained through a double movement of globalization; first is the globalization of human rights and then the universalizing of same-sex sexualities as identities, like that of the Anglo-American, "Stonewall" who modeled sexuality, identity and liberation.[67] Because homosexuality is often seen in the developing world as a legacy of colonialism or as an "abhorrent western import", gay activist often turn to local traditions and history to question the idea of heterosexuality. It is by reclaiming culture's homoerotic history that indigenous gay activists have challenged the idea that

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65 Chandra Muzaffar; *Rights, Religion and ReformEnhancing Human Dignity through Spiritual and Moral Transformation* (Routledge publishers 2002).

66 Carl Stychin, *same-sex sexuality and the Globalization of Human Rights Discourse* (2004) McGill journal, 49(4) 951-968

67 The birth of contemporary American lesbian and gay identity politics at the Stonewall riots(New York City 1969)

homosexuality has polluted the purity of their culture, explained Stychin. Yet because non-Western activists have also benefited from the achievements of the international gay movement, Stychin concludes by calling for the establishment of a bridge between cosmopolitan gay rights and culturally oriented same-sex struggle activists.

To sum up the views of Stychin on the conflicting nature of human rights and its status as either universal or culturally relative with regards to the issue of same sex, is one which is slowly fading away. Owing to the fact that sexual identity of the gays neatly fits into the universalizing language of human rights, and also when it comes to the globalization of human rights in general, there has been a fusion with the movement of sexual identity, which has been advanced by human rights law and international human rights experts. This according to him has brought to the attention of the world on the abuses of human dignity, especially for those how have been constructed as less human because of their same-sex sexual practices and desires. In a way they become cosmopolitan claims to justice, which transcend the particularities of time and place through powerful arguments that flows from the desire to be "who we are"[68].

3.4 LGBT Rights and its Relation to Universalism and Relativism Under Human Rights.

With the increased global media attention of violent acts against the LGBT persons, a crucial question that is very important to ask the world community today is whether gay rights are included under our basic human rights, in other words, whether gay rights are universal, meaning they are applicable to all persons, or culturally relative, which means they are subject to the customs and pre-existing beliefs of particular nations or communities.

On the universalist side, the Universal Declaration of Human Rights in 1948, sees human rights as "rights derived from the inherent dignity of the human person". This implies that

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[68] Gerard Delanty, *citizenship in a Global Age; Society, Culture, Politics* (Buckingham Open University Press, 2000).

human rights are naturally bestowed on every human being, hence it is anthropocentric, and individuals are the central focus of universalism, meaning that humans are members of the universal society and possesses rights which no immediate society of any human should abuse, but instead protect. However, the U.N is not at all clear what their deliberations are on the linkage between gay rights and human rights. For example, the Charter of the United Nations 1945 encourages "respect for human rights and for fundamental freedoms for all without distinction"[69], alongside the UDHR, which states in article 2 "Everyone is entitled to all the rights and freedom set forth in this declaration, without distinction of any kind"[70].

Human rights are held with respect to the state, endowing upon them powerful duties and obligations by setting the limits and requirements of state, and social, action. For example, lists of human rights such as the UDHR and the European Convention on Human Rights (ECHR, 1950), specify the minimum requirements and conditions for a "dignified life". In this sense, human rights affect both the foreign and domestic policies of sovereign states with the UDHR, playing a central role in establishing the "contours of the contemporary consensus on internationally recognized human rights". The extent to which they have been adhered to and complied with, however, is challenged and tends to be the focus of much of the criticism surrounding the human rights regime and its implementation. Nevertheless, a substantial percentage of member states that have sworn to protect the human rights of their citizens, still do not completely implement all provisions of these documents into the practices laws of their sovereign.[71]

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69 United Nations Universal Declaration of Human Rights (1945), 'New York, NY: UN department of Public Information' <www.un.org/en/documents/udhr> accessed June 2021.

70 United Nations Universal Declaration of Human Rights (1948), 'New York, NY: UN department of Public Information'<www.un.org/en/documents/udhr> accessed June 2021.

71 Natalie Lovell, *Theorizing LGBT Rights as Human Rights: A Queer(itical) Analysis* < www.e-ir info/2015/12/30/theorising-lgbt-rights-as-human-rights-a-queeritical-analysis > accessed May 2021

Cultural imperialism presupposes that the universality of human right robs a people of their cultural values into accepting values from the west as standards for moral judgment. Cultural relativity sets in with the primus objective of demanding respect for cultural differences.[72] Cultural relativity is a normative doctrine that portends that what a culture defines to be right is right. This is based on the argument that cultures differ on their conceptions of human wellbeing. Hence, what is right in community A may not be right for an individual to practice in community B. This puts culture at the position of absolutism and ethical or moral infallibility. Cultural relativism is a doctrine that holds that (at least some) such variations are exempt from legitimate criticism by outsiders, a doctrine that is strongly supported by notions of communal autonomy and self-determination. Naturally, cultural relativists argue that there are indeed moral justifications underlying the claim that various practices and beliefs differ from society to society and should be accepted as being relative to other cultural beliefs. Our moral beliefs indicate the kind of environment or culture we grew up in. Therefore, if we were born in Somalia, we would believe that it is morally right to go through female circumcision as a rite of passage. However, if we grew up in the western world, then we would not believe in female circumcision. We can therefore see the relativist's argument of cultural relativism in this case, because if cultural relativism exists, then naturally, morality will also be relative. Additionally, to support his stance, the relativist will also argue that tolerance comes into play when it comes to cultural relativism.

Contemporary society is often referred to as a multicultural world, with people from various cultures increasingly becoming accustomed to interacting with people from other cultures[73]. In the context of human rights, strong or normative cultural relativism selects culture and

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72 Gideon Uchechukwu Igwebueze, Opeyemi Ogundotun ' The Universality of Human Rights and Homosexuality: A Focus on Gender Issues in Africa' (2016) vol 7(4) Studies in Sociology of Science < http://www.cscanada.net/index.php/sss/article/view//8814 > accessed June 2021

73 n 10

seeks to ground ethical rules and substantive human rights in it while strong universalism disregards cultural nuances and upholds the uniformity of moral values across cultures. Culture captures the total way of life of a people, encompassing their language, religion, habits, customs, values, worldviews, science, etc. African cultures are strongly communitarian, which accounts for the privileging of cultural relativism over the idea of the universality of human rights[74].

3.5 International Legality of LGBT Rights

This subject of LGBT rights or gay rights has provoked passionate outburst from majority of African Countries, While many Africans consider homosexuality alien to African culture and immoral, Westerners, or the majority of Westerners, consider it yet another sexual orientation, as harmless as heterosexuality can be and an indubitable fact of human existence. Zimbabwe President Robert Mugabe targeted the Gays and Lesbians of Zimbabwe (GALZ) in his remark:

"I find it extremely outrageous and repugnant to my human conscience that such immoral and repulsive organizations, like those of homosexuals who offend both against the law of nature and the morals of religious beliefs espoused by our society, should have any advocates in our midst."

Mugabe's suggestion in his speech was that homosexuality is inconsistent with the model of sexual relations of pre-colonial Zimbabwean culture[75]. Rights affecting lesbian, gay, bisexual, and transgender (LGBT) people vary greatly by country or jurisdiction – encompassing everything from the legal recognition of same-sex marriage to the death penalty for

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74 Jonathan Chimakonam and Ada Agada, '*The Sexual Orientation Question in Nigeria: Cultural Relativism Versus Universal Human Right*s *Concerns*' (Springer Science+Business Media, LLC 2020)

75 Ajnesh Prasad , 'Cultural Relativism in Human Rights Discourse' (2007) Peace Review A Journal of Social Justice Volume 19, 2007.

homosexuality. Notably, as of January 2021, 29 countries recognized same-sex marriage. By contrast only Iran imposes the death penalty on consensual same-sex sexual acts. The death penalty is officially law but generally not practiced in Afghanistan, Brunei, Mauritania, Nigeria (in the northern third of the country), Saudi Arabia, Somalia and the United Arab Emirates. Sudan rescinded its unenforced death penalty for anal sex (hetero- or homosexual) in 2020. Fifteen countries have stoning on the books as a penalty for adultery, which would include gay sex, but this is only enforced by the legal authorities.

On December 9, 2010, the U.N. Secretary-General Ban Ki-moon spoke at a Ford Foundation event in New York City entitled, "Speak Up, Stop Discrimination." In his speech, Mr. Ban called for individuals to stand up for the rights of all and specifically referred to defending the rights of people jailed for their sexual orientation. This statement clearly identified his advocacy for the issue of gay rights in the context of human rights, and in so doing, placed this issue on the agenda of the United Nations.

In a Human Rights Day address to the United Nations in Geneva, Switzerland on Dec. 6, 2011, the United States Secretary of State, Hillary Clinton, stated that one of the remaining human rights challenges before the world today is guaranteeing the equality and dignity of members of the LGBT community. She outlined how violence against the LGBT community in any form is a violation of human rights, including the withholding of life-saving care or the denial of access to equal justice. Finally, Ms. Clinton argued that, despite the due respect for cultural and religious traditions, these traditions do not trump human rights and therefore should not serve as a pretext for denying fundamental rights to citizens based on sexual orientation or gender identity.[76]

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[76] Juneau Gary PsyD and Neal S. Rubin PhD,' *Recent Developments at the United Nation'* (ABPP Psychology International 2012).

3.6 Conclusion

There is no single, simple answer to the complex subject of prioritising regionalism over universalism. Although, having examined and assessed these divergence, it can be contended that cultural relativism and universalism are not incomparable with each other, that universal human rights values have now matured to such an extent to defy the justification or rationalisation of such practices as genocide, torture, female genital mutilation or physical amputations, cultural relativism is no longer a shield for protecting theocracies or dictatorial regimes and for the denial of the rule of law.

However, the existence of diverse cultural anthropology as regards the practice of certain human rights and freedom to do cannot be ignored, dominated or clouded by the existence of a central core of all human rights values which no derivation are permissible.

These radical views are ideal types and positions involving varying anthropological perspective of human rights by the sect asserting either. The strong cultural relativist holds that the primary source of a moral right or rule is 'culture '. According to Jack Donnelly, 'universality of human nature and rights serves as a check on the potential excesses of relativism'.[77]

In the next chapter we would be discussing about the Nigerian legislatures regarding the issue of LGBT rights, whether those ‘rights’ are recognised and accepted in the Nigerian Legal System of laws, and if not, the legislations enacted in place to address any issue concerning the LGBT rights and their community in the Nigerian society.

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[77] n 4

CHAPTER FOUR

LGBT RIGHTS IN NIGERIA; AN EXAMINATION.

4.1 Introduction

The issue of Lesbian Gay Bisexual and Transgender (LGBT) or Gay community rights has many countries of the world spilt in two opposing stance as to the acceptance and implementation of the rights. Majority of the global northern countries accept, promote and contend for a worldwide acceptance and recognition of these rights, while many countries in Africa are of the position that gay rights should not be condoned, recognised and accepted. According to Amnesty International, homosexuality is illegal in 38 of 54 African countries, and Africa has a wide range of punishments for homosexuality[78]. Nigeria being one of the countries that criminalise gay marriages, upholds a stance rooted in African sexual ethics and religious beliefs of what marriage is; a union of a man and a woman, and anything otherwise is unacceptable.[79] Section 42 of the Constitution of the Federal Republic of Nigeria (1999) provides for equality and non-discrimination, but makes no reference to sexual orientation or gender identity.[80]

This chapter attempts to examine LGBT rights; the Nigerian position under the umbrella of International Human Rights having understood in the previous chapter the meaning of human rights in both the universalist and the culturalist perspective. This chapter outlines and affirms the position of the Nigerian law and legislation regarding Homosexuality and same sex marriages. Furthermore the various punishments by states for violations, and what impact and

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78 Amnesty International; is a global movement of persons against injustice and campaign for a world where Human Rights are enjoyed by all.

79 Faith Olarenwaju, Felix Chidozie, Adekunle Olarenwaju, 'International Politics of Gay Rights and Nigeria-US Diplomatic Relations' (2015)< https://www.researchgate.net/publication/281622690 > accessed June 2021

80 Constitution of the Federal Republic of Nigeria, 1999.

implication these laws and prohibitions which states and the National at large has on the society today.

4.2 National Legislation on LGBT Rights

It is common knowledge that our culture does not allow for the breeding of sexual indiscretions and immorality. Thus the National Assembly is empowered to create laws which are reasonably justifiable in a democratic society for the preservation and protection of public health, public morality, and public order, and also to make laws for the purpose of protecting the rights and freedom of other people.[81] Thus we would now proceed to the enumerations of the laws put in place as regards the LGBT, or homosexuality/gay rights in Nigeria.

There various laws existing criminalising the practice of homosexuality within Nigeria. Varying from different states, like the Northern region; Sharia law criminalises same sex intimacy between both men and women. The laws regarding the prohibition of the practice of LGBT and or gay rights which will be discussed below are the Same Sex Marriage (Prohibition) Act 2014, the Criminal Code Act cap C 38, LFN 2004 and Sharia Laws.

4.2.1 Same Sex Marriage (Prohibition) Act

The essence of this Act which is clearly stated in its interpretation section, states that marriage" means a legally binding union between a man and a woman be it performed under the authority of the State, Islamic or Customary Law. This has been the age long position of marriage whether the Marriage Act/ the Matrimonial Causes Act or under customary law in Nigeria.

In January 2014, the Same Sex Marriage Prohibition Act was signed into law in Nigeria, further criminalising same sex sexual relationships. The explanatory memorandum of the Act

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[81] Constitution of the Federal Republic of Nigeria 1999,S. 45(1).

"Prohibits a marriage contract or civil union entered into between persons of the same sex and provides penalties for the solemnization and witnessing thereof."[82]

The Act is divided into eight sections. However, this long essay is focused on the first seven sections. Section 1 of the Act prohibits marriage or civil union by persons of same sex. According to section 7 of the Act, 'marriage' means a legal union entered into between persons of opposite sex in accordance with the marriage Act[83], Islamic Law or Customary law. It also defines 'civil union' as any arrangement between persons of the same sex to live together as partners in one of the nine dispensations listed in the Act[84]. Section 7 further defines 'same sex marriage' means the coming together of persons of the same sex with the purpose of living together as husband and wife or other purposes of same sexual relationship. It is clear that this Act also regards as same sex marriage, homosexuality, and generally the LGBT whether or not the parties involved had the intention of becoming husband and wife or not. This section also declares that parties to the same sex marriage shall not be recognised as entitled to the benefits of a valid marriage, and that if such unions are by virtue of a certificate issued by a foreign country, it is void in Nigeria.

Section 2 of the Act prohibits the solemnization of same sex marriages in places of worship such as Churches and Mosques. The section equally adds that no certificate issued to persons of same sex marriage or civil union of that nature shall be valid in Nigeria. According to Section 3 of the Act, only a marriage contracted between a man and a woman shall be recognised as valid in Nigeria. Section 4 prohibits the registration of gay association of any kind as well as the public show of same sex amorous relationship directly or indirectly. In

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82 Same Sex Act 2014

83 Matrimonial Causes Act 1970

84 The nine dispensations according to Section 7 are, adult independent relationships; caring partnerships; civil partnerships; civil solidarity pacts; domestic partnerships; reciprocal beneficiary relationships; significant relationships; and stable unions.

section 5 of the Act, the various offences and penalties for the same sex marriages or relationships in Nigeria are enumerated. According to section 5(1) a person who enters into same sex marriage or civil union as prohibited by section 1, has committed an offence and is liable on conviction to a term of 14 years imprisonment. Sub (2) of section 5 provides that a person who goes contrary to the provisions of section 2 commits an offence and is liable on conviction to a term of 10 years imprisonment. Sub (3) of the Act adds that;

> A person or group of persons, who administers, witnesses, abets or aids the solemnization of a same sex marriage or civil union, or supports the registration, operation and sustenance of gay clubs, societies and organizations. Processions or meetings in Nigeria commits an offence and is liable on conviction to a term of 10 years imprisonment.

Section 6 of the Act provides for court jurisdiction on matters of offences as regards same sex marriage in Nigeria. It states that "The High Court of a state or of the Federal Capital Territory shall have jurisdiction to entertain matters arising from the breach of the provisions of the Act. In section 7 also, 'Court' is defined as High Court of a State or of the Federal Capital Territory.

The provisions of this Act as explained above show that the country prohibits same sex relationships of all forms. Such relationships are also criminalised by the Act since engaging in them implies committing offences. It therefore implies that any practice of such relationships prohibited by the Act are practices done in secret.

4.2.2 Criminal Code

The Criminal code provides for a wide range of offences and in particular for those offences termed as 'offences against morality' in chapter 21[85]. These offences include, the indecent treatment of boys less than 14 years of age,[86] the indecent treatment of girls below 16 years of

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85 Criminal code act cap c38 LFN 2004

86 *S. 216*

age,[87] causing or encouraging the seduction or prostitution of a girl below 16 years of age[88] among others. However, the most important offence as far as this long essay is concerned is that of the offence provided for in Section 214 of the Criminal Code Act. It provides as follows;

> Any person who-
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> 1 Has carnal Knowledge of any person against the order or nature; or
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> 2 Has carnal knowledge of an animal; or
>
> 3 Permits a male person to have carnal knowledge of him or her against the order of nature.
>
> Is guilty of a felony and is liable to imprisonment for 14 years.

The code then goes on in Section 215 to provide that an attempt to commit any of the offences laid out in Section 214 is a felony and any person found guilty of such would be liable to imprisonment for 7 years. These offences are tagged "unnatural offences" and are classified as sodomy in law. The code provides in section 6 thereof, that whenever the term "carnal knowledge" or "carnal connection" is used in defining an offence, it implies that the offence, so far as it regards that element of it, is complete upon penetration. This means therefore, that an unnatural offence is complete upon penetration *per anum*.[89] Absence of consent in the passive party or patient is not an element in the offence and the agent is guilty once penetration is proved. The patient will be guilty of an offence under subsection (3) if he

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87 *S. 222*

88 *S. 222A*

89 Akinola Aguda, *The Criminal Law of The Southern States of Nigeria*, (3rd ed. London, Sweet and Maxwell, 1982)

or she did not consent to the commission of the offence by the agent and his or her evidence against the agent will be that of an accomplice.[90]

The code provides however in section 30 that a male person under the age of 12 years is presumed to be incapable of having carnal knowledge and cannot be convicted of an unnatural offence. If a boy under the age of 12 has sexual intercourse with a man under or over that age or with a woman *per anum* with the consent of the man or of the woman as the case may be, it would appear that neither the man nor the woman can be convicted as an agent under this section because of the presumption contained in section 30. It has however, not been decided whether a boy or girl under the age of 12 can be convicted under section 214(3) of permitting a male person to have carnal knowledge of him regarded as being under the age of discretion, but there is nothing in section 30 to indicate that any special rile as to the capacity to have guilty knowledge applies to unnatural offences.[91]

4.2.3 Sharia Laws

Sharia laws is majorly practiced in the Northern part of the country, which is predominantly Muslim, and is considered a criminal offence in 12 Northern States. The penalty for engaging in relationships with persons of the same sex ranges from lashes of the cane to death by stoning. For example, section 372(2) (e) of the Bauchi State Sharia Penal Code prescribes a sentence of death for practicing sodomy as a profession.

In January 2020, religious police arrested 15 recent graduates at a party in Kano, northern Nigeria. In confirming the arrest, according to Deputy Commander General Shehu Tasi'u

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90 Ibid

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Is'haq the students would be re-oriented at the correctional center, adding that the practice of homosexuality would not be tolerated as devout Muslims.[92]

4.3 State Laws and Punishment on LGBT in Nigeria

The prohibition and non-recognition of same-sex marriage or civil union entered into in Nigeria is declaratory of Nigerian law There are no individual state laws and punishment on LGBT in Nigeria, as the provisions of the Same-sex Act cuts across all states, however the Northern part of Nigeria also practice the Sharia law, which considers as a punishable crime the LGBT practice. Nevertheless, the Act still applies to them. The punishment on LGBT practice in Nigeria apart from the provisions of the Same-sex Act, is also provided for in the Criminal code, as earlier elaborated upon in the previous sub heading, a period of 14 years imprisonment for anyone found in commission of the offence, and in violation of the provisions of the Same-sex Act.

The criminalisation of these acts and imposition of severe penalties for their commission can only be seen as a clear demonstration of the degree of public disgust at such deviant behaviours in this jurisdiction and the State's resolve to curb homosexuality in all its ramifications. It must be acknowledged that the operation of secret gay club or any other secret association has always been illegal, for section 38(4) of the 1999 Constitution of the Federal Republic of Nigeria denies a person the right to "form, take part in the activity or be a member of a secret society". It is equally instructive to note that before the recent legislation, a civil or religious official who conducted the celebration of a marriage between two males could be charged with conspiracy to commit or adding, abetting, counseling or procuring the commission of unnatural offences under relevant provisions of the Criminal code.

4.4 Macro Social Implications of the Antigay Laws in Nigeria

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92 < https://www.humandignitytrust.org/country-profile/nigeria/> accessed July 9, 2021

Nigeria is a pluralistic society with concurrent legal pluralism. As a result, marriage in Nigeria is regulated by statute, Islamic law, and native law and custom. A statutory law marriage is essentially monogamous, while a marriage under Islamic law or native law and custom is essentially polygamous. However, a golden thread that runs through all the marriage laws in Nigeria is and has always been hetronormativity. Throughout the ages, same-sex marriage has never been allowed in this country, whether statutorily, judicially, religiously, culturally, or otherwise.

Also, in Nigeria there is invariably a socio-cultural and religious element in every marriage regardless of the legal regime under which it is contracted. In the eyes of Nigerian society, a purported marriage is never recognized unless and until the parties to it have gone through some ceremony dictated by their religion or custom. Thus, in our society, marriage is not merely a legal institution, but equally a religious and social institution governed by law as well as by religious and socio-cultural norms and prescriptions.[93] As for the position under customary law, same-sex marriage has all the time been absolutely forbidden. As a learned writer accurately observes "Same-sex marriage is not practiced by any known custom in Nigeria and is viewed as immoral." Hence, the Act has done on more than restate the customary law disapproval. It is pertinent to note, however, that an old custom among some societies of Southern Nigeria practice a custom whereby a childless woman or one without a male child would "marry" a wife in order to raise a male child for her husband. This practice is prosaically described as "woman to woman marriage."[94] Such marriages, however, never involves any sexual activity between the two women, rather the wife is procured for the husband of the woman responsible for the marriage or a male of her extended family upon

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93 Larry O. C. Chukwu, 'A Reflection on the Recent Nigerian Legislation Against Same Sex Marriage vis-à-vis Rising Gay Activism in the Western World' 32 BYU J. Pub. L. 191 (2018).

94 E.I Nwogugu, *Family Law in Nigeria* (Ibadan: HEBN Publishers, 3rd edn 2014) 79-81.

agreement. The general idea behind this "woman to woman marriage" is on the traditional doctrine that marriage is established for procreation and sustenance of ones lineage.[95]

When it comes to sexual orientation, same-sex copulation is regarded as anathema all over the country. The reprobation cuts across all religious and socio-cultural groups. What's more, both the Criminal Code Act and the Same-sex Act have since criminalized homosexuality in Nigeria, prescribing a punishment of up to fourteen years imprisonment. So also, prior to the legislation under review, twelve states in northern Nigeria had enacted the Sharia Penal Code Law, which makes homosexuality an offence carrying a maximum punishment of death. And a recent search at the Corporate Affairs Commission, which houses the central registry of clubs and associations, reveals the non-existence of any registered gay club or association.[96]

With the impact of globalization and the tendency of Nigerian youths to imbibe Western ideologies, there is an implicit expectance of an increase in the population of the LGBT and gay community. The issue of the impending danger of cross-infestation of the Nigerian society by what is described as a harmful and morally degenerative practice and the destabilising legal implications therefrom, the Nigerian authorities saw the urgent necessity to take measures aimed at preventing such occurrence.

The Obasanjo regime took the initial step in 2006 by presenting the National Assembly with an executive bill outlawing same-sex marriage. Although, the bill was not passed during that administration, the National Assembly finally enacted the Same-sex Marriage (Prohibition) Act 2013 which the President Goodluck Jonathan assented and it came into force on January 7, 2014.

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95 This custom has nevertheless fallen into disuse. Modern times, adoption is resorted to by childless women wishing to achieve same objective.

96 The official website of the Corporate Affairs Commission <https//.www.cac.gov.ng> accessed July 2021.

Conversely, the enactment of the Act attracted serious condemnation and threats of economic sanctions against Nigeria by Western countries- notably the United States, United Kingdom, and Canada- which all posit that the enactment curtailed the fundamental rights of persons with homosexual orientation.[97]

4.5 Conclusion

In this Chapter, the various legislations regulating the issue of the LGBT rights and practice in Nigeria have been outlined and elaborated on, and also the punishment for those guilty of violating the provisions of both the Same-sex Act and the criminal code act, lastly the macro social implications of the Antigay laws in Nigeria was also examined.

Although gay activists have been striving to redefine the concept of human rights and marriage. They argue that prohibition of marriage between lesbians, gay and the likes is a deprivation of their fundamental human rights to freedom of association and non-discrimination. However, such argument misses the point that, right from the origin of mankind, there has always been a limit to every freedom.[98] Unrestrained freedom is inimical to the existence of any organised society, thus the reason international law allows for states to impose restrictions on the fundamental rights and freedoms, provided that such restrictions are in accordance with the law and are necessary in a democratic society to protect national security, public safety and order, public health and morals, and the rights and freedom of

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97 In the wake of the Act the Canadian Government went as far as cancelling the state visit of President Jonathan to Canada earlier scheduled for February 2014; Victoria Ojeme, 'Gay-Marriage Law: Canada cancels Jonathan's visit' (January 2014) < https://www.vangardngr.com/2014/01/gay-marriage-law-canada-jonathans-visit > accessed July 2021.

98 For example, the Holy Bible tells the story of how God put man in the garden of Eden and commanded to eat of every fruit of the tree except that of good and evil. Genesis 2:15-17. Debatably, this is somewhat an origin of a declaration of the right to life, for no man can survive without food, but yet with a restraining condition.

others.[99] For this reason the framers of the Nigerian constitution deemed it fit to state, as part of the fundamental objectives and directive principles of state policy, that State shall direct its policy towards ensuring public safety and order. Conclusively, the law remains extant that same-sex marriage and practice is prohibited in Nigeria, and this is important because it accords with the principles of justice and geared towards maintaining order in the society. The Nigerian authorities should also be commended for being bold enough to resist cultural imperialism, which, to all intents and purposes, the promptings from the Western powers portend, under the guise of Human Rights implementations pertaining to the LGBT community in Nigeria.

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[99] Section 45, Constitution of the Federal Republic of Nigeria 1999.

CHAPTER FIVE

SUMMARY, RECOMMENDATIONS AND CONCLUSION

5.1 Summary

Throughout this long essay, the concept of human rights; the history, origin and its evolution was examined. Thus, in a nutshell, human rights are those priviledges given to every individual by virtue of their being human. They are the alienable rights given simply because of their existence and not attributed to any conditions or conditions to fulfill before they are entitled to such rights. Examples are, right to life, dignity of human person, personal liberty, fear hearing and many others as provided for in various Acts and Statuses on the subject.[100] Resulting from the fact that human rights are not granted by any human authority such as a monarch, government or secular authority, they are not the same as civil rights, such as those in the Nigerian Constitution and various Act. Constitutional rights are granted to individuals by virtue of their citizenship or residence in a particular country, whereas human rights are inherent and held as attributes of human personality.

The origin of human rights are considered an offspring of natural rights. It is a standard of higher-order morality against which all others are judged. The basic of the doctrine of natural law is belief in the existence of a natural moral code based upon the identification of certain fundamental and objectively verifiable human goods. Arguably, the conceptual prerequisites for the defense of human rights had long been in place, a full declaration of the doctrine of human rights only finally occurred after World War II, during the 20th century. The Universal Declaration of Human Rights (UDHR) as adopted by the United Nations General Assembly (UNGA) to prevent similar occurrences like that of World War II.

The Declaration ushered Human rights into a new era in the evolution of human rights that would drive the development of the consciousness of human security. Though not a legally

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[100] For example, Universal Declaration of Human Rights 1948, and the African Charter on Human and Peoples Right 1982.

binding document is accepted everywhere and there are practices of its principles of law. The Human Rights conventions under the framework of the United Nations and regional systems in Africa, Europe and the Americas, led to the creation of a wide range of mechanisms for monitoring the compliance of international human right laws. Through the different mechanisms for agreement and enforcement, the international principles of human rights were recoginsed and adopted as fundamental laws of national frontiers in the shape of constitutional drafts.

Human rights were examined in both the universal and culturally relative perspectives. Although the UDHR possess an assertion of universality of rights as explained in the previous chapter, globalisation has sharpened national cultures and identities creating controversies between universalism of rights and it being culturally relative. Consequently, there is no unanimous consensus regarding these controversies as there are different culture with different values. But at the same time, there are similarities in different cultures when looked at succinctly, having examined t and assessed these divergence, it can be said that cultural relativism and universalism are not incomparable with each other. However, the existence of diverse cultural anthropology as regards certain human rights and freedom to do cannot be ignored or clouded by the existence of a central core of all human rights values which no derivation is permissible.

On the subject of human rights that pertains to the LGBT community, there have been a lot of outburst particularly from the African countries, as they consider it alien to African culture and morals, whereas the Westerners or rather majority of the Westerners consider it yet another sexual orientation, as harmless as heterosexuality can be. African cultures are strongly communitarian, which accounts for priviledging cultural relativism over universality of human rights. And since is issue of LGBT rights is one not internationally binding on States, there is an allowance of non-acceptance, resulting from the stance of the prevalence of

cultural relativity, and on the backing that cultural relativism seeks to ground ethical rules and substantive human rights strongly hinged on morality and natural law, therefore non-acceptance and practice of LGBT rights especially in most African countries cannot be referred to as a hindrance to the Fundamental Human Rights of persons within those States or societies.

Further examined in respect of LGBT rights, particularly in Nigeria, are some legislations enacted into law addressing the LGBT community. In other words, the position of the Nigerian Legislature on the issue of the LBGT rights was discussed. The Same-Sex Marriage (Prohibition) Act 2014, the Criminal Code Act 2004 and the Northern Sharia laws have also been discussed. We examined the Same-Sex Act, which provided for in its interpretation section what marriage means, and then the various sections that talked about the prohibition of marriage or civil union of persons of the same sex and penalties for solemnization and witnessing thereof were properly examined here in this thesis, to properly examine and understand the position of Nigeria as regards LGBT rights and community. Then, we went on to explain the section in the Criminal Code Act that pertains to Same-Sex marriage (Section 214 and 215), and the punishment under the Act for everyone found guilty of committing the act, it also prescribes a penalty for people who know, or abet same-sex relationships. Lastly, we elaborated on the Northern Sharia Laws, and Same-Sex is considered as a criminal offence punishable according to their laws. The implications of the enactment of the Act on the society was also discussed, that when it comes to sexual orientation, same-sex couples are regarded as anathema all over the country, this cuts across all religious and socio-cultural groups. Thus the Act is in tandem with the views and beliefs of the general society.

5.2 Recommendations

International Human Rights system have treaty bodies which are its foundational component, enhancing protection through their independent assessment of States' compliance with their

human rights obligation. They interact with government representatives on the effectiveness of the implementation of the scope of human rights which the States enforce. That being said, under Nigerian constitutional law before an international treaty can become law it has to be ratified by the National Assembly.[101] Therefore, despite the International influence of claims of Human rights violation regarding LGBT rights, it cannot be anything more than mere coercion by these international bodies. A recommendation would be that the Country should uphold its stance that a treaty must first be ratified before it becomes law. Such treaties must also be subject to public policies and safety, not to mention political, social and economic values of the Society, thus, Nigeria cannot be a party to the implementation and recognition of LGBT rights even though recognised and practiced in some other international countries.

Although the Same-sex Marriage (Prohibition) Act which was enacted to address the issue of homosexuality in Nigeria is commendable in the bid to curb the emerging acts and practice of homosexuality, thereby reiterating the fact that human rights is culturally relative, and not all rights are rights in every Country. Thus a right in Country A maybe a criminal offence in Country S, as is the case of the Gay rights legalized in some other Countries.

However, the Act is still quite silent on quite a number of variants of gender and sexual orientations. Particularly on some recently emerging issues relating to same-sex relationships. For instance it is silent on the transgender community, transvestite or cross dressers[102], *the queer and the* +. The silence is a gap giving occasion for such acts which though not captured in the law nonetheless offend the *volkgeist* of the people. It is therefore, recommended that the Act be reviewed in order to reflect entire LGBTQ+ Community, as same-sex marriage only represents a subset of the universal set of the LGBTQ+ community which represents the changing face of gender and sexual orientations. It is therefore recommended that the Act be

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101 Federal Constitution of Nigeria 1999 as Ammended, S.12(1)

102 This probably explains the reason Bobrisky, a Nigerian cross dresser resident in Lagos State has proven a difficult case to handle for law enforcement agents.

reviewed in order to reflect the entire LBGTQ+ community. Furthermore, the Act is also silence on the issue of individuals or corporate entities indoctrinating people especially minors on the LGBTQ+ ideology. Through the use of the media, propaganda, toys amongst other things.[103] Thus it is recommended that the law should be amended to pronounce on acts aimed at indoctrinating people especially minors who would be susceptible to being thrown into confusion or dysphonia at such an early age.

Finally, it is recommended that section 2 (2) of the Same-sex Act which prohibits the public show of same sex amorous relationship but remains silent on the private show of same sex amorous relationship should be amended to equally prohibit the later. This is because the provision appears to allow for the private show of same sex amorous relationship and this defeats the spirit of the Act.

5.3 Conclusion

Having thoroughly examined human rights in general retrospect, universalism and cultural relativism and some ideologies behind both concepts and then narrowing it down to the issue of the LGBT rights and its legality particularly in Nigeria; looking at the Same-Sex Act as the major legislation then, the Criminal Code and Sharia laws. It is safe to say that the position Nigeria takes as regarding the issue of homosexuality is a valid one. Consequently, even though Nigeria may look less sophisticated in the eyes of those countries that have legalized same sex marriage, the Act[104]is a step in the right direction. It not only stands to protect and preserve our cultural values of chastity, fidelity, and honesty. It is also a symbol of independent thought pattern that is distinctively Nigerian, regardless of the fact that some other countries have this same ideologies concerning the issue. This truth was demonstrated

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103 C Sarah, MS Gomillion and Traci Giuliano, 'The Influence of Media Role Models on Gay, Lesbians, and Bisexual Identity' (2011) 58 (3) Journal of Homosexuality; pages 330-354.

104 Same-sex Act

in the polls conducted by NOIPolls[105] in 2015 in conjunction with the initiative for Equal Rights (TIERs).[106] According to the poll, 87 percent of Nigerians support the Same-sex Marriage Act and the punitive measures provided under the Act. 81 percent believed the homosexuals should not have equal rights which would directly relate to the LGBTQ+ relations not having the same status with heterosexual relationships and marriage. 90 percent also believed lesbian, gay, and bisexual people should not be allowed to hold LGBTQ meetings or establish LGBTQ organizations. Flowing from these observations, it would be apt to say that the Same-sex Act is in line with the Nigerian *volkgeist* and therefore justified from the historical school praxis.[107] Thus, the Nigerian nationals should overlook such spurious fear of denial of economic support from some foreign countries that have legalized same sex marriage.

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105 NOIPolls of June 30 2015 < http://noi-polls.com/a-year-and-half-after-legislation-nigerians-still-support-ant-same-sex-marriage-law/ > accessed July 2021.

106 A Nigerian based NGO < https://theinititativeforequalrights.org/ > accessed July 2021.

107 Robert Rodes, *On the Historical School of Jurisprudence*, (Am. J. Juris 2004); 165

BIBLIOGRAPHY

BOOKS

Aguda A, *The Criminal Law of The Southern States of Nigeria*, (3rd ed. London, Sweet and Maxwell, 1982).

Delanty G, *citizenship in a Global Age; Society, Culture, Politics* (Buckingham Open University Press, 2000).

Ishay M*, The Human Rights Reader;(*Special Indian edition:2nd edn).

Müllerson R, *Human Rights Diplomacy* (Routledge 1997).

Muzaffar C, *Rights, Religion and ReformEnhancing Human Dignity through Spiritual and Moral Transformation* (Routledge publishers 2002).

Nwogugu E. I, *Family Law in Nigeria* (Ibadan: HEBN Publishers, 3rd edn 2014) 79-81.

Rehman J, *International Human Rights Law,* (2nd edn, Longman Publishers).

Robertson A. H, and Mereills J.G, *human rights in the world* (3rd edn, Manchester university press 1993) 8.

Rorty R, *Human Rights, Rationality, and Sentimentality. In Truth and Progress: Philosophical Papers*(Cambridge: Cambridge University Press 1993) 167-185

Smith R, *Texts and materials on international human rights* (3rd edn, Routledege 2013).

Walzer M, *Thick and thin: Moral Argument at Home and Abroad*, (University of Notre Dame Press, 1994).

JOURNALS AND ARTICLES

Anttonen A, and Sipilä J, 'Varieties of Universalism' (United Nations Research Institute for Social Development Conference April 2014).

Chimakonam J and Agada A, '*The Sexual Orientation Question in Nigeria: Cultural Relativism Versus Universal Human Right*s *Concerns*' (Springer Science+Business Media, LLC 2020)

Chukwu L, 'A Reflection on the Recent Nigerian Legislation Against Same Sex Marriage vis-à-vis Rising Gay Activism in the Western World' 32 BYU J. Pub. L. 191 (2018).

Donnelly J, 'Cultural Relativism and Universal Human Right' (1984) vol 6 human rights quarterly.

Geneva Academy, 'Universality in the Human Rights Council; Challenges and Achievements' (Research Brief December 2016).

Howard R and Donnelly J, *Human Rights, Human dignity and political regimes* (American Political Science Review 80 September 1986)

James N, 'Making Sense of Human Rights: Philosophical Reflections on The Universal Declaration of Human Rights' (Berkeley; University of California Press, 1987)

Juneau G and Neal R.,' *Recent Developments at the United Nation'* (ABPP Psychology International 2012).

Prasad A, 'Cultural Relativism in Human Rights Discourse' (2007) Peace Review A Journal of Social Justice Volume 19, 2007.

Rodes R, *On the Historical School of Jurisprudence*, (Am. J. Juris 2004); 165.

Sarah C, Gomillion MS and Giuliano T, 'The Influence of Media Role Models on Gay, Lesbians, and Bisexual Identity' (2011) 58 (3) Journal of Homosexuality; pages 330-354.

Steven L, '*5 Fables About Human-Rights*', (Filozofski Vestnik-Acta Philosophica, Political Science Sociology Filozofski Vestnik 1994) 111-126.

Stychin C, *same-sex sexuality and the Globalization of Human Rights Discourse* (2004) McGill journal, 49(4) 951-968.

The birth of contemporary American lesbian and gay identity politics at the Stonewall riots(New York City 1969).

UN Office of the High Commissioner, *Human Rights; Handbook for parliament* (inter-parliamentary union Courand et Associes 2006).

United Nations Human Rights; Office of the High Commissioner of Human Rights, '*Making Human Rights a reality: The Human Rights Mechanisms*' (United Publishing Service, United Nations, Geneva GE.08.13248 2009 1,000 HRC/NONE/2008/109).

WEBSITES

A Nigerian based NGO, The Initiative for equal rights < https://theinititativeforequalrights.org/ > accessed July 2021.

Acciona Sustainability for all, *'A brief History of Human Rights*' <https://www.activesustianbility.com > Accessed 20 August 2020.

All Answers ltd, 'The Issue of Cultural Relativism Human Rights Essay'<https://www.ukessays.com/essays/human-rights/the-issue-of-cultural-relativism-human-rights-essay.php?vref=1> accessed 19 May 2021.

Chiarello L, *'Evolution of the Concepts of Human Rights and Human Security*' Scalabrini International Migration Network(2015) < https://cmsny.org/publications/chiarello-human-rights-and-human-security/ > Accessed 21 August 2020.

'Enforcement Mechanisms in the United Nations', Minnesota Advocates for Human Rights (2003) < http://hrlibrary.umn.edu/svaw/law/un/unenforce.htm > Accessed 21 August 2020.

Eric Hobsbawm, '*Identity politics and the left*' (New Left Review, May/June 1996) <https://newleftreview.org/i217/articles/eric-hobsbawm-identity-politics-and-the-left > accessed June 2021.

European Law Students Association, 'Human Rights Handbook' 2015 <https://www.elsa.org> accessed June 2021.

Fagan A, *'Human Rights*' Internet Encyclopedia of Philosophy < https://iep.utm.edu/hum-rts/ > accessed August 17 2020.

'Human Rights Origin and development' < https://shodhganga.inflibnet.ac.in > Accessed 22 August 2020.

Igwebueze G and Ogundotun O,' The Universality of Human Rights and Homosexuality: A Focus on Gender Issues in Africa' (2016) vol 7(4) Studies in Sociology of Science < http://www.cscanada.net/index.php/sss/article/view//8814 > accessed June 2021.

Lovell N, *Theorizing LGBT Rights as Human Rights: A Queer(itical) Analysis* < www.e-ir info/2015/12/30/theorising-lgbt-rights-as-human-rights-a-queeritical-analysis > accessed May 2021

Office of the United Nations High Commissioner for Human Rights 'International Human Rights Law' <*www.ohchr.org*> accessed 7 May 2020.

Olarenwaju F, Chidozie F, and Olarenwaju A, 'International Politics of Gay Rights and Nigeria-US Diplomatic Relations' (2015)< https://www.researchgate.net/publication/281622690 > accessed June 2021.

Onwazombe I, '*Human Rights Abuse and Violations in Nigeria: A Case Study of the Oil-Producing Communities in the Niger Delta*' Annual Survey of International and Comparative law (vol22: Iss 1, Art 8 2017) < https://digitalcommons.law.ggu.edu/annlsurvey/vol22/iss1/8 > Accessed 15 August 2020.

Philosophy home (2009) < http://www.cultural-relativism.com/> accessed 8 March 2020.

Robbins P, 'Boasian Anthropology: Historical Particularism and Cultural Relativism' (PB Works, October 2001) < http://anthrotheory.pbworks.com/page/29518607/ > accessed May 2021.

Shany Y, 'The Universality of Human Rights; The Jacob Institute for the Advancement of Human Rights' 2018 < www.jbi-humanrights.org > accessed June 2021.

Stanford Encyclopedia of Philosophy, 'Relativism' (2020)< www.plato.stanford.edu/entries/relativism> accessed June 2021.

The Levin Institute 'Origins of Human Rights' The State University of New York (2016)< http://www.globalization101.org/human-rights-vs-natural-rights/> accessed August 17 2020.

UNICEF, 'Rights of a Child Convention; What are Human Rights' (2015) <www.unicef.org/child-rights-convention> accessed June 2021.

United Nations, 'Human Rights'< www.un.org > Accessed 15 August 2020

United Nations, Are human rights universal <www.un.org/en/chronicle/article/are-human-rights-universal> accessed May 2021.

Vedanta Society, 'Harmony of Religions' < www.vendanta.org > accessed July 2021.

Weston B, 'Human Rights'< www.britannica.com/topic/humanrights> accessed June 2021.

Youths for Human Rights *'History of Human Right*' < www.youthsforhumanrights.org > accessed 20 August 2020.