

**SAME SEX RELATIONSHIP IN NIGERIA: LEGAL BARRIER, CULTURAL NORMS
AND HUMAN RIGHTS**

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CERTIFICATION

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DEDICATION

To Almighty God, the architect of wisdom, my constant guide, my provider, my hope and my unfailing strength throughout this academic journey. This academic project is also dedicated to my amazing, strict and yet wonderful parents, Mr and Mrs (Glad) Godwin Obuseh, whose love and sacrifices throughout the duration of these academic rigors taught me that greatness is not inherited, it is built and that you can do great things even from a small place. You believed in me long before I became conscious of myself. Finally, to myself, the whole journey was very challenging, especially in the penultimate session but giving up was never an option, you became more resilient, learnt, unlearnt, relearnt and finally it paid off.

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ABBREVIATIONS/ ACRONYM

ACHPR	–	African Charter on Human and Peoples’ Rights
CAN	–	Christian Association of Nigeria
CCA	–	Criminal Code Act
CDC	–	Centers for Disease Control and Prevention
DOMA	–	Defense of Marriage Act
GLBT / GLBTQ	–	Gay, Lesbian, Bisexual, Transgender (and Queer)
GLMA	–	Gay Lesbian Medical Association
HRC	–	Human Rights Committee (UN)
ICCPR	–	International Covenant on Civil and Political Rights
LGBTQ+ others	-	Lesbian, Gay, Bisexual, Transgender, Queer/Questioning, and others
MSM	–	Men who have Sex with Men
SSMPA	–	Same-Sex Marriage (Prohibition) Act
UN	–	United Nations

ABSTRACT

This research examines the legal, cultural, and human rights dimensions of the prohibition of same-sex relationships in Nigeria. The study is situated within the context of a profound national and international debate, sparked by the enactment of the Same-Sex Marriage (Prohibition) Act (SSMPA). The primary aim of this work is to conduct a multi-faceted examination of Nigeria's stance on same-sex relationships. To achieve this, the study pursues several key objectives: to meticulously analyze the legal architecture of prohibition, encompassing the SSMPA, the Criminal Code, and the Penal Code; to interrogate the foundational role of deep-seated cultural and religious norms in shaping public opinion and legal enforcement; to critically investigate the consequent human rights implications for sexual minorities; to place the Nigerian system in a global context through a comparative analysis with jurisdictions including South Africa, Uganda, Kenya, the United States, the Netherlands, and Qatar; and finally, to propose legal and policy recommendations aimed at addressing identified gaps and contradictions within the existing framework. The theoretical framework is built on Natural Law theory, Cultural Relativism and Human Rights Universalism. This framework is not an isolated legal phenomenon but is deeply entrenched in and reinforced by a societal consensus rooted in conservative interpretations of Christianity and Islam, as well as traditional African values that prioritize procreation and defined gender roles. This domestic conflict is mirrored at the international level, where the laws contravene Nigeria's commitments under the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights (ACHPR). In conclusion, while the research acknowledges the forceful international human rights critiques, it ultimately affirms the legitimacy of the Nigerian legal position as a valid exercise of democratic sovereignty and cultural self-determination. The research posits that through such measures, Nigeria can maintain a social order consistent with its historical and cultural identity while upholding the rule of law.

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND OF THE STUDY

The practice of same-sex relationships was alien in Nigeria and the African society but in recent times it has become a topic on the lips of the average Nigerian. This can be attributed to the agitation by LGBTQ+ rights activists and the legalisation of their activities. Same-sex relationships is another meaning for homosexuality.

The issue of sexual orientation and identification has been a subject of controversy in other parts of the world as new gender identities spring up every day. While several countries have recognised the rights of these individuals and have even codified them, some have criminalised them in a bid to deter people from such acts as they are considered immoral and an abnormality.

The Same-Sex Marriage (Prohibition) Act 2013¹ was enacted in order to criminalize Same-Sex marriage, public show of the relationship and even associations that support Same-Sex relationships in Nigeria. Other statutes exist prior to the enactment of the Same-Sex Marriage (Prohibition) Act, that prohibit same-sex relationships as the Criminal Code Act (CCA)² effective in Southern Nigeria and the Penal Code³ effective in Northern Nigeria.

Nigeria is a very religious and diverse country with over 250 tribes with majority of its population practicing Christianity, Islam and other African Traditional Religion, all of which considers same-sex relationship as gross immorality. The Holy bible documented the story of

¹ The Act was signed into law by President Goodluck Ebele Jonathan at a time when USA was campaigning for the legalisation of same sex relationships within the African Continent as a statement to refute the push.

² Criminal Code Act, Cap C38 Laws of the Federation of Nigeria 2004.

³ Penal Code Act, Cap. 53, Laws of the Federation of Nigeria (LFN) 2004.

the people of Sodom and Gomorrah who were destroyed by God because they engaged in Same-Sex relationship. The Bible in the book of Romans 1: 28 stated "and likewise also the men, leaving the natural use of the woman, burned in their lust one toward another; men with men working that which is unseemly, and receiving in themselves that recompence their error which was meet".

However, the Nigerian legal system' treatment of same-sex relationship has been criticised by several international human rights organizations as contrary to basic human rights while some human rights activists have stated that it is even contrary to the provision of Chapter IV of the 1999 Constitution of the Federal Republic of Nigeria (as altered). The system is also said to be contrary to African Charter on Human and People's Rights to which Nigeria is a signatory.⁴ It is important to note that the said treaty is for the protection of basic human rights.

This research is motivated by the moral and legal dilemma that sprung out of the intersection between law, morality, cultural norms and human rights. It examines how the Nigerian legal system addresses the issue of same-sex relationships and how the lacuna in the legal system which only expressly Prohibited same-sex marriage and not same-sex relationships of any kind has left room for cross dressing, transgendering and the likes.

1.2. STATEMENT OF THE PROBLEM

Same-sex relationships in Nigeria is gradually increasing even with the enactment of the Same-Sex Marriage Prohibition Act 2013⁵ due to the gaps in the Act which only outrightly

⁴ Nigeria ratified the African Charter on Human and Peoples' Rights on June 22, 1983. It was the 26th member state of the Organization of African Unity (OAU, now the African Union) to do so. The Charter itself had been adopted by the OAU Assembly of Heads of State and Government in Nairobi, Kenya, on June 27, 1981.

⁵ Herein referred to as SSMPA

prohibits same-sex marriage. This gap has given room for cross dressing, boys identifying as feminine-male, transgender and many more.

This menace called sexual orientation, and identification must be put in check in order to protect the public morality of the state by implementing statutes that protect the innocence of young children and future generations.

The legislation needs to be broader to accommodate other forms of same-sex relationships and not just prohibition of homosexual marriage. There must also be active implementation in order for this menace to be curbed in Nigeria.⁶

1.3 RESEARCH QUESTIONS

1. What legal provisions in Nigeria prohibits Same-Sex relationships.
2. How do cultural and religious norms influence the enactment and execution of these laws.
3. What is the human rights implication of criminalising Same-Sex relationships in Nigeria.
4. To what extent can Nigerian law be reconciled with its constitutional and International human rights obligations.
5. Is Nigerian legal system similar to any other legal systems of other countries in the world.

1. 4. AIM AND OBJECTIVES OF THE STUDY

The aim of this study is to examine the legal, cultural and human rights dimensions of same-sex relationship in Nigeria. To achieve this aim, the following specific objectives will be addressed:

1. To analyse the legal provisions that criminalise same-sex relationships under the Nigerian legal system.

⁶ Journal of Law, Policy and Globalization ISSN 2224-3240 (Paper) ISSN 2224-3259 (Online) Vol.36, 2015 234650113.pdf< <https://share.google/85LHAHHCWmUMefKPe> > accessed 12 December 2025.

2. To analyse the role of cultural and religious principles in shaping public opinion and legal enforcement.
3. To investigate the human rights implication of the Nigerian position on same-sex relationships.
4. To compare the Nigerian legal system and that of other countries such as, The United States of America, Netherlands, Kenya, Qatar, South Africa and Uganda.
5. To propose a resolution for the resulting lacuna in respect of same-sex relationships in Nigeria.

1.5 SCOPE OF THE STUDY

The research primarily focuses on Nigerian law and a brief comparison with other countries.⁷ It focuses on; The 1999 Constitution of the Federal Republic of Nigeria (as amended), Same-Sex Marriage (Prohibition) Act 2014, The Criminal Code Act, The Penal Code, Defense of Marriage Act USA, Constitution of the Kingdom of the Netherlands, The Penal Code 2004, Qatar, The Kenyan Penal Code of 1930 (revised in 2006), Constitution of the Republic of South Africa, 1996 and The Anti- Homosexuality Act 2023, Uganda.

It also examines the need for the protection of the public morality of the country with jurisprudential authorities.

1.6 RESEARCH METHODOLOGY

On this analytical and comparative legal study, the doctrinal research method would be employed. Reliance will be placed on primary authorities, secondary authorities such as articles, books, suggestions and online publications in providing a detailed analysis on the

⁷ African Attitudes Toward Same-Sex Relationships, 1982–2018 | Oxford Research Encyclopedia of Politics < <https://share.google/F1VuSyybQ1IDITz1Y> > accessed 22 October 2025

subject matter.⁸ The legal systems of Qatar will be analysed as it a religious country as Nigeria, also that of Kenya, Uganda and South Africa will be compared to that of Nigeria in respect to homosexual relationships in Africa. The Netherlands being the first country in the world to decriminalise homosexual relationship as well as the United States of America being one of the most powerful countries in the world will also be analysed.

1.7 SIGNIFICANCE OF THE STUDY

The research is of importance to different groups of people:

1.7.1 Academic Contributions

The study aims to provide for the lacuna in the Same-Sex Marriage (Prohibition) Act which does not expressly prohibit same-sex relationships of any form in Nigeria. It will expand on the Nigerian scholarship by providing an analysis of Same-Sex relationships both through the legal and cultural lenses.⁹

1.7.2 Policy Relevance

It will enable law makers understand the need for the amendment of the Same-Sex Marriage (Prohibition) Act in order to really curb the mischief it was enacted for. The findings may guide lawmakers in reconsidering aspects of the SSMPA and related provisions to better align with Nigeria's constitutional and international obligations.

1.7.3 State Rights Advocacy

The study will provide comprehensive understanding on the right of the state to protect the morality and innocence of the citizens especially that of the vulnerable.

1.7.4 Societal Impact

⁸ Run law Journal < <https://share.google/U0RuDaDZYeJPf2QwX> > accessed 22 October 2025

⁹ Highlights of the Same Sex Marriage (Prohibition) Act, 2013 – Legalpedia | The Complete Lawyer – Research | Productivity | Health < <https://share.google/259GuI69iJ12Y8n6k> > accessed 22 October 2025.

By highlighting cultural influences, the research promotes the need for collective morality.

1.8 THEORETICAL FRAMEWORK

The theoretical framework for the study is hinged on the following theories: Natural Law theory, Legal Positivism, Human Rights theory and Cultural relativism theory.¹⁰

1.8.1 Natural Law Theory

Asserting that certain rights, including dignity and privacy, are inherent and should not be abrogated by positive law.

1.8.2 Legal Positivism

Recognizing the authority of Nigeria's enacted laws such as the SSMPA, even where they conflict with moral arguments.

1.8.3 Human Rights Theory

Emphasizing Nigeria's duty to protect minority rights in line with universal human rights norms. The country has the right to protect the innocence of the innocent and vulnerable amongst other rights.

1.8.4 Cultural Relativism Theory

Applied to this study, cultural relativism explains why Nigerian society deeply rooted in religious and traditional values see same-sex relationships as alien and morally unacceptable.

1.9. TENTATIVE CHAPTER BREAKDOWN

Chapter One: General Introduction (background, problem, objectives, scope, methodology)

Chapter Two: Conceptual Clarification, theoretical and historical framework (review of academic works and theoretical perspectives).

¹⁰ 'Solemnis(ing) beginnings': theories of same-sex marriage in the USA and South Africa on JSTOR < <https://share.google/aYs2UpjnlGpUvIoP> > accessed 22 October 2025

Chapter Three: Legal Barriers to Same-Sex Relationships in Nigeria (analysis of SSMPA, Criminal Code, Penal Code, and judicial interpretation)

Chapter Four: Cultural Norms and Human Rights analysis of Same-Sex Relationship (religion, tradition, morality and comparison with other Jurisdictions)

Chapter Five: Summary, Recommendations, and Conclusion.

CHAPTER TWO

CONCEPTUAL CLARIFICATION, HISTORICAL AND THEORETICAL FRAMEWORK AND LITERATURE REVIEW

2.1 CONCEPTUAL CLARIFICATION

Before discussing the issues surrounding same-sex relationships, it is important to explain what the term means in the context of this work. “Same-sex relationship” can refer to any emotional, romantic, or sexual relationship between two people of the same gender. However, different societies and legal systems understand the term differently, often influenced by cultural and religious beliefs. This subsection briefly clarifies the basic ideas and terms used in this study so that the discussion that follows is clear and unambiguous.

2.1.1. Same Sex Relationship/ Homosexuality

The word same-sex relationship is also known as homosexuality, both words can be used interchangeably. The Oxford concise dictionary defined the term homosexuality to mean; the state of being sexually attracted primarily or exclusively to persons of the same sex¹ The Blacks Law dictionary defined the word homosexual as ‘A term which applies to a person who is sexually attracted to people of the same sex’.²

A same-sex relationship is a romantic, emotional, or sexual connection between two people of the same sex. These relationships can exist in various forms, from friendships to committed partnerships, and are a fundamental part of human intimacy and attachment. The recognition and status of same-sex relationships differ significantly across countries, with

¹ Concise Oxford English Dictionary 9th Edition (Oxford University Press, 2002)

² Black’s law dictionary (10th Edition 2014)

some legalizing same-sex marriage and others enacting laws against them. It is a consensual relationship between persons of the same gender also known as homosexuality.

(a) The Texas Penal Code 2003³ states that homosexuality is the act of engaging in deviate sexual intercourse with another person of the same sex and this deviate intercourse includes any contact between any part of the genitals, mouth or anus of another person. In Nigeria, the Criminal Code Act and The Penal Code respectively make provision for sodomy which is related to homosexuality. concept of same-sex relationship consists of the following group, Lesbians, Gays, Transgender and Bisexuals.

(b) A Lesbian is defined as a woman who is sexually or romantically attracted to other women.⁴

(b) Gay is defined as relating to or characterized by sexual or romantic attraction to people of one's same sex.⁵

(c) Bisexual is a person who is sexually or romantically attracted to people of your own gender and people of a different gender.⁶

(d) Transgender means relating to or being a person whose gender identity differs from the sex the person was identified as having at birth. This can include:

- Trans men (assigned female at birth, identify as male)
- Trans women (assigned male at birth, identify as female)
- Non-binary individuals (don't identify as strictly male or female)

³ Section 2(1) and (6) of the Texas Penal Code.

⁴ Lesbian definition and meaning Merriam-Webster Dictionary (12th Edition 2025)< <https://www.merriam-webster.com/dictionary/lesbian> >accessed 12 December 2025.

⁵ GAY Definition and Meaning Merriam-Webster Dictionary (12th Edition 2025)< <https://www.merriam-webster.com/dictionary/gay> > accessed 12 December 2025.

⁶ Meta AI. (2024). Llama 3.1 [Computer software]. Retrieved from < <https://github.com/meta-llama/llama-models> > accessed 12 December 2025

- Genderqueer or genderfluid individuals (may identify as neither, both, or fluctuate between genders).⁷

The first documentation of homosexuality in print is found in an 1868 letter to Karl Heinrich Ulrichs.⁸

2.1.2. Legal Barriers

A barrier is something such as a rule, law, or policy that makes it difficult or impossible for something to happen or be achieved.⁹

Legal is defined broadly as pertaining to the law or permitted by law, encompassing things that relate to statutes, courts, and justice, meaning lawful and authorized¹⁰.

Legal barriers is a rule, law, policy, or regulation that prevents or hinders something from happening, such as starting a business, accessing services, or exercising rights, creating an obstacle that requires formal legal change (parliamentary or court action) to remove or modify¹¹.

2.1.3 Cultural Norms

Cultural norms are shared values, traditions, and religious beliefs within Nigerian society that shape perceptions of morality, sexuality, and family structure. These are informal, customary norms that govern everyday behaviours and are based on tradition and convenience.¹²

⁷ Transgender Definition and Meaning Merriam-Webster (12th Edition 2025) < <https://www.merriam-webster.com/dictionary/transgender> > accessed 12 December 2025

⁸ Karl Maria Kertbeny wrote to Karl Heinrich Ulrichs who was a German jurist and sexologist famous because it contains the first recorded use of the words “homosexual” and “heterosexual”, coined to create neutral terms for same-sex and opposite-sex attraction, distinct from Ulrichs’ focus on a “third gender” (Uranian) theory. The letter marked a disagreement with Kertbeny advocating for privacy rights over biological explanations to achieve legal reform, though his new terms became central to later medicalized understandings of sexuality.

⁹ BARRIER definition and meaning | Collins English Dictionary (14th Edition 2014) < <https://www.collinsdictionary.com/dictionary/english/legal-barrier> > accessed 12 December 2025

¹⁰ Black’s Law Dictionary, [9th edition 2009] < <https://share.google/UKqdGijbjR60aJ0I6> > accessed 12 December 2025

¹¹ Ibid

¹² Heather Heunermund, Cultural Norms | Definition, Values & Examples – Lesson | Study.com (2022) < <https://share.google/CvYhL3o6ESInmQmAW> > accessed 10 October 2025

Cultural norms are the shared expectations and those rules that guide the behaviour of people within a specific social group. These norms specify those things that are considered appropriate and acceptable in various situations, thereby providing a framework for social order. They are learned, and are transmitted through socialization from generation to generation¹³. Cultural norms are not merely personal preferences but are collectively held beliefs about how individuals ought to behave.

Norms reduce uncertainty and chaos in social interactions by making the behaviour of others more predictable. They create a sense of cohesion and collective identity, allowing for cooperation and coordinated action within the group.¹⁴

2.1.4 Human Rights

The universal rights inherent to all persons, including equality, dignity, privacy, and freedom from discrimination, as guaranteed under the Nigerian Constitution and international instruments.¹⁵ Human rights are the fundamental, inalienable rights and freedoms inherent to all human beings, regardless of nationality, sex, ethnicity, religion, language, or any other status. They apply to every person, everywhere, simply by virtue of being human.¹⁶

They are inalienable, meaning that they cannot be taken away or given away, except in specific situations and following due process (e.g., the right to liberty can be restricted after a fair trial for a crime).¹⁷

¹³ Ibid.

¹⁴ Flynn Simone Isadora, Culture: Values, Norms and Material Objects | Research Starters | EBSCO Research (2021)< <https://share.google/2VWSV8MoAhPUVrm20> > accessed 10 October 2025.

¹⁵ Section 36, 37,42 of the Constitution of the Federal Republic of Nigeria 1999 (as amended); Universal Declaration of Human Rights | United Nations< <https://share.google/6xB2e6EToZgBtV9qZ> > accessed 12 December 2025.

¹⁶ What are human rights? | OHCHR< <https://share.google/ok5MIDQjuiEAYcS1f> > accessed 12 December 2025

¹⁷ Protect Human Rights | United Nations< <https://share.google/jf7FqDaRksGF4ybGS> > accessed 12 December 2025.

Human rights are indivisible and universal as they apply to every person, everywhere, simply by virtue of being a human being and are also interdependent as all rights are equally important and interconnected. The fulfillment of one right often depends on the fulfillment of another as individuals are entitled to their human rights without discrimination.¹⁸

Human rights are the basic standards and freedoms to which every person is entitled, from birth to death. They ensure that every human being can live with dignity, free from fear and want. They are not privileges granted by a government but entitlements that governments are obligated to respect, protect, and fulfill.¹⁹

2.2 Historical Framework

It is quite difficult to pinpoint the genesis of same-sex relationship, this is owing to the fact that same-sex relationships are regarded as abnormality and in some jurisdictions even punishable.

However, the genesis of homosexuality can be traced to biblical events where the practice of sodomy (Any of several forms of sexual intercourse held to be unnatural, particularly bestiality or homosexuality, particularly anal intercourse between males) in Sodom and Gomorrah was described by God as an abomination. In the book of Leviticus, it was stated 'Thou shalt not lie with mankind, as with womankind: it an abomination'.²⁰

In the Holy book, it is stated in verse 27 and 28:

[27] and likewise also the men, leaving the natural use of the woman, burned in their lust one toward another; men with men working that which is

¹⁸ Ibid.

¹⁹ Abdul Rasaq Ariwoola, Learn Nigerian Law (2021) <<https://share.google/rqCv3XGlWuVBWtO41>>accessed 12 December 2025.

²⁰ The book of Leviticus 18:22 KJV

unseemly, and receiving in themselves that recompence of their error which was meet.

[28] And even as they did not like to retain God in their knowledge, God gave them over to a reprobate mind, to do those things which are not convenient.²¹

For the purpose of this study, the history of homosexuality can also be traced down to several records in various societies and ancient civilizations such as Greece, Mesopotamia and even Rome. The first recorded appearance of deep emotional bond between men in ancient Greece culture was in Iliad of 800BC.

2.2.1 Early Civilization

Homosexuality has existed in various forms throughout human history, with evidence traceable to ancient societies. In Mesopotamia, records from around 2000 BCE show that same-sex relationships were not entirely taboo and often featured in myths and temple practices. Deities such as Inanna (Ishtar) were associated with androgyny and gender fluidity, symbolising divine approval of diverse sexual expressions.

In Ancient Egypt, although family and fertility were highly valued, archaeological findings such as the joint tomb of Niankhkhnum and Khnumhotep have been interpreted by scholars as depicting a romantic relationship between two men.²²

The most detailed discussions of homosexuality in antiquity come from Ancient Greece, where same-sex relationships—especially between older and younger men—were often institutionalised through the practice of pederasty.²³ The older man was expected to act as a mentor, teaching the youth about politics, virtue, and warfare, while also serving as a model

²¹ The book of Romans 1:27-28 KJV

²² Toby Wilkinson, *The Rise and Fall of Ancient Egypt* (Bloomsbury 2010) 84
<<https://share.google/MXRY6tMIN18NJLJZY>> accessed 10 October 2025.

²³ Thomas Hubbard, *Homosexuality in Greece and Rome: A Sourcebook of Basic Documents* (University of California Press 2003) 89.

of citizenship. In return, he gained the admiration and beauty of the youth. The relationship was meant to be temporary, concluding when the young man reached full adulthood. This institution was deeply integrated into the social fabric, especially in city-states like Sparta and Athens. In Sparta, it was believed that having a valiant lover in battle would inspire a soldier to greater heroism. In Athens, such relationships were a common theme in symposiums (all-male drinking parties) and were celebrated in art, poetry, and philosophy. Vase paintings often depict courtship scenes between men and youths, and the poetry of Theognis and Pindar extols the virtues of these bonds. Philosophers such as Plato in *The Symposium* idealised male-male affection as the highest form of love, arguing that it promoted virtue and wisdom. However, Greek society still emphasised masculinity and social hierarchy, disapproving of passive male sexual roles.²⁴

In Ancient Rome, same-sex relations were tolerated provided that the Roman citizen assumed the dominant role, while passive male partners were often stigmatized. Emperors like Hadrian openly displayed affection for male partners, most notably Antinous, whose death led to his deification.²⁵ A citizen man could engage in sexual acts with certain social inferiors—women, slaves, prostitutes, or infames (those of disreputable professions)—without loss of social standing, regardless of their gender. The crucial factor was that he must always be the penetrator. To willingly be penetrated was considered *impudicitia* (sexual shame) and was socially devastating for a freeborn man, as it was seen as surrendering his masculine and civic authority. The *Lex Scantinia* was an ancient law, though its enforcement was sporadic, aimed at punishing *stuprum* (sexual misconduct) against freeborn male youths. Its primary purpose was to protect the sexual integrity and future status of citizen boys, not to prohibit

²⁴ Ibid

²⁵ Caroline Vout, *Power and Eroticism in Imperial Rome* (Cambridge University Press 2007) 119.

homosexual acts in general. With the eventual spread of Christianity, Roman tolerance declined as the new faith condemned homosexual acts as sinful and unnatural.²⁶

2.2.2 The Medieval Era

The Middle Ages marked the consolidation of Christian moral authority in Europe, which profoundly shaped attitudes toward sexuality. The concept of “sodomy” emerged as a catch-all term for same-sex acts, regarded as grave sins against nature and punishable by death or excommunication.²⁷ Ecclesiastical courts prosecuted alleged sodomites, and homosexual behavior was often linked to heresy and witchcraft. Despite this repression, homoerotic relationships persisted within monastic communities and were sometimes expressed in the language of spiritual love and friendship.

2.2.3 The Renaissance and Enlightenment (15th–18th Century)

The Renaissance revival of classical literature reintroduced ancient discussions of same-sex love to European intellectuals. Philosophers and artists found inspiration in classical ideals of beauty, friendship, and virtue, which often celebrated male physical form and affection between men.²⁸ The works of Plato, especially the *Symposium* and *Phaedrus*, were widely read and admired for their discussions of spiritual love between men, and these texts subtly shaped Renaissance conceptions of male friendship and intellectual intimacy.²⁹ In art, this revival manifested in the depiction of the male nude as an ideal of beauty. Artists such as Leonardo da Vinci, Michelangelo Buonarroti, and Sandro Botticelli portrayed the male body with a sensual reverence similar to that of ancient Greece.³⁰ These artistic representations,

²⁶ John Boswell, *Christianity, Social Tolerance, and Homosexuality* (University of Chicago Press 1980) 105.

²⁷ Mark David Jordan, *The Invention of Sodomy in Christian Theology* (University of Chicago Press 1997) 22.

²⁸ Michael Rocke, *Forbidden Friendships: Homosexuality and Male Culture in Renaissance Florence* (Oxford University Press 1996) 13. < <https://share.google/XqIPVkzWQcDFhJxqn> > accessed 10 October 2025

²⁹ Plato, *Symposium*, trans. Benjamin Jowett (Oxford University Press 1994) 44.

³⁰ Caroline Elam, ‘The Homoerotic Body in Renaissance Art’ (2005) 28 *Renaissance Studies* 415.

though apparently classical, reflected a homoerotic perception that blurred the line between admiration and desire yet, societal condemnation remained.

In 1533, England enacted the Buggery Act, making homosexual acts punishable by death.³¹ During the Enlightenment, thinkers like Voltaire and Montesquieu began questioning the moral and legal foundations of such penalties, arguing for a more rational and humane approach to sexuality. However, public acceptance remained limited.

2.2.4 The 19TH Century: The Birth of the Homosexual

The 19th century marked a transformation in how homosexuality was conceptualised. In 1869, Karl-Maria Kertbeny, a Hungarian writer, coined the term “homosexuality” to describe same-sex attraction.³² This period also saw the rise of sexology, as scholars such as Richard von Krafft-Ebing, Magnus Hirschfeld, and Havelock Ellis sought to classify sexual behaviors scientifically. While these early studies medicalised homosexuality as a psychological condition, they also laid the groundwork for later decriminalisation efforts, however, social prejudice persisted. In Britain, the Criminal Law Amendment Act 1885 criminalised gross indecency. Across Europe and North America, same-sex relationships were hidden but never entirely erased.

2.2.5 The 20th Century: Repression and Liberation

In the early 20th century, many nations maintained strict prohibitions against homosexuality. Under Nazi Germany, thousands of gay men were imprisoned and sent to concentration camps, marked by the pink triangle symbol.³³ After World War II, growing human rights discourse slowly challenged these oppressive laws.

³¹ Buggery Act 1533 (25 Hen 8 c 6).

³² Randolph Trumpach, Karl-Maria Kertbeny, Letter to Karl Heinrich Ulrichs (1869). < <https://share.google/UZ2fh6BzzYiTxF> > accessed 10 October 2025

³³ Richard Plant, The Pink Triangle: The Nazi War Against Homosexuals (Holt 1986) 34.

In 1969, the Stonewall Riots in New York marked a turning point in modern LGBTQ+ activism. The following decades saw gradual legal reforms, such as the decriminalisation of homosexuality in the UK in 1967 and the removal of homosexuality from the American Psychiatric Association's list of mental disorders in 1973.³⁴

By the late 20th and early 21st centuries, same-sex marriage became legally recognised in several countries, reflecting a major cultural and legal shift. In the United States, homosexuality was highly condemned up until 2003³⁵ where the Supreme Court overruled the decision in *Bowers v Hardwick*.³⁶

Despite progress, many regions, especially in Africa and the Middle East continue to criminalise or stigmatise homosexuality.

2.3 THEORETICAL FRAMEWORK

A theoretical framework provides the foundational lens and analytical tools through which a research problem is examined. For this study, which exists at the intersection of law, culture, and human rights, a single theory is insufficient. This study adopts a combination of three interrelated theories such as the Natural Law Theory, Cultural Relativism and Human Rights Universalism to provide an analytical foundation for understanding the legal, cultural, and moral dimensions of same-sex relationships in Nigeria.

2.3.1 Natural Law Theory

Natural law theory posits that there are objective moral principles, discoverable through reason, which underlie and inform positive law. Natural Law is the law of nature, divine law,

³⁴ American Psychiatric Association, *Diagnostic and Statistical Manual of Mental Disorders* (2nd edn, 1973).

³⁵ The Supreme Court of the United States overturned its decision in *Lawrence v. Texas*, 539 U. S. 558 (2003)

³⁶ *Bowers v Hardwick* (1986) 478 U. S. 186

higher law as it explores the origin of law. Scholars such as Aristotle³⁷, Thomas Aquinas, Plato and St. Augustine maintain that law derives its validity from its conformity with moral order. In the Nigerian, many legal and religious arguments against same-sex relationships are anchored in natural law reasoning that such acts are “unnatural” and contrary to divine order.

According to the Roman orator and philosopher Marcus Cicero (106–43 BCE):

Law is the highest reason, implanted in Nature, which commands what ought to be done and forbids the opposite. True law is right reason in agreement with nature; it is of universal application, unchanging and everlasting... We cannot be freed from its obligations by senate or people, and we need not look outside ourselves for an expounder or interpreter of it. And there will not be different laws at Rome and at Athens, or different laws now and in the future, but one eternal and unchangeable law will be valid for all nations and all times. For reason alone, when it is fully developed and perfected, is rightly called wisdom. And since... reason is found in both man and God, the first association between man and God is in reason.³⁸

This theory has been criticised for being subjective and according to my lecturer, Prof Bazuaye, natural law is a harlot as it has been used by different authoritarians to justify inhumane policies.³⁹

2.3.2 Cultural Relativism Theory

Cultural Relativism is a fundamental concept in anthropology and sociology that asserts that 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.⁴⁰ Cultural relativism argues that moral values and human-rights standards must be understood within specific cultural contexts rather than through universal yardsticks.⁴¹

³⁷ Aristotle argues that we can tell right from wrong by our knowledge

³⁸ Paul Meany, Cicero’s Natural Law and Political Philosophy | Libertarianism.org (2018) <<https://share.google/kupbCVFi2KMBtNgeT>> 10 September 2025

³⁹ Prof Bazuaye in the course of teaching “The Relation of law to: Justice, Morality and Religion” in the course Jurisprudence and Legal Theory, first semester 2024/2025 session.

⁴⁰ Melville J. Herskovits, Cultural Relativism: Perspectives in Cultural Pluralism (1955) <<https://share.google/XxVxtrMPfGWJc2jzl>> accessed 12 December 2025

⁴¹ AMAMIHE: Journal of Applied Philosophy, ISSN: 1597 – 0779 <<https://share.google/t2x1oITajeuPEqOU4>> accessed 12 December 2025.

Applied to this study, cultural relativism explains why Nigerian society deeply rooted in religious and traditional values see same-sex relationships as alien and morally unacceptable. It shows that Nigeria's rejection of same-sex rights is not merely legal but socio-cultural, reflecting collective conceptions of morality, family, and identity.

2.3.3 Human Rights Universalism Theory

Human rights universalism maintains that all human beings are entitled to equal rights and freedoms irrespective of culture, religion, gender, or sexual orientation. This theory is grounded in the Universal Declaration of Human Rights (1948), which affirms that 'All human beings are born free and equal in dignity and rights'.⁴²

In the Nigerian context, the universalist approach challenges discriminatory laws such as the Same-Sex Marriage (Prohibition) Act 2014 and sections of the Criminal Code. These three theories provide a comprehensive framework for analysis. Natural Law explains the moral and religious foundations of Nigeria's legal restrictions; Cultural Relativism explains these restrictions within the country's social and cultural realities; while Human Rights Universalism counterbalances by advocating equality, dignity, and non-discrimination.

By integrating these theories, the study seeks to critically assess whether Nigeria's legal and cultural restrictions on same-sex relationships can be justified within the context of constitutional and international human-rights obligations.

⁴² United Nations General Assembly, Universal Declaration of Human Rights (adopted 10 December 1948) UNGA Res 217 A (III) art 1.

2.4 LITERATURE REVIEW

2.4.1 The Harm Principle

The Harm Principle is one of the most influential ideas in political and moral philosophy.⁴³ It is a cornerstone of liberal thought, setting limits on the power of the state and society over individual freedom. Mill states that ‘The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will, is to prevent harm to others’. According to Mill, the Harm Principle is a guideline for determining the boundaries of social and legal coercion. He distinguishes between self-regarding and other-regarding actions.

Self-regarding actions are those that affect only the individual, such as one’s lifestyle choices, religious beliefs, or personal habits. These should not be interfered with by the state or society. Other-regarding actions, on the other hand, have direct and adverse effects on others. Such actions may be legitimately restricted to prevent harm.

Mill argues that liberty is essential for personal development and the progress of society. Freedom allows individuals to pursue their own good in their own way, as long as they do not deprive others of the same right. By permitting diversity of opinions and lifestyles, society benefits from new ideas and experiences, fostering both individual and collective growth.

The Harm Principle applies to all aspects of conduct such as moral, political, and social. It supports freedom of expression, association, and conscience, but allows restriction where an individual’s act harms others. For example, a person drinking alcohol is a self-regarding act, but driving under the influence becomes other regarding since it endangers others.

⁴³ John Stuart Mill, *On Liberty* (1859) Batoche Books Limited < <https://share.google/DtdtYs6zY9J8DQb82> > accessed 20 October 2025.

2.4.2 The Wolfenden Committee Report (1954-1957)

Before the mid-twentieth century, homosexual acts between men were criminal offences under British law. The Labouchere Amendment of 1885, which introduced the crime of “gross indecency”, made it possible to prosecute men for private, consensual homosexual activity. High-profile cases such as Oscar Wilde’s trial in 1895 and the widespread persecution of homosexual men during and after World War II drew public attention to the harshness and inconsistency of these laws.⁴⁴

By the early 1950s, Britain faced increasing concern about the number of prosecutions for homosexual offences, which were rising rapidly. Between 1931 and 1954, prosecutions increased more than tenfold.⁴⁵

In response to these growing tensions, the British Government, under Prime Minister Sir Anthony Eden, established a Departmental Committee on Homosexual Offences and Prostitution in 1954. The committee was headed by Sir John Wolfenden, a respected educationalist and Vice-Chancellor of Reading University, hence the name Wolfenden.⁴⁶

After three years of hearings, research, and consultations with police officers, psychiatrists, clergy, and members of the public, the committee published its Report in 1957.⁴⁷ The Wolfenden Report made two main recommendations:

1. Private homosexual behaviour between consenting adults (aged 21 and over) should no longer be a criminal offence.

⁴⁴ *Regina v Wilde* (1895) 1 QB 283.

⁴⁵ Patrick Higgins, *Heterosexual Dictatorship: Male Homosexuality in Post-war Britain* (Fourth Estate 1996) 42.

⁴⁶ Jeffrey Weeks, *Sex, Politics and Society: The Regulation of Sexuality since 1800* (3rd edn, Pearson 2012) 181.

⁴⁷ Home Office, *Report of the Departmental Committee on Homosexual Offences and Prostitution* (Cmd 247, 1957) [“Wolfenden Report”].

2. Prostitution laws should be reformed to address the public nuisance aspect rather than private morality.

2.4.3 Herbert Lionel Adolphus Hart: Liberty and Morality

Herbert Lionel Adolphus Hart popularly referred to as H.L.A. Hart was one of the most influential legal philosophers of the twentieth century, delivered the Hamlyn Lectures in 1962, which were later published as *Law, Liberty and Morality* (Oxford University Press, 1963). In this work, Hart explores the relationship between law, morality, and individual freedom, developing and defending John Stuart Mill's Harm Principle in the context of modern legal systems.⁴⁸

Hart's argument was a direct response to Lord Patrick Devlin, who had contended that society is entitled to enforce moral standards through law to preserve its moral structure.⁴⁹ Hart disagreed, arguing instead for a liberal distinction between private morality and public harm. Hart strongly supports Mill's view that the function of law is to prevent harm to others, not to enforce private morality. He argues that the law should not interfere with private conduct unless it causes demonstrable harm to others. According to Hart, moral disapproval alone does not justify legal punishment.

He notes that enforcing morality based on popular opinion risks tyranny of the majority, suppressing minority lifestyles and personal freedom. Therefore, law and morality must be kept distinct, though they sometimes overlap.

⁴⁸ Herbert Lionel Adolphus Hart, *Law, Liberty and Morality* (Oxford: Oxford University Press, 1963) p. 1.

⁴⁹ Patrick Devlin, *The Enforcement of Morals* (Oxford: Oxford University Press, 1965) p. 3.

2.4.4 Patrick Devlin: the Enforcement of Morals

Sir Patrick Devlin (1905–1992) was a British judge and legal philosopher whose work, *The Enforcement of Morals* (Oxford University Press, 1965), emerged from his response to the Wolfenden Committee Report (1957) and the Hart–Devlin debate.

The Wolfenden Committee had recommended that private, consensual homosexual acts between adults should not be criminalised, reasoning that law should not interfere with private morality. Devlin strongly opposed this liberal stance. His lectures (later compiled into *The Enforcement of Morals*) argued that society has the right to use the law to enforce moral standards, since morality is essential to social cohesion.⁵⁰

Devlin’s main claim is that society cannot exist without a shared morality, and that the law may justly enforce that morality to prevent social disintegration. He likened moral consensus to “the cement that holds society together.” If this cement is weakened by the toleration of immoral behaviour, society risks collapse. Thus, the enforcement of moral norms is as necessary to the survival of a society as the protection of its political institutions.

Devlin wrote:

‘Society means a community of ideas; without shared ideas on politics, morals and ethics no society can exist. If men and women do not accept the same moral principles, the society will disintegrate’.

To determine which immoral acts the law should prohibit, Devlin proposed the “reasonable man test.” According to Devlin, the law should enforce only those moral norms whose violation would cause intolerance, indignation, or disgust among right-minded members of society.

Devlin rejected John Stuart Mill’s Harm Principle, which holds that law should interfere only to prevent harm to others. He argued that Mill’s approach is too individualistic and neglects

⁵⁰ Ibid.

the communal nature of moral life. For Devlin, even private conduct can harm society indirectly by undermining the moral convictions that sustain it.

Thus, acts such as homosexuality, prostitution, or adultery, though private and consensual, could still threaten societal integrity by eroding shared moral standards.

H.L.A. Hart, in *Law, Liberty and Morality* (1963), directly opposed Devlin's view. Hart defended Mill's liberal stance, insisting that law should not enforce morality for its own sake.

Devlin responded that society's moral welfare is as vital as its physical or economic welfare, and the law's duty extends to both. He accused Hart of promoting moral relativism that could lead to social chaos.

This disagreement known as the Hart–Devlin debate became a landmark dispute in jurisprudence and legal moralism, influencing modern human rights law, criminal justice, and debates about moral regulation.

In conclusion, there have been different scholarly works on the issue of sexual orientation and public morality.

CHAPTER THREE

LEGAL BARRIERS TO SAME SEX RELATIONSHIP IN NIGERIA

3.1 SAME SEX MARRIAGE (PROHIBITION) ACT, 2013

Prior to the enactment of the Same-Sex Marriage (Prohibition) Act (SSMPA) 2013, Nigeria had in place legal provisions criminalising homosexual conduct both under the Criminal Code Act (applicable in the southern states) and the Penal Code Act (applicable in the northern states).¹ These laws prohibited crimes against the order of nature.

However, the early 2000s witnessed increasing global advocacy for the recognition of same-sex relationships. The Supreme Court of the United States of America overturning its decision in *Lawrence v Texas*² and subsequent legalisation of same-sex marriage in countries such as South Africa (2006) and several European nations sparked intense debates in many African states, including Nigeria.

This global movement toward LGBTQ+ rights was perceived by Nigerian religious and political leaders as a threat to the country's traditional, cultural, and religious values. Public opinion in Nigeria began to frame same-sex marriage not as a question of human rights but as an issue of moral and cultural sovereignty.³

The legislative history of the SSMPA can be traced to 2006, when the administration of President Olusegun Obasanjo first proposed a Same-Sex Marriage (Prohibition) Bill.⁴ The bill sought to criminalise same-sex marriage and related public advocacy. However, it failed

¹ Criminal Code Act, Cap C38 Laws of the Federation of Nigeria 2004, s 214; Penal Code Act, Cap P3 Laws of the Federation of Nigeria 2004, s 284.

² *Lawrence v Texas* | 539 U.S. 558 (2003) | Justia U.S. Supreme Court Center <<https://share.google/14C8gJ45v1wakdr7t> > accessed 24 October 2025

³ Marc Epprecht, *Heterosexual Africa? The History of an Idea from the Age of Exploration to the Age of AIDS* (Ohio University Press 2008) 103.

⁴ Anselm Odinkalu, 'The Same-Sex Marriage Prohibition Bill 2006 and Human Rights in Nigeria' (2007) *Nigerian Human Rights Review* 21.

following the expiration of that administration's tenure. The bill was later reintroduced during President Umaru Musa Yar'Adua's administration in 2008 but again failed to progress through the National Assembly due to legislative delays and competing political priorities.⁵

The bill gained renewed momentum during President Goodluck Jonathan's tenure. In 2011, the Senate reintroduced it under the title 'An Act to Prohibit Marriage or Civil Union Entered into between Persons of Same Sex, Solemnization of Same-Sex Marriage and for Other Matters Connected Therewith'. The Senate passed it on November 29, 2011, and the House of Representatives concurred on May 30, 2013. After much domestic and international debate, President Jonathan signed the bill into law on January 7, 2014, transforming it into the Same-Sex Marriage (Prohibition) Act 2013 (SSMPA).⁶

The bill was passed at a time when the country was in a dilemma on the issue of same-sex relationship. The enactment of the SSMPA reflected the intersection of political populism, religious morality, and cultural nationalism. Religious institutions, including the Christian Association of Nigeria (CAN) and the Supreme Council for Islamic Affairs, publicly endorsed the bill, describing same-sex marriage as contrary to divine and natural law.⁷

Internationally, the law drew criticism from the United States, the United Kingdom, the European Union, and various United Nations agencies, which argued that it violated Nigeria's obligations under international human-rights instruments, including the ICCPR and ACHPR.¹² Nevertheless, the Nigerian government defended the law as an exercise of sovereign legislative power consistent with the will of its people.⁸

⁵ Ibid

⁶ Ibid

⁷ Christian Association of Nigeria, Press Statement on the Same-Sex Marriage Bill (2013); Nigerian Supreme Council for Islamic Affairs, Position Paper on the SSMPA (2013)

⁸ United Nations Human Rights Committee, *Toonen v Australia* (1994) CCPR/C/50/D/488/1992. Jurisprudence Database < <https://share.google/FNsfpzW0Q6JZuZxvw> > accessed 20 October 2025

The Same-Sex Marriage (Prohibition) Act 2014 represents both continuity and departure: continuity, because it reinforces colonial-era sodomy laws; and departure, because it extends criminalisation to areas of advocacy and association. The law's historical trajectory reflects Nigeria's attempt to reconcile national sovereignty and cultural identity with international human-rights commitments.

3.1.1 CRITICAL ANALYSIS OF THE ACT

The essence of this Act is to prohibit same-sex relationship and also state the consequence in Nigeria. The Act clearly states in the interpretation section that "Marriage" means the legal union between persons of the opposite sex in accordance with the Marriage Act or under the customs of their respective communities; while "Same sex marriage" means the legal union between persons of the same sex. This has been the position of marriage since time immemorial under the customary law and also the Marriage Act/Matrimonial Causes Act in Nigeria. Under the Same-Sex Marriage (Prohibition) Act 2013 any marriage or union whether civil or otherwise that is contrary to the above definition is invalid. The fundamental purpose of this Act is to prohibit same-sex marriage between persons of the same gender in the country. The Act serves as a reinforcement to the Criminal Code Act and The Penal Code which in their provisions frown on homosexual relationships by calling them "unnatural offences."⁹

The Act clearly defined what marriage means by stating the right kind of marriage and that any marriage that does not conform to that stated by the state, or customary law is void. The Act also Prohibits sexual relationship between persons of the same sex and other forms connected therewith.

⁹ Section 214 Criminal Code Act C38 LFN 2004

Section 1(1) provides that;

A marriage contract or civil union entered into between persons of same sex

(a) Is prohibited in Nigeria

(b) Shall not be recognised as entitled to the benefits of a valid marriage.

This above stated provision means that same-sex marriage is contrary to the right order of marriage and also invalidates any form of same-sex marriage and will not be entitled to the perks of a valid marriage in Nigeria.

Section 1(2) provides that;

A marriage contract or civil union entered into between persons of same sex by virtue of a certificate issued by a foreign country shall be void in Nigeria and any benefits accruing there by virtue of certificate shall not be enforced by any courts in Nigeria.¹⁰

This provision is of immense importance as it would debar expatriates who are involved in same sex marriage to practise it in Nigeria. The act provides that notwithstanding the fact that certificate has been issued in respect of same sex marriage in another country, such will be void when the parties enter into Nigeria and no entitlements or benefits accruing therefrom by the virtual certificate will be enforced in any court in Nigeria. This law is very important as it will bar foreigners from countries practising homosexual relationship in Nigeria by virtue of this subsection. Countries like USA, Britain, Netherland and other countries where homosexual relationships have been decriminalised will be bound by this Act when they come to Nigeria.

Section 2(1) of the Act provides;

¹⁰ Section 1 (2) of the Same Sex Marriage (Prohibition) Act 2013

A marriage Contracted or civil union entered into between persons of the same sex shall not be solemnised in a church, mosque or any other place of worship in Nigeria.¹¹

The essence of this provision is to prohibit the celebration of marriage same sex marriage in places of worship. This goes on to state the stand of Nigeria concerning same-sex relationships as the Act outrightly prohibits any form of solemnization of marriage in any place of worship in the country and that includes that no licence will be issued to persons who conducts same sex marriage in the Federal Republic of Nigeria. This thereby means that all same-sex unions whether contracted in church, mosque or even customary or secretly done anywhere in so far as is within the Federal Republic of Nigeria prohibited.

Section 3 provides that;

Only a marriage contracted between a man and a woman shall be recognised as valid in Nigeria.¹²

This provision gives recognition to only heterosexual marriages meaning marriage between opposite sex. The provision states that only persons of opposite sex can be legally married and have a valid marriage in Nigeria. *Lord Penzance* in the case of *Hyde v. Hyde* defined marriage as “the voluntary union for life of one man and one woman, to the exclusion of all others”. As a result, any marriage that is not between persons of the opposite sex is not a valid marriage.

Section 4(1) provides that;

The registration of gay clubs, societies and organisations, their sustenance, processions and meetings is prohibited.

(2) The public show of same sex amorous relationship directly or indirectly is prohibited.¹³

¹¹ Section 2 (1) of the Same Sex Marriage (Prohibition) Act 2013

¹² Section 3 of the Same Sex Marriage (Prohibition) Act 2013

¹³ Section 4 (1) of the Same Sex Marriage (Prohibition) Act 2013

The Effects of the above provision is that registration of gay clubs and societies is strictly prohibited. In the United States for example they are gay clubs and organisations which serves a medium where persons in same sex relationship can meet one another. This above the provisions thereby prohibits any association which supports and promotes same sex relationships. The above provisions also states that public show of same-sex affection is prohibited in Nigeria. This section is born out of the need to protect the public morality of the state as the states sees it as its responsibility to protect do innocence of the vulnerable.

Section 5 states the penalties and it reads thus:

- (1) A Person who enters into a same sex marriage contract or civil union commits an offence and is liable on conviction to a term of 14 years imprisonment.
- (2) A Person who registers, operates oh participates in gay clubs, societies an organisation, or directly or indirectly makes public show of same sex amorous relationship in Nigeria commits an offence and is liable on conviction to a term of 10 years imprisonment.
- (3) A Person or group of persons who administers, witnesses, abet or aid the solemnization of a same sex marriage for civil union, or supports the registration, operation and sustenance of gay clubs, societies, organisations processions or meetings in Nigeria commits an offence and is liable on conviction to a term of 10 years imprisonment.¹⁴

This section covers the penalties of going against the provisions of this act. It is important to mention that even those are served as witness to safe sense marriage are also liable. This section states that any person in that enters into the same sex marriage or civil union is liable for a term of 14 years while those who register, operates and participates in gay clubs, societies and organisation are liable for the term of 10 years imprisonment. This also means that a witness cannot claim to be ignorant as ignorance of the law is not an excuse.

¹⁴ Section 5 (1) (2) and (3) of the Same Sex Marriage (Prohibition) Act 2013

Section 6 provides 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 this Act.¹⁵

This section states the courts that can entertain matters regarding same sex marriage and relationships in Nigeria.

3.2. EFFECTS OF SAME SEX RELATIONSHIP

The effect of homosexuality has been researched over the years and many researchers have found out that it has adverse effects on the health of the persons that engage in these acts¹⁶. The University of Chicago's National Opinion Research Centre has conducted surveys regarding homosexuality since the late 1980s and deems that approximately two percent of the U.S. population identifies as either gay, lesbian, or bisexual.² The 2006-2008 National Survey of Family Growth conducted by the CDC's National Centre for Health Statistics found that among women ages 18 to 44, 3.5 percent identified as bisexual with 1.4 percent identifying as homosexual, gay, or lesbian. Among men of the same age group, 1.7 percent claimed gay identity with 1.1 percent identifying as bisexual.¹⁷

Gabriel Rotello, a gay male journalist and former editor of the now defunct Outweek Magazine, an avant-garde U.S. gay and lesbian magazine, has written a new book chronicling the failures of HIV prevention efforts with gay men in the United States and Canada. Based on a series of interviews with epidemiologists, biologists, virologists, physicians, and psychologists working in the HIV/AIDS area, and a selective review of the social science and

¹⁵ Section 6 of the Same Sex Marriage (Prohibition) Act 2013

¹⁶ Effect of homosexuality upon public health and social order – PubMed < <https://share.google/afbTSXhfmz21dkha> > accessed 14 November 2025

¹⁷ Gabriel Rotello, Sexual ecology : AIDS and the destiny of gay men (Dutton 1997) < <https://share.google/CwHfNe7J3Fd2RO3Pw> > accessed 22 October 2025

public health literature on HIV transmission prevention, Rotello presents his rather simplistic writing. This writing, evident from the book's title, states that the AIDS epidemic in gay men is a consequence of their violating the natural rules of sexual anatomy. The rules of sexual anatomy that gay men are alleged to have violated include indiscriminate selection of sexual partners, failure to practice serial long-term monogamy with sexual partners, participation in unhealthy sexual practices such as "rimming" (oral-anal sexual contact) and failing to avoid alcohol and substance use during sex¹⁸. According to Rotello, major contributors to the AIDS crisis have been the tendency for gay men to:

- 1) be flexible in their sexual roles and engage in both receptive and insertive anal sex, thereby increasing the rate of HIV transmission;
- 2) engage in receptive anal sex with many partners, thus exposing themselves to a large pool of infected partners; and
- 3) to be "sexual tourists" who feel compelled to sample the sexual pleasures of the numerous regions they visit in their extensive travels, thereby helping to spread the HIV epidemic worldwide.¹⁹

The Gay Lesbian Medical Association (GLMA) web site describes the following detrimental effects associated with same-sex sexual practice: higher rates of HIV/AIDS, substance abuse, depression/anxiety, hepatitis, sexually transmitted illnesses (anal papilloma/HPV, gonorrhea, syphilis, and chlamydia), certain cancers, alcohol abuse, tobacco use, eating disorders, and (in subsets) obesity.²⁰

¹⁸ *ibid*

¹⁹ *Ibid*

²⁰ Smith, T. American Sexual Behavior: Trends, Socio-Demographic Differences, and Risk Behavior. National Opinion Research Center, University of Chicago. 2006 < <http://www.norc.org/NR/rdonlyres/2663F09F-2E74-436E-AC81-6FFBF288E183/0/AmericanSexualBehavior2006.pdf> > accessed 28 September 2025

In February 2009 a Canadian GLBT group filed a human rights complaint against the Canadian government and Health Canada asserting that the Canadian GLBT population had poor statistics for life expectancy (twenty years short of standard), suicide, alcohol and illicit drug/substance abuse, cancer, infectious disease, HIV/AIDS, and depression. ²¹This is noteworthy in that it challenges the assertion of those claiming the negative health statistics attributed to individuals of GLBT orientation are merely a function of the lack of acceptance of such individuals, and that said statistics would improve with their increased acceptance. Canada provides a highly supportive government, celebration from liberal churches, and a public coerced into silence by hate speech codes, yet the poor health indicators for the GLBT populace remains. This demonstrates that acceptance and affirmation of same-sex sexuality is not the promised antidote for the problems inherent in GLBT sexuality²².

3.3. CONSTITUTIONALITY OF THE SAME SEX MARRIAGE (PROHIBITION) ACT

Teriah Ebah, a Nigerian based in the United Kingdom in 2014 instituted a suit against the Nigerian government, contending and the newly enacted Same Sex Marriage (Prohibition) Act 2013 was contrary to the provision of section 34 and section 37 of the 1999 Constitution (as amended). He also contended that that the Act is an infringement of the citizen's fundamental rights enshrined in section 40 of the Nigerian Constitution.²³ In the suit, the applicant is seeking an order of perpetual injunction, restraining the Nigerian government, from enforcing the provisions of Same Sex Marriage (Prohibition) Act of 2013. He urged the High Court to declare the law as unconstitutional, null and void. Justice Abdul Kafarati in his ruling stated that Mr. Ebah had no right to file a suit for the entire country since the suit did

²¹ *ibid*

²² Andre Von Mol, Negative Health Consequences of Same-Sex Sexual Behavior 2011 < <https://share.google/HuH2Db7cLlkFptiWy> > accessed 23 October 2025

²³ Court Strikes Out Suit Challenging Same Sex Law In Nigeria • Channels Television < <https://share.google/JJp9w5fA1bfKqqRqN> > accessed 23 October 2025

not state that his personal were trampled upon. He also stated that no group in Nigeria is known as Lesbian, Gay, Bisexual, Transgender (LGBTQ) and as such the case was lacking in merit.

3.3.1 Right to Dignity of Human Person- Section 34

- (1) Every individual is entitled to respect for the dignity of his person, and accordingly
 - (a) No person shall be subject to torture or to inhuman or degrading treatment;
 - (b) No person shall be held in slavery or servitude; and
 - (c) No person shall be required to perform forced or compulsory labour.
- (2) For the purposes of subsection (1) (c) of this section, “forced or compulsory labour” does not include
 - (a) Any labour required in consequence of the sentence or order of a court;
 - (b) Any labour required of members of the armed forces of the Federation or the Nigeria Police Force in pursuance of their duties as such;
 - (c) In the case of persons who have conscientious objections to service in the armed forces of the Federation, any labour required instead of such service;
 - (d) Any labour required which is reasonably necessary in the event of any emergency or calamity threatening the life or well-being of the community; or
 - (e) Any labour or service that forms part of –
 - i. Normal communal or other civic obligations of the well-being of the community.
 - ii. such compulsory national service in the armed forces of the Federation as may be prescribed by an Act of the National Assembly, or

- iii. such compulsory national service which forms part of the education and training of citizens of Nigeria as may be prescribed by an Act of the National Assembly.²⁴

This section states that persons should not be exposed to inhumane treatment and this has not been the case for person who are or perceived to be homosexuals in Nigeria. There have been situations where police arrest and extort persons perceived to be homosexuals and these persons are afraid to speak because of the SSMPA.

3.3.2 Right to Personal Liberty – Section 35

Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law.

- a. In execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;
- b. By reason of his failure to comply with the order of a court or in order to secure the fulfillment of any obligation imposed upon him by law;
- c. For the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;
- d. In the case of a person who has not attained the age of eighteen years for the purpose of his education or welfare;
- e. In the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or

²⁴ Section 34(1),(2) of the Constitution of the Federal Republic of Nigeria 1999 (as amended)

- f. For the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto.

Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.²⁵

This section provides for right to personal liberty. According to critics of the Same Sex Marriage (Prohibition) Act, it contradicts the provision of this section. The Criminalisation of gay clubs, societies and organisations limits the right of personal liberty of the people. The Act by prohibiting same sex marriage and civil unions to that effect will appear to limit the right of persons of the LGBTQ+ community. The homosexual unions would be between consensual adults who should have freedom to choose what to do with their life. The Act is said to limit the free determination of sexuality.

3.3.3 Right to Private and Family Life – Section 37

The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.²⁶

The Constitution guarantees the right to private and family life to every citizen of the country. To fully comprehend this section, it is important to define the word “privacy”. Privacy according to Charles Fried²⁷ is not simply an absence of information about us in the minds of others, rather it is the control we have over information about ourselves. The Blacks Law Dictionary²⁸ defined privacy as the condition or state of being free from public attention or

²⁵ s 35 CFRN 1999 (as amended)

²⁶ s 37 CFRN 1999 (as amended)

²⁷ Charles Fried, “privacy”, 77 Yale Law Journal 475, 1965 pg. 482-483 PDF | Privacy | Applied Ethics < <https://share.google/msHa7wGJPENuXk1Sw> >accessed 30 October 2025

²⁸ Black’s Law Dictionary, (9th Edition 2009).

intrusion into or interference with one's acts or decisions. This section states that the private life of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.

It has been argued that the same sex marriage is a private affair and should not be interfered with by the state. It is opined that there should be a limit to the interference of the state in the private life of the citizens.

3.3.4 Freedom of Expression – Section 39

- (1) Every person shall be entitled to freedom of expression including freedom to hold opinions and to receive and impart ideas and information without interference.
- (2) Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own establish and operate any medium for the dissemination of information, ideas and opinions.

Provided that no person, other than the government of the federation or of a state or any other person or body authorized by the president on the fulfillment of conditions laid down by an Act of the National Assembly, shall own, establish or spate a television or wireless broadcasting station for any purpose whatsoever.

- (3) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society.
 - (a) For the purpose of preventing the disclosure of information received in confidence, maintaining the authority and independence of courts or regulating telephony wireless broadcasting television or the exhibition of cinematography films or
 - (b) Imposing restrictions upon persons holding office under the government of the federations or of a state, members of the armed forces of the federation or

member of the Nigeria police force or other government security services or agencies established by law.²⁹

This section states that everyone is entitled to freely express their opinion and ideas on certain topics without interference. This right of expression does not give citizens the free pass to just say anything they like as this right is limited by slander and libel. This right only allows citizens to share their opinions and ideas concerning a matter as long as it does not cause public unrest. It should be stated that where a certain person's right ends, that is where another's begins.

3.3.5 Right to Peaceful Assembly and Association – Section 40³⁰

Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests.

The Act (SSMPA) is contrary to the provisions of this section as it prohibits the registration of societies and organisations that support homosexuality. The Constitution states in this section that citizens can join associations for the protection of their right. The Acts contradiction to the Constitution, which is the grundnorm makes it unconstitutional and therefore unbinding. However the Act has been recognised as valid and binding as it is said to represent the will of the people.

3.3.6 Right to Freedom from Discrimination– Section 42

(1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:-

²⁹ Section 39(1)(2)(3) Constitution of the Federal Republic of Nigeria 1999 (as amended)

³⁰ Section 40 Constitution of the Federal Republic of Nigeria 1999 (as amended)

- (a) Be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or
 - (b) Be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.
- (2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.
- (3) Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the Federation or member of the Nigeria Police Forces or to an office in the service of a body, corporate established directly by any law in force in Nigeria.³¹

The right to freedom from discrimination is also covered by treaties such as the African Charter on Human and People's Rights. Article 2 of the African Charter provides that every person shall be entitled to the enjoyment of the rights and freedoms recognised and guaranteed in the Charter without discrimination of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

The advocates of same sex marriage have stated that the provisions of the SSMPA is contrary to the Constitution. The Act discriminates against sexual identification and orientation by outrightly prohibiting homosexual persons and even going as far as criminalising the act.

³¹ Section 42, Constitution of the Federal Republic of Nigeria 1999 (As Amended)

3.3.7 Evaluating Section 45 – Registration and Derogation from Fundamental Rights

Section 45(1) provides that:

Nothing in section 37,38,39,40 and 41 of this constitution shall invalidate any law that is reasonably justifiable in a democratic society.

- i. In the interest of defence, public safety, public order, public morality or public health; or
- ii. For the purpose of protecting the rights and freedom of other persons

(2) An act of National Assembly shall not be invalidated by reason only that it provides for the taking, during periods of emergency, of measures that derogate from the provisions of section 33 or 35 of this constitution; but no such measures shall be taken in pursuance of any such act during any period of emergency save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during the period of emergency.

Provided that nothing in this section shall authorize any derogation the provisions of section 33 of this constitution, except in respect of death resulting from acts of war or authorize any derogation from the provisions of section 36(8) of this constitution.

(3) In this section, a ‘period of emergency’ means any period during which there is in force a proclamation of a state of emergency declared by the president in exercise of the powers conferred on him under section 305 of this constitution.³²

Section 45 provides a defence against the earlier mentioned sections. Stating that the state still has the power to make laws that protect the general public even if they infringe on some constitutional rights. A good example is the Covid 19 rules and regulations enforced by almost all the countries of the world where the right to freedom of movement³³ and assembly

³² s 45(1)(2)(3) CFRN 1999 (as amended)

³³ Section 41 of the 1999 Constitution (as amended)

was restricted. This section provides that laws can be enforced even when they encroach on these human rights as long as they are reasonably justifiable in a democratic society for the purpose of defence, public safety, public order, public morality or public health or for the purpose of protecting the rights and freedom of other persons.

This study holds the view that the Nigerian legislation is based on Jeremy Bentham's theory of utilitarianism³⁴. It is an ethical theory centred on the "greatest happiness principle," which states that an action is right if it promotes happiness and wrong if it produces unhappiness for the greatest number of people.

3.4 OTHER NIGERIAN STATUTES PROHIBITING SAME SEX RELATIONSHIP

There have been legislations prior to the Same Sex Marriage Prohibition Act, 2013 that prohibits homosexual relationship in Nigeria. These laws have been existing since the colonial era.

3.4.1 The Penal Code

In 1904, the Lugard Administration in Northern Nigeria introduced by proclamation, a criminal code whose purpose, the preamble stated, was to declare, consolidate and amend the criminal law. It was extended in 1916 to the whole country after the unification of Nigeria in 1914.

The application of the Northern criminal code was at first strictly limited and thus even after 1916, most criminal cases in Nigeria were still governed not by the code but by native law and custom. The code was seen merely as a special variety of native law and custom.

The code which eventually emerged to displace the criminal code in 1959 was the penal code. It was influenced by the *Indian Penal code of 1860* and was also based on a code which had

³⁴ Utilitarianism | Definition, Philosophy, Examples, Ethics, Philosophers, & Facts | Britannica < <https://www.britannica.com/topic/utilitarianism-philosophy> > accessed 12 October 2025

been working successfully in a Moslem community (Lade of the Sudan) and had strong link with English law.

By Section 284(1) of the Law “whoever, being a man engaged or consents to being engaged by another man in carnal intercourse, against the order of nature, is said to commit sodomy.”

To ground a conviction for sodomy, under Section 284(1) of the Penal Code states that the Prosecution must prove:

- a) That the Accused person or defendant had intercourse with a man, woman or animal;
- b) That the intercourse was against the order of nature;
- c) That the Defendant or accused made the act, voluntarily;
- d) That there was Penetration.³⁵

In the case of *Sabiu Suleiman v State*³⁶ where the court held that the defendant was guilty of sodomy and sentenced to life imprisonment being that the victim was below 16 years. The presiding Judge gave a brief history of sodomy BT stating, “I believe the sins of sodomy and bestiality took origin from that scene in Sodom which drew God’s anger on the land. Sadly, our so-called civilized world, now tends to legalize this evil of sodomy in what they call ‘same-sex-marriage’. Thankfully, in Nigeria that remains an evil, and offence of sodomy remain grave evil and unnatural order of life, disdained by decent minds”. – Per I. G. Mbaba, JCA.

³⁵ Section 284(1) of the Penal Code (Miscellaneous Amended) Laws of Jigawa State 2014

³⁶ *Sabiu Suleiman v. State* (JBU/337C/2020) <<https://legalpediaonline.com/sabiu-suleiman-v-the-state/>> accessed 24 October 2025

In one of the most recent case of homosexuality, we have the case of a Kano football Coach who was arrested and jailed for 8 years imprisonment for sodomizing one of his students.³⁷

Section 284 provides that;

Whosoever has carnal intercourse against the order of nature with any man, woman or animal Shall be punished with imprisonment for a term which might extend to fourteen years and shall also be liable to fine.

Section 405(d) provides the meaning of Vagabond to mean:

Any male person who dresses or is attired in a fashion as a woman in public place all practises sodomy as a means of livelihood or as a profession.

These sets of people that section 405 referred to as Vagabonds are those that are referred to as cross dressers and feminine make in today's society.³⁸

It is to be noted that some northern states have adopted some forms of Sharia into the communal status, they include Bauchi, Borno, Gombak, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, Yobe and Zamfara.

Sharia law applies mostly to Muslims³⁹ and those who willingly accept it in Its jurisdiction.

The punishment for homosexuality however varies from state to state. In Kano, jigawa, zamfara and Gombe an unmarried person who commits the offence of homosexuality shall be punished with caning of 100 lashes and imprisonment for a period of one year. A married person the punishment of committing homosexuality is execution by stoning and and if the person was previously married the punishment is also stoning to death. If a minor commits the act with an adult the minor faces correctional punishment and the adult faces punishment.

³⁷ Punchng.com < <https://punchng.com/kano-football-coach-jailed-eight-years-for-sodomy/?amp> > accessed 14 October 2025

³⁸ Penal Code Act, Cap. 53 Laws of the Federation of Nigeria (LFN) 2004.

³⁹ Philip Ostien, Sharia Implementation in Northern Nigeria 1999-2006: A Sourcebook (Spectrum Books Limited 2007)pg 45 < <https://share.google/HBOhuOWYQDDa24SNY> > accessed 14 October 2025

3.4.2 Criminal Code Act

The Criminal Code Act⁴⁰ is the statute with provisions that states crimes and penalties in the southern states of Nigeria. In the case of *Aoko v Fagbemi*⁴¹ where the accused was brought to court for the charge of adultery, the court held that the accused cannot be punished for something that has not been stated as a crime at the time of its committal.

Chapter 21 of the Criminal Code Act provides for Offences against morality. One of the provisions includes unnatural offences⁴².

Any person who-

- (1) has carnal knowledge of any person against the order of nature; or
- (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 fourteen years.

Section 215 Attempt to commit unnatural offences

Person any person who attempts to commit any of these offences defined in section 214 of this code, is guilty of a felony and is liable to imprisonment for seven years.

The offender cannot be arrested that warrant.

Section 217. Indecent practices between males

Any male person who, whether public or private, commits any act of gross indecency with another male person or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission or

⁴⁰ CAP, C38 Laws of the Federation of Nigeria (LFN) 2004

⁴¹ (1961) 1 ALL NLR 400

⁴² Section 214 of the Criminal Code Act

any such acts by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for three years.

The offender cannot be arrested without warrant.

In the case of *Magaji v Nigerian Army*,⁴³ where the appellant, a Major in the Nigerian Army, was arraigned before the General Court Martial on a charge of sodomy contrary to section 81(1)(a) of the Armed Forces Decree No. 105, 1993 based on an allegation by four complainants that the appellant had carnal knowledge of them against the order of nature. At the end of the case of the prosecution, the appellant who had pleaded not guilty to the charge did not testify or call evidence in defence, rather, he rested his case on that of the prosecution. At the conclusion of the trial, the General Court Martial convicted the appellant in respect of the offence against one of the complainants and sentenced him to (7) seven years' imprisonment, which was commuted to five (5) years by the Confirming Authority. Dissatisfied with the said conviction and sentence, the appellant appealed to the Court of Appeal which affirmed the decision of the General Court Martial. Further dissatisfied with the decision of the Court of Appeal the appellant appealed to the Supreme Court where Tobi JSC delivered the leading judgement upheld the ruling of the Court of Appeal.

In conclusion, the stand of the Nigerian legislation has been as clear as day on homosexuality. The country being very religious has stated in its Criminal Code Act, Penal Code, Same Sex Marriage (Prohibition) Act, and even the Constitution that same sex relationships are prohibited and punishable in its jurisdiction.

⁴³ (SC 204/2004) [2008] NGSC 11 (7 March 2008)

CHAPTER FOUR
CULTURAL NORMS AND HUMAN RIGHTS ANALYSIS OF SAME SEX
RELATIONSHIPS

The enactment of the Same Sex Marriage (Prohibition) Act 2013 marked a significant milestone in Nigeria's legislative history. While it is celebrated domestically as a moral victory, it has also attracted widespread criticism for violating constitutional rights and international human-rights. This chapter analysis the conflict between cultural norms and international human rights provisions while comparing the SSMPA and the legislative provisions of other countries.

4.1 CULTURAL RELATIVISM AND THE DOCTRINE OF SOVEREIGNTY

Cultural Relativism, emerging prominently from 20th century anthropology, posits that beliefs, values, and practices are culturally specific and should not be judged by the standards of another culture.¹ Cultural relativism is the philosophical principle that 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.²

In ethics and politics, it argues that there are no universal moral standards applicable to all cultures; right and wrong are culture-specific. It challenges the concept of universal human rights, suggesting that imposing Western-derived rights on non-Western societies is a form of ethical imperialism or neo-colonialism.³

¹ John J. Tilley (2000). Cultural relativism. *Human rights quarterly*, 22(2), 501-547. <https://muse.jhu.edu/pub/1/article/13727/summary>

² Melford Elliot Spiro, (1986). Cultural relativism and the future of anthropology. *Cultural Anthropology*, 1(3), 259-286. < <https://www.degruyter.com/document/doi/10.1515/9780822397861-011/pdf?licenseType=restricted> > accessed 25 October 2025

³ *ibid*

The Doctrine of Sovereignty, crystallized in the Peace of Westphalia⁴, establishes the state as the principal actor in international relations, possessing supreme authority within its territorial borders⁵.

Sovereignty is the principle of supreme and unquestionable authority within a territorial boundary. As articulated in the 1648 Peace of Westphalia, it established the modern state system based on the state has exclusive control over its defined territory. No external actor has the right to intervene in the domestic affairs of another sovereign state as all sovereign states are equal in international law.⁶

The synergy between these two concepts is profound, sovereignty provides the legal and political barrier against interference, while cultural relativism provides the philosophical and ethical justification for why that barrier is legitimate.⁷ A state accused of human rights violations can therefore rely on the doctrine of sovereignty and cultural relativism just like Nigeria concerning same-sex marriage prohibition legislations.⁸

4.2 CONFLICT WITH INTERNATIONAL HUMAN RIGHTS OBLIGATIONS

The Same-Sex Marriage (Prohibition) Act imposes severe penalties, including up to 14 years imprisonment for entering a same-sex union and 10 years for participating in or supporting gay clubs or organizations, or making a public show of a same-sex relationship. The Nigerian legislation on same-sex relationships is in conflict with some international provisions such as

⁴ European settlements of 1648, which brought to an end the Eighty Years' War between Spain and the Dutch and the German phase of the Thirty Years' War. < <https://share.google/8aVQr2wJpA7vbSbEt> > accessed 26 October 2025

⁵ Doctrine of Sovereignty < <https://share.google/8GKHL5RcfJ5LLKDuI> > accessed 26 October 2025

⁶ Ibid

⁷ Sovereignty | Definition, Characteristics, Types, History, & Facts | Britannica <<https://share.google/W5P4UmQK0jlz015ri> > accessed 25 October 2025

⁸ THE_CONCEPT_OF SOVEREIGNTY. pdf < <https://share.google/CvvBqxuZzBSwXPS4l> > accessed 25 October 2025

the International Covenant on Civil and Political Rights (ICCPR), Africa Charter and the principle of Non-discrimination.⁹

4.2.1 International Covenant on Civil and Political Rights (ICCPR)

The International Covenant on Civil and Political Rights (ICCPR) is one of the core international human-rights treaties adopted by the United Nations General Assembly in 1966 and entered into force in 1976. The Covenant establishes binding legal obligations on states to protect a broad range of civil and political rights essential to human dignity, autonomy, and liberty.¹⁰ Nigeria ratified the ICCPR on 29 October 1993.

At its core, the ICCPR protects fundamental rights including the right to life (Article 6), freedom from torture and cruel, inhuman, or degrading treatment (Article 7), liberty and security of the person (Article 9), freedom of movement (Article 12), right to privacy (Article 17), freedom of thought and expression (Articles 18 and 19), freedom of assembly and association (Articles 21 and 22), equality before the law and non-discrimination (Article 26). These rights are to be respected without discrimination “of any kind,” and the Human Rights Committee (HRC) the treaty’s monitoring body has clarified that “sex” and “other status” in Article 26 include sexual orientation¹¹.

4.2.1.1 Violation of the Right to Privacy (Article 17 ICCPR)

Prohibits arbitrary or unlawful interference with a person’s privacy, family, and home. The SSMPA criminalizes consensual same-sex relationships and public or private displays of

⁹ Judgment – Where Love Is A Crime < <https://share.google/d7WOUhPOeIkVW0xpB> > accessed 25 October 2025

¹⁰ United Nations, International Covenant on Civil and Political Rights, 1966.

¹¹ UN Human Rights Committee, General Comment No. 18: Non-Discrimination, 1989.

affection between adults. By intruding into the intimate, private lives of individuals, the Act constitutes a direct interference with the privacy rights protected under Article 17.¹²

The UN Human Rights Committee's decision in *Toonen v Australia*¹³ established that laws criminalizing consensual same-sex intimacy violate Article 17 due to their arbitrary intrusion into personal autonomy and private life. The SSMPA, which penalizes not only marriage but also relationships and expressions of affection, stands in clear contradiction to this principle¹⁴.

4.2.1.2 Violation of the Right to Freedom of Expression (Article 19 ICCPR)

Guarantees the right to hold opinions and express ideas without interference. Section 5 of the SSMPA criminalizes “the registration, operation or participation in gay clubs, societies and organizations” and prohibits the “public show of same-sex amorous relationship.” This restricts the ability of LGBT persons and human-rights defenders to express their identity, advocate for reform, or engage in public discourse on sexual orientation and gender identity.¹⁵

The Human Rights Committee has affirmed in General Comment No. 34 that states must refrain from laws that suppress speech based on sexual orientation or that hinder vulnerable groups from expressing their identity, therefore SSMPA's broad prohibitions therefore conflict with Article 19.¹⁶

4.2.1.3 Violation of Freedom of Peaceful Assembly (Article 21 ICCPR)

Protects the right to peaceful assembly. The SSMPA effectively prohibits any gathering perceived to involve LGBT persons or advocacy groups. Events such as community meetings,

¹² Ibid

¹³ *Toonen v Australia*, Communication No. 488/1992, U.N. Doc CCPR/C/50/D/488/1992 (1994). < <https://share.google/MI9WCLU5yAUgefxEi> > accessed 26 October 2025

¹⁴ Ibid

¹⁵ International Covenant on Civil and Political Rights | OHCHR < <https://share.google/BjqBXjtS84C01OJZA> > accessed 26 October 2025.

¹⁶ OAS :: Special Rapporteurship for Freedom of Expression < <https://share.google/DX4y9kIToCXAhQfho> > accessed 26 October 2025

health outreach, or human-rights workshops risk criminal prosecution under the Act. According to the Human Rights Committee, restrictions on assembly must be necessary, proportionate, and in pursuit of a legitimate aim¹⁷. Blanket prohibitions such as those imposed by the SSMPA fail these requirements, making the law incompatible with Article 21.

4.2.1.4 Violation of Freedom of Association (Article 22 ICCPR)

Article 22 guarantees the right to form and join associations. Section 4 of the SSMPA criminalizes membership in “gay clubs, societies and organizations” and penalizes anyone who supports such groups. This provision directly violates Article 22 by outlawing associations based solely on sexual orientation or advocacy.¹⁸

The Human Rights Committee has emphasized that associations formed to promote human rights must be protected under Article 22, and restrictions targeting groups based on their identity or advocacy goals are incompatible with the ICCPR.¹⁹

4.2.1.5 Violation of the Right to Non-Discrimination (Article 26 ICCPR)

Article 26 guarantees equality before the law and protection against discrimination “on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.” The Committee has clarified that “other status” includes sexual orientation²⁰.

The SSMPA discriminates on the basis of sexual orientation by criminalizing conduct associated with LGBT persons, denying them legal recognition, and restricting their rights to

¹⁷ UN Human Rights Committee, General Comment No. 37: Right of Peaceful Assembly, 2020.

¹⁸ Article 22: Freedom of Association – A Commentary on the International Covenant on Civil and Political Rights < <https://share.google/F3pLCUMo6pPsuYmth> > accessed 26 October 2025

¹⁹ Human Rights Committee, General Comment No. 25: Participation in Public Affairs and the Right to Vote, 199

²⁰ Article 26: Equality before the Law Equal Protection of the Law – A Commentary on the International Covenant on Civil and Political Rights < <https://share.google/TpV45SXbjDMYEiDeH> > accessed 26 October 2025

expression, association, and privacy. The Human Rights Committee has repeatedly held that discriminatory laws targeting LGBT persons violate Article 26²¹.

4.2.2 African Charter on Human and People's Rights (ACHPR)

The African Charter on Human and Peoples' Rights (ACHPR), adopted in 1981 and ratified by Nigeria in 1983, establishes a regional human-rights framework binding on all state parties. The Charter guarantees a broad spectrum of civil, political, economic, social, cultural rights and Nigeria, as a ratifying state, is obligated to legislate in alignment with the Charter.²²

4.2.2.1 Article 2 - Non-Discrimination

This article provides that:

Every individual shall be entitled to the enjoyment of the rights and freedoms recognised guaranteed in the present Charter without distinction of any kind such as race, ethnic group, colour, sex, language, religion, political or any other opinion, national and social origin, fortune, birth or other status.

The charter is against any form of discrimination and any law that punishes a certain group of persons because of their perceived sexual orientation is not a good law²³.

4.2.2.2 Article 3 – Equality before the Law

1. Every individual shall be equal before the law.
2. Every individual shall be entitled to equal protection of the law.

The charter states that all persons are equal before the law, therefore, some set of persons should not be considered inferior due to their sexual orientation.

²¹ *ibid*

²² African_Charter_Human_Peoples_Rights.pdf < <https://share.google/2e4hScBZv9l7JjRXr> > accessed 27 October 2025

²³ (n)22

4.2.2.3 Article 5- Right to Dignity

Every individual shall have the right to the respect of the dignity inherent in a human being and to the recognition of his legal status. All forms of exploitation and degradation of man particularly slavery, slave trade, torture, cruel, inhuman or degrading punishment and treatment shall be prohibited.

The Charter also protects human dignity as nobody has the right to arbitrarily treat another human in an inhumane manner.

4.2.2.4 Article 10- Freedom of Association

1. Every individual shall have the right to free association provided that he abides by the law.
2. Subject to the obligation of solidarity provided for in 29 no one may be compelled to join an association.

This is also available in all democratic constitutions of the world and it provides for freedom of persons to form and join associations that protect their interest.

The Criminalisation of same-sex relationships is contrary to international provisions and have been condemned by international organisations as an infringement of human rights.

4.3 CULTURAL AND RELIGIOUS DIMENSIONS OF SAME-SEX PROHIBITION IN NIGERIA

It is being argued that same-sex relationship is a foreign import, a disease from the Western world and as such has no place in proper African tradition.²⁴ The main purpose of marriage and sexuality is the continuation of the family lineage. Children are seen as a link to their ancestors, a support system for parents in old age, and the means by which the family name and heritage are preserved. Individuals are expected to get married and bear children and same-sex relationship is seen as a deviation from one's duty²⁵.

Traditional gender roles are defined that is, Men are expected to be husbands, fathers, and providers while women are expected to be wives, mothers, and homemakers. Same-sex relationships are seen as a confusion of these roles, challenging the natural and social hierarchy that maintains stability. Both Christianity and Islam which are the two dominant religions in Nigeria, strongly condemn homosexuality. It is viewed as pervasive in both law and society²⁶.

Many Nigerian Christian denominations interpret passages in the Bible "Thou shalt not lie with mankind, as with womankind: it is abomination"²⁷ and also "For this cause God gave them up unto vile affections: for even their women did change the natural use into that which is against nature: and likewise also the men, leaving the natural use of the woman, burned in their lust one toward another; men with men working that which is unseemly, and receiving

²⁴ Adekunbi Imosemi, Protecting Religion and culture in Nigeria: Probing Same Sex Relationships and Marriages under the Criminal Justice Administration < <https://share.google/j6Chfcf8Mp7mH2NNV> > accessed 30 October 2025.

²⁵ *ibid*

²⁶ *ibid*

²⁷ Leviticus 18: 22 KJV

in themselves that recompense of their error which was meet²⁸” as clear and unambiguous condemnations of homosexual acts.

Islamic teachings based on the Qur’an and the Hadith, also prohibit homosexual acts. Like conservative Christians, many Nigerian Muslims view it as a major sin (kabirah) that violates divine law (Sharia). This is particularly dominant in the northern states, where Sharia penal codes are in effect for Muslims and prescribe severe punishments, including flogging and death by stoning for the crime of same-sex intimacy.²⁹

The Same-Sex Marriage (Prohibition) Act 2013 (SSMPA) was supported by both Christian and Muslim leaders around the country. The prohibition of same-sex relationships in Nigeria is not merely a law; it is a manifestation of a deep-seated cultural and religious view. It is a religious consensus that deems it a sin, and this belief forge a national identity defined in opposition to perceived Western immorality.

4.4 COMPARATIVE ANALYSIS: NIGERIA AND OTHER JURISDICTIONS

Here is a comparative analysis of the legal provisions of different countries including Africa such as Uganda, Kenya and South Africa. European and Arab countries will also be analysed. A comparative analysis of same-sex relationships between Nigeria and other countries reveals stark contrasts, placing Nigeria among the world’s most restrictive nations on this issue.

4.4.1 South Africa

South Africa became the first African country and fifth globally to legalise same-sex marriage and the state also recognises same-sex adoption and extends constitutional protection to LGBTQ+ community.³⁰

²⁸ Romans 1: 26-27 KJV

²⁹ Nigerian Supreme Council for Islamic Affairs position papers on morality and Sharia law (see public statements, 2013–

³⁰ LGBT Rights in South Africa | Equaldex < <https://share.google/ZVslSHLkJom7WTt21> > accessed 2 November 2025

Section 9(3) of the Constitution of the Republic of South Africa 1996 provides that:

(3) The state may not unfairly discriminate directly or indirectly against anyone on one or more grounds, including race, gender, sex, pregnancy, marital status, ethnic or social origin, colour, sexual orientation, age, disability, religion, conscience, belief, culture, language and birth.

*Minister of Home Affairs v Fourie*³¹ refers to the landmark 2005 decision by the Constitutional Court of South Africa that declared the common-law and statutory definitions of marriage invalid for excluding same-sex couples. In this case, the parties approached the court for permission to marry after dating for ten (10) years. The ruling paved the way for the legalisation of same-sex marriage in South Africa, which was achieved through the enactment of the Civil Union Act.³² Also the Constitutional Court in the case of *National Coalition for Gay and Lesbian Equality v. , Minister of Justice*³³ struck down sodomy laws, affirming that human dignity, equality, and privacy are intrinsic to democratic governance.

The Civil Union Act of 2006 was passed by the National Assembly on the 1st of November 2006 and referred to as the South African Civil Union Act 17 of 2006, which legalized same-sex marriage by providing for the solemnization of civil unions either through marriage or partnership. In South Africa it can be seen that relationships are not made official through marriage but also through something called Civil partnership³⁴.

³¹ [2005] 1ALL SA 273 (SCA)

³² *ibid*

³³ *National Coalition for Gay and Lesbian Equality v Minister of Justice (1999) (1) SA 6 (CC)*.

³⁴ Civil Union Act, 2006 – Citations – LawLibrary < <https://share.google/JeRdZzCO5vRfEmamg> > accessed 2 November 2025

4.4.2 Uganda: A Parallel Restrictive Approach

The Ugandan Penal Code³⁵ has been existing since the colonial era and it states the punishments for unnatural offences.

Section 145. Unnatural Offences

Any person who—

- (a) Has carnal knowledge of any person against the order of nature;
- (b) Has carnal knowledge of an animal; or
- (c) Permits a male person to have carnal knowledge of him or her against the order of nature, commits an offence and is liable to imprisonment for life.

Section 146 with the Sub-head - Attempt to commit unnatural offences provides:

Any person who attempts to commit any of the offences specified in section 145 commits a felony and is liable to imprisonment for seven years.

Section 147 with the sub-head Indecent Assaults on Boys under Eighteen provides:

Any person who unlawfully and indecently assaults a boy under the age of eighteen years commits a felony and is liable to imprisonment for fourteen years, with or without corporal punishment.

Section 148 with the sub head Indecent Practices provides:

Any person who, whether in public or in private, commits any act of gross indecency with another person or procures another person to commit any act of gross indecency with him or her or attempts to procure the commission of any such act by any person with himself or herself or with another person, whether in public or in private, commits an offence and is liable to imprisonment for seven years.³⁶

³⁵ The Uganda Penal Code Act (Chapter 120). 1950

³⁶ Section 148 Uganda Penal code Act

There also is the latest legislation of the Ugandan Government in a bid to protect the public morality of the state known as the Anti-Homosexuality Act. The Anti-Homosexuality Act, 2023, is a Ugandan law that imposes severe penalties, including life imprisonment and the death penalty, for same-sex sexual conduct. It was signed into law by President Yoweri Museveni in May 2023.

However, this is not the first legislation on homosexuality as the first Anti-Homosexuality Act 2014 imposed life imprisonment for “aggravated homosexuality”³⁷ although the Ugandan Constitutional Court struck down the Act on procedural grounds, new iterations have emerged, such as the Anti-Homosexuality Act 2023, which reintroduced severe penalties, including the death sentence for certain offences.

Section 2 provides for ‘The offence of homosexuality’ thus:

- 1) A person commits the offence of homosexuality if the person performs a sexual act or allows a person of the same sex to perform a sexual act on him or her.
- 2) A person who commits the offence of homosexuality is liable, on conviction, to imprisonment for life.
- 3) A person who attempts to perform a sexual act in the circumstances referred to in subsection (1) commits an offence and is liable, on conviction, to imprisonment for a period not exceeding ten years.
- 4) For purposes of subsection (3), a person shall be deemed to attempt to commit an offence when the person intending to commit an offence begins to put his or her intention into execution by means adapted to its fulfilment, and manifests his or her intention by some overt act, but does not fulfil his or her intention to such an extent as to commit the offence.

³⁷ Anti-Homosexuality Act 2014

- 5) For the avoidance of doubt, a person who is alleged or suspected of being a homosexual, who has not committed a sexual act with another person of the same sex, does not commit the offence of homosexuality under this section.³⁸

Section 3 – Aggravated Homosexuality provides:

- 1) A person who commits the offence of homosexuality in any of the circumstances specified in subsection (2), commits the offence of aggravated homosexuality and is liable, on conviction, to suffer death.
- 2) The circumstances referred to in subsection (1) are where—
 - a. The person against whom the offence is committed is a child;
 - b. The offender is a parent, guardian or relative of the person against whom the offence is committed;
 - c. The person against whom the offence is committed contracts a terminal illness as a result of the sexual act;
 - d. The offender is a serial offender;
 - e. The offender is a person in authority over the person against whom the offence is committed;
 - f. The person against whom the offence is committed is a person with disability or suffers a disability as a result of the sexual act;
 - g. The person against whom the offence is committed is a person with mental illness or suffers a mental illness as a result of the sexual act;
 - h. The person against whom the offence is committed is of advanced age;
 - i. The sexual act is committed against a person by means of threats, force, fear of bodily harm, duress or undue influence, intimidation of any kind, or through misrepresentation as to the nature of the act; or
 - j. The person against whom the offence is committed was, at the time the offence was committed, unconscious or in an altered state of consciousness due to the influence of medicine, drugs, alcohol or any other substance that impaired his or her judgment.
- 3) A person who attempts to perform a sexual act in the circumstances referred to in subsection (1) commits an offence and is liable, on conviction, to imprisonment for a period not exceeding fourteen years.
- 4) For purposes of subsection (3), a person shall be deemed to attempt to commit an offence when the person intending to commit an offence, begins to put his or her

³⁸ Uganda Penal Code, 1930

intention into execution by means adapted to its fulfilment, and manifests his or her intention by some overt act, but does not fulfil his or her intention to such an extent as to commit the offence.

- 5) For the avoidance of doubt, a person who is alleged or suspected of being a homosexual, who has not committed a sexual act with another person of the same sex, does not commit the offence of aggravated homosexuality under this section.

In conclusion, the Act states that homosexuality is a grievous offence and even higher punishment is given if the victim is a minor or person of disability and where the offender is a serial offender.

4.4.3 Kenya

The Kenyan society sees homosexuality as a taboo and an invention of the Western world. The Kenya Penal Code of 1930 and the amendment of 2006 states that offences that are contrary to the order of nature are punishable by imprisonment up to fourteen years.

Section 162 with the sub head Unnatural offences provides:³⁹

Any person who—

- (a) Has carnal knowledge of any person against the order of nature; or
- (b) Has carnal knowledge of an animal; or
- (c) 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 fourteen years:

Provided that, in the case of an offence under paragraph (a), the offender shall be liable to imprisonment for twenty-one years if—

- (i) The offence was committed without the consent of the person who was carnally known; or
- (ii) The offence was committed with that person's consent but the consent was obtained by force or by means of threats or intimidation of some kind, or by

³⁹ Kenya Penal Code of 1930

fear of bodily harm, or by means of false representations as to the nature of the act.

Section 163. Attempt to Commit Unnatural Offences

Any person who attempts to commit any of the offences specified in section 162 is guilty of a felony and is liable to imprisonment for seven years.

Section 65 with the sub head Indecent Practices between Males provides:

Any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony and is liable to imprisonment for five years.

In recent years, there have been consistent reports of discrimination and violence being committed against LGBT people in recent years, including high-profile attacks against LGBT refugees in Kakuma Refugee Camp⁴⁰. A constitutional challenge to the laws criminalising same-sex sexual activity was rejected in 2019 by the High Court and is currently being appealed to the Court of Appeal⁴¹

On 24 October 2024, the Magistrates Court in Mombasa awarded \$31,000 in compensation to two gay men, ruling that their rights had been violated after they were arrested for committing an “unnatural sexual offence”. During the arrest, the two men were subjected to forced genital examinations and HIV tests. The Court ruled that their treatment had violated

⁴⁰ Country policy and information note: sexual orientation and gender identity and expression, Kenya, February 2025 (accessible) – GOV.UK < <https://share.google/9tjruhgrQmLO4upLk> > accessed 3 November 2025

⁴¹ Kenya | Human Dignity Trust < <https://share.google/PcP1nEHCE2ga885k3> > accessed 3 November 2025

their constitutional right to privacy. This follows the 2018 Court of Appeal ruling which held the use of forced anal exams to be unconstitutional⁴².

It has been rumoured that Kenya might be on the path of recognition of LGBTQ community.

4.4.4 The Netherlands

The Netherlands is known as the first country to legalize same sex marriage in the world.

The foundation of the decriminalisation of same sex relationship in the Netherlands can be traced to Article 1 of the Dutch Constitution which states that all people in the Netherlands must be treated equally in equal circumstances and prohibits discrimination.

Section 2 of the Equal Treatment Act⁴³

1. For the purposes of this Act and the provisions based upon it the following definitions apply:
 - a. Discrimination: direct and indirect discrimination;
 - b. Direct discrimination: discrimination between persons on the grounds of religion, belief, political opinion, race, sex, nationality, heterosexual or homosexual orientation or civil status;
 - c. Indirect discrimination: discrimination on the grounds of characteristics or behaviour other than those referred to under (b), resulting in direct discrimination.

The Dutch law that legalised same sex relationship is the Act on the Opening of Marriage, which came into effect on April 1, 2001. It made the Netherlands the first country in the

⁴² Kenya | Human Dignity Trust < <https://www.humandignitytrust.org/country-profile/kenya/> > accessed 3 November 2025

⁴³ Netherlands-Equal-Treatment-Act-2004-eng.pdf < <https://share.google/s0wU5o7tsT5osZ6UM> > accessed 3 November 2025

world to legalize same-sex marriage⁴⁴. The “*Act on the opening of marriage*” in the Netherlands primarily refers to the conditions and procedures for getting married, which permit same-sex marriage and require couples to be over 18, not currently married or in a registered partnership, and not blood relatives in a direct line or as siblings. Couples must register their intent to marry with a municipality at least 12 weeks in advance⁴⁵.

In conclusion, the Netherlands provides one of the world’s most comprehensive legal protections for homosexuals built on equality and non-discrimination. While the law is supportive, efforts are being made to make sure societal compliance is equal to this progressive legal framework.

4.4.5 The United States of America

The Defense of Marriage Act (DOMA) was a United States federal law passed by the 104th United States Congress and signed into law by President Bill Clinton on September 21, 1996. It banned federal recognition of same-sex marriage by limiting the definition of marriage to the union of one man and one woman. ⁴⁶

The case of *United States v. Windsor*⁴⁷ is a landmark U.S. Supreme Court case that struck down section 3 of the Defense of Marriage Act (DOMA). The ruling required the federal government to recognize same-sex marriages that were legally performed in states where such marriages were authorized. In the above-mentioned case, Edith Windsor and Thea Spyer were a same-sex couple who met in New York City in 1963 and became a couple shortly after. They registered as domestic partners in New York City in 1993. In 2007, when Spyer’s health was declining due to multiple sclerosis, the couple travelled to Toronto, Canada, to be legally

⁴⁴ LGBT Rights in Netherlands | Equaldex < <https://share.google/cqzUDWA5Fog6UbhBW> > accessed 7 November 2025

⁴⁵ *ibid*

⁴⁶ Defense of Marriage Act (DOMA) | Wex | US Law | LII / Legal Information Institute < <https://share.google/PXP4XJcUI6iPSgQcX> > accessed 30 October 2025

⁴⁷ (2013) 570 US

married. Their marriage was recognized by their home state of New York. When Thea Spyer died in 2009, she left her entire estate to Edith Windsor and because their marriage was not recognized by federal law, the estate was not eligible for the unlimited spousal exemption from federal estate taxes. Windsor was forced to pay \$363,053 in federal estate taxes that she would not have owed if she had been married to a man. Windsor filed a lawsuit against the federal government, seeking a refund of the taxes she had paid. She argued that DOMA treated her marriage as “second-class” and violated the Equal Protection guarantee of the U.S. Constitution.

Section 2 of the Defense of Marriage Act (DOMA) allowed states to refuse to recognize same-sex marriages performed in other states.

Section 3 defined marriage as “only a legal union between one man and one woman as husband and wife,” and defined spouse as “a person of the opposite sex who is a husband or a wife.”

The above definition barred legally married same sex couples from the benefits accrued to them such as social security survivor benefits, filing joint federal tax returns, immigration rights for a foreign spouse, family and medical leave protections etc. The Supreme Court, in a 5-4 decision written by Justice Anthony Kennedy, held that Section 3 of DOMA was unconstitutional. The court stated that the section was against equal liberty and also violated basic due process applicable to the Federal Government. The court held that Edith Windsor be given her \$363,053 tax refund.

The decision of the Court brought attention to the harm caused by marriage inequality and also paved way for Obergefell in the case of *Obergefell v. Hodges (2015)*⁴⁸. The Supreme

⁴⁸ *Obergefell v. Hodges (2015) 14-566 USC*

Court ruled that the Fourteenth Amendment requires all states to license marriages between two people of the same sex and to recognize such marriages performed in other

4.4.6 Qatar

Homosexual activity is prohibited under the Penal Code 2004, and it criminalises acts of sodomy and intercourse between people of the same sex. The provisions bear maximum penalty of seven years' imprisonment. Both men and women are criminalised under this law⁴⁹. The Constitution of Qatar states that Islam is the religion of the state and Islamic law is the main source of legislation. In addition, Qatar also operates and *interprets* Sharia law which criminalises homosexuality under which there is a possibility of the death penalty⁵⁰.

4.4.6.1 Qatar Penal Code 2004

Article 28 criminalises sexual intercourse 'without compulsion, duress or ruse' with a with a penalty of up to seven years' imprisonment. The provision is gender-neutral as to the other party so is applicable to same-sex intimacy between women.⁵¹

Article 285 criminalises sexual intercourse 'without compulsion, duress or ruse' with a male with a penalty of up to seven years' imprisonment. The provision is gender-neutral as to the other party so is applicable to same-sex intimacy between men⁵².

Article 296 criminalises leading, instigating or seducing a male in any way to commit sodomy and inducing or seducing a male or female in any way to commit illegal or immoral actions with a penalty of between one and three years' imprisonment. However, the term 'immoral actions' is undefined⁵³.

⁴⁹ Qatar Penal Code, Law No. 11 of 2004

⁵⁰ Qatar | Human Dignity Trust < <https://share.google/jpkwhMyizW84Thv2X> > accessed 30 October 2025

⁵¹ QTR_PenalCode11-2004_EN_0.pdf< <https://share.google/Y0eYGeVksKh1lvfot> > accessed 30 October 2025

⁵² *ibid*

⁵³ Qatar | Human Dignity Trust < <https://share.google/tuy58G8ageEkeoD7Y> > accessed 30 October 2025

4.4.6.2 Sharia Law

In addition to the Penal Code provisions outlined here, Qatar operates Sharia courts in which it is technically possible for men who engage in same-sex intimacy to be sentenced to death.⁵⁴

Qatar's laws and cultural norms are based on traditional gender roles and norms. Homosexuality is seen as a violation of these norms. LGBTQ+ individuals face harassment, discrimination, and violence in Qatar, and are not allowed to engage in same-sex sexual activity.⁵⁵ Campaign groups have stated that members of the LGBT+ community have been detained and subjected to ill-treatment in detention".⁵⁶ Human Rights Watch recently identified a number of cases where individuals were given severe and repeated beatings while in custody⁵⁷.

In conclusion, there is constant conflict between cultural norms and human rights when the topic of homosexuality is brought up. It should be noted that that all countries have sovereignty and so cannot be forced to implement laws that are contrary to its grundnorm. However, there should be a balance between culture, human rights and international instruments.

⁵⁴ Ibid

⁵⁵ LGBT Rights in Qatar | Equaldex < <https://share.google/2WNT8q8N1WpGqcr5q> > accessed 5 November 2025

⁵⁶ ibid

⁵⁷ What are Qatar's homosexuality laws? | World News | Sky News
<<https://share.google/Xwd6xAu6OHGJ2Mpqa>> accessed 5 November 2025

CHAPTER FIVE

SUMMARY, RECOMMENDATIONS AND CONCLUSION

5.1 SUMMARY

This research work investigated the dynamics of same-sex relationships in Nigeria with particular emphasis on legal barriers, cultural norms, and human-rights implications. Findings reveal that the Same-Sex Marriage (Prohibition) Act (SSMPA) 2013 is the cornerstone of Nigeria's criminalization of same-sex relationships. This law operates in harmony with pre-existing provisions in the Criminal Code Act (applicable in the South) and the Penal Code (applicable in the North), which collectively proscribe acts deemed contrary to the order of nature. By prohibiting same-sex marriage, penalizing public displays of same-sex affection, and criminalizing organizations perceived to support sexual minorities, the Act is perceived to create a restrictive and punitive environment.

Nigerian society is heavily influenced by traditional values, religious doctrines, and communal morality. These cultural narratives uphold heterosexuality and widely condemn homosexuality as immoral, un-African and religiously forbidden. Such views shape public opinion, politics, and legislative practices, reinforcing societal hostility toward different sexual orientation. The SSMPA conflicts with constitutional guarantees such as the rights to privacy, dignity, association, and expression. It also contravenes obligations under the International Covenant on Civil and Political Rights (ICCPR) and the African Charter on Human and Peoples' Rights, particularly concerning non-discrimination and protection of those seen to be vulnerable.

John Stuart Mill's principle states that the state has a right to interfere with the right of individuals if it will cause harm to another person. The SSMPA was enacted in order to protect citizens from causing harm to others by their actions or inactions.

The theory of utilitarianism by Jeremy Bentham can also be inferred in the Nigerian legal system as the number of heterosexual are far beyond that of the homosexual and so it can be concluded that that SSMPA is a good law as it satisfies the greater number. The theory of Utilitarianism is all about numbers and if a larger number of Nigerians are in support of the Criminalisation of same-sex relationships, then it is considered to be a good legislation.

Lord Devlin stated in the Hart-Devlin debate that society cannot exist without a shared morality and he likened morality to the cement that holds society together. Through a combination of the Constitution and other various provisions including the Same Sex Marriage (Prohibition) Act 2013 it is very clear that the Nigerian legal system favours the Devlin view which reflects that of the sociological and natural school.

5.2 RECOMMENDATIONS

The SSMPA needs to be amended in order to remove the lacuna which does not cover other forms of homosexuality including crossing dressing, feminine boys or any identification perceived to be homosexual. There needs to be legal reforms in order to curb the growing cases of police brutalisation and extortion¹. Specialized Training for Security Agencies like the Nigeria Police Force and other security agencies on the precise contents of the SSMPA. This training should emphasize that the law targets specific acts and associations, not identity or private sentiment, and should focus on preventing its misuse for extortion or blackmail, which undermines the integrity of the legal system.

The National Judicial Institute should conduct workshops for judges to ensure consistent and fair interpretation of the law, preventing judicial underreach and ensuring that prosecutions are conducted based on credible evidence and proper legal procedure. I have noticed in some

¹ LGBTQ+ Nigerians recount police abuses under 'weaponised' law | Context by TRF < <https://share.google/xFLz0f0hBXedG4Wtr> > accessed 12 November 2025

cases that the accused have not been punished properly like the case of the young boy who was sodomized by his football Coach and there have been many of such cases.

Government agencies, in collaboration with civil society organizations that support the law, should launch public information campaigns to clearly articulate the legal provisions and the state's rationale. This will prevent misinterpretation ensuring that the law is applied by the appropriate authorities and not by mobs, thereby upholding the rule of law.

Domesticate and enforce international human-rights treaties, especially the ICCPR, to an extent that does not clash with the cultural norms of the State. In all international engagements, the Nigerian government should consistently affirm that its laws on this matter are non-negotiable as they are a direct expression of its democratic and cultural sovereignty. Foreign partners should be urged to respect the principle of non-interference in the domestic affairs of a sovereign nation, as enshrined in the UN Charter.

Nigeria is the 6th most populated country in the world with an estimate of over 237 million people, over 250 tribes and languages,² despite the diversity, the SSMPA was accepted by almost the whole country showing its conformity to her general morality³.

5.3 CONCLUSION

This study concludes that the prohibition of same-sex relationships in Nigeria is driven largely by cultural and religious necessity. While the SSMPA is seen as beyond marriage prohibition and actively facilitating discrimination, social exclusion, and systematic violations of fundamental rights, it is important to restate that the protection of the public morality of the state is one of the responsibilities of the legislature. Nigeria's attempt to

² Population by Country (2025) – Worldometer < <https://www.worldometers.info/world-population/population-by-country/> > accessed 12 November 2025

³ The Same-Sex Marriage Prohibition Act 2014: Nigeria's Rejection of a Western Secular Trend by Hannatu Adamu :: SSRN < https://papers.ssrn.com/sol3/papers.cfm?abstract_id=3808366 > accessed 12 November 2025

preserve cultural and religious values must be balanced with its constitutional responsibilities and international human-rights commitment but not to the detriment of the innocence of the young and vulnerable amongst the citizens as there have been cases of young children identifying as genders that they were not assigned to at birth⁴ .

The Nigerian legal system's position on same-sex relationships is a legitimate, democratic, and culturally grounded expression of the nation's identity and values. The SSMPA is a cornerstone of this position, providing a clear legal standard that enjoys widespread public support. The responsibility now lies in upholding this law with fairness and consistency, ensuring that its application strengthens, rather than undermines, the rule of law. By focusing on the precise enforcement of its legal provisions, educating its public, and confidently asserting its sovereign right to self-determination, Nigeria can maintain a social order that is authentic to its historical and cultural context.

⁴ Gender affirming surgery | healthdirect < <https://share.google/IPC1IPBEujRDB7SHI> > accessed 14 November 2025.

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