



SAME SEX MARRIAGE, FREEDOM OF ASSOCIATION AND CULTURAL RELATIVISM IN NIGERIA: AN OVERVIEW

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Abstract

Same-sex marriage has emerged as a contentious issue globally, with significant legal, cultural, and social implications. This study seeks to examine the intersection between same-sex marriage, freedom of association, and cultural relativism in Nigeria, focusing on the challenges and prospects of reconciling global human rights standards with deeply rooted cultural and religious values. The work highlights the dual dynamics of the discourse, where the assertion of freedom of association as a fundamental right collides with strong societal opposition rooted in cultural relativism and traditional beliefs. The research seeks to underscore the role of Nigeria's legal framework, particularly the Same-Sex Marriage (Prohibition) Act 2014, in shaping the discourse and the broader implications for human rights and social cohesion. While the study acknowledges the significance of cultural relativism in preserving societal identity, it will critique the legal and social barriers that marginalize LGBTQ individuals and restrict their fundamental freedoms. The doctrinal methodology is employed by analyzing statutes, case law, and scholarly articles to evaluate the current legal framework and its alignment with international human rights obligations. The findings reveal that the legal prohibition of same-sex marriage exacerbates discrimination and infringes on the rights to freedom of association and equality. The work recommends a nuanced approach that balances cultural sensitivities with the universality of human rights. It calls for public dialogue, legal reforms, and enhanced awareness campaigns to foster inclusivity while respecting cultural contexts. The study concludes that addressing the complexities of same-sex marriage in Nigeria requires an adaptive legal framework that harmonizes cultural relativism with fundamental freedoms, ensuring social harmony and the protection of human dignity.

Keywords: Same-Sex Marriage, Freedom of Association, LGBTQ, Cultural Relativism.

1.0 Introduction

The issue of same-sex marriage has emerged as a highly debated topic globally, reflecting broader conversations about human rights, equality, and cultural values.¹ While many countries have made significant progress in recognizing and protecting the rights of same-sex couples, the African continent, including Nigeria, has largely resisted these developments. This resistance is rooted in deeply entrenched cultural, moral, and religious beliefs that shape national identity and societal norms. In Nigeria, the discussion on same-sex marriage is not just a legal matter but also a complex social and political issue that intersects with questions of morality, tradition, and international human rights obligations².

The legal framework governing same-sex relationships in Nigeria is primarily defined by the Same-Sex Marriage (Prohibition) Act of 2014 (SSMPA)³, which not only criminalizes same-sex unions but also penalizes any form of support, advocacy, or assembly promoting LGBTQ rights. The Act imposes severe penalties, including up to 14 years of imprisonment, for individuals engaging in

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¹M Arthur-Jolasinmi, 'Homosexuality, Universalism and Cultural Relativism-a review' *Nigerian Journal of Legal* [2023] 21 (3): pp 211-213

² O Nnamuchi, 'Nigeria's Same Sex Marriage (Prohibition) Act and Threat of Sanctions by Western Countries: A Legitimate Case of Human Rights Advancement or What' *Swiss Journal International Limited* [2019] 34 (2)

³ Same-Sex Marriage (Prohibition) Act of 2014



or supporting same-sex relationships. Additionally, it restricts freedom of association by criminalizing gatherings of individuals or organizations that advocate for LGBTQ rights, reinforcing societal opposition to such relationships. Consequently, the SSMPA has sparked controversy, both within Nigeria and in the international community, as it raises concerns over fundamental human rights violations, particularly the rights to freedom of association, expression, and non-discrimination.

One of the core debates surrounding Nigeria's stance on same-sex marriage lies in the tension between cultural relativism and universal human rights principles. Cultural relativism posits that moral and ethical values should be understood within the context of a specific culture, suggesting that same-sex relationships contradict Nigeria's deeply held traditions and religious beliefs. The country's strong Christian and Islamic influences further reinforce the perception that same-sex unions are unnatural and incompatible with societal values. From this perspective, the SSMPA is seen as a necessary measure to preserve cultural integrity and uphold moral standards.

On the other hand, human rights advocates argue that certain fundamental freedoms such as the right to privacy, freedom of association, and protection from discrimination should transcend cultural boundaries. Nigeria is a signatory to various international human rights instruments, including the Universal Declaration of Human Rights (UDHR) and the African Charter on Human and Peoples' Rights,⁴ which emphasize equality and non-discrimination. Critics of the SSMPA argue that the law contravenes Nigeria's international commitments by imposing legal and social restrictions on LGBTQ individuals and their allies. Moreover, the law's criminalization of advocacy efforts has significantly limited the ability of activists and organizations to promote LGBTQ rights, further exacerbating discrimination and marginalization within Nigerian society. Beyond its legal implications, the SSMPA has had profound social and psychological effects on LGBTQ individuals in Nigeria. The law has legitimized widespread discrimination, harassment, and violence, forcing many LGBTQ individuals to live in secrecy and fear. The stigmatization fostered by the law extends beyond legal penalties, contributing to social exclusion and restricting access to basic rights and services. The suppression of advocacy efforts also means that there are few safe spaces or support systems available for individuals facing discrimination based on their sexual orientation.

The debate over same-sex marriage in Nigeria presents a complex intersection of law, culture, and human rights, raising critical questions about the extent to which cultural values should influence legal standards. While proponents of the SSMPA argue that it reflects the will of the Nigerian people and protects traditional family structures, opponents emphasize the need for Nigeria to align its domestic laws with global human rights norms.⁵ This ongoing discourse highlights a fundamental dilemma: how can Nigeria balance the preservation of its cultural identity with its obligations to uphold universal human rights principles?

This study seeks to explore the legal, social, and human rights dimensions of same-sex marriage in Nigeria, analyzing the justifications for the country's legal stance in light of cultural relativism while also assessing the extent to which these laws conflict with international human rights obligations. By examining the broader implications of the SSMPA, the research will contribute to the discourse on reconciling cultural values with evolving global human rights standards, offering insights into potential pathways for addressing these legal and societal tensions.

2.0 Conceptual Clarifications

2.1 Same-Sex Marriage

Same-sex marriage refers to the legal recognition of a marriage between two individuals of the same sex. This concept has evolved significantly over the past few decades, particularly as various countries

⁴ A Ojilere, 'Discrimination on grounds of sexual orientation and gender identity: The limits of human rights in Africa' *Journal of Homosexuality* [2024] 31 (2): pp 256-279

⁵ V Goel, 'Some Cultural Aspects Behind the legacy of Homo-Sexuality: A Human Rights Study' *The Indian Journal of Political Science* [2012] 21 (4): pp 311-321



have amended their laws to recognize and protect the marital rights of same-sex couples.⁶ In jurisdictions where same-sex marriage is legally recognized, LGBTQ individuals are afforded the same legal rights, privileges, and responsibilities as heterosexual couples, including access to spousal benefits, inheritance rights, adoption rights, and protections against discrimination.⁷

In Nigeria, same-sex marriage is explicitly prohibited under the Same-Sex Marriage (Prohibition) Act of 2014 (SSMPA), which criminalizes not only same-sex unions but also any gatherings, organizations, or advocacy efforts supporting LGBTQ rights. Individuals participating in same-sex marriages or advocating for their recognition face severe penalties, including imprisonment.⁸ This legislative stance is justified by Nigerian authorities on the grounds of cultural and religious norms, reflecting a cultural relativist approach where local values are prioritized over international human rights standards. This prohibition aligns with the broader socio-cultural rejection of homosexuality, which is viewed by many Nigerians as a violation of traditional values and religious doctrines. The Act has been critiqued for infringing on fundamental human rights, including the rights to privacy, equality, and freedom of association, as enshrined in the Nigerian Constitution and international human rights treaties to which Nigeria is a party.⁹

The concept of same-sex marriage, within the context of Nigeria, highlights the tension between global human rights standards and deeply entrenched cultural relativism. Addressing this issue requires a nuanced approach that respects cultural and religious sensitivities while advancing the principles of equality and non-discrimination.¹⁰ Legal reforms, public education, and dialogue are essential to creating a more inclusive society that acknowledges and protects the rights of all individuals, regardless of sexual orientation.

2.2 Sexual Orientation

Sexual orientation refers to an individual's enduring pattern of emotional, romantic, or sexual attraction to individuals of a particular gender, including heterosexual, homosexual, and bisexual orientations.¹¹ Internationally, it is recognized as an intrinsic part of human identity, with human rights instruments such as the Universal Declaration of Human Rights (UDHR) advocating for equality and non-discrimination.¹² However, in Nigeria, legal and societal attitudes toward non-heteronormative orientations remain highly restrictive. The Same-Sex Marriage (Prohibition) Act, 2014 criminalizes same-sex relationships and any form of LGBTQ advocacy, reinforcing societal views that perceive homosexuality as deviant and immoral.

Cultural relativism plays a central role in shaping Nigeria's opposition to LGBTQ rights, as many Nigerians see non-heteronormative orientations as incompatible with traditional, religious, and cultural values. Religious institutions further oppose LGBTQ recognition, viewing it as a threat to moral and spiritual norms. Consequently, LGBTQ individuals face severe restrictions on their freedom of association, as laws criminalize advocacy groups and gatherings that promote LGBTQ rights. This suppression not only limits their ability to organize and express themselves but also stifles broader discussions on diversity, inclusion, and equality. The stigmatization of sexual orientation in Nigeria results in widespread discrimination, marginalization, and violence, affecting access to education,

⁶ L Drabble, 'Measuring the impact of legal recognition of same-sex marriage'

<https://www.google.com/url?sa=t&source=web&rct=j&opi=89978449&url=https://pmc.ncbi.nlm.nih.gov/articles/PMC8612071/&ved=2ahUKEwj5xYWv95yKAxWcVKEAHX10GW0QFnoECCMQAQ&usq=AOvVaw0h37e9Q6EEPA_lgaH_A8TxJ> accessed 14th November, 2024

⁷ *Ibid*

⁸ *Ibid*

⁹ MVL Badgett, 'A Review of the Effects of Legal Access to Same-Sex Marriage' <<https://www.google.com/ur>> accessed 21st November, 2024

¹⁰ AW Fingerhut, 'Same-Sex Marriage: The Social and Psychological Implications of Policy and Debates' *Journal of Social Sciences* [2011] 32 (1)

¹¹ RL Sell, 'Defining and Measuring Sexual Orientation: A Review' *Journal of Homosexuality* [1987] 41 (8)

¹² MD Storms, 'Theories of Sexual Orientation' *Journal of Personality and social psychology* [1908] 60 (4); pp 211-220



employment, and healthcare. The legal system, influenced by cultural and religious biases, often fails to protect LGBTQ individuals from abuse.¹³ While many countries have embraced same-sex marriage and anti-discrimination laws, improving social integration and economic development, Nigeria's resistance highlights the ongoing conflict between global human rights norms and local cultural beliefs.

Addressing this issue requires a balanced approach that respects cultural sensitivities while promoting equality and non-discrimination. Legal reforms, public education, and constructive dialogue are crucial to fostering a more inclusive society that upholds the dignity and rights of all individuals, regardless of sexual orientation.

2.3 Rights

Rights are entitlements or freedoms granted to individuals by law or nature, ensuring their ability to participate fully in society¹⁴. These rights are categorized into civil, political, social, economic, and cultural rights and are fundamental to societal organization. In Nigeria, rights are constitutionally guaranteed, including life, liberty, freedom of expression, and association. However, restrictive laws like the Same-Sex Marriage (Prohibition) Act, 2014 (SSMPA) limit these rights for specific groups, notably LGBTQ individuals, raising concerns about equality and universality in legal protections. Civil rights such as privacy, equality, and freedom from discrimination are particularly relevant to LGBTQ advocacy, as they are enshrined in international instruments like the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), which Nigeria has ratified. Similarly, political rights, including freedom of association and expression, are essential for advocacy but are often curtailed due to societal stigma and restrictive legislation.¹⁵ The universal and inalienable nature of human rights conflicts with Nigeria's legal and cultural stance, where LGBTQ individuals face discrimination, violence, and legal persecution. While many countries have embraced same-sex marriage and LGBTQ rights within diverse cultural and religious landscapes, Nigeria's resistance underscores the tension between global human rights norms and local socio-cultural values. Bridging this gap requires dialogue and legal reforms that respect cultural contexts while promoting equality and justice. A rights-based approach that balances inclusivity with cultural sensitivities is essential for addressing these challenges effectively.

2.1.4 Culture

Culture consists of the shared beliefs, values, traditions, and norms that define a society, influencing its laws, moral codes, and perceptions of social issues¹⁶. In Nigeria, culture is deeply rooted in religious and traditional values that emphasize heterosexual marriage as the only acceptable union. These cultural norms reinforce laws like the Same-Sex Marriage (Prohibition) Act, 2014 (SSMPA) and contribute to the rejection of LGBTQ rights, which are often seen as foreign or incompatible with Nigerian identity. Religion plays a major role in shaping cultural attitudes toward same-sex relationships, with Christianity and Islam strongly condemning homosexuality. Religious institutions frequently oppose LGBTQ rights, further entrenching societal resistance.¹⁷ The concept of cultural relativism is often used to justify this opposition, arguing that moral standards should be defined by each society rather than imposed by external forces. As a result, LGBTQ advocacy and freedom of association face significant restrictions, limiting dialogue and support for LGBTQ individuals. Although

¹³ LA Peplau, 'A new paradigm for understanding women's sexuality and sexual orientation' *Journal of Social Issues* [2000] 40 (8): pp119-125

¹⁴ D Del Gobbo, 'Transformative events in the LBTQ Rights movement' *Women's Rights Law Reporter Journal* [2016] 35 (4): pp 254-267

¹⁵ PK Das, 'LGBTQ Rights and Gender Equality: A Legal Analysis' *Research Journal IJJSRS* [2024] 32 (4): pp 230-245

¹⁶ M Ergin, 'Moral Boundaries and Cultural Membership: Perceptions of the LGBTQ in Nigeria' *Journal of Economy Culture and Society* [2023] 32 (4): pp 240-267

¹⁷ P Ricca, 'Enhancing Cultural Sensitivity in a Community Health Care Setting for LGBTQ Patients' *Journal of Community Health* [2018] 21 (5): pp 320-350



culture evolves over time, deeply ingrained traditions often resist change¹⁸. Efforts to introduce LGBTQ rights in Nigeria are met with backlash, as they are perceived as threats to cultural sovereignty. However, history shows that cultural values are not static; they adapt in response to social and legal developments. Many societies that once opposed LGBTQ rights have embraced them through education, legal reforms, and activism, proving that culture and human rights can coexist. Addressing the cultural barriers to LGBTQ rights in Nigeria requires a balanced approach that respects cultural values while challenging exclusionary practices. Public education, interfaith dialogue, and advocacy can help shift perceptions, fostering a more inclusive society that aligns local traditions with universal human rights principles.

2.1.5 Morals

Morals are principles that define right and wrong, often shaped by culture, religion, and philosophy¹⁹. In Nigeria, morality is closely linked to religious and cultural beliefs, both of which reject same-sex relationships as immoral. This moral framework influences legal norms, reinforcing laws like the Same-Sex Marriage (Prohibition) Act, 2014 (SSMPA). Christianity and Islam, the dominant religions in Nigeria, explicitly condemn homosexuality, shaping public opinion and legislative policies.

Because same-sex relationships are seen as violating societal values, LGBTQ advocacy is criminalized, with the right to freedom of association often denied on moral grounds²⁰. This creates a conflict between individual freedoms and societal norms, with the latter prevailing. Cultural relativism is frequently cited to defend these laws, arguing that moral rejection of same-sex relationships is part of Nigeria's cultural identity. However, critics argue that moral values evolve and should not be used to justify discrimination. Globally, many countries have embraced LGBTQ rights as a moral imperative for equality, but Nigeria remains resistant due to its adherence to traditional and religious values. Addressing moral opposition to LGBTQ rights in Nigeria requires public education, dialogue, and legal reform to challenge misconceptions and promote inclusivity. While morals help maintain social cohesion, they should not be a basis for exclusion and discrimination. A balanced approach is needed to align cultural identity with human rights, ensuring dignity and equality for all individuals²¹.

3.0 Legal Framework Regulating Same-Sex Marriage, Freedom of Association, and Cultural Relativism in Nigeria

The legal framework in Nigeria regarding same-sex marriage, freedom of association, and cultural relativism is both multifaceted and controversial. While Nigeria's legal system guarantees certain rights, these rights are often constrained by conservative interpretations of cultural and religious values, especially when it comes to LGBTQ rights. Below is an exploration of the legal instruments relevant to these issues.

3.1 Constitution of the Federal Republic of Nigeria 1999 (as amended)

The 1999 Constitution of the Federal Republic of Nigeria (as amended) is the supreme law governing the country, outlining the structure of governance, separation of powers, and fundamental rights of citizens. While it guarantees certain rights, their interpretation especially regarding same-sex marriage, freedom of association, and cultural relativism remains contested.

¹⁸ G Shenkman, 'What we know and what remains to be explored about LGBTQ Parent Families in Nigeria: A Sociocultural Perspective' *International Journal of Environment and Public Health* [2022] 19 (7)

¹⁹ JM Finnis, 'Law, Morality, and Sexual Orientation' *Sexual Orientation and Rights Journal* [2017] 26 (8); pp 243-265

²⁰ J Hadit, 'Sexual Morality: The Cultures and Emotions of Conservatives and Liberals' *Journal of Applied Social Psychology* [2001] 52 (3): pp 312-327

²¹



The following are some constitutional provisions which include: Section 37 (Right to Privacy)²² Guarantees privacy in personal and family life. However, the Same-Sex Marriage (Prohibition) Act (SSMPA),²³ which criminalizes same-sex relationships, contradicts this right by interfering with personal autonomy. Section 40 (Freedom of Association) Grants the right to form and join groups, but the SSMPA restricts LGBTQ advocacy, making it illegal to form or support organizations promoting LGBTQ rights, thus undermining constitutional freedoms. Section 42 (Freedom from Discrimination)²⁴ Prohibits discrimination based on ethnicity, sex, religion, or political opinion, yet the SSMPA institutionalizes discrimination against LGBTQ individuals, contradicting the Constitution's anti-discrimination stance. Section 1 (Supremacy of the Constitution) Declares the Constitution as the highest legal authority, binding on all persons and institutions. Section 14²⁵ (Democratic Governance & Sovereignty) establishes Nigeria as a democratic state, emphasizing sovereignty derived from the people. This provision is often used to justify laws like the SSMPA under cultural relativism, arguing that Nigerian laws should reflect local cultural and religious values. While the Constitution guarantees rights, the SSMPA contradicts them by criminalizing same-sex relationships and LGBTQ advocacy. The Nigerian government justifies these restrictions using cultural relativism, asserting that local traditions and beliefs take precedence over universal human rights. This ongoing tension between constitutional rights, cultural norms, and international human rights standards remains a critical issue in Nigeria's legal and human rights landscape.

3.2 Same-Sex Marriage (Prohibition) Act

The Same-Sex Marriage (Prohibition) Act is a landmark piece of legislation in Nigeria that prohibits same-sex marriage and criminalizes activities related to LGBTQ rights. This law represents one of the strictest anti-LGBTQ laws in the world and has far-reaching implications for same-sex relationships, freedom of association, and the expression of LGBTQ identity in Nigeria. The Act reflects deeply rooted cultural, religious, and societal beliefs about marriage and family structures, and its introduction has sparked both domestic and international debates about human rights, cultural relativism, and the limitations of freedom in Nigeria.

Section 1 of the SSMPA criminalizes the solemnization of same-sex marriages or civil unions, making them illegal in Nigeria. It provides:

“Marriage or civil union entered into between persons of the same sex is prohibited in Nigeria.”

This section directly addresses the topic of same-sex marriage by prohibiting its recognition or solemnization. It clearly reflects the cultural and religious beliefs in Nigeria, where same-sex relationships are largely considered immoral and incompatible with traditional family structures.²⁶ The enactment of this law reflects Nigeria's adherence to its cultural relativism, as the law is shaped by societal values and religious doctrines that view same-sex unions as contrary to Nigerian values, which are heavily influenced by Islamic and Christian teachings. From a cultural relativist perspective, the law is justified as a reflection of the moral standards and traditions of the Nigerian people, which reject same-sex relationships as inconsistent with their understanding of marriage and family. However, this law conflicts with international human rights standards, which advocate for the protection of individuals' rights to marry whomever they choose, regardless of sex or gender. Critics argue that it violates the principles of equality and non-discrimination as set out in international human rights treaties such as the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights (ICCPR), to which Nigeria is a signatory.

Section 2 of the SSMPA criminalizes the public display of same-sex intimacy, including public displays of affection (PDA). It states:

²² Constitution of the Federal Republic of Nigeria 1999 (as amended), 1999, section 37.

²³ *Ibid*, Section 40

²⁴ *Ibid*, Section 42

²⁵ *Ibid*, Section 14

²⁶ Same-Sex Marriage (Prohibition) Act, 2014, section 1.



“Any person who registers, operates, or participates in gay clubs, societies, organizations, or any form of same-sex association shall be guilty of an offense.”²⁷

This provision has significant implications for the freedom of association, which is enshrined in Section 40 of the Nigerian Constitution. Section 40 guarantees the right to form and join associations, but Section 2 of the SSMPA limits this freedom for LGBTQ individuals by criminalizing the formation of groups or societies that advocate for same-sex relationships. It targets not only same-sex unions but also any form of LGBTQ advocacy or community-building.

In practice, this provision severely restricts LGBTQ rights to free association. LGBTQ individuals are effectively prevented from forming advocacy groups, holding events, or organizing for legal and social recognition. This limitation represents a direct contradiction of constitutional guarantees of freedom of association, demonstrating how the SSMPA restricts the rights of individuals and groups seeking to promote same-sex rights and marriage in Nigeria. Cultural relativism is also relevant here because the law reflects Nigeria's societal opposition to LGBTQ identities. While international human rights frameworks emphasize the right to form associations for the protection of personal interests, including the protection of LGBTQ rights, Nigeria's legal framework is informed by its religious and cultural values, which reject such associations. In the Nigerian context, the law is justified as a necessary measure to preserve traditional values against what is seen as foreign imposition of LGBTQ norms. Section 4 of the SSMPA stipulates penalties for anyone found in violation of the Act, including those participating in same-sex marriages or relationships, as well as those involved in advocating for such practices. The penalties include:

“Any person who contravenes any provision of this Act commits an offense and is liable on conviction to a fine of 500,000 naira or imprisonment for a term of 5 years, or both.”²⁸

The above section underscores the criminalization of same-sex relationships and LGBTQ advocacy, reinforcing the stigmatization of LGBTQ individuals in Nigerian society. It acts as a legal deterrent for anyone considering involvement in same-sex relationships or related activities. The penalties create a climate of fear and repression, where LGBTQ individuals risk legal punishment for exercising their rights to freedom of expression, privacy, and association. It also makes it challenging for any LGBTQ organizations to operate freely without fear of legal consequences. Critics of the Act argue that these severe penalties reflect a broader cultural and political strategy that aims to criminalize and suppress LGBTQ visibility and activism, largely for political purposes tied to religious conservatism and social control. Section 5 of the SSMPA criminalizes the act of supporting or facilitating same-sex marriages, including through media, public advocacy, or online platforms. It states:

“No person or group of persons shall, in any public or private place, directly or indirectly support or aid the solemnization of same-sex marriage.”²⁹

This section adds another layer of legal control, making it illegal to support or advocate for same-sex marriage or even publicly express support for LGBTQ rights. It significantly limits freedom of expression, which is another constitutional right in Nigeria, particularly Section 39 of the Nigerian Constitution, which guarantees the right to freedom of expression. This provision is part of a broader strategy to prevent the normalization of LGBTQ identities in Nigerian society, criminalizing efforts to challenge societal views on homosexuality. From a cultural relativist perspective, this provision could be seen as an attempt to protect Nigerian cultural and moral standards from what is perceived as foreign influence often viewed as Western ideologies that conflict with African cultural values. However, this provision also conflicts with the right to freedom of expression, an essential part of democratic governance. By criminalizing speech, it curtails public debates and stifles discourse on LGBTQ rights, preventing a robust discussion of the issue in Nigerian society.

The Same-Sex Marriage (Prohibition) Act, is a reflection of Nigeria's cultural and religious

²⁷*Ibid*, Section 2

²⁸*Ibid*, section 4

²⁹*Ibid*, section 5



values, which reject same-sex marriage and relationships. The law criminalizes not only same-sex unions but also the freedom of association and expression for LGBTQ individuals, making it difficult for them to advocate for their rights or form communities. It highlights the tension between cultural relativism, which justifies the law based on local traditions, and universal human rights, which demand the protection of individual freedoms, including the rights of LGBTQ individuals.

While the law aligns with Nigeria's sovereignty and cultural values, it conflicts with international norms regarding equality and non-discrimination. The SSMPA thus represents a legal and cultural struggle between local customs and the protection of universal human rights, which remains a key issue in global debates on LGBTQ rights.

3.3. The Criminal Code Act

The Criminal Code Act (Cap 77, Laws of the Federation of Nigeria, 2004)³⁰ is a foundational criminal law in southern Nigeria, defining offenses and penalties. Originally enacted in 1916 under British colonial rule, it continues to criminalize certain sexual acts, particularly homosexuality, alongside the Same-Sex Marriage (Prohibition) Act (SSMPA). Its provisions contribute to a hostile environment for LGBTQ individuals, restricting their freedom of association and reinforcing cultural relativism over international human rights. Here are some key Provisions and Implications. Section 214³¹ (Criminalization of Same-Sex Relations), Punishes consensual same-sex relations with 14 years' imprisonment. Aligns with SSMPA in prohibiting same-sex marriages and relationships, reflects cultural and religious values opposing homosexuality, criticized for violating privacy and equality rights under international law. Section 217³² (Criminalization of Attempts at Same-Sex Relations) Punishes attempts to engage in same-sex acts with up to 7 years imprisonment, reinforces legal deterrence against LGBTQ identities and relationships, restricts freedom of association and self-expression, supports cultural relativism, viewing homosexuality as a moral threat. Section 221³³ (Penalties for "Unnatural Offenses") Confirms a 14-year prison sentence for violations of Sections 214–216. Reinforces Nigeria's cultural stance on traditional family structures. Criticized for contradicting principles of non-discrimination and human rights. Section 226³⁴ (Public Indecency) Criminalizes public sexual acts with a 2-year imprisonment penalty. Indirectly targets LGBTQ individuals, restricting public expressions of same-sex intimacy. Supports societal rejection of LGBTQ visibility.

The Criminal Code Act, like the SSMPA, reflects Nigeria's sovereignty in legislating based on local cultural and religious values. It clashes with international human rights norms, particularly freedom of expression, equality, and privacy. Human rights activists argue that these provisions disproportionately impact LGBTQ individuals, reinforcing discrimination and social stigma. The Criminal Code Act continues to shape Nigeria's legal and social stance on LGBTQ rights, positioning cultural relativism against universal human rights principles.

3.4 The Nigeria Correctional Service Act 2019:

The Nigeria Correctional Service Act of 2019 represents a significant reform in the country's penal system, shifting its focus from mere punishment to the rehabilitation and reintegration of offenders. This transformation is reflected in the renaming of the Nigeria Prisons Service to the Nigeria Correctional Service (NCoS), underscoring a commitment to human rights and the humane treatment of inmates. The Act emphasizes objectives such as reformation, rehabilitation, and reintegration while ensuring the safe custody of incarcerated individuals. The Act's provisions theoretically apply to all offenders, including those convicted under anti-homosexuality laws. However, the Nigerian

³⁰ Criminal Code Act Cap 77 Laws of the Federation of Nigeria 2004

³¹ *Ibid*, Section 214

³² *Ibid* Section 217

³³ *Ibid* Section 221

³⁴ *Ibid*, Section 226



legal framework continues to criminalize same-sex relationships under laws like the Same-Sex Marriage Prohibition Act, making rehabilitation efforts for LGBTQ individuals particularly challenging. Although Section 10 of the Act prohibits discrimination on grounds such as race, religion, and gender, it does not explicitly include sexual orientation, and in practice, LGBTQ inmates often face abuse, discrimination, and violence. Section 23, which addresses the treatment of offenders with special needs, could be interpreted to include LGBTQ individuals, yet the lack of resources and systemic bias within correctional facilities undermines its effectiveness. Additionally, Section 24 provides for psychosocial counseling and vocational training to aid inmates in their reintegration into society. However, societal and institutional biases may exclude LGBTQ individuals from fully benefiting from these rehabilitation programs, as their sexual orientation is often stigmatized rather than recognized as an inherent identity. The disconnect between cultural relativism, which upholds the criminalization of same-sex relationships, and the broader human rights perspective remains a significant barrier to meaningful reform in Nigeria's correctional system.

3.5 The Nigeria Police Establishment Act: The Nigeria Police Establishment Act of 2020 introduced reforms aimed at improving professionalism, transparency, and accountability within the Nigeria Police Force (NPF). It redefines the force's responsibilities, including crime prevention, law enforcement, and the protection of lives and property. However, its implementation is deeply intertwined with Nigeria's criminalization of same-sex relationships. The Act grants the police broad powers of arrest, detention, and law enforcement, which they use to target LGBTQ individuals and activists. While Section 26 mandates the police to protect fundamental rights, and Section 42 prohibits dehumanizing treatment, these provisions are often undermined by the enforcement of anti-LGBTQ laws. LGBTQ individuals frequently face harassment, arbitrary arrests, and violence from law enforcement officers, who may exploit existing laws to justify discriminatory actions. Though Section 49 establishes accountability mechanisms for police misconduct, LGBTQ individuals may be hesitant to report abuses due to stigma and fear of further persecution.

3.6 The Matrimonial Causes Act: The Matrimonial Causes Act (MCA)³⁵ governs marriage, divorce, and related legal matters in Nigeria, but it is strictly based on a heterosexual framework. Enacted in 1970, the Act reflects Nigeria's traditional and religious values by limiting legal marriage to opposite-sex unions. It provides for the dissolution of marriage under specific grounds, such as adultery and cruelty, but since same-sex relationships are not legally recognized, LGBTQ individuals lack legal avenues for resolving relationship disputes, seeking divorce, or securing property and child custody rights. The Act reinforces the exclusion of same-sex unions by defining marriage in heteronormative terms, preventing LGBTQ individuals from accessing spousal maintenance, inheritance rights, or legal recognition of their partnerships. This exclusion underscores Nigeria's cultural relativist approach, where traditional values take precedence over international human rights standards advocating for marriage equality. As a result, LGBTQ individuals remain legally marginalized, with no recognition or protection for their relationships under Nigerian family law.

In summary, these three legal frameworks -the Nigeria Correctional Service Act, the Nigeria Police Establishment Act, and the Matrimonial Causes Act, highlight the broader systemic challenges faced by LGBTQ individuals in Nigeria. While they contain provisions that promote human rights and equal treatment in theory, the legal and cultural context significantly limits their application to LGBTQ individuals. These laws reinforce the social and legal marginalization of the LGBTQ community, illustrating the conflict between cultural relativism and international human rights principles.³⁶

³⁵ The Matrimonial Causes Act Cap M7, Laws of the Federation of Nigeria 2004

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4.1. Legal issues in Same Sex Marriage, Freedom of Association and Cultural Relativism in Nigeria

The discourse on same-sex marriage, freedom of association, and cultural relativism in Nigeria is both legally and socio-politically significant. The interplay between these concepts raises fundamental questions about human rights, constitutional freedoms, and cultural sovereignty. While international human rights instruments advocate for non-discrimination and freedom of association, Nigeria's legal framework, influenced by religious and cultural norms, strongly prohibits same-sex marriage.³⁷

The legal stance on same-sex marriage in Nigeria is unambiguous and restrictive. The Same-Sex Marriage (Prohibition) Act (SSMPA) 2014 criminalizes same-sex unions and prescribes penalties for individuals engaging in such relationships. Section 1 of the Act explicitly states that a marriage contract or civil union entered into by persons of the same sex is invalid and illegal. Furthermore, Section 5 criminalizes the public display of same-sex relationships and imposes severe penalties on those involved in the registration, operation, or participation in gay clubs or organizations.³⁸ The prohibition of same-sex marriage in Nigeria raises legal concerns regarding human rights. Critics argue that the SSMPA contravenes provisions of the 1999 Constitution of Nigeria (as amended), particularly Section 42, which guarantees freedom from discrimination. Furthermore, it conflicts with Nigeria's international obligations under the African Charter on Human and Peoples' Rights (ACHPR) and the Universal Declaration of Human Rights (UDHR), which emphasize equality and non-discrimination. However, the Nigerian government justifies the law based on societal values and public morality.³⁹ Freedom of association is a fundamental right enshrined in Section 40 of the 1999 Constitution of Nigeria, which guarantees the right to form and belong to lawful associations. However, the SSMPA imposes restrictions on organizations advocating for LGBTQ+ rights, thereby raising concerns about constitutional violations. The enforcement of the SSMPA has led to the suppression of LGBTQ+ advocacy groups and the arrest of individuals organizing events promoting the rights of sexual minorities. Courts in Nigeria have upheld the government's position, emphasizing the need to align legal provisions with cultural and religious sensibilities. This limitation on freedom of association has sparked debates on the extent to which human rights should be interpreted within Nigeria's unique legal and moral landscape.⁴⁰

Cultural relativism posits that moral values and legal norms should be interpreted within the context of a society's traditions and customs. Nigeria, as a multi-religious and culturally diverse nation, largely rejects same-sex marriage on the grounds of cultural and religious beliefs. Both Christianity and Islam, which dominate the country, explicitly prohibit homosexuality, reinforcing the societal consensus against same-sex unions.⁴¹ Proponents of cultural relativism argue that external influences, such as international human rights advocacy, should not override Nigeria's indigenous legal norms. The Nigerian government has consistently defended its position by asserting its sovereign right to legislate in accordance with its cultural and religious ethos. However, critics argue that cultural relativism should not serve as a basis for human rights violations, and that Nigeria should adopt a more inclusive legal approach that accommodates global human rights standards.⁴²

The legal issues surrounding same-sex marriage, freedom of association, and cultural relativism in Nigeria highlight the complex relationship between law, human rights, and societal values. While Nigeria's legal framework strongly opposes same-sex marriage and restricts LGBTQ+ advocacy, this

³⁷ JO Chimakonam, 'The Sexual Orientation question in Nigeria: Cultural relativism versus universal Human Rights' *Sexuality & Culture Journal* [2020] 21 (3) pp 421-460

³⁸ *Ibid*

³⁹ M Arthur-Jolasinimi, 'Homosexuality, Universal and Cultural Relativism-a-review' *Nigerian Journal of Legal online* [2023] 23 (23) pp 211-282

⁴⁰ *Ibid*

⁴¹ *Ibid*

⁴² O Abifrain, 'Same-sex Marriage, Human Rights and Cultural Diversity' *World Affairs: The Journal of International Issues* [2016] 21 (4) pp 122-154



stance raises fundamental questions about constitutional rights and international obligations. The debate remains a contested terrain between cultural sovereignty and the universality of human rights, necessitating a balanced legal approach that respects both Nigeria's traditions and its commitments to global human rights standards.

4.2 Challenges Arising from the Intersection of Same-Sex Marriage, Freedom of Association, and Cultural Relativism

The discourse on same-sex marriage remains contentious worldwide, largely influenced by differing legal, social, and cultural perspectives. At the heart of this debate is the intersection of same-sex marriage, freedom of association, and cultural relativism. While same-sex marriage advocates argue for equal rights and non-discrimination, opponents often cite cultural values, religious beliefs, and societal norms.⁴³ The interaction of these concepts presents several legal, ethical, and social challenges that need to be addressed.

Legal Challenges

Contradictory Legal Frameworks: In jurisdictions where same-sex marriage is recognized, there is often a conflict with international treaties and domestic laws of other nations that prohibit it. This discrepancy creates difficulties for same-sex couples in cross-border legal recognition of their unions.

Freedom of Association vs. Anti-Discrimination Laws: Businesses, religious institutions, and private organizations sometimes invoke freedom of association to justify exclusion of same-sex couples from services or membership. Balancing this with anti-discrimination protections remains a legal dilemma.

Human Rights Considerations: The principle of universality in human rights, which supports same-sex marriage, often clashes with national legal frameworks that are based on religious or cultural laws, thereby complicating enforcement and advocacy efforts.⁴⁴

Social and Cultural Challenges

Cultural Relativism and Resistance to Change: Many societies perceive same-sex marriage as a Western imposition that contradicts traditional family structures. Cultural relativism argues that each society should determine its moral and legal values independently, making it difficult to achieve a global consensus.

Religious Opposition: Major religious institutions, including Christianity and Islam, predominantly oppose same-sex marriage, citing religious doctrines. This often translates into policy influence, reinforcing societal resistance to legal recognition.

Public Perception and Stigma: Even in legally progressive societies, same-sex couples still face stigma and discrimination, particularly in workplaces, education, and healthcare settings, where cultural biases persist despite legal protections.

Political and Policy Challenges

Legislative Barriers: Policymakers often struggle to legislate on same-sex marriage due to political pressure from conservative groups and religious organizations, resulting in delays or outright refusal to recognize such unions.

Diplomatic Tensions: Countries that support LGBTQ+ rights sometimes impose diplomatic and economic sanctions on those that criminalize same-sex marriage, leading to geopolitical frictions and debates over sovereignty.

Policy Inconsistencies: Even in countries where same-sex marriage is legal, inconsistent policies across states or regions create confusion regarding the rights and obligations of same-sex couples.

⁴³L. Spitz, 'At the Intersection of North American Free trade and same-sex marriage' *UCLA Journal of International Law and Foreign Affairs* [2004] 34 (9) pp 322 - 378

⁴⁴GO Antai, 'Universality versus Cultural relativism in International Human Rights: A Case Study of the Anti-Homosexuality' *IAA Journal of Management* [2023] 43 (2) pp122-130



Balancing Rights and Cultural Values

To address these challenges, a balanced approach is necessary, one that respects both cultural diversity and universal human rights. One possible strategy is legal harmonization, which involves encouraging nations to adopt legal frameworks that recognize fundamental human rights while taking cultural nuances into account. Another approach is fostering dialogue and conducting awareness campaigns by engaging religious and cultural leaders in discussions to promote understanding and reduce resistance. Additionally, strengthening human rights institutions is essential to ensure that these bodies effectively advocate for LGBTQ+ rights without imposing solutions that disregard cultural contexts.

The intersection of same-sex marriage, freedom of association, and cultural relativism presents complex challenges that require nuanced legal and policy responses. Achieving a balance between individual rights and cultural values remains a crucial goal in fostering inclusivity and respect in diverse societies.

4.3. Cultural Relativism and Its Impact on LGBTQ Rights

Cultural relativism is the principle that a person's beliefs, values, and practices should be understood based on their own culture rather than judged against the criteria of another. This concept has significant implications for human rights, particularly LGBTQ rights, as it often clashes with universal human rights principles. This work examines the impact of cultural relativism on the recognition and protection of LGBTQ rights globally, highlighting the challenges and prospects for advocacy in different cultural contexts. Cultural relativism is rooted in anthropology and seeks to promote respect for cultural diversity. It asserts that no single culture's moral or ethical standards are inherently superior to others. However, this principle can sometimes be used to justify practices that violate internationally recognized human rights, including the discrimination and persecution of LGBTQ individuals.⁴⁵

The universalist approach to human rights, as embodied in international treaties such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR), asserts that fundamental rights, including non-discrimination and equality, apply to all individuals regardless of culture. However, cultural relativism has often been invoked to resist these norms, especially in societies where LGBTQ identities are viewed as incompatible with religious, traditional, or societal values.⁴⁶

While cultural relativism poses challenges, progress can be made through dialogue and local advocacy by engaging with cultural and religious leaders to promote LGBTQ rights within the framework of local traditions, helping to reduce resistance. Legal reforms, including incremental legal changes such as anti-discrimination laws, can contribute to a more inclusive environment without causing immediate radical shifts that provoke backlash. Education and awareness initiatives, particularly public awareness campaigns tailored to specific cultural contexts, can help challenge stereotypes and foster greater acceptance of LGBTQ individuals. Additionally, strengthening regional human rights frameworks, such as the African Commission on Human and Peoples' Rights, can provide culturally sensitive yet rights-respecting solutions to address these challenges effectively.

Cultural relativism significantly influences the recognition and enforcement of LGBTQ rights worldwide. While it fosters respect for cultural diversity, it can also serve as a barrier to human rights protections. Striking a balance between cultural sensitivity and universal human rights is essential to advancing LGBTQ rights while respecting the socio-cultural realities of different societies. Through inclusive dialogue, legal reform, and education, it is possible to bridge the gap between cultural relativism and the universal principles of equality and dignity for all.

⁴⁵ P H Lee, 'LGBT Rights versus Asian values: de/re-constructing the universality of human rights' *The International Journal of Human Rights* [2016] 96 (5) pp 134-150

⁴⁶ Ibid



5.0 Conclusion

Same-sex marriage, freedom of association, and cultural relativism in Nigeria remain contentious issues shaped by legal, religious, and socio-cultural factors. While international human rights frameworks advocate for equality and non-discrimination, Nigeria's legal stance, influenced by cultural and religious values, strongly opposes same-sex unions. The country's laws, particularly the Same-Sex Marriage (Prohibition) Act (SSMPA) of 2014, reflect deep-seated beliefs that prioritize traditional family structures over global human rights perspectives.

Freedom of association, a fundamental human right, is also affected by these laws, limiting the ability of LGBTQ+ individuals to organize and advocate for their rights. Cultural relativism plays a significant role in justifying Nigeria's position, as many argue that foreign ideologies should not override indigenous cultural and religious values. However, this perspective raises concerns about balancing national identity with global human rights obligations. Ultimately, the debate highlights the tension between universal human rights and local traditions, requiring a nuanced approach that respects cultural identities while fostering inclusivity and respect for human dignity.

5.2 Recommendations

Dialogue and Public Sensitization: There is a need for constructive national dialogue on LGBTQ+ rights, fostering understanding between human rights advocates and cultural custodians. Public education programs should address misconceptions and promote tolerance.

Legal Reforms and Human Rights Protections: While cultural values are important, laws should not infringe on basic human rights. Legal reforms should ensure that LGBTQ+ individuals are not criminalized for their identity and that their freedom of association is protected.

Respect for Cultural Contexts in Advocacy: International organizations advocating for LGBTQ+ rights in Nigeria should adopt culturally sensitive approaches, working with local communities and leaders to foster gradual change rather than imposing external values.

Strengthening Judicial and Institutional Frameworks: Nigeria's judiciary and human rights institutions should uphold non-discriminatory principles while balancing legal and cultural considerations to ensure fairness and justice for all citizens.

Regional and Comparative Learning: Nigeria can benefit from examining how other culturally conservative societies address LGBTQ+ issues without disregarding their traditions, adopting best practices that align with its unique socio-cultural landscape. By adopting a balanced approach that respects cultural values while promoting human dignity and non-discrimination, Nigeria can navigate this complex issue in a way that fosters inclusivity, peace, and national cohesion.