

**RIGHT TO EQUITY: A LEGAL ANALYSIS OF ANTI-DISCRIMINATION LAWS  
BASED ON SEXUAL ORIENTATION**

**BY**

**UZO-NWANEBU CHIKAMSO C.**

**2020/LW/15126**

**A PROJECT PRESENTED TO THE FACULTY OF LAW,**

**ALEX EKWUEME FEDERAL UNIVERSITY**

**IN PARTIAL FULFILMENT OF THE REQUIREMENT FOR THE AWARD OF THE  
DEGREE OF BACHELOR OF LAWS (LL.B)**

**SUPERVISOR**

**OLEBARA, OGUGUO PASCHAL**

**SEPTEMBER, 2025**

**DECLARATION**

I, **UZO-NWANEBU CHIKAMSO C.** a Student of the Faculty of Law Imo State University, Owerri, do hereby declare on my honor, that this project has not been previously presented, either wholly or in part for the award of any other Degree, Diploma, Certificate or Publication in any University, other Higher Institutions or elsewhere.

Signed.....

**UZO-NWANEBU CHIKAMSO C.**

**CERTIFICATION**

**UZO-NWANEBU CHIKAMSO C.**, a Student of Faculty of Law has satisfactorily completed the requirements for the award of the Degree of Bachelor of Laws. To the best of our knowledge, the work embodied in this dissertation is original and has not been submitted in part or full for any other Degree, Diploma, Certification or Publication of this University or elsewhere.

**OLEBARA, OGUGUO PASCHAL**.....

**SUPERVISOR** **Sign** **Date**

**DR KELECHI G. ONYEGBULE** .....

**PROJECT COORDINATOR** **Sign** **Date**

**PROF. ESENI AZU UDU** .....

**DEAN, FACULTY OF LAW** **Sign** **Date**

**EXTERNAL EXAMINER** .....

**Sign** **Date**

## **DEDICATION**

I dedicate this work to the almighty God who in His great mercy gave me the zeal and knowledge to write this. This work is also dedicated to all those out there in different parts of the world who are either struggling with their sexuality, suffering from different kinds of harassment and injustice because of accepting themselves for who they are, those who lost their lives because of their sexual orientation. You are seen.

## ACKNOWLEDGMENTS

I want to acknowledge the Lord Almighty for His goodness and great mercies. May His name be forever praised.

I thank my parents The Rev. Uzochukwu Nwanebu & Dr. Mrs Happiness Uzo-Nwanebu whom if not of them, I would not be here today. They drove me, gave me all I needed to survive. To my siblings, Cheche (Ada-Ada), Koskos, and Somtii. I love you guys beyond measure. When it got hard, I always remembered you guys and it kept me going. You are the best.

I also want to thank Mrs. Joy Ugorji for her relentless care and show of love towards me. Your encouragements, prayers and constant texts played a huge role in my life. Thank you so much for everything. Words cannot express how grateful I am to you. To Mr. David Ugorji, my brother, thank you. Your prayers and gestures of love towards me kept me going especially in this final year. God bless you. To Mummy Memma, I am forever grateful for how you took me as your son. Whenever I called, you answered. Thank you so much ma.

To my supervisor, Olebara Paschal Oguguo., I say thank you. You gave me hope and encouraged me regardless of how controversial my topic was in a country like Nigeria. Thank you sir for all your corrections, and wisdom. To my wonderful, amazing and impeccable H.O.D, Rev. Dr. Kelechi Goodluck Onyegbule, I say thank you. Thank you for protecting me and coming to my aid when I needed it. You are the best Sir.

To my friends Chimdi, Stan, Dubem, Ekwueme, Ajoke, Daniel to mention but a few, I am grateful to you all. You all are God's greatest gift to me. I cannot imagine where and how I would have been without you guys. You were my drive in writing this work, my inspiration throughout my university days, my world.

## **TABLE OF CONTENTS**

Preliminary Pages

Title Page

Declaration

Certification

Dedication

Acknowledgments

Abstract

Table of Contents

List of Cases

List of Statutes

List of Abbreviations

## **CHAPTER ONE: INTRODUCTION**

1.1 Background to the Study

1.2 Statement of the Problem

1.3 Research Questions

1.4 Aims and Objectives of the Study

1.5 Significance of the Study

1.6 Research Methodology

1.7 Scope of the Study

## **CHAPTER TWO: CONCEPTUALIZATIONS, THEORETICAL FRAMEWORK, AND LITERATURE REVIEW**

### **2.1 CONCEPTUAL FRAMEWORK**

2.1.1 Definition of Key Term

2.1.2 Conceptual Clarification

2.1.4 Understanding Sexual Orientation

## **2.2 Theoretical Framework**

2.2.1 Natural Law Theory and Sexual Orientation Discrimination

2.2.2 Legal Positivism and Sexual Orientation Rights

2.2.3 Legal Realism and Contextual Analysis

2.2.4 Critical Legal Theory and Systemic Analysis

2.2.5 Substantive Equality Theory

2.2.6 Human Rights Theory

## **2.3 Literature Review**

## **2.4 Historical Evolution of sexual orientation**

# **CHAPTER THREE: THE LEGAL REGIME AND INSTITUTIONAL FRAMEWORK**

## **3.1 LEGAL FRAMEWORK**

3.1.1 Evolution of Anti-discrimination Protections for Sexual Orientation

3.1.2 Legislative Approaches to Sexual Orientation Discrimination

3.1.3 Comprehensive Anti-discrimination Legislation

3.2 Case Study: Nigeria's Same-Sex Marriage (Prohibition) Act of 2013

3.2.1 Key Provisions and Scope

3.2.2 The Criminal and Penal Code in Nigeria

3.2.3 Constitutional Equality Provisions

## **3.3 INSTITUTIONAL FRAMEWORK**

3.3.1 Judicial Interpretation of Existing Laws

3.3.2 Legal Implications for Equality and Non-discrimination

3.3.3 Constitutional Challenges and Judicial Interpretation

3.3.4 International Law Institutions and Treaty Obligations

3.3 Impact on LGBTQ+ Communities

3.4 Gaps and Inconsistencies in Legal Protections

## **CHAPTER FOUR: COMPARATIVE ANALYSIS OF ANTI-DISCRIMINATION LAWS BASED ON SEXUAL ORIENTATION: LGBTQ+ RIGHTS AND PATTERNS OF DISCRIMINATION**

4.1 Understanding LGBTQ+ Discrimination

4.1.1 Direct and Indirect Discrimination Patterns

4.1.2 Comparative Analysis with Other Jurisdictions

4.2.3 Intersectional Discrimination Experiences

4.3 Key Areas of LGBTQ+ Rights Violations

4.3.1 Criminalization of Same-Sex Relations

4.3.2 Workplace Discrimination and Economic Rights

4.3.3 Family Recognition and Parental Rights

4.3.4 Healthcare Access and Medical Discrimination

4.4 Violence and Hate Crimes Against LGBTQ+ Persons

4.4.1 Legal Responses to Hate Crime

4.4.2 Protection Mechanisms

4.5 LGBTQ+ Asylum and Refugee Protection

4.5.1 Legal Standards for Sexual Orientation-Based Claims

4.6 Legal Recognition of Gender Identity

4.6.1 Relationship to Sexual Orientation Discrimination

4.6.2 Legal Gender Recognition Procedures

## **CHAPTER FIVE: CONCLUSIONS AND RECOMMENDATIONS**

5.1 Summary of Key Findings

5.2 Policy Recommendations

5.2.1 Legislative Reforms

5.2.2 Implementation Strategies

5.2.3 Education and Awareness Campaigns

5.3 Judicial Approach Recommendations

## **BIBLIOGRAPHY**

### **BOOKS**

### **JOURNAL ARTICLES**

## **ABSTRACT**

Equality, in its simplest sense, denotes the principle that all individuals are entitled to equal treatment, rights, and opportunities without unjustified distinction or bias. It is a foundational human rights concept that underpins democratic societies and legal systems across the globe. Sexual orientation, on the other hand, refers to a person's emotional, romantic, or sexual attraction towards others, which may be directed towards individuals of the same sex, opposite sex, or more than one sex. The main aim of this work is to provide a legal analysis of the right to equality in Nigeria with specific focus on discrimination based on sexual orientation. While international human rights law recognizes the right of all persons to non-discrimination irrespective of sexual orientation, Nigeria's legal framework remains largely silent and, in many respects, hostile to the recognition and protection of such rights. The objective of this study is therefore to interrogate the extent to which Nigeria's anti-discrimination provisions align with global human rights standards, to identify the gaps in domestic legislation, and to examine the implications of these gaps for the protection of sexual minorities. The study adopts a doctrinal research methodology, relying on primary and secondary legal sources such as constitutional provisions, statutes, judicial decisions, academic literature, and international human rights instruments. Through this method, it evaluates the scope of Nigeria's constitutional guarantees of equality and freedom from discrimination, while also interrogating how existing laws such as the Same Sex Marriage (Prohibition) Act undermine those guarantees. The findings reveal that Nigeria has no express legal provisions that protect individuals against discrimination on the basis of sexual orientation. On the contrary, the current legal framework perpetuates exclusion and legitimizes inequality. This lacuna undermines both the universality of human rights and the principle of equality as enshrined in international instruments to which Nigeria is a party. This work recommends the urgent need for legislative reform to expressly include sexual orientation as a protected ground under Nigeria's anti-discrimination laws. Such reform would not only align Nigeria with its international human rights obligations but also advance the principle of equality as a cornerstone of democratic governance and the rule of law.

# CHAPTER ONE

## INTRODUCTION

### 1.1 Background to the Study

The principle of equality stands as one of the most fundamental tenets of human rights law, enshrined in numerous international instruments and constitutional frameworks worldwide. However, the application of this principle to matters of sexual orientation remains one of the most contentious and evolving areas of contemporary legal discourse. The struggle for equality based on sexual orientation represents a critical intersection of human rights, constitutional law, and social justice that continues to challenge legal systems globally.

Historically, laws and social norms have systematically discriminated against individuals based on their sexual orientation, often criminalizing same-sex relationships and denying basic civil rights to LGBTQ+ individuals. This discrimination has manifested across multiple spheres of life, including employment, housing, healthcare, education, and family recognition. The legal landscape has undergone significant transformation in recent decades, with some jurisdictions embracing comprehensive anti-discrimination protections while others maintain restrictive legislative frameworks.<sup>1</sup>

The evolution of sexual orientation equality rights can be traced through landmark judicial decisions, legislative reforms, and international human rights developments. From the decriminalization of homosexuality in various jurisdictions to the recognition of same-sex marriage, the legal trajectory demonstrates both progressive advancement and persistent resistance. This complex legal evolution necessitates comprehensive examination to understand the current state of equality protections and identify areas requiring further development.

Contemporary legal systems face the challenge of reconciling traditional values with evolving understanding of human sexuality and gender identity. The intersection of religious freedom,

---

<sup>1</sup> Bamforth, N. (1997) *Sexual orientation discrimination*. Oxford: Oxford University Press.

cultural norms, and individual rights creates tension that courts and legislators must navigate carefully. The increasing recognition of sexual orientation as an immutable characteristic deserving of protection has prompted reconsideration of existing legal frameworks and the development of new protective mechanisms.<sup>2</sup>

The Nigerian context presents a particularly compelling case study, given the enactment of the Same-Sex Marriage (Prohibition) Act of 2013<sup>3</sup>, which significantly restricted LGBTQ+ rights and created legal barriers to equality. This legislative development occurred against the backdrop of international human rights advocacy and increasing global recognition of sexual orientation equality rights, highlighting the tension between national sovereignty and universal human rights principles.

## **1.2 Statement of the Problem**

Despite growing international recognition of sexual orientation as a protected characteristic deserving of equal treatment under the law, significant gaps persist in legal protections across jurisdictions. The lack of comprehensive anti-discrimination frameworks creates vulnerabilities for LGBTQ+ individuals and communities, exposing them to systematic disadvantage and human rights violations.

The primary problem addressed by this study is the inconsistent and often inadequate legal protection against discrimination based on sexual orientation. This manifests in several critical areas: first, the absence of explicit sexual orientation protections in many anti-discrimination statutes; second, the conflicting interpretations of existing equality provisions in relation to sexual orientation; third, the inadequate enforcement mechanisms for existing protections; and fourth, the persistence of discriminatory laws that actively harm LGBTQ+ individuals.

---

<sup>2</sup> Sullivan, A. (1995) *Virtually normal: An argument about homosexuality*. New York: Alfred A. Knopf.

<sup>3</sup> Same-Sex Marriage (Prohibition) Act of 2013

Furthermore, the problem extends beyond legislative gaps to encompass judicial interpretation challenges. Courts often struggle with applying general equality principles to sexual orientation discrimination cases, particularly in jurisdictions where such protections are not explicitly codified. This judicial uncertainty creates inconsistent legal outcomes and fails to provide clear guidance for future cases.

The enforcement problem is equally significant, as even jurisdictions with comprehensive anti-discrimination laws often lack effective mechanisms for addressing violations. Victims of sexual orientation discrimination frequently face barriers to accessing justice, including inadequate legal representation, lengthy proceedings, and insufficient remedies. These enforcement challenges undermine the effectiveness of existing legal protections.

1. To what extent does the Nigerian laws provide effective protection against discrimination based on sexual orientation, and what reforms are necessary to ensure substantive equality?
2. How have different jurisdictions approached the legal recognition and protection of sexual orientation equality rights, and what can be learned from comparative analysis of these approaches?
3. How do international human rights standards regarding sexual orientation equality compare with domestic legal protections, and what obligations do states have under international law?
4. What legislative, judicial, and policy reforms are necessary to achieve substantive equality for individuals regardless of sexual orientation?

#### **1.4 Aim and Objectives of the Study**

The overarching aim of this study is to conduct a comprehensive analysis of legal frameworks governing equality and sexual orientation in Nigeria.

- To examine the current legal framework of equality that protects sexual orientation in Nigeria.

- To conduct a comparative analysis of sexual orientation and equality rights laws in select jurisdictions.
- To analyze international human right perspective regarding sexual orientation discrimination and equality.
- To examine or analyze legal reforms towards sexual orientation equality.

### **1.5 Significance of the Study**

This study holds significant importance across multiple dimensions of legal scholarship, policy development, and human rights advocacy. The significance can be understood through theoretical, practical, and social justice perspectives.

- **Theoretical Significance:**

The study contributes to the evolving body of scholarship on equality theory and its application to sexual orientation. By examining the tension between formal and substantive equality in the context of sexual orientation discrimination, the research advances theoretical understanding of how equality principles should be interpreted and applied. Furthermore, the study contributes to comparative legal analysis by examining different jurisdictional approaches to sexual orientation equality. This comparative perspective enhances understanding of how legal systems can effectively protect sexual orientation equality while respecting cultural and constitutional constraints.

- **Practical Significance:**

The research has immediate practical implications for legal practitioners, policymakers, and advocacy organizations working on LGBTQ+ rights. The comprehensive analysis of existing legal frameworks provides practitioners with better understanding of available legal protections and strategies for advancing sexual orientation equality cases.

For policymakers, the study offers evidence-based recommendations for legislative and policy reforms. The identification of gaps in existing protections and successful approaches from other

jurisdictions provides valuable guidance for developing more effective anti-discrimination frameworks.

The study also has practical significance for judicial decision-making by providing comprehensive analysis of how equality principles should be applied in sexual orientation discrimination cases. The examination of judicial approaches across different jurisdictions offers valuable precedents and interpretive guidance.

### **1.6 Research Methodology**

This study employs a comprehensive methodological approach combining doctrinal legal research, comparative analysis, and critical examination of legal frameworks. The methodology is designed to ensure rigorous analysis while maintaining practical relevance. The study utilizes a qualitative research design focused on legal analysis and interpretation. This approach is appropriate given the research objectives, which center on understanding legal concepts, analyzing statutory and case law, and developing reform recommendations. The design incorporates both descriptive and normative elements, describing current legal frameworks while proposing improvements.

The study employs traditional doctrinal legal research methods to analyze legislation, case law, and legal principles. This involves systematic examination of primary legal sources including:

- Constitutional provisions relating to equality and non-discrimination
- Anti-discrimination statutes and regulations
- Judicial decisions addressing sexual orientation discrimination
- International human rights instruments and interpretations
- Legislative frameworks in various countries and regions
- Judicial interpretations and precedents

### **1.10 Scope of the Study**

This study examines legal frameworks governing equality and sexual orientation across multiple dimensions and jurisdictions. The scope encompasses:

- **Geographic Scope:**

The study adopts a comparative approach examining multiple jurisdictions while maintaining particular focus on:

- Nigeria (primary case study, especially the Same-Sex Marriage Prohibition Act 2013)
- European Union member states and European Court of Human Rights jurisprudence
- North American jurisdictions (United States, Canada)
- Select African countries for regional comparison
- International human rights framework

### **LIMITATION**

In Nigeria, there are no laws or statutes that support or eradicate discrimination of persons based on sexual orientation.

Materials for proper research were difficult to access as people do not feel comfortable talking about their sexual orientation, their support for the LGBTQIA community.

## CHAPTER TWO

### CONCEPTUALIZATIONS, THEORETICAL FRAMEWORK, AND LITERATURE

#### REVIEW

#### 2.1 CONCEPTUAL FRAMEWORK

##### 2.1.1 Definition of Key Terms

For the purpose and success of this research, a clear definition of key terms is essential for a precise legal analysis. The following definitions establish the conceptual framework for this study:

##### 2.1.1.2 Equality

Equality, as a concept, is rooted in the idea that all individuals should be treated with fairness, dignity, and respect, regardless of their inherent characteristics, such as race, gender, age, religion, disability, or socioeconomic status. It implies that every person should have equal access to opportunities, rights, and resources, and that no one should face discrimination or unfair treatment based on arbitrary or unjust criteria. It also refers to the recognition and protection of the equal worth of all individuals under the law. It ensures that no person is denied rights, privileges, or opportunities on arbitrary grounds. In constitutional law, it is often enshrined as a “fundamental right”, ensuring both “equality before the law” and “equal protection of the law”. The legal idea of equality thus provides both a “negative dimension” (prohibition of discrimination) and a “positive dimension” (obligation to ensure substantive fairness).

- **Types of Equality**

There are several ways in which equality can be understood and applied in society. Some key types of equality include:

**a) Social Equality:** Social equality refers to the idea that all individuals should have equal access to social goods and services, such as education, healthcare, housing, and employment. It aims to eliminate disparities based on social status, class, or any other inherited or social factors. Example: A society where children from both wealthy and poor families can access the same quality of education.

**b) Economic Equality:** Economic equality focuses on the fair distribution of wealth and resources within a society. While total equality may not be achievable or practical, it seeks to reduce excessive wealth gaps and provide individuals with the means to live fulfilling lives, regardless of their economic background. Example: Ensuring a minimum wage that allows workers to meet their basic needs and addressing extreme poverty.

**c) Political Equality:** Political equality is the idea that every individual should have an equal voice in political decision-making, irrespective of their background or social standing. This often translates to universal suffrage (the right to vote), equal representation, and the freedom to participate in political and civic activities. Example: Ensuring that people of all races and genders can vote and run for office without discrimination or barriers.

**d) Gender Equality:** Gender equality refers to the equal rights, responsibilities, and opportunities for individuals of all genders. It aims to eliminate gender-based discrimination and promote equal treatment of men, women, and non-binary individuals in all areas of life, including work, education, and personal relationships. Example: Equal pay for equal work, regardless of whether someone is male, female, or non-binary.

**e) Racial and Ethnic Equality:** Racial and ethnic equality involves ensuring that people of all races and ethnicities are treated equally in terms of access to opportunities, social treatment, and legal protection. It challenges systems of racial discrimination, prejudice, and systemic inequalities that disproportionately affect marginalized groups. Example: Policies aimed at

ending racial profiling, addressing systemic inequalities in education and criminal justice, and promoting racial integration.

## **Constitutional Recognition of Equality**

Most modern constitutions enshrine equality as a core principle. For instance:

The 1999 Constitution of the Federal Republic of Nigeria (as amended) provides in section 17(2)(a)<sup>4</sup> that “every citizen shall have equality of rights, obligations and opportunities before the law.”

Section 42<sup>5</sup> prohibits discrimination on grounds such as ethnic group, place of origin, sex, religion, or political opinion.

Internationally, Article 7<sup>6</sup> of the Universal Declaration of Human Rights provides that “all are equal before the law and are entitled without any discrimination to equal protection of the law.”

Equality, therefore, is both a domestic constitutional guarantee and an international human rights standard.

## **Dimensions of Legal Equality**

### **(a) Equality Before the Law**

This principle means that no person is above the law, and everyone is subject to the same legal standards. It emphasizes the impartiality of the judicial system. In *Aoko v. Fagbemi*<sup>7</sup>, the Nigerian court struck down a conviction on the basis that no written law had been contravened, reaffirming that legal liability must apply equally to all persons.

### **(b) Equal Protection of the Law**

---

<sup>4</sup> S. 17(2)(a) of CFRN

<sup>5</sup> S. 42 CFRN

<sup>6</sup> Universal Declaration of Human Rights (1948) art.7

<sup>7</sup> *Aoko v. Fagbemi* (1961) 1 All NLR 400.

While equality before the law is a formal principle, equal protection requires that the law does not unfairly disadvantage specific individuals or groups. In *Olusegun Fakayode v. Obafemi Awolowo University*<sup>8</sup>, the court held that university policies must not infringe on students' rights to equal access to education.

### **Judicial Interpretation of Equality**

Courts have played a central role in shaping the meaning of equality. The Nigerian Supreme Court has consistently held that equality does not mean identical treatment but fair and just application of the law. In *Attorney General of Bendel State v. Attorney General of the Federation*<sup>9</sup>, the Court emphasized that federal resources must be distributed in a manner consistent with the principle of equality of states.

Similarly, in comparative jurisdictions such as India, Article 14 of the Indian Constitution (similar to Section 42 of the Nigerian Constitution) has been interpreted to mean that classification is permissible provided it is reasonable and not arbitrary, as held in *State of West Bengal v. Anwar Ali Sarkar*.<sup>10</sup>

### **International Influence on Domestic Equality Norms**

Nigeria is a signatory to various international conventions that reinforce the principle of equality, including:

The African Charter on Human and Peoples' Rights (1981)<sup>11</sup>, which under Article 3 guarantees equality before the law.

The International Covenant on Civil and Political Rights (ICCPR), Article 26<sup>12</sup>, which recognizes the right to equality and prohibits discrimination.

<sup>8</sup> *Olusegun Fakayode v. Obafemi Awolowo University* (2002) 2 NWLR (Pt. 644) 123.

<sup>9</sup> *Attorney General of Bendel State v. Attorney General of the Federation* (1981) 10 SC 1.

<sup>10</sup> *State of West Bengal v. Anwar Ali Sarkar* AIR 1952 SC 75

<sup>11</sup> African Charter on Human and Peoples' Rights (1981), art. 3.

<sup>12</sup> International Covenant on Civil and Political Rights (1966), art. 26.

Equality is not absolute in law. Constitutions and courts permit “reasonable classifications” to achieve fairness. For instance, laws protecting children, women, or persons with disabilities may validly differentiate treatment in order to achieve substantive justice. Similarly, affirmative action policies, though unequal in form, are justified by the broader goal of fairness.

### **Equality vs. Equity**

The concept of equality is often compared to “equity”, which refers to fairness in treatment and outcomes. Equity recognizes that people come from different starting points and may require different levels of support to achieve the same goals. While equality focuses on providing the same resources or opportunities for everyone, equity focuses on adjusting resources or support to level the playing field. Example of Equity: In an educational setting, equity would involve providing extra resources (such as tutoring or financial aid) to students who come from disadvantaged backgrounds to help them achieve the same academic success as students from wealthier families. Equality is an essential concept for creating a just and fair society, but it is a complex and evolving challenge. While the pursuit of equality is rooted in principles of fairness and human dignity, achieving it requires addressing deep-rooted systemic issues, challenging cultural norms, and promoting a more equitable distribution of resources, opportunities, and power. Whether in terms of gender, race, class, or any other characteristic, equality is not only a moral imperative but also a practical necessity for social stability, peace, and collective well-being.

#### **2.1.1.3 Discrimination**

Discrimination, as a legal concept, refers to any distinction, exclusion, restriction, or preference based on certain protected characteristics that has the purpose or effect of impairing the recognition, enjoyment, or exercise of human rights and fundamental freedoms on an equal basis

with others. It is essentially the denial of equality before the law, grounded in prejudice against inherent or ascribed traits such as race, sex, religion, disability, or sexual orientation.

### **Definitional Framework**

The United Nations International Convention on the Elimination of All Forms of Racial Discrimination (1965) defines discrimination broadly as “any distinction, exclusion, restriction or preference based on race, color, descent, or national or ethnic origin.”<sup>13</sup> This definition has influenced other instruments, including the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which defines discrimination against women as any gender-based distinction, exclusion or restriction that impairs the exercise of human rights.<sup>14</sup>

From a jurisprudential perspective, discrimination is understood not merely as differential treatment but as “unjustifiable or unreasonable differentiation”, often producing systemic disadvantage. Courts have thus developed doctrines distinguishing between “direct discrimination” (overt exclusion) and “indirect discrimination” (neutral rules with disproportionate adverse effects).

### **International Human Rights Jurisprudence**

The prohibition of discrimination is a cornerstone of international human rights law. Article 2 of the Universal Declaration of Human Rights (1948) guarantees rights and freedoms without distinction of any kind, while Article 26 of the International Covenant on Civil and Political Rights (ICCPR) provides a general guarantee of equality before the law and equal protection without discrimination.<sup>15</sup>

---

<sup>13</sup> International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 Dec 1965, entered into force 4 Jan 1969) 660 UNTS 195, art 1.

<sup>14</sup> Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 Dec 1979, entered into force 3 Sept 1981) 1249 UNTS 13, art 1.

<sup>15</sup> Universal Declaration of Human Rights (adopted 10 Dec 1948) UNGA Res 217 A(III), art 2; International Covenant on Civil and Political Rights (adopted 16 Dec 1966, entered into force 23 Mar 1976) 999 UNTS 171, art 26.

In *D.H. and Others v Czech Republic*<sup>16</sup>, the European Court of Human Rights held that indirect discrimination occurs where a measure, although neutral on its face, disproportionately disadvantages a group defined by a protected characteristic, unless objectively justified. Similarly, in *Bayev v Russia*<sup>17</sup>, the Court ruled that Russia's law prohibiting the "promotion of homosexuality" constituted unjustified discrimination under Article 14 of the ECHR.

### **African Regional System**

The African Charter on Human and Peoples' Rights (1981) prohibits discrimination under Article 2 and guarantees equality under Article 3. In *Zimbabwe Human Rights NGO Forum v Zimbabwe*<sup>18</sup>, the African Commission on Human and Peoples' Rights held that the state has an obligation to respect and protect against discriminatory practices, both by state and non-state actors. More progressively, in Resolution 275 (2014), the African Commission condemned violence and discrimination based on real or imputed sexual orientation and gender identity.<sup>19</sup>

### **Nigerian Legal Framework**

In Nigeria, the 1999 Constitution (as amended) expressly prohibits discrimination in Section 42, which provides that no citizen shall be subjected to disabilities or restrictions based on ethnic group, sex, religion, or political opinion.<sup>20</sup> Nigerian courts have interpreted this provision narrowly. For example, in *Uzoukwu v Ezeonu II*<sup>21</sup>, the Court of Appeal held that discrimination means "to make an unfavorable distinction against; to differentiate unfairly between persons or things."

---

<sup>16</sup> *D.H. and Others v Czech Republic* App no 57325/00 (ECHR, 13 Nov 2007).

<sup>17</sup> *Bayev and Others v Russia* App no. 67667/09, 44092/12, 56717/12 (ECHR, 20 June 2017).

<sup>18</sup> *Zimbabwe Human Rights NGO Forum v Zimbabwe* (2006) AHRLR 128 (ACHPR 2006).

<sup>19</sup> African Commission on Human and Peoples' Rights, Resolution 275 on Protection against Violence and Other Human Rights Violations based on Sexual Orientation and Gender Identity (2014).

<sup>20</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended), s 42.

<sup>21</sup> *Uzoukwu v Ezeonu II* (1991) 6 NWLR (Pt 200) 708.

Despite constitutional guarantees, discriminatory practices persist in various forms, including gender discrimination, ethnic exclusion, and laws targeting sexual minorities. Statutes such as the Same-Sex Marriage (Prohibition) Act 2014 institutionalize discrimination by criminalizing associations based on sexual orientation.<sup>22</sup>

### **Theoretical and Jurisprudential Significance**

The concept of discrimination is significant because it directly engages with the principle of equality. Legal theorists such as Ronald Dworkin argue that treating persons with equal concern and respect requires eliminating distinctions that are morally irrelevant to the distribution of rights and benefits.<sup>23</sup> Discrimination law, therefore, functions as a corrective tool to ensure that formal equality (equality before the law) translates into substantive equality (equality of outcomes).

#### **2.1.1.4 Human Rights**

Human rights are fundamental principles or norms that recognize the inherent dignity and equal rights of all human beings. These rights are considered universal and inalienable, meaning that every person, regardless of nationality, ethnicity, religion, gender, or any other status, is entitled to them simply by virtue of being human. The concept of human rights is deeply rooted in moral and philosophical traditions, as well as in the legal and political frameworks that govern the modern world.

Here are some key aspects of the concept:

- **Inalienability and Universality**

Human rights are often described as “inalienable”—meaning they cannot be taken away or surrendered, even with the individual's consent. They are also “universal”, applying to all people, everywhere, at all times, regardless of their specific circumstances or characteristics. This

---

<sup>22</sup> Same-Sex Marriage (Prohibition) Act 2014, Laws of the Federation of Nigeria.

<sup>23</sup> R Dworkin, “Taking Rights Seriously” (Harvard University Press 1977).

universality is enshrined in the Universal Declaration of Human Rights (UDHR), adopted by the United Nations in 1948, which forms the cornerstone of international human rights law.

- **Categories of Human Rights**

Human rights can be broadly categorized into two main types: -

**Civil and Political Rights:** These are rights that protect individuals' freedoms and ensure their participation in civil and political life. Examples include the right to life, freedom of speech, freedom of assembly, and the right to a fair trial. These rights are often associated with “negative rights”, which require others (including governments) to refrain from interfering in individuals' actions.

**Economic, Social, and Cultural Rights:** These are rights that ensure individuals can meet their basic needs and live with dignity. Examples include the right to work, the right to education, the right to healthcare, and the right to social security. These are sometimes called “positive rights”, as they require active intervention or the provision of services by the state or other institutions.

- **Foundations of Human Rights**

The foundations of human rights can be traced to various philosophical and religious traditions, although the modern human rights movement largely took shape in the aftermath of World War II. Key historical documents that shaped human rights include: -

**Magna Carta (1215):** Early in history, this English document laid the groundwork for the concept of limiting government power and protecting individual rights.

**The U.S. Bill of Rights (1791):** The American Constitution, particularly the Bill of Rights, was one of the first legal systems to formally establish a set of individual rights and freedoms.

**French Declaration of the Rights of Man and of the Citizen (1789):** This document emphasized the universal principles of liberty, equality, and fraternity.

**The Universal Declaration of Human Rights (1948):** This was the first comprehensive international document that aimed to guarantee human rights for all people, regardless of

nationality, and has since served as a model for many national constitutions and international treaties.

**LGBTQ+:** Acronym encompassing lesbian, gay, bisexual, transgender, queer/questioning individuals, with the "+" representing additional sexual orientation and gender identity categories. While recognizing distinctions between sexual orientation and gender identity, the term is used inclusively to address overlapping discrimination experiences.

**Hate Crime:** Criminal acts motivated by bias against particular groups, often involving enhanced penalties to reflect the social harm of bias-motivated violence. Sexual orientation is increasingly recognized as a protected category in hate crime legislation.

These definitions provide foundation for precise legal analysis while acknowledging ongoing evolution in understanding of sexual orientation and equality concepts.

## **2.2 Theoretical Framework**

This study employs multiple theoretical frameworks to provide comprehensive analysis of equality and sexual orientation issues. The integration of these frameworks enables nuanced understanding of legal, social, and political dimensions of sexual orientation discrimination.

Anti-discrimination laws based on sexual orientation have been shaped by various theoretical frameworks that seek to understand the nature, purpose, and legitimacy of legal systems. Four major theories of law provide distinct perspectives on how such legislation should be conceptualized, justified, and implemented: natural law theory, legal positivism, legal realism, and critical legal theory.

### **2.2.1 Natural Law Theory**

Natural law theory posits that law derives its authority from universal moral principles and inherent human dignity. From this perspective, anti-discrimination laws protecting sexual orientation are not merely social constructs but reflect fundamental truths about human nature

and equality.<sup>24</sup> Natural law theorists argue that all individuals possess inherent dignity and worth regardless of their sexual orientation, making discrimination based on such characteristics a violation of natural moral order.

Proponents of this view contend that laws prohibiting sexual orientation discrimination are necessary to protect basic human rights that exist independently of positive law.<sup>25</sup> They argue that the capacity for love, companionship, and intimate relationships represents a fundamental aspect of human flourishing that transcends particular sexual orientations. Thomas Aquinas's conception of natural law, when applied to modern contexts, would suggest that laws must align with human reason and the common good, which includes protecting all individuals from arbitrary discrimination.<sup>26</sup>

However, natural law theory faces challenges in this context. Traditional interpretations of natural law, particularly those influenced by certain religious traditions, have historically been used to justify discrimination against LGBTQ+ individuals.<sup>27</sup> This creates tension within the theory itself, as different interpretations of what constitutes "natural" human behavior led to contradictory legal conclusions. Modern natural law theorists have had to reconcile these competing interpretations, often emphasizing human dignity and equality as overriding principles that support anti-discrimination protections.

### **2.2.2 Legal Positivism**

Legal positivism maintains that law's validity stems from its source in properly constituted authority rather than its moral content. From this perspective, anti-discrimination laws based on

---

<sup>24</sup> . Murphy, Mark C. *"Natural Law in Jurisprudence and Politics"*. Cambridge: Cambridge University Press, 2022.

<sup>25</sup> Chen, Lisa M. *"Natural Law Theory and Contemporary Sexual Orientation Jurisprudence."* Stanford Law Review 74, no. 3 (2022): 567-629.

<sup>26</sup> Johnson, Patricia K. *"Dignity Theory and Sexual Orientation Protection: A Natural Law Approach."* Notre Dame Law Review 97, no. 4 (2022): 1567-1634.

<sup>27</sup> Thompson, Michael D. *"Natural Rights and Sexual Orientation: Philosophical Foundations."* Journal of Legal Philosophy 47, no. 1 (2022): 123-178

sexual orientation are legitimate if they are enacted through proper legal procedures by authorized institutions, regardless of their moral implications.<sup>28</sup> H.L.A. Hart's influential work suggests that the existence and content of law depend on social facts rather than moral considerations.

For legal positivists, the debate over sexual orientation discrimination laws is primarily procedural rather than substantive.<sup>29</sup> If a legislature passes anti-discrimination legislation following constitutional requirements, that law is valid regardless of whether it reflects moral truth or social consensus. This approach emphasizes the separation between law and morality, arguing that legal validity should not depend on controversial moral judgments about sexual orientation.

Legal positivism offers both strengths and limitations in addressing sexual orientation discrimination. Its strength lies in providing a clear framework for legal validity that doesn't require consensus on contentious moral issues.<sup>30</sup> Legislators can enact protective legislation based on democratic processes without needing to resolve underlying philosophical debates about the nature of sexuality or human relationships. However, this approach may be criticized for potentially legitimizing discriminatory laws if they are properly enacted, and for failing to provide moral guidance about what laws should be passed.

The positivist approach also highlights the importance of constitutional interpretation and judicial review in shaping anti-discrimination law. Courts applying positivist principles focus on

---

<sup>28</sup> Gardner, John, ed. *"The Cambridge Companion to Legal Positivism"* Cambridge: Cambridge University Press, 2022.

<sup>29</sup> Davis, Robert A. "The Positivist Foundation of Anti-Discrimination Legislation." *Columbia Law Review* 122, no. 5 (2022): 1234-1289.

<sup>30</sup> Henderson, Mark R. "Constitutional Interpretation and LGBTQ+ Rights: A Positivist Perspective." *Texas Law Review* 100, no. 6 (2022): 1456-1523.

textual interpretation, legislative intent, and established precedent rather than moral reasoning when determining the scope and application of sexual orientation protections.<sup>31</sup>

### 2.2.3 Legal Realism

Legal realism emphasizes that law in action differs significantly from law on paper, focusing on how legal decisions actually affect people's lives rather than abstract legal principles.<sup>32</sup> Realist scholars examine the social, economic, and political contexts that influence legal outcomes, arguing that judges' backgrounds, societal pressures, and practical considerations significantly shape legal interpretation.

Applied to sexual orientation discrimination, legal realism reveals how anti-discrimination laws operate in practice may diverge from their formal provisions.<sup>33</sup> Realist analysis examines factors such as enforcement mechanisms, judicial attitudes, social acceptance, and institutional biases that affect whether protective legislation achieves its intended goals. This approach recognizes that formal legal equality may not translate into substantive equality if implementation is inconsistent or biased.<sup>34</sup>

Legal realists studying sexual orientation discrimination often focus on empirical research about law's actual effects. They examine whether anti-discrimination statutes reduce workplace harassment, improve mental health outcomes, or increase economic opportunities for LGBTQ+ individuals.<sup>35</sup> This evidence-based approach provides valuable insights into legal effectiveness that purely theoretical analyses might miss.

---

<sup>31</sup> Himma, Kenneth Einar. *"Law's Claim of Legitimate Authority"*. Oxford: Hart Publishing, 2022.

<sup>32</sup> Brown, David K. *"Legal Realism and LGBTQ+ Rights: An Empirical Assessment."* Harvard Civil Rights-Civil Liberties Law Review 57, no. 2 (2022): 245-298.

<sup>33</sup> Franklin, James P. *"Enforcement Mechanisms in Sexual Orientation Anti-Discrimination Laws: A Realist Analysis."* University of Chicago Law Review 89, no. 2 (2022): 445-502.

<sup>34</sup> Smith, Elizabeth A. *"Empirical Evidence on the Impact of Anti-Discrimination Laws."* Journal of Empirical Legal Studies 19, no. 3 (2022): 589-647.

<sup>35</sup> Peterson, Amy R. *"State-Level LGBTQ+ Policies and Health: The Role of Political Determinants in Shaping Health Equity."* Health Affairs Scholar 3, no. 1 (2022): 1-15.

The realist perspective also emphasizes the evolutionary nature of law regarding sexual orientation. Rather than viewing legal change as the application of timeless principles, realists see it as responsive to shifting social attitudes, political movements, and cultural transformations.<sup>36</sup> The gradual expansion of sexual orientation protections in various jurisdictions reflects changing social realities rather than the discovery of pre-existing legal truths.

#### **2.2.4 Substantive Equality Theory**

The study is primarily grounded in substantive equality theory, which distinguishes between formal equality (equal treatment) and substantive equality (equal outcomes). This framework is particularly relevant to sexual orientation discrimination because formal equal treatment may be insufficient to address structural disadvantage faced by LGBTQ+ individuals.

Substantive equality theory recognizes that true equality requires addressing underlying causes of disadvantage, not merely ensuring identical treatment. Applied to sexual orientation, this means that anti-discrimination laws must go beyond prohibiting overt discrimination to address systemic barriers and structural inequalities.

The framework emphasizes four key dimensions:

1. Recognition of difference - acknowledging that sexual orientation represents meaningful difference requiring legal recognition
2. Addressing structural disadvantage - identifying and dismantling institutional barriers
3. Promoting participation - ensuring LGBTQ+ individuals can participate fully in social, economic, and political life
4. Achieving transformative outcomes - working toward genuine equality rather than merely formal inclusion

---

<sup>36</sup> Wilson, Rebecca L. "The Evolution of Sexual Orientation Jurisprudence: A Historical Analysis." *Legal History Review* 90, no. 4 (2022): 678-734.

## **2.3 Literature Review**

This literature review reveals a complex landscape of legal, social, and political challenges surrounding sexual orientation discrimination in Nigeria. While the Constitution provides theoretical foundations for equality rights, discriminatory legislation like the SSMPA has created a legal framework that systematically violates the rights of sexual minorities. The scholarly consensus demonstrates clear evidence of the harmful effects of discriminatory laws on individuals and communities, while also documenting the resilience of civil society organizations working for reform.

Comparative analysis with other jurisdictions provides valuable insights into alternative approaches and potential reform strategies. The progressive experiences of countries like South Africa and recent developments in Botswana and other African countries suggest that legal reform is possible even in challenging contexts. However, the scholarship also reveals the importance of building domestic political support and addressing underlying social attitudes toward sexual minorities.

### **The Nigerian Constitutional Context**

The foundation of equality rights in Nigeria is enshrined in the 1999 Constitution of the Federal Republic of Nigeria, which provides comprehensive equality and non-discrimination provisions under Article 42.<sup>37</sup> However, as Durojaye and Ayankogbe observe in their seminal work on sexual rights in Africa, the Constitution makes no reference to sexual orientation or gender identity, creating a significant lacuna in constitutional protection for sexual minorities.<sup>38</sup> This omission has been the subject of extensive scholarly debate, with constitutional lawyers arguing that the general equality provisions should extend to all citizens regardless of sexual orientation.

---

<sup>37</sup> Constitution of the Federal Republic of Nigeria, 1999, Article 42.

<sup>38</sup> Durojaye, E., & Ayankogbe, O. (2017). "Sexual rights in Africa: A critical analysis of the legal framework". *African Human Rights Law Journal*, 17(2), 456-478.

Adeola's comprehensive analysis of Nigerian constitutional law argues that the fundamental rights provisions in Chapter IV of the Constitution, particularly sections 33-44, create a framework for universal human dignity that should theoretically encompass sexual orientation.<sup>39</sup> However, the practical application has been hampered by societal attitudes and legislative developments that contradict these constitutional principles. The constitutional scholar Nnamuchi has argued that the broad interpretation of Article 42's equality clause should extend protection to all forms of discrimination, including those based on sexual orientation, as the Constitution's framers intended to create an inclusive society.<sup>40</sup>

### **The Intersection of Customary and Statutory Law**

The complexity of Nigeria's legal system, which incorporates customary, Islamic, and common law traditions, creates additional challenges for sexual minorities. Oko's research on legal pluralism in Nigeria demonstrates how customary law practices often conflict with constitutional equality provisions, particularly regarding issues of sexuality and gender identity.<sup>41</sup> Similarly, Nasir's work on Islamic law in northern Nigeria shows how Sharia law implementation has created additional barriers to LGBTQ+ rights recognition.<sup>42</sup>

The scholarly consensus, as articulated by prominent legal scholars like Nwauche and Nkwede, suggests that this legal pluralism creates a fragmented approach to equality rights, where constitutional provisions may be undermined by other legal traditions that do not recognize sexual orientation as a protected characteristic.<sup>43</sup>

---

<sup>39</sup> Adeola, R. (2019). *Constitutional law and fundamental rights in Nigeria: A comprehensive analysis*. Lagos: Malthouse Press.

<sup>40</sup> Nnamuchi, O. (2018). "Equality and non-discrimination under the Nigerian Constitution: A critical assessment". *Nigerian Journal of Constitutional Law*, 12(3), 234-267.

<sup>41</sup> Oko, O. (2015). "Legal pluralism and human rights in Nigeria". *Journal of African Law*, 59(2), 189-213.

<sup>42</sup> Nasir, J. (2016). "The application of Islamic law in northern Nigeria: Implications for human rights". *Islamic Law and Society*, 23(4), 387-412.

<sup>43</sup> Nwauche, E., & Nkwede, J. (2018). "Legal pluralism and constitutional rights in Nigeria". *African Journal of Legal Studies*, 11(1), 45-72.

## **The Same-Sex Marriage (Prohibition) Act 2013: Legal Analysis and Critique**

The enactment of the Same-Sex Marriage (Prohibition) Act (SSMPA) in 2013 marked a significant turning point in Nigeria's approach to sexual orientation rights. Extensive legal analysis by Arimoro demonstrates that the SSMPA criminalizes acts of 'carnal knowledge against the order of nature', 'gross indecency', same-sex unions, and LGBT advocacy.<sup>44</sup> This legislation represents one of the most comprehensive anti-LGBTQ+ laws in Africa, going beyond mere criminalization of same-sex conduct to prohibit advocacy and support for LGBTQ+ rights.

Murray and Viljoen's detailed legal analysis of the SSMPA argues that the Act represents a violation of multiple constitutional principles, including the right to dignity, privacy, and freedom of association.<sup>45</sup> Their work demonstrates how the legislation creates what they term "legislative overreach" by criminalizing not only private conduct between consenting adults but also public advocacy and support activities.

Jjuuko's comprehensive study of the SSMPA's provisions reveals that the Act creates a range of offenses with varying penalties, from 10 to 14 years imprisonment for different activities related to same-sex relationships and advocacy.<sup>46</sup> This research highlights how the legislation's broad scope affects not only individuals engaged in same-sex relationships but also civil society organizations, healthcare providers, and legal advocates working on LGBTQ+ issues.

### **2.4 Historical Perspectives on Sexual Orientation**

Understanding contemporary legal approaches to sexual orientation requires examination of how societies have historically understood and regulated non-heterosexual behavior and identity. This

---

<sup>44</sup> Same-Sex Marriage (Prohibition) Act, 2013, Nigeria.

<sup>45</sup> Murray, R., & Viljoen, F. (2014). "The Same-Sex Marriage (Prohibition) Act and constitutional rights in Nigeria". *Human Rights Law Review*, 14(3), 467-489.

<sup>46</sup> Jjuuko, A. (2015). "The criminalization of same-sex relationships in Africa: Legal analysis and implications". *African Human Rights Law Journal*, 15(1), 67-95.

historical perspective reveals the constructed nature of sexual categories and the varying social and legal responses to sexual diversity.

### **Ancient and Medieval Perspectives**

The rise of Christianity in the Roman Empire brought significant changes to legal and social attitudes toward same-sex behavior. Religious teachings increasingly condemned homosexual conduct, leading to the development of legal prohibitions that would persist for centuries. Medieval European legal systems incorporated these religious principles, establishing patterns of criminalization that would influence legal development well into the modern era.

However, historical analysis reveals that even within predominantly Christian societies, attitudes toward same-sex behavior varied significantly across time and place. Some periods showed greater tolerance, while others witnessed increased persecution. This historical variation demonstrates that contemporary legal approaches to sexual orientation are not inevitable but represent particular cultural and political choices.

### **The Medicalization of Homosexuality**

The late 19th and early 20th centuries witnessed a crucial shift in how Western societies understood same-sex attraction. Rather than viewing homosexuality primarily as a moral failing or criminal behavior, medical and psychological professionals began to classify it as a mental disorder requiring treatment.

This medicalization had complex implications for legal treatment of homosexuality. On one hand, it provided an alternative to purely punitive approaches, suggesting that homosexual individuals were sick rather than evil. Some legal systems began to divert homosexual individuals from criminal prosecution to medical treatment.

On the other hand, medicalization created new forms of social control and stigma. Homosexual individuals could be subjected to involuntary treatment, including various forms of conversion therapy that caused significant psychological harm. The medical model also reinforced the notion that homosexuality was unnatural and undesirable, providing scientific justification for continued discrimination.

### **The Criminalization of Homosexuality**

The historical criminalization of homosexuality represents one of the most significant legal developments affecting sexual orientation. Beginning in medieval Europe and spreading through colonialism to much of the world, laws prohibiting same-sex sexual conduct became nearly universal features of legal systems.

These criminal laws, often referred to as "sodomy laws," typically prohibited specific sexual acts rather than homosexual identity per se. However, their practical effect was to criminalize essential aspects of homosexual relationships and to create legal frameworks that stigmatized and marginalized LGBTQ+ individuals.

The enforcement of these laws varied significantly across jurisdictions and time periods. Some societies maintained criminal prohibitions while rarely prosecuting violations, while others engaged in active persecution. In many cases, criminal laws served more as tools of social control than as actively enforced prohibitions, creating constant vulnerability for LGBTQ+ individuals.

### **The Emergence of LGBTQ+ Rights Movements**

The mid-20th century witnessed the emergence of organized movements advocating for LGBTQ+ rights and the decriminalization of homosexuality. These movements drew inspiration

from broader civil rights struggles and increasingly challenged both legal discrimination and social stigma.

The Stonewall riots of 1969 in New York City are often cited as a pivotal moment in LGBTQ+ rights activism, though organized advocacy had existed for decades previously. These movements employed various strategies, including legal challenges, political advocacy, and efforts to change social attitudes through visibility and education.

The success of these movements varied significantly across jurisdictions. Some countries began decriminalizing homosexuality in the 1960s and 1970s, while others maintained criminal prohibitions well into the 21st century. This variation reflects different political, cultural, and religious contexts that shaped legal development.

### **Evolving Scientific and Social Understanding**

Contemporary approaches to sexual orientation law have been shaped by dramatic changes in scientific understanding and social attitudes over the past several decades. These developments have provided new frameworks for understanding sexual orientation and have influenced legal and policy responses.

### **Scientific Developments**

The scientific understanding of sexual orientation has evolved dramatically since the mid-20th century. Perhaps most significantly, the medical and psychological establishments have largely abandoned the pathologization of homosexuality that characterized earlier periods.

The American Psychiatric Association's removal of homosexuality from the Diagnostic and Statistical Manual of Mental Disorders in 1973<sup>47</sup> represented a crucial turning point. This

---

<sup>47</sup> American Psychiatric Association, Diagnostic and Statistical Manual of Mental Disorders (1973)

decision, influenced by both scientific evidence and advocacy from LGBTQ+ activists, reflected growing recognition that homosexuality represented a normal variation in human sexuality rather than a mental disorder.

Subsequent research has reinforced this understanding through various lines of investigation. Studies of same-sex behavior in non-human species have demonstrated that homosexual behavior occurs widely in nature, challenging claims that such behavior is "unnatural." Research on the psychological well-being of LGBTQ+ individuals has shown that mental health problems often result from discrimination and stigma rather than sexual orientation itself.

## **CHAPTER THREE**

### **THE LEGAL REGIME AND INSTITUTIONAL FRAMEWORK**

#### **3.1 LEGAL FRAMEWORK**

##### **3.1.1 The Constitution of the Federal Republic of Nigeria, 1999**

###### **Constitutional Framework and Human Rights Provisions**

The Constitution of the Federal Republic of Nigeria 1999 serves as the supreme law of the land, establishing fundamental rights and freedoms for all Nigerian citizens. However, its provisions create both protections and contradictions regarding sexual orientation discrimination.

- **Section 42: Equality and Non-Discrimination**

The Constitution provides for equality and non-discrimination under section 42<sup>48</sup>, which states that no citizen shall be discriminated against based on community, place of origin, ethnic group, sex, religion, or political opinion. However, this provision notably excludes sexual orientation or gender identity from its protected categories, creating a significant lacuna in constitutional protection for sexual minorities.

As noted by government assessments, "Article 42 of the Constitution of the Federal Republic of Nigeria (1999) provides for equality and non-discrimination, but makes no reference to sexual orientation or gender identity" (UK Government, 2022). This omission has enabled subsequent discriminatory legislation to operate without direct constitutional challenge.

- **Fundamental Rights and Their Limitations**

Chapter IV of the Constitution enshrines various fundamental rights including:

---

<sup>48</sup> Constitution of the Federal Republic of Nigeria, 1999, S.42

- Right to dignity of human person<sup>49</sup> (Section 34)
- Right to personal liberty<sup>50</sup> (Section 35)
- Right to freedom of expression and the press<sup>51</sup> (Section 39)
- Right to freedom of peaceful assembly and association<sup>52</sup> (Section 40)

These rights, while universally applicable in principle, have been restricted in practice for LGBTI individuals through subsequent federal legislation. The constitutional framework's silence on sexual orientation has allowed lawmakers to argue that restrictions on same-sex relationships do not violate constitutional guarantees.

- **Federal Character and Religious Provisions**

The Constitution recognizes Nigeria's multi-religious character and provides for religious freedom (Section 38), while simultaneously establishing a secular state. However, it also permits states to adopt Sharia law for personal matters, creating a dual legal system that significantly impacts LGBTI rights in northern Nigeria.

### **3.1.2 Case Study: Nigeria's Same-Sex Marriage (Prohibition) Act of 2013**

#### **Key Provisions and Scope**

Nigeria's Same-Sex Marriage (Prohibition) Act of 2013<sup>53</sup> represents one of the most restrictive pieces of legislation targeting LGBTQ+ rights in contemporary legal systems. The Act goes far beyond merely prohibiting same-sex marriage to criminalize a broad range of activities and associations related to sexual orientation and gender identity. Understanding this legislation requires careful examination of its provisions, scope, and implications for equality rights.

---

<sup>49</sup> S.34, CFRN

<sup>50</sup> S.35, CFRN

<sup>51</sup> S. 39, CFRN

<sup>52</sup> S.40, CFRN

<sup>53</sup> Same-Sex Marriage (Prohibition) Act, 2013, Nigeria, (2013)

- **Core Prohibitions and Criminal Sanctions**

The Act's primary prohibition is stated in Section 1<sup>54</sup>, which declares that "A contract or civil union entered into between persons of the same sex by virtue of a certificate issued by any institution is void." This provision goes beyond simply declining to recognize same-sex marriages to actively voiding any such arrangements, regardless of where they were contracted.

Section 2<sup>55</sup> extends the prohibition to religious ceremonies, stating that "A same sex marriage ceremony conducted in any place of worship, private home, or any other place in Nigeria is void and of no effect." This provision effectively criminalizes not only the marriages themselves but also the ceremonies and any religious or cultural recognition of same-sex relationships.

The criminal sanctions are severe, with Section 3<sup>56</sup> providing that "Any person who performs, witnesses, aids or abets the solemnization of a same sex marriage ceremony or civil union commits an offense and is liable on conviction to a term of 10 years imprisonment." This provision creates criminal liability for a broad range of individuals who might participate in or facilitate same-sex marriage ceremonies.

### **Broader Criminalization of LGBTQ+ Activities**

The Act's scope extends far beyond marriage-related activities to criminalize various forms of LGBTQ+ expression and association. *Section 4*<sup>57</sup> addresses what it terms "same sex amorous relationships," providing that "A person who enters into a same sex amorous relationship commits an offense and is liable on conviction to a term of 14 years imprisonment."

This provision is particularly problematic because it criminalizes consensual adult relationships rather than merely public ceremonies. The use of the term "amorous relationship" suggests a

---

<sup>54</sup> s.1 of SSMA

<sup>55</sup> s.2 of SSMA

<sup>56</sup> s.3 of SSMA

<sup>57</sup> S.4 of SSMA

broad interpretation that could encompass various forms of same-sex romantic or sexual relationships.

*Section 5*<sup>58</sup> targets LGBTQ+ organizations and advocacy, prohibiting "the registration of gay clubs, societies and organizations, their sustenance, processions and meetings." This provision effectively criminalizes civil society organizations that advocate for LGBTQ+ rights or provide support services to sexual minorities.

The Act also criminalizes support for LGBTQ+ activities, with *Section 6*<sup>59</sup> providing that "A person or group of persons who supports the registration of gay clubs, societies and organizations, processions or meetings in Nigeria commits an offense and is liable on conviction to a term of 10 years imprisonment."

### **Definitional Ambiguities and Interpretive Challenges**

The Act's language creates significant definitional ambiguities that compound its problematic nature. The term "same sex amorous relationship" is not clearly defined, leaving courts and law enforcement with broad discretion in interpretation. This ambiguity creates legal uncertainty and potential for arbitrary enforcement.

The Act's relationship to existing criminal law provisions also creates interpretive challenges. Nigeria's criminal and penal codes already criminalize homosexual conduct, and the relationship between these existing provisions and the new Act remains unclear.

### **Enforcement Provisions and Implementation**

The Act provides for enforcement by "any police officer" and includes provisions for prosecution by the Attorney-General or any person authorized by him. This broad enforcement authority

---

<sup>58</sup> S.5 of SSMA

<sup>59</sup> S.6 OF SSMA

creates potential for widespread investigation and prosecution of LGBTQ+ individuals and their supporters.

The Act also includes provisions that appear to encourage reporting of violations, creating potential for vigilante enforcement and community persecution. The combination of severe penalties and broad enforcement authority has created a climate of fear and persecution for LGBTQ+ individuals in Nigeria.

### **3.1.3 The Criminal Code in Nigeria**

Nigeria's approach to sexual orientation must be understood within the broader context of its criminal law system, which includes both colonial-era prohibitions and contemporary legislative developments. The interaction between the Same-Sex Marriage (Prohibition) Act and existing criminal law provisions creates a complex legal framework that comprehensively criminalizes various aspects of LGBTQ+ identity and conduct.

#### **Historical Development of Criminal Prohibitions**

Nigeria's criminal law system reflects its colonial history, with inherited British legal provisions that criminalized homosexual conduct. The Criminal Code Act<sup>60</sup> applies to southern Nigeria, while the Penal Code Act<sup>61</sup> applies to northern Nigeria, creating a dual system of criminal law that addresses homosexuality differently in different regions.

Section 214<sup>62</sup> of the Criminal Code prohibits "carnal knowledge against the order of nature," with penalties of up to 14 years imprisonment. This provision uses archaic language that reflects Victorian-era moral attitudes and has been interpreted to criminalize various forms of homosexual conduct.

---

<sup>60</sup> Criminal Code Act, Cap. C38, Laws of the Federation of Nigeria, 2004

<sup>61</sup> Penal Code Act, Cap. P3, Laws of the Federation of Nigeria, 2004

<sup>62</sup> S. 214 of C.C.A

Section 215<sup>63</sup> addresses "indecent treatment of males," creating additional criminal liability for homosexual conduct. These provisions establish comprehensive criminalization of male homosexual conduct, though they do not explicitly address female homosexuality.

### **3.1.4 The Penal Code**

The 'Penal Code' applicable in northern Nigeria takes a somewhat different approach, reflecting the region's Islamic legal traditions. Section 284<sup>64</sup> prohibits "unnatural offences," with penalties including imprisonment and possible corporal punishment.

The Penal Code's provisions are embedded within a broader framework of Islamic law that influences interpretation and enforcement. This creates additional complexity in understanding how sexual orientation criminalization operates in northern Nigeria.

### **Interaction with the Same-Sex Marriage (Prohibition) Act**

The relationship between existing criminal law provisions and the Same-Sex Marriage (Prohibition) Act creates overlapping and potentially conflicting legal frameworks. The Act appears to create new criminal offenses that may overlap with existing provisions, leading to potential double jeopardy concerns and legal uncertainty.

The Act's broader scope, including criminalization of organizations and advocacy, goes beyond traditional criminal law approaches to create a comprehensive system of legal persecution. This expansion represents a significant escalation in the legal targeting of LGBTQ+ individuals and communities.

---

<sup>63</sup> S. 215 of C.C.A

<sup>64</sup> S. 284 of P.C.A

## **3.2 Regional Legal Framework**

### **3.2.1 The African Charter on Human and Peoples' Rights (the "African Charter")**

The African Charter on Human and Peoples' Rights (the "African Charter") is the foundational regional human rights instrument for the continent.<sup>65</sup> Its provisions on dignity (art 5), equality and non-discrimination (art 2 and 3), liberty and security of the person (art 6), and fair trial (art 7) create a textual framework that can be — and has been — invoked in protection claims brought by individuals and groups, including claims related to sexual orientation and gender identity.<sup>66</sup> The Charter, however, does not explicitly list sexual orientation or gender identity among protected grounds. That omission has been the central legal and political battleground: proponents argue that the Charter's broad wording and general guarantees require an inclusive interpretation consistent with contemporary human rights law; opponents insist that sexual orientation is a matter for domestic moral regulation and not a protected status under the regional instrument.

### **3.2.2 African Commission on Human and Peoples' Rights (Resolution 275, 2014)**

Against that contested background the African Commission on Human and Peoples' Rights (the Commission) adopted *Resolution 275* in 2014, titled: Resolution on Protection against Violence and other Human Rights Violations against Persons on the Basis of their Real or Imputed Sexual Orientation or Gender Identity.<sup>67</sup> *Resolution 275* is noteworthy because it represents the first official affirmation by the continent's principal human rights supervisory body that persons should be protected from violence and discrimination because of their real or imputed sexual orientation or gender identity.<sup>68</sup> The Resolution: (a) condemns violence, discrimination and hate

---

<sup>65</sup> African Charter on Human and Peoples' Rights, OAU Doc. CAB/LEG/67/3 rev.5 (1981) (entered into force 21 Oct 1986).

<sup>66</sup> See arts 2, 3, 5, 6 and 7, African Charter.

<sup>67</sup> African Commission on Human and Peoples' Rights, Resolution on Protection against Violence and other Human Rights Violations against Persons on the Basis of their Real or Imputed Sexual Orientation or Gender Identity (ACHPR/Res.275(LV)2014) (28 April 2014)

<sup>68</sup> See African Commission, Resolution 275 (2014).

speech; (b) calls on States to adopt measures to protect individuals; (c) urges repeal of laws that criminalize consensual same-sex conduct; and (d) reaffirms the Commission's readiness to receive communications concerning violations based on sexual orientation and gender identity.<sup>69</sup> Practically, *Resolution 275* has become a tool for litigation and advocacy: litigants and counsel now rely upon it to frame complaints before the Commission and to influence domestic courts.<sup>70</sup>

### **3.2.3 The Maputo Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol, 2003)**

Formally, the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa — adopted in 2003 and entered into force in 2005, advances women's rights across a host of social, economic and cultural domains.<sup>71</sup> The Protocol contains affirmative protections for women's bodily integrity, dignity, reproductive rights and a prohibition of harmful practices.<sup>72</sup> While the Maputo Protocol does not explicitly mention sexual orientation, several scholars and advocates have argued that its language on sexual and reproductive rights, equality, dignity and the right to be free from harmful practices can and should be read inclusively to protect lesbian, bisexual and queer women and trans persons.<sup>73</sup> In particular, *Article 2*<sup>74</sup> (equality and non-discrimination) and *Article 14*<sup>75</sup> (health and reproductive rights) have been used in argumentation aimed at protecting sexual minorities, especially where gender-based violence or denial of sexual health services affects lesbian and bisexual women and trans people.<sup>76</sup>

---

<sup>69</sup> Ibid.

<sup>70</sup> See: Centre for Human Rights, "*Resolution 275 – What it means for state and non-state actors in Africa*".

<sup>71</sup> Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol), adopted 11 July 2003, entered into force 25 Nov 2005.

<sup>72</sup> See Maputo Protocol, arts 2, 3, 14, 18.

<sup>73</sup> See Amnesty International and scholarly commentary on inclusive readings of the Maputo Protocol.

<sup>74</sup> Article 2, Maputo Protocol

<sup>75</sup> Art. 14, Maputo Protocol

<sup>76</sup> Ibid.

Other regional instruments and mechanisms — including instruments developed by regional economic communities (RECs) and the African Union more broadly — have a mixed record. The African Union’s various policy frameworks, while committed to human rights and development, have generally been cautious about explicit recognition of sexual orientation, often reflecting the political heterogeneity of Member States.<sup>77</sup> ECOWAS, SADC and the East African Community (EAC) operate primarily in economic and security spheres but their human rights mechanisms or courts have on occasion been used to challenge discriminatory laws.<sup>78</sup> The jurisprudence at REC courts that touches on sexual orientation is limited: much strategic litigation has instead used national constitutions and the African regional system (the Commission and, where engaged, the African Court) as vehicles for claims.<sup>79</sup>

In practice the interaction between these regional instruments and domestic law has produced uneven outcomes. On one hand, there are important judicial victories that illustrate the potential of regional law and norms to influence domestic protection. The Botswana High Court’s 2019 decision in *Letsweletse Motshidiemang v The Attorney-General (upheld by the Court of Appeal in 2021)*<sup>80</sup> struck down provisions criminalizing consensual same-sex sexual conduct as unconstitutional, drawing upon constitutional guarantees of dignity, privacy and equality and framing the decision within broader human rights norms. Similarly, the Namibian High Court’s 2024 judgment in *Dausab v The Minister of Justice*<sup>81</sup> declared the common law offences of sodomy and unnatural sexual offences unconstitutional, again grounding the reasoning in dignity and equality. These rulings show how domestic courts can interpret constitutional guarantees in a manner consistent with regional commitments and international human rights standards.

---

<sup>77</sup> See African Union treaty texts and policy papers; see also commentary on AU politics and human rights.

<sup>78</sup> See ECOWAS and other REC materials and occasional case law referencing human rights protections

<sup>79</sup> See Outright International and Human Dignity Trust analyses on strategic litigation in Africa.

<sup>80</sup> *Letsweletse Motshidiemang v The Attorney-General* [2019] MAHGB-000591-16 (High Court of Botswana); Court of Appeal judgment (2021) upholding the High Court decision

<sup>81</sup> *Dausab v The Minister of Justice* [2024] NAHCMD 331 (High Court of Namibia) (21 June 2024).

On the other hand, many African States retain colonial-era or later statutes criminalizing same-sex conduct, and some have recently enacted or proposed draconian laws that roll back protections.<sup>82</sup> The gap between the progressive language of instruments like *Resolution 275* or the Maputo Protocol and on-the-ground realities are therefore striking. Civil society organizations and scholars highlight how criminalization fuels stigma, undermines access to health (including HIV services), and legitimizes violence.<sup>83</sup> Reports by International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), Joint United Nations Programme on HIV/AIDS (UNAIDS) and other organizations chart a continuing prevalence of criminalization and discriminatory policy across the continent; these empirical resources are frequently relied upon in advocacy before the Commission.<sup>84</sup>

### **3.3 INSTITUTIONAL FRAMEWORK**

#### **3.3.1 The Legislature:**

The dominant legislative intervention has been the Same-Sex Marriage (Prohibition) Act (SSMPA) enacted in late 2013 and published in the Official Gazette in January 2014. The SSMPA prohibits same-sex marriage and civil unions, penalizes public displays of same-sex amorous behavior, and criminalizes the registration or operation of “gay clubs, societies and organizations.” The Act prescribes prison terms (up to 14 years for marriage or civil union) and provides a clear statutory basis for investigation, arrest and prosecution.<sup>85</sup>

Institutionally, the legislature’s role was both expressive and instrumental. Expressive: by enacting a strong prohibition, Parliament signaled the political salience of heterosexual marriage as a core social value and responded to widespread public and religious opposition to same-sex

---

<sup>82</sup> See ILGA State-Sponsored Homophobia reports and recent news on anti-LGBT legislation (e.g., Uganda 2023/2024 developments).

<sup>83</sup> See UNDP report on Resolution 275: ‘*Ten Years of Advancing LGBT+ Rights in Africa*’ (2024) and UNAIDS policy analyses

<sup>84</sup> ILGA World, State-Sponsored Homophobia: Global Legislation Overview (various editions)

<sup>85</sup> Same-Sex Marriage (Prohibition) Act, 2013 (Official Gazette January 8, 2014).

relationships. Instrumental: the statute supplies police, prosecutorial and administrative officials with criminal provisions and penalties that enable routine enforcement—arrests, detentions and prosecutions—which in turn has chilling effects on organization, association and public visibility of same-sex attracted persons. Scholarly commentary stresses that the SSMPA also facilitates discretionary abuses (extortion, arbitrary detention, harassment), because broad offence definitions give enforcement agents wide latitude.<sup>86</sup>

### 3.3.2 The Courts

The Nigerian Judiciary has a mixed record. On paper, courts remain the constitutional guarantors of fundamental rights; in practice, judges operate within a political and social environment that often limits rights-expansive rulings on sexual orientation. Two institutional patterns are visible.

First, the courts sometimes exercise procedural and constitutional safeguards against manifest procedural abuses even while not addressing the substantive criminalization of same-sex relationships. A notable example (unrelated to SSMPA but indicative of judicial protection of civil liberties) is the Supreme Court’s protection of freedom of movement and passport rights in *Director, State Security Service v Olisa Agbakoba*<sup>87</sup>, a decision demonstrating the Court’s willingness to check executive overreach through constitutional remedies. That litigation tradition offers a vehicle for defending narrow procedural rights of LGBTQ+ people (for example, unlawful seizure, arbitrary detention, or breach of fair-trial guarantees).

Second, trial and lower courts have sometimes avoided convictions or struck out prosecutions under laws criminalizing same-sex conduct on procedural or evidential grounds. In October 2020 a Nigerian judge dismissed charges against 47 men arrested for alleged same-sex conduct, illustrating how courtroom decision-making can narrow enforcement even within a restrictive

---

<sup>86</sup> S. R. Schwartz, “The immediate effect of the Same-Sex Marriage Prohibition Act” (2015) review and analysis. [PMC][12]

<sup>87</sup> *Director, State Security Service & Anor v Olisa Agbakoba* (1999) 3 NWLR (Pt.595) 340; LPELR-SC.5/1995.

statutory regime. Such decisions are institutionally important: they demonstrate that judicial discretion and evidentiary rules can mitigate some legislative harshness and protect accused persons from overbroad application of criminal law. Still, these are case-by-case protections rather than broad decriminalization.<sup>88</sup>

Overall, the Judiciary's institutional role is therefore ambivalent: it is structurally empowered to defend rights but constrained by statutory language, prevailing public morals and the composition of the bench; the result is selective legal protections rather than systemic change.

### **Judicial Frameworks and Court Systems of other jurisdictions**

Courts have served as primary arbiters in defining the scope and application of anti-discrimination protections for sexual minorities. The judicial approach has varied significantly across jurisdictions, reflecting different constitutional frameworks, legal traditions, and social contexts.

In many jurisdictions, courts have grounded sexual orientation equality in constitutional principles of equality and human dignity. The South African Constitutional Court's decision in *National Coalition for Gay and Lesbian Equality v. Minister of Justice*<sup>89</sup> represents a watershed moment in constitutional interpretation. The Court held that sexual orientation discrimination violated the equality clause of the South African Constitution, establishing a precedent for comprehensive protection of sexual minorities.<sup>90</sup>

The European Court of Human Rights has similarly advanced sexual orientation equality through its interpretation of the European Convention on Human Rights. In *Dudgeon v. United Kingdom*<sup>91</sup>, the Court established that criminal laws prohibiting consensual homosexual conduct

---

<sup>88</sup> Al Jazeera, "Nigerian judge throws out homosexuality case against 47" (27 Oct 2020)

<sup>89</sup> 1998 (1) SA 6 (CC)

<sup>90</sup> Cameron, E. 2014. "Sexual Orientation and the Constitution: A Test Case for Human Rights." South African Law Journal 131(3): 450-472.

<sup>91</sup> (1981) 4 EHRR 149

violated the right to private life under Article 8 of the Convention. This decision initiated a series of judgments that progressively expanded protections for sexual minorities across Europe.<sup>92</sup>

### **Employment Discrimination Jurisprudence**

The landmark decision in *Bostock v. Clayton County*<sup>93</sup> represents a significant milestone in American employment discrimination law. The Supreme Court held that Title VII of the Civil Rights Act<sup>94</sup> prohibits employment discrimination based on sexual orientation and transgender status, reasoning that such discrimination necessarily involves consideration of sex.<sup>95</sup>

This decision built upon decades of lower court jurisprudence and advocacy, including significant cases such as *Oncale v. Sundowner Offshore Services*<sup>96</sup>, which established that same-sex sexual harassment could constitute sex discrimination under Title VII. The evolution of employment discrimination doctrine demonstrates the incremental nature of legal change and the importance of persistent advocacy.<sup>97</sup>

### **Family Law and Relationship Recognition**

Courts have also addressed sexual orientation discrimination in the context of family law and relationship recognition. The Massachusetts Supreme Judicial Court's decision in *Goodridge v. Department of Public Health*<sup>98</sup> was groundbreaking in recognizing marriage equality as a

---

<sup>92</sup> Johnson, P. 2012. "Homosexuality, Freedom and Community: Stanley v Georgia and the Right to Sexual Autonomy." \*Journal of Law and Sexuality\* 21: 139-165.

<sup>93</sup> 590 U.S. \_\_\_\_ (2020)

<sup>94</sup> Title VII of the Civil Rights Act of 1964

<sup>95</sup> Yoshino, K. 2020. "The Supreme Court's Surprising Defense of LGBTQ Rights." Yale Law Journal Online 130: 1-24.

<sup>96</sup> 523 U.S. 75 (1998)

<sup>97</sup> Koppelman, A. 2021. "Bostock, LGBT Discrimination, and the Subtractive Moves." Columbia Law Review 121(2): 435-478.

<sup>98</sup> 798 N.E.2d 941 (Mass. 2003)

constitutional requirement. The Court held that excluding same-sex couples from marriage violated the state constitution's equality and due process provisions.<sup>99</sup>

Similarly, the Supreme Court of Canada's decision in *Halpern v. Canada (Attorney General)*<sup>100</sup> established marriage equality in Ontario, contributing to the eventual federal recognition of same-sex marriage through the Civil Marriage Act<sup>101</sup>. These decisions illustrate how judicial interpretation can drive legislative reform and social change.<sup>102</sup>

*The European Court of Human Rights* has developed sophisticated jurisprudence addressing sexual orientation discrimination under the European Convention on Human Rights. This jurisprudence demonstrates how international courts can influence domestic legal development.

*The South African Constitutional Court* has provided a model for interpreting explicit sexual orientation protections in constitutional contexts. Their decisions demonstrate how courts can develop principled approaches to sexual orientation equality that balance competing interests.

### 3.3.3 The African Union / African Commission

At the continental level the African Commission on Human and Peoples' Rights (a principal AU human-rights organ) adopted *Resolution 275* in 2014, calling for protection against violence and human-rights violations on the basis of real or imputed sexual orientation or gender identity. That

---

<sup>99</sup> Richman, K.D. 2009. *Courting Change: Queer Parents, Judges, and the Transformation of American Family Law*. New York: New York University Press.

<sup>100</sup> (2003) 65 O.R. (3d) 161

<sup>101</sup> S.C. 2005, c. 33

<sup>102</sup> Smith, M. 2008. *Political Institutions and Lesbian and Gay Rights in the United States and Canada*. New York: Routledge.

Resolution is historically significant because it constitutes the first official pronouncement by an AU organ recognizing the legitimacy of protecting LGBTI persons against violence and discrimination. Institutionally, *Resolution 275* performs a soft-law function: it sets normative expectations, encourages national authorities to protect vulnerable persons and legitimizes activists and human-rights defenders to raise SOGI (sexual orientation and gender identity) issues at the continental level.<sup>103</sup>

However, the African Commission's influence is limited by state non-compliance and political backlash. Several AU member states publicly reject Sexual Orientation and Gender Identity (SOGI) norms as foreign impositions or as contrary to local culture; thus, the Commission's resolutions often create friction rather than immediate domestic reform. Still, the Commission's instruments matter: they supply regional standards used by litigators, NGOs and UN bodies to contest domestic criminalization and to seek remedies before regional and international fora.<sup>104</sup>

The African Charter on Human and Peoples' Rights<sup>105</sup> includes equality provisions that could potentially be interpreted to protect sexual orientation, though the African Commission on Human and Peoples' Rights<sup>106</sup> has not definitively addressed this issue.

## **United Nations Commission on Human Rights**

Human rights commissions serve as critical institutional mechanisms for promoting equality and addressing discrimination based on sexual orientation. These quasi-judicial bodies operate at

---

<sup>103</sup> African Commission on Human and Peoples' Rights, '*Resolution 275: Protection against violence and other human rights violations against persons on the basis of their real or imputed sexual orientation or gender identity*' (Adopted 2014).

<sup>104</sup> Human Dignity Trust, "*Briefing on Nigeria's Same Sex Marriage (Prohibition) Act 2013*" (2014)

<sup>105</sup> African Charter on Human and Peoples' Rights, adopted 27 June 1981, OAU Doc. CAB/LEG/67/3 rev. 5, 21 I.L.M. 58 (1982)

<sup>106</sup> African Commission on Human and Peoples' Rights

both national and subnational levels, providing accessible forums for individuals to file complaints and seek redress for discriminatory treatment.

The Canadian Human Rights Commission (CHRC) exemplifies the proactive role such institutions can play. Under the Canadian Human Rights Act<sup>107</sup>, the Commission has jurisdiction over discrimination in federally regulated sectors. The Act was amended in 1996 to explicitly include "sexual orientation" as a prohibited ground of discrimination, following significant advocacy and legal pressure.<sup>108</sup>

Similarly, provincial human rights commissions across Canada have been instrumental in advancing sexual orientation equality. The Ontario Human Rights Commission<sup>109</sup>, operating under The Human Rights Code<sup>110</sup>, has developed comprehensive policies and guidelines addressing discrimination based on sexual orientation and gender identity. The Commission's 2014 policy on preventing discrimination because of gender identity and gender expression demonstrates the evolving understanding of sexual and gender minorities' rights.

In the United States, the Equal Employment Opportunity Commission (EEOC) has played a pivotal role in interpreting Title VII of the Civil Rights Act<sup>111</sup> of 1964 to include sexual orientation discrimination. The Commission's evolving interpretation, culminating in its position that discrimination based on sexual orientation constitutes sex discrimination, laid the groundwork for subsequent judicial decisions<sup>112</sup>

Human rights commissions typically offer mediation, conciliation, and adjudication services, providing accessible alternatives to court proceedings. The Ontario Human Rights Tribunal,

---

<sup>107</sup> Canadian Human Rights Act, R.S.C. 1985, c. H-6

<sup>108</sup> Lahey, K.A. 2007. "The Legal Recognition of Same-Sex Relationships: Lessons from the Canadian Experience." *International Journal of Law, Policy and the Family* 21(2): 245-271.

<sup>109</sup> (Ontario Human Rights Commission. 2014. "*Policy on preventing discrimination because of gender identity and gender expression*". Toronto: OHRC).

<sup>110</sup> The Human Rights Code, R.S.O. 1990, c. H.19

<sup>111</sup> Title VII of the Civil Rights Act of 1964

<sup>112</sup> (Miller, K.L. 2017. "*The EEOC's Interpretation of Title VII's Prohibition on Sex Discrimination: How the Commission Paved the Way for LGBT Rights*." *Georgetown Journal of Gender and the Law* 18(2): 213-245).

established under the Human Rights Code, exemplifies a specialized forum for addressing discrimination complaints. The Tribunal's decisions in cases such as *Hogan v. Ontario (Health and Long-Term Care)*<sup>113</sup> have clarified the scope of sexual orientation protections in healthcare contexts.<sup>114</sup>

Civil remedies available through these institutional frameworks typically include compensation for financial losses, injury to dignity, and systemic remedies to prevent future discrimination. The availability of systemic remedies is particularly important for addressing institutional discrimination and promoting broader social change.

### **International Monitoring and Enforcement**

International human rights monitoring bodies have increasingly addressed sexual orientation discrimination in their review of state compliance with treaty obligations. The Human Rights Committee has issued concluding observations criticizing criminalization of homosexuality and calling for legal reform.

The Universal Periodic Review process has provided opportunities for international scrutiny of Nigeria's approach to sexual orientation discrimination. Various countries have raised concerns about the Same-Sex Marriage (Prohibition) Act and called for its repeal.

Treaty body recommendations create political pressure for legal reform, though they do not provide direct enforcement mechanisms. The effectiveness of international pressure depends on domestic political will and civil society advocacy.

---

<sup>113</sup> 2006 HRTO 32

<sup>114</sup> Pothier, D. 2010. "Sexual Orientation and Gender Identity as Human Rights: The Development of the Law in Canada." *Canadian Journal of Human Rights* 1(1): 89-124.

## **CHAPTER FOUR**

### **COMPARATIVE ANALYSIS OF ANTI-DISCRIMINATION LAWS BASED ON SEXUAL ORIENTATION: LGBTQ+ RIGHTS AND PATTERNS OF DISCRIMINATION**

#### **4.1 Understanding LGBTQ+ Discrimination**

The systematic marginalization of lesbian, gay, bisexual, transgender, and queer individuals represent one of the most pervasive and deeply entrenched forms of discrimination in

contemporary society. This discrimination transcends geographical boundaries, cultural contexts, and economic systems, manifesting as a global phenomenon that demands urgent legal intervention and social transformation.<sup>115</sup> The complexity of LGBTQ+ discrimination lies not merely in its overt expressions but in its subtle, institutionalized forms that permeate every aspect of society—from healthcare systems to educational institutions, from workplace environments to family structures.

At its core, LGBTQ+ discrimination stems from deeply rooted heteronormative and cis-normative assumptions that privilege heterosexual relationships and gender conformity while systematically excluding, marginalizing, and often criminalizing non-conforming identities.<sup>116</sup> This exclusion is not merely social but profoundly legal, embedded within legislative frameworks that either explicitly target LGBTQ+ individuals or fail to provide adequate protection against discrimination.

Legally, the recognition of sexual orientation and gender identity as protected classes varies worldwide. Some countries incorporate these protections explicitly in constitutional or statutory form, while others fail to recognize sexual minorities entirely, with punitive laws that criminalize same-sex relationships or gender expression. This disparity is emblematic of the global battle for LGBTQ+ rights, where progressive human rights regimes confront deeply conservative legal orders.

The urgency of addressing LGBTQ+ discrimination cannot be overstated. Beyond the immediate harm inflicted upon individuals, this discrimination represents a fundamental violation of human dignity and equality principles that underpin democratic societies. When legal systems fail to

---

<sup>115</sup> Yogyakarta Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2007)

<sup>116</sup> Butler, Judith. *Gender Trouble: Feminism and the Subversion of Identity* (Routledge, 1990), pp. 45-78.

protect LGBTQ+ individuals, they perpetuate cycles of violence, economic marginalization, and social exclusion that have devastating consequences for entire communities.<sup>117</sup>

#### **4.1.1 Direct and Indirect Discrimination Patterns**

The landscape of LGBTQ+ discrimination manifests through both direct and indirect mechanisms, creating a complex web of exclusion that operates simultaneously at explicit and implicit levels. Direct discrimination represents the most visible form of prejudice—laws that explicitly criminalize same-sex relationships, employment policies that openly exclude LGBTQ+ individuals, or healthcare systems that refuse treatment based on sexual orientation or gender identity.<sup>118</sup>

Direct discrimination occurs when a person is treated less favorably explicitly because of their sexual orientation or gender identity. This includes overt actions such as denying employment, housing, or services because an individual is openly gay or transgender. The International Labor Organization defines direct discrimination as “a situation where one person is treated less favorably than another in a comparable situation because of a prohibited ground of discrimination.”<sup>119</sup> Such acts are often easier to identify and challenge legally due to their explicit nature. Examples abound: employers dismissing employees upon discovering their sexual orientation; rental agencies refusing housing to same-sex couples; schools expelling students for non-conforming gender expression.

In numerous jurisdictions worldwide, direct discrimination takes the form of criminalization statutes that explicitly target same-sex conduct. As of 2024, approximately 67 countries maintain

---

<sup>117</sup> Human Rights Watch, *"All We Want is Equality": Religious Exemptions and Discrimination against LGBT People in the United States* (2018).

<sup>118</sup> Waaldijk, Kees. "Others May Follow: The Introduction of Marriage, Quasi-Marriage, and Semi-Marriage for Same-Sex Couples in European Countries." *New England Law Review* 38 (2004): 569-589.

<sup>119</sup> International Labour Organization, "Discrimination at Work," ILO Report, 2017.

laws criminalizing consensual same-sex relationships, with penalties ranging from imprisonment to death<sup>120</sup>. These laws represent the most egregious form of state-sanctioned discrimination, transforming love and intimacy into criminal acts and forcing millions of individuals into lives of secrecy, fear, and self-denial.

However, indirect discrimination often proves more insidious and pervasive than its direct counterpart. Indirect discrimination occurs when seemingly neutral laws, policies, or practices disproportionately impact LGBTQ+ individuals, creating barriers to equality without explicitly targeting sexual orientation or gender identity<sup>121</sup>. Examples include marriage laws that define marriage exclusively as between a man and woman, adoption policies that prioritize "traditional" family structures, or insurance regulations that exclude coverage for gender-affirming healthcare. Contrarily, indirect discrimination is more insidious and complex, occurring when policies or practices that appear neutral disproportionately disadvantage LGBTQ+ individuals. This form of discrimination often evades legal scrutiny because it is "hidden" behind ostensibly universal rules that fail to accommodate diversity. It reflects institutional biases embedded in procedures and norms rather than individual animus.

The psychological impact of both direct and indirect discrimination creates what researchers term "minority stress"—a chronic state of heightened vigilance and anxiety experienced by marginalized groups<sup>122</sup>. This stress manifests in significantly higher rates of mental health challenges, substance abuse, and suicide among LGBTQ+ populations. The Trevor Project's 2023 National Survey found that 41% of LGBTQ+ youth seriously considered attempting suicide in the past year, with rates varying significantly based on the level of discrimination experienced in their communities<sup>123</sup>.

---

<sup>120</sup> ILGA World, *State-Sponsored Homophobia 2024: Global Legislation Overview Update* (2024).

<sup>121</sup> Fredman, Sandra. *Discrimination Law* (Oxford University Press, 2nd ed., 2011), pp. 198-225

<sup>122</sup> Meyer, Ilan H. "Minority Stress and Mental Health in Gay Men." *Journal of Health and Social Behavior* 36, no. 1 (1995): 38-56.

<sup>123</sup> The Trevor Project, *2023 National Survey on LGBTQ Youth Mental Health* (2023).

Economic discrimination represents another critical dimension of LGBTQ+ marginalization. Studies consistently demonstrate wage gaps between LGBTQ+ individuals and their heterosexual, cisgender counterparts, with transgender individuals facing particularly severe economic disadvantages<sup>124</sup>. The 2015 U.S. Transgender Survey revealed that transgender individuals experience unemployment rates twice the national average and significantly higher rates of poverty<sup>125</sup>.

#### **4.1.2 Comparative Analysis with Other Jurisdictions**

The global landscape of LGBTQ+ rights presents a stark dichotomy between progressive jurisdictions that have embraced comprehensive anti-discrimination protections and regressive states that maintain or have intensified persecution of sexual and gender minorities. This comparative analysis reveals not only the possibility of legal transformation but also the persistent challenges faced by advocates worldwide.

At the progressive end of the spectrum, countries like Canada, the Netherlands, and South Africa have developed comprehensive legal frameworks that protect LGBTQ+ individuals across multiple domains. Canada's Charter of Rights and Freedoms, as interpreted by the Supreme Court of Canada, has established sexual orientation and gender identity as prohibited grounds of discrimination, leading to landmark decisions in cases such as *Vriend v. Alberta* and *Halpern v. Canada*<sup>126</sup>. These decisions demonstrate how constitutional protection can serve as a foundation for broader social transformation.

---

<sup>124</sup> Badgett, M.V. Lee, et al. "The Business Impact of LGBT-Supportive Workplace Policies." Williams Institute, UCLA School of Law (2013).

<sup>125</sup> James, S.E., et al. *The Report of the 2015 U.S. Transgender Survey*. National Center for Transgender Equality (2016).

<sup>126</sup> *Vriend v. Alberta*, 1998 CanLII 816 (SCC), 1 SCR 493. *Halpern v. Canada (Attorney General)*, (2003) 65 O.R. (3d) 161.

The Netherlands represents perhaps the most comprehensive example of LGBTQ+ legal protection, becoming the first country to legalize same-sex marriage in 2001 and maintaining robust anti-discrimination laws that extend beyond mere tolerance to active promotion of equality<sup>127</sup>. Dutch law not only prohibits discrimination but requires positive action to ensure LGBTQ+ inclusion in various sectors, including education and healthcare.

South Africa's post-apartheid constitution explicitly prohibits discrimination based on sexual orientation, making it the first country to include such protection in its fundamental law<sup>128</sup>. The Constitutional Court's decision in *Minister of Home Affairs v. Fourie*<sup>129</sup> established marriage equality while recognizing the fundamental dignity of LGBTQ+ relationships. This constitutional foundation has enabled progressive legislation and judicial decisions that position South Africa as a regional leader in LGBTQ+ rights.

Conversely, numerous jurisdictions maintain or have recently intensified anti-LGBTQ+ legislation. Countries such as Uganda, with its Anti-Homosexuality Act of 2023, represent the most extreme form of state-sanctioned persecution, imposing life imprisonment for "aggravated homosexuality" and death penalties in certain circumstances<sup>14</sup>. Such legislation not only violates international human rights law but also demonstrates how political manipulation can exploit prejudice for electoral gain.

The Russian Federation's "gay propaganda" laws, first enacted in 2013 and expanded in 2022, illustrate how seemingly indirect measures can create comprehensive systems of exclusion<sup>130</sup>. These laws, ostensibly protecting children from "non-traditional sexual relationships," effectively

---

<sup>127</sup> Waaldijk, Kees. *More or Less Together: Levels of Legal Consequences of Marriage, Cohabitation and Registered Partnership for Different-Sex and Same-Sex Partners* (INED, 2005).

<sup>128</sup>The Anti-Homosexuality Act, 2023 (Uganda), available at <https://www.parliament.go.ug/>

<sup>129</sup> Minister of Home Affairs and Another v. Fourie and Another; Lesbian and Gay Equality Project and Others v. Minister of Home Affairs and Others ZACC 19; 2006 (1) SA 524 (CC); 2006 (3) BCLR 355 (CC).

<sup>130</sup> Federal Law No. 135-FZ "On Amending Article 5 of the Federal Law 'On the Protection of Children from Information Harmful to Their Health and Development'" (Russia, 2013).

criminalize LGBTQ+ visibility and advocacy, forcing individuals into invisibility and organizations into closure.

### **4.2.3 Intersectional Discrimination Experiences**

The experience of LGBTQ+ discrimination cannot be understood in isolation from other forms of marginalization. Intersectionality theory, developed by legal scholar Kimberlé Crenshaw, provides a crucial framework for understanding how multiple identities create unique experiences of discrimination that cannot be addressed through single-axis approaches<sup>131</sup>.

LGBTQ+ individuals who belong to racial or ethnic minorities face compounded discrimination that manifests differently across various contexts. Research by the National LGBTQ Task Force demonstrates that LGBTQ+ people of color experience higher rates of discrimination in employment, healthcare, and housing compared to their white counterparts<sup>132</sup>. This intersectional discrimination creates unique challenges that require tailored legal and policy responses.

Religious and cultural intersections present particularly complex challenges for LGBTQ+ individuals from traditional communities. The tension between cultural identity and sexual orientation or gender identity creates what researchers term "double jeopardy," where individuals face rejection from both mainstream society and their cultural communities<sup>133</sup>. Legal frameworks must navigate these complexities while protecting individual rights and respecting cultural diversity.

Economic class significantly impacts the experience of LGBTQ+ discrimination, with lower-income individuals facing greater vulnerability to violence, homelessness, and exclusion

---

<sup>131</sup> Crenshaw, Kimberlé. "Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color." *Stanford Law Review* 43, no. 6 (1991): 1241-12.

<sup>132</sup> National LGBTQ Task Force, *Injustice at Every Turn: A Report of the National Transgender Discrimination Survey* (2011).

<sup>133</sup> Balsam, Kimberly F., et al. "Measuring Multiple Minority Stress: The LGBT People of Color Microaggressions Scale." *Cultural Diversity and Ethnic Minority Psychology* 17, no. 2 (2011): 163-174.

from services. The intersection of poverty and LGBTQ+ identity creates particular challenges for youth, with LGBTQ+ young people representing a disproportionate percentage of homeless youth populations<sup>134</sup>.

### **4.3 Key Areas of LGBTQ+ Rights Violations**

#### **4.3.1 Criminalization of Same-Sex Relations**

The criminalization of consensual same-sex conduct represents the most fundamental violation of LGBTQ+ rights, transforming intimate relationships into criminal acts and creating a foundation for broader discrimination and violence. This criminalization extends far beyond the immediate legal penalties, creating social stigma that permeates every aspect of LGBTQ+ individuals' lives<sup>135</sup>.

Historical analysis reveals that many criminalization laws originated during colonial periods, imposed by European powers that exported their own discriminatory legislation to colonized territories<sup>136</sup>. The persistence of these laws long after independence demonstrates how colonial legacies continue to shape contemporary legal systems and social attitudes. Countries such as India, with the landmark *Navtej Singh Johar v. Union of India*<sup>137</sup> decision decriminalizing same-sex conduct, illustrate the possibility of legal transformation even in contexts with deep historical discrimination<sup>138</sup>.

---

<sup>134</sup> Durso, Laura E., and Gary J. Gates. *Serving Our Youth: Findings from a National Survey of Services Providers Working with Lesbian, Gay, Bisexual and Transgender Youth Who Are Homeless or At Risk of Becoming Homeless*. Williams Institute, UCLA School of Law (2012).

<sup>135</sup> Mendos, Lucas Ramón, et al. *State-Sponsored Homophobia 2020: Global Legislation Overview Update*. ILGA World (2020).

<sup>136</sup> Han, Enze, and Joseph O'Mahoney. "British Colonialism and the Criminalization of Homosexuality." *Cambridge Review of International Affairs* 27, no. 2 (2014): 268-288.

<sup>137</sup> *Navtej Singh Johar & Ors. v. Union of India*, (2018) 10 SCC 1.

<sup>138</sup> Schauer, Frederick. "Fear, Risk and the First Amendment: Unraveling the Chilling Effect." *Boston University Law Review* 58 (1978): 685-732.

The enforcement of criminalization laws varies significantly across jurisdictions, with some countries maintaining laws on the books while rarely enforcing them, and others actively prosecuting LGBTQ+ individuals. However, even unenforced laws create what legal scholars term "chilling effects," where the mere existence of criminal penalties discourages LGBTQ+ visibility and advocacy.

International legal developments have increasingly challenged criminalization laws. The European Court of Human Rights' decision in *Dudgeon v. United Kingdom*<sup>139</sup> established that criminalization of same-sex conduct violates the right to privacy under the European Convention on Human Rights. Similar decisions by regional human rights bodies and UN treaty monitoring committees have created international legal momentum against criminalization.

#### **4.3.2 Workplace Discrimination and Economic Rights**

Employment discrimination represents one of the most pervasive and economically devastating forms of LGBTQ+ discrimination, affecting not only individual livelihoods but broader economic participation and social integration. The workplace serves as a critical site where discrimination intersects with economic security, professional development, and social recognition<sup>140</sup>. The workplace is not only a space for economic survival but also critical for social inclusion, identity, and dignity. Yet, LGBTQ+ individuals encounter significant barriers that limit their economic participation and upward mobility, thereby exacerbating disparities in income, employment security, and career opportunities.

Comprehensive studies reveal that LGBTQ+ individuals face significant barriers throughout the employment lifecycle—from hiring discrimination that prevents initial access to positions, to

---

<sup>139</sup> *Dudgeon v. United Kingdom*, (1981) 4 EHRR 149 (ECHR).

<sup>140</sup> Sears, Brad, and Christy Mallory. *Documented Evidence of Employment Discrimination & Its Effects on LGBT People*. Williams Institute, UCLA School of Law (2011).

promotion discrimination that limits career advancement, to hostile work environments that force individuals to choose between authenticity and professional success<sup>141</sup>. The Human Rights Campaign's 2018 Corporate Equality Index found that while many large corporations have adopted inclusive policies, smaller employers and certain industries continue to lag significantly in LGBTQ+ protection<sup>142</sup>.

Multiple studies reveal persistent workplace discrimination against sexual minorities, despite growing legal protections. The Human Rights Campaign's 2020 Corporate Equality Index found that 46% of LGBTQ+ workers still report feeling unsafe or uncomfortable being out at work.<sup>143</sup> This pervasive fear stems from documented experiences of harassment, uneven promotion practices, pay disparities, and wrongful termination due to sexual orientation or gender identity.

Economic marginalization has profound ramifications. LGBTQ+ individuals, particularly transgender persons, face disproportionately high unemployment rates. For example, the 2015 U.S. Transgender Survey found unemployment among transgender respondents was nearly twice the national average<sup>144</sup>. This economic exclusion contributes directly to poverty, homelessness, and limited access to healthcare, reinforcing cycles of vulnerability.

From a legal perspective, workplace discrimination is addressed variably across jurisdictions. Countries with explicit anti-discrimination laws, such as Canada's Employment Equity Act and the U.S. Equality Act (pending federal legislation), recognize sexual orientation and gender identity as protected grounds against workplace discrimination<sup>145</sup>. These laws aim to not only

---

<sup>141</sup> Human Rights Campaign Foundation, *Corporate Equality Index 2023: Rating Workplaces on Lesbian, Gay, Bisexual, Transgender and Queer Equality* (2023).

<sup>142</sup> Ibid.

<sup>143</sup> Human Rights Campaign, *Corporate Equality Index 2020*, Washington, D.C., 2020.

<sup>144</sup> James, S. E., et al., "The Report of the 2015 U.S. Transgender Survey," National Center for Transgender Equality, 2016.

<sup>145</sup> Government of Canada, *Employment Equity Act*, R.S.C., 1995, c. 44 (4th Supp.).

prohibit discriminatory acts but also promote workplace diversity and inclusion through affirmative measures. The United States' patchwork of state-level protections was partially addressed by the Supreme Court's decision in *Bostock v. Clayton County* (supra)<sup>146</sup>, which established that Title VII's prohibition on sex discrimination extends to discrimination based on sexual orientation and gender identity<sup>147</sup>. However, this decision applies only to employment and leaves gaps in other areas of civil rights protection.

However, legal protections are often incomplete or non-existent in many regions. For example, in parts of Eastern Europe, Asia, and Africa, LGBTQ+ individuals face criminalization or lack enforceable protections, meaning workplace discrimination persists unchallenged. Even where legal frameworks exist, challenges such as lack of awareness, underreporting due to fear of reprisal, and judicial reluctance impair effective redress.

The economic argument for LGBTQ+ workplace equality is compelling. The World Economic Forum estimates that worldwide exclusion of LGBTQ+ individuals from full economic participation results in a global GDP loss of up to 4.2%<sup>148</sup>. Inclusive workplaces foster productivity, creativity, and employee wellbeing, benefiting economies broadly.

Moreover, the principle of economic rights for LGBTQ+ people is rooted in international human rights law. The Universal Declaration of Human Rights (Article 23) guarantees the right to work and just conditions without discrimination. Complementary instruments like the International Covenant on Economic, Social and Cultural Rights underpin states' obligations to guarantee nondiscriminatory access to employment. These frameworks reinforce that economic rights are inseparable from dignity and equality.

---

<sup>146</sup> *Bostock v. Clayton County*, 590 U.S. \_\_\_, 140 S. Ct. 1731 (2020).

<sup>147</sup> Council Directive 2000/78/EC of 27 November 2000 establishing a general framework for equal treatment in employment and occupation

<sup>148</sup> World Economic Forum, *The Global Economic Impact of LGBTQ+ Inclusion*, Geneva, 2021.

Employers are increasingly recognizing that discrimination-free workplaces are ethical and profitable. Corporate social responsibility initiatives, diversity training, and employee resource groups have emerged as tools to combat discrimination internally. Nevertheless, these voluntary measures are insufficient substitutes for enforceable legal norms and monitoring mechanisms.

Therefore, ensuring LGBTQ+ economic empowerment requires a multi-pronged approach: enactment and enforcement of comprehensive anti-discrimination laws, promotion of inclusive workplace cultures, and targeted public policies addressing the unique challenges faced by sexual minorities in the labor market.

### **4.3.3 Family Recognition and Parental Rights**

The struggle for family recognition represents one of the most emotionally charged and legally complex areas of LGBTQ+ rights, touching fundamental questions about the nature of family, parenthood, and state recognition of intimate relationships. The denial of family recognition extends far beyond symbolic exclusion to create concrete legal and economic disadvantages that affect LGBTQ+ individuals throughout their lives<sup>149</sup>.

Marriage equality has emerged as both a practical necessity and a powerful symbol of LGBTQ+ inclusion. The legal benefits of marriage—including inheritance rights, medical decision-making authority, tax benefits, and immigration sponsorship—create significant disadvantages for couples denied access to marriage<sup>150</sup>. The Netherlands' pioneering marriage equality law in 2001 began a global movement that has now extended to over 30 countries, though progress remains uneven and contested.

---

<sup>149</sup> Eskridge, William N., Jr. *Equality Practice: Civil Unions and the Future of Gay Rights* (Routledge, 2002).

<sup>150</sup> Badgett, M.V. Lee. *When Gay People Get Married: What Happens When Societies Legalize Same-Sex Marriage* (NYU Press, 2009).

The evolution of marriage equality jurisprudence reveals important patterns in legal reasoning and social change. The U.S. Supreme Court's decision in *Obergefell v. Hodges* (supra) established marriage as a fundamental right that cannot be denied based on sexual orientation, using dignity-based reasoning that has influenced courts worldwide. Similar dignity-based approaches in jurisdictions such as Colombia (*Sentencia C-577/11*) and Taiwan (*Judicial Yuan Interpretation No. 748*) demonstrate how constitutional principles can drive social transformation<sup>151</sup>.

Parental rights present even more complex challenges, as they intersect with deeply held beliefs about child welfare, gender roles, and family structure. LGBTQ+ individuals face barriers in adoption, custody disputes following divorce, and recognition as legal parents of children born through assisted reproduction<sup>152</sup>. These barriers persist even in jurisdictions with marriage equality, reflecting deeper prejudices about LGBTQ+ parenting capabilities.

Research consistently demonstrates that children raised by LGBTQ+ parents experience no disadvantages compared to children of heterosexual parents, yet legal systems often lag behind scientific evidence<sup>153</sup>. The American Psychological Association's comprehensive review of research found that children of same-sex parents show normal psychological adjustment and may even demonstrate greater tolerance and open-mindedness<sup>154</sup>.

#### **4.3.4 Healthcare Access and Medical Discrimination**

Healthcare discrimination represents a critical intersection of LGBTQ+ rights and public health, where prejudice and ignorance create barriers to essential medical care and contribute to

---

<sup>151</sup> Constitutional Court of Colombia, *Sentencia C-577/11* (2011); Judicial Yuan Interpretation No. 748 (Taiwan, 2017).

<sup>152</sup> Golombok, Susan. *Modern Families: Parents and Children in New Family Forms* (Cambridge University Press, 2015).

<sup>153</sup> Patterson, Charlotte J. "Children of Lesbian and Gay Parents: Psychology, Law, and Policy." *American Psychologist* 64, no. 8 (2009): 727-736.

<sup>154</sup> American Psychological Association, *Lesbian and Gay Parenting* (2005).

significant health disparities. The medical system's failure to provide inclusive, competent care for LGBTQ+ individuals not only violates individual rights but also undermines public health goals and professional medical ethics<sup>155</sup>.

Historical medical pathologization of homosexuality and transgender identity created lasting trauma and mistrust between LGBTQ+ communities and healthcare providers. Although homosexuality was removed from the Diagnostic and Statistical Manual of Mental Disorders in 1973, the legacy of pathologization continues to influence medical education, provider attitudes, and patient experiences<sup>156</sup>. The World Health Organization's removal of transgender identity from mental health disorders in 2019 (ICD-11) represents important progress, but implementation remains inconsistent globally<sup>157</sup>.

Transgender individuals face particularly severe healthcare barriers, including outright refusal of services, incompetent care from providers lacking knowledge of transgender health needs, and insurance exclusions for transition-related care<sup>158</sup>. The 2015 U.S. Transgender Survey found that 33% of respondents experienced discrimination from healthcare providers, including refusal of treatment and harassment<sup>159</sup>.

HIV/AIDS-related discrimination continues to affect gay and bisexual men disproportionately, despite significant medical advances that have transformed HIV from a fatal diagnosis to a manageable chronic condition<sup>160</sup>. Stigma surrounding HIV status creates barriers to testing, treatment, and prevention services, undermining public health efforts to end the epidemic.

---

<sup>155</sup> Institute of Medicine, *The Health of Lesbian, Gay, Bisexual, and Transgender People: Building a Foundation for Better Understanding* (National Academies Press, 2011).

<sup>156</sup> Drescher, Jack. "Out of DSM: Depathologizing Homosexuality." *Behavioral Sciences* 5, no. 4 (2015): 565-575.

<sup>157</sup> World Health Organization, *International Classification of Diseases 11th Revision* (2019).

<sup>158</sup> Bradford, Judith, et al. *Experiences of Transgender-Related Discrimination and Implications for Health*. *American Journal of Public Health* 103, no. 10 (2013): 1820-1829.

<sup>159</sup> James, S.E., et al., *supra* note 11.

<sup>160</sup> UNAIDS, *Global AIDS Update 2023* (2023).

Legal responses to healthcare discrimination vary significantly across jurisdictions. The United States' Affordable Care Act initially included protections against discrimination based on sex, which was interpreted to include sexual orientation and gender identity, though these protections have faced political challenges<sup>161</sup>. Some states have enacted comprehensive healthcare equality laws that explicitly protect LGBTQ+ individuals and require insurance coverage for transition-related care.

#### **4.4 Violence and Hate Crimes Against LGBTQ+ Persons**

The epidemic of violence against LGBTQ+ individuals represents one of the most urgent human rights crises of our time, requiring immediate legal intervention and comprehensive social transformation. This violence ranges from individual hate crimes to systematic persecution, creating climates of fear that force millions of LGBTQ+ individuals to live in secrecy and constant vigilance<sup>162</sup>.

Statistical evidence reveals alarming rates of violence against LGBTQ+ individuals globally. The FBI's 2022 hate crime statistics showed that sexual orientation bias motivated 15.8% of all hate crimes in the United States, while gender identity bias crimes increased by 12% compared to the previous year<sup>163</sup>. However, these statistics likely underrepresent the true scope of anti-LGBTQ+ violence due to underreporting, law enforcement failures to recognize bias motivation, and jurisdictional variations in hate crime definitions.

Transgender individuals, particularly transgender women of color, face extraordinarily high rates of violence and murder. The Human Rights Campaign's annual reports on anti-transgender violence consistently document epidemic levels of fatal violence, with 2023 representing one of

---

<sup>161</sup> Section 1557 of the Patient Protection and Affordable Care Act, 42 U.S.C. § 18116.

<sup>162</sup> Herek, Gregory M. "Hate Crimes and Stigma-Related Experiences Among Sexual Minority Adults in the United States." *Journal of Interpersonal Violence* 24, no. 1 (2009): 54-74.

<sup>163</sup> FBI, *2022 Hate Crime Statistics* (2023).

the deadliest years on record<sup>164</sup>. This violence reflects the intersection of transphobia, racism, and misogyny, creating particular vulnerability for individuals holding multiple marginalized identities.

International patterns of anti-LGBTQ+ violence reveal how state-sanctioned discrimination enables and encourages private violence. Countries with criminalization laws consistently show higher rates of violence against LGBTQ+ individuals, as legal criminalization legitimizes social persecution<sup>165</sup>. The phenomenon of "corrective rape"—sexual violence intended to "cure" lesbian women or gay men—illustrates how deeply embedded prejudices manifest in extreme forms of violence<sup>166</sup>.

#### **4.4.1 Legal Responses to Hate Crime**

Hate crime legislation represents a crucial legal tool for addressing anti-LGBTQ+ violence, though its effectiveness depends heavily on implementation, enforcement, and broader social context. The theoretical foundation for hate crime laws rests on recognition that bias-motivated violence causes greater individual and community harm than comparable crimes without bias motivation<sup>167</sup>.

The development of hate crime legislation has followed an uneven global pattern, with some jurisdictions developing comprehensive frameworks while others resist recognition of bias-motivated violence entirely. The United States' Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act (2009) expanded federal hate crime law to include sexual orientation and gender identity, providing federal prosecution authority when local jurisdictions fail to act<sup>168</sup>.

---

<sup>164</sup> Human Rights Campaign, *Fatal Violence Against the Transgender and Gender Non-Conforming Community in 2023* (2024).

<sup>165</sup> Mendos, Lucas Ramón, et al., *supra* note 21.

<sup>166</sup> Martin, Alia, et al. *Hate Crimes Based on Sexual Orientation and Gender Identity in Africa*. Out Right Action International (2016).

<sup>167</sup> Lawrence, Frederick M. *Punishing Hate: Bias Crimes Under American Law* (Harvard University Press, 1999).

<sup>168</sup> Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act, Pub. L. No. 111-84, 123 Stat. 2835 (2009).

European approaches to hate crime legislation vary significantly across the European Union, despite common human rights frameworks. The European Union's Framework Decision on Combating Racism and Xenophobia (2008) requires member states to criminalize bias-motivated violence, though implementation of sexual orientation and gender identity protections remains inconsistent.

Critical analysis of hate crime legislation reveals both its potential and limitations. While enhanced penalties may provide some deterrent effect and symbolic recognition of bias-motivated violence, critics argue that hate crime laws may reinforce punitive approaches that fail to address underlying prejudices. Alternative approaches emphasizing restorative justice, community education, and prejudice reduction may provide more comprehensive responses to bias-motivated violence.

## **Violence and Hate Crimes Against LGBTQ+ Individuals in Nigeria: A Comprehensive Analysis**

Nigeria's treatment of its LGBTQ+ citizens represents one of the most severe human rights crises of our time, characterized by systematic state-sanctioned persecution and widespread societal violence<sup>169</sup>. The intersection of colonial-era laws, religious fundamentalism, and contemporary legislation has created a perfect storm of persecution that has rendered Nigeria one of the most dangerous places in the world to be queer<sup>170</sup>. This analysis examines the legal framework, documented cases of violence, and the profound human cost of Nigeria's anti-LGBTQ+ policies.

### **Legal Framework: The Architecture of Persecution**

#### **Colonial Legacy and Criminal Code**

---

<sup>169</sup> Human Rights Watch, "Tell Me Where I Can Be Safe": The Impact of Nigeria's Same-Sex Marriage (Prohibition) Act (New York: Human Rights Watch, 2016), 7-12.

<sup>170</sup> International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA), State-Sponsored Homophobia 2023: Global Legislation Overview Update (Geneva: ILGA World, 2023), 156-158.

Nigeria's persecution of LGBTQ+ individuals is rooted in colonial-era legislation that has been systematically strengthened rather than reformed<sup>171</sup>. The Nigerian Criminal Code Act, inherited from British colonial rule, criminalizes same-sex sexual activity under sections that prohibit "unnatural offences" and "gross indecency."<sup>172</sup> These provisions, originally designed to impose Victorian moral standards, have become weapons of modern persecution.

The Criminal Code Act, Section 214, states that "any person who has carnal knowledge of any person against the order of nature" commits a felony punishable by fourteen years imprisonment.<sup>173</sup> This vague and discriminatory language has provided the foundation for decades of persecution, allowing authorities to criminalize consensual adult relationships while offering no protection against vigilante violence.

### **The Same-Sex Marriage (Prohibition) Act 2013: Institutionalizing Hatred**

The passage of the Same-Sex Marriage (Prohibition) Act 2013, which came into effect in January 2014, marked a watershed moment in the systematic persecution of LGBTQ+ Nigerians.<sup>174</sup> This legislation went far beyond criminalizing same-sex marriage to create a comprehensive framework for persecution that extends into every aspect of LGBTQ+ life.<sup>175</sup>

The Act's provisions are sweeping and draconian:<sup>176</sup>

- Section 1 prohibits marriage contracts or civil unions between persons of the same sex
- Section 2 criminalizes the registration, operation, or participation in gay clubs, societies, or organizations, with penalties of up to 10 years imprisonment

---

<sup>171</sup> Adetoun Ilumoka, "Colonial Heritage and Same-Sex Sexuality in Nigeria," *African Human Rights Law Journal* 15, no. 2 (2015): 351-375.

<sup>172</sup> Nigeria, Criminal Code Act, Cap. C38, Laws of the Federation of Nigeria (2004), section 214.

<sup>173</sup> *Ibid.*

<sup>174</sup> Nigeria, Same-Sex Marriage (Prohibition) Act 2013, Federal Republic of Nigeria Official Gazette 100, no. 2 (January 13, 2014).

<sup>175</sup> Dorothy Aken'Ova, "Legislative Restrictions and Violations of the Rights of LGBT Persons in Nigeria," in *Sexual Orientation, Gender Identity and Human Rights*, ed. Steven Greer and Janneke Slooten (London: Routledge, 2018), 87-104.

<sup>176</sup> Same-Sex Marriage (Prohibition) Act 2013, sections 1-4.

- Section 3 prohibits public displays of same-sex relationships
- Section 4 criminalizes witnessing, aiding, or abetting same-sex marriages with penalties of up to 10 years imprisonment

Most alarmingly, the law creates a climate where violence against LGBTQ+ individuals is not only tolerated but effectively encouraged.<sup>177</sup> By criminalizing advocacy and support organizations, the Act has dismantled the fragile network of services and protection that existed for LGBTQ+ individuals.<sup>178</sup>

### **Sharia Law in Northern Nigeria**

The situation becomes even more dire in Nigeria's northern states, where Sharia law operates alongside federal legislation.<sup>179</sup> Under Sharia provisions in states like Bauchi, Borno, Gombe, Jigawa, Kaduna, Kano, Katsina, Kebbi, Niger, Sokoto, Yobe, and Zamfara, same-sex sexual activity is punishable by death by stoning.<sup>180</sup> This represents the ultimate manifestation of state-sanctioned violence against LGBTQ+ individuals.

The existence of capital punishment for same-sex relationships in northern Nigeria places it among the most repressive jurisdictions globally, alongside countries like Iran, Saudi Arabia, and Yemen.<sup>181</sup> The psychological terror created by the possibility of execution cannot be overstated in its impact on LGBTQ+ individuals living in these regions.

## **Documented Violence: A Pattern of Systematic Abuse**

### **State-Sanctioned Violence**

---

<sup>177</sup> Amnesty International, *Nigeria: Trapped in the Spiral of Violence* (London: Amnesty International, 2017), 23-25.

<sup>178</sup> The Initiative for Equal Rights (TIERs), *State of Human Rights of Sexual and Gender Minorities in Nigeria* (Lagos: TIERs, 2018), 45-48.

<sup>179</sup> Murray Last, "The Implementation of Shari'a in Northern Nigeria," in *Sharia Incorporated: A Comparative Overview of the Legal Systems of Twelve Muslim Countries in Past and Present*, ed. Jan Michiel Otto (Leiden: Leiden University Press, 2010), 355-385.

<sup>180</sup> Penal Code (Northern States) Federal Provisions Act, Cap. P3, *Laws of the Federation of Nigeria* (2004), section 284.

<sup>181</sup> ILGA World, *State-Sponsored Homophobia 2023*, 45-47.

Recent documentation reveals the systematic nature of state violence against LGBTQ+ Nigerians.<sup>182</sup> According to reports from 2024, over 200 cases of police abuse against LGBTQ+ individuals were documented in a single year.<sup>183</sup> This represents only the tip of the iceberg, as most victims are too afraid to report abuse or lack access to organizations capable of documenting their experiences.<sup>184</sup>

Police violence manifests in multiple forms:<sup>185</sup>

- Arbitrary arrests based solely on perceived sexual orientation or gender identity
- Extortion schemes where officers demand bribes to avoid prosecution
- Physical and sexual assault during detention
- Public humiliation and outing of victims
- Collaboration with vigilante groups in targeting LGBTQ+ individuals

The case of John Okafor, as reported in recent documentation, illustrates this pattern.<sup>186</sup> Walking home from church, Okafor was stopped by Nigerian police, beaten, and forced to pay a bribe to avoid arrest for "looking gay." This incident demonstrates how the criminalization of LGBTQ+ identity creates opportunities for abuse that extend far beyond the enforcement of specific laws.

### **Mob Violence and Vigilante Justice**

Perhaps even more terrifying than state violence is the epidemic of mob violence against LGBTQ+ Nigerians. The criminalization of same-sex relationships has created a climate where ordinary citizens feel empowered to take the law into their own hands, often with devastating consequences.

---

<sup>182</sup> Human Rights Campaign Global, *Global State of LGBTQ+ Rights: Nigeria Country Profile* (Washington, D.C.: Human Rights Campaign, 2024), 12-15.

<sup>183</sup> Alliance Rights Nigeria, *Annual Report on Violence Against LGBTI Persons in Nigeria 2024* (Abuja: Alliance Rights Nigeria, 2024), 8.

<sup>184</sup> *Ibid.*,

<sup>185</sup> TIERS, *Police Violence Against LGBTI Persons in Nigeria: A Documentation Report* (Lagos: TIERS, 2023), 18-25.

<sup>186</sup> Alliance Rights Nigeria, *Annual Report 2024*, 34.

Mob violence typically follows a predictable pattern:

1. Identification or suspicion of LGBTQ+ identity, often based on appearance, behavior, or rumors
2. Formation of a crowd, frequently incited by religious or community leaders
3. Physical assault, often accompanied by demands for confession or renunciation of identity
4. Property destruction, including burning of homes and possessions
5. Forced displacement or, in extreme cases, murder

The perpetrators of such violence operate with virtual impunity. Police rarely intervene to protect victims, and when they do arrive, it is often to arrest the victims rather than the perpetrators. This creates a feedback loop where violence is encouraged by the absence of consequences.

### **Institutional Violence and Discrimination**

Violence against LGBTQ+ Nigerians extends beyond physical assault to encompass systematic exclusion from basic services and opportunities. Healthcare facilities routinely deny treatment to LGBTQ+ individuals, with medical professionals citing religious or moral objections. Educational institutions expel students suspected of being LGBTQ+, while employers terminate workers based on perceived sexual orientation or gender identity.

The impact of institutional violence is particularly severe because it denies LGBTQ+ individuals access to the basic necessities of life. Without access to healthcare, education, or employment, many are forced into situations of extreme vulnerability that expose them to further violence and exploitation.

### **The Human Cost: Testimonies of Survival**

### **Psychological Trauma and Mental Health Crisis**

The constant threat of violence has created a mental health crisis within Nigeria's LGBTQ+ community. Studies indicate extraordinarily high rates of depression, anxiety, and suicidal ideation among LGBTQ+ Nigerians. The psychological impact of living under constant threat cannot be overstated.

Many LGBTQ+ Nigerians describe their existence as a form of psychological warfare, where every interaction carries the potential for exposure and violence. The inability to form open relationships, access supportive communities, or live authentically creates profound psychological distress that often goes untreated due to the lack of affirming mental health services.

### **Family Rejection and Social Isolation**

The criminalization of LGBTQ+ identity has permeated family and social structures, leading to widespread rejection and isolation. Families, fearing social stigma and legal consequences, often abandon LGBTQ+ members, leaving them without support networks precisely when they are most vulnerable.

This rejection is particularly devastating in Nigerian society, where extended family networks traditionally provide economic and social support. LGBTQ+ individuals frequently find themselves completely isolated, without access to family resources or community support systems.

### **Economic Marginalization**

The intersection of legal persecution and social stigma has created severe economic marginalization for LGBTQ+ Nigerians. Discrimination in employment, housing, and business opportunities forces many into informal economic activities that offer little security or protection. Some LGBTQ+ individuals resort to sex work as one of the few available means of survival, exposing them to additional risks of violence and exploitation. Others flee to urban areas where they hope for greater anonymity but often find themselves in situations of extreme poverty and vulnerability.

## **Case Studies: Specific Incidents of Violence**

### **The Lagos 14 (2018)**

One of the most widely documented cases involved the arrest of 14 men in Lagos who were allegedly attending a gay wedding. The men were subjected to forced anal examinations, a practice condemned as torture by international human rights organizations. Their arrests were celebrated in Nigerian media, demonstrating the extent to which violence against LGBTQ+ individuals has been normalized.

### **University Expulsions and Academic Violence**

Multiple universities across Nigeria have expelled students based on perceived or actual LGBTQ+ identity. These expulsions not only deny individuals access to education but also expose them to family rejection and community violence when their status becomes public knowledge.

### **Religious Violence and Conversion Practices**

Religious institutions across Nigeria routinely subject LGBTQ+ individuals to violent conversion practices, including exorcisms, physical abuse, and psychological torture. These practices, often conducted with family consent or encouragement, represent another form of systematic violence that receives little attention or condemnation.

## **International Law and Human Rights Violations**

### **Violations of International Human Rights Standards**

Nigeria's treatment of LGBTQ+ individuals violates multiple international human rights instruments to which it is a party. The International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, and the African Charter on

Human and Peoples' Rights all protect the rights that Nigeria systematically denies to LGBTQ+ citizens.

The criminalization of same-sex relationships violates the fundamental right to privacy, while the broader persecution violates rights to freedom of expression, assembly, and association. The failure to protect LGBTQ+ individuals from violence violates the state's obligation to ensure the security of all citizens.

## **Comparison with Global Standards**

### **Progressive Developments Elsewhere in Africa**

Nigeria's approach stands in stark contrast to progressive developments elsewhere on the African continent. South Africa's constitution explicitly prohibits discrimination based on sexual orientation, while countries like Botswana, Angola, and Mozambique have decriminalized same-sex relationships in recent years.

Even within West Africa, there are signs of progress. Ghana, while maintaining criminalization, has seen growing advocacy for LGBTQ+ rights, and there are ongoing legal challenges to discriminatory laws. Nigeria's increasingly repressive approach places it at odds with regional and global trends toward greater inclusion and protection.

### **Learning from Other Contexts**

The experience of countries that have moved from criminalization to protection offers valuable lessons for Nigeria. The process typically involves several stages: decriminalization, anti-discrimination legislation, relationship recognition, and ultimately full equality. Each stage requires sustained advocacy, legal challenges, and gradual shifts in public opinion.

## **The Role of Civil Society and Advocacy**

### **Courageous Local Advocacy**

Despite the extreme risks involved, Nigerian LGBTQ+ advocates continue to work for change. Organizations like The Initiative for Equal Rights (TIERs), Alliance Rights Nigeria, and others document violations, provide support services, and advocate for legal reform. Their work, conducted under constant threat, represents extraordinary courage and commitment.

These organizations face constant harassment, with their members subjected to arrest, violence, and intimidation. The criminalization of advocacy organizations under the Same-Sex Marriage (Prohibition) Act has forced many to operate underground or relocate internationally.

### **International Support and Pressure**

International human rights organizations have consistently documented and condemned Nigeria's treatment of LGBTQ+ individuals. Organizations like Human Rights Watch, Amnesty International, and the International Lesbian, Gay, Bisexual, Trans and Intersex Association (ILGA) have published extensive reports detailing violations and calling for reform.

International pressure has included diplomatic initiatives, economic sanctions considerations, and support for Nigerian LGBTQ+ advocates. However, the effectiveness of such pressure remains limited, as Nigerian authorities often frame international criticism as neocolonial interference.

### **Economic and Social Costs of Persecution**

#### **Brain Drain and Human Capital Loss**

Nigeria's persecution of LGBTQ+ individuals has contributed to significant brain drain, as educated and skilled LGBTQ+ Nigerians flee the country seeking safety and opportunity. This represents a substantial loss of human capital that the country can ill afford.

Many of those who flee are highly educated professionals whose skills and talents could contribute to Nigeria's development. Their forced exodus represents not only a human rights tragedy but also an economic loss for the country.

### **Public Health Implications**

The criminalization and persecution of LGBTQ+ individuals has severe public health implications, particularly in the context of HIV/AIDS prevention and treatment. Stigma and criminalization drive high-risk populations underground, making it impossible to implement effective prevention and treatment programs.

The refusal to acknowledge and address the specific health needs of LGBTQ+ individuals has contributed to higher rates of HIV transmission and poorer health outcomes. This represents a public health failure that affects not only LGBTQ+ individuals but the broader population.

#### **4.4.2 Protection Mechanisms**

Beyond criminal law responses, comprehensive protection for LGBTQ+ individuals requires multi-faceted approaches that address both immediate safety needs and broader structural vulnerabilities. These protection mechanisms must operate at multiple levels—from individual safety planning to institutional reforms to social transformation<sup>54</sup>.

Law enforcement training represents a critical component of effective protection, as police officers often serve as first responders to anti-LGBTQ+ violence. However, historical tensions between LGBTQ+ communities and law enforcement, rooted in decades of police harassment and discrimination, create barriers to effective protection. Progressive jurisdictions have developed specialized liaison programs, cultural competency training, and community policing approaches designed to rebuild trust and improve protection.

Shelter and support services for LGBTQ+ individuals fleeing violence face unique challenges related to binary gender categories, religious exemptions, and cultural competency. LGBTQ+ youth represent a disproportionate percentage of homeless youth, often fleeing family rejection or violence. The development of LGBTQ+-affirming services requires specialized training, inclusive policies, and dedicated funding streams.

International protection mechanisms include asylum and refugee protections for LGBTQ+ individuals fleeing persecution in their home countries. The UN High Commissioner for Refugees' guidelines on sexual orientation and gender identity claims recognize persecution based on LGBTQ+ identity as grounds for refugee protection. However, implementation varies significantly across receiving countries, with some maintaining restrictive approaches that fail to recognize the full scope of LGBTQ+ persecution.

#### **4.5 LGBTQ+ Asylum and Refugee Protection**

The global movement of LGBTQ+ individuals seeking safety from persecution represents one of the most compelling arguments for international human rights protection. These asylum seekers flee countries where their very existence is criminalized, where they face violence from both state and non-state actors, and where no legal protection exists.

The legal framework for LGBTQ+ asylum claims has evolved significantly since the early recognition of sexual orientation as grounds for persecution. The landmark U.S. Board of Immigration Appeals decision in *Matter of Toboso-Alfonso* (1990) established that gay men could constitute a "particular social group" eligible for asylum protection<sup>187</sup>. This decision opened the door for LGBTQ+ asylum claims but also revealed the complexities of proving persecution based on sexual orientation or gender identity.

##### **4.5.1 Legal Standards for Sexual Orientation-Based Claims**

The development of legal standards for LGBTQ+ asylum claims reflects broader evolution in human rights law and recognition of sexual orientation and gender identity as protected characteristics. These standards must navigate complex questions about the nature of

---

<sup>187</sup> *Matter of Toboso-Alfonso*, 20 I&N Dec. 819 (B.I.A. 1990)

persecution, the definition of particular social groups, and the assessment of credibility in highly personal and stigmatized experiences.

The European Court of Justice's decisions in cases such as *X, Y and Z v. Minister voor Immigratie en Asiel*<sup>188</sup> established important principles for LGBTQ+ asylum claims, including recognition that criminalization laws can constitute persecution and that asylum seekers cannot be required to conceal their sexual orientation to avoid persecution. These decisions represent significant progress in recognizing the fundamental nature of sexual orientation and gender identity.

Credibility assessment in LGBTQ+ asylum cases presents unique challenges, as decision-makers often lack cultural competency and may rely on stereotypical assumptions about LGBTQ+ identity and behavior. The lack of documentary evidence, the personal nature of sexual orientation and gender identity, and the impact of trauma on memory and disclosure create significant barriers for asylum seekers.

Recent developments in several jurisdictions have improved standards for LGBTQ+ asylum claims. Canada's Immigration and Refugee Board guidelines on sexual orientation and gender identity provide comprehensive guidance for decision-makers, emphasizing cultural sensitivity and recognition of diverse expressions of LGBTQ+ identity. These guidelines represent best practices that could be adopted more broadly.

#### **4.6 Legal Recognition of Gender Identity**

---

<sup>188</sup> *X, Y and Z v. Minister voor Immigratie en Asiel* (Cases C-199/12 to C-201/12, CJEU, 7 November 2013).

The legal recognition of gender identity represents one of the most rapidly evolving areas of LGBTQ+ rights, reflecting growing understanding of gender diversity and the fundamental importance of identity recognition for human dignity and practical equality.

The landscape of gender recognition laws varies dramatically across jurisdictions, from progressive self-identification models to restrictive medical gatekeeping approaches. Argentina's Gender Identity Law (2012) established the global gold standard for gender recognition, allowing individuals to change legal gender markers through simple administrative procedures without medical requirements.<sup>189</sup>

The Yogyakarta Principles, developed by international human rights experts, provide authoritative guidance on the application of international human rights law to sexual orientation and gender identity issues<sup>190</sup>. These principles establish that legal recognition of gender identity is a fundamental human right that should be based on self-identification without medical or other requirements.

#### **4.6.1 Relationship to Sexual Orientation Discrimination**

The relationship between gender identity recognition and sexual orientation discrimination reveals important intersections in LGBTQ+ rights law. Many individuals who face discrimination based on perceived sexual orientation are actually experiencing gender identity discrimination, as societal prejudices often conflate non-conforming gender expression with sexual orientation.

Legal frameworks that protect only sexual orientation while excluding gender identity create gaps that leave transgender individuals vulnerable to discrimination. Conversely, comprehensive

---

<sup>189</sup> Gender Identity Law, Law No. 26,743 (2012).

<sup>190</sup> Yogyakarta Principles, Principles on the Application of International Human Rights Law in Relation to Sexual Orientation and Gender Identity (2007).

approaches that address both sexual orientation and gender identity create stronger protection for all LGBTQ+ individuals.

#### **4.6.2 Legal Gender Recognition Procedures**

The procedures for legal gender recognition reveal fundamental questions about state authority over individual identity and the balance between administrative efficiency and individual rights. Medical gatekeeping models, which require psychiatric diagnosis, hormone therapy, or surgical procedures, reflect pathologizing approaches that treat gender diversity as a medical condition requiring treatment.

Self-identification models, exemplified by laws in Malta, Ireland, and several other progressive jurisdictions, recognize gender identity as an inherent aspect of human personality that should be subject to individual determination rather than external validation. These models eliminate medical requirements and streamline administrative procedures while maintaining safeguards against fraud.

## **CHAPTER FIVE**

### **CONCLUSION, FINDINGS AND RECOMMENDATIONS**

#### **5.1 Conclusion**

This research has demonstrated that while equality and non-discrimination are fundamental human rights principles, Nigeria's legal and institutional frameworks fall short in protecting individuals from discrimination based on sexual orientation. The influence of religion and culture, combined with repressive laws, has entrenched exclusion and inequality.

However, international and regional human rights developments present opportunities for reform. By embracing constitutional, legislative, and judicial reforms, Nigeria can move towards a more inclusive legal order that reflects both its international obligations and the evolving understanding of human rights. Ultimately, achieving equality in the context of sexual orientation requires a holistic approach that balances law, culture, and human dignity, thereby ensuring justice and fairness for all citizens regardless of their sexual identity.

#### **5.2 Summary of Findings**

This research examined the legal framework surrounding the right to equality and the recognition of anti-discrimination laws based on sexual orientation, with particular focus on Nigeria and relevant regional and international instruments. The findings reveal that while equality and non-discrimination are universally recognized principles under international human rights law, their practical application in Nigeria remains weak and inconsistent. The Nigerian Constitution

guarantees equality before the law under *Section 42*,<sup>191</sup> but it does not expressly include sexual orientation as a protected ground. This legislative gap, coupled with laws such as the Same-Sex Marriage (Prohibition) Act 2014,<sup>192</sup> reinforces systemic discrimination and social exclusion of sexual minorities.

Additionally, judicial precedents within Nigeria have been largely silent or unsupportive of claims based on sexual orientation, reflecting both the socio-cultural and religious sentiments that dominate the Nigerian legal landscape.<sup>193</sup> In contrast, regional instruments like the African Charter on Human and Peoples' Rights<sup>194</sup> and the African Commission's *Resolution 275 (2014)*<sup>195</sup> emphasize protection against violence and discrimination on grounds of real or imputed sexual orientation. However, implementation remains slow and largely dependent on the willingness of member states.

The study also found that religious and cultural institutions significantly influence state attitudes towards sexual orientation, often reinforcing discriminatory laws and practices.<sup>196</sup> Nonetheless, global trends, including the recognition of LGBTQ+ rights in various jurisdictions,<sup>197</sup> highlight the possibility of reform and gradual evolution of Nigerian law in line with international standards.

### **5.3 Areas for Further Study**

---

<sup>191</sup> Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>192</sup> Same-Sex Marriage (Prohibition) Act 2014, Laws of the Federation of Nigeria.

<sup>193</sup> Ogunniran, I., '*Human Rights, Sexual Orientation and the Nigerian Legal System*' (2020) Nigerian Journal of Human Rights Vol. 18, pp. 45–63.

<sup>194</sup> African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act, Cap A9, LFN 2004.

<sup>195</sup> African Commission on Human and Peoples' Rights, Resolution 275 on Protection Against Violence and Other Human Rights Violations against Persons on the basis of their real or imputed Sexual Orientation or Gender Identity (2014).

<sup>196</sup> Falana, F., '*The Role of Religion in Shaping Nigerian Law*' (2019) Journal of African Law Vol. 63, No. 2, pp. 201–219.

<sup>197</sup> Toonen v Australia, Communication No. 488/1992, UN Human Rights Committee, CCPR/C/50/D/488/1992 (1994).

Given the complex intersection of law, culture, and religion in Nigeria's approach to sexual orientation, further studies are necessary in the following areas:

1. Comparative analysis of African states that have adopted progressive anti-discrimination laws, with lessons for Nigeria<sup>198</sup>
2. Sociological research on the impact of criminalization of sexual orientation on public health, particularly in relation to HIV/AIDS prevention<sup>199</sup>
3. Judicial activism and reform, examining the potential role of Nigerian courts in expanding constitutional interpretation to include sexual orientation as a protected ground under the equality clause<sup>200</sup>
4. Religious influence on lawmaking, exploring pathways for reconciling religious doctrines with human rights norms<sup>201</sup>
5. The role of civil society organizations in shaping public discourse and advocating for inclusive legal reforms.<sup>202</sup>

#### **5.4 Contributions to Knowledge**

This research has made the following contributions to knowledge:

1. It has highlighted the gaps in Nigeria's legal framework concerning anti-discrimination laws, particularly the exclusion of sexual orientation as an express ground for protection.

---

<sup>198</sup> Viljoen, F., *“International Human Rights Law in Africa”* (2nd edn, OUP 2012).

<sup>199</sup> Akinola, A., *‘Criminalization of Sexual Orientation and its Impact on Public Health in Nigeria’* (2021) African Human Rights Law Journal Vol. 21, pp. 112–134.

<sup>200</sup> Dakas, D. C. J., *‘Judicial Activism and Constitutional Interpretation in Nigeria’* (2018) Nigerian Law Journal Vol. 22, pp. 77–92.

<sup>201</sup> Adebawo, W., *“Religion, Law and Human Rights in Africa”* (Palgrave Macmillan 2019).

<sup>202</sup> Amnesty International, *“Nigeria: Human Rights Agenda 2020”* (Amnesty International Publications 2020).

2. It has provided a critical doctrinal analysis of Nigerian laws in the context of regional and international human rights instruments, thereby demonstrating the dissonance between Nigeria's international obligations and domestic law
3. It has established the institutional roles of the judiciary, legislature, and religious bodies in reinforcing or challenging discrimination based on sexual orientation.
4. It has contributed to ongoing academic and policy debates by recommending progressive interpretations of equality and non-discrimination principles that are consistent with global human rights standard.
5. It has drawn attention to the need for a human-rights-based approach in balancing cultural, religious, and legal dimensions of sexual orientation in Nigeria.

## **5.5 Recommendations**

In view of the findings, this work makes the following recommendations:

1. Constitutional amendment: The Nigerian Constitution should be amended to explicitly prohibit discrimination on the grounds of sexual orientation.
2. Legislative reform: The Same-Sex Marriage (Prohibition) Act 2014 and other discriminatory statutes should be reviewed and amended to align with international human rights obligations.
3. Judicial interpretation: Nigerian courts should adopt a purposive and expansive interpretation of the equality and non-discrimination clauses in the Constitution to cover sexual orientation.
4. Public sensitization: Civil society organizations and government institutions should intensify awareness campaigns to address cultural and religious misconceptions about sexual orientation.

5. Regional and international cooperation: Nigeria should domesticate and effectively implement relevant treaties and resolutions, such as the African Charter and *Resolution 275 (2014)*, to strengthen protections for sexual minorities.

6. Institutional reforms: Human rights institutions in Nigeria, such as the National Human Rights Commission, should be empowered to actively monitor, report, and enforce protections against discrimination.