



Between Human Rights and Socio-Cultural Politics: Interrogating Nigerians' Anti-Gay Legislation from A Liberal Democratic Perspective

Obinna U. Muoh¹, Levi O. Frank², Amaogechukwu B. Chika³, Chinonyelum Eze³, Promise C. Nnaji³, Joseph Emenike³, Cinderella Oloidi³, and Joy O. Ugwuanyi³

¹Department of History and International Studies, Enugu State University of Science and Technology

²Department of History and International Studies, Delta State University, Abraka, Nigeria.

³Department of History and International Studies, University of Nigeria, Nsukka.

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*Corresponding Author: Obinna U. Muoh

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Abstract

Original Research Article

The enactment of Nigeria's Same-Sex Marriage (Prohibition) Act (SSMPA) in 2014 generated intense debates concerning the relationship between human rights, socio-cultural values, religion, and democratic governance. While supporters of the legislation regard it as a legitimate expression of Nigerian cultural identity, religious morality, and national sovereignty, critics argue that it violates fundamental human rights and undermines the principles of liberal democracy. The central problem addressed by this study is the persistent tension between the protection of minority rights and the preservation of dominant socio-cultural values within a democratic society. Against this backdrop, the study interrogates Nigeria's anti-gay legislation from a liberal democratic perspective, examining whether the SSMPA reflects democratic legitimacy or constitutes a restriction on the rights and freedoms of sexual minorities. The study adopts a qualitative research design and relies on documentary methods of data collection. Data were obtained from books, journal articles, legal documents, government publications, international human rights reports, constitutional provisions, and relevant secondary sources. Liberal democratic theory serves as the analytical framework for evaluating the compatibility of Nigeria's anti-gay legislation with democratic principles such as equality, individual liberty, freedom of association, privacy, and minority rights. The study finds that while the SSMPA enjoys considerable socio-cultural and religious support, its provisions raise significant concerns regarding constitutional freedoms, democratic inclusiveness, and the protection of vulnerable groups. The significance of the study lies in its contribution to ongoing scholarly debates on human rights, culture, and democracy in Africa. It further provides a nuanced understanding of how states negotiate competing demands between collective cultural values and universal principles of human dignity and freedom.

Keywords: Anti-gay legislation, Same-Sex Marriage (Prohibition) Act, Liberal democracy, Human rights, Socio-cultural politics, Nigeria.

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Introduction

On 20 January 2014, Nigeria's President Goodluck Ebele Jonathan signed into law the Same Sex Marriage (Prohibition) Act (SSMPA), a legislation that criminalises same-sex unions and prohibits activities associated with the promotion of homosexual relationships. The enactment of the law generated extensive scholarly and political

debates concerning the relationship between human rights, culture, religion, and democratic governance in Nigeria (Adebanjo, 2015; Amusan, Saka, & Adekeye, 2019; Sogunro, 2022; Okonkwo, 2023). It also attracted international attention regarding Nigeria's commitment to the principles of equality, dignity, and non-discrimination as enshrined in global human rights instruments (Human Rights Watch, 2014). Beyond its legal implications, the



Act revealed the extent to which religious and cultural values shape public attitudes toward LGBTQ+ persons and other ideas perceived as originating from Western societies (Obadare, 2015; Ossisanwo & Alugbin, 2025).

Opposition to homosexuality in Nigeria is largely rooted in the belief that same-sex relationships are incompatible with African socio-cultural traditions and moral values (Amusan, Saka, & Adekeye, 2019). These values are often grounded in the understanding that marriage and sexual relations are intended exclusively for men and women (Baloyi, 2022). Consequently, many Nigerians view the preservation of heterosexual family structures as essential to maintaining social cohesion and cultural continuity. This perception has contributed significantly to the widespread public support enjoyed by the SSMPA since its enactment. While the legislation reflects dominant social and religious sentiments within Nigeria, it simultaneously raises important questions about the nature and practice of democracy. Proponents of the law argue that democratic governance should reflect the moral values and cultural preferences of the majority population. From this perspective, public policies that align with societal norms contribute to social stability and collective harmony (Sass & Dryzek, 2024; Mansouri & Elias, 2025). Critics, however, contend that democracy extends beyond majority rule and must also guarantee the protection of fundamental rights and freedoms, particularly those of minority groups. They maintain that restrictions imposed on individuals solely because of their sexual orientation are inconsistent with democratic principles and internationally recognised human rights standards (Human Rights Watch, 2014; Associated Press Abuja, 2014).

This debate lies at the heart of liberal democratic theory. Liberal democracy emphasises equality before the law, individual liberty, minority rights, freedom of association, and protection from state discrimination (Schlag, 2023). It holds that the legitimacy of a democratic state depends not only on its responsiveness to majority preferences but also on its capacity to safeguard the rights of vulnerable and marginalised groups. From this perspective, the criminalisation of same-sex relationships raises concerns regarding equal citizenship, personal autonomy, and the limits of state authority in regulating private life.

Against this backdrop, this study interrogates Nigeria's anti-gay legislation from a liberal democratic perspective. Specifically, it examines whether the Same Sex Marriage (Prohibition) Act of 2014 constitutes a legitimate expression of Nigeria's socio-cultural and religious values or whether it undermines the core principles of liberal democracy by restricting the rights and freedoms of a

minority group. In doing so, the study contributes to broader scholarly discussions on the relationship between human rights, culture, and democratic governance in contemporary Africa.

Literature Review:

The discourse surrounding Nigeria's anti-gay legislation has attracted increasing scholarly attention in recent years, particularly in relation to human rights, democratic governance, cultural identity, and citizenship. The enactment of the Same-Sex Marriage Prohibition Act (SSMPA) continues to generate debates among scholars, policymakers, and human rights advocates regarding the balance between universal human rights norms and local socio-cultural values. Recent literature reflects diverse perspectives on the implications of anti-gay laws for democratic development and social inclusion in Nigeria.

Oladosu-Uthman (2021) examined the implications of the Same-Sex Marriage Prohibition Act (SSMPA) within the broader context of marriage, religion, and human rights in Nigeria. The study argues that although the Act was introduced to protect traditional marriage and preserve cultural values, it has generated significant human rights concerns, particularly regarding the rights of sexual minorities. The author further demonstrates that the law has contributed to discrimination and social exclusion while reinforcing conservative cultural and religious norms. The study is important because it situates the SSMPA within the wider socio-economic and cultural challenges confronting Nigerian society. However, the work focuses mainly on the relationship between religion, culture, and human rights and pays little attention to how liberal democratic principles such as minority rights, equality, and tolerance can be applied to evaluate the legislation. Therefore, this study will bridge this gap by employing liberal democratic theory as its primary analytical framework while simultaneously examining the socio-cultural factors that shape public support for the law.

Umbu and Agada (2021) investigated the constitutionality of the prohibition of same-sex marriage in Nigeria and examined whether the SSMPA violates the constitutional right to freedom of marriage. The authors argue that the law raises significant constitutional questions regarding individual liberty and freedom of association. They further contend that legal restrictions on same-sex unions may conflict with fundamental rights provisions contained in the Nigerian Constitution. The study contributes significantly to legal debates surrounding sexual minority rights in Nigeria. However, its analysis is largely

constitutional and legalistic, with limited consideration of the socio-cultural and political realities that influence legislative decision-making in Nigeria. Consequently, this study intends to integrate constitutional analysis with socio-cultural and political perspectives in order to provide a more holistic understanding of anti-gay legislation.

Sogunro (2020) examines the evolution and enforcement of Nigeria's anti-LGBTQ legal framework, especially the Same Sex Marriage (Prohibition) Act of 2013, arguing that these laws are deeply rooted in broader systems of political and social control reinforced by cultural and religious narratives that portray same-sex relationships as incompatible with Nigerian values. The study further shows that advocacy for sexual and gender minority rights in Nigeria is constrained by strong public opinion and political rhetoric shaped by religion, which continues to justify exclusionary legal practices and limit meaningful reform. This work is highly relevant to the present topic because it demonstrates how religion and dominant social beliefs influence the persistence of anti-gay legislation, thereby helping to explain why such laws maintain legitimacy despite international human rights criticism. However, the study focuses more on legal advocacy, colonial legacies, and social control structures, while giving limited attention to the normative democratic question of how governments should balance majority moral preferences with the constitutional obligation to protect minority rights in a liberal democratic system. This research therefore builds on by critically engaging the tension between majority rule and minority rights, particularly questioning whether democratic legitimacy can justify laws that infringe on fundamental human rights.

Omoteye and Akinlade (2023) explored the legal implications of the SSMPA on customary female-husband and woman-to-woman marriage practices in Nigeria. The authors argue that these traditional institutions are fundamentally different from contemporary same-sex relationships because they serve social and reproductive functions rather than sexual purposes. Their study demonstrates that the enactment of the SSMPA creates legal ambiguities regarding the status of certain customary practices recognised in various Nigerian communities. The work contributes to scholarship by highlighting the complexity of African marriage systems and challenging simplistic assumptions about sexuality in African societies. However, the study is primarily concerned with customary law and does not adequately address the broader questions of human rights, citizenship, democratic inclusion, and political participation. This study seeks to move beyond customary law to investigate how anti-gay

legislation affects democratic governance and citizenship rights in Nigeria.

Kore-Okiti (2025) critically assessed the compatibility of the SSMPA with international human rights standards. The study argues that the Act conflicts with principles of equality, non-discrimination, privacy, and freedom protected under international human rights instruments such as the Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights, and the African Charter on Human and Peoples' Rights. The author concludes that the legislation is inconsistent with Nigeria's international obligations. While the study makes an important contribution to human rights scholarship, its major weakness lies in its emphasis on international legal standards without adequately engaging with the cultural, religious, and political factors that influence the adoption and persistence of anti-gay legislation in Nigeria. This study balances international human rights principles with an examination of Nigeria's socio-cultural realities.

Nweze and Amucheazi (2025) conducted a conflict-of-laws analysis of the SSMPA and argued that certain provisions of the Act conflict with constitutional guarantees of freedom of expression and association. The authors further contend that the blanket prohibition of same-sex organizations and relationships may create legal difficulties in transnational contexts where same-sex marriages contracted abroad seek recognition. The study significantly advances legal understanding of the SSMPA by exposing contradictions between domestic legislation and constitutional protections. Nevertheless, the work remains largely confined to legal analysis and does not sufficiently investigate the political motivations, cultural considerations, and democratic implications underlying anti-gay legislation. This study will address this limitation by incorporating legal, political, and socio-cultural perspectives into a unified analytical framework.

Onwuka (2025) examined the constitutional legitimacy of the SSMPA and argued that the legislation is inconsistent with the fundamental rights provisions of the Nigerian Constitution. The study highlights how prevailing religious and cultural beliefs have influenced the criminalisation of same-sex relationships despite constitutional guarantees of equality and personal liberty. The author concludes that the Act undermines democratic principles and constitutionalism. Although the study provides valuable constitutional insights, it places limited emphasis on how competing notions of cultural sovereignty and liberal democracy interact within the Nigerian political environment. Therefore, this study seeks to bridge this gap by critically analysing the relationship

between constitutional rights, cultural values, and democratic governance.

A recent scoping review by Akadinma, Dunkwu, and Ahmad (2026) examined the health and social consequences of the SSMPA for LGBTQ persons in Nigeria. The study found that the law has contributed to stigma, discrimination, fear, barriers to healthcare access, and broader social exclusion. The review also noted that existing research disproportionately focuses on gay and bisexual men while neglecting the experiences of lesbians, bisexual women, and transgender persons. The study is particularly significant because it synthesizes empirical evidence regarding the lived consequences of anti-gay legislation. However, it primarily focuses on health and social outcomes and does not sufficiently address the broader theoretical debates concerning democracy, citizenship, and minority rights. This study will link the lived experiences of affected individuals to wider discussions of liberal democracy, citizenship, and human rights in Nigeria.

The reviewed literature demonstrates that scholars have extensively examined Nigeria's anti-gay legislation from legal, constitutional, religious, cultural, and human rights perspectives. However, most studies treat these issues separately rather than analysing them within a single integrated framework. Furthermore, there is limited scholarship that systematically applies liberal democratic theory to explain the tensions between individual rights and socio-cultural values in Nigeria. Existing studies also pay inadequate attention to how anti-gay legislation affects democratic citizenship, political participation, and the inclusion of minority groups within the Nigerian state. This study, therefore, seeks to examine the anti-gay law from a liberal democratic perspective.

Theoretical Framework:

Liberal democratic theory is a contested concept, with no finality. It has been widely associated with figures like Locke, Montesquieu, Kant, Madison, Constant, Tocqueville, Mill, and Lincoln. However, these thinkers never employed the term 'liberal democracy' (Ghins, 2025). It places individual liberty, equality, human rights, constitutionalism, and the rule of law at the centre of governance and social organisation. The theory provides a framework for understanding the relationship between the government and citizens, especially regarding the protection of minority rights against the majority and arbitrary state decisions. At its core, the theory postulates that all humans are entitled to inherent and inalienable

human rights that must be protected irrespective of cultural lines, traditions, religious beliefs and societal stratification. There is an existing belief that individuals enter into social contracts with the state primarily to secure their natural rights to life, liberty, and property (Matthew, Azubike, and Nkirika, 2024; Thrasher, 2024). To this end, a government derives legitimacy from its ability to protect its citizens rather than suppressing them (Matthew, Azubike, and Nkirika, 2024). Where the state violates this principle, it undermines the very foundation of democratic governance.

The concept of democracy is often associated with majority rule; as such, liberal democratic theorists argue that, to strike a balance, the power of the majority must be constrained by the constitution, which safeguards individual freedom and guarantees minority rights. According to Mill (1859), "The limitations, therefore, of the power of government over individuals, loses none of its importance when the holders of power are regularly accountable to the community, that is to the strongest party therein." The argument on the liberal handling of power warned against the 'tyranny of the majority'. For Mill, the holders of the powers of government must ensure that individual freedom is restrained only when it causes harm to others. Concomitantly, issues relating to identity, association, and private conduct should ordinarily remain outside the sphere of state coercion.

Every democratic society, in the real sense, guarantees political participation and equality, and the protection of civil liberties (Wier and Beetham, 1999; Kahn, 2024). There is a misconception held by most third-world countries that democracy is about the periodic conduct of elections. Beyond that, it requires the institutional protection of rights and freedoms that give citizens the confidence to participate in public life. Civil liberties such as the freedom of association, expression, and personal autonomy are therefore indispensable components of true democracy. Rawls's (1971) understanding of democracy through his theory of justice is that, "...principles of justice are chosen behind a veil of ignorance," which means "no one is advantaged or disadvantaged in the choice of principles by the outcome of natural chance or the contingency of social circumstances." This condition ensures that individuals would likely establish laws that protect vulnerable minorities, irrespective of religion, ethnicity, or social status, from the might of the majority. Rawls work, by simply advocating equal basic liberties for all men, contributes to the development of the liberal democratic theory.

Imperatively, liberal democratic theory's emphasis on the universality of individual freedom and non-discrimination

based on cultural lines is evident in the rise of human rights obligations by states. Contemporary organisations such as the United Nations have often held the principle of human rights firmly, even within the context of LGBTQ+, which is evident in Antonio Guterres, the UN Secretary General's view, when he said, "The United Nations is proud to stand with all members of the human family, without discrimination of any kind..." (United Nations, n.d). This view is based on the Universal Declaration of Human Rights (1948), which reflects the ideals of liberal democracy, the equality and dignity of all human beings. These principles have continuously influenced constitutional democracies across the world.

In Nigeria, the theory provides the lens for examining the tensions between the global liberalised norms on human rights and socio-cultural politics. The country is constitutionally recognised as a democracy which is committed to protecting human rights. Its 1999 constitution, which ended over a decade of military rule, guarantees rights such as freedom of association, expression, and privacy, as well as protection from discrimination. On the contrary, the signing of the Same Sex Marriage Prohibition Act in 2014 imposed significant legal restrictions on same-sex marriage, including penalties on individuals who aided such a union in any form (Human Rights Watch, 2014; Associated Press Abuja, 2014). The Act raises an important question over the balance between the majority's cultural preferences and individual rights. Those who argued for the Act believe it reflects Nigeria's cultural values, morals and religious beliefs. They maintain that true democracy reflects the will of the masses, especially with matters related to culture and morals.

Liberal democratic theorists oppose the notion that the majority opinion constitutes the basis for making laws in a government. This was the exact point maintained by Mill in 1859 on his concept of 'tyranny of the majority'. In this regard, the criminalisation of same sex relationships may be interpreted as an example of the majority's imposition of their moral conviction on the minority group. The theory insists on the consideration of minority opinions through institutional accommodations of their ideas. On the global stage, sexuality and intimacy are generally regarded within the liberal spectrum as matters of personal choice. In this context, unless the actions cause harm to others, all forms of state are considered unjustified. Therefore, it is inconsistent with liberal democratic theory to criminalise any form of adult relationship that does not cause harm to others. The opposing groups in Nigeria argue that such actions cause harm to society by weakening the

foundations on which it is built.

The general opinion on homosexuality in Nigeria is significantly shaped by religious teachings (Ossisanwo and Alugbin, 2025), with the state, Christians, and Muslims aligning against the idea (Obadare, 2015). The post-colonial conception of African identity has also contributed to an indifferent reaction to a concept largely accommodated across Western democracies. Political leaders across all spheres of life in Nigeria repudiate the idea in defence of cultural sovereignty against a growing Western influence. However, liberal democracy does not entirely oppose cultural values; it argues that they operate within the confines of the constitution, with respect for human rights. Therefore, the application of liberal democratic theory to this study enables a critical assessment of Nigeria's anti-gay legislation, whether or not they align with democratic principles beyond the 'majority might'. Here, it forces a shift from the popular perception of the law to questions surrounding constitutional rights, minority protection, equality and human dignity. The theory creates a crossroads for the study, leading to a dilemma over states prioritising cultural consensus over individual liberties when the two come into conflict.

The Nigerian State's Interest in Female Reproductive Organs and Sexuality before Anti-Gay Laws

The historical trajectory of the Nigerian state's legislative interest in the female reproductive organ and the governance of female sexuality shows that the codification of the Same-Sex Marriage (Prohibition) Act (SSMPA) was not a sudden, novel eruption of public morality. Long before 2014, the state maintained a deeply entrenched, localised regulatory grip on female biology as a primary tool to legitimise political authority, preserve patriarchal lineage, and construct an artificial architecture of national identity. By treating female anatomy as a site of public surveillance and legislative curation, the state evolved from a colonial apparatus of domestic discipline into a post-colonial arbiter of moral hygiene. This reveals that the state's interest in female biology was never merely about public health but was fundamentally about the preservation of a political economy deeply dependent on the regulation of reproductive labour. According to Adebajo (2015), the way the Nigerian state engages with sexuality has always been moulded by much wider, deep-seated anxieties surrounding morality, culture, religion, and social control. Consequently, the SSMPA should not be analysed as an

isolated, out-of-nowhere piece of legislation, but rather as the predictable climax of a very long, continuous history of the state inserting itself into the intimate lives of its citizens.

Firstly, to understand the roots of this reproductive subjugation, one must look at the pre-colonial and colonial eras, where female sexuality and reproductive capacity were central to economic and social organisation within the disparate ethnic matrix that would become Nigeria. In patriarchal structures like those found within Hausa-Fulani, Yoruba, and certain Igbo communities, the female body was the primary vehicle for transmitting wealth and political alliances. Nevertheless, this instrumentalisation was complex and adaptive, allowing for flexible gender constructs in which institutional practices such as "female husbands" or "woman-to-woman marriage" existed among the Igbo, Yoruba, and South-South groups like the Ibibio and Efik (Amadiume, 1987; Oyèwùmí, 1997; Urama, 2019). According to Amadiume (1987), pre-colonial African societies actually possessed far more fluid and accommodating gender arrangements before colonial rule stamped them out. By paying the bride price for another woman, a wealthy or barren woman became a sociological "husband" to secure heirs for her lineage. Crucially, as emphasised by Omoteye and Akinlade (2016), these arrangements were entirely distinct from Western conceptualisations of lesbianism, as they were pragmatic, socio-economic configurations engineered to solve reproductive crises rather than expressions of same-sex desire.

The arrival of the British colonial project shattered this fluid matrix by imposing a rigid Victorian binary that criminalised non-normative expressions of gender and sexuality. British administrators introduced legal and administrative structures specifically designed to police and reshape local social behaviour in line with their own strict moral standards, expanding colonial governance far beyond economic exploitation into the most private corners of colonial life. According to Ekpo-Otu (2013), women suspected of sex work were constantly targeted with state surveillance, criminal penalties, and severe social stigmatisation. In a similar vein, according to Thomas (2003), colonial governments systematically viewed female sexuality and childbearing as areas that demanded official, institutional control. These heavy-handed historical interventions effectively laid the groundwork for modern state overreach, normalising and legitimising the idea that the government has an inherent right to police intimate life.

The transition to independence did not dismantle these

structures; instead, these colonial legal traditions were inherited, embraced, and adapted by the post-colonial Nigerian state. According to Obidimma and Obidimma (2013), Nigeria's tripartite legal architecture—comprising statutory, customary, and Islamic legal systems—collectively works to reinforce heterosexual marriage as the only socially and legally recognized framework for family life. The stubborn persistence of these colonial legal norms has therefore contributed immensely to how the modern state continues to regulate sexuality and gender relations today.

Along the same line, the post-colonial Nigerian judiciary continued to utilise this inherited colonial weaponry to police female reproductive decisions through a series of hostile rulings. In the landmark case of *Meribe v. Egwu* (1976), the Supreme Court dismissed woman-to-woman marriage as repugnant. According to Justice Madarikan (1976), who directly delivered the judgment on behalf of the court, "the law governing any decent society should abhor and express its indignation of a woman-to-woman marriage". The jurist essentially insisted that no civilised legal system could tolerate or validate a marriage contracted between two females, explicitly mandating that any local custom permitting such an arrangement must be struck down as completely incompatible with public decency and natural justice. Furthermore, this judicial hostility intensified in *Okonkwo v. Okagbue* (1994), where the Supreme Court labelled a customary marriage arranged to raise heirs for a deceased brother as invalid. According to Justice Uwais (1994), this kind of custom "is a fiction and a fallacy as there is no way a dead person can naturally and mutually get married to someone who is living". The court maintained that attributing an ongoing marital status to a deceased partner is a complete legal absurdity, arguing that a deceased individual is naturally incapable of giving consent or entering a valid, living marital union, thereby making any custom that attempts to raise heirs through such a ghostly framework completely unenforceable under modern policy.

Moving forward, by the time the Court of Appeal decided *Ojukwu v. Agupusi* (2014), the state's rhetoric had escalated to overt moral condemnation. The presiding justice explicitly asserted that customary practices allowing widows to choose alternative reproductive pathways gave a "licence to immorality" and actively encouraged "promiscuity". In other words, the court interpreted these autonomous customary choices not as protected traditions, but as state-threatening behaviour that promoted sexual deviance and threatened public decency. Moreso, through these direct judicial assertions, the post-

colonial legal system systematically stripped women of their traditional rights to utilise their wealth and reproductive choices to subvert structural marginalisation.

As anxieties over population growth and national development intensified in the late twentieth century, reproduction itself became a highly scrutinized object of state interest. Women's biological capacities were gradually swallowed up by broader state development agendas, as seen in the National Population Policy for Sustainable Development (2004), which explicitly links individual reproductive behaviour to macro-economic planning and social progress. According to Mama (1995), post-colonial states have habitually placed women's bodies at the absolute centre of their development strategies, drastically expanding governmental surveillance over personal reproductive choices. This deep level of state involvement is starkly mirrored in Nigeria's highly restrictive abortion laws, which permit the procedure only when it is a literal matter of saving the mother's life under the Criminal Code Act. This rigid control perfectly captures what Foucault (1978) conceptualised as "bio-power", which is the structural process by which states regulate entire populations by exerting ultimate authority over bodies, sex, and reproduction to steer society toward specific moral and political goals.

Moreover, these population management initiatives and maternal health policies were routinely framed as benevolent developmental interventions, yet they undeniably reinforced the patronising belief that a woman's reproductive life must be monitored and steered for the "greater good" of the nation. According to Oyěwùmí (1997), many post-colonial African institutions simply inherited these heavily gendered, controlling assumptions directly from colonial administrations, solidifying the state's role in managing women's daily lives and bodies. In tandem with these developmental excuses, religion has played a massive historical role in shaping institutional attitudes toward sex. Both Christianity and Islam have heavily dictated public morality and legislative policy, and with religious and cultural values remaining the primary anchors for public support of laws that police sexual conduct (Adebanjo, 2015). Long before the SSMPA was ever drafted, same-sex relations were already heavily criminalised under Section 214 of the Criminal Code Act, proving that the state had long accepted its self-appointed role as the enforcer of public morality.

Furthermore, analysing this intersection of gender, reproductive health, and state legislation exposes a profound flaw in the classic liberal perspective, which

often views the state's actions as mere failures of democratic execution or structural inefficiency. Liberal legal theorists argue that if Nigeria were to fully implement international treaties like CEDAW or the Maputo Protocol, women would be liberated from these oppressions. Moreover, this liberal optimism assumes that the post-colonial state is a neutral arbiter that can be reformed to protect bodily rights. In reality, the Nigerian state's relationship with the female body is fundamentally extractive and disciplinary, intentionally weaponising the regulation of female biology to maintain political equilibrium. The state's preservation of a tripartite legal system ensures a fractured landscape where women's reproductive rights are constantly traded for political capital. In the geopolitical calculus of Nigeria, state elites frequently yield to religious and traditional structures, retaining laws that restrict abortion or permit early marriage to secure the allegiance of conservative power blocs. Therefore, the state's interest in the female body is a foundational mechanism of its governance, rendering the liberal belief in state-led reformation hollow, as the state itself remains the primary architect of this anatomical subjugation.

Ultimately, when viewed against this deep historical backdrop, the enactment of the Same-Sex Marriage (Prohibition) Act reveals itself not as a radical, sudden break from tradition, but as the completely organic continuation of an established pattern of sexual policing. While proponents defended the law as a shield to protect Nigerian cultural and religious integrity, critics from organisations like the Human Dignity Trust (2014) rightly countered that it fundamentally violated basic human rights to privacy, dignity, equality, and freedom of association. According to Tamale (2011), many contemporary African laws that police sexuality are deeply rooted in colonial legal traditions, irony notwithstanding, even when they are fiercely defended in the name of authentic local culture. In conclusion, tracing this history makes it undeniably evident that the regulation of the womb, the policing of custom, and the criminalisation of non-normative intimacy are all branches of the same tree: a statist imperative to control human biology as a fundamental currency of political power.

The Nigerian Anti-gay legislation/Laws

Before same-sex relationships began to receive significant attention from the press in Nigeria, they were often viewed by the general public as non-existent factors (Adebanjo, 2015). In fact, it is documented that Nigeria maintains a

restrictive stance toward such relationships. This reality is reflected in societal attitudes, public condemnation of same-sex acts, and national legislation (Namwase et al., 2017). The issue appears to be a significant concern for minority groups and advocates. Because Nigeria portrays itself as a liberal democratic nation, proponents of rights for sexual minorities believe their interests should be protected by the legislative framework, even within a population that maintains strong traditional views on the matter. The issue of same-sex relationships appears to be a concern of the minority group which practices, believes and advocates for it. The question of same-sex relationships remains a contentious socio-political issue in contemporary Nigeria. That said, Nigeria's legislative frameworks have long maintained strict regulations regarding sexual minorities. As a former colony of Britain, the nation's legal heritage included laws that prohibited same-sex relationships and provided penalties for offenders (Songunro, 2022). While many Western liberal democracies have recognised the rights of LGBTQ+ individuals, Nigeria has maintained a legal framework that criminalises same-sex relationships and prohibits the recognition of same-sex unions. This framework is influenced by religious, moral, and cultural values, as well as concepts of national sovereignty. Advocates of such legislation rely on these premises to validate their positions. However, critics argue that these laws intersect with internationally recognised human rights principles and influence Nigeria's status as a liberal democratic state (Human Rights Watch, 2014). Consequently, Nigerian legislation has become a point of discussion in global debates concerning human rights and democracy.

The origin of anti-gay legislation in Nigeria is traced to 1914, when the country was born through the amalgamation. It was introduced through the Criminal Code and the Penal Code, which were to be retained at independence in 1960. Section 214 of the Criminal Code Act of 1916, as reflected in the Laws of the Federation of Nigeria (1990) explicitly outlined the British take on the subject. Accordingly, any person who;

- (1) has carnal knowledge of any person against the order of nature; or
- (2) has carnal knowledge of an animal; or
- (3) permits a male person to have carnal knowledge of him or her against the order of nature; is guilty of a felony, and is liable to imprisonment for fourteen years.

Similarly, Section 215 outlines the punishment for offenders stating that:

Any person who attempts to commit any of the offences defined in the last preceding section is guilty of a felony, and is liable to imprisonment for seven years. The offender cannot be arrested without warrant.

In northern Nigeria, the Penal code and the Quran became the foundational basis for the introduction of Sharia criminal codes. The Sharia law was governed by three basic components: Qur'anic laws, Fiqh-us-Sunnah, and Ijtihad-Ijma-Qiyas. These components recognise marriage strictly as a union between a male and a female, offering no provisions for same-sex unions. Under the Qur'an (4:16), it states: "If two men (or two women) are guilty of lewdness, give them suitable punishment... But if they show penitence, reform and mend their ways, they should be forgiven." Under certain interpretations of Sharia law, however, same-sex acts attract severe penalties including flogging, imprisonment, or death by stoning (Sharia Penal Code Law, 2000). Adebajo (2015) highlights that these punishments vary across northern states, noting that penalties are often more devastating for married offenders than unmarried ones.

With the global rise of LGBTQ+ advocacy, political and religious leaders in Nigeria vehemently argued that homosexuality was incompatible with local traditions. This cultural backlash culminated in the Same-Sex Marriage (Prohibition) Act. Section 1 of the Act voids and renders unenforceable any same-sex marriage contracts or civil unions, confirming that same-sex marriages contracted outside Nigeria will not be recognised within the country. As the most significant piece of post-independence anti-gay legislation in Nigeria, the Act criminalises same-sex marriages and denies them any form of legal recognition. Structurally, the SSSMPA codifies strict prohibitions and severe criminal penalties across its provisions. The Section further nullifies marriage contracts or civil unions between persons of the same sex, declaring them void and legally unenforceable within Nigeria. This statutory invalidity explicitly extends to same-sex marriages contracted outside the country. Beyond the marriage contract itself, Section 4 extends criminal liability to encompass advocacy and public association. It strictly prohibits the registration, operation, and sustenance of gay clubs, societies, or organisations, while also criminalising public displays of same-sex amorous relationships. The penalties for violating these sections are severe; Section 5 prescribes a maximum fourteen-year prison sentence for individuals who enter into a same-sex marriage contract or civil union, and a ten-year imprisonment term for anyone who registers, operates,

participates in, or supports gay organisations.

The critical distinction between colonial-era legislation and post-colonial law lies in the breadth of this contextualization. While colonial-era statutes primarily criminalise specific sexual acts under the Criminal and Penal Codes, the SSMPA significantly broadens this scope by criminalising association, advocacy, and public expressions of sexual orientation (Adebanjo, 2015; Eseyin, 2015). Supporters of the legislation justify its strictness on cultural, religious, and political grounds. Proponents frame the law as a vital mechanism to protect indigenous cultural identity from perceived foreign influences, arguing that same-sex intimacy fundamentally deviates from African traditions and societal norms. Religion plays an equally foundational role in shaping public approval. Nigeria is a deeply pious society where Christianity, Islam, and African Traditional Religions universally reject homosexual conduct on moral and spiritual grounds. Consequently, an overwhelming coalition of religious leaders served as the core advocates driving the legislative passage and popular support of the SSMPA (Adebanjo, 2015; Okonkwo, 2023).

Arguments surrounding the Same-Sex Marriage (Prohibition) Act (SSMPA) frequently invoke national sovereignty as a primary justification. Proponents assert that Nigeria retains an absolute sovereign right to enact legislation reflecting the distinct moral and ethical preferences of its citizenry. From this perspective, external pressure from Western governments and international non-governmental organisations is viewed as unwarranted interference in domestic affairs. This defence of the SSMPA as an exercise of national self-determination is deeply anchored in a post-colonial resistance against what is now termed "cultural imperialism". President Jonathan, while signing the bill into law, explicitly declared that his administration resisted intense geopolitical pressures and subtle diplomatic threats from Western powers. Scholars expanding on this view argue that international human rights advocacy often functions as an extension of Western hegemony. For instance, Nnamuchi (2019) posits that no universal international human rights instrument explicitly mandates the legal recognition of same-sex marriage, meaning sovereign states retain the ultimate statutory authority to structure domestic family law.

Domestic public opinion polls have consistently indicated an overwhelming opposition to same-sex relationships, with advocates maintaining that imposing Eurocentric moral frameworks undermines democratic self-determination. This perspective mirrors the foundational anxieties raised by landmark African historians as seen in

Ayandele (1966) view that missionary and colonial institutions profoundly transformed indigenous political and social structures in Nigeria, facilitating the spread of European cultural values and weakening traditional systems of authority. Contemporary Nigerian legal scholarship continues to reinforce this paradigm, asserting that true sovereignty requires a state to maintain exclusive jurisdiction over its ethical boundaries without political or economic coercion from external actors. Despite widespread domestic support, the SSMPA has faced substantial criticism from human rights organizations and legal scholars globally. Critics argue that the statute violates fundamental protections guaranteed under both international treaties and the Constitution of the Federal Republic of Nigeria. Constitutional concerns center on infringements upon the rights to freedom of association, freedom of expression, privacy, personal liberty, and freedom from discrimination. The United Nations, Human Rights Watch (HRW), and Amnesty International have heavily documented the negative consequences of the legislation for sexual minorities. Research indicates that the law has escalated targeted harassment, arbitrary arrests, extortion, and physical violence against individuals perceived to be LGBTQ+.

Furthermore, the legislation has fostered a climate of fear that deters victims of abuse from seeking institutional protection. According to Graeme Reid, the former LGBT rights director at Human Rights Watch, the SSMPA stands as the most repressive restriction on fundamental freedoms enacted since Nigeria's return to civilian rule in 1999 (Human Rights Watch, 2014). Reid cautioned that when a government is permitted to strip one specific group of its constitutional protections, it establishes a dangerous precedent to legislate away the liberties of any other citizens. Human rights reports confirm that many LGBTQ+ persons avoid reporting conventional crimes to law enforcement out of fear that they will become targets of investigation under the provisions of the Act. Ultimately, this legal divide underscores a fundamental tension within liberal democratic theory regarding the balance between majoritarian morality and the preservation of minority rights against state overreach.

Socio-political justification of the Nigerian anti-gay laws.

Nigeria, as a multi-ethnic country with diverse cultures, upholds moral values. Therefore, engaging in same-sex acts is prohibited at both the societal and governmental levels. Nigerians see same-sex practice as immoral and

inappropriate, a great threat to the foundational belief in marriage and family life (Amusan, Saka, & Adekeye, 2019). The majority of Nigerian society believes that a sense of sexual sanctity among the people must be maintained, which will, in turn, help control their behaviour. As a result, same-sex relationships are widely rejected by many segments of society, who perceive them as contrary to traditional conceptions of marriage, family life, and social order (Chukwu, 2015).

Within the Nigerian society, as noted elsewhere in this study, marriage is traditionally understood as a union between a man and a woman for companionship, procreation, and the continuation of family lineage. From this perspective, the act of same-sex unions is considered a challenge to long-standing cultural values and family structures. Many Nigerians, therefore, regard gay practice as a threat to the institution of marriage and the moral standard of the society (Amusan, Saka, & Adekeye, 2019; Oladosu-Uthman, 2021)

Religion is an important factor influencing public attitudes toward gay practice in Nigeria. Christianity, Islamism, and African Traditional Religion play significant roles in shaping social values (Obadare, 2015; Ossisanwo and Alugbin, 2025). The tripartite religious system rejects the practice of same-sex relationships. The Islamic Sharia laws, which are dominant in the Northern part of the country, subject gay persons to some of the most stringent punishments recorded in the country, with extrajudicial killings sometimes taking place (Itai, 2022, BBC News, 2014; Los Angeles Blade, 2022). Christians, on the other hand, reject the practice, upholding the biblical saying in Genesis I: 27 that, "...God created them male and female and blessed them" (Zondervan, 2011). Though Christians do not show as much extremity as Islam, they segregate gay persons, often referring to them as unfit in the presence of God. This put priest who concur to uniting homosexual couples in the Christian way into a negative spotlight, which could eventually lead to their expulsion from the church. For traditionalists, engaging in such acts could threaten the ancestral inheritance (Chukwu, 2015).

The government is also out to maintain good moral standards in society. Most government officials are influenced by their religion. This explains why they rendered unrelenting support for the Act. Beyond the oversimplified narratives, Amusan, Saka, and Adekeye (2019) argue that politicians support the Act to seek mass support from the Nigerians who see it as immoral to engage in homosexuality. However, the reality remains the fact that previous governments have held firm positions on the anti-gay movement, but have not enacted it into the

constitution. This is done with the belief that the government must protect the family values on which the society is built.

Political leaders have often presented their opposition to same-sex marriage as an expression of national sovereignty and cultural independence. They argue that Nigeria possesses the right to enact laws that reflect its own social and cultural realities rather than adopting values perceived to originate from foreign societies (Adamu, 2019). Thus, the social and political justification of Nigeria's anti-gay laws is rooted in concerns about morality, religion, family preservation, cultural identity, and national self-determination.

Interrogating Nigeria's Anti-Gay Legislation from a Liberal Democratic Perspective

The enactment of the Same-Sex Marriage (Prohibition) Act (SSMPA) in 2014 represented a defining moment in the relationship between human rights, socio-cultural values, and democratic governance in Nigeria. While the legislation was widely celebrated within the country, it attracted significant criticism from international human rights organisations and liberal scholars who viewed it as a violation of fundamental rights and freedoms (Human Rights Watch, 2014). To understand the controversy surrounding the law, it is important to situate it within the broader socio-cultural context that shapes public attitudes towards homosexuality in Nigeria and Africa generally.

Across much of Africa, homosexuality is widely perceived as incompatible with indigenous cultural values and social norms. This perception is rooted in the belief that same-sex relationships contradict traditional conceptions of marriage, family, and procreation, which are regarded as the foundations of African societies. Consequently, many Africans view homosexuality not merely as a private lifestyle choice but as a challenge to established moral and social structures (Ossisanwo and Alugbin, 2025). This sentiment is reinforced by religious beliefs, particularly within Christianity and Islam, the two dominant religions in Nigeria. Both religions generally regard homosexual practices as morally unacceptable, and their teachings continue to shape public opinion and state policies. It is therefore unsurprising that the SSMPA received overwhelming support among Nigerians who perceived it as a necessary measure for preserving cultural identity, religious morality, and family values.

The defense of anti-gay legislation on cultural grounds, however, presents an important paradox. While

homosexuality is often described as a foreign or Western import, scholars such as Sogunro (2014) and Wekesa (2016) argue that many anti-homosexuality laws in Africa are themselves products of colonial legal systems. During British colonial rule, anti-sodomy laws were introduced into many African territories and subsequently retained after independence (Aderinto, 2015). As a result, the legal foundations of contemporary anti-gay legislation are not entirely indigenous but are partly derived from colonial jurisprudence. This historical reality complicates claims that anti-gay laws are purely expressions of authentic African traditions. Rather, it suggests that the current legal hostility towards homosexuality reflects a complex interaction between colonial legal legacies, religious conservatism, and contemporary socio-cultural values.

Notwithstanding its cultural and historical foundations, the SSMPA raises significant concerns when examined through the lens of liberal democratic theory. Liberal democracy is built upon principles such as individual liberty, equality before the law, freedom of expression, freedom of association, privacy, and the protection of minority rights. Unlike the majoritarian conceptions of democracy, liberal democracy insists that the rights of minorities must be protected even when their beliefs, identities, or lifestyles are unpopular. The legitimacy of democratic governance, therefore, depends not only on its responsiveness to majority preferences but also on its commitment to safeguarding fundamental rights for all citizens.

Viewed from this perspective, the SSMPA appears difficult to reconcile with several constitutional and democratic principles. The Nigerian Constitution guarantees freedoms of expression, association, conscience, and privacy. It also prohibits discriminatory treatment of citizens on arbitrary grounds. However, the SSMPA criminalises same-sex relationships, prohibits organisations that advocate for LGBTQ+ rights, and imposes severe penalties on individuals associated with such activities. These provisions effectively restrict the ability of sexual minorities to express their identities, associate with like-minded individuals, and participate freely in civic life. Critics argue that the law transforms a matter of private personal identity into a subject of criminal sanction, thereby expanding state control into areas traditionally protected by individual liberty (Human Rights Watch, 2014; Sogunro, 2014; Lalude, 2019; and Agama, 2024).

Furthermore, the legislation has implications for the protection of minority groups within a democratic society. Liberal democratic theory emphasises that citizenship

rights should not depend on the popularity of one's beliefs or identity. Yet the SSMPA appears to institutionalise distinctions between majority and minority citizens by denying legal recognition and protection to individuals based on their sexual orientation. Human rights advocates contend that such exclusion undermines the principle of equal citizenship and weakens democratic inclusiveness. Reports of increased arrests, harassment, and social discrimination against suspected homosexuals following the enactment of the law further reinforce concerns that the legislation has contributed to the marginalisation of an already vulnerable minority (Itai, 2022, BBC News, 2014; Los Angeles Blade, 2022).

At the same time, defenders of the SSMPA maintain that democratic governments derive legitimacy from the values and preferences of the people they govern. Since a significant majority of Nigerians oppose homosexuality on cultural and religious grounds, supporters argue that the legislation reflects democratic responsiveness rather than democratic failure. This position aligns with arguments advanced by scholars who contend that democracy should not be detached from the social realities and moral foundations of particular societies. According to this perspective, the protection of communal values and social cohesion may, under certain circumstances, take precedence over individual claims to unrestricted liberty.

The Nigerian case, therefore, illustrates a fundamental tension within democratic theory: the conflict between majority rule and minority rights. On one side is the argument that democratic governments should reflect the moral convictions and cultural traditions of the majority population. On the other hand, the liberal democratic contention is that fundamental rights should not be subject to popular approval or cultural preference. The challenge lies in determining whether democratic legitimacy is derived primarily from majority consent or from the protection of universal rights that apply equally to all citizens.

Ultimately, the SSMPA occupies a contested space between these two competing understandings of democracy. While the legislation enjoys considerable socio-cultural legitimacy within Nigeria, it simultaneously raises questions regarding equality, freedom, and the protection of minorities. The law, therefore, serves as an important case study for examining the complex relationship between human rights and socio-cultural politics in contemporary Africa. It demonstrates that democratic governance is not merely a matter of majority rule but also involves ongoing negotiations between collective values and individual rights. Understanding this

tension is essential for evaluating both the strengths and limitations of Nigeria's democratic experience.

Conclusion

This study has examined Nigeria's anti-gay legislation, particularly the Same-Sex Marriage (Prohibition) Act (SSMPA) of 2014, through the analytical lens of liberal democratic theory. The study was motivated by the persistent tension between the protection of human rights and the preservation of socio-cultural values in contemporary Nigeria. By interrogating the legal, historical, cultural, religious, and political foundations of the legislation, the study sought to determine whether the SSMPA represents a legitimate expression of democratic self-determination or a contradiction of the fundamental principles associated with liberal democracy.

The findings reveal that Nigeria's anti-gay legislation did not emerge in isolation. Rather, it is rooted in a long historical tradition of state regulation of sexuality and intimate life. Colonial criminal laws introduced by the British administration established the legal foundations for the criminalisation of same-sex relations, while post-colonial governments retained and expanded these provisions. The enactment of the SSMPA in 2014, therefore, represents the culmination of a broader historical process through which the state has sought to regulate sexuality in accordance with prevailing moral, religious, and cultural norms. Consequently, the law reflects both inherited colonial legal structures and contemporary socio-political realities.

The study further demonstrates that the widespread support for anti-gay legislation in Nigeria is largely shaped by deeply entrenched religious beliefs, cultural values, and conceptions of family life. Across much of Nigerian society, marriage is traditionally understood as a heterosexual institution intended for procreation, social continuity, and the preservation of lineage. Christianity, Islam, and African Traditional Religion reinforce these perceptions by presenting homosexuality as morally unacceptable. Political leaders have also framed opposition to same-sex relationships as a defence of cultural sovereignty and national identity against perceived foreign influences. Within this context, many Nigerians regard the SSMPA as a legitimate instrument for protecting societal values and maintaining social cohesion.

However, when examined through the framework of liberal democratic theory, significant contradictions emerge. Liberal democracy extends beyond the principle

of majority rule and emphasises the protection of individual liberty, equality before the law, freedom of association, freedom of expression, privacy, and minority rights. The theory insists that democratic legitimacy is not measured solely by public approval but also by the ability of institutions to safeguard vulnerable groups against discrimination and state overreach. From this perspective, several provisions of the SSMPA appear difficult to reconcile with the core principles of liberal democracy.

The study finds that the legislation not only criminalises same-sex unions but also extends criminal liability to advocacy, association, and public expressions of LGBTQ+ identity. Such provisions raise important questions regarding constitutional freedoms and the limits of state intervention in private life. Human rights organisations and legal scholars have argued that the law undermines fundamental rights guaranteed under both international human rights instruments and Nigeria's constitutional framework. Reports documenting increased discrimination, harassment, arbitrary arrests, and social exclusion following the enactment of the law further suggest that the legislation has had broader implications for citizenship, inclusion, and democratic participation.

At the same time, the study acknowledges that the debate cannot be reduced to a simple opposition between human rights and culture. The Nigerian case illustrates a more complex struggle over competing interpretations of democracy. Supporters of the SSMPA view democracy primarily as the expression of the majority's moral will, while critics understand it as a constitutional order that protects the rights of all citizens, regardless of social acceptance. This tension reflects one of the most enduring dilemmas in democratic theory: the challenge of balancing collective cultural preferences with the protection of individual rights and minority freedoms.

Ultimately, the study concludes that Nigeria's anti-gay legislation occupies a contested space between socio-cultural legitimacy and liberal democratic principles. While the law enjoys substantial support among large segments of the population and reflects prevailing religious and cultural values, it simultaneously raises serious concerns regarding equality, personal liberty, freedom of association, and the protection of minority rights. The SSMPA therefore exposes the limitations of a purely majoritarian conception of democracy and highlights the importance of constitutional safeguards in preventing the marginalisation of vulnerable groups.

The Nigerian experience demonstrates that democratic governance involves more than electoral legitimacy or

adherence to majority opinion. It also requires a continuous negotiation between cultural identity, national sovereignty, and universal principles of human dignity and human rights. As debates over sexuality, citizenship, and rights continue to evolve globally and within Africa, the challenge for Nigeria remains how to reconcile its socio-cultural realities with its constitutional and international commitments. In this regard, the controversy surrounding the SSMPA serves as a valuable case study for understanding the broader relationship between human rights, socio-cultural politics, and democratic governance in contemporary African states. The study, therefore, concludes that the future of democratic development in Nigeria will depend largely on its ability to balance respect for cultural values with the protection of the fundamental rights and freedoms that form the cornerstone of liberal democratic governance.

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