

A Constitutional Review of the Illegitimacy of Nigeria's Same-Sex Marriage (Prohibition) Act

Ezinwanne Mary ONWUKA¹

Faculty of Law, Ahmadu Bello University, Zaria.

ezinwanne.dominion@gmail.com || ORCID: 3452-9046

¹ Ezinwanne Mary ONWUKA, Faculty of Law, Ahmadu Bello University, Zaria, ezinwanne.dominion@gmail.com || ORCID: 3452-9046

Abstract

Consensual sexual activity between adults of the same sex is criminalised in Nigeria. This stems from prevailing socio-cultural and religious beliefs that portray same-sex sexual relationships as unnatural, un-African, and morally reprehensible. Religious people would go further to regard it as demonic. It is on this basis that the Same Sex Marriage (Prohibition) Act (SSMPA) 2013, which criminalises various forms of same-sex unions and public display of same-sex amorous relationships, was enacted by the Nigerian government. This legislation was birthed notwithstanding that the Constitution of the Federal Republic of Nigeria, 1999 (as amended) guarantees the fundamental rights of all citizens, irrespective of one's sexual orientation. These rights include the right to life, freedom from discrimination, right to personal liberty, right to freedom of assembly and association, right to fair hearing, and right to privacy. The study adopts a doctrinal research methodology to analyse the constitutionality of the SSMPA with regards to its alignment or otherwise with the fundamental rights enshrined in Chapter IV of the 1999 Constitution (as amended), particularly the right to privacy, right to freedom of assembly and association, and right to freedom from discrimination. The study contributes to the scholarly debate on LGBTQ+ rights and argues for the protection of the fundamental rights of every individual, regardless of gender identity and sexual orientation.

Keywords: Same Sex Marriage (Prohibition) Act, fundamental rights, gender identity, sexual orientation, same-sex marriage, LGBTQ+ persons

1.0. Introduction

Same-sex marriage is not only prohibited but also criminalised in Nigeria with defaulters risking 14-year prison term. This is as a result of the enactment and enforcement of the Same Sex Marriage (Prohibition) Act (SSMPA), 2013. The SSMPA is targeted at a group of minorities within the Lesbian, Gay, Bisexual, Transgender, Queer (LGBTQ+) community, particularly as it relates to one's expression of their gender identity and sexual orientation. Although homosexuality is not a new phenomenon in Nigeria, such practices were done in secret because of social stigma and public censorship. However, the influence of popular culture and western civilisation has led to the increased visibility of same-sex practices in Nigeria such that LGBTQ+ persons no longer hide their identities. The increased public display of same-sex relationships gave rise to the enactment of the SSMPA.

Interestingly, Nigeria's anti-homosexual marriage Act came at a time the world was witnessing a rise in the legalisation of same-sex marriages to protect the rights of LGBTQ+ persons. The first country that legalised same-sex marriage was Netherlands in 2001.² Currently, there are 38 countries worldwide where same-sex marriage is legal.³ Thailand became the first Southeast Asian nation to legalise it in January 2025. South Africa is currently the first and only African country where same-sex marriage is legally recognised. It

² David Crary and Mike Corder, 'The Dutch Went First in 2001; Who Has Same-Sex Marriage Now?' *AP News* (Amsterdam, 1 April 2021) <<https://apnews.com/article/europe-africa-netherlands-job-cohen-western-europe-e08b053af367028737c9c41c492cc568>> accessed 6 October 2025.

³ Human Rights Campaign, 'Marriage Equality Around the World' (undated) <<https://www.hrc.org/resources/marriage-equality-around-the-world>> accessed 6 October 2025.

legalised same-sex marriage with the Civil Union Act, 2006,⁴ becoming the fifth country in the world and the first in Africa to do so. The South African constitution also protects against discrimination based on sexual orientation.⁵ It is surprising that despite the increasing legalisation of homosexual marriages in many parts of the world, Africa has remained antagonistic. A study⁶ found that the acceptance of same-sex marriage is geographically and culturally determined. Another study⁷ found that nearly half of the countries worldwide where homosexuality is outlawed are in Africa. In Africa, the highest acceptance rate of same-sex marriage is in South Africa with 34 per cent of the population being positively disposed to it while Nigeria recorded the lowest acceptance rate with only one per cent of the population in support.⁸

The United Nations Human Rights Council passed a resolution, entitled *Human Rights, Sexual Orientation and Gender Identity*,⁹ in favour of LGBTQ+ rights in 2011 with a call to all member nations to protect the rights of LGBTQ+ persons. The effect was an upsurge in countries that legalised same-sex marriage from 2011. Contrary to the mandate, the Goodluck Ebele Jonathan administration enacted the SSMPA as a form of defiance and rejection of ‘westernisation.’ The SSMPA not only prohibits same-sex marriage, but also criminalises and denies them legal recognition. Buttressing this point, Adamu observed that:

“The natural implication of the criminalisation of same-sex marriage in Nigeria is that no civil suit can be instituted asserting rights or any claims under such a marriage in any court of law in Nigeria....Thus benefits ordinarily accruing to married couples such as conjugal rights, inheritance, child custody, maintenance and alimony will not be actionable...”¹⁰

The focus of this study is on the criminalisation of same-sex marriage or civil union in Nigeria in spite of the provisions of the Constitution of the Federal Republic of Nigeria 1999 (hereinafter referred to as 1999 Constitution (as amended)), which guarantee Nigerian citizens the right to privacy,¹¹ freedom from discrimination,¹² and the right to freely associate with others.¹³ The paper is divided into four parts with this introductory section as the first. The second part covers the scope of the SSMPA and a survey of subsidiary laws which criminalised same-sex relations in Nigeria prior to the enactment of the SSMPA. The third part of the paper examines the misalignment between the SSMPA and the fundamental rights guaranteed by the 1999 Constitution (as amended). The final part is the conclusion.

⁴ The Act was amended in 2020 and is now known as the *Civil Unions Amendment Act 8 of 2020*. A key provision is the prohibition of marriage officers from refusing to conduct and solemnise same-sex marriages.

⁵ Constitution of the Republic of South Africa, 1996, s 9(3).

⁶ Pew Research Center, ‘The Global Divide on Homosexuality: Greater Acceptance in More Secular and Affluent Countries’ (4 June 2013) <<https://internationaltravel.wisc.edu/wp-content/uploads/sites/255/2015/04/Pew-Center-Report-on-Global-Attitudes-Toward-LGBTIQ.pdf>> accessed 6 October 2025.

⁷ Lucas Ramon Mendos, *State-Sponsored Homophobia Report 2019: Global Legislation Overview Update* (ILGA World, December 2019).

⁸ Pew Research Center (n5).

⁹ UNAIDS, ‘Historic Resolution on Human Rights Violations Based on Sexual Orientation and Gender Identity Adopted at the Human Rights Council’ (27 June 2011) <<https://www.unaids.org/en/resources/presscentre/featurestories/2011/june/20110627ohchr>> accessed 6 October 2025.

¹⁰ H Adamu, ‘The Same –Sex Marriage Prohibition Act 2014: Nigeria’s Rejection of a Western Secular Trend’ [2019] 1 (1) *Usmanu Danfodio University Sokoto Law Journal* 160-183, 164.

¹¹ The Constitution of the Federal Republic of Nigeria 1999 (CFRN 1999), s 37.

¹² CFRN 1999, s 42.

¹³ CFRN 1999, s 40.

2.0. Legal Framework on the Prohibition of Same-Sex Relationships in Nigeria

Nigeria is one of the most restrictive environments for sexual minorities in Africa, where consensual same-sex conduct and related expressions of identity are criminalised under multiple overlapping statutes. These are the SSMPA, the Criminal Code Act, the Penal Code Act, and several Sharia Penal Code Laws of Northern states.

2.1. Scope of the Same Sex Marriage (Prohibition) Act

While the title of the Same Sex Marriage (Prohibition) Act, 2013 specifically mentions 'Same Sex Marriage', its scope extends beyond this focus. The SSMPA contains only eight sections, yet it sets out Nigeria's firm stance against same-sex marriages. It declares that a marriage or civil union entered into between persons of same sex is illegal.¹⁴ It forbids the solemnisation of such unions in churches, mosques, any other place of worship and invalidates any marriage certificate issued to same-sex couples,¹⁵ stressing that only a marriage between a man and a woman is valid in Nigeria.¹⁶ It also bans the registration and operation of LGBTQ+ associations and organisations, as well as public displays of same-sex affection, whether directly or indirectly.¹⁷ Anyone who contracts a same-sex marriage or civil union is liable to 14 years imprisonment, while those who promote such by registering LGBTQ+ associations and supports the solemnisation of homosexual couples risk 10 years imprisonment.¹⁸ The Act defines key terms such as 'marriage', 'same sex marriage', 'witness' and 'civil union.'¹⁹ Notably, 'marriage' is a legal union entered into between persons of opposite sex in accordance with the Marriage Act, Islamic Law, or Customary Law while 'same sex marriage' means the coming together of persons of same sex with the purpose of living together as husband and wife or for other purposes of same sexual relationship. State High Courts have the jurisdiction to entertain matters arising from the breach of the SSMPA and, in the case of the Federal Capital Territory, the High Court of the FCT has jurisdiction.²⁰

2.2. Complementary Provisions on the Criminalisation of Same-Sex Conduct in Nigeria

An assessment of the criminalisation of same-sex relationships in Nigeria is not limited to the SSMPA. The Act only restates the position of some other Nigerian legislations, albeit to a greater extent. Other legislations that bar such acts include the Criminal Code Act, which is applicable in southern Nigeria, the Penal Code Act that is enforceable in northern Nigeria, and the Sharia Penal Code Laws applicable in Zamfara, Borno, Bauchi Gombe, Jigawa, Kebbi, Kaduna, Kano, Katsina, Niger, Sokoto, and Yobe States. In addition to these, there are state laws like the Prostitution, Lesbianism, Homosexuality, Operation of

¹⁴ Same Sex Marriage (Prohibition) Act 2013 (SSMPA), s 1.

¹⁵ SSMPA, s 2.

¹⁶ SSMPA, s 3.

¹⁷ SSMPA, s 4.

¹⁸ SSMPA, s 5.

¹⁹ SSMPA, s 7.

²⁰ SSMPA, s 6

Brothels and Other Sexual Immoralities (Prohibition) Law 2000 of Borno State, and the Prostitution and Immoral Acts (Prohibition) Law of Kano State 2000.²¹

The Criminal Code Act²² and the Penal Code Act²³ proscribe acts of ‘carnal knowledge’ against the order of nature. Offenders are liable to 14-year imprisonment, with the Penal Code Act adding a fine. The phrase ‘against the order of nature’ used in the Criminal and Penal Codes implies any sexual activity that varies from the penetration of the male penis into the female vagina. This broad definition includes sexual conduct between persons of the same sex and having carnal knowledge of an animal.²⁴ In *Naz Foundation v Government of NCT of Delhi*,²⁵ the phrase ‘carnal intercourse against the order of nature’ was interpreted to mean all forms of sexual conduct other than heterosexual penile–vaginal intercourse. The implication being that other sexual acts such as anal sex, oral sex, and the use of sex toys fall within this range. However, that is beyond the scope of this study. The Sharia Penal Code Law of Zamfara State termed ‘carnal intercourse against the order of nature’ as ‘sodomy’,²⁶ specifying a punishment of 100 lashes of the cane in addition to a year imprisonment for unmarried offenders while married offenders are to be stoned to death.²⁷ It criminalises lesbianism (*sihaq*)²⁸ with 50 lashes of the cane in addition to a term of imprisonment which may extend to six months.²⁹ The punishment for lesbianism in Bauchi State is 50 lashes of the cane in addition to a term of imprisonment which may extend to five years.³⁰ Furthermore, the Prostitution, Lesbianism, Homosexuality, Operation of Brothels, and Other Sexual Immoralities (Prohibition) Law of Borno State criminalises prostitution, lesbianism, and homosexuality.³¹ The punishment for lesbianism and homosexuality is the death penalty.³²

The foregoing underscores how strict Nigerian laws are against same-sex relationships and marriages.

3.0. Fundamental Rights Implications of the Same Sex Marriage (Prohibition) Act

The SSMPA is irreconcilable with fundamental constitutional and human rights, particularly in regard to privacy, freedom of assembly and association, and freedom from discrimination guaranteed by the 1999 Constitution (as amended).

²¹ This law targets sex workers, transgender persons and cross-dressers.

²² Criminal Code Act, Cap C38 LFN 2004 (CCA), s 214

²³ Penal Code Act, Cap P3 LFN 2004, s 284

²⁴ CCA (n21).

²⁵ 160 Delhi Law Times 277 (Delhi High Court 2009).

²⁶ Zamfara State Sharia Penal Code Law 2000 (SPC Law, Zamfara), s 130.

²⁷ SPC Law, Zamfara, s 131.

²⁸ SPC Law, Zamfara, s 134.

²⁹ SPC Law, Zamfara, s 135.

³⁰ Augustine Edobor Arimoro, ‘The Criminalisation of Consensual Same-Sex Sexual Conduct in Nigeria: A Critique’ [2020] SSRN 1-21, 11 <<https://ssrn.com/abstract=3644604>> accessed 10 October 2025.

³¹ The Prostitution, Lesbianism, Homosexuality, Operation of Brothels, and Other Sexual Immoralities (Prohibition) Law of Borno State 2000 (PLHOB Law, Borno State), s 3.

³² PLHOB Law, Borno State, s 7.

3.1. Violation of Privacy Rights

According to Justice Blackburn,³³ the right to privacy “is the most comprehensive of rights and the right most valued by civilised man...the right to be let alone.” While it is difficult to define ‘privacy,’ the right to privacy encompasses the right to limit the access others have to one's personal information, secrecy or the option to conceal any information from others, control over others’ use of information about oneself,³⁴ and freedom from intrusion upon oneself, one's home, family and relationships. Importantly, it encapsulates the principle of autonomy, which is the epicentre of ‘liberty’ or ‘freedom.’³⁵ Autonomy is the basis for other fundamental rights, including the rights to personal liberty, human dignity, privacy, freedom of assembly and association, and freedom of expression.

The right to privacy is guaranteed by multiple international and regional instruments, including the Universal Declaration of Human Rights (UDHR),³⁶ the European Convention for the Protection of Human Rights and Fundamental Freedoms,³⁷ the International Covenant on Civil and Political Rights (ICCPR),³⁸ and the Charter of Fundamental Rights of the European Union.³⁹ The 1999 Constitution (as amended) also guarantees this right.⁴⁰ The right to privacy safeguards the autonomy of individuals to make personal decisions about their intimate relationships, family life, and identity without unwarranted interference by the state. It ensures that citizens are free from intrusive moral or political regulation of their private lives.

By criminalising same-sex relationships, the SSMPA intrudes into the private lives of adults who engage in consensual intimacy. This interference is incompatible with the constitutional right to privacy. Such overreach undermines the privacy and autonomy of individuals that the constitution seeks to safeguard. The application of the principle of autonomy to same-sex relations evinces the right of adults of sound mind to freely engage in private homosexual intercourse with other consenting adults without interference by a public authority. The European Court of Human Rights in *Dudgeon v United Kingdom*⁴¹ held that criminalising homosexual acts between consenting adults in private violated the right to respect for private life. Similarly, in *Lawrence v Texas*,⁴² the United States’ Supreme Court struck down anti-sodomy laws, asserting that the state cannot “demean [individuals’] existence or control their destiny by making their private sexual conduct a crime.”

³³ *Bowers v Hardwick* [1986] 478 U.S. 186, 198.

³⁴ Mnyim Mwuese Modupe, ‘An Appraisal of the Same-Sex Marriage (Prohibition) Act 2013 in the Face of Emerging Multiplicity of Gender and Sexual Orientations’ [2019] 9 *Benue State University Law Journal* 455-470, 456.

³⁵ Benjamin O. Igwenyi, Onyekachi Eni, Eseni Azu Udu, ‘Same Sex Marriage, Constitutionalism and the Imperative of Public Morality’ [2020] 2 (3) *IJOCLLEP* 130-139, 132.

³⁶ The Universal Declaration of Human Rights 1948 (UDHR), art 12.

³⁷ European Convention for the Protection of Human Rights and Fundamental Freedoms 1950, art 6.

³⁸ International Covenant on Civil and Political Rights 1966 (ICCPR), art 17.

³⁹ Charter of Fundamental Rights of the European Union 2000, art 7.

⁴⁰ CFRN 1999 (n10).

⁴¹ [1981] 4 EHRR 149 (ECtHR).

⁴² [2003] 539 U.S. 558, 578.

3.2. Restriction of the Right to Assembly and Association

The right to peaceful assembly and association is one which is very fundamental to the very existence of man as a political animal.⁴³ It is thus provided for in the UDHR,⁴⁴ the ICCPR,⁴⁵ the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act (ACHPRA),⁴⁶ and, most importantly, the 1999 Constitution (as amended).⁴⁷ The Constitution guarantees the right of every person to assemble freely and join and form political parties, trade union, or any other associations 'for the protection of his interests.'

The SSMPA prohibits the registration of gay clubs, societies and organisations; their sustenance, procession and meetings⁴⁸ and imposes a 10-year imprisonment on offenders.⁴⁹ The law extends to anyone who supports or sustains such organisations, including through leasing premises or providing funding, with penalties reaching up to 10 years imprisonment.⁵⁰ The implication is that pro-LGBTQ+ organisations and associations are barred and members of such groups cannot meet to promote their interests, nor can they receive funding from other individuals or groups. Other persons or groups are also not allowed to associate with them by funding, or aid their activities by any other means.⁵¹

The aforementioned provisions of the SSMPA is unconstitutional as it curtails the freedom of assembly and association of LGBTQ+ persons and pro-LGBTQ+ advocacy groups. In *Federal Government of Nigeria v Oshiomhole*,⁵² the court stated that section 40 of the 1999 Constitution confers a right to all Nigerians to meet and discuss matters on which they have a common interest, even through mass protest. In *Inspector General of Police v All Nigeria People's Party & Ors*,⁵³ the Court of Appeal held that peaceful assembly and association are fundamental rights essential to democracy. Hence, the SSMPA is a rape on the right of LGBTQ+ persons to join and form associations for the protection of their interests in a democratic society.

3.3. Breach of the Right to Freedom from Discrimination

In the Canadian case of *Andrews v Law Society of British Columbia*,⁵⁴ 'discrimination' was defined as "a distinction, whether intentional or not but based on grounds relating to personal characteristics of the individual or group, which has the effect of imposing burdens, obligations or disadvantages on such individual or group not imposed upon others...." Thus, it refers to differential treatment that is demeaning to the human person, which is often the case when a law or conduct unjustifiably treats some persons or

⁴³ KM Mowoe, *Constitutional Law in Nigeria*, vol IV (Northline Press 2021) 509.

⁴⁴ UDHR, art 20.

⁴⁵ ICCPR, arts 21 & 22.

⁴⁶ African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act 1986 (ACHPRA), Cap A9 Laws of the Federation of Nigeria 2004, art 10.

⁴⁷ CFRN 1999, s 40.

⁴⁸ SSMPA, s 4(1).

⁴⁹ SSMPA, s 5(2).

⁵⁰ SSMPA, s 5(3).

⁵¹ Adamu (n9), 165.

⁵² [2004] 9 WRN 129.

⁵³ [2008] 12 WRN 65.

⁵⁴ [1989] 1 SCR 143.

group of persons as inferior or lesser humans.⁵⁵ The right to freedom from discrimination is founded on the basis of the recognition of the inherent dignity and equal rights of all individuals, regardless of their background, identity, or characteristics.

The UDHR stresses the equality and dignity of all human beings⁵⁶ and prohibits differential treatment based on sex, race, religion, and, importantly, sexual orientation and gender identity.⁵⁷ The ICCPR asserts that all individuals are entitled to the rights and freedoms outlined in the Covenant without discrimination on any ground.⁵⁸ Furthermore, the ACHPRA⁵⁹ guarantees the right to freedom from discrimination of whatever nature or manner, including sex. The 1999 Constitution (as amended) also provides for the right to freedom from discrimination.⁶⁰ Section 42(1)(a) of the 1999 Constitution (as amended) states that no citizen shall be subjected to any ‘disability or restriction’ by reason of sex, religion, political opinion, place of origin, ethnic group, or community, and ‘circumstances of his birth.’⁶¹ The implication of this provision is the invalidation of any law and executive or administrative action that creates or is capable of imposing disabilities or restrictions against, or according privilege or advantage to a certain class of citizens. Section 42 corroborates section 17(2)(a) of the Constitution, which mandates the state to ensure ‘equality of rights, obligations and opportunities before the law’ for all citizens. It also reinforces section 15(2) that prohibits discrimination on the basis of place of origin, sex, religion, status, ethnic or linguistic association or ties to promote national integration.

In this light, the SSMPA is discriminatory as it subjects LGBTQ+ persons to ‘disabilities and restrictions’ which other citizens are not made subject to. Obidimma and Obidimma rightly observed that:

“There is no doubt that the attitude and efforts of the National Assembly and indeed the Nigeria nation in promulgating the foregoing law is in itself discriminatory against people with same-sex preferences... It is contended that it is not only flawed in logic, it is also unconstitutional as it constitutes a violation of the fundamental rights of the people with same-sex preferences.”⁶²

While it can be argued that sexual orientation is not expressly mentioned in section 42(1), it suffices to state that ‘sex’, as used therein, is a generic term that encompasses sexual orientation. This was the position of the Supreme Court of India in *National Legal Services Authority v Union of India & Ors.*⁶³ In that case, an identical constitutional provision to that in section 42(1) of Nigeria’s 1999 Constitution (as amended) came up for judicial review and the position of the court was that “discrimination on the ground of sex under Articles 15 and 16 [of the Indian Constitution] includes discrimination on the ground of gender identity.”

⁵⁵ Elokoi Solomon, ‘Nigeria’s Same-Sex Marriage Prohibition Act: Flying in the Faces of Constitutional and African Charter Rights’ (unpublished manuscript, 1–26) 8 <<https://core.ac.uk/download/551549143.pdf>> accessed 6 October 2025.

⁵⁶ UDHR, art 1.

⁵⁷ UDHR, art 2.

⁵⁸ ICCPR, art 26.

⁵⁹ ACHPRA, art 2.

⁶⁰ CFRN 1999, (n12).

⁶¹ CFRN 1999, s 42(2).

⁶² E Obidimma and A Obidimma, ‘The Travails of Same Sex Marriage Relation under Nigeria Law’ [2013] 17 *Journal of Law, Policy and Globalization* 42-48, 45.

⁶³ [2014] 5 SCC 438.

Also, in *Bostock v Clayton County*, the Supreme Court of the United States held that “...discrimination based on homosexuality or transgender status necessarily entails discrimination based on sex; the first cannot happen without the second.” This expansive interpretation supports the inclusion of sexual orientation under the umbrella of characteristics protected from discrimination. Thus, it is wrong to claim, like Mowoe⁶⁴ did, that the discrimination against homosexuals in Nigeria was not envisaged by the draftsmen of the Nigerian constitution. Therefore, it is unjustifiable to impose disabilities or limitations on certain class of citizens because of their sexual orientation, as the SSMPA does, except on the grounds clearly provided by the constitution: an appointment to any state office or corporate body established by law and membership of the armed forces or police force.⁶⁵

4.0. Conclusion

The question of whether members of the LGBTQ+ community in Nigeria are entitled to the enjoyment of fundamental rights guaranteed to all citizens under the 1999 Constitution (as amended) will continue to be a subject of debate. This is further complicated by section 45(1) of the 1999 Constitution (as amended) that bestows on the government the power to override certain fundamental rights when it is ‘reasonably justifiable in a democratic society’ in the interest of national defence, public safety, public order, public morality or public health,⁶⁶ and to protect the rights and freedoms of other persons.⁶⁷ In *Pamela Adie v Corporate Affairs Commission*,⁶⁸ the Court of Appeal upheld the respondent's refusal to register the ‘Lesbian Equality and Empowerment Initiative’, a pro-LGBTQ+ organisation, on the ground that the denial was ‘reasonably justifiable’ since the name was ‘misleading, offensive, and contrary to public policy.’ This appears to be a distorted interpretation of ‘reasonably justifiable...’ In *Dudgeon’s case*,⁶⁹ the court interpreted ‘reasonably necessary (akin to the ‘justifiable’ used in the Nigerian Constitution) in a democratic society’ to imply “the existence of a ‘pressing social need’ for the interference in question”, and held that criminalising consensual same-sex acts between consenting adults did not satisfy this test. While no one has yet been convicted under the SSMPA,⁷⁰ the attitude of Nigerian courts toward the enforcement of the Act, particularly following *Pamela Adie’s case*,⁷¹ remains largely predictable. Accordingly, the author submits that the SSMPA is constitutionally problematic as it abrogates the recognised fundamental rights of LGBTQ+ persons and their allies, especially as it is in conflict with the principles of equality, non-discrimination, and personal autonomy. In the final analysis, on the basis of the preamble of the 1999 Constitution (as amended), there is a growing need to do away with prejudice, bias, and sentiments fueled by socio-cultural and religious beliefs and uphold the principles of freedom, equality, and justice by safeguarding the rights of all citizens, including the marginalised LGBTQ+ community in Nigeria.

⁶⁴ Mowoe (n42) 536.

⁶⁵ CFRN 1999, s 42(3).

⁶⁶ CFRN 1999, s 45(1)(a).

⁶⁷ CFRN 1999, s 45(1)(b).

⁶⁸ Suit No.: FHCI ABJICSI82712018.

⁶⁹ *Dudgeon v United Kingdom* (n40).

⁷⁰ A Federal High Court in Lagos State, Nigeria dismissed a case against 47 men charged under the SSMPA in 2020.

⁷¹ *Pamela Adie v Corporate Affairs Commission* (n67).

"Beyond Punishment: How Determinism Can Transform Criminal Justice and Social Responsibility"

By

Selamawit Berhanu¹

Faculty of Law, Addis Ababa University

Selamberhanu235@gmail.com

¹ Selamawit Berhanu, Faculty of Law, Addis Ababa University, Selamberhanu235@gmail.com