THE ANATHEMA OF GAY MARRIAGE IN NIGERIA

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ABSTRACT

Before November 2011, gay marriage was a controversial issue in Nigeria. That was so because, there was no law, which prohibited it, thus the involvement of parties in this type of marriage was not illegal although it was seen to have flowed from moral depravity. Yet, supporters of gay marriage claim authority from the constitutional provisions, which guarantee the rights to freedom of thought, conscience, religion and the right to freedom from discrimination. This paper aims at highlighting current position of the law on gay marriage in Nigeria. In doing so, it draws substantially from available legal literature, case law and statutes. This paper finds as a fact that in Nigeria, gay marriage was an aberration as well as a bitter pill to swallow and concludes that Nigeria, has recently streamlined the position of the law on it by enacting a domestic criminal statute as a legal framework to officially and formally outlaw it.

Keywords: Homosexuality, Marriage, Rights, Union, and Benefits.

1. INTRODUCTION

Marriage is otherwise known as matrimony. It could also be termed as a conjugal union or a legal union of a couple as spouses. The essentials of a valid marriage are that parties must be capable of contracting the marriage; there must be mutual consent or agreement between the parties; and an actual contracting in the form prescribed by law.\(^1\)

Marriage usually involves heterosexuals; that is to say, persons of opposite sex. A man is usually the husband while a woman is the wife. A man proposes marriage to a woman and if she accepts the proposal, she introduces the suitor to her parents or guardians. Thereafter, both families meet for marriage ceremony. Marriage ceremony is the religious or civil proceeding that solemnises a marriage.

In ecclesiastical jurisprudence particularly in Christian religion, marriage originated at the Garden of Eden; God did the networking and the facilitation. It is a man that marries a woman. There is a Biblical injunction that a man shall leave his father and his mother and cleave unto his wife (a woman for that matter) and they shall be one flesh.\(^2\) Upon marriage, the rib of the man, which had been removed by God for the creation\(^3\) of a woman returns to him in whole as a woman to comfort the man as his wife. A man is expected to handle his wife with


\(^3\) Genesis 2:21.
care and tenderness because she is the bone of his bone, and the flesh of his flesh.\textsuperscript{4} This explains why she is a ‘Woman’ because from the rib of a man did God create her. In the days of Noah and particularly when men began to multiply on the face of the earth, daughters were born unto them. The sons of God saw the daughters of men that they were fair; and they took them as wives.\textsuperscript{5}

Similarly, any man (husband) who finds a virtuous woman (not man) as wife finds a good thing for her price is far above rubies.\textsuperscript{6} Paul the Apostle, in his \textit{Epistle to the Ephesians}, admonished wives (women) to submit themselves to their husbands (not fellow women in marriage). It also charged husbands (men not women) to love their wives (women and not fellow men) even as Christ also loved the Church, and gave himself for it.\textsuperscript{7} It is marriage of the opposite sex which can elicit this kind of commitment and not otherwise.

Marriage, therefore, according to the scripture, is the joining of man and woman as husband and wife, which is a ceremony or sacrament of the Christian Church. It seems suitable to opine that no known religion in Nigeria supports or allows solemnisation of gay marriage.

According to Islam, a majority of Muslim legal scholars cite the rulings of the Prophet Muhammad and the story of Lot in Sodom as condemnation of homosexuality. Given that Islam views marriage as an exchange between two parties where the man offers protection and security in return for exclusive sexual and reproductive rights to the woman, same-sex marriages cannot be considered legal within the constraints of the Muslim marriage.\textsuperscript{8}

Culturally, in any or every ethnic group in Nigeria, marriage usually involves a man and woman as parties. It does not involve the unconventional or unusual man-to-man or woman-to-woman marital or conjugal relationship. Therefore, a state of taboo will arise if a man claims to marry a fellow man or a woman also claims to marry a fellow woman or a person of the same sex. Thus, all cultures in Nigeria, except in certain parts of Igboland, do not allow gay marriage or same sex marriage. In certain parts of Igboland, a married woman who is barren may be allowed to marry another woman for her husband for the purpose of procreating children. Although, she is said to have married that other woman, her husband does consummation of such marriage, in which case, there is no same sex union in the real sense between her and the second woman.

Legally, there are two types of marriage in Nigeria. The first is monogamous (statutory) marriage and the second is polygamous marriage, which is patterned under native law and custom. This admits of the existence of dualism of marriage in Nigeria. In \textit{Hyde v. Hyde},\textsuperscript{9} monogamous marriage was defined as “… the voluntary union for life of one man and one woman to the exclusion of all others”. From this definition, one can sift three elements of a monogamous marriage to be, voluntary union between parties, the union being for life and that it must be a union of one man and one woman to the exclusion of all others.\textsuperscript{10}

Statutorily, a monogamous marriage had been defined as a marriage, which is recognised by the law of the place where it is contracted as a voluntary union of one man and one woman to the exclusion of all others during the continuance of the marriage.\textsuperscript{11} A didactic observation of this definition shows a synthesis of all the elements articulated in the case of

\textsuperscript{4} Genesis 2: 23.
\textsuperscript{5} Genesis 6: 1 – 2.
\textsuperscript{6} Proverbs 31:10.
\textsuperscript{7} Ephesians 5: 22 &25.
\textsuperscript{8} “Homosexuality and Same-Sex Marriages in Islam on Patheos” .com 2009 –05-12, retrieved 5/5/2012.
\textsuperscript{9} (1886) LR 1 P & D 130, 133.
\textsuperscript{11} Interpretation Act, Cap 123 LFN 2004, s. 18.
Thus, it may be opined that the definition contained in the Interpretation Act is basically taken from the case of Hyde.

On the other hand, a polygamous marriage may be defined as a voluntary union for life of one man with one or several wives. Its essential feature is anchored on the man’s capacity to take as many wives as he pleases. The mere fact that at a given period, he has only one wife does not affect the character of marriage so long as the capacity of taking more wives is retained. There is, therefore, no limit to the number of wives a husband could take under the polygamous system. Customary law governs the character and incidents of polygamy. There is no single uniform system of customary law prevailing throughout Nigeria because of the multitude of system of law, which differs from one locality to another.

The divergence between monogamous marriage and polygamous marriage is that in the former, a man contracts the marriage with only one wife, but in the latter, a man from the outset has been married to many wives according to his affluence. It should be stated that any marriage contracted under native law and custom is valid. The research focus of this paper, therefore, seeks to examine the crime of same sex marriage in Nigeria against the background of condemnation and outcry by supporters of the marriage in the light of perceived constitutional right to private life and freedom of association.

It is disconcerting to opine that the fact that one has the right to private life does not mean that one should depart markedly from the hitherto applicable concept of parties to marriage which involves a man as the husband and a woman as the wife. Similarly, the right to freedom of association as entrenched in the constitution should also not be abused in favour of homosexual relationship or marriage.

2. METHODOLOGY

The methodology adopted in this paper is reliance on secondary source materials. Data were collected from textbooks, statutes, case law, journal papers, newspapers and other legal literature. The methodology adopted in this article is descriptive, analytical and comparative. It is descriptive and analytical because the paper describes and analyses the present state of law on the subject of gay marriage in Nigeria. Also, a comparative study of other jurisdictions on the same subject is undertaken in this paper.

3. LITERATURE REVIEW

At this juncture, it is instructive to state that a review of related literature herein will herald the mainstream discussion. On the global stage, there are majorly two schools of thought concerning gay marriage, that is to say, the supporting school of thought and the attacking school of thought. This paper shall presently illuminate on various opinions in favour of gay marriage and allied relationship. The supporting school of thought rejects the definition of marriage as the union of a man and a woman. Its adherents argue that, instead, the sole criterion for marriage becomes the presence of love and mutual commitment. Timothy Dailey submits
that once marriage is no longer confined to a man and a woman that it becomes impossible to exclude any relationship between two or more partners. It seems therefore that the issue of what gender one is attracted to is seen as an issue of taste or preference, rather than as a moral issue. Gay marriage rights advocates say homosexuals’ need and deserve the same symbolic and practical benefits for their relationship enjoyed by heterosexuals.

John Boswell, a Yale historian, writing in support of same sex marriage was of the view that the medieval Catholic Church routinely conducted ceremonies, which solemnised same sex unions between men. Similarly, Mark Strasser, a Professor at Capital University Law School, Columbus, Ohio, argues for recognition of same sex marriage with analysis of legal development from Hawaii Supreme Court ruling through enactment of Vermont Civil Union Legislation.

The American Bar Association (ABA) had sometimes past resolved and urged state, territorial, and tribal governments to eliminate all of their barriers to civil marriage between two persons of the same sex who are otherwise eligible to marry. Precisely in 1989, the ABA urged for the adoption of statutes prohibiting discrimination on the basis of sexual orientation and had also opposed efforts to amend the federal constitution to bar marriage between two people of the same sex. The American Bar Association also canvassed for the repeal of section 3 of the Federal Defense of Marriage Act, which mandates the denial of rights and responsibilities to marriage of same sex spouses. This recommendation urging the elimination of legal barriers to civil marriage between same – sex couples keeps pace with the society’s evolving understanding that gay and lesbian couples are healthy and functioning contributors or agents of development to the society.

The centrality of the argument put forward by those in support of same sex marriage, from the above, is that the marriage is based on love, affection, intimacy and preference or choice. They are of the opinion that culture or religion are no barrier but that the constitution, almost everywhere, guarantees their right to freedom of association.

In the United States, the Supreme Court gave its imprimatur on gay relationship when it held that the freedom to marry is a constitutionally protected fundamental right and that it is one of the vital personal rights essential to orderly pursuit of happiness by free men. The right to marry is of fundamental importance for all individuals. It has also been held that the freedom of personal choice “which contemplates male to male or female to female marriage” in matters of marriage and family life, is one of the liberties protected by Due process clause. Furthermore, the Federal Supreme Court in Lawrence v. Texas held that due process and liberty protections of the Fourteenth Amendment apply to gay and lesbian citizens, despite a fast history of exclusion. The court held further that all adults including lesbian and gay citizens enjoy a right to liberty under the Due process clause that gives them the full right to enjoy in private sexual conduct.

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20 John Boswell, Same- Sex Unions in Pre-Modern Europe. Villard, 1994. This author drew substantially from his earlier work entitled Christianity, Social Tolerance, and Homosexuality: Gay People in Western Europe from the Beginning of the Christian Era to the Fourteenth Century (University of Chicago Press, 1980).
21 Baehr v. Lewin, 852 P. 2d 44, 61 (Haw. 1993) which rejected the argument that the definition of marriage itself precludes same sex marriage.
Some states allow adoption of children by gay couples. In the U.S., same sex marriages are not recognised federally but couples of that marriage can legally marry in some states and receive state level benefits. Some other states such as New Jersey, Maryland and Rhode Island do not facilitate same-sex marriages, but do recognise them if performed in other jurisdictions. Several states offer civil unions or domestic partnerships, granting all or part of the state-level rights and responsibilities of marriage. Yet, quite a sizeable number of states have constitutional restrictions limiting marriage to one woman and one man in confluence with jurisdiction like Nigeria. In Europe, the Netherlands was the first country to extend marriage laws to include same-sex couples, following the recommendation of a special commission appointed to investigate the issue in 1995, a same-sex marriage bill was passed in the House of Representatives and the Senate in 2000, taking effect on April 1, 2001.

In the Netherlands’ Caribbean special municipalities of Bonaire, Sint Eustatius and Saba, marriage is presently restricted to heterosexual couples, however, a law enabling same-sex couples to marry has been passed and is planned to come into effect by 10th October 2012. The Caribbean countries of Aruba, Curacao and Sint Maarten, forming the remainder of the Kingdom of the Netherlands, do not perform same-sex marriages, but must recognise those performed in the European territory of the Netherlands. The United Kingdom has not yet recognised same-sex marriage but plans to introduce same sex civil marriage by 2015.

In Africa, same-sex marriage became legal in South Africa on November 30, 2006, when the Civil Unions Bill was enacted after having been passed by the South African Parliament earlier that month. South Africa became the fifth country, first in Africa, and the second outside Europe, to legalise same-sex marriage. The recent recognition of that marriage in the continent of Africa by the Republic of South Africa among other countries shows the repulsiveness of the marriage in sub-Saharan Africa. The background of mixed laws, mixed race and mixed culture in South Africa, flowing from Royal Dutch orientation, explains the acceptability of the marriage in that jurisdiction.

The alternative view to the marriage flows from those who regard the marriage as an aberration. It has been argued that gay marriage threatens the institutions of marriage and family. This is because same sex marriage runs counter to historical tradition, moral order and the best interests of children and society at large. The attacking party to the marriage sermonise that marriage between a man and a woman is an essential characteristic of civilisation, and as such, is the seedbed of society. While same sex marriage breed children, homosexual marriage does not because the children alleged to be its products actually either belong to one of the partners or are biologically unrelated.

Similarly, some social commentators think that successful child-rearing require both a man and a woman as parents, making same sex marriage a dangerous precedent. Homosexual marriage translates to homosexuality, which is rightly viewed as unnatural. Homosexuality is not natural and therefore abnormal.

This paper has a Nigerian background. In Nigeria, marriage is a union between a man and a woman. Equally, all indigenous cultures in Nigeria abhor gay marriage. So also is religion whether Christianity or Islam or even paganism. The law says it all that such marriage is unlawful and it should be so regarded for the guarantee of a functional society.

28 Same – Sex Dutch Couples Gain Marriage and Adoption Rights
32 Timothy Dailey, op. cit, p. 7.
4. HOMOSEXUALITY

Homosexuality is anachronistic for the ancient world, since there is no single word in Latin or ancient Greek with the same meaning as the modern concept of homosexuality. But it was a German psychologist, Karoly Maria Benkert, who coined the term 'homosexuality' in the late 19th century. Homosexuality is the act of having sexual interest in a person of the same sex. Buggery is an example of homosexuality. At common law, buggery consists, amongst others, in sexual intercourse between a man and another man per anum. The intercourse is by their mutual consent. In Nigeria, unnatural offence is another nomenclature for homosexuality, which is frowned at, in the Criminal Code in section 214 and the Penal Code in section 284. Biblically, homosexuality is known as sodomy, a practice by residents of Sodom and Gomorrah. Homosexuality will also arise from the relationship of gay marriage or same sex marriage, particularly where a male marries a male counterpart.

Closely linked to Gay Marriage are unnatural offences. Any person who marries another would love to consummate such marriage and consummation takes place by way of sexual intercourse. Sexual intercourse by parties to gay marriage is most likely to take place otherwise than by natural order of things or against the order of nature. This would ordinarily conflict with the law on unnatural offences. It means that parties to gay marriage in Nigeria could be charged and prosecuted under the law against unnatural offences as well as Anti –Gay Marriage and Relationships Act 2011.

The term unnatural offence includes sodomy or buggery and bestiality.33 Under the Criminal Code, 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.34 The imprisonable term therein stipulated underlines the seriousness of the crime and the disdain with which it is treated by law. In addition, any person who attempts to commit any of the offences contained in S. 214 of the Criminal Code is guilty of a felony, and is liable to imprisonment for seven years and the offender, according to the law, cannot be arrested without warrant.35

There is the offence of indecent practices between males.36 In this regard, any male person who, whether in public or private, commits any act of gross indecency with another male person, or procures another male person to commit any act of gross indecency with him, or attempts to procure the commission of any such act by any male person with himself or with another male person, whether in public or private, is guilty of a felony, and is liable to imprisonment for three years. The offender cannot be arrested without a warrant.

Under the Criminal Code, any person who assaults another with intent to have carnal knowledge of him or her against the order of nature is guilty of a felony, and liable to imprisonment for fourteen years.37 When it comes to unnatural offences, the learned author of Isabella Okagbue38 is of the opinion that consensual homosexuality should not be codified. She argues that an act of sodomy between a man and a woman is nobody’s business and that homosexual offence is hardly likely to reform or rehabilitate the offender. She submits that only the public or harmful manifestations of homosexuality as in cases involving violence, corruption

33 C. O. Okonkwo, op. cit; p. 277.
34 Criminal Code Act Cap C. 38 Laws of the Federation of Nigeria (LFN) 2004, s. 214. The corresponding section of the Penal Code Law 1959 is section 284 which equally constitutes 14 years term of imprisonment.
36 Ibid, s. 217; See also s. 285 , Penal Code Law which constitutes a term of imprisonment for 7 years for offenders.
37 Criminal Code Act, s. 352.
or public solicitation should be punished. She submits further that the strong social and cultural taboos against unnatural offences need no augmentation or backing from the criminal law.

With respect to the learned writer, this work begs to differ for the following reasons. Unnatural offences smacks of conducts, which are below the civilized standard of behaviour in the society. It also debases the very existence of human being and equates man with lower and ordinary animals (whether wild or tamed). It corrupts the morals of the people and throws their reverence to the winds. Unnatural offences are against the order of nature right from human existence. This paper is of the opinion that homosexuality between consenting parties in private should be punished since it can manifest itself in the public subsequently. Homosexuality in private should be punished because it can lead to “public or harmful manifestations …involving violence, corruption or public solicitation…”. Which the learned author argues, should be punished. In addition, if the learned author admits that there are strong social and cultural taboos against bestiality, it means that, there is a corresponding strong likelihood or tendency to say that the practice needs the augmentation of the criminal law in keeping with the cherished norms and ethos of the society.

On the aggregate, it is submitted that unnatural offences, more than ever before, needs the backing of criminal law because their codification has helped in check-mating worst conducts which could have happened if such laws were not in existence. Perhaps, it is analytical to sermonise against unnatural offences that in Biblical times, the cities of Sodom and Gomorrah were destroyed with fire and brimstone because of their sexual profligacy.

5. GAY MARRIAGE

This is the ceremonial union of two people of the same sex; a marriage or marriage-like relationship between two women or two men. Gay marriage is also known as same sex marriage or homosexual marriage. It is a relationship, which involves cohabiting homosexual persons, or is a marriage between two persons of the same sex. It means the coming together of two persons of the same gender or sex in a civil union, marriage, domestic partnership or other form of same sex relationship, for the purposes of cohabitation as husband and wife. It involves male - to - male and female – to - female marriage relationship and mutual consent between them is the driving force. Those who support legal recognition for same sex marriage typically refer to such recognition as marriage equality. In countries where this marriage exists, their marriage laws are gender neutral with regards to the parties.

6 CLASSICAL HISTORY

The first recorded mention of the performance of gay marriages occurred during the early Roman Empire. At least two of the Roman Emperors were in gay unions. The first Roman emperor to have married a man was Nero, who is reported to have married two other men on different occasions. Nero “married a man named Sporus in a very public ceremony …with all the solemnities of matrimony, and lived with him as his spouse” A friend gave the “bride” away “as required by law”. The marriage was celebrated separately in both Greece and Rome in extravagant public ceremonies. The Emperor Elagabalus married an athlete named Hierocles in a lavish public ceremony in Rome amidst the rejoicings of the citizens.

39 Ibid.
40 Genesis 19.
41 B. A. Garner, note 1 above at p. 1061.
42 See the botched Some Sex Marriage (Prohibition) Bill 2006, (Nigeria).
The Christian Emperors Constantius II and Constantine outlawed same-sex marriage on December 16, 342 AD. This law specifically outlaws marriages between men and reads as follows: When a man marries and is about to offer himself to men in womanly fashion (*quam vir nubit in feminam viris porrecturam*), what does he wish, when sex has lost all its significance; when the crime is one which it is not profitable to know; when Venus is changed to another form; when love is sought and not found? We order the statutes to arise, the laws to be armed with and avenging sword, that those infamous persons who are now, or who hereafter may be guilty, may be subjected to exquisite punishment.  

In the United States, the movement to obtain marriages rights and benefits for same-sex couples began in the early 1970s. The issue became prominent in the United States politics in the 1990s, with New England being the centre of same-sex marriage legalization. The United States’ federal government does not recognize same sex marriage, and is prohibited from doing so by the Defense of Marriage Act (DOMA) 1996, which defines marriage as a union between a man and a woman. The Defence of Marriage Act does not prevent individual states from defining marriage as they see fit. The right to marry was first extended to same-sex couples by a United States’ jurisdiction on November 18, 2003 in Massachusetts.

In United States, same sex marriage has been recognized in some of the fifty states. The States are Massachusetts in 2003, Connecticut since October 10, 2008, and in Iowa since April 27, 2009.  

It became legal in Vermont in September 1, 2009, in Maine with effect from September 14, 2009 and in New Hampshire, it was legalized on June 3, 2009 but to take effect from January 1, 2010.

But the first same-sex union in modern history with government recognition was obtained in Denmark in 1989. Elsewhere, the Canadian Parliament approved same sex marriage by defining marriage as the lawful union of two persons to the exclusion of all others in July 2005. A Conservative Government motion inviting Members of Parliament (MPs) to request repeal of same sex marriage in Canada failed in December 2006, so same-sex marriage continues to be recognized throughout the nation.

The nationwide legalisation of same sex marriage in Canada has raised questions about United States’ law, because of Canada’s proximity to the United States There was no municipal or domestic criminal law/statute in Nigeria before November 2011 against gay marriage, but an attempt was made in 2006 for the codification against that conduct or marriage as a crime. A Bill to that effect was presented to the National Assembly and it fell through.

The Anglican Church Communion in Nigeria was in the forefront of campaign against same-sex marriage. Supporting same-sex Marriage (Prohibition) Bill 2006 before the National Assembly, the Church through its emeritus Primate, Archbishop Peter Akinola said: “The church commends the lawmakers for their prompt reaction to outlaw same–sex relationships in Nigeria and calls for the Bill to be passed since the idea expressed in the Bill is the moral position of Nigerians regarding human sexuality.”

The foregoing was an attempt too uncomfortable to critics and so they mounted stiff resistance and wide spread condemnation against the Bill. Those critics found cover under human rights and civil liberty groups to ventilate and articulate their grievance and opposition. They masqueraded as such because of the fear of being stigmatised should they form either lesbian or gay association as a platform to propagate their campaign. The irony of it is that they
do not practice what they preach, that to say being parties to gay marriage. They found support in a policy statement made by the United States of America. In spite of the foregoing, the battle against same sex marriage was not over then until it was over recently. Critics of that marriage regrouped sometimes past and re-presented the 2006-botched Bill to the National Assembly particularly the Senate for deliberation thereon and possible passage into an Act. The sneeze by way of re-presentation of the Bill in 2011 caused supporters of, and parties to gay marriage to catch cold or panic, and become restless.

Same – same marriage supporters argue that the marriage is a matter of equality and that the rights to those involved in same-sex relationships are violated if same – sex unions are not legally recognised. They argue that, by this type of marriage, they are exercising their rights to freedom of thought, conscience and religion and right to freedom from discrimination. In spite of the exposition of their constitutional rights and generation of sympathy from those who cared, there was no known celebration of gay marriage in Nigeria and there was no known union of gay in Nigeria.

The absence of any publicly celebrated gay marriage in Nigeria before November 2011 showed either that such marriage did not exist at all or that if it did exist, it was wrapped in absolute secrecy. If it was wrapped in secrecy, it meant that it did not receive any general or public acceptance by the majority of citizenry and the fact that Canada has no citizenship or residency requirement to receive a marriage certificate (unlike Belgium and the Netherlands). Canada and the United States have a history of respecting marriage contracted in either country.

Same – sex marriages have been recognised nationwide in Netherlands since 2001, Belgium in 2003, Spain in 2005, Canada in 2005, Norway in 2009, Sweden in 2009 and South Africa 1998. South Africa appears to be the only African nation where homosexuality is clearly protected. The 1996 Constitution of South Africa explicitly defends homosexuals from discrimination, and this has been followed by series of court rulings, which protect rights to gay sex.

7. CODIFICATION ATTEMPT IN NIGERIA

The Senate on November 29, 2011, unanimously passed a Bill into an Act, which outlawed gay marriage and relationships in Nigeria. That Act effectively outlawed public display of affection between gay and lesbian couples. The law spells out a 14-year term of imprisonment for any person involved in same sex marriage. It also prescribes a 10-year imprisonable term for persons who abet or aid such unions as well as any person who registers, operates or participates in gay clubs or who directly or indirectly makes public show of same sex amorous relationships.

A sovereign nation is accountable to its citizens alone and could, without any external interference, make laws deemed to be in the best interest of its citizenry. However, the outburst
from some countries including the United States, Canada and Britain towards Nigeria over the said law have, quite sadly diminished that belief.

The US has gone as far as announcing, a 3 million Dollar Global Equality Fund to support civil society organizations working for the rights of lesbians, gays, bisexuals and transgender persons in Nigeria and other countries. President Obama in a seven-section memorandum on International Initiatives to Advance the Human Rights of Lesbians, Gay, Bisexual and Transgender Persons, directed American agencies to combat the criminalisation of rights of lesbian, Gay, Bisexual and Transgender (LGBT) persons globally. He also ordered that the protection of the rights of LGBT persons must be incorporated into the US diplomacy and foreign assistance. This kind of action by the US government is, in actual fact, repulsive to the nation (Nigeria’s) culture, tradition and value system in general. The US government, therefore, should not use the bait of aid or grant to induce Nigeria to trade its cherished indigenous value system for America’s which is alien and repulsive; and the much talked about universal human rights do not include immoral and pervasive sexual manifestation of human beings.

This paper very honestly commends the Senate for its bold and radical legislative approach in criminalising gay marriage and allied relationships in Nigeria. The agents of criminal justice administration both at the state and federal levels are hereby enjoined to ensure strict implementation of the legislation in order to meet the need of the nation and the expectation of the enacting authority, thereby giving bite and vitality to the legislation.

8. GAY MARRIAGE IN OTHER JURISDICTIONS

There are some African nations, which are, Muslim in culture, and which make no mention whatsoever of homosexuality in their legal codes. Such countries are Chad, Burkina Faso, Central African Republic, Rwanda, etc. In these jurisdictions, the law seems to have closed its eyes against homosexuality and indeed gay marriage. This prevailing situation appears to be worst than that of Nigeria, which has laws against homosexuality (unnatural offences). Therefore, homosexuality and gay marriage are simple issues, without any great moment, in those Islamic jurisdictions.

However, there are some African nations, which have explicitly outlawed homosexual activity. In Uganda, the law prescribes life imprisonment for gay sex. In Kenya, punishment is up to 14 years imprisonment for homosexual sex. For Zimbabwe, homosexuality is outlawed with varying sanctions including imprisonment. In Ghana, consensual gay sex is outlawed, but is considered a misdemeanour and in Zambia, punishment is up to 14 years imprisonment for gay sex. The criminalisation of same sex marriage in these Sub – Sahara African countries shows the posture and the mental attitude of those nations towards and against the marriage.

There has been a growing body of opinion that gay marriage should not be contracted. For those who are in support of anti-gay legislation, their argument is that it protects people from the deleterious effects of their own immoral behaviour, protects others from it, and serves as a restraint upon the spread of such behaviour within the body politic.

Same – sex marriage is supported by several religious denominations such as the Metropolitan Community Church, United Church of Christ, the Ecumenical Catholic Church, Reconstructionist Judaism, Reform Judaism, the Unitarian Universalist Association and Liberal Quakers. In States like New York, New Jersey, Michigan, Wisconsin, organizations, political


parties, and some governors support same sex marriage. It also has the support of some United States (US) Senators and members of the U.S House of Representatives.58

Same – same marriage supporters argue that the marriage is a matter of equality and that the rights to those involved in same-sex relationships are violated if same – sex unions are not legally recognised. Advocates liken prohibitions on same- sex marriage to past prohibitions on inter – racial marriage. Supporters of this marriage argue that it should be allowed because it does no harm to families or society; it provides important benefits for partners and their children and extends a civil right to a minority group.

For those who are in support of anti- gay legislation, their argument is that it protects people from the deleterious effects of their own immoral behaviour, protects others from it, and serves as a restraint upon the spread of such behaviour within the body politic. On the other hand, gay marriage is opposed against the backgrounds of morals, culture and religion; and the fact remains that the practice of same – sex marriage is a bitter pill to swallow. Gay marriage does not envisage procreation of children but seems to boost and satisfy the ego of parties thereto. Nothing therefore profits a party who enters into gay marriage with another with no offspring to show as a product of the marriage. But this is a matter of choice, that is to say, the need to procreate in male-to-female marriage relationship and the need for comfort, enjoyment and satisfaction for gay marriage.

On the whole, gay marriage is anchored on the conjugality of the relationship and whatever satisfaction parties derive from it and not for purpose of procreation of children. If parties to this marriage have desire for children, they may adopt them in accordance with the relevant laws on adoption in countries, which allow for its practice.

9. GAY MARRIAGE AND LESBIANISM

In 630 – 560 B.C., Sappho, a Greek poetess lived in the island of Lesbos. Her poems and transcendency in the later centuries made the term “lesbianism” to be accepted internationally as a way of denoting the feminine homosexuality. In the ancient Rome and in Greece, lesbianism was accepted by normality. In Rome, for example, public baths existed for women who, in spite of being married, wanted to support sexual contacts with other women.

With the expansion of Christianity, the acceptance of the homosexual relations was decreasing considerably to the extent of turning into motive of pursuit. Nevertheless, it is necessary to point out that the motive of the Christian condemnation was centring more on the adultery than in identifying if it was committed between men or between women.

In the Middle Ages, only the ecclesiastic archives knew few cases of lesbianism where denunciations, condemnations and sermons were compiled. Saint Ambrose, in the 4th century, qualified the desire of a few women for others of lustful act; Saint Crisostom qualified it as shameful. Centuries later, Saint Anselm would refer to the sexual relation between women as an offence on the nature; and in the same sense, Pedro Abelardo would declare himself. Saint Thomas established as one of the vices against nature the coitus between female and female. Later, many theologians would base on Saint Thomas to condemn lesbianism as a sin of lechery.59

Lesbianism, from the above discourse, involves female-to-female sexual relationship and could ultimately play a cataclysmic role in heralding gay marriage. Whenever it is practiced. It violates the law on unnatural offences, which is interlarded in Nigerian criminal jurisprudence.

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58 Ibid., 59 Available @ file://Megiraffgw01 ftp/ftpsite/0.htm, retrieved 5/5/2012.
10. GAY MARRIAGE AND SEX CHANGE

The biological sexual constitution of an individual is fixed at birth and cannot be changed, either by medical or surgical means. The only cases where the term “change of sex” is appropriate are those in which an original or natural mistake as to sex is made at birth and subsequently revealed by further medical examination. In England, the law allows a person who has lived in their chosen gender for at least two years to receive a new gender.

In Australia, the law recognises a surgically constructed vagina to be vaginal in the real sense of it. Thus, a perpetrator could in law rape a victim who has a surgically constructed vagina. Unlike England and Australia, Nigeria does not have any law in the mode, which recognises gender-re-assignment or a surgically constructed vagina. Assuming, therefore, that in Nigeria, a man marries another man who has undergone sexual surgery to become a woman, would such marriage be regarded as a proper marriage or union between a man and a woman? The answer seems to be in a negative. This is because parties to such marriage would be regarded as having been involved in gay marriage, which is now a crime in Nigeria.

11. CRITICISM AND PRESCRIPTIONS

Homosexual marriage is an empty pretence that lacks the fundamental sexual complementariness of male and female. And like all counterfeits, it cheapens and degrades the real thing. According to Pitirim Sorokin, the eminent Harvard sociologist, the destructive effects may not be immediately apparent, but the cumulative damage is inescapable.

Opponents of gay marriage say recognising such union will hurt traditional families at a time when marriage is already suffering from divorce and other social trends. Also the idea of procreation of children will be defeated in gay marriage since consummation cannot really take place. This is because marriage is, and has been for mellenia, the institution that forms and upholds for society, the cultural and social values and symbols related to precreation. It establishes the values that govern the transmission of human life to the next generation, and the nurturing of that life in the basic societal unit, the family.

Redefining marriage to include same-sex couples would affect its cultural meaning and function and, in doing so, damage its ability, and thereby, society’s capacity to protect the inherently procreative relationship and the children who result from it.

The teachings of the Talmud and Torah, and the Bible, were seen as specifically prohibiting the practices of same-sex union as contrary to nature and the will of the Creator, and a moral shortcoming. Legalisation of gay marriage would mean to place a stamp of official approval on homosexuality. Therefore, Nigeria, which is not a gay friendly jurisdiction, enacted a law, which effectively proscribes gay marriage. This singular action will lead the controversial and slippery matter of gay marriage to rest and open a floodgate of prosecution against its perpetrators. This piece, therefore, canvass for strict application of the law, not minding the reaction of other jurisdictions who are or may be against it.

64 Margaret A. Someaville, “The Case Against Same-sex Marriage”, being a brief submitted to the standing Committee on Justice and Human Rights (Final Version), Montreal, Quebec, Canada, April 29, 2003.
12. CONCLUSION

The freedom of association entrenched in the constitution does not give people the liberty to associate by way of gay marriage in breach of the law. By way of recapitulation, monogamous marriage is a voluntary union of one man and one woman to the exclusion of all others during the continuance of the marriage. Polygamous and monogamous marriages involve heterosexuals and not homosexuals. Culturally, homosexual marriage is something, which is detested. Religiously, marriage is recognised as involving heterosexuals. The issue of child bearing which flows from marriage is defeated and discarded by gay marriage and adoption of children does not solve the problem. Also, the Biblical injunction that believers should multiply and replenish the earth has been violated by gay relationship. This is inherent in the teachings and doctrines of Christian and Moslem faiths, which are the two dominant religions in Nigeria.

It is disquieting that an infinitesimal number of people who masked under the canopy of civil liberty and human rights groups were championing the cause for gay marriage and allied relationships in Nigeria. They alluded to certain provisions of the constitution as guaranteeing their strange advocacy for the very strange and outlandish marriage, which is unknown to generally acceptable age-long practice, culture and morality of Nigerians. This paper salutes the Senate for enacting a law to prohibit gay marriage in Nigeria. This has driven advocacies for recognition of gay marriage in Nigeria into obscurity and also will help to checkmate unnatural offences such as homosexuality and lesbianism.