

## WRONGFUL BIRTH AND WRONGFUL LIFE: LEGAL DOCTRINES, ETHICAL DILEMMAS, SOCIAL IMPLICATIONS, AND COMPARATIVE JURISPRUDENCE

**Oluremi Savage\***

**Olawunmi C. Macaulay-Adeyelu\***

### **Abstract**

*The emergence of wrongful birth and wrongful life claims within tort law marks one of the most contested intersections of medical negligence, reproductive autonomy, and bioethical reasoning in modern jurisprudence. This article examines these two related yet doctrinally distinct causes of action through a combined analytical and doctrinal lens, with Nigeria as the primary jurisdiction of study while drawing comparative insights from the United Kingdom, the United States, France, and Australia. Drawing on applicable legal principles, landmark judicial decisions, and statutory provisions, the article interrogates the conceptual foundations of both causes of action, evaluates the ethical tensions they generate, and assesses their broader implications for disability rights, healthcare accountability, and reproductive autonomy. It finds that while wrongful birth claims are increasingly accommodated within negligence frameworks across several jurisdictions, wrongful life claims remain philosophically and legally intractable with most courts rejecting them on the ground that no legal system can meaningfully adjudge existence against non-existence. Drawing on comparative jurisprudence,*

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\* LLD, Senior Lecturer, Public and Private Law Department, Faculty of Law, Lagos State University, Ojo, Lagos, Nigeria. Email: [remisavage@gmail.com](mailto:remisavage@gmail.com); [oluremi.savage-oyekunle@lasu.edu.ng](mailto:oluremi.savage-oyekunle@lasu.edu.ng)

\* PhD, Associate Professor, Department of Philosophy, Faculty of Arts, Lagos State University, Ojo, Lagos, Nigeria. Email: [wunmi\\_makay@yahoo.com](mailto:wunmi_makay@yahoo.com); [olawunmi.macaulay-adeyelu@lasu.edu.ng](mailto:olawunmi.macaulay-adeyelu@lasu.edu.ng)

*the article distils policy recommendations calibrated to the Nigerian legal context, by seeking to strike a careful balance between parental rights, child welfare, medical accountability, and the dignity of persons living with disabilities.*

**Keywords:** *Wrongful Birth; Wrongful Life; Nigerian Torts Law, Bioethics, Medical Negligence; Reproductive Autonomy; Disability Rights, Comparative Jurisprudence.*

## 1.0 INTRODUCTION

The rapid advancements in medical science, particularly in the fields of prenatal diagnosis, genetic counselling, and assisted reproduction, have given rise to a new and philosophically charged category of tort claims commonly designated as wrongful birth and wrongful life.<sup>1</sup> These causes of action, which emerged primarily in the latter half of the twentieth century within common law jurisdictions, challenge the judiciary to engage with some of the most profound questions in bioethics and legal theory: Can the act of being born constitute a cognisable legal harm? Does a healthcare provider owe a duty of care to a child not yet born in respect of its future condition? And how should a legal system apportion liability when the alleged wrong involves not merely physical injury but the very continuity of human existence?<sup>2</sup>

Wrongful birth refers to an action brought by parents typically a mother, against a healthcare professional or institution for negligently failing to provide accurate information, diagnose a foetal abnormality, or carry out a successful sterilisation procedure, thereby depriving the

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<sup>1</sup> K A Richard, 'Legal and Ethical Controversies of Wrongful Birth and Wrongful Life Claims in Reproductive Health' (2024) 5(2) *The Obafemi Awolowo University Law Journal* 89-108.

<sup>2</sup> S Todd, 'Negligence by IVF providers: Injury on being born?' (2025) 55(2) *Journal of The Royal Society Of New Zealand* 207-222.

parents of the opportunity to make an informed reproductive decision.<sup>3</sup> Wrongful life, by contrast, is an action initiated by or on behalf of the child, who asserts that but for the defendant's negligence, he or she would not have been born and would thereby have been spared a life characterised by suffering and disability.<sup>4</sup> The philosophical complexity inherent in the latter claim is self-evident: the plaintiff is required to establish that non-existence would have been preferable to a life lived, however impaired.

The historical emergence of these doctrines can be traced to a series of American decisions in the 1960s and 1970s, with courts in various states gradually accepting wrongful birth while rejecting wrongful life on grounds that the necessary damages calculation comparing the value of existence against non-existence, is beyond the competence of any court of law.<sup>5</sup> The United Kingdom, Australia, and France each engaged with these doctrines in markedly different ways, producing a rich tapestry of comparative jurisprudence that illuminates the value judgements embedded in different legal systems and cultural contexts.<sup>6</sup> In Nigeria, wrongful birth and wrongful life claims remain largely underdeveloped in both legislation and case law. The Nigerian legal system, which operates within the common law tradition inherited from British colonial administration, possesses the foundational tort principles, duty of care, breach, causation, and damages, necessary to accommodate such claims.<sup>7</sup> However, the interplay of cultural values,

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<sup>3</sup> N Thi Bao Anh & T K Phung, 'Wrongful Birth and Wrongful Life Action: Does Vietnamese Legal System Practice?' (2020) 4(3) *Journal of Asian Research* 98-109.

<sup>4</sup> R Gillon, 'Wrongful life claims' (1998) 24 *Journal of Medical Ethics* 363.

<sup>5</sup> W F Hensel, 'The Disabling Impact of Wrongful Birth and Wrongful Life Actions' (2005) 40 *Harvard Civil Rights-Civil Liberties Law Review* 141-195.

<sup>6</sup> I Giesen, 'The Use and Influence of Comparative Law in 'Wrongful Life' Cases' (2012) 8 (2) *Utrecht Law Review* 35-54.

<sup>7</sup> K O Akanbi, 'Views on the Echoing Influence of the Common Law on the Nigerian Legal System' (2022) 3 *International Journal of Law and Clinical Legal Education* 25-31.

religious convictions, systemic weaknesses in the healthcare sector, and the relative scarcity of reported decisions on this subject has meant that these doctrines exist largely at the periphery of Nigerian legal discourse.<sup>8</sup> This gap is particularly concerning given Nigeria's high prevalence of preventable genetic conditions such as sickle cell disease, the inadequate provision of genetic counselling services, and the documented deficiencies in prenatal healthcare infrastructure.

The article is structured as follows: Part Two examines the legal doctrines of wrongful birth and wrongful life in detail, including their elements, landmark cases, and key distinctions. Part Three addresses the ethical dilemmas that these doctrines engender. Part Four analyses their broader social implications. Part Five offers a comparative assessment of how different jurisdictions have approached these claims, with particular attention to lessons for Nigeria. Part Six presents policy recommendations, and Part Seven concludes.

## **2.0 LEGAL DOCTRINES: WRONGFUL BIRTH AND WRONGFUL LIFE**

### **2.1 Preliminary Distinctions**

Before examining each doctrine in detail, it is necessary to clearly distinguish wrongful birth and wrongful life from two related but doctrinally separate causes of action. Wrongful conception, also called wrongful pregnancy arises where parents sue for harm caused by a failed sterilisation or contraceptive procedure, resulting in an unintended pregnancy.<sup>9</sup> The child born following such a procedure

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<sup>8</sup> Ibid.

<sup>9</sup> L H Munro *A Wrongful Conception of Harm? Interference with Reproductive Autonomy as the True Harm in Wrongful Conception* (LLB Dissertation of the University of Otago, 2024) <https://ourarchive.otago.ac.nz/esploro/outputs/graduate/A-Wrongful-Conception-of-Harm-Interference/9926753213501891> accessed 24 April 2026.

need not have any disability for this claim to succeed. Wrongful birth, on the other hand, typically arises where parents allege that medical negligence deprived them of information, through failure to diagnose a foetal abnormality or genetic condition, that would have enabled them to terminate the pregnancy or otherwise prepare for the birth of a child with significant disabilities.<sup>10</sup> Wrongful life is the most philosophically contested of these actions: the claim is brought by or on behalf of the child, asserting that the very circumstance of being born constitutes compensable harm.<sup>11</sup> These distinctions are not merely academic. They determine standing, the nature of the duty owed, the heads of recoverable damages, and the ethical premises of the claim. Conflating them leads to doctrinal confusion and inconsistent outcomes, as demonstrated by the divergent judicial responses across jurisdictions examined in this article.

## 2.2 Wrongful Birth Claims

### 2.2.1 Legal Foundation and Elements

Wrongful birth claims are typically framed within the tort of medical negligence.<sup>12</sup> A claimant must establish: first, the existence of a duty of care owed by the healthcare professional to the plaintiff; second, a breach of that duty, usually through failure to conduct appropriate prenatal screening, failure to diagnose a foetal abnormality, or failure to provide accurate and adequate genetic counselling; third, a causal link between the breach and the harm suffered, namely the birth of the child with a condition that the parents would have avoided had they

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<sup>10</sup> M B Sullivan, 'Wrongful Birth and Wrongful Conception: A Parent's Need for a Cause of Action' (2000) 15(1) *Journal of Law and Health* 105-120.

<sup>11</sup> C P Moutos & J Y Phelps, 'Wrongful birth and Wrongful Life Lawsuits in Obstetrics and Gynaecology' (2024) 6 *American Journal of Obstetrics and Gynaecology* 611-617.

<sup>12</sup> M Gaiparashvili, 'Wrongful Birth and Wrongful Life Cases: Comparative Study' (2020) 2(12) *Herald of Law* 24-44.

been properly informed; and fourth, recoverable damages flowing from that harm.<sup>13</sup>

The central legal issue in wrongful birth is whether healthcare providers failed in their duty of care by not informing parents of risks or failing to diagnose conditions that would have influenced reproductive decisions.<sup>14</sup> The causation question is particularly intricate: the plaintiff must demonstrate that, had the defendant discharged the duty of care properly, they would have opted for termination of the pregnancy or taken other steps to avoid the birth. This introduces a counterfactual inquiry that courts have resolved differently depending on prevailing judicial culture and applicable statutory provisions on reproductive rights.

### **2.2.2 Landmark Cases Across Jurisdictions**

Several judicial decisions across common law jurisdictions have shaped the contours of wrongful birth liability. In *McFarlane v Tayside Health Board*,<sup>15</sup> the House of Lords held that the additional costs of raising a healthy child born following a failed vasectomy were irrecoverable as a matter of public policy, though allowing recovery for pregnancy related expenses. The decision exposed the significant role that policy considerations play in delimiting the scope of wrongful birth damages. In *Parkinson v St James and Seacroft University Hospital NHS Trust*,<sup>16</sup> the Court of Appeal distinguished *McFarlane* and allowed partial recovery of the extra costs attributable to the

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<sup>13</sup> M Pioro *et al*, 'Wrongful birth litigation and prenatal screening' (2008) 179(10) *Canadian Medical Association* 1027-1030.

<sup>14</sup> C Falzon, 'Wrongful Life & Wrongful Birth: Legal and Moral Issues' (MA dissertation of the University of Malta, 2014) <https://www.um.edu.mt/library/oar/handle/123456789/2611> accessed 20th May 2026.

<sup>15</sup> *McFarlane v Tayside Health Board* [2000] 2 AC 59 (HL)

<sup>16</sup> *Parkinson v. St James and Seacroft University Hospital NHS Trust* [2002] QB 266

child's disability, a ruling that demonstrated the willingness of English courts to draw nuanced distinctions within the wrongful birth framework.

In the United States, *Keel v Banach*<sup>17</sup> is among the landmark decisions affirming wrongful birth, with the Alabama Supreme Court recognising the parents' right to recover damages for the costs attributable to the child's disability resulting from the physician's failure to detect Down syndrome. The American approach varies significantly by state, but the majority of jurisdictions that have considered the issue recognise wrongful birth as a valid cause of action in its core formulation.

In Nigeria, there is no reported appellate decision specifically designated as a wrongful birth case. However, the foundational elements, medical negligence, duty of care, and causation are well-established within Nigerian tort jurisprudence.<sup>18</sup> The case of *M.D.P.D.T. v Okonkwo*,<sup>19</sup> confirms that Nigerian courts are willing to hold healthcare providers accountable in negligence. The challenge lies in the application of established principles to the specific factual matrix of wrongful birth, particularly given the absence of enabling legislation on prenatal screening obligations and genetic counselling standards.

## 2.3 Wrongful Life Claims

### 2.3.1 Legal Basis and Conceptual Challenges

A wrongful life claim is one brought by a child, through a litigation friend or guardian ad litem alleging that the negligence of a healthcare

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<sup>17</sup> *Keel v. Banach* 624 So. 2d 1022 (Ala. 1993).

<sup>18</sup> B Odunsi, 'Medical Negligence and Its Litigation in Nigeria' (2023) 14(2) *Beijing Law Review* 1090-1122.

<sup>19</sup> *M.D.P.D.T. v Okonkwo* (2001) 7 NWLR (Pt. 711) 206.

provider deprived his/her parents, the opportunity to make an informed reproductive choice that would have prevented his/her birth. The consequence is that the child lives with severe disability and its attendant suffering.<sup>20</sup> The doctrinal challenge this claim presents is stark: the plaintiff must establish that the defendant not only acted negligently, but that the outcome of that negligence is the child's very existence and that non-existence would have been a preferable outcome.<sup>21</sup>

Wrongful life claims raise three discrete legal controversies. The first relates to the issue of recognition i.e. whether the law can acknowledge such a claim without offending fundamental conceptions of human dignity and the sanctity of life?<sup>22</sup> The second relates to the issue of valuation i.e. if recognition is granted, how should damages be assessed especially as doing this would require the court to compare the disadvantage of life with disability against the hypothetical state of non-existence.<sup>23</sup> The third, and perhaps most contentious, is the ethical dimension, as recognising wrongful life claims implies that a person with disability's existence is, in some legally cognisable sense, worse than non-existence, a proposition which disability rights advocates and many ethicists find deeply objectionable.<sup>24</sup>

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<sup>20</sup> J R Botkin, 'The Legal Concept of Wrongful Life' (1988) 259(10) *The Journal of the American Medical Association* 1541-1545; *McKay v Essex Area Health Authority* [1982] QB 1166.

<sup>21</sup> *Harrington v Stephens* (2006) 226 CLR 52; P Cane, *Atiyah's Accidents, Compensation and the Law* (8th edition, Cambridge University Press 2013) 78-79.

<sup>22</sup> C Wheeler, 'Recognising Dignity & Showing Respect: Essential for Effective Complaint Handling' (2017) 14(1) PM *Perspektive Mediation* 59-70.

<sup>23</sup> M Abbasi & E Parsa, 'Types of compensation claims in relation to pre-natal diagnosis negligence in the UK legal system' (2019) 9(S2) *Journal of Advanced Pharmacy Education & Research* 78-84.

<sup>24</sup> P Dimopoulos & M Bagaric, 'The moral status of wrongful life claims' (2003) 2(1) *Common Law World Review* 35-64.

### 2.3.2 Existence *versus* Non-Existence: The Central Philosophical Problem

Genetic testing has enabled expectant parents to assess fetal viability, as many genetic diseases can be detected during pregnancy in today's world. And where prenatal diagnosis indicates that a foetus is predisposed to serious illness likely to result in pain, dependence, and diminished quality of life; some argue that such pregnancies should not be continued.<sup>25</sup> This perspective raises the question of whether it is justified to bring a child into the world when it is evident that his/her life will be marked by suffering.<sup>26</sup>

This leads us to ask: What is the nature of existence? The question, though ancient in origin, acquires renewed urgency when placed at the centre of wrongful birth or wrongful life claims. For existentialist philosophers, existence is a conscious, lived and self-determining experience. Sartre claims that authentic existence demands the capacity for self-definition, the ability to consciously shape one's identity rather than have it imposed by external circumstances. According to him, it is through our relations with others that we come to fully understand and define ourselves. Thus, a life defined by avoidable suffering will undermine the very conditions necessary for authentic human existence.<sup>27</sup>

A second question will then be: what makes existence a worthwhile enterprise? Is it the ability to live a life that guarantees independence and autonomy; or is a life marked by profound dependence on others?

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<sup>25</sup> J Harris, *The Value of Life: An Introduction to Medical Ethics* (Routledge, 1985) 143–155.

<sup>26</sup> R Dworkin, *Life's Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom* (Alfred A Knopf, 1993) 84–101; H Kuhse & P Singer, *Should the Baby Live? The Problem of Handicapped Infants* (Oxford University Press, 1985) 156–178.

<sup>27</sup> J Sartre, *Being and Nothingness* (H E Barnes Translation, Philosophical Library 1956) 438–440; 502–505.

Or a life that guarantees pain and ill health? What qualifies a life to be worth it? If the conditions of one's existence are defined from birth by unrelenting pain, suffering, and an inability to function without constant external support; then the very concept of existence as a meaningful human experience demands interrogation. In such circumstances, another difficult but necessary question arises: would it not be more humane to prevent the birth of a child destined for a life of severe suffering than to allow that life to commence and endure? This is not a question about the abstract value of life, but the quality and dignity of the life in question.<sup>28</sup>

Where prenatal diagnosis reveals a condition that will consign a child to irreversible suffering, some argue that termination, as a deliberate and considered medical choice, is not merely permissible but, in certain cases, the more compassionate course of action.<sup>29</sup> And it is within this tension between the sanctity of life and the quality of life that wrongful life claims find their philosophical grounding.<sup>30</sup> Some scholars contend that existence ought not to be valued for its own sake alone, but that the wellbeing of the individual must constitute a necessary condition for any existence worthy of the name. On this view, a life that cannot guarantee autonomy, dignity, meaningful relationships, and freedom from avoidable suffering falls short of what may properly be called real or full human existence.

This position finds resonance with Heidegger's concept of *Geworfenheit* or thrownness: a philosophical belief that all human beings were cast into the world without their consent; into circumstances entirely beyond their control. According to Heidegger,

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<sup>28</sup> O C Macaulay-Adeyelu, 'A Constructivist Critique of Gene Editing' (2021) *Lasu Journal of Humanities* 53-67.

<sup>29</sup> J Harris, *The Value of Life: An Introduction to Medical Ethics* (Routledge, 1985) 143–155; R Dworkin, *Life's Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom* (Alfred A Knopf, 1993) 84–101; *Vo v France* [2004] ECHR 326.

<sup>30</sup> J J Thomson, 'A Defense of Abortion' (1971) 1(1) *Philosophy and Public Affairs* 47.

throwness is an inescapable feature of the human condition as no one chooses the terms of their arrival into existence.<sup>31</sup> The above resonates with the stance adopted in some quarters in the case of wrongful birth or wrongful life. It is one thing to acknowledge the inevitability of ‘throwness’ and quite another to wilfully engineer the conditions of that ‘throwness’ to amplify its burdens. Thus, as Benatar notes, bringing a person into existence; to endure severe and unrelenting suffering is not a morally neutral act; it is an imposition.<sup>32</sup>

It follows that where a person is brought into the world condemned, from birth, to a life of severe suffering with an absence of the conditions necessary for self-determination, the question arises whether such life satisfies the threshold of meaningful existence at all. Where medical negligence denies prospective parents the information necessary to make an informed reproductive choice, the law is not merely confronted with a question of clinical failure; it is confronted with the question of whether a preventable and burdensome ‘throwness’ was wilfully and negligently enabled.

### **2.3.3 The Duty of Care to the Unborn Child**

Across the jurisdictions examined, the courts have consistently identified the impossibility of comparing existence with non-existence as the central barrier to recognising wrongful life claims. In *McKay v Essex Area Health Authority*,<sup>33</sup> the English Court of Appeal categorically rejected the concept of wrongful life. Stephenson LJ reasoned that the law cannot measure the value of existence against the void of non-existence. According to him, to hold otherwise would be to declare that life, even when impaired constitutes a legal injury, a conclusion fundamentally at odds with the sanctity of human life.

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<sup>31</sup> M Heidegger, *Being and Time* in J Macquarrie & E Robinson Translation (Harper & Row 1962) 174–179.

<sup>32</sup> D Benatar, *Better Never to Have Been: The Harm of Coming into Existence* (Oxford University Press 2006) 1–30.

<sup>33</sup> *McKay v Essex* (n 20).

In contrast, the Supreme Court of California in *Turpin v Sortini*<sup>34</sup> recognised wrongful life in a limited form by allowing recovery of the extraordinary medical expenses arising from the child's condition. The court however, refused to award general damages for the 'pain, suffering, or diminished quality of life' suffered by the plaintiff. This partial recognition reflects a pragmatic compromise: it provides financial relief where losses are objectively quantifiable yet avoids the deeper philosophical difficulty of comparing existence with non-existence.

A further dimension of wrongful life concerns whether healthcare providers owe a duty of care directly to a foetus. It is settled in Nigerian law, like in English law that a duty of care may arise in respect of pre-natal injury,<sup>35</sup> and the general principles of negligence applied by Nigerian courts support this possibility. The more contentious issue, however, is whether that duty extends to preventing the child's very birth. A proposition that the United Kingdom Courts have consistently rejected, based on the reasoning that its acceptance would require it to endorse the view that non-existence is legally preferable to existence with disability.<sup>36</sup>

#### **2.4 Key Distinctions Between the Two Doctrines**

Wrongful birth and wrongful life are doctrinally distinct in several critical respects. Wrongful birth is a parental claim while wrongful life is brought by the child. The harm alleged also differs. In wrongful birth, parents claim the deprivation of reproductive choice and the attendant burden of raising a child with disabilities. In a wrongful life action, the child claims that the harm done is his/her existence in an

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<sup>34</sup> *Turpin v Sortini* (1982) 31 Cal. 3d 220.

<sup>35</sup> J U Eke & N T Unyene, 'An Evaluation of the Legal Effects of the Doctrine of Duty of Care in Medical Practice in Nigeria' (2023) 13(1) *African Journal of Law & Criminology* 269-292.

<sup>36</sup> *McKay v Essex* (n 20).

impaired state itself.<sup>37</sup> It is much easier for the courts to calculate damages in wrongful birth actions, than in one revolving around a wrongful life claim as the latter requires comparison between existence and non-existence, which the law nor reason can satisfactorily undertake.<sup>38</sup> Ethically, while it is agreed that both claims are controversial; the ethical objections against wrongful life claims impose a heavier burden, than the other type of claim as the former would involve the law agreeing with the reasoning that the plaintiff would have been better off never born. A proposal most legal systems are unwilling to accept.

### **3. Ethical Dilemmas**

#### **3.1 The Valuation of Life and Disability**

The main ethical tension in both wrongful birth and wrongful life actions lies in the implicit suggestion that a life lived with disability is, in some morally significant sense, of lesser than a life without disability, or even inferior to no life at all.<sup>39</sup>

This suggestion is deeply problematic from the perspective of disability rights ethics. The social model of disability, widely endorsed by advocates and embedded in international human rights instruments such as the United Nations Convention on the Rights of Persons with Disabilities (CRPD),<sup>40</sup> to which Nigeria is a state party, emphasises that disability is not an inherent deficiency but one that arises from social and environmental barriers.<sup>41</sup> Thus, a legal framework which compensates parents for the birth of a child with disability on the premise that such a birth constitutes harm, risks entrenching

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<sup>37</sup> S Yakren, 'Wrongful Birth: Claims and the Paradox of Parenting a Child with a Disability' (2018) 87(2) *Fordham Law Review* 583-628.

<sup>38</sup> *Ibid.*

<sup>39</sup> A Mullock, 'Wrongful Life: The Courts' Dilemma in Determining a Remedy for a Living Plaintiff' (2002) 22 *Oxford Journal of Legal Studies* 423; J Fortin, 'Is the "Wrongful Life" Action Really Dead?' (1987) 9 *Journal of Social Welfare Law* 306.

<sup>40</sup> Convention on the Rights of Persons with Disabilities (CRPD) 2008.

<sup>41</sup> M Bérubé, *Life as We Know It: A Father, a Family, and an Exceptional Child* (Pantheon Books, 1996) 45-67.

stigmatising attitudes which the disability rights movement has long sought to dismantle.<sup>42</sup>

Wrongful birth claims need not be understood as a devaluation of disabled lives. Instead, the claim can be framed as recognition that the harm suffered by the parents is not the child's disability *per se*, but the deprivation of their right to make an informed reproductive decision.<sup>43</sup> This reframing grounded in parental autonomy rather than a judgement about the child's worth, offers a more defensible ethical foundation for wrongful birth, even if it does not fully resolve the tension between reproductive rights and disability equality.<sup>44</sup>

### **3.2 Autonomy: Parental Rights and Reproductive Freedom**

Central to the ethical justification of wrongful birth claims is the principle of reproductive autonomy. Parents are entitled, within the bounds of applicable law, to make informed decisions about pregnancy continuation or termination.<sup>45</sup> The right to make such decisions presupposes access to accurate and adequate medical information. Where a healthcare provider negligently withholds or fails to discover relevant information for instance, by failing to conduct appropriate prenatal screening or to provide competent genetic counselling, the parent is deprived of the very information upon which the exercise of autonomy depends.<sup>46</sup> The ethical wrong, in

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<sup>42</sup> I Kant, *Groundwork of the Metaphysics of Morals*, translated by Mary Gregor (Cambridge University Press, 1998) 429.

<sup>43</sup> N Priaulx, *The Harm Paradox: Tort Law and the Unwanted Child in an Era of Choice* (Routledge, 2007) 45–67.

<sup>44</sup> J Coggon, *What Makes Health Public? A Critical Evaluation of Moral, Legal, and Political Claims in Public Health* (Cambridge University Press, 2012) 112; A Asch, 'Prenatal Diagnosis and Selective Abortion: A Challenge to Practice and Policy' (1999) 89 *American Journal of Public Health* 1649, 1650–1652.

<sup>45</sup> P Laufer-Ukeles, 'Reproductive Choices and Informed Consent: Fetal Interests, Women's Identity, and Relational Autonomy' (2011) 34 (7) *American Journal of Law & Medicine* 567–623.

<sup>46</sup> *Ibid.*

this sense, lies not in the disability of the child, but in the systemic failure to respect the parent's capacity for self-determination.

In the Nigerian context, this principle intersects with significant social and cultural dynamics. Reproductive autonomy is constrained in practice by patriarchal family structures, religious influences, and the limited availability of genetic counselling and prenatal diagnostic services in many parts of the country.<sup>47</sup> The ethical imperative to protect parental autonomy must therefore be understood in conjunction with the structural conditions that presently limit its meaningful exercise for many Nigerians.<sup>48</sup>

### **3.3 Medical Ethics: Beneficence, Non-Maleficence, and the Duty to Inform**

Some parents of special needs children argue that to take care of such special needs offspring is a rewarding and enjoyable venture, they describe a feeling of purposefulness in taking care of their wards, this as beautiful as they want us to believe is problematic, because they have avoided the most important question that begs to be answered, should one have kids that their sole existence is dependent on another? Can the special needs child describe such existence in like terms as their parents? Who should enjoy one's existence more, the individual or the carer?

Immanuel Kant's, in his foundational work, *Groundwork of the Metaphysics of Morals* enunciates what he referred as the *Formula of Humanity* which is based on the belief that one must act so that humanity, whether in one's own person, or in that of another, is always treated as an end in it self and not merely as a means to an end.<sup>49</sup>

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<sup>47</sup> E B Onuh, 'An Extrapolative Appraisal of Reproductive Rights and the Crisis of Unsafe Abortion in Nigeria' (2025)2(1) *Nnamdi Azikiwe University Journal of Law and Clinical Legal Education* 116-125.

<sup>48</sup> Ibid.

<sup>49</sup> I Kant, *Groundwork of the Metaphysics of Morals*, translated by Mary Gregor (Cambridge University Press, 1998) 429.

Kant's argument rests on the premise that rational beings possess an intrinsic dignity and worth that sets them apart from mere objects or instruments.<sup>50</sup> Unlike objects, which only have conditional value, human beings have dignity, an incomparable and unconditional worth which places them above objects or things.<sup>51</sup> So to bring forth offsprings on the premise that taking care of all their needs is a worthwhile experience can be considered as treating a person merely as a means and a direct disregard of rational and physical autonomy which is a fundamental moral violation.<sup>52</sup>

The above principle as stated by Kant has significant implications in law, ethics and human rights discourse as it strengthens the idea that individuals cannot be sacrificed for aggregate social utility, and that every person is entitled to be treated as a subject of rights rather than an object of policy.<sup>53</sup>

The ethical framework applicable to medical practitioners engaged in prenatal care encompasses the foundational principles of beneficence, non-maleficence, justice, and respect for autonomy.<sup>54</sup> Wrongful birth and wrongful life claims arise, at their core, from the failure of healthcare providers to discharge these duties adequately.

The duty to inform a specific application of the principle of respect for autonomy requires that healthcare providers disclose all material risks and available diagnostic information relevant to reproductive decision-making. In *Montgomery v Lanarkshire Health Board*,<sup>55</sup> the United Kingdom Supreme Court affirmed a patient-centred standard of

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<sup>50</sup> Ibid at 428-429.

<sup>51</sup> A W Wood, *Kant's Ethical Thought* (Cambridge University Press, 1999) accessed 24 April 2026.

<sup>52</sup> C M Korsgaard, *Creating the Kingdom of Ends* (Cambridge University Press, 1996) 106–132.

<sup>53</sup> O O'Neill, *Constructions of Reason: Explorations of Kant's Practical Philosophy* (Cambridge University Press, 1989) 126–144.

<sup>54</sup> B Varkey, 'Principles of Clinical Ethics and Their Application to Practice' (2021) 30(1) *Medical Principles & Practice* 17–28.

<sup>55</sup> *Montgomery v Lanarkshire Health Board* (2015) UKSC 11.

disclosure, holding that a doctor must take reasonable care to ensure that a patient is aware of any material risks. While this decision arose in the context of obstetric care rather than prenatal diagnosis, its reasoning is directly applicable to wrongful birth scenarios and offers a useful template for Nigerian courts and policymakers to consider.

### **3.4 Disability Rights: Avoiding Stigmatisation and Upholding Human Dignity**

Perhaps the most persistent ethical criticism of both doctrines and of wrongful life in particular is that they risk institutionalising a negative assessment of disabled lives. When a court awards damages to a child for the fact of being born with a disability, or awards damages to parents on the basis that the birth of a disabled child constitutes a compensable harm, it necessarily adopts a comparative framework in which disability functions as a legally recognised diminishment.<sup>56</sup> This framework sits uneasily with the human rights architecture that Nigeria has ratified, including the CRPD and the African Charter on Human and Peoples' Rights (ACHPR).<sup>57</sup>

An ethical approach to wrongful birth and wrongful life must therefore be scrupulous in its language and reasoning. Damages should be framed as compensation for the additional financial burdens of caring for a child with disability, and not as a measure of the comparative worth of that child's existence. Courts and policymakers must resist the temptation to use the language of harm in ways that reinforce social stigma against persons with disabilities. The Nigerian legal system, in developing its jurisprudence in this area, has an opportunity to chart a course that is both legally coherent and ethically responsible.

### **3.5 Balancing Ethical Frameworks**

A comprehensive ethical analysis of wrongful birth and wrongful life requires engagement with multiple moral frameworks. From a

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<sup>56</sup> D Sõritsa, 'Damages Subject to Compensation in Cases of Wrongful Birth: A Solution to Suit Estonia' (2016) 24 *Juridica International* 105-115.

<sup>57</sup> African Charter on Human and Peoples' Rights 1986.

consequentialist perspective, the overriding concern is the welfare of the child, the family, and society at large: are the outcomes of recognising these claims likely to produce better consequences overall, including improved medical standards, enhanced access to information, and greater support for families raising children with disabilities?<sup>58</sup> From a deontological standpoint, the focus shifts to duties and rights: does a healthcare provider have a duty to disclose, and does the parent have a correlative right to information? From a virtue ethics perspective, the question becomes what a person of good character a conscientious physician, an equitable judge would do in the circumstances.<sup>59</sup> And from a human rights perspective, the analysis must centre on the dignity and equality of all persons, particularly those with disabilities.

These frameworks do not always converge, and the ethical challenges posed by wrongful birth and wrongful life are not amenable to easy resolution.<sup>60</sup> What they collectively suggest, however, is that any legal approach to these doctrines must be attentive to both the individual circumstances of the parties before the court and the broader social and normative environment in which those circumstances arise.<sup>61</sup>

#### **4. Social Implications**

##### **4.1 Economic Burdens and Resource Allocation**

One of the most tangible consequences of wrongful birth and wrongful life litigation is economic.<sup>62</sup> Families raising children with chronic conditions physical disabilities, genetic disorders, or developmental

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<sup>58</sup> V L Raposo, 'Wrongful Birth and Wrongful Life Actions (The Experience in Portugal as a Continental Civil Law Country)' (2017) 3(2) *Italian Law Journal* 421-450.

<sup>59</sup> Ibid.

<sup>60</sup> P Frati *et al*, 'Preimplantation and Prenatal Diagnosis, Wrongful Birth and Wrongful Life: A Global View of Bioethical and Legal Controversies' (2017) 23(3) *Human Reproduction Update* 338-357.

<sup>61</sup> Ibid.

<sup>62</sup> T A. Burns, 'When Life is an Injury: An Economic Approach to Wrongful Life Lawsuits' (2003) (52)4 *Duke Law Journal* 807-839.

impairments typically bear extraordinary financial burdens in respect of medical care, rehabilitation, special educational provision, and long-term support.<sup>63</sup> Where negligence on the part of a healthcare provider contributed to the circumstances in which those burdens were incurred, tort law provides a mechanism for the redistribution of those costs to the responsible party.<sup>64</sup> Wrongful birth claims, in particular, serve this redistributive function by enabling parents to recover the additional costs of raising a child with a disability that they would not have borne but for the defendant's negligence.

In the Nigerian context, the economic dimension of these claims carries particular significance. Public funding for the care and support of persons with disabilities is grossly inadequate, and private medical insurance remains inaccessible to the majority of the population. Families raising children with conditions such as sickle cell disease which affects approximately 150,000 children born annually in Nigeria, representing the highest national incidence in the world often face catastrophic out-of-pocket expenditure.<sup>65</sup> A functioning legal framework that enables the recovery of damages for healthcare negligence in the prenatal context could provide meaningful financial relief for affected families.

#### **4.2 Disability Stigma and Social Attitudes**

A recurring concern in the literature on wrongful birth and wrongful life is their potential to reinforce negative social attitudes toward disability. When litigation is premised on the notion that the birth of a child with a disability is a harm for which compensation is appropriate, it risks sending a message however unintended that

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<sup>63</sup> Ibid.

<sup>64</sup> Ibid.

<sup>65</sup> I I Beli, 'Socio-economic Burden of Sickle Cell Disease on Families attending Sickle Cell Clinic in Kano state, Northwestern Nigeria' (2024) 9 *Global Paediatrics* <https://www.sciencedirect.com/science/article/pii/S2667009724000617> accessed 24 April 2025.

disabled lives are less valuable or less welcome in society.<sup>66</sup> In a country such as Nigeria, where disability stigma remains deeply embedded in many communities, and where children with disabilities may be perceived through a cultural lens that associates physical or cognitive impairment with spiritual misfortune or moral failing, the social implications of such messaging are particularly acute.<sup>67</sup>

Legal practitioners, courts, and policymakers in Nigeria must therefore be vigilant in ensuring that the language and reasoning of any emerging jurisprudence on wrongful birth is not deployed in ways that deepen existing stigma.<sup>68</sup> The framing of damages as compensation for the extraordinary costs of care rather than as a measure of the reduced worth of the child's life is essential to maintaining the ethical and social integrity of these claims.<sup>69</sup>

#### **4.3 Healthcare Accountability and Standards of Prenatal Care**

One potentially constructive social effect of wrongful birth litigation is its capacity to promote higher standards of prenatal care and medical accountability. Where healthcare providers are aware of potential legal liability for failure to conduct adequate prenatal screening or to provide competent genetic counselling, there is an incentive to improve the quality and thoroughness of those services.<sup>70</sup> In jurisdictions such as the United Kingdom and the United States, wrongful birth litigation has contributed, at least in part, to the

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<sup>66</sup> S Mor, 'The Dialectics of Wrongful Life and Wrongful Birth Claims in Israel: A Disability Critique' (2014) 63 *Studies in Law Politics and Society* 113-146.

<sup>67</sup> Ibid

<sup>68</sup> K B.C Ashipu & G Mayen Umukoro, 'A Critique of the Language of Law in Selected Court Cases in Nigeria' (2014) 5(8) *Mediterranean Journal of Social Sciences* 622-626.

<sup>69</sup> Ibid.

<sup>70</sup> M Piro *et al*, 'Wrongful birth litigation and prenatal screening' (2008) 179(10) *Canadian Medical Association Journal* 1027-1030.

development of clearer clinical guidelines and more robust informed consent procedures in the context of prenatal care.<sup>71</sup>

In Nigeria, where the standards of prenatal care vary enormously between public and private healthcare facilities, and between urban and rural settings, the deterrent function of wrongful birth liability could in principle stimulate improvements in clinical practice.<sup>72</sup> However, this must be approached with caution: there is a risk that fear of liability may drive defensive medicine, leading healthcare providers to recommend unnecessary interventions including, controversially, the termination of pregnancies where abnormalities are detected in order to minimise litigation exposure.<sup>73</sup>

#### **4.4 Reproductive Autonomy and the Right to Information**

Wrongful birth claims affirm a fundamental principle: that parents are entitled to make reproductive decisions on the basis of complete and accurate medical information. The tort remedy serves to vindicate the right to information and to impose accountability on those who negligently deprive parents of that information.<sup>74</sup> In Nigeria, this principle intersects with ongoing debates about reproductive rights, access to contraception, and the legal status of abortion. The criminal law provisions governing termination of pregnancy in Nigeria under both the Criminal Code<sup>75</sup> and Penal Code<sup>76</sup> impose significant restrictions, meaning that even where parents receive information

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<sup>71</sup> C P Moutos & J Y Phelps, 'Wrongful Birth and Wrongful Life Lawsuits in Obstetrics and Gynaecology' (2024) 6 *American Journal of Obstetrics and Gynaecology* 611-617.

<sup>72</sup> I N Okedo-Alex *et al*, 'Does disrespect and abuse during childbirth differ between public and private hospitals in Southeast Nigeria' (2021) 21(1) *BMC Pregnancy and Childbirth* 852.

<sup>73</sup> *Ibid*.

<sup>74</sup> D W Witney & K N. Rosenbaum, 'Recovery of Damages for Wrongful Birth' (2011) 32(2) *Journal of Legal Medicine* 167-204.

<sup>75</sup> Criminal Code Act Cap C38, LFN 2004.

<sup>76</sup> Penal Code Act Cap P3 LFN 2004.

about foetal abnormalities, their capacity to act on that information through termination is constrained by law.<sup>77</sup>

This legal context complicates the application of wrongful birth doctrine in Nigeria. The causation question whether the parents would have terminated the pregnancy had they received timely information cannot be answered in the affirmative in many cases without running into the restrictions of Nigerian law on termination of pregnancy. Policymakers and courts will need to address this intersection carefully.<sup>78</sup>

#### **4.5 Pressure to Terminate and Advocacy Backlash**

A further social concern is the risk that an active wrongful birth litigation culture may create implicit or explicit pressure on parents to terminate pregnancies where foetal abnormalities are detected.<sup>79</sup> If the legal and social narrative frames the birth of a child with a disability as a preventable harm, parents who choose to continue such pregnancies may feel stigmatised or may be perceived as having accepted the burden voluntarily, thereby forfeiting any moral or legal claim to support.<sup>80</sup> Disability rights advocates across various jurisdictions have challenged wrongful birth claims on the ground that they implicitly devalue disabled lives and risk reinforcing eugenic attitudes toward reproductive decision-making.<sup>81</sup> In Nigeria, where cultural, religious, and familial factors already exert significant pressure on reproductive decisions, the introduction of a wrongful birth litigation framework without adequate safeguards could intensify those pressures in harmful ways.

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<sup>77</sup> B Ilo & A Imosemi, 'Prospect and Challenges of Criminal Procedures in Nigeria: A Review' (2022) 8(2) *Unnes Law Journal*:279-312.

<sup>78</sup> Ibid.

<sup>79</sup> A Lippman, 'Prenatal Genetic Testing and Screening: Constructing Needs and Reinforcing Inequities' (1991) 17 (1-2) *American Journal of Law & Medicine* 15-50.

<sup>80</sup> *McKay v Essex* (n 20).

<sup>81</sup> A Asch, 'Prenatal Diagnosis and Selective Abortion: A Challenge to Practice and Policy' (1999) 89(11) *American Journal of Public Health* 1649, 1650–1653.

## 5. Comparative Jurisprudence

### 5.1 United States of America

The United States was among the first jurisdictions to grapple seriously with wrongful birth and wrongful life claims, and the resulting body of case law reflects the country's characteristic diversity of state-level legal approaches.<sup>82</sup> The majority of American states that have addressed the issue recognise wrongful birth as a valid cause of action, allowing parents to recover at least the extraordinary costs of raising a child with a disability attributable to the defendant's negligence.<sup>83</sup> Wrongful life claims, however, have been recognised in only a small number of states principally California, New Jersey, and Washington and even in those jurisdictions, recovery is typically confined to the quantifiable costs of extraordinary care, with general damages for the comparative disadvantage of existence rejected as incalculable.<sup>84</sup>

The cultural context of American wrongful birth jurisprudence is important. The strong American emphasis on individual autonomy and constitutionally protected reproductive rights particularly following *Roe v Wade*,<sup>85</sup> and notwithstanding its subsequent overruling in *Dobbs v Jackson Women's Health Organisation*,<sup>86</sup> supported judicial recognition of parental claims arising from the deprivation of informed reproductive choice. At the same time, courts have been careful to limit the language of their decisions to avoid implying that disability itself constitutes a legal harm, attempting to reconcile the recognition

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<sup>82</sup> W Hensel, 'The Disabling Impact of Wrongful Birth and Wrongful Life Actions' (2005) 40 *Harvard Civil Rights-Civil Liberties Law Review* 141-195.

<sup>83</sup> D Witney & K Rosenbaum, 'Recovery of Damages for Wrongful Birth' (2011) 32(2) *Journal of Legal Medicine* 167-204.

<sup>84</sup> N Beshara, 'Wrongful life: an issue of first impression for the Supreme Court of South Carolina-Willis v. Wu' (2005) 33(3) *Journal of Law, Medicine & Ethics* 616-617.

<sup>85</sup> *Roe v Wade* 410 US 113 (1973).

<sup>86</sup> *Dobbs v Jackson Women's Health Organisation* 597 US 215 (2022).

of wrongful birth with respect for the dignity of persons with disabilities.

## **5.2 United Kingdom**

English law recognises wrongful birth as a cause of action in medical negligence, subject to the limitations established by the House of Lords in *McFarlane v Tayside Health Board*.<sup>87</sup> The scope of recoverable damages has been elaborated through subsequent decisions, with the courts permitting recovery of the additional costs attributable to a child's disability (Parkinson) while denying recovery for the ordinary costs of child-rearing in the absence of disability. Wrongful life, however, has been definitively rejected in England since *McKay v Essex Area Health Authority*,<sup>88</sup> a position that has not been reversed by statute or overruled by subsequent authority.

The English approach reflects a broader judicial philosophy of restraint in extending tort liability into areas that involve value judgements about the worth of human life. This approach resonates with the human rights framework of the European Convention on Human Rights, under which the right to life<sup>89</sup> and the prohibition of inhuman or degrading treatment<sup>90</sup> inform the interpretive context in which courts operate. Nigeria, which inherited its common law tradition from English law and whose courts frequently cite English decisions as persuasive authority, would do well to give close attention to the doctrinal architecture of English wrongful birth jurisprudence as it develops its own approach.

## **5.3 France: The *Perruche* Case and Legislative Response**

The French experience offers perhaps the most instructive example of the social and legislative consequences that can follow judicial

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<sup>87</sup> (15 above).

<sup>88</sup> *McKay v Essex* (n 20).

<sup>89</sup> Article 2 European Convention on Human Rights (ECHR) 1953.

<sup>90</sup> Article 3 European Convention on Human Rights 1953.

recognition of wrongful life. In *Arrêt Perruche*,<sup>91</sup> the French Supreme Court awarded damages to a child born with severe disabilities resulting from the defendant doctor's negligent failure to diagnose his mother's rubella infection during pregnancy. The court held that the child could recover damages for his own impaired existence. The decision provoked immediate and intense public controversy, with disability rights organisations arguing that it implied that disabled lives were legally wrongful.<sup>92</sup>

The French legislature responded swiftly with the Loi du 4 mars 2002,<sup>93</sup> which prohibited wrongful life claims while preserving wrongful birth claims for parents. The French episode illustrates several important lessons for Nigerian policymakers. First, judicial recognition of wrongful life is likely to generate significant social backlash, particularly from disability rights communities.<sup>94</sup> Second, legislative intervention can effectively shape the scope and limits of these doctrines, providing greater certainty than judge-made law alone. Nigeria's National Assembly would benefit from studying the French legislative experience as a precedent for prospective regulation in this area.

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<sup>91</sup> *Arrêt Perruche* (Court of Cassation, November 17, 2000).

<sup>92</sup> Ibid.

<sup>93</sup> Loi du 4 mars 2002 relative aux droits des malades et à la qualité du système de santé (Law of March 4, 2002, on Patients' Rights and the Quality of the Health System).

<sup>94</sup> S Mor, 'The Dialectics of Wrongful Life and Wrongful Birth Claims in Israel: A Disability Critique' (2014) 63 *Studies in Law Politics and Society* 113-146.

#### **5.4 Australia**

Australian courts have recognised wrongful birth as a valid cause of action, as confirmed by the High Court of Australia in *Harriton v Stephens*<sup>95</sup> and *Waller v James*.<sup>96</sup> In those decisions, the High Court unanimously rejected wrongful life claims, holding, consistent with the English position that the comparison between impaired existence and non-existence is not one that the law can make. The majority held that there is no legally cognisable damage in being born, even with severe disability, when the alternative is non-existence.

Australia's approach reflects a careful balancing of common law traditions with the increasingly prominent disability rights movement. The emphasis on economic damages (quantifiable care costs) in wrongful birth, rather than existential judgements about the value of the child's life, represents an attempt to provide meaningful legal redress to families without endorsing propositions that undermine the dignity of disabled persons. This approach offers a workable template for Nigerian jurisprudence.

#### **5.5 Nigeria: Existing Framework and Key Considerations**

In Nigeria, the absence of specific legislation on wrongful birth and wrongful life means that any claims in this area must be resolved by reference to the general law of negligence as developed in Nigerian courts, supplemented by the persuasive authority of decisions from England, Australia, and other common law jurisdictions.<sup>97</sup> The elements of the tort of negligence duty of care, breach, causation, and damage are well-established in Nigerian jurisprudence, as reflected in

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<sup>95</sup> *Harriton v Stephens* [2006] HCA 15.

<sup>96</sup> *Waller v James* [2006] HCA 16.

<sup>97</sup> O A Adejumo & O A Adejumo, 'Legal Perspectives on Liability for Medical Negligence and Malpractices in Nigeria' (2020) 35(44) *Pan African Medical Journal*

Review | <https://www.panafrican-med-journal.com/content/article/35/44/full/>  
accessed 23 April 2026.

decisions such as *Donoghue v Stevenson*,<sup>98</sup> applied extensively by Nigerian courts, and *Agbonmagbe Bank Ltd. v. General Manager, G.B. Ollivant Ltd. & Ors.*<sup>99</sup>

A number of Nigeria specific factors complicate the application of these principles to wrongful birth. First, the legal restrictions on abortion under the country's Criminal legislations significantly constrain the counterfactual inquiry at the heart of causation in wrongful birth claims.<sup>100</sup> Second, the limited availability and accessibility of genetic counselling and prenatal diagnostic services means that the standard of care against which healthcare providers' conduct is measured must be calibrated to reflect prevailing conditions while still incentivising improvement.<sup>101</sup> Third, cultural attitudes toward disability, reproduction, and litigation in Nigeria require a legally and socially sensitive approach that does not transplant foreign doctrines uncritically into the Nigerian context.

The high prevalence of sickle cell disease in Nigeria makes the development of wrongful birth jurisprudence particularly urgent. Nigeria accounts for approximately 75% of the global sickle cell disease burden, and a significant proportion of cases could be prevented through effective premarital screening, genetic counselling, and prenatal diagnosis.<sup>102</sup> When a healthcare provider, aware of a pregnant patient's genotype, fails to investigate her partner's genotype

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<sup>98</sup> *Donoghue v. Stevenson* [1932] AC 562.

<sup>99</sup> *Agbonmagbe Bank Ltd v General Manager, G.B. Oliviant Ltd* [1961] 1 All NLR 116.

<sup>100</sup> E B Onuh, 'An Extrapolative Appraisal of Reproductive Rights and the Crisis of Unsafe Abortion in Nigeria' (2025) 2(1) *Nnamdi Azikiwe University Journal of Law and Clinical Legal Education* 116-125.

<sup>101</sup> O A Adejumo & O A Adejumo, 'Legal Perspectives on Liability for Medical Negligence and Malpractices in Nigeria' (2020) 35(44) *Pan African Medical Journal* <https://www.panafrican-med-journal.com/content/article/35/44/full/> accessed 23 April 2026.

<sup>102</sup> Centre for Policy Impact in Global Health, 'Sickle Cell Disease in Nigeria: Why We Must Focus on Advocacy' (2024) <https://centerforpolicyimpact.org/2024/09/17/sickle-cell-disease-in-nigeria-why-we-must-focus-on-advocacy/> accessed 24 April 2026.

or yet neglects to warn them of their risks of both carrying the sickle cell gene, or negligently communicates their need for genetic counselling and prenatal diagnosis services; or communicates this information negligently, leaving the couple without a genuine understanding of their situation and therefore unable to make a truly informed decision. Where the negligence thereafter materialises in the form of a child born with sickle cell disease imposing enduring health crises and significant financial burden on the family, accountability must follow. In this circumstance, the harm flowing from such failure is both foreseeable and preventable and the provider may be liable under the tort of medical negligence. The doctrine of wrongful birth, appropriately adapted to Nigerian legal context offers a vital mechanism for achieving both accountability and deterrence within the medical profession.

#### **5.6 Possible Development Needed in Nigeria**

The comparative survey reveals several key lessons for the development of Nigerian law in this area. From the United States, Nigeria can draw on the experience of a jurisdiction that has grappled extensively with the tension between parental autonomy and disability rights. From the United Kingdom, Nigeria can derive guidance on the doctrinal framework for wrongful birth within a common law negligence system closely aligned with Nigerian legal traditions.<sup>103</sup> From France, Nigeria can observe the social and legislative consequences of wrongful life recognition and the value of clear statutory regulation. And from Australia, Nigeria can learn the importance of maintaining a principled distinction between the parental claim (wrongful birth) and the child's claim (wrongful life),

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<sup>103</sup> V B Olagbegi-Oloba, *The Impact of Court-Connected Alternative Dispute Resolution on the Dispensation of Civil Justice in Nigeria: A Comparison with South Africa and the United States of America* (PhD Law of the University of Stellenbosch, 2024) <https://scholar.sun.ac.za/server/api/core/bitstreams/319e52f7-604d-4e46-8c38-a712c22b7bfa/content> accessed 24 April 2026.

recognising the former while rejecting the latter on clear philosophical and legal grounds.

## **6. Recommendations**

### **6.1 Legislative Framework**

The most urgent policy recommendation for Nigeria is the enactment of a clear statutory framework that distinguishes wrongful birth from wrongful life, defines the elements of each cause of action, and specifies the heads of recoverable damages. Such legislation would reduce doctrinal uncertainty, provide guidance to courts and legal practitioners, and enable the Nigerian legal system to respond coherently to claims in this area without being obliged to engage in extensive common law development on a case-by-case basis. The statute should expressly permit wrongful birth claims grounded in medical negligence including failures of prenatal screening, genetic counselling, and disclosure, while precluding wrongful life claims on the basis that the law cannot adjudge existence against non-existence. Compensation in wrongful birth cases should be tied to the additional financial burdens attributable to the child's disability rather than to any assessment of the child's comparative worth.

### **6.2 Strengthening Informed Consent and Genetic Counselling**

Any legislative or regulatory framework addressing wrongful birth in Nigeria must be accompanied by robust requirements for informed consent in the context of prenatal care. Healthcare providers should be required, at a minimum, to: disclose all material risks associated with a pregnancy; inform patients of the availability of relevant prenatal screening and diagnostic tests; provide or refer patients to competent genetic counselling where indicated by family history or screening results; and document consent in a manner that protects both patient and provider in the event of subsequent dispute. These requirements should be articulated in detailed regulatory guidelines issued by the Medical and Dental Council of Nigeria, with appropriate sanctions for non-compliance.

Given the prevalence of sickle cell disease, healthcare providers attending to couples with known carrier status or a family history of the condition should be under a specific duty to offer haemoglobin electrophoresis and, where appropriate, prenatal diagnosis. Failure to discharge this duty in a case where the child is born with sickle cell disease should, in principle, found a wrongful birth claim if the causation and damage elements are established.

### **6.3 Improving Healthcare Infrastructure and Access**

Policy recommendations in this area cannot be effective in isolation from the broader healthcare context. The widespread unavailability of prenatal diagnostic services and genetic counselling in public healthcare facilities in Nigeria means that many potential wrongful birth claims will never arise because the relevant services were simply not offered, not because the standard of care was met. Federal and state governments must invest in expanding the provision of reproductive healthcare services, including trained genetic counsellors, prenatal diagnostic equipment, and specialist obstetricians capable of interpreting and communicating relevant findings to patients. The National Health Act 2014 provides a legislative basis for such investment, and its implementation should be pursued with urgency.

### **6.4 Ethical Safeguards and Disability Rights Protection**

Any legal framework recognising wrongful birth must incorporate explicit ethical safeguards to protect the dignity and rights of persons with disabilities. Legislation should include a provision affirming that the recognition of wrongful birth claims does not imply that a child born with a disability has a lesser right to life, dignity, or social support than any other person. Courts adjudicating wrongful birth claims should be required to frame their decisions in terms of the harm done to parental autonomy rather than in terms of the comparative disadvantage of the child's condition. The National Disability Commission and civil society organisations representing persons with

disabilities should be engaged as stakeholders in the development of any legislative framework in this area.

Parallel investments in social inclusion, educational access, and healthcare provision for persons with disabilities are essential complements to any development of wrongful birth jurisprudence. The goal of the legal system in this area should not be to create financial incentives for the avoidance of disabled births, but to ensure accountability for medical negligence and to redistribute the extraordinary financial burdens borne by families who were denied the information necessary to make informed reproductive choices.

### **6.5 Access to Justice and Children's Welfare**

The policy framework should also address the welfare of children born with preventable conditions, irrespective of whether a wrongful birth claim is available or successful. State and federal governments should develop comprehensive support programmes for families raising children with genetic conditions and disabilities, including subsidised medical care, rehabilitation services, special educational provision, and social assistance. Access to justice for affected families should be improved through the provision of legal aid in wrongful birth cases, the development of specialist medical negligence panels or dedicated civil courts, and the streamlining of pre-action protocols for clinical negligence claims.

### **7. Conclusion**

Wrongful birth and wrongful life are not merely abstract legal constructs: they are doctrines with real consequences for real families, real children, and real healthcare systems. This article has sought to demonstrate, through a combined doctrinal and analytical methodology, that these doctrines engage some of the most profound questions in law, ethics, and social policy questions about the value of human life, the limits of medical duty, the meaning of reproductive autonomy, and the capacity of the law to do justice in conditions of irreducible uncertainty.

For Nigeria, the development of jurisprudence in this area is both an opportunity and a responsibility. The opportunity lies in the possibility of creating a legal framework that genuinely promotes healthcare accountability, vindicates parental autonomy, and provides meaningful redress to families harmed by medical negligence in the prenatal context. The responsibility lies in doing so in a manner that is sensitive to the unique cultural, social, and legal conditions of Nigerian society, that protects the dignity and rights of persons with disabilities, and that

does not import foreign doctrines uncritically without regard to their fitness for purpose in the Nigerian environment.

The comparative survey conducted in this article suggests that the most defensible approach for Nigeria is to recognise wrongful birth as a cause of action in medical negligence, calibrate the recoverable damages to the additional costs attributable to the child's disability, reject wrongful life on philosophical and ethical grounds, and embed any emerging jurisprudence within a clear statutory framework supported by robust healthcare regulation, informed consent requirements, and disability rights protections. This approach would position Nigeria as a jurisdiction that takes seriously both the rule of law and the dignity of all human life.

The path forward requires collaboration among legislators, jurists, medical practitioners, disability advocates, and policymakers. It requires the courage to engage honestly with difficult ethical questions and the wisdom to learn from the experience of other jurisdictions. Above all, it requires a commitment to a vision of justice that is as attentive to the most vulnerable members of society children born with disabilities, families crushed by medical and financial burdens, and communities underserved by an overstretched healthcare system, as it is to the formal requirements of legal doctrine.