LEGAL AND HUMAN RIGHTS IMPLICATIONS OF RESTRICTIVE ABORTION LAWS IN NIGERIA: A TRIPARTITE ANALYSIS OF THE INTERESTS OF THE WOMAN, THE FOETUS, AND THE PUTATIVE FATHER

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CERTIFICATION

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DEDICATION

I dedicate this project to my first love, my Creator, the source of my existence, God Almighty, for the privilege of life and for making this journey possible. To my parents and siblings, whose unwavering support, guidance, and encouragement have shaped every step of my path and inspired me to pursue knowledge with passion and diligence. To all those whose voices are often unheard, may this work, in some small way, contribute to justice, understanding, and human dignity.

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AfCHPR: African Court on Human and Peoples' Rights

APA: American Psychological Association

CAUP: Campaign Against Unwanted Pregnancy Chapter Two

CEDAW: Convention on the Elimination of All Forms of Discrimination Against Women

CFRN: Constitution of the Federal Republic of Nigeria Chapter Two

CRA: Child's Rights Act

CTOP Act: Choice on Termination of Pregnancy Act (92 of 1996)

ECHR: European Court of Human Rights Chapter Three

ICESCR: International Covenant on Economic, Social and Cultural Rights Chapter Two

ICCPR: International Covenant on Civil and Political Rights Chapter Two, Three

ICPD: International Conference on Population and Development Chapter Two

LFN: Laws of Federation of Nigeria

MLA: Modern Language Association

NALT: Nigerian Association of Law Teachers

NMA: Nigerian Medical Association

NWLR: Nigeria Weekly Law Reports

OSCOLA: Oxford Standard for the Citation of Legal Authorities Chapter Three

PAC: Post-Abortion Care Chapter Five

PNDCL 102: Provisional National Defence Council Law 102

SAN: Senior Advocate of Nigeria

SOGON: Society of Gynecologists and Obstetricians of Nigeria

SToP: Safe Termination of Pregnancy Chapter Two

UDHR: Universal Declaration of Human Rights Chapter Three

UK: United Kingdom Chapter Two, Four

UN: United Nations Chapter Three

VAPP Act: Violence Against Persons (Prohibition) Act

ABSTRACT

This study critically examines the legal and human rights implications of Nigeria's restrictive abortion laws through a tripartite analysis of the competing interests of the woman, the foetus, and the putative father. The background establishes that Nigeria's legal framework, anchored in the Criminal and Penal Codes, is highly prohibitive, permitting abortion only to save the woman's life; this restrictive stance drives the high incidence of unsafe abortions, contributing significantly to maternal mortality. The central problem addressed is the profound normative conflict created by the law's failure to equitably balance the woman's fundamental constitutional rights against the moral and legal status of the foetus and the social and relational interests of the putative father. Adopting a doctrinal and comparative methodology, the research systematically analyzed Nigerian statutes, constitutional provisions, judicial precedents like *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo*, and international obligations, notably the Maputo Protocol. Findings confirm that the Nigerian framework is contradictory: while the woman holds explicit, justiciable constitutional rights to life,

dignity, and autonomy, the foetus holds the status of potential life, and the father possesses no legal right to veto. The study concludes that the law is fundamentally unbalanced and in direct conflict with Nigeria's binding international human rights commitments. To achieve a coherent legal framework, the research recommends legislative modernization to align penal laws with Article 14(2)(c) of the Maputo Protocol (legalizing abortion for rape, incest, and health risk), urgent judicial activism to interpret constitutional rights expansively, and statutory recognition of the biological father’s moral and relational interest through veto consultation, safeguarded by exceptions for domestic violence.

CHAPTER ONE

1.1 Background of Study

Abortion remains one of the most controversial and polarizing issues in legal, political, ethical and human rights discourse. It is a contentious matter in contemporary society, generating profound debates-across moral, social, and religious spheres. The debate extends beyond mere medical considerations to questions about morality, autonomy, and the sanctity of life. Globally, jurisdictions adopt varying approaches:some permit abortion on request or for broad socio-economic reasons, while others restrict it to narrowly defined circumstances such as saving the life of the pregnant woman or preserving her physical and mental health.[1] These differences reflect deep-rooted cultural, religious, and political values that continue to divide opinions.

In Nigeria, unsafe abortion remains a significant public health concern and a leading contributor to maternal mortality. Approximately 45,000 maternal deaths occur annually, yet the annual rate of reduction in maternal mortality is less than 4 percent below the threshold required to achieve the Millennium Development Goal 5 target. Abortion complications are estimated to account for 20–40 percent of these maternal deaths, with a procedure-related death rate of about 680 per 100,000 abortions. Unsafe abortion alone contributes to roughly 10–14 percent of maternal morbidity and mortality nationwide.[2]

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[1] Center for Reproductive Rights, *The World's Abortion Laws 2023* <https://reproductiverights.org> accessed 10th August 2025.

[2] Federal Ministry of Health (Nigeria), *National Guidelines on Safe Termination of Pregnancy for Legal Indications* (Federal Ministry of Health 2018) <https://www.health.gov.ng/doc/National_Guidelines_on_Safe_Termination_of_Pregnancy.pdf> accessed

In 2012, an estimated 1.25 million induced abortions occurred in Nigeria more than the double 610,000 recorded in 1996 translating to a rate of 33 abortions per 1,000 women aged 15–49 years. The unintended pregnancy rate that year was approximately 59 per 100 women in this age group, with 56 percent of unintended pregnancies ending in abortion. Around 212,000 women received treatment for complications arising from unsafe abortion (a treatment rate of 5.6 per 1,000 women of reproductive age), while an additional 285,000 experienced serious health consequences but did not receive necessary medical care.[3]

Over 80 percent of induced abortions in Nigeria are performed by doctors in private facilities, typically for social rather than medical reasons, with the remainder being self-induced or carried out by untrained health personnel and quacks. Data on lawful abortions remain scarce due to the country's restrictive legal framework, but the prevalence of unsafe procedures and the severity of resulting complications underscore the urgent need for skilled providers and appropriate technology for safe pregnancy termination.[4] Women seek abortions for various reasons, including financial and emotional inability to care for a child; fear of rejection by partners, parents, or society; as a means of birth control; physical or mental health concerns; being too young or ill to continue a pregnancy; or to terminate pregnancies resulting from rape or contraceptive failure. However, the restrictive state of abortion law in Nigeria fails to recognize these complex realities, thereby driving the practice underground and unwittingly sustaining the cycle of unsafe procedures and preventable deaths and encouraging illegal

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13th August 2025.
[3] *Ibid* 2.
[4] *Ibid* 9.

abortions with the attendant consequences. In Nigeria, the legal framework governing abortion is among the most restrictive in the world, permitting termination of pregnancy only to save the life of the woman. The principal statutory provisions are contained in the Criminal Code Act, applicable in Southern Nigeria, and the Penal Code, applicable in the Northern states. Under sections 228–230 of the Criminal Code[5] and sections 232–234 of the Penal Code[6], any person who unlawfully procures the miscarriage of a woman commits an offence, with equally severe penalties imposed on the woman herself and any person supplying drugs or instruments for such purposes.This restrictive legal framework places Nigeria in the category of countries with near-bans, despite the country's obligations under regional and international human rights instruments.[7]

A narrow statutory defence exists in section 297 of the Criminal Code,[8] permitting abortion if undertaken in good faith for the preservation of the woman's life. A similar provision appears in sections 235–236 of the Penal Code,[9] allowing the procedure where done in good faith to save the woman's life. In Northern states operating Sharia Penal Codes (applicable in some northern states like Kano, Zamfara, Bauchi, Katsina, Sokoto, Jigawa, e.t.c.), abortion is criminalized with stricter sanctions, Muhammad Mumtaz Ali explains, under classical Maliki jurisprudence which heavily influences the Sharia Penal Codes in Northern Nigeria, abortion before 120 days prior to the stage of ensoulment, is prohibited but attracts taʿzīr (discretionary) punishments such as fines or

[5] Criminal Code Act, Cap. C38, Laws of the Federation of Nigeria 2011.
[6] Penal Code (Northern States) Federal Provisions Act, Cap P3, Laws of the Federation of Nigeria 2011.
[7] African Union, *Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa* (adopted 11 July 2003, entered into force 25 November 2005) (Maputo Protocol) art 14.
[8] Criminal Code Act, Cap C38, Laws of the Federation of Nigeria 2011.
[9] *Ibid* (n 6).

short imprisonment, whereas abortion after ensoulment is treated analogously to homicide, invoking diyāt (blood money) alongside possible imprisonment. This aligns with the observations of Thomas Eich, who notes that Maliki sentiments on abortion shift with fetal development, especially around the alaqa stage (40 days), and is consistent with general descriptions of the Maliki position in secondary literature such as the Wikipedia entry on Islam and abortion.[10]

Beyond criminal statutes, regulatory instruments such as the Medical and Dental Practitioners' Code of Ethics (2004)[11] though does not expressly regulate abortion, it place a general ethical restriction on medical practice to avoid procedures that are not medically justified. It provisions restrict doctors from performing procedures that are unjustified and unlawful, emphasizing that doctors must act in good faith thereby reinforcing the require adherence to the law of the land and the statutory limits in the Criminal and Penal Codes. While the Constitution of the Federal Republic of Nigeria 1999 (as amended) guarantees the right to life,[12] Nigerian courts have not definitively ruled on whether this right extends to the unborn, leaving a jurisprudential gap that fuels ongoing controversy. Similarly, Section 3(1) of the Child Rights Act 2003[13] states that provisions in Chapter IV of the Constitution of Federal Republic of Nigeria 1999,[14] or any successive constitutional provisions relating to Fundamental Rights, shall apply as if

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[10] Muhammad Mumtaz Ali, *Abortion from the Perspective of Islamic Law and Ethics* (Kuala Lumpur: International Islamic University Malaysia Press, 2013) 92-94; Thomas Eich, 'Maliki Perspectives on Abortion,"in *Abortion* (Cham: Springer, 2021) 137-145, especially pg. 137-138; "Islam and abortion', *Wikipedia*, last modified 8 August 2025, para. 4, available at: <https:///en.wikipedia.org/wiki/.Islam_and_abortion> accessed 13th August 2025.

[11] *Medical and Dental Practitioners' Code of Ethics* (Medical and Dental Council of Nigeria,2004) made pursuant to the *Medical and Dental Practitioners Act*, Cap M8, Laws of the Federation of Nigeria 2004.

[12] Section 33 of the Constitution of the Federal Republic of Nigeria 1999 (as amended).

[13] Child Rights Act, Cap C50, Laws of the Federation of Nigeria 2010.

[14] Constitution of the Federal Republic of Nigeria 1999 (as amended) ss 32-42.

those provisions are expressly stated in this Act. This means that the fundamental rights enshrined in the constitution, such as right to life is also guaranteed for the child. Section 4 of Child Rights Act 2003 guarantees every child the right to "survival, and development"[15]. This right encompasses the child's right to life, proper healthcare, adequate nutrition, safe drinking water, and a hygienic environment. It also includes provisions for the protection and care necessary for the child's well-being. The provision often invoked in anti-abortion arguments as to extend protection to the foetus. However, the Act does not explicitly define "child" to include the

unborn, leaving its applicability to foetuses debated. Section 17 of the Child's Right Act 2003 also accord right of the unborn child to protection against harm.etc.[16] Sub-section 1 of this section states that a child may bring an action for harm or injury caused to the child willfully, recklessly, negligently or through neglect before, during or after the birth of that child.[17]

Although not directly regulating abortion, the Violence Against Persons (Prohibition) Act[18] prohibits harmful traditional practices which may include unsafe abortions (depending on interpretation and state adaptation). The VAPP Act applies federally in the FCT, but many states have domesticated it with similar provisions. The VAPP Act impacts reproductive rights by criminalizing harmful practices. The legal and ethical debate on abortion is often framed as a conflict between three distinct but interconnected interests: the women's right to bodily autonomy, the moral and the legal

[15] *Child's Right Act* (n 13).
[16] *Ibid.*
[17] *Ibid.*
[18] Violence Against Persons (Prohibition) Act 2015, Laws of the Federation of Nigeria.

status of the foetus, and the potential rights and interests of the putative or identified father.[19] The woman's rights are grounded in constitutional guarantees of dignity, personal liberty, and privacy under sections 34, 35, and 37 of the Constitution of the Federal Republic of Nigeria 1999 (as amended), as well as Nigeria's treaty obligations under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Protocol to the African Charter on Human and People's Rights on the Rights of Women in Africa (Maputo Protocol).[20] Conversely, arguments concerning the foetus are rooted in both moral philosophy notably, the "sanctity of life" doctrine and legal provisions that criminalize termination except in life-saving circumstances.[21]

The putative father's interests, although rarely addressed in Nigeria's jurisprudence, have emerged in Nigerian jurisprudence, have emerged in comparative jurisdictions as a source of legal contention. In *Paton v. British Pregnancy Advisory Service Trustees*,[22] the English courts rejected a husband's claim to prevent his wife from obtaining lawful abortion, holding that the law recognizes no right in the father to veto the woman's decision prior to birth. Nonetheless, the debate remains live, especially in jurisdictions where paternal consent or involvement is legislatively encouraged or mandated.

Ethically, the abortion debate straddles two dominant positions: the pro- choice perspective, which emphasizes reproductive autonomy, gender equality, and bodily integrity; and the pro-life perspective, which prioritizes the preservation of fetal life from

[19] Rebecca J Cook and Benard M Dickens, 'Human Rights Dynamics of Abortion Law Reform' *Human Rights Quarterly 1,* [2003] 25(1) 1
[20] Constitution of the Federal Republic of Nigeria 1999 (as amended) ; Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), adopted 18th December 1979, 1249 UNTS 13.
[21] Criminal Code Act;Penal Code.
[22] (1979) QB 276 (CA)

conception.[23] Pro-life scholars emphasize the sanctity of fetal life, often grounding their arguments in natural law or moral philosophy. John Finnis, for example, argues that life begins at conception and that abortion is tantamount to homicide.[24] Don Marquis similarly contends, in his influential essay *Why Abortion is Immoral*, that abortion is wrongful because it deprives the foetus of a "future like ours".[25] These arguments reinforce legal positions that seek to prioritize fetal protection over maternal autonomy. African scholars and Nigerian jurists often argue that laws prohibiting abortion protect morality, cultural values, and the sanctity of life.

By contrast, pro-choice theorists stress women's autonomy, equality, and health. Judith Jarvis Thomson, in her seminal work *"*A Defense of Abortion", uses the celebrated violinist analogy to demonstrate that even if the foetus is assumed to have a right to life, the woman is not morally obligated to sustain it against her will.[26] Ronald Dworkin likewise frames abortion as a matter of individual freedom and moral responsibility, rather than solely the sanctity of life.[27] Feminist legal theorists such as Catherine MacKinnon further argue that restrictive abortion laws entrench patriarchal control and undermine gender equality, while Nigerian scholars like Adetoro Ipadeola highlight how such laws perpetuate unsafe abortion practices and contribute to high maternal mortality. African feminists scholars like Akanni, Dorcas O. and Adebayo Akin highlight how restrictive abortion laws disproportionately harm poor women in Nigeria, framing

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[23] Don Marquis, *'Why Abortion is Immoral' Journal of Philosophy* [1989] 86(4) 183.
[24] John Finnis, *Natural Law and Natural Rights* (Oxford University Press 1980).
[25] Don Marquis *(n 23).*
[26] Judith Jarvis Thomson, 'A Defense of Abortion' *Philosophy & Public Affairs* [1971] (1) 47.
[27] Ronald Dworkin, *Life's Dominion: An Argument About Abortion, Euthanasia, and Individual Freedom* (Vintage Books 1993).

abortion access as a public health and human rights necessity. [28] Between these extremes lies a more nuanced views, advocating for a balanced recognition of the women's autonomy alongside the protection of potential life, and in some cases consideration of the father's stake in the reproductive decision.

Despite the abundance of global scholarship on abortion, Nigerian legal research has paid limited attention to a tripartite analysis that gave equal weight to the interests of the woman, the foetus, and the putative father. Existing works often focus exclusively on the women's right or fetal protection, leaving paternal interests largely unexplored. This study seeks to fill in that gap by critically analyzing these three perspective within Nigeria's legal framework, ethical considerations, and human rights obligations, while engaging in a comparative examination of selected jurisdictions to inform potential law reform and policy development.

1.2 Statement of Problem

Abortion remains one of the most contentious legal, moral, and human rights issues in contemporary discourse. In Nigeria, the legal framework on abortion is highly restrictive, permitting the procedure only to save the life of a pregnant woman. This restrictive stance is primarily anchored in Sections 228–230 of the Criminal Code [29] and Section 232 of the Penal Code,[30] with both statutes criminalizing abortion in most circumstances. However, the law's narrow scope leaves unresolved the broader

[28] Catherine A MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press 1989); Adetoro Ipadeola, 'Abortion Law Reform in Nigeria: Addressing Women's Reproductive Health Rights' *Nigerian Journal of Human Rights* [2018] 45.
[29] *Criminal Code Act*, Cap C38, Laws of the Federation of Nigeria 2011.
[30] Penal Code (Northern States) Federal Provisions Act, Cap P3, Laws of the Federation of Nigeria 2011.

question of how to equitably balance the legal interests of the woman, the foetus, and the putative father within the context of human rights and ethical considerations. At the heart of this debate lies a deep normative conflict: the woman's right to bodily autonomy and reproductive choice stands in apparent tension with the foetus's claimed right to life, often framed in moral, religious, and philosophical terms. Complicating this further is the largely neglected position of the putative father, whose potential interests in the decision to terminate or continue a pregnancy have been given minimal attention in Nigerian jurisprudence. This legal and ethical ambiguity fosters inconsistent judicial reasoning and perpetuates societal divisions.

The consequences of this unresolved tripartite conflict are far-reaching. Nigeria continues to witness high rates of unsafe abortions, contributing significantly to maternal mortality, while legal uncertainties leave healthcare providers and potential litigants in precarious positions. Moreover, the absence of a comprehensive legal framework that recognizes and reconciles the intersecting rights of all parties fuels policy stagnation and hinders the development of progressive reproductive health laws.

This study is therefore necessitated by the urgent need to provide a holistic, comparative, and contextually relevant analysis of abortion from the perspectives of the woman, the foetus, and the putative father. By situating the discourse within the intersecting frameworks of human rights law, ethical theory, and comparative jurisprudence, the research aims to bridge the normative and legal gaps that have long characterized abortion debates in Nigeria.

1.3 Research Questions

This study seeks to address the following questions:

1. How does Nigerian law currently regulate abortion, and to what extent does it recognize or protect the rights of the woman, the foetus, and the putative father?

2. What are the key human rights principles and ethical considerations that underpin or challenge the legal positions relating to the actors within the abortion context?

3. In what ways can the competing rights of the woman, the foetus, and the putative father be reconciled within a coherent legal and ethical framework

4. How do other jurisdictions approach the tripartite analysis of abortion, and what lessons can Nigeria draw from these models.

1.4 Aim and Objectives of the Study

The aim is to critically examine the legal, human rights, and ethical dimensions of abortion, focusing on the tripartite interests of the woman, the foetus, and the putative father, with a view to proposing reforms for a balanced legal framework in Nigeria.

The Objectives are to:

1. Analyse the current Nigerian legal provisions on abortion and assess their

compatibility with recognized human rights norms.

2. Explore the human right perspectives and ethical issues on abortion from the perspectives of the woman, the foetus, and the putative father.

3. To analyse the theoretical normative and pragmatic approaches to resolving the conflict of the rights of the woman, the foetus and the putative father.

4. Conduct a comparative analysis of abortion laws in selected jurisdictions, focusing on how they balance the tripartite interests.

1.5 Research Methodology

This research adopts a doctrinal legal research methodology, which entails the systematic analysis of legal principles, statutes, case law, and scholarly commentary relevant to the subject of abortion, human rights, and ethical considerations. The study will rely primarily on secondary sources, including textbooks, journal articles, law reports, policy papers, and authoritative online legal databases.

The approach is both descriptive and analytical. The descriptive aspect will outline the current legal framework governing abortion in Nigeria, as well as relevant provisions of international and regional human rights instruments. The analytical component will examine the adequacy, coherence, and ethical underpinnings of these laws, particularly in relation to the rights and interests of the woman, the foetus, and the putative father.

A comparative method will also be employed in Chapter Four, focusing on the laws of selected jurisdictions namely South Africa, the United Kingdom, Ireland, and Ghana. These jurisdictions are chosen for their diversity in legal approaches, ranging from

liberal to restrictive regimes, thereby offering valuable models for possible legal reform in Nigeria. The ethical analysis will draw on established theories in moral philosophy and bioethics, as well as religious and socio-cultural perspectives, insofar as these inform or influence legal reasoning and policy-making.

All legal authorities and materials will be referenced in accordance with the Nigerian Association of Law Teachers (NALT) citation style to ensure academic rigour and uniformity.

1.6 Scope of the Study

This study is confined to an examination of abortion within the Nigerian legal and socio-cultural context, with particular focus on the tripartite legal and ethical interests of the woman, the foetus, and the putative father. The analysis will primarily draw from relevant provisions of the Nigerian Constitution, the Criminal Code, the Penal Code, and applicable judicial decisions.

The research will also engage with applicable international and regional human rights instruments to which Nigeria is a party, including the African Charter on Human and Peoples' Rights, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), and other relevant treaties and soft-law standards.

In order to enrich the discourse and provide practical reform models, the study will conduct a comparative analysis of abortion laws in selected jurisdictions such as South Africa, the United Kingdom, Ireland, and Ghana. These jurisdictions are chosen for their differing legal approaches to abortion and their illustrative value in demonstrating how competing rights can be balanced. Ethical considerations will be addressed through

engagement with philosophical, religious, and moral perspectives that inform abortion debates in Nigeria and other societies. However, the study will not seek to provide a theological treatise on abortion, but will instead approach such perspectives insofar as they influence law, policy, and human rights discourse.

1.7 Limitations of the Study

The research is subject to certain limitations. First, the study is doctrinal in nature and primarily relies on the analysis of legal instruments, case law, scholarly literature, and secondary data; it does not include empirical fieldwork or interviews. Second, given the vastness of the abortion debate, the study will not attempt to exhaust all religious, philosophical, or cultural perspectives on the subject. Only those that are most relevant to Nigerian law and policy will be addressed. Third, while the comparative analysis includes selected jurisdictions, the findings from these jurisdictions may not be directly transferable to Nigeria due to differences in constitutional arrangements, socio-cultural contexts, and political climates. Nonetheless, the lessons derived will be adapted to suit Nigeria's unique context. Finally, the study is limited by the availability and currency of legal materials, particularly in relation to recent judicial decisions and legislative amendments in both Nigeria and the comparator jurisdictions.

1.8 Significance of the Study

This research is significant for several reasons. First, it contributes to the ongoing

academic and policy discourse on reproductive rights in Nigeria by addressing abortion through a tripartite lens examining the intersecting rights and interests of the woman, the foetus, and the putative father. Unlike many existing studies that focus exclusively on the woman or the foetus, this work adopts a holistic approach that seeks to balance competing claims within a unified legal and ethical framework.

Second, the study offers valuable insights into the compatibility (or otherwise) of Nigeria's restrictive abortion laws with its constitutional obligations, international human rights commitments, and ethical considerations. By situating the Nigerian legal framework within broader human rights discourse, the research provides a critical basis for evaluating whether current laws adequately safeguard the dignity, autonomy, and welfare of all stakeholders.

Third, the comparative analysis undertaken in this study offers practical lessons from other jurisdictions that have grappled with similar ethical and legal dilemmas. This enables the formulation of contextually relevant recommendations that are both progressive and culturally sensitive, thereby bridging the gap between theory, policy, and practice.

Finally, the research will serve as a useful resource for legal scholars, policymakers, healthcare practitioners, and advocacy groups seeking to reform abortion laws in Nigeria. By presenting a balanced and well-reasoned analysis, it aims to influence judicial reasoning, legislative reform, and public discourse in a manner that promotes justice, protects human rights, and advances ethical decision-making in matters of reproductive health.arrangements, socio-cultural contexts, and political climates.

Nonetheless, the lessons derived will be adapted to suit Nigeria's unique context.

1.9 Conclusion

This chapter has set the foundation for the study by situating the debate on abortion within the intersecting frameworks of law, human rights, and ethical discourse. It has identified the key problem as the absence of a balanced and coherent legal approach that adequately considers the tripartite interests of the woman, the foetus, and the putative father in Nigeria. The chapter has outlined the research objectives, questions, and methodology, as well as the scope and limitations of the work. The next chapter will proceed to examine the legal and human rights dimensions of women's reproductive autonomy within the Nigerian legal system, alongside relevant international standards.

CHAPTER TWO

IS THERE A RIGHT TO ABORTION?

2.1 Introduction

The question of whether a woman possesses a right to abortion is central to one of the most persistent legal and ethical debates in Nigeria. This chapter seeks to examine whether such a right can be said to exist under Nigerian law, despite the clear criminalization of abortion under the Criminal Code and Penal Code. It examines the apparent conflict between statutory prohibitions and the broader constitutional, human rights, and jurisprudential arguments supporting a woman's autonomy over her reproductive choices. The objective is to explore whether Nigerian law, directly or by implication, recognizes or ought to recognize a right to abortion as an extension of the woman's right to life, dignity, privacy, and equality.

The discourse surrounding abortion is typically framed around two opposing ideological and legal viewpoints the pro life and pro choice stances. In Nigeria, the pro life perspective predominantly influences the legal and socio-cultural environment. The Criminal Code Act, which applies to Southern Nigeria, makes it a crime to intentionally terminate a pregnancy, except when necessary to save the mother's life,[31] while the Penal Code, which operates in the North, maintains a similar position.[32] These legal restrictions are bolstered by the religious and cultural values prevalent in the country, which view fetal life as sacred and inviolable. According to Obiyan and Omozuwa, these values highlight a profound intersection of religion and law, where the sanctity of potential life is prioritized over the woman's individual autonomy.[33] On the other hand,

[31] Criminal Code Act, Cap C38 Laws of the Federation of Nigeria 2011, ss 228–230.
[32] Penal Code (Northern States) Federal Provisions Act, Cap P3 Laws of the Federation of Nigeria 2011, s 232.
[33] S Obiyan and O Omozuwa, 'Religion, Law, and Women's Reproductive Health in Nigeria' *African Human*

the pro choice perspective is grounded in constitutional and human rights principles. It posits that a woman's right to decide whether to carry a pregnancy to term falls within her fundamental rights to life,[34] human dignity,[35] privacy,[36] and freedom from discrimination.[37] Limiting access to safe abortion infringes these rights and compromises women's reproductive freedom by compelling them to endure unwanted or hazardous pregnancies. This viewpoint frames abortion not merely as a moral or religious question, but as an issue of legal autonomy, equality, and bodily integrity as protected by the 1999 Constitution and international human rights agreements ratified by Nigeria.[38]

This chapter begins by clarifying key concepts such as privacy, reproductive rights, and abortion, and how they interrelate within human rights discourse. It then examines the recognition of privacy in international human rights law and its connection to women's reproductive autonomy. The chapter further analyses major judicial interpretations of the right to privacy in abortion cases, both internationally and comparatively, before turning to the Nigerian legal framework. It evaluates relevant constitutional provisions, statutory restrictions, and limited case law to determine whether a woman's right to abortion can be inferred under Nigerian law. The discussion also considers ethical and human rights dimensions, highlighting the tension between women's autonomy and the state's duty to protect fetal life, and concludes by identifying the major challenges that hinder the recognition of abortion as a right in Nigeria.To maintain this focus, the

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[34] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 33.
[35] *Ibid* s 34.
[36] *Ibid* s 37.
[37] *ibid* s 42.
[38] Centre for Reproductive Rights, *'The World's Abortion Laws 2023: Nigeria Country Profile'* (2023) <https://reproductiverights.org/maps/worlds abortion laws/> accessed 6 November 2025.

present discussion is limited to the rights of the woman, while the legal and ethical considerations relating to the foetus and the putative father will be explored in detail in Chapter Three.

2.2 Women's Rights as Pertaining to Abortion

The discourse on abortion in Nigeria cannot be separated from the broader framework of women's rights. Human rights are inherent to all persons and do not depend on state recognition. Human rights stem from the very nature of man. There exists a fundamental interconnectedness between man and certain inalienable rights which infact define him. Man is born with rights and even not codified, the mere existence of every human confers same with rights. As Akinyemi notes, rights are not governmental gifts but conditions inherent in human existence.[39] Similarly, Cranston describes a human right as something whose denial constitutes "a great affront to justice," underscoring its inviolable nature.[40] In legal theory, as Holmes and Salmond argue, a right becomes enforceable only when recognized and protected by the legal system; either the law gives a person the right, or they do not have it.

Within this framework, abortion directly implicates core dimensions of women's rights—bodily autonomy, dignity, and health. Bodily autonomy requires that women retain control over reproductive decisions without coercion. In Nigeria's patriarchal context, denying abortion often imposes involuntary motherhood, thereby stripping women of control over their bodies. Restrictive abortion laws also undermine women's

[39] B Akinyemi, 'Your Rights, My Rights, Human Rights', being the 2nd Lam Adesina Lecture for Peace and Good Governance, delivered in 1badan on 23rd November, 2000.
[40] M Cranston, 'Human Rights: Real and Supposed?' in D D Raphael (ed), *Political Theory and the Rights of Man* (Indiana University Press 1967) 52.

dignity, especially in circumstances involving rape, incest, poverty, or threats to health, effectively subjecting them to degrading and involuntary experiences.

Women's health rights are equally central. Unsafe abortion remains a major contributor to maternal morbidity and mortality in Nigeria. When legal systems restrict access to safe abortion, women are compelled into clandestine and often unsafe procedures, violating their right to the highest attainable standard of health.

Beyond personal autonomy and health, abortion access significantly affects women's social and economic rights. The inability to control fertility can disrupt education, employment, and long-term economic prospects, particularly for adolescents and low-income women. Thus, restrictive abortion laws perpetuate gender inequalities and limit women's full participation in society.

In essence, abortion is not merely a medical or criminal law issue, it is fundamentally a women's rights issue. Restrictive laws erode autonomy, dignity, health, and socio-economic participation, underscoring why the abortion debate must be situated within the broader recognition of women as full rights-bearing citizens.

2.3 Conceptual Clarification

Before delving into the legal and constitutional discussions surrounding abortion, it is crucial to provide clear definitions of key terms that form the basis of this discourse. Defining these terms lays the groundwork for understanding the intersection of privacy, autonomy, and reproductive rights.

2.3.1 Privacy

Privacy signifies the condition of being free from unauthorized interference or intrusion, whether from the government, organizations, or other individuals.[41] In legal discourse, privacy includes both informational privacy (guarding personal data and communications) and decisional privacy, which ensures the right to make significant personal choices without outside interference.[42]

2.3.2 Right to Privacy

The right to privacy is the legal recognition of privacy as a fundamental human right, often codified in constitutions and international treaties.[43] It extends beyond mere seclusion to include the protection of individual autonomy in matters integral to personal dignity, family life, and bodily integrity.[44] In the context of reproductive rights, the right to privacy protects decisions concerning contraception, pregnancy, and abortion from unwarranted state interference, creating a private sphere where fundamental personal decisions are exercised.[45]

2.3.3 Reproductive Rights

Reproductive rights are the rights of individuals to make autonomous decisions about reproduction and reproductive health, including access to contraception, fertility

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[41] Samuel D Warren and Louis D Brandeis, 'The Right to Privacy' *Harvard Law Review* [1890] 4 (5) 193.
[42] C Nwapi, 'Constitutional Protection of the Right to Life and Health in Nigeria' *Nigerian Journal of Human Rights Law* [2014] (2)22, 25.
[43] Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 37; International Covenant on Civil and Political Rights 1966, Art 17.
[44] *Ibid*.
[45] S Obiyan and O Omozuwa, 'Religion, Law, and Women's Reproductive Health in Nigeria' *African Human Rights Law Journal* [2019] (19) 245, 258.

services, and safe abortion where legal.[46] These rights are grounded in principles of autonomy, equality, and non-discrimination and are recognized in international human rights instruments such as CEDAW, ICCPR, ICESCR, and the Maputo Protocol.[47]

2.3.4 Abortion

Abortion is the intentional termination of a pregnancy before the foetus attains viability that is, before it can survive independently outside the womb. It may occur spontaneously (miscarriage) or be induced deliberately through medical or surgical means. Restrictions on abortion raise critical questions about the state's role in regulating private decisions and its obligations to protect women's rights.

2.3.5 Interrelationship of Concepts

Privacy, reproductive rights, and abortion are interconnected in human rights discourse. Privacy provides the legal and philosophical framework that protects decisional autonomy; reproductive rights operationalize this protection specifically for sexual and reproductive health; and abortion represents a tangible exercise of these rights in circumstances where pregnancy may impact a woman's health, dignity, or autonomy.

2.3.6 Distinguishing Privacy from Autonomy, Liberty, and Bodily Integrity

While related, these concepts are distinct:

Autonomy refers to the capacity to make informed, independent decisions about one's life, particularly fundamental personal choices.[48]

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[46] WHO, Reproductive Rights: Global Guidance (2019) 1–2.
[47] CEDAW 1979, Art 12; ICESCR 1966, Art 12; Maputo Protocol 2003, Art 14.
[48] J Raz, *The Morality of Freedom* (Oxford University Press 1986) 166–167.

Liberty is the broader freedom to act within legal and social constraints, encompassing political, civil, and personal freedoms.[49]

Bodily integrity specifically protects the physical inviolability of the individual, ensuring that no one may be subjected to non consensual medical procedures or other forms of bodily intrusion.[50]

Privacy overlaps with these concepts in that it creates a protected sphere for exercising autonomy and safeguarding bodily integrity, yet it is distinct in emphasizing protection from external intrusion, rather than the act of making choices per se.

2.3.7 Limitations of Liberty as a Defence for Abortion

Although the principle of liberty is often invoked in arguments supporting abortion rights, it cannot operate as an absolute defence for the termination of pregnancy. Liberty, as a human right, is inherently limited by the equal and competing rights of others. Where the exercise of liberty endangers another life particularly that of the unborn such liberty must yield to the superior and more fundamental right to life. The right to life is universally regarded as the foundation of all other rights, for without life, no other right can exist. Thus, in the abortion debate, liberty cannot be stretched to justify an act that extinguishes potential life. From a pro-life standpoint, the foetus, though unborn, possesses an intrinsic moral worth and a legitimate claim to protection. Consequently, the State's duty to preserve life overrides the woman's liberty interest when the two come into conflict.

2.4 Historical Context of Abortion laws in Nigeria.

[49] John Stuart Mill, *On Liberty* (first published 1859, Hackett Publishing 1978) 14–16.

[50] C Cook and R Dickens, 'Human Rights and Reproductive Autonomy' in Rebecca J Cook, Joanna N Erdman and Bernard M Dickens (eds), *Abortion Law in Transnational Perspective: Cases and Controversies* (University of Pennsylvania Press 2014) 102.

The history of abortion regulation in Nigeria is a complex and layered subject, deeply rooted in colonial inheritance reinforced and defined by a confluence of prevailing indigenous cultural norms and the powerful influence of a diverse religious values. Before colonial intervention, many Nigerian communities approached reproduction and pregnancy termination through customary norms rather than codified law. Indigenous practices allowed for a degree of flexibility, where women sought traditional remedies to terminate pregnancies in circumstances such as severe illness, rape, incest, or socio-economic hardship.[51] These practices were largely managed within the community and did not attract the stigma or criminal sanctions that later emerged under colonial legislation.

The arrival of British colonial rule radically altered this framework. In 1916, the Criminal Code, modeled on the English Offences Against the Person Act 1861, was introduced in Southern Nigeria.[52] The Act criminalized abortion in nearly all circumstances, providing only a narrow exception where the procedure was necessary to save the life of the woman. Under sections 228–230 of the Criminal Code, a woman who attempted to procure her own miscarriage could be punished with up to seven years' imprisonment, while a provider administering drugs or other means to induce abortion could face up to fourteen years or even life imprisonment.[53]

In Northern Nigeria, which came under a separate legal regime, the Penal Code was enacted in 1960.[54] This Code, influenced by both British colonial law in India and local Islamic traditions, similarly prohibited abortion except where necessary to preserve the

[51] E Etieyibo,'Abortion in African Communal Societies: An Ethical Analysis' *African Journal of Reproductive Health* [2017] 21(2)19.
[52] Criminal Code Act, Cap C38 Laws of the Federation of Nigeria 2011.
[53] *Ibid* ss 228-230.
[54] Penal Code (Northern States) Federal Provisions Act, Cap P3, Laws of the Federation of Nigeria 2011.

life of the mother. Thus, the legal regimes in both North and South entrenched a rigid criminalization of abortion, reflecting Victorian moral values transplanted into Nigerian law.

Although Britain liberalized its abortion law with the Abortion Act of 1967, which permitted abortion under broader conditions such as risk to the physical or mental health of the woman or in cases of fetal abnormality, Nigeria retained its colonial-era restrictions without modification.[55] This divergence illustrates the persistence of colonial legal legacies in Nigeria, where laws imposed to reflect 19th-century British morality continue to govern reproductive health despite changing global standards. This framework stands in stark contrast to the modern reproductive rights movements that have emerged both globally and within Nigeria. The development of these movements gained momentum with the International Conference on Population and Development in Cairo in 1994, where reproductive rights were formally addressed in the context of sexual policies.[56] In Nigeria, advocacy groups such as the Campaign Against Unwanted Pregnancy (CAUP) were established in the early 1990s to defend women's sexual and reproductive rights and eliminate unsafe abortion.[57] These organizations, alongside the Nigerian Medical Association (NMA) and the Society of Gynecologists and Obstetricians of Nigeria (SOGON), have consistently advocated for the liberalization of abortion laws to protect women's health.[58]

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[55] Abortion Act 1967 (UK).
[56] United Nations, *Report of the International Conference on Population and Development* (UN Publications 1995).
[57] B Oye-Adeniran, 'Advocacy for Reform of the Abortion Law in Nigeria' *Reproductive Health Matters* [2004]12(24) 209.
[58] Wikipedia, 'Abortion in Nigeria'
< https://en.wikipedia.org/wiki/Abortion_in_Nigeria> accessed 3 September 2025.

Post-independence, the justification for maintaining these restrictive provisions has been reinforced by religious, cultural, and political narratives. Christian and Islamic teachings, both of which are deeply embedded in Nigerian society, strongly condemn abortion as morally unacceptable.[59] These beliefs, combined with the state's interest in upholding "public morality," contributed to the reluctance of lawmakers to revise the colonial provisions. As a result, abortion law in Nigeria today remains largely unchanged from its colonial inception, criminalizing the practice in almost all circumstances and permitting it only when the life of the mother is at stake.

2.5 The "Pro Life" Statutory Framework: Nigeria's Criminalization of Abortion

Abortion in Nigeria is expressly criminalized under both the Criminal Code Act (applicable in Southern Nigeria) and the Penal Code Act (applicable in Northern Nigeria). These statutory instruments reflect the Nigerian legal system's position that the intentional termination of pregnancy is a punishable offence, except when performed to save the life of the pregnant woman. The laws embody a legislative preference for the protection of potential life, consistent with the moral and religious values that dominate the Nigerian socio-legal environment.

2.5.1 The Criminal Code Act (Applicable in Southern Nigeria)

The Criminal Code Act expressly prohibits abortion through three closely related provisions sections 228, 229, and 230. Section 228 criminalizes the conduct of any person who, with intent to procure the miscarriage of a woman, unlawfully administers to her any poison, drug, or other noxious substance, or unlawfully uses any force or

[59] O Akinwale, 'Religion and the Politics of Abortion in Nigeria' *Journal of African Studies and Development* [2019] 11(4) 49.

instrument for that purpose.[60] The offence is classified as a felony, punishable by up to fourteen years imprisonment. This section targets third parties such as medical practitioners, traditional attendants, or any other individuals who attempt to induce an abortion. Section 229 extends liability to the woman herself, making it a felony for any woman to attempt to procure her own miscarriage by any means whatsoever.[61] The provision underscores that criminal responsibility attaches not only to those who assist but also to the woman who voluntarily seeks to terminate her pregnancy. The punishment prescribed is seven years imprisonment.

Section 230 further broadens the scope of criminal liability by penalizing anyone who supplies or procures any substance or instrument, knowing that it is intended to be unlawfully used to procure a miscarriage.[62] The offence is punishable by three years imprisonment, indicating the legislature's intent to criminalize all forms of participation in the abortion process.

Collectively, these provisions make abortion in Southern Nigeria illegal in virtually all circumstances. The only recognized exception arises under section 297, which provides that a person is not criminally responsible for performing a surgical operation in good faith and with reasonable care for the preservation of the mother's life.[63] This exception, though narrow, forms the basis of the medical defence for therapeutic abortion, particularly where continuation of the pregnancy poses a grave danger to the woman's life.

2.5.2 The Penal Code Act (Applicable in Northern Nigeria)

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[60] Criminal Code Act, Cap C38 Laws of the Federation of Nigeria 2011, s 228.
[61] *Ibid* s 229.
[62] *Ibid* s 230.
[63] *Ibid* s 297.

The Penal Code Act, which governs the northern states of Nigeria, adopts a similar stance but is more concise in its formulation. Section 232 provides that whoever voluntarily causes a woman with child to miscarry shall, if such miscarriage is not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of up to fourteen years and may also be liable to a fine.[64] The section criminalizes both the act of causing a miscarriage and the intention to do so, except where the act is medically necessary to preserve the woman's life. The wording of section 232 reflects the same legislative principle found in the Criminal Code: abortion is prohibited unless it falls within the narrow life saving exception.[65] The penal provision does not differentiate between the woman and the person performing the act; rather, liability extends to anyone who voluntarily brings about the miscarriage.

Thus, both Codes though enacted under distinct legal traditions align in substance: abortion is a criminal offence, and the only legally acceptable ground for its performance is the preservation of the pregnant woman's life. The provisions do not recognise socio-economic, psychological, or health related grounds short of imminent danger to life. This strict statutory framework forms the basis of Nigeria's "pro life" legal stance and defines the limits of lawful abortion practice within the country. This section represents the baseline "pro life" legal standard in Nigeria.

2.6 The "Pro Choice" Rebuttal: Constitutional Guarantees of the Woman

While the Criminal Code Act and Penal Code Act criminalize abortion, proponents of a rights based interpretation argue that the Constitution of the Federal Republic of Nigeria

[64] Penal Code (Northern States) Federal Provisions Act, Cap P3 Laws of the Federation of Nigeria 2011, s 232.

[65] See also M I Ladan, *Materials and Cases on Public International Law* (2nd edn, ABU Press 2007) 382, discussing the alignment of Nigerian penal provisions with restrictive abortion norms.

1999 (as amended) provides stronger, superior legal protections that may override the Codes in certain circumstances. The “pro choice” argument proceeds on the premise that the Constitution is the supreme law of the land, and any legislation inconsistent with its provisions is void to the extent of its inconsistency.[66] From this standpoint, constitutional rights relating to life, dignity, privacy, and equality form the foundation for asserting a woman’s right to make autonomous reproductive decisions.

2.6.1 The Right to Life (Section 33, 1999 Constitution)

Section 33(1) of the 1999 Constitution guarantees that “every person has a right to life, and no one shall be deprived intentionally of his life save in execution of the sentence of a court.”[67] This provision, though primarily directed at unlawful killing, has been interpreted by human rights scholars to impose both negative and positive obligations on the State: the negative duty to refrain from arbitrary deprivation of life and the positive duty to protect life from foreseeable threats.[68]

Applied to abortion regulation, this means that where the criminalization of abortion drives women to unsafe, clandestine procedures that threaten their survival, the State arguably fails in its constitutional duty to protect the woman’s right to life.[69] The narrow statutory exception limited only to situations where the woman’s life is in immediate danger has been criticized as insufficient because it does not extend protection to serious threats to the woman’s physical or mental health.[70] In cases where continuation of pregnancy risks severe morbidity, the failure to permit therapeutic abortion could

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[66] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 1(3).
[67] *Ibid* s 33(1).
[68] C Nwapi, ‘Constitutional Protection of the Right to Life and Health in Nigeria’ *Nigerian Journal of Human Rights Law* [2014] (2) 22, 25.
[69] A Adewole, ‘Abortion in Nigeria: The Law and the Practice’ *African Journal of Reproductive Health* [2017] 21(2) 17, 20.
[70] *Ibid*.

amount to an indirect violation of the woman's right to life. In 2012, the Guttmacher Institute reported that approximately 1.25 million induced abortions occurred in Nigeria, a dramatic increase from the 610,000 recorded in 1996.[71] This equated to 33 abortions per 1,000 women aged 15–49. Of these, about 212,000 women sought treatment for complications, while a further 285,000 experienced serious health consequences but did not receive medical attention.[72] The procedure-related death rate was estimated at 680 deaths per 100,000 abortions.[73] These figures reveal that criminalization does not reduce the incidence of abortion but instead makes it more deadly. This reasoning finds support in international jurisprudence interpreting similar constitutional provisions. The Human Rights Committee, in *K. L. v Peru*, held that denying a medically indicated abortion where the pregnancy endangered the woman's life and health constituted a violation of her right to life and freedom from cruel treatment.[74] Although Nigeria is not bound by that decision, it reflects the evolving interpretation of reproductive rights as integral to life protection under modern constitutional law.

2.6.2 The Right to Dignity of Human Person (Section 34)

Section 34(1)(a) provides that "no person shall be subjected to torture or to inhuman or degrading treatment."[75] This provision, often invoked in the context of detention and punishment, has broader implications for personal autonomy and reproductive freedom. Forcing a woman to carry an unwanted pregnancy especially one resulting from rape or

[71] Guttmacher Institute, *Facts on Induced Abortion in Nigeria* (2015) 2.
[72] *Ibid* 3.
[73] *Ibid*.
[74] *K.L. v Peru* (Communication No. 1153/2003, UN Doc CCPR/C/85/D/1153/2003, 2005).
[75] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 34(1)(a).

incest to term may, in certain circumstances, amount to inhuman and degrading treatment.[76]

The psychological trauma, social stigma, and bodily intrusion associated with such enforced pregnancy can undermine the woman's dignity and mental health.[77] Reproductive coercion through rigid anti abortion laws disregards the moral agency and humanity of women, effectively reducing them to instruments of reproduction. The Constitution's protection of dignity thus implies a recognition of personal autonomy and freedom from state imposed suffering.[78]

2.6.3 The Right to Freedom from Discrimination (Section 42)

Section 42(1)(a) prohibits discrimination on the basis of sex in the "practical application of any law."[79] The abortion provisions of the Criminal and Penal Codes can therefore be argued to be inherently discriminatory, as they impose a unique and severe legal burden criminal liability and physical risk solely on women.

Furthermore, the Codes' provisions disregard the unequal social and economic impact of forced pregnancy, which disproportionately affects women's access to education, employment, and healthcare.[80] By criminalizing abortion without accommodating the realities of women's reproductive health and autonomy, the law perpetuates gender inequality contrary to the spirit of Section 42.[81] This constitutional argument does not assert that abortion must be entirely unrestricted; rather, it contends that the absolute

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[76] O Ogbu, *Human Rights Law and Practice in Nigeria* (Enugu: CIDJAP Press 2013) 119.
[77] *Ibid.*
[78] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 34.
[79] *Ibid* s 42(1)(a).
[80] *Ibid* 99.
[81] *Ibid*

criminalization of abortion, without reasonable exceptions or procedural safeguards, is inconsistent with the constitutional guarantees of life, dignity, and equality. Under the supremacy clause of Section 1(3), the Constitution must prevail wherever there is conflict between its provisions and the existing statutory framework.[82] The Constitution also emphasizes health and welfare obligations through its directive principles. Section 17(3)(d)[83] obliges the state to ensure adequate medical and health facilities for all persons. Although non-justiciable, this provision underlines the state's responsibility to protect women's health. In practice, however, the criminalization of abortion undermines this duty by driving women to unsafe procedures, thereby negating the state's constitutional commitment to welfare.

2.7 Deep Dive: The Right to Privacy (Section 37) and its Boundaries

2.7.1 Theoretical Analysis of Decisional Privacy

Privacy as a legal concept has evolved beyond the narrow sense of seclusion to encompass the right of individuals to make personal and autonomous decisions free from unwarranted state intrusion. The earliest legal articulation of this idea can be traced to Warren and Brandeis' classic definition of privacy as "the right to be let alone."[84] In modern constitutional thought, privacy encompasses decisional autonomy the freedom to make intimate and fundamental life choices such as those relating to marriage, family, and reproduction.Within the context of reproductive rights, decisional privacy refers to the capacity of women to determine whether and when to continue or terminate a pregnancy. This principle recognizes that reproductive choices implicate

[82] Constitution of the Federal Republic of Nigeria 1999 (as amended), s 1(3).
[83] *Ibid.*

[84] Samuel D Warren and Louis D Brandeis, 'The Right to Privacy' *Harvard Law Review* [1890] 4 (5) 193.

bodily integrity, health, and personal dignity areas in which the state's authority must be carefully limited. Consequently, the protection of privacy operates as a safeguard against intrusive laws that compel individuals to act contrary to their conscience or well being.

2.7.2 The Scope of Section 37 of the 1999 Constitution

Section 37 of the 1999 Constitution of the Federal Republic of Nigeria (as amended) provides that: "The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected."[85] While the text appears focused on informational and communicational privacy, Nigerian constitutional interpretation which favors a liberal and purposive approach allows for a broader understanding of its scope.

A literal reading may confine Section 37 to the protection of private communications and property, but a purposive interpretation links it to the broader principle of human dignity under Section 34.[86] Thus, although the provision does not expressly refer to decisional or bodily autonomy, it may be interpreted as encompassing a woman's right to make private and intimate decisions concerning her body and reproductive health. The right to privacy, therefore, can be viewed as an extension of personal liberty and autonomy that limits the state's interference in deeply personal matters.

2.7.3 Establishing Autonomy via Nigerian Case Law

The Supreme Court's decision in *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo*[87] remains the most significant Nigerian authority linking privacy, bodily integrity, and personal autonomy. In that case, the Court upheld a patient's right to

[85] Constitution of the Federal Republic of Nigeria, 1999 (as amended), s. 37.
[86] *Ibid*, s. 34(1).
[87] [2001] 7 NWLR (Pt. 711) 206 (SC).

refuse a life saving blood transfusion on religious grounds. Justice Ayoola emphasized that the right to privacy and self determination is intrinsic to human dignity, and that medical intervention without consent would constitute a violation of personal autonomy.[88]

The reasoning in Okonkwo extends logically to reproductive autonomy. If the Court recognizes an individual's right to refuse medical treatment even at the risk of death, then the same principle supports the right of a woman to decline the physical and psychological burdens of an unwanted pregnancy. The decision, though not directly addressing abortion, establishes a domestic constitutional foundation for autonomy over one's body and medical choices principles central to the pro choice argument within Nigeria's constitutional framework.

2.7.4 The Right to Privacy and Reproductive Choice: Comparative Insights

Comparative jurisprudence provides interpretive guidance on how courts have construed privacy in relation to reproductive decision making. In *Griswold v Connecticut*,[89] the United States Supreme Court invalidated a state law prohibiting the use of contraceptives by married couples, reasoning that the Constitution protects a "zone of privacy" arising from various guarantees. This reasoning laid the foundation for *Roe v Wade*,[90] which located a woman's right to choose abortion within the broader concept of privacy under the Fourteenth Amendment.

While Roe has since been overturned, its analytical framework remains influential in global human rights and constitutional interpretation. These cases demonstrate that reproductive decisions fall within the protected sphere of personal autonomy and

[88] *Ibid*, per Ayoola JSC.
[89] 381 US 479 (1965).
[90] 410 US 113 (1973).

dignity values that resonate with Nigeria's constitutional guarantees of liberty, privacy, and dignity. Though not binding, such comparative reasoning can enrich domestic interpretation by highlighting universal principles of personal freedom and self determination.

2.7.5 Examining the Boundaries and Limitations of the Right to Privacy

The right to privacy under Section 37, like most fundamental rights, is not absolute. It may be limited in the interest of public order, morality, or public health, provided such limitations satisfy the constitutional test of proportionality. The state may, for example, regulate abortion procedures to ensure safety and prevent abuse. However, a total prohibition that endangers women's lives or forces them into unsafe, clandestine abortions would be disproportionate and inconsistent with the constitutional guarantee of dignity and autonomy. A balanced constitutional interpretation requires that privacy be respected while recognizing legitimate state interests. Thus, while the state retains authority to protect public health, it must not do so in a manner that violates the personal autonomy and dignity guaranteed under the Constitution. This nuanced approach ensures that the right to privacy maintains its protective character without degenerating into absolutism or moral paternalism.

2.8 Ethical Considerations on Abortion: Pro-Life and Pro-Choice Perspectives

The ethical debate on abortion remains one of the most divisive in human thought, reflecting a clash between the moral value of fetal life and the autonomy of the pregnant woman. Two primary perspectives dominate the discourse the pro-life and the

pro-choice positions each drawing on philosophy, religion, medicine, and human rights principles.

2.8.1 The Pro-Life Perspective:

The pro-life view holds that human life begins at conception and must be protected as sacred and inviolable. Rooted in the principle of the sanctity of life, this stance condemns abortion as the unjustifiable taking of human life. Within Christian ethics, especially Roman Catholicism, abortion is considered "intrinsically evil," as affirmed by *Evangelium Vitae* (1995).[91] Protestant and Islamic traditions in Nigeria share similar convictions, viewing abortion as morally impermissible except when the mother's life is at risk. Philosophers such as Don Marquis and John Finnis have further argued that abortion is immoral because it deprives the foetus of a potential "future like ours" and violates the basic good of human life.[92] Nigerian scholars support this reasoning, asserting that restrictive laws preserve morality and cultural values. Pro-life advocates also argue that abortion harms women psychologically and morally, threatening the moral fabric of society.

2.8.2 The Pro-Choice Perspective:

Conversely, the pro-choice argument emphasizes the woman's right to bodily autonomy, privacy, and self-determination. It maintains that no individual should be compelled to use their body to sustain another's life. Judith Jarvis Thomson's "violinist analogy" illustrates that even if the foetus is regarded as a person, forcing a woman to continue pregnancy constitutes bodily coercion.[93] Mary Anne Warren similarly contends that

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[91] John Paul II, *Evangelium Vitae* (Vatican City: Libreria Editrice Vaticana, 1995) para 62.
[92] D Marquis, 'Why Abortion is Immoral' *The Journal of Philosophy* [1989] 86 (4)183; J Finnis, *Natural Law and Natural Rights* (Oxford: Clarendon Press, 1980)
[93] J J Thomson, 'A Defense of Abortion' *Philosophy and Public Affairs* [1971] 1 (1) 47.

person-hood requires self-awareness and reasoning, qualities absent in early fetal development.[94] African feminist scholars extend this reasoning, linking abortion restrictions to gender inequality and unsafe practices that endanger women's lives.[95] They argue that legal access to abortion is not merely a personal choice but a public health necessity and a human rights obligation.[96]

2.8.3 Feminist Ethics and Equality-Based Critique:

Feminist ethics reframes abortion as a moral issue grounded in women's lived experiences rather than abstract universal rules. It recognizes women as full moral agents capable of making responsible reproductive decisions.[97] Catherine MacKinnon, in particular, critiques the reliance on privacy-based arguments, asserting that abortion should be understood through the lens of gender equality.[98] She argues that many abortions result from systemic gender inequality and lack of sexual autonomy conditions that are deeply evident in patriarchal societies like Nigeria.[99]

2.8.4 The Nigerian Feminist Perspective:

Nigerian feminist scholars such as Abiola Akiyode-Afolabi have contextualized the abortion debate within the realities of cultural patriarchy, economic inequality, and limited reproductive freedom.[100] They emphasize that reproductive justice cannot be

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[94] M A Warren, 'On the Moral and Legal Status of Abortion' *The Monist* [1973] 57(1) 43, 44–45.
[95] D O Akanni and A Adebayo, 'Reproductive Rights and the Nigerian Woman: A Legal and Ethical Appraisal' *African Journal of Gender and Law* [2019] 11 121.
[96] *Ibid* 127.
[97] C Gilligan, *In a Different Voice: Psychological Theory and Women's Development* (Harvard University Press, 1982) 98.
[98] C MacKinnon, *Toward a Feminist Theory of the State* (Harvard University Press, 1989) 190.
[99] *Ibid* 192.
[100] Abiola Akiyode-Afolabi, 'Press Statement' (Women Advocates Research and Documentation Centre (WARDC), Lagos, 28 September 2025) <https://www.vanguardngr.com/2025/09/intl-safe-abortion-day-2025-wardc-advocates-access-to-safe-abortion/> accessed 8 November 2025.

achieved without confronting the social norms and religious barriers that restrict women's bodily autonomy.[101]

2.8.5 Middle Ground and Emerging Ethical Positions:

Between these polarized stances lies a pragmatic "middle ground," recognizing abortion as permissible only in exceptional circumstances such as rape, incest, severe fetal abnormality, or threats to maternal life consistent with the Maputo Protocol.[102] This approach balances moral sensitivity with compassion and aligns with human rights efforts to protect women's health and dignity without undermining the value of potential life.

In sum, ethical reasoning about abortion reveals that the issue transcends law and medicine; it is also a moral, social, and gendered question. The pro-life stance prioritizes the sanctity of life, while the pro-choice position asserts the woman's right to autonomy and equality. Nigeria's ongoing challenge lies in reconciling these competing moral imperatives within its pluralistic and deeply religious society.

2.9 Ethical Dilemmas of Healthcare Professionals

Healthcare professionals in Nigeria face profound ethical and legal conflicts when confronted with abortion-related cases. While medical ethics anchored in the Hippocratic Oath—obliges practitioners to "do no harm" and preserve life, the criminalization of abortion under Nigerian law severely restricts their ability to act in patients' best interests.[103] This creates a tension between professional compassion and fear of prosecution. This dilemma is particularly acute in cases of rape or incest, where

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[101] *Ibid*.

[102] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (2003) Art 14(2)(c).

[103] The Hippocratic Oath emphasizes the physician's duty to preserve life and do no harm. See Nigerian Medical Association, *Code of Medical Ethics in Nigeria* (Revised Edition, 2008).

many doctors recognize the psychological and physical trauma of victims and believe termination would preserve their dignity and mental health. Yet, the law allows abortion only to save the woman's life.[104] Similarly, physicians frequently provide post-abortion care for complications from unsafe procedures an ethically frustrating situation described as "silent complicity," where doctors save lives only after preventable harm has occurred.[105]

Pharmacists also encounter moral distress. With rising access to medical abortion pills such as misoprostol and mifepristone, they often face the ethical challenge of balancing care for women with fear of criminal sanctions. Denying such drugs can push women toward unsafe methods, yet dispensing them risks legal consequences.[106]

A survey conducted by the Department of Gynaecology and Perinatology, Obafemi Awolowo University, Ile-Ife, revealed that 37% of healthcare providers supported abortion on demand, while 43% supported therapeutic abortion or abortion in special cases such as rape or incest. Their reasons ranged from professional considerations (57.1%) to religious or human rights grounds.[107] These findings suggest that while many professionals are conservative, they favour broader indications for safe abortion.

Medical experts like Dr. Chi Agbaje and Professor Oye-Adeniran argue that restricting abortion violates women's reproductive rights and fuels unsafe practices that lead to preventable deaths. As Professor Oye-Adeniran observes, "Until we start seeing

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[104] See Criminal Code Act, Cap C38 Laws of the Federation of Nigeria 2011, ss. 228–230; Penal Code (Northern States) Federal Provisions Act, Cap P3 LFN 2011, s. 232.

[105] F E Okonofua, 'Preventing Unsafe Abortion in Nigeria' *African Journal of Reproductive Health* [1997] 1(1) 25.

[106] B A Oye-Adeniran, I F Adewole and A V Umoh, 'Community-Based Survey of Unwanted Pregnancy in Southwestern Nigeria' *African Journal of Reproductive Health* [2004] 8(3) 103–115; World Health Organization, *Medical Management of Abortion* (WHO 2018) 22.

[107] Gynaecologist and Perinatology, Obafemi Awolowo University, Ile-Ife (Nigeria) December 4 - 6 , 1991.

women's reproductive health as part of their human rights, deaths from unsafe abortion will continue."[108] Ultimately, restrictive abortion laws compel healthcare providers to act against their ethical convictions. Such laws convert doctors from agents of health into agents of the law, undermining medical independence and patient trust. Reconciling this conflict requires harmonizing legal and ethical obligations through clearer guidelines and reforms that recognize abortion as a public health and human rights issue rather than a purely criminal act.[109]

2.10 The International Law Dimension: The Maputo Protocol and Other Human Rights Instruments

Nigeria is a signatory to several international and regional human rights instruments that directly or indirectly recognize women's reproductive rights, including the right to access safe abortion under certain conditions. While these instruments do not uniformly mandate the liberalization of abortion, they set clear obligations on states to ensure women's health, dignity, and autonomy. The tension between Nigeria's international commitments and its restrictive domestic abortion laws illustrates a significant gap in compliance and enforcement.

2.10.1 Article 14(2)(c) of the Maputo Protocol

The Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, commonly known as the Maputo Protocol, is a regional treaty adopted in 2003. Article 14(2)(c) explicitly obliges state parties to "protect the reproductive rights of women by authorizing medical abortion in cases of sexual assault, rape, incest,

[108] B A Oye-Adeniran and Others , 'Promoting Sexual And Reproductive Health Rights In Nigeria Through Change in Medical School Curriculum', *African Reproductive Health Journal* (2004) 8(1) 85-91.

[109] Federal Ministry of Health, *National Guidelines on Safe Termination of Pregnancy for Legal Indications* (2018).

and where the continued pregnancy endangers the mental and physical health of the mother or the life of the mother or the foetus."[110]

This provision represents a progressive standard for women's reproductive rights in Africa, situating access to safe abortion within the broader framework of health, dignity, and bodily integrity. It reflects a rights based approach that prioritizes the life and well being of women while recognizing exceptional circumstances under which abortion is morally and legally justified.[111]

2.10.2 The Domestication Debate

Nigeria ratified the Maputo Protocol in 2005, demonstrating formal commitment to these regional standards.[112] However, ratification alone does not render the Protocol enforceable under domestic law without domestication in accordance with Section 12(1) of the 1999 Constitution.[113] Legally, this means that while the Protocol is not directly binding in Nigerian courts, it serves as a persuasive interpretive authority. Courts may consider it when construing constitutional rights including Sections 33, 34, 37, and 42 particularly to adopt expansive interpretations that protect women's life, health, dignity, and equality.[114] It also signals Nigeria's international commitments to safeguard reproductive rights, lending normative weight to arguments for reforming restrictive domestic abortion laws.

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[110] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) 2003, Art 14(2)(c).

[111] S Obiyan and O Omozuwa, 'Religion, Law, and Women's Reproductive Health in Nigeria' *African Human Rights Law Journal* [2019] 19 245, 247.

[112] African Union, Status of Ratification of the Maputo Protocol (2023) <https://au.int/en/treaties> accessed 7 November 2025.

[113] Constitution of the Federal Republic of Nigeria 1999 (as amended), s. 12(1).

[114] Ibid s. 1(3).

The court has been an agent of change in recent landmark judicial rulings. Recent court decisions have emerged as a significant force for change, circumventing the legislative stalemate. A landmark decision was delivered in June 2025 by the Federal High Court in Abuja, which affirmed that unintended pregnancies resulting from sexual violence constitute a violation of a woman's fundamental rights to physical and mental health.[115] This ruling, the first of its kind from a superior court in Nigeria, recognized that pregnancies from sexual violence not only harm physical health but also mental well-being, granting survivors access to safe abortion as a human right. This decision represents a critical legal precedent that is expected to strengthen the legal framework for reproductive rights in Nigeria and prevent survivors from resorting to unsafe procedures.

A separate, yet equally significant, ruling came from the ECOWAS Community Court of Justice on April 4, 2025, in the case of *Dorothy Bebe v Federal Republic of Nigeria*.[116] While the court dismissed the case on its merits due to the petitioner's insufficient evidence, the judgment was a powerful victory for reproductive justice advocates. The court took the opportunity to reaffirm the Nigerian government's binding obligations under the Maputo Protocol. The court's finding that Nigeria has a clear legal obligation to provide access to safe and legal abortion services in cases of rape, sexual assault, and where pregnancy endangers a woman's health provides a strategic opening for future litigation and advocacy efforts to challenge the country's restrictive laws.

2.10.3 United Nations Treaty Bodies

[115] Ipas, 'Nigeria affirms right to abortion for survivors of sexual violence', 23 July 2025, <https://www.ipas.org/news/nigeria-affirms-right-to-abortion-for-survivors-of-sexual-violence/> accessed 8 November 2025.

[116] *Dorothy Bebe v Federal Republic of Nigeria* (ECW/CCJ/APP/48/23; ECW/CCJ/JUD/16/25) [2025] ECOWAS CCJ 25 (4 April 2025).

International human rights instruments provide further support for the recognition of reproductive rights:

CEDAW (Convention on the Elimination of All Forms of Discrimination Against Women): The foremost international treaty is the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW), which Nigeria ratified in 1985. Article 12 of CEDAW obliges states to eliminate discrimination in healthcare, including access to family planning services.[117] The CEDAW Committee has clarified that unsafe abortion constitutes a critical dimension of discrimination against women, urging states to legalize abortion at least in cases of rape, incest, severe fetal impairment, and risk to the life or health of the mother.[118] Nigeria's criminalization of abortion in almost all circumstances is therefore inconsistent with its CEDAW obligations. The Committee has emphasized that states must ensure access to reproductive healthcare, including safe abortion, to prevent discrimination and protect women's health and autonomy.[119]

ICCPR (International Covenant on Civil and Political Rights): The Human Rights Committee has interpreted the right to life and privacy as including obligations to prevent unnecessary maternal deaths and respect personal decision making in reproductive matters.[120]

ICESCR (International Covenant on Economic, Social and Cultural Rights): The Committee highlights the right to health, which encompasses both physical and mental

[117] Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13, art 12.

[118] CEDAW Committee, General Recommendation No 35 on Gender-based Violence Against Women (2017) UN Doc CEDAW/C/GC/35, para 18.

[119] UN Committee on the Elimination of Discrimination Against Women (CEDAW), General Recommendation No. 35 on Gender Based Violence Against Women (2017) CEDAW/C/GC/35, paras 23–25.

[120] UN Human Rights Committee, General Comment No. 36 on the Right to Life (2018) CCPR/C/GC/36, para 28.

well being, requiring states to provide access to essential healthcare services, including reproductive health.[121]

These instruments collectively establish a strong normative framework that supports the woman's rights to life, health, and autonomy in the context of reproductive decision making.

2.10.4 Regional Instruments and Judicial Interpretation

Beyond the Maputo Protocol, regional human rights bodies have advanced jurisprudence protecting reproductive and privacy rights.

African Court on Human and Peoples' Rights (AfCHPR): While no binding abortion specific case exists, the Court has affirmed that the right to health, dignity, and freedom from inhuman treatment imposes positive obligations on states to protect vulnerable populations.[122]

Decisions from other regional systems, such as the European Court of Human Rights and Inter American Court of Human Rights, demonstrate that courts increasingly recognize reproductive autonomy and the protection of private life as part of the state's human rights obligations.[123] The 1994 International Conference on Population and Development (ICPD) recognized reproductive health and autonomy as fundamental human rights. Its Programme of Action urged states to address unsafe abortion as a public health issue and ensure women's access to quality reproductive care.[124]

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[121] UN Committee on Economic, Social and Cultural Rights (CESCR), General Comment No. 14 on the Right to the Highest Attainable Standard of Health (2000) E/C.12/2000/4, paras 8–11.

[122] *Social and Economic Rights Action Center & Centre for Economic and Social Rights v Nigeria* (Comm No. 155/96) [2001] AfCHPR 35 (27 October 2001).

[123] *A, B and C v Ireland* (2010) App no 25579/05, ECHR; *Artavia Murillo and others v Costa Rica* (2012) Series C No 257, IACtHR.

[124] 87 United Nations, *Programme of Action of the International Conference on Population and Development* (Cairo, 5–13 September 1994) UN Doc A/CONF.171/13/Rev.1.

Paragraph 8.25 calls on governments to deal with the health impact of unsafe abortion and, where legal, ensure safe abortion services.[125] Nigeria endorsed the ICPD Programme, thereby committing itself to tackling unsafe abortion as a public health issue. Despite these restrictive domestic laws, Nigeria has signaled its commitment to more progressive human rights standards on the international stage.

These regional and international frameworks reinforce domestic arguments that women's reproductive rights are grounded in fundamental human rights principles, providing both legal and moral authority for broad interpretations of the Nigerian Constitution.

2.11 Analysis of Recent Legal Developments in Nigeria

Nigeria has very few judicial decisions directly addressing the constitutionality of abortion laws. Most cases concern criminal prosecutions under the Criminal Code Act or Penal Code Act, rather than challenges based on constitutional rights. For example, in *State v Okpala*[126] and *Akang v State*,[127] the courts primarily examined whether the statutory elements of abortion offenses were satisfied. These cases confirm that the statutory prohibitions on abortion are actively enforced, but they do not resolve questions regarding potential conflicts with the woman's constitutional rights to life, dignity, privacy, or non discrimination. The absence of Nigerian constitutional jurisprudence on abortion means that domestic courts have not yet had the opportunity to adjudicate the broader rights based arguments developed in academic and international discourse. This gap underscores the reliance on theoretical, comparative,

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[125] International Conference on Population and Development (ICPD), Programme of Action (Cairo, 5–13 September 1994) UN Doc A/CONF.171/13/Rev.1, para 8.25.
[126] (1962) 2 FSC 1.
[127] [1990] 3 NWLR (Pt. 132) 526.

and persuasive authorities to interpret domestic law in ways that uphold women's autonomy and health.

2.11.1 State-Level Initiatives and Backlash

In the absence of national legislative reform, some states have attempted to create their own policy guidelines, with mixed results. In June 2022, after nearly four years of consultation among doctors, lawyers, and policymakers, the Lagos State Government released its State Guidelines on Safe Termination of Pregnancy for Legal Indications. The document was designed to clarify the legal framework for abortion under the existing laws and to reduce maternal mortality resulting from unsafe procedures. However, following intense backlash from religious groups and pro-life organizations, the state governor directed the immediate suspension of the guidelines for "public sensitization." As of early 2024, the suspension remained in effect despite repeated appeals from women's rights advocates and civil society groups for reinstatement of the policy.[128]

In contrast, Ogun State took a different approach. In May 2023, the state implemented its own guidelines that extended legal exceptions for abortion to cases of rape, incest, and health risks, including conditions like cancer and hypertension. Ogun State has adopted this guidelines known as the Safe Termination of Pregnancy (SToP) guidelines,

[128] Vanguard News, 'Safe Abortion Guidelines: WARDC Flags Off Pink Movement in Lagos' (26 February 2024) <https://www.vanguardngr.com/2024/02/safe-abortion-guidelines-wardc-flags-off-pink-movement-in-lagos> accessed 8 November 2025; Nairametrics, 'Why Lagos State Suspended the Newly Launched Abortion Guidelines' (8 July 2022) <https://nairametrics.com/2022/07/08/why-lagos-state-suspended-the-newly-launched-abortion-guidelines> accessed 8 November 2025; Daily Post, 'Sanwo-Olu Suspends Lagos Abortion Guidelines' (7 July 2022) <https://dailypost.ng/2022/07/07/lagos-sanwo-olu-suspends-abortion-guidelines> accessed 8 November 2025; NAN News, 'SOGON, WARDC Seek Reinstatement of Lagos Law on Safe Abortion' (26 February 2024) <https://nannews.ng/2024/02/26/sogon-wardc-seek-reinstatement-of-lagos-law-on-safe-abortion> accessed 8 November 2025.

and has repeatedly stated its commitment to implementing them.[129] This action positioned Ogun as the most progressive state in Nigeria regarding abortion rights. The contrasting outcomes in Lagos and Ogun states highlight the fragmented nature of reform efforts.

The legal and political landscape is further complicated by allegations of grave human rights violations. A 2022 Reuters report alleged that the Nigerian military had conducted a mass abortion program in the country's Northeast since 2013, terminating over 10,000 pregnancies of women separated from Islamic insurgents, often without their knowledge or consent.[130] This alleged program underscores the dire human rights implications and the complexities of reproductive health in conflict zones.

Recent legal progress is occurring at the judicial and state levels, bypassing the stalled national legislature. This indicates a strategic shift by advocates who, recognizing the political and legislative deadlock, are now targeting the judiciary and specific state governments. This new approach, while yielding some victories, has created a fragmented and geographically unequal landscape of reproductive rights. A woman's right to safe abortion services may now be contingent on her location, creating significant inequities in a country where poverty and other barriers severely limit mobility.

2.11.2 Persuasive Authority: Rex v Bourne (English Case)

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[129] Guardian Nigeria, 'Ogun govt commits to safe, legal abortion to cut maternal deaths' (10 October 2025) <https://guardian.ng/news/nigeria/metro/ogun-govt-commits-to-safe-legal-abortion-to-cut-maternal-deaths> accessed 8 November 2025.

[130] Reuters, 'Nigeria military ran secret mass abortion programme in the Northeast, ending at least 10,000 pregnancies' (7 December 2022) <https://www.reuters.com/investigates/special-report/nigeria-military-abortions> accessed 8 November 2025.

The 1938 English case *Rex v Bourne*[131] is often cited in Nigerian legal scholarship and practice when interpreting abortion law. In *Bourne*, the court acquitted a doctor who performed an abortion on a 14 year old rape victim, holding that preserving the mother's life could include preserving her physical and mental health. This case has been influential in Nigerian legal thought because it offers a broader, health centered interpretation of the statutory exception for preserving life under both the Criminal Code and Penal Code.[132] Although not binding, *Bourne* demonstrates a judicial approach that balances statutory criminalization with pragmatic considerations for the woman's well being. Nigerian courts occasionally reference such foreign authorities to guide reasoning in areas where domestic jurisprudence is sparse, particularly regarding reproductive health and the interpretation of vague statutory provisions.[133] By highlighting both the absence of domestic constitutional rulings and the persuasive value of foreign case law, this section establishes the current legal landscape: abortion remains criminalized in Nigeria, yet there are recognized avenues statutory exceptions and international/legal scholarship for interpreting the law in a manner that considers women's health, autonomy, and dignity.

2.12 Conclusion

This chapter has examined the legal and human rights dimensions underpinning the argument that a woman possesses a constitutionally and internationally recognized right to abortion. Through an analysis of Nigerian statutory law, constitutional guarantees, judicial reasoning, and international legal instruments, it is evident that a

[131] [1938] 1 KB 687.
[132] S Obiyan and O Omozuwa, 'Religion, Law, and Women's Reproductive Health in Nigeria' *African Human Rights Law Journal* [2019] 19 245, 247.
[133] *Ibid*.

powerful constellation of rights including the right to life, health, bodily autonomy, privacy, dignity, and equality provides a robust framework supporting the protection of women's reproductive choices.[134] While the Criminal and Penal Codes criminalize abortion, constitutional provisions such as Sections 33, 34, 37, and 42, interpreted in light of international instruments like the Maputo Protocol and CEDAW, establish a persuasive foundation for asserting the primacy of the woman's rights. Case law, both domestic and persuasive foreign authorities, reinforces the principle that autonomy and health considerations are integral to the protection of fundamental human rights.[135]

From the sole perspective of the woman, it is clear that the right to abortion is firmly rooted in human rights and dignity, and that legal, ethical, and social considerations converge to highlight the need for access to safe reproductive healthcare. As the discussion transitions to Chapter three, these established rights must now be weighed against other competing legal and ethical interests, specifically those of the foetus and the putative father. Understanding this balance is crucial for developing a holistic, nuanced framework for reproductive rights within the Nigerian context.

CHAPTER THREE

THE RIGHTS OF THE FOETUS AND THE PUTATIVE FATHER

3.1 Introduction

The debate on abortion in Nigeria cannot be fully appreciated without examining the competing claims of the foetus and the putative father. Abortion is primarily as a matter

[134] Constitution of the Federal Republic of Nigeria 1999 (as amended), ss 33, 34, 37, 42.
[135] *Medical and Dental Practitioners Disciplinary Tribunal v Okonkwo* [2001] 7 NWLR (Pt 711) 206 (SC); *Rex v Bourne* [1938] 1 KB 687.

of women's rights: bodily autonomy, dignity, health, and equality. These rights do not exist in a vacuum. Abortion law in Nigeria, and indeed globally, is shaped by the perceived rights of other actors: the unborn foetus and, to a lesser extent, the male partner or putative father. These competing claims introduce profound legal, ethical, cultural, and social complexities that continue to shape both the restrictive framework of Nigerian abortion law and the heated debates surrounding reform.

The foetus occupies a central place in anti-abortion arguments, particularly in religious, moral, and philosophical traditions that equate conception with the beginning of human life. Nigerian law reflects this influence by criminalizing abortion except where necessary to save the life of the mother, effectively recognizing a strong, though implicit, protection of fetal life.[136] Yet, this recognition is neither absolute nor uncontested. Questions remain as to when fetal "life" legally begins, whether it qualifies as "person-hood," and how such claims should be weighed against the rights of women who bear the burdens of pregnancy.

Alongside the foetus, the position of the putative father introduces a further dimension to the discourse. Although Nigerian statutes are silent on paternal rights in abortion decisions, cultural and patriarchal structures often situate men as central figures in reproductive choices.[137] The tension lies in reconciling a man's genetic or social interest in fatherhood with the woman's exclusive physical and health burdens of pregnancy. Comparative jurisprudence shows that most legal systems deny men a veto over

[136] Criminal Code Act, Cap C38 Laws of the Federation of Nigeria 2011, ss 228–230; Penal Code (Northern States) Federal Provisions Act, Cap P3 Laws of the Federation of Nigeria 2011, ss 232–23.
[137] A O Adepoju, 'Gender, Patriarchy and the Politics of Reproduction in Africa' *African Population Studies* [2005] 31(2) 45.

abortion, but the issue remains contentious, particularly in societies where family structures are strongly patriarchal. Therefore, there is need for a shifts focus from women's rights to these competing claims, critically examining the legal, ethical, cultural, and social recognition of the foetus and the putative father in Nigeria. This chapter seeks to highlights the triangular conflict at the heart of abortion regulation: the autonomy of the woman, the life of the foetus, and the interests of the putative father.

3.2 Prenatal person-hood in Law

The legal status of the unborn child is uncertain across different jurisdictions. Most legal systems stop short of granting full person-hood before birth and instead provide limited protections in specific situations. In civil law traditions, the *infans conceptus* rule, which comes from Roman law, allows a foetus to be treated as already born when it benefits them, such as in matters of inheritance. However, this protection is contingent on live birth: if the child is not born alive, this concept fails. Common law systems, including Nigeria's, have historically used the "born alive" rule. According to Section 307 of the Nigerian Criminal Code,[138] a child becomes a person only when it has fully exited the mother's body in a living state. Before this point, any harm to the foetus, while punishable, is not considered murder. This framework acknowledges the foetus as deserving limited protection but stops short of granting it full legal person-hood. Nevertheless, the law occasionally extends recognition to the unborn for pragmatic reasons. For instance, a foetus may be considered a "life in being" for rules against perpetuities or may be eligible to inherit under succession law once born alive. These exceptions shows how the law operates on a spectrum offering protection to potential

[138] Criminal Code Act, Cap C38 Laws of the Federation of Nigeria 2011.

life without conferring full legal identity.

3.3 The Concept of the Unborn Child

Medically, an unborn child refers to a human being in utero at any stage before birth. Legally, its status varies based on each society's moral, cultural, and statutory context. In Nigeria, the unborn is recognized only to the extent that its protection aligns with societal values and legal intentions. The idea that an unborn child has rights dates back centuries. Many early legal systems, from the Babylonians to the Romans, viewed the killing of a foetus as a wrong against the father or the community rather than against the child. Modern law, influenced by these traditions, often sees fetal rights as reliant on the mother’s status.

In present-day Nigeria, abortion is illegal except when necessary to save the mother’s life. This restriction reflects the country's strong religious and moral beliefs about the sanctity of life. However, legal comparisons show varying perspectives: while countries like Canada and the United States deny fetal person-hood, others, such as Ireland prior to its 2018 constitutional amendment, considered the foetus to have equal rights to life alongside the mother.

Ultimately, the legal concept of the unborn child in Nigeria represents a cautious compromise. The foetus receives protection as potential life but is not seen as an independent legal person. This uncertainty continues to shape Nigerian abortion law and the larger discussion about reproductive rights.

3.4 Philosophical and Ethical Foundations of Fetal Rights

The debate surrounding the moment life begins and whether a foetus should be considered a moral or legal “person” has historically sparked division among scholars, philosophers, and theologians. This ongoing discourse impacts both legal frameworks and societal ethics, shaping perceptions of abortion and the worth of potential life. Three predominant philosophical viewpoints influence global perspectives on this matter.

3.4.1 The Conceptionist View

According to this perspective, life commences at conception. This stance is founded on natural law theory and is endorsed by various religious groups, asserting that human life possesses inherent value from the instant of fertilization. Consequently, terminating an embryo is seen as the wrongful act of taking innocent human life. Thinkers like John Finnis[139] and Don Marquis advocate for this viewpoint, with Marquis contending that abortion is ethically wrong because it robs the foetus of a “future like ours.”[140] Within this framework, the foetus is attributed moral worth equivalent to that of a person who is already born, rendering abortion an act of unjust killing.

3.4.2 The Viability Standard

An opposing perspective ties the start of meaningful life to the stage of viability the moment when a foetus is capable of surviving independently outside of the womb, typically around 24–28 weeks into gestation. This standard is more practical than moral:

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[139] J Finnis, *Natural Law and Natural Rights (*2nd edn, OUP 2011) 85.
[140] D Marquis, 'Why Abortion is Immoral' *Journal of Philosophy* (1989) 86(4) 183.

it signifies a level of physical autonomy that the law can acknowledge. Philosophers such as Michael Tooley and legal precedents set by the landmark U.S. case *Roe v Wade*[141] embody this view, arguing that prior to viability, the foetus's dependence on the mother categorizes it as part of her body, rather than a distinct legal entity.[142]

3.4.3 The Ensoulment Theory

In Islamic and Aristotelian traditions, person-hood initiates when the soul enters the foetus, a phenomenon believed to happen between 40 to 120 days post-conception.[143] Before reaching this stage, while abortion may be viewed as morally undesirable, it is not equated with murder. This concept shapes Islamic law in certain regions of Northern Nigeria, where Maliki jurisprudence permits abortion in specific situations before ensoulment but prohibits it afterward.

In addition to these viewpoints, modern philosophy also relates abortion to wider ethical principles. Judith Jarvis Thomson's "violinist analogy" proposes that even if a foetus possesses a right to life, no individual including the foetus has the entitlement to utilize another's body without consent.[144] This analogy reinterprets abortion not as an act of killing but as a refusal to support another's life. Ronald Dworkin similarly differentiates between the inherent value of life and the derived right of autonomy, suggesting that while life merits respect, individuals must retain the liberty to make complex moral decisions.[145]

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[141] 410 US 113 (1973).
[142] M Tooley, 'Abortion and Infanticide' *Philosophy and Public Affairs* (1972) 2 37, 44.
[143] G M Badr, 'Islamic Criminal Justice' *The American Journal of Comparative Law* (1974) 18(2) 228, 231.
[144] J J Thomson, 'A Defense of Abortion' *Philosophy and Public Affairs* (1971) (1) 47, 49.
[145] R Dworkin, *Life's Dominion: An Argument About Abortion and Euthanasia* (Knopf 1993) 20.

In the Nigerian context, these discussions highlight significant moral diversity. Christian communities often align with the conceptionist viewpoint, Islamic scholars lean towards the ensoulment theory, and healthcare professionals might invoke viability for practical reasons. Yet, Nigerian law remains ambiguous regarding which philosophical framework predominates, leaving judicial and legislative authorities without a cohesive ethical foundation.

3.5 Religious and Cultural Dimensions of Fetal Rights in Nigeria

Religious beliefs and cultural norms significantly influence Nigerian attitudes toward abortion and fetal life. Although the nation's legal structure is originated and rooted in colonial laws, its moral foundation is bolstered by strong Christian, Islamic, and traditional beliefs that regard life both born and unborn as sacred.

3.5.1 Christianity and the Sanctity of Life

The pro-life perspective grounds its arguments in the doctrine of the sanctity of life, which posits that human life is intrinsically valuable from the moment of conception. Religious traditions, particularly Roman Catholicism, articulate this principle unequivocally. The Catechism of the Catholic Church declares abortion to be a "grave moral disorder" and equates it to homicide.[146] Within Nigeria, this moral reasoning finds resonance among both Christian and Muslim leaders who assert that terminating pregnancy at any stage constitutes the unlawful taking of innocent life.[147] Thus, it is

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[146] *Catechism of the Catholic Church* (1994) para 2271.

[147] A A An-Na'im, *Islam and the Secular State: Negotiating the Future of Shari'a* (Harvard University Press 2008) 125.

despicable to think of violating life in any way - lynching, killing, brutalising, manhandling, and the likes.

Christianity, especially within the Catholic and Pentecostal denominations prevalent in Southern Nigeria, asserts that life begins at conception and must be safeguarded without exception. The

principle of the sanctity of life, derived from the commandment "Thou shalt not kill,"[148] condemns abortion as the deliberate taking of innocent life. Christians point that birth and death form part of the processes which God has created, so we should respect them. Therefore, no human being has the authority to take life or violate it in any way. Churches consistently advocate against any moves to liberalize abortion laws, portraying such actions as defiance against divine authority. This viewpoint continues to shape public policy and political discussions, exemplified by the suspension of reproductive health guidelines in Lagos State following church protests in 2022.[149]

3.5.2 Islam and the Doctrine of Ensoulment

In Northern Nigeria, where Islamic laws and culture are deeply rooted, abortion is largely forbidden except to protect the mother's life or in rare circumstances prior to ensoulment. The Qur'an advises against "slaying your children due to fear of poverty,"[150] highlighting that all life is under God's authority. Islamic scholars assert that since humans do not have the ability to create life, they lack the moral right to end it arbitrarily.

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[148] Exodus 20:13 (King James Version).
[149] K Omonobi, 'Lagos Suspends Safe Abortion Guidelines after Religious Protests' *Vanguard* (15 July 2022)
<https://www.vanguardngr.com> accessed 22 September 2025.
[150] Qur'an 17:31

The Qu'ran pontificate to support them as it says:

“Do not kill or destroy yourselves, for verily, Allah has been to you most merciful”[151]

Therefore, the concept of ensoulment thus mediates between compassion for the mother and reverence for divine creation.

3.5.3 Indigneous Cultural Perspectives

Prior to colonialism, customary African societies typically regarded pregnancy and childbirth as community responsibilities rather than personal choices. Fertility was celebrated, and motherhood elevated to a symbol of social worth.[152] However, these societies were not entirely inflexible; abortion was occasionally accepted in instances of illness, rape, or societal difficulty. Among the Yoruba and Igbo, the unborn were thought to dwell in a spiritual realm as *abiku* or *ogbanje* until they successfully navigated infancy. This view acknowledged the spiritual significance of unborn life while recognizing that person-hood fully materialized only after birth.[153]

3.5.4 Cultural Reinforcement of Patriachy

Cultural beliefs in Nigeria frequently define motherhood as the most critical aspect of womanhood. This patriarchal structure reinforces the idea that women’s bodies exist primarily for reproduction rather than as autonomous entities. As a result, abortion is

[151] Qu'ran 4:29.
[152] I Amadiume, *Male Daughters, Female Husbands: Gender and Sex in an African Society* (Zed Books 1987) 88–90.
[153] B Idowu, *Olodumare: God in Yoruba Belief* (Longman 1962) 162.

stigmatized not just as a moral wrong but as a cultural insult to womanly virtue.[154] Such views foster silence and shame surrounding reproductive health, leading many women to resort to unsafe abortion methods despite legal and religious prohibitions.

3.5.5 Conflicts and Intersections

Throughout Nigeria, both religion and culture converge on a singular central belief: that life, however it is defined, is sacred. However, this shared belief often obscures the actual experiences of women dealing with unwanted or medically risky pregnancies. The ongoing occurrence of unsafe abortions, despite strict prohibitions, highlights the disconnect between moral principles and social realities. While faith and tradition offer ethical direction, they also uphold a structure in which women's autonomy is limited, and legal reform remains a sensitive political issue.

3.6 Explicit Protection of the Unborn Child under the Child's Rights Act

The Child's Rights Act (CRA) of 2003[155] marks Nigeria's most significant advancement toward safeguarding the interests of children and protecting children's rights. While it primarily targets individuals below the age of eighteen, the Act offers limited recognition to unborn children, thus providing a modest yet important legal acknowledgment of prenatal life. According to Section 17 of the CRA,[156] every child including those yet to be born has the right to protection from harm, neglect, and abuse. This provision establishes a legal framework whereby injuries occurring prenatally can lead to postnatal legal recourse: a child, once born alive, may pursue compensation for harm

[154] A Mama, 'Patriarchy and the Politics of Abortion in Nigeria' *African Journal of Reproductive Health* [2001] 7(2) 27, 30.
[155] Cap C50 Laws of the Federation of Nigeria 2004.
[156] *Ibid*.

sustained during pregnancy or delivery as a result of negligence. This principle ensures that although a foetus is not recognized as a legal person, it is safeguarded from actions that may adversely affect its future well-being.

The Act also affirms the economic rights of the unborn child. Under Nigeria's laws on intestate succession, a child conceived prior to a parent's death is entitled to inherit as if they had already been born, provided that the child is subsequently born alive. This reflects the broader *infans conceptus* doctrine, which posits that legal personality can retroactively begin at conception when it is advantageous for the child.

In a broader sense, the guiding principle of the CRA—the "best interest of the child" doctrine articulated in Section 1[157] implies a duty to protect fetal life indirectly through maternal welfare. By highlighting the importance of survival and developmental needs stipulated in Section 4[158], the Act promotes policies that give precedence to maternal health, acknowledging the fundamental connection between the mother's state and the unborn child's chances of survival. Therefore, while the CRA does not fully declare the unborn as a legal person, it creates a protective framework that anticipates and safeguards future life. The foetus is therefore accorded a derivative form of protection, legal interest without full person-hood.

3.6.1 Fetal Rights in Nigerian Case Law

Judicial exploration of fetal rights in Nigeria has been limited. The courts have primarily addressed abortion cases through the scope of criminal liability, rather than through constitutional or human rights perspectives. Consequently, the legal position of the

[157] *Ibid.*
[158] *Ibid.*

foetus remains ambiguous, operating within a framework that criminalizes abortion without formally acknowledging fetal person-hood.

In *R v Idiong and Umo*,[159] the West African Court of Appeal found the accused guilty of manslaughter following the death of a woman who attempted an abortion. The court determined that although the accused's intention was solely to induce a miscarriage and not to cause death, the action constituted an unlawful interference with pregnancy. This case highlights the court's focus on safeguarding maternal life rather than recognizing independent rights of the foetus. Likewise, *State v Njoku*[160] clarified that administering any harmful substance to induce a miscarriage could be treated as using a “noxious substance” under Section 228 of the Criminal Code, irrespective of whether it was specifically recognized as an abortifacient. The focus remained on criminal actions rather than viewing the foetus as a rights-holder.

In *Commissioner of Police v Modebe*,[161] a medical professional faced charges under Section 233 of the Penal Code after a woman died during an abortion procedure. He was acquitted due to insufficient evidence of intent to induce a miscarriage, reflecting the stringent evidentiary requirements for convictions related to abortion and the judiciary’s reluctance to broaden the discussion beyond criminal intent. These cases reveal a consistent trend: Nigerian courts have not clearly delineated whether a foetus is considered a “person” under the law. Their decisions center on procedural responsibility and societal morality instead of fetal person-hood or autonomy. As a result, while the foetus receives indirect protection via the criminalization of abortion, it does not enjoy

[159] (1946) 12 WACA 398.
[160] (1973) ECSLR 638 (Nigeria).
[161] (1960) NNLR 29.

explicit judicial acknowledgment as a rights-holder.

3.6.2 Judicial Silence on Fetal Rights in Nigeria

One of the most striking features of Nigerian abortion jurisprudence is the absence of judicial interpretation defining the constitutional status of the foetus. While Section 33(1) of the 1999 Constitution guarantees that “every person has a right to life,” courts have not clarified whether this includes the unborn. As a result, the legal personality of the foetus remains suspended between moral protection and constitutional ambiguity.This judicial silence has left critical questions unanswered. Nigerian courts have yet to consider whether fetal life enjoys constitutional recognition or whether abortion laws can be tested against fundamental rights such as dignity, privacy, and equality. Most rulings have focused narrowly on criminal culpability, leaving constitutional analysis undeveloped.

Comparatively, other jurisdictions have confronted these issues directly. In *Christian Lawyers Association v Minister of Health*, the court rejected the claim that the foetus is a constitutional “person,” holding that the right to life under Section 11 of the South African Constitution[162] does not extend to the unborn. By contrast, the Nigerian judiciary has not undertaken such interpretive engagement, thereby allowing restrictive colonial statutes the Criminal and Penal Codes to persist unchallenged. The implications of this silence are significant. First, it creates uncertainty for medical practitioners and pregnant women, who lack clear constitutional guidance. Second, it stifles the evolution of reproductive rights jurisprudence, as courts have not explored how rights to dignity,

[162] Constitution of the Republic of South Africa, 1996 (Act 108 of 1996)

privacy, and health intersect with fetal protection. Finally, it places Nigeria at odds with international human rights commitments, such as the Maputo Protocol,[163] which requires state parties to permit abortion in limited circumstances.

Until Nigerian courts address the constitutional meaning of "person-hood," the legal status of the foetus will remain undefined, and the balance between protecting potential life and respecting women's autonomy will continue to rest on unsettled moral terrain.

3.7 International and Regional Perspectives on Fetal Rights

Globally, the question of whether the foetus possesses legal or moral rights has long divided scholars, courts, and human rights institutions. International law has deliberately avoided adopting a uniform definition of when life begins. Instead, most instruments emphasize protecting born persons while acknowledging the moral importance of potential life. This reflects a careful balance between safeguarding human dignity and respecting women's reproductive autonomy.

3.7.1 The Universal Framework

The foundational international instruments: the United Nations Charter, Universal Declaration of Human Rights (UDHR), and the International Covenant on Civil and Political Rights (ICCPR) all affirm the inherent right to life but do not specify when that right begins. Article 3 of the UDHR[164] declares that "everyone has the right to life, liberty, and security of person," while Article 6 of the ICCPR provides that "every human being

[163] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa *(Maputo Protocol)*, art 14(2)(c).

[164] Universal Declaration of Human Rights, 1948

has the inherent right to life."[165] None, however, extend these rights explicitly to the unborn. The Human Rights Committee's General Comment No. 36 (2018) clarifies that restrictive abortion laws which expose women to unsafe procedures or suffering may constitute violations of the right to life.[166] The Committee stops short of recognizing fetal person-hood, instead emphasizing state obligations to protect women's dignity, autonomy, and health.

Similarly, the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) situates reproductive rights within the broader framework of gender equality. It calls on states to eliminate punitive abortion laws and ensure safe access where necessary to protect women's lives and health.[167]

3.7.2 The Regional Human Rights Systems

(i) The European System

The European Court of Human Rights (ECHR) has repeatedly declined to recognize foetuses as "persons" under Article 2 of the European Convention on Human Rights. In *Vo v France*,[168] the Court held that "the unborn child is not regarded as a person directly protected by Article 2." It emphasized that states retain a "margin of appreciation" in balancing the protection of the unborn with women's rights. This position reflects

[165] International Convention on Civil and Political Rights, 1966
[166] Human Rights Committee, *General Comment No 36: Article 6 (Right to Life)* UN Doc CCPR/C/GC/36 (30 October 2018) para 8.
[167] CEDAW Committee, *General Recommendation No 24: Women and Health* (1999) UN Doc A/54/38/Rev.1, chap I, para 31.
[168] *Vo v France App* no 53924/00 (ECtHR, 8 July 2004) para 82.

Europe's pragmatic approach protecting potential life through policy rather than constitutional entitlement.

(ii) The Inter-American System

The American Convention on Human Rights (1969) is the only major treaty that appears to grant a right to life "from the moment of conception." However, its interpretation has evolved. In *Artavia Murillo v Costa Rica*, the Inter-American Court of Human Rights held that embryos are not "persons" under the Convention[169] and that protecting potential life cannot override women's reproductive autonomy. This decision marked a turning point in Latin America, affirming that women's rights to health, privacy, and family life take precedence over fetal claims.

(iii) The African Regional Framework

The African Charter on Human and Peoples' Rights (1981) does not mention fetal rights, though its Article 4 guarantees that "human beings are inviolable" and have a right to life. However, the Protocol to the African Charter on the Rights of Women in Africa (Maputo Protocol, 2003) advances a nuanced position. Article 14(2)(c) obliges state parties to authorize abortion in cases of rape, incest, or danger to the mother's physical or mental health.[170] This reflects an African consensus that prioritizes women's well-being without completely disregarding the moral significance of fetal life.

3.7.3 Absence of Consensus

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[169] *Artavia Murillo and others ("In vitro fertilization") v Costa Rica* IACtHR Series C No 257 (28 November 2012) paras 264–268.

[170] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005) art 14(2)(c).

Despite the multiplicity of instruments, there is no global consensus on the legal status of the foetus. International law deliberately avoids defining when life begins, preferring flexibility that allows individual states to interpret the right to life according to cultural, moral, and constitutional contexts. This interpretive openness enables countries like Nigeria to maintain restrictive abortion laws while others, such as South Africa, adopt liberal frameworks grounded in women's autonomy. Overall, international and regional norms reveal a common principle: while the foetus is morally significant, it is not a legal person in international human rights law. The primary duty imposed on states is to protect women's health, dignity, and freedom of choice, ensuring that the regulation of abortion does not amount to inhumane or discriminatory treatment.

3.7.1 Behavioral Interventions and Comparative Practices

In addition to legal frameworks, various countries utilize behavioral and public health approaches aimed at ensuring fetal health. These efforts frequently demonstrate how different governments view the foetus not solely as a legal stakeholder, but as an ethical and medical concern, with its protection closely linked to the health and behavior of the mother.

(a) Alcohol Consumption During Pregnancy

Many jurisdictions advocate for limiting alcohol consumption during pregnancy due to the well-established link between maternal drinking and fetal alcohol spectrum disorders. Public health organizations in nations like the United Kingdom, Canada, and Australia promote total abstinence or minimal drinking through awareness initiatives.

Conversely, a contentious proposal put forth in Poland in 2017 suggested mandating the isolation of pregnant women who drank alcohol. This proposal received significant backlash for violating women's autonomy,[171] highlighting the conflict between governmental efforts to protect unborn life and the rights of individuals.

(b) Dietary Restrictions and Environmental Exposure

Global health organizations provide nutritional recommendations and guidance to mitigate environmental and dietary risks during pregnancy. National and international agencies have also issued dietary guidelines for pregnant women due to the risks associated with consuming fish contaminated with methylmercury from industrial pollution. Studies link in utero exposure to methylmercury with serious neurological disorders in children.[172] These guidelines are presented as precautionary health measures rather than as punitive actions, focusing on minimizing risks to enhance fetal neurological development.

(c) Tobacco Use and Secondhand Exposure

Maternal smoking is closely linked to negative effects such as lower birth weight and increased neonatal mortality. In the United States, discussions have arisen regarding whether legal bans or educational initiatives are more effective in combating prenatal tobacco exposure. While most states prefer strategies based on information dissemination, proposals for punitive measures have raised ethical concerns about

[171] Wikipedia, 'Fetal rights' <https://en.wikipedia.org/wiki/Fetal_rights> accessed 30 September 2025.
[172] *Ibid.*

government intrusion into personal health decisions.[173]

(d) Criminalization of Pregnancy-Related Conduct in the United States

While no state in the U.S. explicitly criminalizes actions taken during pregnancy, some prosecutors have invoked existing child endangerment and abuse laws to charge women believed to have harmed the foetus through substance use. In certain instances, drug use has been categorized as criminal assault, and some states permit the civil detention of expectant mothers who refuse treatment. Opponents argue that these methods grant a quasi-person-hood status to the foetus while undermining the legal and moral agency of pregnant women.[174]

(e) Sex-Selective Abortion

Some Asian countries including India, China, and South Korea have implemented laws banning abortions conducted for reasons of fetal sex selection. Although these regulations aim to address gender disparities, they inadvertently restrict reproductive autonomy, revealing the intricate balance between protecting foetuses and promoting gender equality. The challenge lies in fostering equality without imposing excessive restrictions on women's reproductive choices.[175]

In various global and regional settings, behavioral interventions consistently uncover a recurring challenge: governments seek to protect prenatal health without assigning direct legal person-hood to the foetus. However, when these initiatives become coercive, they can threaten women's autonomy and reinforce patriarchal systems. The dominant

[173] *Ibid.*
[174] *Ibid.*
[175] *Ibid.*

international approach thus favors education, access to healthcare, and social support over punitive measures—acknowledging that the health of the pregnant woman is the most effective means of ensuring fetal development.

3.8 Synthesis: Harmonizing Nigerian Law with Comparative Principles

The examination of fetal rights under Nigerian law highlights an ongoing conflict between moral beliefs and a lack of constitutional clarity. Although the legal framework in the country acknowledges unborn children through indirect safeguards such as the Child's Rights Act and legal prohibitions against abortion. I refrains from recognizing person-hood or providing explicit constitutional rights. This absence illustrates the impact of religious beliefs, cultural norms, and colonial legal legacies, which uphold the sanctity of life but do not harmonize with contemporary principles of personal autonomy and reproductive rights.

In ethical and philosophical terms, Nigeria’s restrictive abortion legislation is rooted in moral principles that hold life to be sacred from the moment of conception. Nevertheless, in application, these laws frequently lead to results that contradict their intent prompting women to seek unsafe abortions and undermining the very right to life that they aim to safeguard. The absence of judicial clarification on fetal person-hood further complicates the issue, resulting in stagnant constitutional interpretations while other jurisdictions progress towards more nuanced frameworks that reconcile fetal protection with women's rights.

Insights from comparative and international perspectives are invaluable. Most global and regional legal standards tend to avoid classifying the foetus as a legal person,

preferring instead to frame the protection of potential life as a state interest subordinate to women's entitlements to health, dignity, and privacy. Instruments like the Maputo Protocol and various United Nations declarations place the onus on states to ensure safe and humane conditions for reproductive choices rather than enforcing punitive measures.

Consequently, Nigeria finds itself at a pivotal moment. The task ahead is to advance beyond rigid moral positions to develop a balanced legal framework that recognizes both the sanctity of life and the importance of reproductive choice. Legal reforms must not only define the status of the foetus but also secure women's health, autonomy, and social equality. Until such a balance is achieved, the rights of the foetus will remain conceptually important yet legally ambiguous within Nigeria’s human rights framework.

3.9 Legal Position of the Putative Father in Nigeria

Under Nigerian law, the issue of paternal consent in abortion is conspicuously absent. Neither the Criminal Code Act (applicable in the Southern States) nor the Penal Code (applicable in the Northern States) makes any statutory provision requiring the involvement or consent of the putative father in decisions relating to abortion. The only legally recognized justification for termination of pregnancy under Nigerian law is the preservation of the life of the mother, as provided under section 297 of the Criminal Code and section 232 of the Penal Code. Beyond this narrow exception, abortion remains criminalized, and the law does not extend recognition to paternal input.

This legislative silence effectively means that a man, even if he is the biological father of the foetus, has no legal right to veto or authorize an abortion. Nigerian courts have

also not developed jurisprudence granting fathers a role in abortion decisions. The existing judicial approach aligns with the principle that reproductive choices are primarily vested in the pregnant woman, whose bodily integrity and autonomy are directly implicated.

In practice, paternal consent carries no binding legal effect in Nigeria. Any claim by a father seeking to restrain or compel a woman to continue or terminate a pregnancy would lack statutory backing and judicial precedent. The law neither recognizes nor enforces paternal veto rights in abortion, thereby leaving the decision exclusively within the scope of the pregnant woman's rights and medical necessity. Abortion decisions are thus legally situated within the relationship between the pregnant woman and her medical practitioner.

Consequently, paternal veto rights are non-existent under Nigerian law. Even if a man is the biological father of the foetus, he cannot legally authorize, restrain, or veto an abortion. The Nigerian framework thereby reinforces the principle that reproductive decision-making is grounded in the bodily autonomy of the woman, with the physician serving as the sole professional authority permitted to intervene in such cases.

This chapter seeks to analyzes the complex legal and ethical status of the putative father in reproductive decision-making, specifically concerning abortion. It argues that while Nigerian statutory law is conspicuously silent on paternal rights effectively granting the father no legal standing to veto or compel an abortion this legal position exists in sharp tension with powerful patriarchal cultural norms and indirect statutory acknowledgments of paternal interest. To investigate this duality, the chapter will first

establish the definitive legal position under the Nigerian Criminal and Penal Codes. Second, it will explore the socio-legal context, including the practical realities of gender dynamics and the limited interests implied by the Child's Rights Act. Third, the chapter will conduct a wide comparative analysis of jurisprudence from the United States, South Africa, and other international bodies to contextualize the legal rejection of paternal rights. Finally, it will synthesize these findings to evaluate the coherence of the putative father's position within the Nigerian legal framework.

3.10 Statutory Recognition through Liability and Property Expectation

While Nigerian law does not expressly grant paternal decision-making rights, certain statutory provisions indirectly acknowledge the putative father's interest through liability and property expectations under the Child's Rights Act (CRA) 2003.

(a) The Unborn Child's Right to Sue for Prenatal Harm:

Section 17(1) of the CRA[176] provides that "a child may bring an action for damages against a person for harm or injury caused to the child willfully, recklessly, negligently, or through neglect before, during or after birth." This creates a legally recognizable interest in the foetus's physical safety, implicitly tied to the father's potential liability for harm sustained in utero.

(b) Paternal Interest in Succession and Lineage:

Section 17(2)[177] further provides that "where the father of an unborn child dies intestate, the unborn child is entitled, if conceived during his lifetime, to be considered in the

[176] Cap C50 Laws of the Federation of Nigeria 2004.
[177] Ibid.

distribution of his estate." This provision connects the survival of the unborn child to the father's estate and lineage continuity, thereby recognizing the foetus's legal capacity as a future heir. For the putative father, the continued development of the foetus thus represents a vital property and lineage interest.

3.11 The Putative Father's Standing in Nigerian Domestic and Cultural Law

While the legal status of abortion in Nigeria is generally restrictive, the interplay of statutory silence, cultural norms, and patriarchal practices creates a complex context for understanding the father's interests in reproductive decision-making. The legal doctrine of maternal paramountcy often clashes with deeply rooted Nigerian moral and cultural norms, where the father's role in lineage and succession is considered non-negotiable. Nigerian society, being largely patriarchal, recognizes men as heads of households and principal decision-makers a status that culturally extends to reproductive matters. Consequently, even in the absence of legal authority, societal expectations often confer on men an informal but powerful influence over abortion decisions.

Within traditional frameworks, the father's claim to the continuation of the lineage is viewed as a communal, not merely personal right. Terminating a pregnancy without paternal consultation is often regarded as an affront to familial continuity and male authority. Although Nigerian statutes do not grant men a legal veto over abortion, women are frequently pressured through custom, economic dependency, or social stigma into seeking their husband's or partner's approval before terminating a pregnancy. As one scholar notes, "the silence of the law on paternal consent has not

silenced patriarchal pressures, which often substitute informal coercion for legal authority.”

3.11.1 Practical Realities and Gender Dynamics: A Paternal Perspective

Despite the statutory silence, Nigerian cultural realities continue to reflect a gendered imbalance that often disadvantages men:

3.11.1.1. Erosion of Male Authority and Lineage Control:

While Nigerian customs emphasize patrilineal descent, women’s ability to unilaterally make reproductive decisions challenges traditional notions of male lineage authority. This has been perceived by some as undermining the father’s legitimate interest in family continuity and inheritance stability. Cultural norms in Nigeria place immense value on patrilineal descent. A son is not merely a child; he is the carrier of the family name, inheritance, and lineage a cornerstone of the family’s continuity. Within this profound cultural significance, a pregnancy is rightfully considered a social matter, implicating the father, his family, and wider kinship obligations.

The putative father, therefore, has a deep-seated cultural claim to the continuation of the pregnancy. To terminate a pregnancy without his consultation is often regarded as an outright affront to both familial continuity and his male authority (in the context of his role as head of lineage). This powerful societal perspective reinforces the ethical argument that a man has a profound psychological and cultural stake that should be legally acknowledged, given the unborn child's connection to his identity and family's future.

3.11.1.2. Custody, Child Support, and Responsibility Paradox:

Fathers are legally obligated to support children they have biologically fathered, yet excluded from prenatal decision-making. This produces an inequity where men bear financial and moral responsibilities for children conceived or terminated without their input. This creates a striking paradox of responsibility: men are entirely excluded from the decision-making process during pregnancy, yet they immediately acquire enforceable, lifelong legal and financial responsibilities after the child's birth.

This imbalance is a core argument for the father's claim. It is fundamentally inequitable to grant the woman absolute, unilateral authority over the existence of a child, while simultaneously granting the father zero legal say over that existence, only to saddle him with all the post-birth legal and financial consequences. While acknowledging the burdens of pregnancy on the woman, the father's exclusion from the initial decision places a severe and unique burden of its own: a responsibility without representation.

3.11.1.3. Social and Moral Implications of Female Autonomy:

Some women, leveraging their legal autonomy, make reproductive choices without paternal consultation, sometimes leading to familial conflict and emotional strain especially in instances where a woman will voluntarily terminate the pregnancy out of spite for her partner or husband in order to get back at him when she feel wronged. This underscores the moral and social tension between women's reproductive freedom and men's perceived exclusion from shared parenthood. A dynamic that can be equally frustrating and disenfranchising for the father whose hopes and future are being

unilaterally determined.

3.11.1.4. Ethical Framing and Accountability:

While the mother's bodily autonomy is paramount, completely disregarding paternal consent raises ethical concerns regarding fairness, accountability, and shared responsibility for conception and its consequences.The putative father is socially and psychologically implicated from the moment of conception, and the law's refusal to recognize this interest risks denying a valid claim to shared decision-making.

3.11.1.5. Law versus Reality:

The divergence between law and social reality underscores Nigeria's duality where women possess legal autonomy, but societal structures remain patriarchal. Recognizing paternal interests, even through non-binding consultation rights, may help balance fairness without compromising women's bodily integrity.

Ultimately, while Nigerian law firmly places reproductive decision-making within the domain of the woman and her physician, cultural and ethical realities reveal that men maintain significant emotional, social, and lineage-based stakes in abortion decisions. The Child's Rights Act 2003 indirectly acknowledges these interests through provisions on liability and succession but stops short of granting decision-making rights. The law's position, therefore, reflects a deliberate balance protecting women's bodily autonomy while acknowledging, though not enforcing, paternal interests through post-birth responsibilities and indirect statutory recognition

3.12 The Paradox of Responsibility and the Risk of Coercion

Nigerian law recognizes paternal responsibilities after birth, obligating fathers to provide maintenance and participate in custody disputes. This creates a paradox: men are excluded from legal decision-making during pregnancy but acquire enforceable obligations post-birth. While some view this as inequitable, the counter-argument is that paternal responsibilities after birth cannot justify granting men control over women's bodies during pregnancy, since the physical and emotional burdens of gestation are borne solely by the woman.

Moreover, granting men a formal legal role in abortion decisions risks amplifying coercion and intimate partner violence. International human rights bodies, including the CEDAW Committee, have consistently held that paternal consent requirements amount to discrimination, as they burden women disproportionately and infringe upon their reproductive autonomy.

3.13 Comparative Analysis of Paternal rights

The Supreme Court's 1973 decision in Roe v Wade[178] is widely seen as allocating the rights in an abortion decision between the mother, the state, and the foetus. However, the Court left unanswered as many questions as they settled, most notably the constitutional status of the biological father. In the Roe decision, the Court explicitly acknowledged that no issue of fathers' rights regarding the decision to abort was presented and expressly declined to decide them.[179] This judicial silence created a central conflict: what legal rights, if any, does a putative or identified father have in a

[178] 410 U. S. 113 (1973).
[179] W L Schultz, 'The father's rights in the abortion decision', *Texas Tech Law Review* (1975) 6(3) 1075-1094.
<https://heinonline.org/HOL/Page?handle=hein.journals/text6&id=1089> accessed 2 November 2025.

woman's decision to terminate a pregnancy?

This section will critically analyze the legal status of these competing interests. It will argue that, while various constitutional and common-law theories and arguments have been advanced in favor of paternal consent or veto powers, both U.S. jurisprudence and international human rights consensus have firmly rejected such arguments. The prevailing doctrine holds that a woman's right to bodily autonomy and reproductive freedom supersedes any paternal interest in continuing or terminating a pregnancy.

The law has established that her right to bodily integrity is paramount and cannot be overcome by a paternal interest. To demonstrate this, it is necessary to first examine the full spectrum of rights asserted by putative and identified fathers, starting with the core constitutional arguments for their inclusion. It will then analyze the definitive court rulings, from *Planned Parenthood v Danforth* to *Planned Parenthood v Casey*, that have shaped the limits of these rights, along with the key judicial rebuttals. Following the analysis of paternal rights, the chapter will then examine the separate and distinct legal status of the foetus as defined in constitutional and tort law.

Traditionally, the putative father has been burdened with the duty of providing support for his child, yet he has not been granted corresponding rights. This creates complex scenarios. For instance, if the father opposes the abortion, it can be argued that he wants the child and would either seek its custody or contribute to its support, which would substantially diminish the adverse effects on the mother that Roe considered.[180] In the reverse situation, where the father wants an abortion but the mother refuses,

[180] W E Tapovatz, 'The Putative Father's Rights after Roe v Wade', *St. Mary's Law Journal* (Summer 1974) 6(2) 407-420.
<https://heinonline.org/HOL/Page?handle=hein.journals/stmlj6&id=421> accessed 1 November 2025.

some have argued that the father should be relieved of any future child support obligations. However, this writer unequivocally rejects any right for a father to compel a woman to have an abortion, calling the idea indefensible legally and ethically.[181]

3.13.1 Arguments for Paternal Rights in Comparative Law

While judicial precedent has largely rejected the concept of a paternal veto over abortion, a significant volume of legal and academic discourse has emerged to defend a father's interests. A body of legal scholarship continues to explore how a father's interest in the unborn might be constitutionally recognized. The central contention is that a father possesses a fundamental, constitutionally protected right to his unborn child, which cannot be unilaterally terminated by the mother's decision. Advocates of this position generally ground their reasoning on three interrelated foundations: the constitutional right to procreate, the "biology plus" standard developed for unwed fathers, and the principle of equal protection under the law.

A notable illustration is *Coe v Gerstein,*[182] a Florida federal case that tested whether Roe v Wade necessarily precluded the state from acknowledging a father's role in reproductive decisions. The Coe court represented a rare judicial acknowledgment that suggested that Roe did not bar a state from recognizing paternal interests as a legitimate concern of public policy.[183] Nevertheless, it struck down the statute that required spousal consent for abortion, reasoning that the provision was too sweeping to

[181] Marshall B. Kapp, 'The Father's (Lack of) Right and Responsibilities in the Abortion Decision: An Examination of Legal-Ethical Implications', *Ohio Northern University Law Review* (1982) 9 (3) 369-384. <https://heinonline.org/HOL/Page?handle=hein.journals/onulr9&id=385> accessed 1 November 2025.
[182] 376 F. Supp. 695 (S.D. Fla. 1973), appeal dismissed, 417 U.S. 279 (1974).
[183] *Ibid* (n 44).

withstand constitutional scrutiny.[184] The decision thus implied that while the state might have a valid interest in a father's potential parenthood, the particular mechanism compulsory consent was constitutionally impermissible.

In Coe, the plaintiff, a married woman, challenged Florida's spousal-consent law[185] as inconsistent with Roe.[186] The court observed that Roe had deliberately avoided addressing paternal rights. While acknowledging a woman's right to privacy in reproductive matters, Coe emphasized that this right was not absolute and could yield to a sufficiently compelling state interest. The court read Roe as recognizing only two such interests maternal health and the protection of potential life[187] and reasoned that other legitimate state interests could, in theory, exist outside those categories. One of those, it proposed, might be the protection of a father's relationship with the unborn.[188] The flaw in the Florida law, however, lay in its design: by conditioning abortion on a husband's approval,[189] it effectively allowed a private party to regulate a woman's medical decision, an outcome Roe forbade. The Coe court affirmed that a state holds a compelling interest in promoting the father's stake in his offspring. This interpretation opened the door for other compelling state interests, which the Coe court argued could include protecting the father's interest in his unborn child.This interpretation by the Coe court represents the most logical extension of Roe.

Following the Coe court's logic, the protection of a father's fundamental interest in his unborn child qualifies as a compelling state interest. This interest, potentially arising at

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[184] *Ibid*.
[185] Fla. Stat. Ann. § 458.22(3) (Supp. 1974).
[186] *Ibid*.
[187] *Coe v Gerstein*, 376 F Supp 695, 697 (SD Fla 1973), appeal dismissed, 417 US 279 (1974).
[188] *Ibid* 698.
[189] *Ibid*.

conception, would grant the state the constitutional authority to curtail the mother's abortion right. This perspective argues that Roe does not create an absolute prohibition on abortion regulation, even in the first trimester. Instead, Roe's restrictions are limited to regulations based on maternal health or potential life. Consequently, this viewpoint concludes that a state remains constitutionally empowered to restrict a mother's right to an abortion if its aim is to protect the father's interest in his unborn child. The ultimate question for state legislatures, therefore, becomes one of policy: whether they should choose to protect this paternal interest.

Proponents of paternal rights often invoke the U.S. Supreme Court's description of procreation as a 'basic civil right of man' in *Skinner v Oklahoma*,[190] which characterized marriage and reproduction as central to human existence. From this premise, they argue that a unilateral abortion decision infringes upon a father's constitutionally protected liberty interest to conceive and raise children, an interest recognized in decisions such as (*Santosky v Kramer*[191]*)*[192] On this reading, reproductive choice should not be understood as exclusively maternal but as a shared constitutional sphere that includes paternal liberty.

Another doctrinal pillar derives from *Stanley v Illinois*,[193] where the Supreme Court held that an unwed father who accepts parental responsibilities acquires a constitutionally protected relationship with his child. Scholars have extended this reasoning to the

[190] 316 US 535 (1942).
[191] 455 US 745 (1982).
[192] Molly Diggins, 'Paternal Interests in the Abortion Decision: Does the Father Have Say,' *University of Chicago Legal Forum 1989* (1989) 377-398. <https://heinonline.org/HOL/Page?handle=hein.journals/uchclf1989&id=381> accessed 1 November 2025.
[193] 405 US 645 (1972).

prenatal context, suggesting that when a putative father affirmatively acknowledges paternity and provides emotional or material support during pregnancy, he meets a 'biology plus' threshold sufficient to warrant constitutional consideration.[194] Under this theory, terminating a pregnancy without his consent would extinguish an existing liberty interest, not merely a potential one.

Comparative jurisprudence occasionally reinforces this biological connection. For example, in Re C.[195] (Blood-Tie), the English court prioritized a biological father's claim to custody over that of prospective adopters, emphasizing the intrinsic legal weight of genetic ties.[196] Such reasoning implies that biology, when combined with demonstrable commitment, may create an interest distinguishable from purely genetic parenthood, as in cases involving sperm donors.

A further argument frames the exclusion of fathers from abortion decisions as a question of sex equality under the Equal Protection Clause. This approach contends that a father who has exhibited an equal commitment to parenthood is treated differently from the mother solely on the basis of gender. Supporters maintain that while the woman bears the physical gestational burden, that fact should not automatically nullify the father's constitutionally significant stake in procreation.[197] A

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[194] W E Tapovatz, 'The Putative Father's Rights after Roe v Wade', *St. Mary's Law Journal* (Summer 1974) 6(2) 407-420. <https://heinonline.org/HOL/Page?handle=hein.journals/stmlj6&id=421> accessed 1 November 2025.
[195] *Re C. (M.A.) (An Infant)* [1966] 1 All ER 838.
[196] D Lasok, 'Legal Status of the Putative Father', *International and Comparative Law Quarterly* (1968) 17 (3) 634-650.
<https://heinonline.org/HOL/Page?handle=hein.journals/incolq17&id=644> accessed 1 November 2025.
[197] L Estrada, 'Defensive Mechanism: A Father's Right to Defend the Unborn', *Cardozo Journal of Law & Gender* (2009) 15 (3) 617-640.
<https://heinonline.org/HOL/Page?handle=hein.journals/cardw15&id=623> accessed 1 November 2025.

similar concern surfaced in *Scheinberg v Smith*,[198] where the Fifth Circuit upheld a statute requiring spousal notification, distinguishing it from an unconstitutional veto. The court concluded that the measure advanced legitimate state objectives encouraging marital communication and recognizing a husband's interest in the couple's shared procreative potential without unduly burdening the woman's autonomy.[199]

Taken together, these arguments propose that the state's recognition of paternal interests could coexist with, rather than negate, a woman's reproductive autonomy. Roe v Wade is thereby interpreted not as an absolute bar to paternal consideration but as a limitation only on regulations grounded in maternal health or fetal preservation. Whether legislatures should act upon this constitutional latitude remains a normative and policy question, one that balances individual autonomy, biological connection, and the broader societal valuation of parenthood.

3.13.2 Judicial Rejection of Paternal Rights in Comparative Law

A foundational argument against paternal rights is that they are inherently antagonistic to the woman's autonomy. Granting a father the power to consent necessarily includes the power to withhold it, thereby nullifying her decision. A series of U.S. court decisions have consistently affirmed this judicial rejection. In *Jones v Smith*,[200] an unwed father's attempt to prevent an abortion was denied, with the court interpreting *Roe v Wade* to

[198] 659 F.2d 476 (5th Cir 1981).
[199] Molly Diggins, 'Paternal Interests in the Abortion Decision: Does the Father Have Say', *University of Chicago Legal Forum* 1989(1989)377-398. <https://heinonline.org/HOL/Page?handle=hein.journals/uchclf1989&id=381> accessed 1 November 2025.
[200] 278 So 2d 339 (Fla Ct App 1973), cert denied, 415 US 958 (1974).

mean the first-trimester decision rests solely with the woman and her physician.[201] In *Doe v Bellin Memorial Hospital*,[202] the court found that a father was not an 'indispensable party' to a lawsuit concerning an abortion, thereby implying he holds no definitive legal interest or a stake in the decision.[203] A federal district court in *Doe v Rampton*[204] declared an entire Utah abortion statute[205] unconstitutional, specifically citing the paternal consent provisions as an invalid abridgment of the mother's right to privacy by the state.

The Massachusetts case *Doe v Doe*[206] provides a detailed exploration of this issue. A husband sought an injunction to stop his wife's abortion, presenting two main arguments: The husband first asserted a constitutional right to veto his wife's decision. The court's majority conceded that the Constitution has often protected interests within a marriage. However, they drew a critical distinction: this protection typically serves as a shield against government interference, not as a sword enabling one spouse to compel another's private conduct. Even if the husband's interests fell within the Fourteenth Amendment's scope, the court reasoned, this would not entitle him to prevent his wife's private medical decision. The husband also asserted a common law entitlement to intervene. The majority dismissed this argument, stating that no pre-Roe precedent recognized such a paternal right and that post-Roe rulings have consistently held that

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[201] W L Schultz, 'The father's rights in the abortion decision', Texas Tech Law Review (1975) 6(3) 1075-1094.
<https://heinonline.org/HOL/Page?handle=hein.journals/text6&id=1089> accessed 2 November 2025.
[202] 479 F.2d 756 (7th Cir. 1973).
[203] *Ibid* (n 24).
[204] 366 F Supp 189 (D Utah 1973).
[205] Utah Code Ann. §§ 76-7-301 to -320 (Supp 1973). According to the court in Rampton, the Utah state legislature had attempted to limit abortions to their constitutionally barest minimum. Yet the state had enacted a statute that contained numerous provisions that were blatantly violative of the holding in Roe v Wade. See 366 F Supp at 198 (Lewis, J); *Ibid* 200 (Anderson, J).
[206] 314 NE2d 128, 365 Mass 556 (1974).

the state is constitutionally forbidden from advancing a father's interest when it denigrates the wife's right to privacy.

The majority further commented that even if the court possessed the judicial power to intervene, it would be contrary to sound policy for a court to interfere in such intimate matters. The decision was not unanimous. Justice Hennessey dissented, suggesting that while the judiciary was constrained, the father's interest might be more properly advanced through legislative action. Justice Reardon also dissented, proposed that parental rights should be balanced individually rather than by granting one parent categorical superiority.

The U.S. Supreme Court has twice addressed state efforts to involve husbands in abortion decisions and has invalidated both attempts. In *Planned Parenthood v Danforth*,[207] the Court struck down a Missouri law requiring a married woman to obtain her husband’s written consent. Although acknowledging a husband’s deep and proper concern, the Court held that in any disagreement, only one view can prevail. The key rationale was a balancing test centered on the physical reality of pregnancy: Since it is the woman who physically bears the child and who is the more directly and immediately affected by the pregnancy, as between the two, the balance weighs in her favor. The Court held that a state cannot give a husband a unilateral veto over a decision that is ultimately the woman's to make.[208]

[207] 428 US 52 (1976)
[208] Molly Diggins, 'Paternal Interests in the Abortion Decision: Does the Father Have Say', University of Chicago Legal Forum 1989 (1989) 377-398. <https://heinonline.org/HOL/Page?handle=hein.journals/uchclf1989&id=381> accessed 1 November 2025.

This reasoning was reaffirmed in *Planned Parenthood v Casey*,[209] which invalidated a Pennsylvania statute requiring spousal notification. The Court found that such a provision imposed an undue burden, particularly for women at risk of domestic abuse or coercion, and reflected an archaic understanding of a husband's authority over his wife. The state, the Court held, may not confer upon a man the kind of dominion over his spouse that parents hold over children.

Comparable principles have been adopted internationally. In *Christian Lawyers Association of South Africa v Minister of Health*,[210] the Constitutional Court dismissed claims that fetal rights should override abortion access, affirming that reproductive autonomy rests with women under the Choice on Termination of Pregnancy Act of 1996, which contains no paternal consent requirement. Canadian law follows the same logic: in *Tremblay v Daigle*,[211] the Supreme Court of Canada ruled that a man has no legal authority to prevent his partner from terminating a pregnancy. The French Conseil d'État has also confirmed that no spousal authorization is required, emphasizing that the decision ultimately belongs to the woman. International human rights bodies, including the UN Committee on the Elimination of Discrimination against Women (CEDAW), have declared that requiring a husband's or partner's approval constitutes discrimination and violates women's equality rights. Among surveyed jurisdictions, Morocco appears to be the only state that still mandates explicit spousal consent.[212]

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[209] 505 US 833 (1992).
[210] 1998 (4) SA 1113 (t).
[211] [1989] 2 SCR 530.
[212] B M Knoppers and others, 'Abortion law in francophone countries', *American Journal of Comparative Law* [1990] 38(4) 889-922.
<https://heinonline.org/HOL/Page?handle=hein.journals/amcomp38&id=903> accessed 2 November 2025.

3.13.2.1 Judicial Reasoning and Core Doctrines

Courts rejecting paternal rights typically rest their conclusions on three doctrinal foundations:

1. Gestation vs. Parenthood: Judges have consistently differentiated between the right to become a parent and the right to compel another person to continue a pregnancy. The woman’s claim centers on bodily integrity and the immediate physical burdens of gestation, whereas the man’s interest is prospective and contingent on the child’s birth. Legal scholars in the 1970s characterized this contrast as the difference between an interest that is 'personal, immediate, and real' and one that is 'economic, prospective, and contingent'.

2. Lack of Enforceable Remedy: A highly practical argument is the lack of any constitutional or humane remedy to enforce a paternal right. Courts are unwilling to force a woman to carry a pregnancy against her will.

3. Common Law Principles: Basic common law principles provide no support for the father's claim. In fact, they strongly reinforce the woman's position by prioritizing bodily integrity and the right to refuse medical procedures.

3.14 Affirmative Defenses for Abortion

Several legal theories reinforce the woman’s exclusive right to decide:

1. Self-Defense: One legal analysis frames an unwanted pregnancy as an "invasion." Under this view, the foetus (termed an "invader-occupant") is an intruder threatening the woman's life, safety, and bodily integrity. The common law right of self-defense thus

justifies the woman (and her physician) in repelling the invader.

2. Unenforceable Rescue: This argument posits that compelling a woman to continue a pregnancy is a form of forced rescue, which the common law does not require. Tort law does not mandate a bystander to perform even an easy rescue (like saving a drowning person). Therefore, it cannot compel a pregnant person to perform a rescue that is protracted, risky, and costly. This aligns with decisions like *McFall v Shimp*,[213] which affirmed that a court cannot force an individual to undergo even a simple bone marrow donation to save another's life.

3.15 Analysis of Alternative Scenarios

While U.S. courts have foreclosed a father's veto over a legal abortion, legal legal theorists have continued to test the outer boundaries of paternal interests in reproduction. Two hypothetical or exceptional scenarios are often examined in academic commentary:

1. A reverse situation in which a man wishes to terminate a pregnancy while the woman refuses; and

2. 2. A possible paternal right to intervene when an abortion would be unlawful rather than legally protected.

3.15.1 Scenario 1: The Unwilling Father and Child-Support Obligations

This scenario considers whether a man who does not wish to become a parent, offers to fund an abortion, and is refused by the pregnant woman could later be excused from

[213] (1978) Pa D & C 3d 90.

child-support duties after the birth. The legal is can a father's financial responsibility be extinguished because he opposed the pregnancy's continuation? In *re S.P.B.*,[214] the father claimed that the legalization of abortion had broken the causal link between sexual intercourse and the eventual birth of a child. He maintained that once he expressed an unwillingness to parent and the woman nevertheless chose to continue the pregnancy, her autonomous decision not his conduct became the direct cause of the child's existence. On that basis, he argued, compelling him to pay support was unjust.Proponents argue that because his voluntariness in procreation was eliminated, he should be relieved of the financial obligation.

Courts have uniformly rejected this reasoning. The Colorado Supreme Court in *S.P.B.* held that a father's personal preference for abortion has no legal bearing on his obligation to support a child once born. Likewise, in In re Ince (Or.), the court dismissed an equal-protection claim, reasoning that any difference between men and women in this context results not from statutory discrimination but from biological realities the "operation of nature." Thus, regardless of his wishes, a man's financial responsibility arises from parentage, not from his level of agreement with the pregnancy.

3.15.2 Scenario 2: Intervention in an Illegal Abortion

A more unusual hypothetical concerns whether a father could intervene to prevent an illegal abortion. The legal foundation of this argument relies not on reproductive rights but on the common-law doctrine of defense of others.The Michigan Court of Appeals case *People v Kurr*[215] recognized that a person could use defensive force, even deadly

[214] 651 P.2d 1213 (Colo 1982).
[215] 253 Mich App 317, 318 (Mich Ct App 2002).

force, to protect a non-viable foetus from an unlawful assault. However, the court was explicit that the doctrine did not apply to lawful abortions, since a legal medical procedure is not an unlawful attack.

Legal commentators have noted that, under this reasoning, a father could theoretically invoke a Kurr-style defense only in the extraordinary circumstance of attempting to prevent a criminal abortion.[216] The argument would frame his conduct as protecting the foetus from illegal harm rather than asserting a general paternal veto. This remains a theoretical construct rather than an endorsed legal right.

3.16 Proposed Methods for Protecting Paternal Interests

Based on the *Stanley v Illinois* line of cases (which identifies a father's basic and essential right to raise his offspring), some scholars argue that failing to provide any procedure for a father's interests creates a conclusive presumption that the mother's rights are always superior. The legal literature evaluates several potential (though mostly rejected) methods for protecting a father's interest:

1. Absolute Consent Statutes

This would require the father's consent as a prerequisite for any lawful abortion, likely enforced by criminal sanctions. This can be achieved by imposing criminal penalties on anyone involved in an abortion, including the doctor and the mother, if it occurs without the father's approval. However, this approach is widely seen as problematic for several reasons. It could be abused by a father to punish the mother or gain leverage in a

[216] Lawrence Estrada, 'Defensive Mechanism: A Father's Right to Defend the Unborn', *Cardozo Journal of Law & Gender* [2009] 15 (3) 617-640. <https://heinonline.org/HOL/Page?handle=hein.journals/cardw15&id=623> accessed 1 November 2025.

divorce. It places a heavy burden on the mother to identify and locate the father. While pre-Roe criminal laws indirectly sheltered a father's interest, Roe v Wade foreclosed this approach for pre-viable foetuses. It has been argued that the father's interest was seen as sheltered within the criminal sanctions imposed by the state that made most abortions illegal anyway.[217]

2. Civil Liability

Another suggestion is to permit a father to bring a damages action against the doctor or the mother for a wrongful abortion. Courts have overwhelmingly rejected this approach. In *Kausz v Ryan*,[218] the court ruled that any claimed loss was too speculative for compensation, and in *Herko v Uviller*[219] it held that a husband's claim was derivative of his wife's consent once she agreed to the procedure, his independent claim could not stand. However, this right would be prone to abuse by fathers with no genuine interest in the child. Both parents should have a constitutionally guaranteed right to safeguard the life of their child. Joseph Witherspoon, argued that granting the mother uncontrolled discretion and unfettered authority would effectively turn the father into a partial slave.

3. Injunctive Relief

This would involve the father petitioning a court to issue an injunction to stop the abortion. This is often seen as inefficient, as the mother could simply get the abortion without informing the father.[220] In the absence of a consent statute, several fathers

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[217] R A Gilbert, 'Abortion: The Father's Rights', University of Cincinnati Law Review (1973) 42(3) 441-467. <]https://heinonline.org/HOL/Page?handle=hein.journals/ucinlr42&id=453> accessed 1 November 2025.
[218] 51 Iowa 232, 1 NW 485 (Iowa 1879).
[219] 455 US 994 (1982).
[220] W L Schultz, 'The father's rights in the abortion decision', *Texas Tech Law Review* [1975] 6(3) 1075-1094.

have invoked the equity jurisdiction of courts to prevent an abortion. While courts have generally denied such claims based on Roe, some argue Roe does not explicitly bar this form of relief. This would require a hearing where a judge would enjoin the abortion only if the father's interests were found to substantially outweigh the mother's interests and the physical burden she bears.[221]

4. Combined Statutory-Judicial Approach

A more nuanced proposal suggests a statute requiring consent from both parents. If the father refuses consent or is unavailable, the mother would petition a court to terminate his interest. The court would then hold an immediate hearing to balance the competing interests, weighing factors like the father's commitment to future custody, the mother's health, and the gestational stage. The goal is to allow a father to demonstrate a superior interest without imposing an undue burden on the mother. This model presumes that in most cases, the mother's interest will be found superior, and the court would simply declare the father's consent unnecessary. Proponents argue, however, that this procedure is still needed to recognize the father's interest in the rare case where it might be paramount.

3.17 Synthesis: Reconciling Nigerian Law with Comparative Principles

The competing interests of the woman, the foetus, and the putative father illustrate the profound complexity of reproductive rights. This is especially true within the Nigerian

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<https://heinonline.org/HOL/Page?handle=hein.journals/text6&id=1089> accessed 2 November 2025.

[221] Molly Diggins, 'Paternal Interests in the Abortion Decision: Does the Father Have Say', *University of Chicago Legal Forum* [1989] 1989: 377-398. <https://heinonline.org/HOL/Page?handle=hein.journals/uchclf1989&id=381> accessed 1 November 2025.

legal landscape, which is characterized by restrictive statutes, deeply rooted patriarchal social norms, and a minimally developed body of case law on abortion.

At the core of reproductive rights lies the principle of personal autonomy. The pregnant woman exclusively bears the physical, emotional, and social risks of both pregnancy and abortion. Therefore, respecting her autonomy necessitates acknowledging her sole authority to decide the outcome of a pregnancy. This position is strongly endorsed by international human rights bodies. The CEDAW Committee, for instance, has clearly stated that any legal requirement for spousal or paternal authorization for an abortion constitutes a violation of a woman's rights to equality, dignity, and freedom from discrimination.

In Nigeria, the legal framework, particularly the Criminal Code, places a strong emphasis on fetal protection. It criminalizes the procurement of a miscarriage, providing only a narrow exception to preserve the mother's life. While this grants the foetus significant statutory protection, it stops short of conferring full legal person-hood. This legal stance inherently reflects a moral valuation of potential life. Consequently, this creates a direct tension with the woman's right to bodily autonomy and her reproductive decisions.

By contrast, the putative father's interests are almost entirely marginalized within Nigerian law, which grants him no statutory right to veto or even participate in an abortion decision. This exclusion is consistently mirrored in comparative jurisprudence. In the English case of *Paton v British Pregnancy Advisory Service Trustees*,[222] the court held that a husband had no legal right to stop his wife's abortion. Similarly, the U.S.

[222] [1979] QB 276.

Supreme Court in *Planned Parenthood v Danforth* invalidated paternal consent requirements as unconstitutional.

While ethical arguments for paternal involvement citing his genetic link, emotional investment, and shared responsibility are acknowledged, they are legally and philosophically outweighed by the woman's exclusive physical burden. Philosophical defenses of abortion, such as Judith Jarvis Thomson’s, underscore this by arguing that a right to life does not entail a right to use another's body against their consent. This asymmetry of reproductive burdens, combined with the practical risks of coercion, further justifies privileging the pregnant woman's autonomy.

From a purely doctrinal standpoint, the subordination of the father's claim in common law is clear and consistent. His interests, while recognized, are legally classified as inchoate not fully formed or enforceable prior to birth and cannot supersede the mother's dispositive liberty interest. This, however, creates a significant paradox within the Nigerian context. In practice, patriarchal social norms grant men substantial informal influence over reproductive decisions, even though the law provides them with no formal rights. This informal control can, in effect, restrict a woman's ability to exercise her choices. Ultimately, this analysis highlights the need for a balanced legal framework. Such a framework must, first and foremost, respect a woman's bodily autonomy. It should also acknowledge the defined legal and ethical status of fetal interests and recognize paternal perspectives.

CHAPTER FOUR

A COMPARATIVE ANALYSIS OF ABORTION LAWS IN SELECTED JURISDICTIONS

4.1 Introduction

Different jurisdictions have adopted varying approaches to the legal recognition or prohibition of abortion, often influenced by historical, cultural, and constitutional traditions. While some countries have liberalized abortion as part of broader reproductive rights reforms, others have maintained restrictive regimes rooted in religious or moral objections.[223] Comparative analysis is therefore indispensable to understanding the normative foundations and policy directions that shape abortion law. By examining the experiences of other jurisdictions, this chapter seeks to identify global trends and draw relevant lessons for Nigeria. The goal is not to impose uniformity, but to critically evaluate how different legal systems balance the competing claims of women's autonomy, fetal protection, and state interest. Such comparison also illuminates the role of constitutional design, judicial interpretation, and international human rights instruments in shaping the scope of reproductive freedom.[224]

Abortion regulation reveals a spectrum that ranges from liberal frameworks, which view access to abortion as a component of women's dignity and health, to prohibitive regimes, which criminalize termination of pregnancy except in rare, life-threatening circumstances.[225] Between these poles lie moderate systems, which permit abortion under defined conditions such as rape, fetal abnormality, or threats to mental or

[223] R Cook and B Dickens, 'Human Rights Dynamics of Abortion Law Reform' *Human Rights Quarterly* [2003] 25(1) 1.
[224] Amnesty International, *Nigeria: Unsafe Abortion and Women's Rights* (Report, 2017).
[225] Convention on the Elimination of All Forms of Discrimination Against Women (adopted 18 December 1979, entered into force 3 September 1981) 1249 UNTS 13.

physical health. This diversity underscores the evolving global recognition that reproductive rights are an integral aspect of gender equality and bodily integrity.[226]

This chapter thus undertakes a structured comparative analysis of abortion laws across selected jurisdictions—the United Kingdom, South Africa, Ireland, Ghana. The discussion situates each legal framework within its socio-political and constitutional context, highlighting how historical experiences and judicial reasoning have shaped the respective regimes. The chapter concludes with reflections on what lessons Nigeria can draw from these jurisdictions to reform its own abortion laws in a manner that harmonizes human rights standards with local realities.[227]

4.2.1 Abortion Law in the United Kingdom

The United Kingdom has long been a pivotal jurisdiction in the evolution of abortion law, blending statutory regulation with moral, medical, and political influences. Historically, abortion in England and Wales was criminalized under the Offences Against the Person Act 1861 and the Infant Life (Preservation) Act 1929, the latter criminalizing the destruction of a foetus capable of being born alive.[228] The Abortion Act 1967 then introduced a statutory exception: abortion could lawfully be carried out if two registered medical practitioners certify that continuation of the pregnancy would involve risk to the life, physical or mental health of the woman (or her existing children), or where there is substantial risk of fetal abnormality.[229] The Act also imposed a 28-week gestational limit (later reduced to 24 weeks) except in grave circumstances.[230]

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[226] A Nwobike, 'Constitutional Protection of the Right to Life and Abortion in Nigeria' *Nigerian Current Law Review* [2005] 12(2) 45.

[227] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol) (adopted 11 July 2003, entered into force 25 November 2005) art 14.

[228] Offences Against the Person Act 1861 (UK) ss 58, 59; Infant Life (Preservation) Act 1929 (UK).

[229] Abortion Act 1967 (UK) s 1.

[230] Human Fertilisation and Embryology Act 1990 (UK) s 37 (reducing limit to 24 weeks).

Over time, amendments and judicial interpretation refined this framework. The Human Fertilization and Embryology Act 1990 lowered the general limit to 24 weeks, aligning statutory policy with medical assessments of viability.[231] The requirement of two doctors' approval established a medical gatekeeper model, reinforcing the notion that abortion is not a pure right but a regulated clinical decision subject to professional discretion.[232] Throughout the late twentieth and early twenty-first century, the United Kingdom maintained its reputation for moderate liberalism: abortion was widely available up to 24 weeks under lawful grounds, with exceptions after that threshold in cases of maternal risk or fetal anomaly.[233]

In recent years, the UK has witnessed significant pressure to remove criminal penalties and fully decriminalize abortion for women's self-managed terminations. In June 2025, the House of Commons passed an amendment (by 379 votes to 137) to dis apply provisions of the 1861 Act and the Infant Life Preservation Act 1929 in respect of women's conduct in relation to their own pregnancies.[234] This change removes the prospect of criminal prosecution for women who terminate pregnancies outside statutory criteria, though doctors and others performing abortions outside the legal framework may still face criminal liability.[235] The amendment does not alter the core framework of the 1967 Act (e.g. the 24-week limit, requirement of two doctors, or

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[231] *Ibid*.
[232] D Priach and L Scott (eds), *Reproductive Rights and the Law: International Perspectives* (2nd edn, Routledge 2018) 145.
[233] N McIntosh, 'Abortion Regulation in the UK: Ethical and Legal Dimensions' *British Journal of Medical Ethics* [2022] 45(3) 220.
[234] Reuters, 'UK parliament votes to decriminalise abortion, repeal Victorian-era law' (17 June 2025).
[235] British Medical Association, 'MPs back decriminalisation of abortion' (2025) <https://www.bma.org.uk> accessed 29 October 2025.

regulation after viability), but seeks to eliminate penal sanctions against women themselves.[236]

The parliamentary move comes against a backdrop of high-profile prosecutions that highlighted the system's inconsistencies. One notable case is that of Carla Foster, who was sentenced in 2023 to 28 months in prison for procuring an abortion at around 32–34 weeks, exceeding the 24-week limit.[237] Although her sentence was partially suspended on appeal, the case revived public outrage over criminalization of women under Victorian statutes.[238] Similarly, Nicola Packer was arrested after taking abortion pills later in pregnancy; her acquittal underscored judicial reluctance to punish women for pregnancies they believed to be early.[239] Critics argue that prosecuting women for abortion undermines dignity and drives terminations underground exactly the moral and health consequences that reformers cite.[240]

Yet the UK reform is not without limits. The amendment passed in 2025 is narrow and targeted: it does not expand access or restructure medical oversight, but solely removes criminal liability for women.[241] Some stakeholders warn it may open the door to ethically contentious late-term abortions or create ambiguity about medical rules and enforcement.[242] Others argue that removing criminal sanctions strengthens women's autonomy without altering clinical standards.[243] In parallel, England and Wales have introduced safe access zones (buffer zones) around abortion clinics to protect women

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[236] Jurist, 'UK members of parliament to vote on decriminalizing abortion' (2025).
[237] Trial of Carla Foster (2023) (reporting).
[238] *Ibid*.
[239] Wikipedia, 'Abortion in the United Kingdom' <https://en.wikipedia.org/wiki/Abortion_in_the_United_Kingdom> accessed 29 October 2025.
[240] The Guardian, 'British women are being jailed under archaic abortion laws' (2025).
[241] The Guardian, 'UK votes to decriminalise abortion after prosecutions of some women' (2025).
[242] *The* Church Times, 'Worrying change in law may increase late-term abortions' (2025).
[243] The Guardian, 'Abortion's unwelcome return to British politics' (2025).

seeking services from harassment, suggesting a complementary public order approach to safeguard access.[244]

The UK model illustrates a gradual evolutionary approach: statutory regulation tethered to medical oversight, slowly softened by decriminalization of women's conduct. For Nigeria, this offers a template: preserving structured medical safeguards while eliminating punitive measures against pregnant women. The 2025 amendment underscores that reform need not upend clinical regimes, but may instead relieve women from criminal jeopardy a nuanced pathway that aligns with human rights and public health imperatives.

4.2.2 Ireland

Ireland's experience with abortion legislation represents one of the most striking transformations in modern constitutional and moral history. For decades, the Irish legal system maintained one of the most restrictive abortion regimes in Europe, rooted deeply in religious doctrine and a cultural emphasis on the sanctity of unborn life. The Offences Against the Person Act 1861 criminalized abortion in all circumstances, carrying severe penal sanctions for both the woman and any person assisting in the procedure.[245] This rigid framework was further entrenched by the adoption of the Eighth Amendment to the Irish Constitution in 1983, which accorded the unborn child a constitutional right to life equal to that of the mother.[246]

Under the Eighth Amendment, Article 40.3.3 of the Irish Constitution declared that "the State acknowledges the right to life of the unborn and, with due regard to the equal right

[244] Abortion Services (Safe Access Zones) (Scotland) Act 2024 (Scotland) asp 10; Abortion Services (Safe Access Zones) Act (Northern Ireland) 2023 c 1.
[245] Offences Against the Person Act 1861 (UK) ss 58–59.
[246] Constitution of Ireland 1937, Eighth Amendment of the Constitution Act 1983.

to life of the mother, guarantees in its laws to respect, and as far as practicable, by its laws to defend and vindicate that right."[247] This provision effectively rendered abortion inaccessible, even in cases of rape, incest, or severe fetal abnormality, as any termination could be interpreted as unconstitutional unless the mother's life was directly endangered. The amendment thus created a constitutional equilibrium between two competing lives the mother and the unborn that left physicians uncertain about when medical intervention might expose them to criminal liability.

Judicial interpretation soon tested the boundaries of this provision. In the landmark Attorney *General v X* (commonly known as The X Case),[248] the Supreme Court confronted a situation where a fourteen-year-old girl, impregnated as a result of rape, expressed suicidal intent. The Court held that abortion was permissible when there was a "real and substantial risk" to the life of the mother, including the risk of suicide.[249] Although the judgment introduced a narrow exception, the legislature failed to enact implementing legislation for over two decades, leaving medical practitioners uncertain and women effectively without practical access to abortion.

The constitutional and moral rigidity of Ireland's abortion law came under renewed scrutiny in 2012 following the death of Savita Halappanavar, a pregnant woman who died from sepsis after being denied an abortion during a miscarriage.[250] Her death triggered nationwide protests and international condemnation, exposing the life-threatening consequences of legislative ambiguity. The tragedy catalyzed public

[247] *Ibid* art 40.3.3.
[248] *Attorney General v X and Others* [1992] IESC 1, [1992] 1 IR 1.
[249] *Ibid*.
[250] Human Rights Watch, *A State of Isolation: Access to Abortion for Women in Ireland* (Report, 2013).

discourse on reproductive rights, culminating in the establishment of a Citizens' Assembly in 2016, which recommended substantial reform.

In 2018, following decades of activism and moral debate, Ireland held a historic referendum to repeal the Eighth Amendment. A decisive majority approximately 66.4% voted in favour of repeal.[251] Subsequently, the Health (Regulation of Termination of Pregnancy) Act 2018 was enacted, allowing abortion on request up to twelve weeks of pregnancy and under broader circumstances thereafter, such as risk to the life or serious harm to the health of the woman, or fatal fetal abnormality.[252] This legislation marked a fundamental shift from a morality-based approach to a human rights and healthcare-oriented framework.

Ireland's reform demonstrates how constitutional democracies can evolve through civic dialogue and human rights advocacy. The process that led to the 2018 Act reflected a redefinition of national values from rigid religious orthodoxy to a compassionate recognition of women's autonomy, dignity, and equality. The Irish experience also underscores the necessity of legal clarity in balancing moral convictions with the realities of women's health and safety. While moral considerations remain central to public discourse, Ireland's transformation reveals that restrictive laws do not eliminate abortion but merely displace it into secrecy, risk, and suffering.

4.2.3 South Africa

South Africa presents one of the most progressive legal frameworks on abortion in Africa, reflecting a deliberate constitutional and legislative commitment to women's reproductive autonomy. Historically, abortion in South Africa was governed by the

[251] Irish Government, Thirty-sixth Amendment of the Constitution Act 2018 (Repeal of the Eighth Amendment)(2018).
[252] Health (Regulation of Termination of Pregnancy) Act 2018, ss 9–12.

Abortion and Sterilization Act 1975[253], a restrictive colonial-era statute that allowed termination of pregnancy only in limited circumstances primarily when the woman's life was in danger, or in cases of rape, incest, or severe fetal deformity. This law was heavily criticized for its racial bias and for denying access to safe abortion to Black women, who often lacked the resources to navigate its complex approval procedures.

With the advent of constitutional democracy in 1994, South Africa's legal philosophy underwent a radical transformation. The Choice on Termination of Pregnancy Act 92 of 1996 (CTOP Act)[254] repealed the earlier legislation and recognized abortion as a matter of women's constitutional rights. The CTOP Act allows termination of pregnancy on request within the first twelve weeks of gestation, and under specified conditions up to the twentieth week such as risk to the woman's physical or mental health, fetal abnormality, or socio-economic hardship. Beyond twenty weeks, abortion is permissible only if the woman's life is in danger or there is severe fetal impairment. The law's underlying principle is the recognition of women's autonomy over their reproductive health and the right to dignity, privacy, and bodily integrity as protected under sections 9, 10, 12(2)(a), and 27(1)(a) of the Constitution of the Republic of South Africa 1996.[255]

The South African courts have consistently interpreted these constitutional guarantees to safeguard women's reproductive rights. In *Christian Lawyers Association v Minister of Health*[256], the applicants challenged the constitutionality of the CTOP Act, arguing that the right to life under section 11 of the Constitution extended to the unborn child. The Transvaal High Court dismissed the application, holding that the Constitution does

[253] Abortion and Sterilization Act 1975 (South Africa).
[254] Choice on Termination of Pregnancy Act 92 of 1996 (South Africa).
[255] Constitution of the Republic of South Africa 1996, ss 9, 10, 12(2)(a), 27(1)(a).
[256] (1998) (4) SA 1113 (T).

not confer legal person-hood on a foetus, and that the protection of women's reproductive autonomy takes precedence within the constitutional framework. This landmark decision affirmed that the rights of the unborn do not outweigh the rights of the woman, especially her right to privacy and bodily integrity.

Further judicial clarification came in *Minister of Health v Treatment Action Campaign*[257], where the Constitutional Court reaffirmed the State's positive duty to ensure access to healthcare services, including reproductive health. The Court held that the government's failure to make the antiretroviral drug nevirapine available to pregnant women violated the constitutional right to healthcare under section 27. Although the case did not directly concern abortion, its reasoning underscored the State's obligation to create an enabling environment for women to exercise their reproductive choices.

Despite the legal progress, South Africa faces persistent challenges in implementing the CTOP Act. Socio-economic inequality, stigma, and lack of healthcare infrastructure have restricted access to safe abortion services, particularly in rural areas. Studies reveal that many public hospitals still refuse to perform abortions due to conscientious objection by medical practitioners or administrative barriers, leading women to seek unsafe alternatives.[258] This gap between law and practice highlights the continuing struggle to actualize reproductive justice.

For Nigeria, South Africa's experience provides valuable lessons. The incorporation of reproductive rights into a constitutional framework demonstrates how legal reform can harmonize public health objectives with fundamental human rights. While Nigeria's Criminal Code Act and Penal Code Act criminalize abortion except to save the woman's

[257] (2002) (5) SA 721 (CC).
[258] A Ngwena, 'Reproductive Rights and the Politics of Abortion in South Africa' *Journal for Juridical Science* [2010] 35(2) 1.

life,[259] the South African model shows that liberalization can coexist with moral and cultural sensitivity, provided the law is grounded in principles of dignity, equality, and access to healthcare. Adopting such an approach could help Nigeria reconcile its restrictive laws with international human rights obligations, such as those under the Convention on the Elimination of All Forms of Discrimination Against Women (CEDAW) and the Maputo Protocol, both of which emphasize women's right to reproductive autonomy and health.

4.2.4 Ghana (African Comparison)

Abortion law across Africa reflects a complex intersection of morality, religion, colonial legacies, and public health concerns. While many African states retain restrictive abortion frameworks modeled on 19th-century colonial statutes, gradual reform has emerged in response to maternal mortality and international human rights obligations. Ghana present contrasting example within this evolving landscape one marked by constitutional restraint, the other by cautious liberalization.

Ghana's legal position represents one of the most liberal frameworks in West Africa, though implementation challenges persist. The Criminal Offences Act 1960 originally prohibited abortion in all circumstances.[260] However, the Provisional National Defence Council Law 102 (PNDCL 102) amended the law in 1985, significantly broadening the grounds for lawful abortion.[261] Under this reform, abortion is permitted when the pregnancy results from rape, defilement, or incest; where continuation would pose a risk

[259] A Adeleke, 'The Challenge of Access to Safe Abortion Services in South Africa: Lessons for Nigeria' *Nigerian Journal of Human Rights* [2021] 17(2) 98.
[260] Criminal Offences Act 1960 (Act 29) (Ghana) ss 58–59.
[261] Provisional National Defence Council Law 102 (PNDCL 102) (1985).

to the life or physical or mental health of the woman; or where there is substantial risk of fetal abnormality.[262]

The Ghanaian framework is further supported by the Constitution of Ghana 1992, which guarantees the right to life and human dignity,[263] and has been interpreted to include reproductive health rights consistent with the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (Maputo Protocol).[264] Despite this progressive legislation, access to safe abortion remains limited due to social stigma, lack of trained personnel, and uneven policy enforcement.[265] Public discourse continues to be shaped by strong religious and cultural opposition to abortion, even when legally permissible.

To enhance access, Ghana's Ministry of Health and the Ghana Health Service have developed Comprehensive Abortion Care Guidelines, emphasizing post-abortion care, counselling, and training for health providers.[266] These administrative reforms signal a pragmatic recognition that safe abortion services are integral to reducing maternal mortality, rather than a moral endorsement of abortion itself.

An evaluation of Kenya and Ghana underscores the divergent pathways available to African states navigating the abortion debate. Kenya's constitutional framework embodies a cautious balancing act recognising limited exceptions but leaving enforcement uncertain. Ghana, by contrast, has established a clearer statutory

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[262] *Ibid* s 58(2).
[263] Constitution of Ghana 1992, arts 12–15.
[264] Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa (adopted 11 July 2003, entered into force 25 November 2005) (Maputo Protocol) art 14(2)(c).
[265] HO Okonofua, 'Reducing Maternal Mortality in Nigeria: An Ethical and Policy Perspective' *African Journal of Reproductive Health* [2007] 11(2) 9, 13.
[266] Ghana Health Service, *Comprehensive Abortion Care Services Standards and Protocols* (2nd edn, 2012).

foundation for abortion on specified grounds, aligning more closely with international human rights standards.

Both countries highlight that legal reform alone is insufficient; societal attitudes, religious beliefs, and administrative capacity determine the real impact of law on women's lives. For Nigeria, these jurisdictions offer instructive lessons. Kenya demonstrates the need for legal precision and medical protection when abortion is constitutionally permitted, while Ghana illustrates the potential of moderate reform that accommodates moral sensibilities yet prioritizes public health.

4.3 Conclusion

The comparative exploration of abortion laws across diverse jurisdictions reveals that legal reform in this area is deeply shaped by a society's moral philosophy, constitutional design, and approach to human rights. The global shift from rigid criminalization to conditional or rights-based regulation reflects an increasing awareness that women's reproductive autonomy, public health, and social welfare are interlinked concerns that cannot be effectively addressed through punitive measures. In liberal jurisdictions such as Canada, South Africa, and several European states, abortion law has evolved to recognize the woman's right to dignity, privacy, and health as central to the justice system's understanding of reproductive freedom. These legal systems do not treat abortion as a moral aberration but as a medical and ethical issue subject to procedural safeguards rather than criminal sanctions. The result has been safer medical practice, reduced maternal mortality, and greater respect for women's autonomy within constitutional and ethical limits.[267] Conversely, restrictive regimes including Nigeria,

[267] *R v Morgentaler* [1988] 1 SCR 30; The Choice on Termination of Pregnancy Act 92 of 1996 (South Africa); European Court of Human Rights, *A, B and C v Ireland* (2010) 53 EHRR 13.

Kenya, and Poland continue to view abortion primarily through the prism of moral protectionism and fetal sanctity. This approach, while grounded in cultural and religious convictions, often neglects the practical consequences for women's lives and public health.[268] Experience has shown that stringent abortion prohibitions neither prevent the procedure nor strengthen moral conduct; instead, they push vulnerable women toward unsafe, unregulated alternatives that jeopardize their lives.[269] The high incidence of unsafe abortions in Nigeria underscores this reality and signals the urgent need for a policy framework that prioritizes human life in its totality both born and unborn.

Comparative experience further demonstrates that effective reform does not necessitate absolute liberalization. Jurisdictions such as Ghana and Ireland show that carefully crafted laws can uphold moral and cultural sensitivities while safeguarding women's reproductive rights.[270] What is essential is the presence of clear, humane, and enforceable legal standards that protect women's health and autonomy without undermining societal values. Nigeria can draw on these models to adopt a balanced, context-sensitive approach that acknowledges its socio-religious realities while embracing the imperatives of human rights and public health.

In conclusion, the lessons drawn from other jurisdictions point toward the need for Nigeria to move beyond its colonial criminal framework and toward a modern, rights-informed abortion law. A reformed legal regime must integrate constitutional principles of dignity, equality, and freedom from inhuman treatment with practical measures that

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[268] Criminal Code Act, Cap C38 Laws of the Federation of Nigeria 2011; Constitutional Tribunal of Poland, Judgment of 22 October 2020 (K 1/20).
[269] World Health Organization, Preventing Unsafe Abortion: Fact Sheet (2021).
[270] Ghana Health Service, Comprehensive Abortion Care Services Standards and Protocols (2nd edn, 2012); Health (Regulation of Termination of Pregnancy) Act 2018 (Ireland).

ensure safe, accessible reproductive healthcare. This balance between moral conscience and human rights represents the most sustainable path forward for Nigeria, allowing the law to serve as both a protector of life and a guarantor of justice.

CHAPTER FIVE

FINDINGS, RECOMMENDATIONS, AND CONCLUSION

5.1 Introduction

This final chapter concludes the critical legal and ethical examination of abortion in Nigeria, which this study has analyzed through the specific tripartite lens of the woman, the foetus, and the putative father, as established in Chapter One. The preceding chapters have methodically deconstructed the deep normative conflict identified in the Statement of Problem. Chapter Two established the woman's rights as grounded in the 1999 Constitution and international law. Chapter Three analyzed the competing legal and moral status of the foetus and the (legally silent) interests of the putative father. Chapter Four provided a comparative analysis of how other jurisdictions have attempted to resolve this same tripartite conflict.

In accordance with the NALT guide, this chapter will now synthesize these analyses. Section 5.2 will present the principal findings of the research, which directly answer the research questions. Section 5.3 will propose actionable Recommendations aimed at resolving Nigeria's policy stagnation and creating the "balanced legal framework" this study set out to find. Finally, Section 5.4 will provide a definitive Conclusion to the entire study.

5.2 Findings

The prinicipal findings of the study are as follows:

1. The Criminal Code (Sections 228–230) and Penal Code (Section 232) criminalize abortion except when performed in good faith to save the life of the woman.

2. The law imposes severe penalties, including up to fourteen years' imprisonment for the provider and seven years for a woman who procures her own miscarriage.

3. There is no specific statutory recognition of the foetus as a "person". However, the criminalization of abortion implies a level of protection for potential life; thus, the foetus receives substantial statutory protection under Nigeria's penal laws, even though it is not legally recognized as a person. The "born alive" rule applies, meaning that legal rights accrue only upon live birth.

4. The Child Rights Act does not explicitly confer rights on an unborn child; its provisions apply primarily to children already born.

5. The law is silent on the putative father's role or consent in abortion decisions. No statute or case law grants him any right to be consulted or to veto an abortion.

6. Despite restrictive penal laws, the 1999 Constitution provides legal grounds that may be interpreted to support a woman's rights to life (Section 33), dignity (Section 34), privacy (Section 37), and freedom from discrimination (Section 42) none of which are expressly limited in abortion-related contexts.

7. Nigeria is a State Party to the Maputo Protocol, which in Article 14(2)(c) guarantees women the right to abortion in cases of rape, incest, sexual assault, or where the pregnancy endangers the woman's physical or mental health or life, or involves severe fetal abnormality.

8. Women's reproductive rights are also grounded in Nigeria's treaty obligations under CEDAW and the African Charter on Human and Peoples' Rights (Ratification and Enforcement) Act.

9.The Criminal and Penal Codes remain inconsistent with these international obligations, creating a normative tension between Nigeria's penal laws and its binding commitments under international and regional human rights instruments.

10. The Constitution provides the woman enforceable rights to life, dignity, health, and privacy, which could form the legal basis for reproductive autonomy in Nigeria.

11. Nigerian law treats the foetus as having potential life but not legal person-hood until birth. No enforceable right to life exists before birth under statutory or constitutional provisions.

12. There is no statutory or judicial recognition of the putative father's right to participate in abortion decisions. His interest is moral and relational rather than legal.

13. Paternal veto rights are non-existent under Nigerian law, and the decision is legally situated within the scope of the pregnant woman's right and medical neccessity.

14. Nigerian courts, particularly in *Medical and Dental Practitioners Disciplinary Tribunal v. Okonkwo*[271], have affirmed that constitutional rights to privacy and personal autonomy protect individuals' medical and reproductive choices.

15. No Nigerian court has yet applied this reasoning directly to abortion cases, but the precedent establishes a legal foundation for judicial interpretation consistent with constitutional rights.

[271] [2001] 7 NWLR (Pt 711) 206 (SC)

16. Comparative analysis from other jurisdictions provides a clear and feasible roadmap for legal reform:

i. Ireland has transitioned from a constitutional ban on abortion to a regulated system through constitutional amendment and legislation.

ii. South Africa recognizes abortion as a constitutional right under its Choice on Termination of Pregnancy Act (1996), reflecting a rights-based approach.

iii. Ghana permits abortion under limited conditions, including health and rape, in a manner consistent with the Maputo Protocol. These comparative examples demonstrate that legal reform toward broader abortion access has been implemented in jurisdictions with similar religious, cultural, or regional contexts as Nigeria.

5.3 Recommendations

Based on the findings that Nigeria's current law is in tension with constitutional guarantees, misaligned with international law, and struggles to equitably balance the tripartite interests, the following recommendations are proposed to achieve the "balanced legal framework" that was the aim of this study.

5.3.1. Legislative Reform: Review and Modernization of Penal Laws

The National Assembly may review Sections 228–230 of the Criminal Code and Section 232 of the Penal Code. This review should aim to enact a new “Reproductive Health and Safety Act.” To achieve a balanced framework, the Act may utilize Article 14(2)(c) of the Maputo Protocol as its minimum standard. This would align Nigerian law with its international obligations by legalizing medical abortion, at minimum, in cases of: sexual assault, rape, incest; risk to the physical or mental health of the woman; risk to the life of the woman; severe fetal abnormality; grave or permanent injury to the woman,

including conditions where pregnancy would cause irreversible damage or long-term physical harm; serious socio-economic hardship; inability to care for the child due to extreme hardship; emergency medical situations (e.g., ectopic pregnancy or severe preeclampsia); fetal-viability considerations (permitting early termination before viability but restricting it afterward unless exceptions apply); protection of the woman's dignity and privacy, as recognized in rights-based jurisdictions; fetal impairment that threatens the woman's health or future fertility; conditions incompatible with life (e.g., anencephaly); and where the pregnancy results from the defilement of a minor (as specifically recognized in Ghana).

5.3.2. Domestication of the Maputo Protocol

To remove all legal ambiguity and empower the judiciary, the National Assembly may immediately pass an Act to fully domesticate the Protocol to the African Charter on Human and Peoples' Rights on the Rights of Women in Africa, as required by Section 12 of the Constitution.

5.3.3. Judicial Activism to Reconcile the "Normative Conflict"

Pending legislative reform, the Nigerian judiciary can play a role in resolving the conflict identified in this thesis. Judicial interpretation of constitutional rights, particularly those concerning life, dignity, and privacy-should be expansive enough to uphold women's reproductive autonomy. This judicial "reconciliation" could be based on the precedent set in *Medical and Dental Practitioners Disciplinary Tribunal v.*

Okonkwo[272].

5.3.4. Public Health and Educational Reform (Addressing the Root Problem)

The government may directly address the public health crisis described in Chapter One.

By massively increase funding and universal access to modern contraception and family planning, fully implement and fund Post-Abortion Care (PAC) in all public hospitals, launching national education campaigns to destigmatize reproductive health and inform citizens of the dangers of unsafe abortion and safe practice.

5.3.5. Statutory Recognition of the Biological Father's Relational Interest

There is a need address the inconsistency identified in Finding 3, the new Reproductive Health and Safety Act should include a requirement for notification or consultation with the biological father, provided that his identity is known and there is no substantiated risk of domestic violence or coercion. This measure would not grant a right of veto, which would contradict the woman's constitutional autonomy, but would acknowledge the father’s moral and relational stake, thereby moving toward a truly tripartite and balanced framework and mitigating future post-natal disputes. Ensuring a father’s equitable stake in reproductive decisions requires not only acknowledging his moral interest but also enacting legal mechanisms that reflect the cultural and familial value placed on the father’s role in the Nigerian context.

5.4 Conclusion

This study began by identifying a deep normative conflict at the heart of Nigerian

[272] [2001] 7 NWLR (Pt 711) 206 (SC).

abortion law, stemming from the unresolved, competing claims of the woman, the foetus, and the putative father. The aim was to conduct a holistic, tripartite analysis to find a path toward a balanced legal framework. The study concludes that Nigeria's current legal framework is fundamentally unbalanced and indefensible. The findings have decisively shown that, of the three actors, only the woman holds clear, justiciable constitutional rights to life, dignity, and bodily autonomy. The legal status of the foetus is one of potential life, while the putative father holds no legal right to veto her decision. Resolution of this conflict does not require an alien legal transplant. Instead, it demands that Nigeria’s legal system uphold its constitutional supremacy and adhere to its binding international human rights obligations. The adoption of the Maputo Protocol standards, alongside judicial interpretation that privileges the woman's fundamental rights, offers a clear, pragmatic, and humane path toward a balanced legal framework that prioritizes life, safety, and justice for all actors in the Nigerian reproductive landscape.

This research contributes to existing legal scholarship by introducing a tripartite analytical model that situates abortion law within the intersecting rights and responsibilities of the woman, the foetus, and the putative father, an approach rarely adopted in Nigerian legal literature. It also bridges constitutional, ethical, and human rights perspectives, thereby offering a framework that can guide future legislative reform, judicial reasoning, and academic discourse on reproductive rights in Nigeria.

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