

Mental Illness and Insanity in the Nigerian Law

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Abstract: *This work examines the concepts of mental illness, insanity and insanity plea under the Nigerian law. Mental illness is a psychological syndrome associated with distress, impairment in an area or areas of functioning and that significantly increased risk of death, disability, or loss of freedom and not occurring merely as a predictable response to a disturbing life event such as a bereavement but assumed to be a manifestation of a psychological or biological dysfunction. Insanity refers to unsoundness of the mind or a mental disease that gives rise to a defect of reason that renders a person not liable in law for his actions. Insanity plea is a legal argument that an accused person should be exculpated from liability if his illegal act is attributable to mental illness. The plea hinges on the assumption of freewill and responsibility for one's action and on the presumption that everyone is of a sound mind until the contrary is proved. Criminal liability hinges on the English Common Law and Doctrines of Equity in the Latin maxim 'actus non facit reum nisi mens sit rea', meaning 'that the intent and the action must concur to constitute a crime'. Thus, a perpetrator of an act must understand that what he is doing is wrong and the first test to determine criminal responsibility was the M'Naghten Rules of 1843, formulated in the belief that liability is the basis of the criminal law and that capacity to choose between right and wrong is the basis for liability. Most jurisdictions have modified their laws regarding criminal liability but in Nigeria, the M'Naghten Rules continue to guide the criminal law. The work ex-rayed insanity plea in Nigeria using the Criminal Code Act, Criminal Procedure Act, Criminal Procedure Code and the Penal Code Act and made appropriate recommendations on lacunas observed within the Acts. With particular reference to the fate of persons acquitted by reason of insanity, the work advocated that treatment and rehabilitation should be stated in the court's verdict and they should be accordingly send to a mental health facility for treatment and rehabilitation Also, the law should spell out a fixed term for their treatment and rehabilitation and when they should be released from the safe custody- once they are certified by two independent medical officers that they are mentally fit - and not based on the discretion of the Governor as is the case presently.*

I. Introduction

Mental illness is as a psychological syndrome associated with distress, impairment in an area or areas of functioning and that significantly increased risk of death, disability, or loss of freedom and not occurring merely as a predictable response to a disturbing life event such as a bereavement but assumed to be a manifestation of a psychological or biological dysfunction (Diagnostic and Statistical Manual of Mental Disorders-IV (DSM-IV, 2000). It is as a clinically recognizable collection of symptoms or behaviour associated in most cases with distress or interference with personal functions (International Classification of Disorders-10 (ICD-10, 1994). Mental illness can also be defined as an illness of the mind that manifests in behaviours that markedly deviate from the societal norm. Most generally, mental illness is a severe form of abnormality that make persons do acts or omissions that are contrary to societal norms and such persons may come in contact with law enforcement agents.

The DSM-IV (2000) included over 100 disorders and categorized them into groups called axes. Axis I spell out clinical disorders and other conditions that may be a focus of clinical attention including dementia, delirium, substance-related disorders, mood disorders, schizophrenia and other psychotic disorders, among others. Axis II indicates personality disorders and mental retardation including paranoid personality disorder, schizoid personality disorder, schizotypal personality disorder, antisocial personality disorder, obsessive-compulsive personality disorder, and mental retardation, among others. Axis III reports current general medical conditions that are potentially relevant to the understanding or management of the individual's mental disorder including infectious and parasitic diseases, endocrine, nutritional and metabolic diseases and immunity disorders, and congenital anomalies, among others. Axis IV reports psychosocial and environmental problems including problems with primary support group, problems related to the social environment, educational problems, occupational problems, and problems with access to health care services, among others. Axis V is for reporting the clinician's judgment of the individual's overall level of functioning; this is useful in planning treatment and measuring its impact, and in predicting outcomes.

Note that the ICD-10 also includes comparable groups of mental illnesses and that these two manuals are used in health facilities worldwide to categorize mental illnesses. Note also that the causes of mental illnesses are manifold and each has varied etiological factors.

In its olden usage, insanity denoted craziness or madness but in modern usage, insanity is most commonly encountered as an informal unscientific term denoting mental instability, or in the narrow legal context of the insanity defense. It denotes a state of being seriously mentally ill or madness. It is a concept discussed in court to help distinguish guilt from innocence. Although insanity is informed by mental health professionals but the term is primarily legal, not psychological. It is a legal term pertaining to a defendant's ability to determine right from wrong when a crime is committed. It refers to unsoundness of the mind or a mental disease that gives rise to a defect of reason that renders a person not liable in law for his actions (Osborn's Concise Dictionary, 2001). Insanity is a condition that impairs a person's ability to discharge his or her legal responsibilities (Oxford Dictionary of Psychology, 2003). It is a spectrum of behaviors characterized by certain abnormal mental or behavioral patterns (Wikipedia, 2014). Insanity may manifest as violations of societal norms, including persons becoming a danger to themselves or others, though not all such acts constitute insanity. A clinical psychologist, writer, musician and professor at Fuller Graduate School of Psychology in Pasadena, California, Howes (2009) defined insanity as a mental illness of such a severe nature that a person cannot distinguish fantasy from reality, cannot conduct her/his affairs due to psychosis, or is subject to uncontrollable impulsive behaviour.

Insanity, a legal term is rooted in the concept of mental illness, a psychiatric / psychological term and it is the basis for ascribing criminal responsibility. The dividing line between criminal culpability and not being culpable has been exceedingly difficult to draw due to many factors, including confusion in the attitudes to liability of the mental patients, limited knowledge about etiology of mental illnesses, conflicting psychiatric / psychological theories, and the skepticism surrounding acceptability/veracity of medical evidence by lawyers (Okonkwo, 2005). This has culminated in insanity plea or defense which comes in where a person is unable to detect the wrongfulness or rightness of his action and alleges that a mental illness made the accused to commit the offence. Insanity plea confirms the societal norm that the law should not punish persons that are incapable of controlling their behaviours.

Insanity plea is a legal argument that an accused person should not be held ascriptively responsible for an illegal act if the conduct is attributable to mental illness. Davison and Neale (2001) defines insanity plea as a legal argument that a defendant should not be held responsible for an illegal act if it is attributable to mental illness that interfered with rationality or that resulted from some other excusing circumstances, such as not knowing right from wrong. The insanity plea is rooted in criminal law, which says that people have freewill and that if they do wrong, they have chosen to do so, are blameworthy, and should therefore be punished. Accordingly, Okonkwo (2005) suggested that the definition of criminal liability should be made reasonably flexible to give room for changing standards and progress in knowledge.

The concept of criminal responsibility is rooted in the English Common Law and Doctrines of Equity, which indicate that a perpetrator of an act must understand that what he was doing is wrong and is stated in the Latin maxim 'actus non facit reum nisi mens sit rea', meaning 'that the intent and the action must concur to constitute a crime' and the first test to determine criminal responsibility was the M'Naghten Rules of 1843 which were formulated in the belief that liability is the basis of the criminal law and that capacity to choose between right and wrong is the basis for liability. The Rules became the basis for assigning criminal responsibility and insanity plea. They were three:

- (a) All persons are presumed sane until a reverse is proved;
- (b) That it is a defence for the accused to show that he was laboring under such a defect of reason, due to disease of the mind as either
 - (i) Not to know the nature and quality of his act, or
 - (ii) If he did know this, not to know that he was doing wrong
- (c) That if a person commits an offence under an insane delusion, he is under the same degree of liability as he would have been on the facts as he imagined them to be.

It is instructive to note that Nigerian law regarding insanity seems to be based on the M'Naghten Rules. Furthermore, advances in medical and psychological researches indicated that the M'Naghten Rules were defective in assigning criminal liability and should be modified and many jurisdictions have enacted Statutes that modified the Rules including England and The United States. It is from the foregoing that this work seek to critically appraise the concept of mental illness and insanity in the Nigerian legal system, examine the concept of insanity and how it operate in the Nigerian legal system, discuss the various types of insanity, examine the standard of proof of insanity under the Nigerian law, and highlight the consequences of a successful insanity plea in Nigeria.

II. Insanity Or Unsound Mind Under The Nigerian Law

Nigerian law presumes every person to be sane until the reverse is proven. This is contained in Section 27 of the Criminal Code Act (C.C.A) (2004) and Section 43 of the Penal Code Act (P.C.A) (2004). The Criminal Code Act (2004) relates to Southern Nigeria while the Penal Code Act (2004) relates to Northern Nigeria. Specifically, Section 27 of the C.C.A. states that *'every person is presumed to be of sound mind, and to have been of sound mind at any time which comes in question, until the contrary is proved'* while Section 43 of the P.C.A. states that *'a person is presumed, unless the contrary is proved, to have knowledge of any material fact if such fact is a matter of common knowledge'*.

Meanwhile, since the two codes serve the Nigerian criminal justice system, I wish to concentrate on the C.C.A. and refer to the P.C.A where applicable.

Insanity defense in the Nigerian law is provided for in Section 28 of the C.C.A. (2004) which provides that *'a person is not criminally responsible for an act or omission if at the time of doing the act or making the omission he is in such a state of mental disease or natural mental infirmity as to deprive him of capacity to understand what he is doing, or of capacity to control his actions, or of capacity to know that he ought not to do the act or make the omission'*.

Let us examine the elements of insanity from the provision but first look at the categories of mental illness under the Act.

III. Categories Of Mental Illnesses/Insanity Defences Under The Nigerian Law

There are different categories of mental conditions which may affect a person's responsibility for an offence, including the following:

The first is that one may do the outlawed act in a state of impaired consciousness arising from some mental illness or internal cause. In this state the action is involuntary and it is referred to as automatism. The second is where the person may be conscious and perform willed body movements that constitute the actus reus of the offence but due to his mental illness, he may not know or understand what he is doing. The third is where the person may be conscious of what he is doing but due to the mental illness, he is not aware that it is wrong. The fourth is where the person knows what he is doing and that it is wrong but due to the mental illness, he is not able to control his actions. The fifth is where the person knows what he is doing and that it is wrong but due to his mental delusional state he may believe that his action is appropriate. We shall examine these categories thus:

1. (A) Mental Disease

Mental disease here refers to any disease that produces a malfunctioning of the mind. There are different types of mental diseases as earlier indicated in the DSM-IV (2000) and ICD-10 (1994). Although it may exclude physical diseases with identifiable causes, the provision seems to include medical conditions that affect mental functioning. In this respect, the court should be eclectic in its approach by giving mental disease a wider meaning, and that it covers many different types of mental disorders. The court should also listen with care to the significance of a particular disorder as expounded by medical experts and decide as to whether the abnormality has impaired capacity and whether the extent is such as to exculpate criminal liability. It may be argued that a malfunctioning of the mind is not a disease of the mind if it is caused by a blow. However, neurophysiological evidence indicates that a blow on the head will cause the brain to slam against the inside of the skull opposite the side of the blow and if the effect is ordinary loss of consciousness, a diagnosis of concussion is made but if there is a structural damage, a diagnosis of contusion is made (Pinel, 1995, 2002). Contusion will definitely affect mental functioning as there may be irreversible structural damage to the brain. Thus, contusion will come under the disease of the mind while concussion may not, depending on its degree.

In **Bratty v. A.G for Northern Ireland (1961)**, Lord Denning defined disease of the mind as any disorder that has manifested itself in violence and is prone to reoccur; at any rate it is a sort of disease for which a person should be detained in hospital, rather than being given an unqualified acquittal.

In **R. v. Kemp (1957)**, the accused was charged with causing grievous bodily harm to his wife and he pleaded insanity by reason of arteriosclerosis that caused a temporary loss of consciousness during which the attack was made. Delving, J., holding the accused liable stated among others:

'The law is not concerned with the brain but with the mind in the sense that the mind is the mental faculties of reason, memory and understanding. If one reads for 'disease of the mind' 'disease of the brain' 'it would follow that in many cases insanity will not be established because it would not be proved that the brain could not been affected in any way, either by degeneration of the cells or by any other way. In my judgment, the condition of the brain is irrelevant and so is the question of whether the condition of the mind is curable or incurable, transitory or permanent'.

(B) Natural Mental Infirmity

This term clearly goes beyond 'mental disease' and the M'Naghten Rule. The English Mental Deficiency Act (1913 - 1938) (but currently replaced by the Mental Health Act (1959) defined mental defectiveness as '*a condition of arrested or incomplete development of mind existing before the age of 18 years, whether arising from inherent causes or induced by diseases or injury*'. Section 1 of the Mental Health Act (1927) defines mental defectiveness on the basis of the patients' ability to look after themselves and categorized them into four; idiots (those unable to guard themselves against common physical danger), imbeciles (those incapable of managing themselves or their affairs), feeble-minded persons (those requiring care, supervision and control for their own protection or for the protection of others), and morally defectives (those with strong vicious or criminal tendencies and who require care, supervision and control for the protection of others). The Mental Health Act (1959) defined psychopathic disorder as a persistent disorder or disability of mind resulting in abnormally aggressive or seriously irresponsible conduct which requires or is susceptible to treatment. The psychopath is an irresponsible anti-social person who engages in amorous acts for no discernable reason. Could such a person lack the same responsibility as normal person?

In **R. v. Omoni (1949)**, the West African Court of Appeal defined the term to mean '*a defect in mental power neither produced by his own default nor the result of disease of the mind*'. But the court added that the defect must not be produced by the accused person's default. The Federal Supreme Court adopted this definition in **R. v. Tabigen (1960)**, and added that '*a defect in mental power*' does not amount to an inability to master the passion'. Although the accused was in the grip of a strong passion and this was material to determining whether he had lost the capacity to control his action, the proof of mental disease or natural mental infirmity would come first. If the infirmity is not natural but is induced by one's worship of juju and/or witchcraft, the accused will be criminally liable as the case of **R. v. Alice Eriyamremu (1959)** illustrates. However, a mental disease which is self-induced such as the one occasioned by continued and excessive drinking, can still constitute insanity. For example, a bacterial infection that affect the brain -syphilis - is transmitted via contact with genital sores of an infected person and is dormant for years before it becomes virulent and attacking bodily parts and result in general paresis (Pinel, 2002) . Thus, it is contracted from conscious running of risk but insanity plea will avail the sufferer under the Nigerian law as any other insane person (Section 29 (2) (b) of the C.C.A. (2004; Okonkwo, 2005; Williams, 1992).

(2) Uncontrollable Impulse

The Criminal Code (2004) provides for the defence of uncontrollable impulse in appropriate circumstances as indicated in Section 28 of the Act thus '*a person is not criminally responsible for an act or omission if he is in such a state of mental disease or natural mental infirmity as to deprive him ... of the capacity to control his actions*'. In practice, it may be difficult to differentiate between uncontrollable impulse occasioned by mental illness and uncontrollable impulse occasioned by ordinary passion, which the law does not condone. Insanity affects both the intellectual faculties as well as the total personality of the insane person, including will and emotions. Thus, under the Criminal Code (2004), uncontrollable impulse is a defence. In **Echem v. The State (1952)**, the accused was charged for murder and he pleaded insanity due to the injury he had earlier sustained. Medical evidence indicated that the injury could have affected his brain whenever he had attacks of mental disorder. The doctor also added that the accused might have known that what he was doing was wrong but he was incapable of controlling his acts during the attack. The accused was not held legally liable. However, in the case of **Arisa v. The State (1983)**, the accused pleaded insanity and adduced a medical evidence similar to the one in **Echem v. The State** but was held criminally liable because the surrounding circumstances pointed that he was able to control his action but failed to do so. However, uncontrollable impulse is not a defence in the Penal Code Act (2004).

(3) Insane Delusion

A delusion is a false belief held contrary to reality that deviates from previously held patterns of beliefs and is out of context with those of the culture of the person. The second part of Section 28 of the Act states that a person whose mind at the time of his doing or omitting to do an act, is affected by delusion on some specific matter or matters, but who is not otherwise entitled to the benefit of the provisions of this section, is criminally responsible for the act or omission to the same extent as if the real state of things had been such as he was induced by the delusions to believe to exist.

The frame of mind which gave rise to such a delusion may be regarded as an unsound state of mind but it does not necessarily arise from mental illness or natural mental infirmity. Also, in this defense if the state of things erroneously believed is true would justify the accused alleged act or omission but it relates to things of partial insanity due to some abnormality or defects in the brain.

Accordingly, Fatayi Williams, C.J.N., in the case of **Ngene Arum v. The State**, illustrated insane delusion thus: 'where an accused person under the influence of his delusion supposes that another man was going to kill him and he killed that man believing he did so on self-defense, he would be exempted for the killing. This exemption from criminal liability is given in Section 30 (2)(a) of the 1999 Constitution and Section 286 of the Criminal Code, Cap 30 Laws of Eastern Nigeria.

In **Udofia v. The State**, Obaseki, J.S.C., held that an accused person affected by delusion can only be relieved of criminal liability:

1. If at the time of doing the act or making the omission he is in such a state of mental illness or natural mental infirmity as to deprive him of capacity to understand what he is doing, of capacity to control his actions or of capacity to know that he ought not to do the act or make the omission, or
2. Where he had absolute defense in law, i.e., the constitution.

Obaseki, J.S.C., also stated in **Nwabo v. The State**, '*...that there is no doubt that the pains in the leg may have temporary caused the delusion which afflicted him. Be that as it may, he is liable to the same extent as if what he believed in his state of mind unaffected by the delusion*'.

And Iguh, J.S.C., held that '*... a delusion which has no causation in mental illness or natural infirmity does not afford any defense to the accused person under the provision of Section 28 of the Criminal Code under consideration. Accordingly, in the defense of delusion, exculpation of responsibility cannot in law be available to an accused person. So, too, a defense founded on witchcraft or superstitious belief cannot afford a legal defense under the Criminal Code.*

IV. Other Mental States/Related Defences Against Criminal Liability

Automatism

Although automatism is not expressly provided for in the Criminal Code, it is however implied in Section 24 of the Act thus: '*Subject to the expressed provisions of this code relating the negligent acts or omissions, a person is not criminally responsible for an act or omission, which occurs independently of the exercise of his will, or for an event which occur by accident*'.

Furthermore, Section 2 (1) of the English Homicide Act (1957) defined automatism as '*such abnormality of mind (whether arising from a condition of arrested or retarded development of mind or any inherent causes or induced by disease or injury) as substantially impaired his mental responsibility for his acts and omissions in doing or being a party to the killing*'

Automatism is usually linked to the workings of the brain by external factors rather than inherent brain defects and is held when once behavior is automatic and tends to include spasms, sleep walking, reflex actions, fits, and nightmares, among others. Lord Denning held it to occur in **Brathay v. Attorney General for Northern Ireland (1961)** where an act was done by the defendant's muscles without his control.

Automatism is rarely pleaded in Nigerian courts and two known cases where it was pleaded were **State v. Ojeka**, where it failed and in **Public v. Iyarmet**, where it succeeded. For this plea to succeed, medical or scientific evidence is desirable to distinguish a genuine plea from a fictitious one.

Automatism is differentiated from insanity in that while insanity plea requires the involuntary act of the accused to be a product of mental illness, in automatism the involuntary act could occur without a mental disorder. Also, in insanity plea, the accused bears the legal burden to prove that he was insane whereas in automatism, the accused bears only evidential burden while the prosecution bears the legal burden of proving that the accused acted voluntarily. Furthermore, the verdict of a successful insanity plea is 'not guilty by reason of insanity' and requires mandatory commitment in a mental health facility for treatment while the verdict of a successful automatism plea is complete acquittal.

Intoxication

This is provided for in Sections 29 of the Criminal Code and Section 44 of the Penal Code. Section 29 (2) of the C.C.A. states that '*intoxication shall be a defence to any criminal charge if by reason thereof the person charged at the time of the act or omission complained of did not know that such act or omission was wrong or did not know what he was doing and the state of intoxication was caused without his consent by the malicious or negligent act of another person ; or the person charged was by reason of intoxication insane, temporarily or otherwise, at the time of such act or omission*'

There are certain qualifications for intoxication to succeed as a defence against criminal liability: It must not be voluntary and self-induced but from a malicious or negligent act of another; it incapacitated the accused from knowing the nature and quality of the act; and it resulted in brief or permanent insanity at the time of the act.

Ordinarily, intoxication as a defence will fail unless it is proved that in the course of drinking alcohol, another person, unknown to the drinker put an intoxicated substance into the alcohol and the 'normal' quantity

became an 'intoxicated' quantity. This also applies to mental or bodily conditions caused by drinking narcotics or exciting drugs or non-alcoholic stimulants or hypodermic injections.

Section 29 (1) of the Criminal Code and Section 44 of the Penal Code do not provide for intoxication as a defence against criminal liability. And generally, intoxication is a question of facts to be proved by evidence and not by mere pleading or denial of knowledge when or that the act was committed. The accused bears the legal burden of proof to the satisfaction of the court regarding the nature, quality and quantity of the drink or other causes of drunkenness that led to intoxication. He must also prove the time lapse between intoxication and the commission of the act and the court will give a verdict taking into consideration the facts of the case and the surrounding circumstances.

Diminished Responsibility / Capacity: This defence is based on the M'Naghten Rule and the Criminal code restricts it to homicide cases while the Penal Code does not provide for it. A jurist, Lord Parker, C.J. defined diminished responsibility / capacity as '*a state of mind so different from that of ordinary human beings that the reasonable man would term it abnormal. It appears to us to be wide enough to cover the mind's activities in all its aspects, not only the perception of physical acts is right or wrong but also the ability to exercise will power to control physical acts in accordance with rational judgment*'.

A decision of diminished responsibility is a complicated one for the court to determine, usually after hearing all the evidence (Okonkwo, 2005, Williams, 1961). It is suggested, with due respect, that Nigerian Law (both Criminal Code and Penal Code) should introduce this defence in unambiguous term as is done in other jurisdictions, whose laws are based on the received English Laws such as Queensland that introduced diminished responsibility into Section 304 A of its Code in the same terms as Section 2 (1) of the Homicide Act.

Appraising Insanity Plea Under The Criminal Code Act: The Lack Of Capacity Under The Nigerian Law

After proving the mental disease or natural mental infirmity requirement, the defence must prove that it was such as to deprive the accused of any one of the three different capacities; or the capacity to know that he ought not to do it, or the capacity to understand what he is doing, or the capacity to control his actions. This does not really mean total incapacitation but it relates to lack of substantial or adequate capacity.

Capacity To Understand What He Is Doing

There may be a problem in giving a precise meaning of the power to understand and Nigerian courts are yet to give this phrase a judicial interpretation. The dilemma would have been worse if the word 'know' was used instead because one may know what he is doing, that he is sticking a knife into somebody's neck but he may not understand what he is doing, that he is killing the person because he is mentally deranged. Until Nigerian courts give a judicial interpretation to this phrase, it will still be arguable the precise meaning of the term.

Capacity To Control His Actions

If an accused fails in the previous two, this defence can avail him if he can adduce evidence to show that his mental illness or infirmity was so severe to deprive him of capacity to control his actions. This defence allows a plea of irresistible or uncontrollable impulse as the Court of Criminal Appeal remarked in **R. v. Omoni (1949)**. This defence extends beyond 'impulse' to include many recognizable diseases of the mind that do not involve sudden impulse but slow deterioration, brooding, bipolar depression, Alzheimer's disease, constant pressures as indicated in the case of **Carter v. U. S.** Also, a paranoiac may act 'coolly and carefully on a premeditated plan, yet be incapable of controlling his actions and this has been documented in **Mandelbrot v. A.G (1956)**.

The fear in this defence is the inability to differentiate between the impulse an accused could not genuinely control from the ones he could control but failed to do so. Nigerian law allows this plea but Nigerian courts require convincing evidence other than an accused statement that he could not control his impulse as was in **R. v. Omoni (1949)**, where the appellant was held criminally liable. Thus, in **Echem v. R (1952)** the plea relieved the appellant of criminal liability because medical evidence was adduced to support the plea as earlier indicated. The court accepted the medical evidence and added that the court presumes that the medical officer had kept fully in mind the possibility of the accused being an impostor.

Capacity To Know That He Ought Not To Do The Act Or Make The Omission

This provision gives a defence to an accused who may have fully understood the nature of his acts but the mental illness or infirmity precluded him from knowing that the act was illegal. This provision is really an exception to the general rule that ignorance of the law is no excuse; ignorance of the law is excusable if it is due to a mental illness. However, this exception seems not to cover cases where one feels compelled to discharge a

moral obligation when he knows that the law forbids such an act. The Criminal Code Act (2004) is phrased differently from the M’Naghten’s Rules that allows a defence of insanity if the accused did not know that what he did was ‘wrong’. In **R. v. Windle (1952)** in England, the Court of Criminal Appeal held that ‘wrong’ means ‘contrary to law’ and so held an accused liable for killing his wife since he knew the law forbade him to do so but he did it believing his action to be morally right. However, an Australian High Court took a different view in the case of **Stapleton v. R (1952)** and held that the correct test for ‘wrong’ is whether the accused could differentiate good from evil and not merely if he could distinguish legality and illegality. It also posited that in most cases if an insane man knows that an act is illegal, he will also know that it is wrong. But instances may arise where ‘the insane motives of the accused arise from complete incapacity to reason as to what is right or wrong (his insane judgment treating the act as one of inexorable obligation or inescapable necessity) he may yet at the back of his mind have an awareness that the act he proposes to do is punishable by law’. In such cases, the court held that a defence should be available

In view of the seemingly conflicting positions, Nigerian law seems to follow the Stapleton’s position because it clearly envisages ‘wrong’ as meaning the ability to differentiate good from evil and not legality from illegality (Okonkwo, 2005). Section 229 of the Criminal Procedure Act (2004) provides that ‘*whenever any person is acquitted by virtue of the said Section 28 or 29 (2) (b) of the Criminal Code, the verdict of the court before which the trial has been held... shall state specifically whether he committed the act alleged or not*’. Neither sections 28 nor 29 (2) (b) envisages an acquittal by reason of insanity for an act done knowing it to be ‘contrary to law’. Besides, knowledge of good and evil is more consonant with medical knowledge. Furthermore, Section 51 of the Penal Code (2004) states that ‘*Nothing is an offence which is done by a person who, at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law*’. This Act clearly envisages ‘wrong’ as meaning something different from ‘contrary to law’

V. Discussion

Insanity plea in Nigeria seems to rely exclusively in the M’Naghten Rule when many jurisdictions, including Britain that propounded it, had long replaced it. This seems to work great hardship on the Nigerian society as most judges seem to apply it blindly without recourse to the peculiarities of each case. This has led to the conviction of some accused persons who really lacked capacity at the time of committing the offence.

Furthermore, it seems that most people who commit crimes do so with full knowledge of their acts but once arrested, they plead insanity to evade justice. This culminates in a great difficulty in delineating between the ‘culpable and the non-culpable’ by Judges. Accordingly, insanity plea tends to fail in convicting offenders and thereby letting them go free and continue to perpetrate more havoc in the Nigerian society.

Moreover, there seems to be no uniformity in the Nigerian law regarding criminal liability and insanity plea. In the first instance, the Criminal Code uses the terms ‘sanity’, ‘insanity’ and ‘insane’ in appropriate cases (sections 27, 28, 29 (2) (b) while the Penal Code does not use any of such terms but rather uses ‘unsound mind’ for insane cases (section 51). Similarly, the corresponding Criminal Procedure Act (CCA)(2004) for the Criminal Code Act (2004) and the Criminal Procedure Code (2004) for the Penal Code Act (2004) use ‘unsound mind’ generally (Part 25 of C.C.A. and Chapter XXVI of the C.C.C. It is only Section 229 of the C.C.A. that uses ‘insanity’ – Acquittal on ground of insanity (including insanity resulting from intoxication). It seems the four Acts adopt the two terms – unsound mind and insanity- simultaneously.

Furthermore, Section 28 of the Criminal Code Act provides for the defense of uncontrollable impulse in appropriate circumstances while such is alien to the Penal Code Act.

Also, Nigerian law seems not to recognize the defences of diminished responsibility/capacity and automatism, both in principle and in practice, and these are valid defences rooted in the concept of mental illness and provided for in other jurisdictions, including England where our laws were derived.

Furthermore, Section 27 of the Criminal Code presumes everyone to be sane until the contrary is proved while Section 43 of the Penal Code presumes everyone to have knowledge of any material fact if such fact is of common knowledge until the contrary is proved. In essence, sanity and common knowledge are two different legal phenomena that Nigerian law seems to project as precursors to criminal liability and insanity plea.

Also, while Section 29 (1) of the Criminal Code clearly states that intoxication shall not constitute a defence to any criminal charge, Section 44 of the Penal Code provides that an intoxicated person is presumed to have the same knowledge as he would have had if not intoxicated. However, the two Acts provide for the defence of intoxication (Section 29 (2) (b) of the C. C. A. and Section 52 of the P. C. A.) but the latter only provides for involuntary intoxication and is silent on the effects of a successful plea. The former provides for intoxication by reason of malicious or negligent acts of another person and due to insanity and also provides for the effects of a successful plea where Sections 229 and 230 of the Criminal Procedure Act shall apply in appropriate cases. These relate to the verdict on acquittal and on the safe custody of the .acquitted person

Furthermore, Nigerian law seems to be punitive in its outlook towards insanity plea rather than rehabilitative. None of the afore-mentioned four Acts envisage or contemplate or use the terms 'treatment' or 'rehabilitation' with regard to the fate of an accused incapable of making a defence by reason of insanity or unsound mind or for an accused or prisoner or an acquitted person by reason of insanity or unsound mind. The law rather prescribes that such persons should be sent to or confined in a lunatic asylum or prison or such suitable place of safe custody as the court thinks fit. The essence of sending the person there is for safe custody or for observation and not for treatment or rehabilitation. Persons incapable of making a defence are confined in such a place until a medical officer certifies them fit to make a defence and they are taken to court and return there until the case is decided. For those acquitted by reason of insanity or unsound mind, both the C.P.A. and C.P.C. mandate the judge to state if the acquittee committed the alleged offence or not. If the person committed the offence, he shall be acquitted by reason of insanity and ordered for safe custody in any of the above-stated places and report same 'for the order of the Governor' (Sections 230 (1) of the C.P.A. and 322 (1) of the C.P.C. And the Governor may order such person to be confined in a lunatic asylum, prison or other place of safe custody during the pleasure of the Governor (S. 230 (2) of C.P.A. and S. 327 (2) of C. P.C.).

In effect, the person so confined is not there for a fixed term and even where he recovers from his mental illness and is certified by a medical officer to be mentally fit; his release from the safe custody is not automatic but depends on the discretion of the Governor (sections 223 of the C.P.A. and 322 of the C.P.C.).

Abiama (2008) had advocated that a legally insane person should be sent to a psychiatric hospital for treatment and posed mind-burbling questions including: How long should the person spend in a mental hospital? Should the person be released as soon as he or she recovers? Or should the person be incarcerated in the mental hospital to complete the expected prison term for the offence? What happens to the rehabilitation of the patient following recovery? Is the mental hospital adequately equipped to rehabilitate the patient to resume life once more in the society? Abiama (2008) then advocated a parley between the psychiatric hospital and the prison.

Moreover, there seems to be a lacuna in the provision of appropriate punishment for a legal, medical or other mental health officer or any other person who intentionally falsifies or doctors evidence or report to aid an accused person to outwit justice under the cloak of mental illness and/ or insanity plea. Nigerian law should be amended by providing appropriate prison terms without option for fine for anyone that aids a law breaker to evade justice via doctoring psychiatric reports or using any other illegal means. This will serve as a deterrent to others

VI. Recommendations

From the foregoing, the following are recommended:

Both the Criminal Code Act and the Penal Code Act should be harmonized to reflect similar line of thought and legal phenomenon. Similarly, both the Criminal Procedure Act and the Criminal Procedure Code should be harmonized to reflect similar line of thought and legal phenomenon

The defence of diminished responsibility/capacity should be introduced into the Nigerian criminal law to cure manifest injustice many accused persons are exposed to in the criminal justice system.

Furthermore, there should be a harmonization of Section 27 of the Criminal Code Act, regarding the presumption of sanity until the contrary is proved and Section 43 of the Penal Code Act, regarding the presumption of common knowledge until the contrary is proved. Sanity and common knowledge are two different legal phenomena and Nigerian law should not project them in the same limelight as precursors to criminal liability and insanity or plea.

Similarly, Section 29 (1) of the Criminal Code Act and Section 44 of the Penal Code Act should be harmonized to reflect the non-availability of intoxication as a defence to criminal liability.

Furthermore, Sections 230 of the Criminal Procedure Act and Section 236 of the Criminal Procedure Code should be amended to reflect that the judge should spell out safe custody, treatment and rehabilitation of the acquittee in the verdict and send the acquittee to an appropriate mental health facility such as a Psychiatric Hospital or Mental Health Ward of a Teaching Hospital for appropriate safe custody, treatment and rehabilitation and not to a lunatic asylum or prison as is presently the case. The punishment oriented criminal justice system should be changed when mental illness is the root cause of the alleged offence committed by the accused.

Similarly, Sections 233 of the Criminal Procedure Act and 327 of the Criminal Procedure Code should be amended to include a fixed term for the release of persons confined in safe custody by reason of insanity or unsoundness of mind. The Acts should indicate that once two medical officers on independent observation and assessment certify that the acquittee has successfully recovered from mental illness and is no longer a danger to himself, others and the society, the Governor should be notified and he should be released accordingly. Such release should no longer be based on the whims and caprices of the Governor.

Moreover, Section 52 of the Penal Code Act should be amended to cover all arms of intoxication such as that by reason of malicious or negligent acts of another person and that due to unsound mind and also

provides for the effects of a successful plea where Sections 326 and 327 of the Criminal Procedure Code shall apply in appropriate cases. These relate to the verdict on acquittal and on the safe custody of the acquitted person

Meanwhile, there should be a provision of appropriate punishment for a legal, medical or other mental health officer or any other person who intentionally falsifies or doctors evidence to aid an accused person to outwit justice under the cloak of mental illness and/ or insanity plea.

Moreover, there should be a parley between the mental health facility and the prison such that after acquitted persons are successfully treated and recovers from mental illness in the psychiatric hospital, he should be sent to the prison for rehabilitation and not for punishment. Rehabilitation should be clearly stated in the court's judgment so that he is not seen in the prison as a convict but as a recovered mental patient undergoing rehabilitation for reintegration into the mainstream of the society (Abiama, 2008).

VII. Conclusion

Mental illness, insanity and insanity plea are concepts that are inextricably linked and one lead to the other. Mental illness is the basis of insanity and insanity plea is the basis for exculpation from criminal liability and is rooted in the concept of mental illness.

Nigerian law via the Criminal Code Act and Penal Code Act and the Criminal Procedure Act and Criminal Procedure Code, seems to provide different position to seemingly similar legal phenomena. The harmonization of Nigerian law vis-à-vis mental illness and criminal liability is imperative. The law should be amended to incorporate treatment and rehabilitation in the verdict of the court that the acquittee was found legally insane and exculpable from criminal liability. Furthermore, the law should indicate a fixed term for the release of an acquittee – once two independent medical assessors certify him psychologically and mentally fit and not based on the whims and caprices of the Governor. Also, Nigerian law should spell out appropriate sanctions for medical, legal, judicial officers or any other person who falsifies or doctors report or evidence in order to enable a criminal outwit justice under the cloak of mental illness / insanity or unsound mind.

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