PROOF OF INSANITY BY MEDICAL EVIDENCE IN NIGERIA – A CRITIQUE

BY

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ABSTRACT

This paper is on proof of insanity by medical evidence –a critique. The plea expresses the principle that one who has lost his reason should not be criminally condemned. Legal insanity is not the same as medical insanity. Legal insanity is based on statutes and court decisions. Accused must offer proof to show that when they committed the crime, they were legally insane. Some jurisdictions allow an accused to show proof of a mental defect by an expert witness, and lay witnesses. The paper utilizes secondary data such as textbooks, journals, case laws, and statutes etc. The paper addresses the definition of insanity, history of insanity, background, origin of the laws of insanity in Nigeria, insanity under the Nigerian law, medical proof of insanity, the courts interpretation and scope of defence of insanity in Nigeria, mental infirmity and disorder and so on.

The findings from this paper are that: a person may be mentally psychotic when the crime is committed but still be unable to discharge his onus of proving legal insanity. A person who is suffering from insanity should not be criminally responsible for his actions or inactions. In

Nigeria, the extent to which this defence may hold is uncertain. Judges are not readily moved by such defence neither is the society. From the legal position , if a person has the capacity to plan a crime, and document step by step what they are going to do, then they can't be insane. If a person is delusional they cannot appreciate how their behaviour impact negatively on others or themselves. It was recommended that the various laws should be reformed in line with international best practices. We need to return to a humane interpretation of legal insanity by paying attention to the severity of the emotional disturbance of the person committing the disturbed act.

INTRODUCTION

There are two principles that may be said to underlie the general exceptions to criminal responsibility. Firstly, the circumstances surrounding the commission of the act may amount to a legal justification for its commission. Secondly, the circumstances may be incompatible with the existence of mens rea. The plea of insanity falls within the latter category. The plea expresses the principle that one who has lost his "reason" should not be criminally condemned.

Legal insanity is not the same as medical insanity. Legal insanity is based on statutes and court decisions, known as common law. Defendants must offer proof to show that at the time they committed the crime, they were legally insane. Most jurisdictions allow a defendant to offer proof of a mental disease or defect through an expert witness, and in some jurisdictions through lay witnesses. Moreover, the United States Supreme Court requires governments to provide indigent defendants with competent psychiatrists when they intend to raise the insanity defense at trial. Some states, however, limit the testimony that can be provided by experts, as in the following Tennessee statute: "No expert witness may testify as to whether the defendant was or was not insane . . . . Such ultimate issue is a matter for the trier of fact alone."[1]

Thus, a person may be mentally psychotic at the time the crime is committed, but still be unable to carry his or her burden of proving the legal definition of insanity, such as the case of Jeffrey Dahmer. A Wisconsin jury convicted Mr. Dahmer, a sexually motivated serial killer of young boys, who was also involved in cannibalism, despite his plea of legal insanity.vi Finally, a plea of not guilty by reason of insanity should not be confused with a claim that a person is not

[1] Section 39-11-501(c) of Tennessee Code

competent to stand trial or be executed. Both are based on an offender's mental state, but only insanity is a defense to a crime.

DEFINITION OF INSANITY

The definition of insanity is very nebulous, fluid and incapable of precise definition. However, different academic writers, jurists and statute laws define insanity differently. For instance, **The *Black`s Law Dictionary***10 described insanity as:

> Any mental disorder severe enough that it prevents a person from having legal capacity and excuses the person from criminal or civil responsibility.

The same *Black's Law Dictionary* further defines insanity as:

> A social and legal term rather than a medical one used to denote that degree of mental illness which negates the individual's legal responsibility or capacity11.

The *New International Webster's Comprehensive Dictionary of the English language**12*** defines insanity as:

> Any mental disorder characterized by temporary or permanent irrational or violent deviations from normal thinking, feeling, and behavior: not a technical term in medicine or psychiatry.

The same *New International Webster's Comprehensive Dictionary of the English language* defines insanity as:

> Any degree of mental unsoundness resulting in inability to distinguish between right and wrong, to control the will, foresee the consequences of an act, make a valid contract, or manage one`s own affairs, or lack of sound sense; extreme folly,[2]

While ***Oxford Advanced Learners Dictionary*** defines insanity as:

[2] Funk and Wagnalls, The New International Webster's Comprehensive Dictionary (2010 Edn, Typhoon Media Corporation: United State of America.). 655.

> The state of being insane or action that is very stupid and possibly dangerous.[3]

Statutorily, in the southern part of Nigeria, *Section 28 of The Criminal Code*,[4] which is the main provision for insanity defines insanity on the basis of the criminal responsibility of the accused person as follows:

> 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. A person whose mind, at the time of his doing or omitting to do an act, is affected by delusions on some specific matter or matters, but who is not otherwise entitled to the benefit of the foregoing 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,

While *Section 51 of The Penal Code*,[5] defines insanity on the basis of the act of the accused as follows:

> 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.

In England, The English Mental Deficiency Act,[6] currently replaced by the Mental Health Act 1959 defines 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

[3] Honby, A., Oxford Advanced Learners Dictionary (6th Edn. Oxford University Press), 618
[4] Cap. C38 Laws of the Federation, 2004
[5] Penal Code
[6] 1913-1938

induced by diseases or injury. In explaining what insanity is all about, Lord Denning in the English case of Brathy v. A.G. for Northern Ireland[7] stated inter alia as follows:

> A disease of the mind as any disorder that has manifested itself in violence and is prone to reoccur at any rate is a sort of disease for which a person should be detained in hospital, rather than being given an unqualified acquittal by the court.

Commenting on a similar concept, His Lordship Justice Verity CJ (as he then was) of the WACA in *R. v. Omoni*,[8] defined insanity as:

> A defect in mental power neither produced by his own default nor the result of disease of mind.

On our part, we define insanity as "a defect of reasoning in a person due to natural infirmity or mental disease depriving him of the capacity to know what he is doing whether it is right or wrong".

In the light of the foregoing definitions of insanity or mental health disease by scholars and eminent jurists, it is clear that the State of mental health of a person at the time of committing the offence is relevant and vital in determining whether the defence will be available to him or not.

HISTORY OF INSANITY

Modern insanity defenses derived from the case of Daniel M'Naghten of Glasgow, Scotland, who was one of the first people on record to successfully use the defense. The *M'Naghtenvii* decision was handed down in 1843 under the English common law system – the basis for most of the early laws in the United States. Before the *M'Naghten* ruling, there is some evidence that as early as 1581 English kings were willing to forego execution of those deemed "mad," and by the 18th century some courts in England were allowing the so-called "wild beast" test (PBS. *From M'Naghten*). From these early beginnings, common law decisions and federal

[7] (1961)
[8] (1949)

and state statutory definitions of legal insanity resulted in several variations of the insanity defense in the United States.

The *M'Naghten* rule predominated in about two-thirds of the states until the middle of the 20th century. Other early variations included the irresistible impulse test adopted by about one-third of the jurisdictions, and what has become known as the *Durham* test adopted in New Hampshire in 1871. The Model Penal Code was completed in 1962 and by 1980 about half of the state and federal jurisdictions had adopted its "substantial capacity" definition of the insanity defense. However, when John Hinckley was found not guilty by reason of insanity in 1982, after his attempted assassination of President Reagan, the public was outraged, and in 1984 the federal Insanity Defense Reform Act was passed and many jurisdictions reformed their insanity defense and returned to a stricter *M'Naghten*-type standard.

Today, a few jurisdictions view the insanity defense as no longer viable, because it does nothing to treat an offender's mental illness. In a handful of states, the legislative bodies have repealed the insanity defense. In addition, a number of states have adopted a new verdict of "guilty but mentally ill or insane." This new verdict fulfills two purposes: – those who are convicted of their crimes must still pay their debt to society, but these offenders are supposed to receive treatment for their mental illness.

Since its inception, the insanity defense has been heavily criticized, despite the fact that studies show it is used in only about 1% of all cases with a success rate of approximately 25%. Even with the small number of cases in which the insanity defense is invoked, some of them are celebrated cases of violent and heinous crimes that receive substantial media attention, thus making it appear as though the insanity defense is used quite often. However, the reality is that the insanity defense is claimed in cases involving serious, as well as nonviolent crimes, although the public is not likely to hear about the less serious offenses.

The lack of public support for the insanity defense is based on a sense that people with mental problems can get away without punishment for their crimes. Moreover, persons who are found not guilty by reason of insanity may still be a danger to society and should not be permitted to roam free simply because of their verdict. Furthermore, critics argue, allowing

offenders to plead insanity or even fake insanity weakens any deterrent effect that punishment might have on the behavior of potential offenders.[9]

BACKGROUND: ORIGIN OF THE LAW ON INSANITY IN NIGERIA

Like most of its laws, Nigeria inherited the Law on Insanity from its colonial masters in England, and later legislated on it and have it enshrined in the Criminal Code (which is alleged to have been copied from India Code)contained in the Laws of The Federation of Nigeria, 1990 (now 2004). The Source of this Law arose from its acceptance of Common Law. The Common Law includes judicial cases decided then in England.

The test for determining the degree of mental disorder as a defence against criminal responsibility was first propounded as a rule in the famous M'Naghten's Case. There, the House of Lords held that:

Everyone is presumed sane until the contrary is proved.

That it is a Defence for the Accused to show that he was labouring under such a defect of reason due to disease of the mind so as either Not to know the nature and quality of his act or

If he knew the nature and quality of his act, he didn't know what he was doing wrong.

Also it was held that if a man commits a criminal act under an insane delusion, he is under the same degree of responsibility as he would have been on the facts as he imagined them to be.

The above findings according to Okonkwo, the M'Naghten rules were formulated in the belief that responsibility is the essence of the Criminal Law and that capacity to choose between right and wrong is the essence of responsibility.

However, the above rules met a lot of criticism as many writers, jurists, and psychologists questioned parochial treatment of the Defence. As a result in 1953, The Royal Commission on Capital Punishment declared the rules to be defective and inadequate. Recommendations were therefore made to enlarge the defence to include persons who know the unlawfulness of an act but by reason of his mental disease or deficiency are incapable of preventing themselves from

[9] Carol A. Rolf, From M'Naghten to Yates – Transformation of the Insanity Defense in the United States – Is it still Viable, available at

committing such an unlawful act. Such a victim however is guilty of manslaughter (a lesser offence which does not warrant the death penalty but life imprisonment).

However, in U.S, psychiatric views dominated and led to a test propounded in the case of Durham V. U.S where the test was modified to be – *an accused person is not criminally responsible if his unlawful act was the product of mental disease or mental defect.*

The above rule itself brought its problem, in that it was difficult to practically ascertain mental disease or defect and its products. Thus much was left on the arms and caprice of psychiatric experts who by no means agreed amongst themselves. In fact, Judge Burger noted in Blocker V. U.S:

These factors I think demonstrate that a term such as disease which has no fixed, agreed or accepted definition in the discipline which is called upon to supply expert testimony and which as we have seen is usually subject to change without notice, is a tenuous and indeed dangerously vague term to be a critical part of a rule of law on criminal responsibility[2]

Indeed in that case, the sociopathic tendencies have been argued to fall amongst mental disorder. And many more tendencies like "psychosis', 'schizophrenia', etc can as well be argued. The dangers of such unsteady paradigm, perhaps, plunged in fear into the Judges and in an attempt to resist the dangers that could flow from them, the Judges had to focus only on facts and evidence as a checkmate to expert testimonies.

The Nigerian Legislature in her Criminal Code has the Defence enshrined in Section 28. The Nigerian Law states that a person is not criminally responsible for an offence if at the time he committed the offence, he was in a state of mental disease or of natural mental infirmity such as to deprive him :

Of his capacity to understand what he was doing; or

Of his capacity to know that he ought not to so do the act or make the omission; or

Of his capacity to control his actions.

From the foregoing, it is obvious that the Defence compliments the general defence in Section 24 which says a person is not criminally responsible for an act or omission which

occurred independently of his will. Thus the Nigerian Courts would have to first see or explain the definition of mental disease or natural mental infirmity, after which it must proceed to find out whether or not the said victim fall under any of the capacities above. As a result of inevitable nature of peculiar facts in peculiar circumstances, we shall see that the various altitude of the Court on the subject matter.

INSANITY UNDER THE NIGERIAN LAW

Nigerian law presumes every person to be sane until the contrary is proved. This assertion is contained under Sections 27 and 43 of the criminal and Penal Codes respectively.[10] Since the two codes serve the Nigerian criminal justice system, we shall discuss them separately.

The Criminal Code Provision

The relevant provisions of insanity in the Criminal Code are contained in Sections 27 and 28. Section 27 of the Act states the obvious, and is meant to be a prelude to the defence of insanity in the following words:

> 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 28 of the Criminal Code which is the main provision on insanity stipulates as follows:

> 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. A person whose mind, at the time of his doing or omitting to do an act, is affected by delusions on some

[10] Cap. C38 Laws of the Federation of Nigeria, 2004 and Cap. P.14, LFN, 2004

> specific matter or matters, but who is not otherwise entitled to the benefit of the foregoing 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.

It is obvious from the above passage that Section 28 of the Criminal Code provides for the defence of insanity if at the time of doing the act or omission a person is in such a state of mental disease or natural mental infirmity[11] as to deprive him of his 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.[12]

MEDICAL PROOF OF INSANITY

There is fluidity in the term unsoundness of mind so there are more chances of abuse and it also hampered the dialogue between medical and legal discipline.[13] As we know that unsoundness of mind is variable and broad term so mere considering the unsoundness of mind equivalent to insanity is not adequate. In other word we can say that there is no medical equivalent term for unsoundness of mind. Various conditions like depression, bipolar disorder, post partum psychosis, obsession & compulsive disorders may lead to subnormal control over the act done by a person. In majority of cases crime happened as a result of fit of anger, mental instability and impulse. In which person may realize that he has done wrong after committing the act. In Indian scenario if we take an example of a depressed person we know that he may kill his dependent relatives like wife and children before the act of suicide. And if he is caught before committing the suicide or unable commit suicide, then he can't plead under section 84 because he knows the nature as well as legal status of his act. In above scenario there is a possibility that person was suffering from nilhistic or cotard delusion at the time of crime but unable to get defence as this will be decided on the basis of how he explains the crime at the time of counseling. So pre act situation is also not well considered in this McNaghten rule. Similarly a mutilomaniac well knows that what he is doing is wrong, but still he can't control himself from

[11] The expression "natural mental infirmity" means a defect in mental power neither produced by his-own default nor the result of disease of the mind. See the Queen v. Michael Tabigen(1960) 1 NSCC 6 S.C.
[12] Ezediufu v. The State (2001)17 NWLR (Pt.741) 82
[13] . Freeman M, Pathare S. WHO Resource Book on Mental Health, Human Right and Legislation. 2005; 23.

mutilating a man because of lack of control over his act. By McNaghten rule, he is guilty. But actually he should not be.[14]

Similarly a mother after delivery may have an overt presentation of bipolar disorder that is timed to coincide with tremendous hormonal shifts after delivery[15] and during this phase if she kills her child the he will also be punished in Indian law. In all these cases cognitive functions may be normal but there is surely a defect in areas of will and emotion, which might affect his working to such an extent that he might lose control over his actions. So these people have medical proof of insanity but their insanity is not legally considered. It is a question of utmost important that when a person is medically unfit then how anyone can assume them legally fit. Some other important questions are capacity of a person to overcome his aggression and how he/she dealt with a situation is beyond easy understanding because they lie buried in his sub conscious mind into which no expert can enter. So there is a greater need of wider concepts like emotions, pre act situations and individual mental capacity of a person etc. On one hand since 1843, law makers of around the world has realized about flaws present in McNaghten rule so many attempt had been done to overcome these shortcomings. Many test like irresistible impulse test, Durham's rule, Currents rule are developed but failed due to their own shortcomings and extreme diversion from McNaghten rule. Several states of United States has adopted American law institute test, which included volitional aspect but removed many shortcoming of its predecessor.[16]

In some countries like India, they didn't do much in this area since incorporation McNaghten rule in their constitution. In country like India, a non medical person decides that what kind of insanity is benefitted under section 84. Even in United Kingdom several changes have been done since incorporation of McNaghten Rule. According to recent discussion paper of the Law Commission on law reform, they recommend to abolish the common law defence of insanity and replace it with a statutory defence of "not criminally responsible by reason of recognized medical condition". This defence would be available where a person totally lacked

[14] Anil aggrawal. Textbook of Forensic Medicine and Toxicology. 1st edn. India: APC. 2015; 501.
[15] Sit D, Rothschild AJ, Wisner KL. A Review of Postpartum Psychosis. Journal of women's health (2002). 2006; 15: 352-368.
[16] Lockey CJ, Bloom JD. The evolution of the american law institute test for insanity in Oregon: focus on diagnosis. J Am Acad Psychiatry Law. 2007; 35: 325-329.

capacities to make a judgment rationally, to understand that they are doing something wrong and to control their actions [8].

Despite a lot of criticism and long battle between medical and legal proof of insanity, there are some points which favours legal proof of insanity over its rival. As we can see in past when we diverted towards medical proof of insanity, there was very much dependency over psychiatrist and there was sharp increase in percentage of trials pleading mental disease or defect as defence. At that time it was said that psychiatrists were given a blank check, while not leaving much in hand of judge or jury.[17] So equation should be balanced like recent law reform in United Kingdom, where they abolished the requirement of evidence from two medical practitioners, one of whom must be a psychiatrist, to support a defence of insanity. They propose to retain the requirement for two experts, but only one of them need be a medical practitioner. Another concept is public anger related to acquittal of criminals on the ground of insanity. If we accept the medical proof of insanity over legal proof then obviously there is an increase number acquittal and which may lead to increase public anger towards judiciary. Knowledge and awareness toward civil and criminal responsibilities of an insane person is the best way to deal with the outrage of public in this kind of situation also in some cases, Doctrine of diminished responsibility y is better way against complete acquittal to control public anger

THE COURTS INTERPRETATION AND SCOPE OF THE DEFENCE OF INSANITY IN NIGERIA

1 Mental Disease and Natural Mental Infirmity

Now the Nigerian Court in R v. Omoni,[18] affirmed that the Nigerian Legislation went a bit further unlike the M'Naghten Rule and other countries. The Court took the definition that *it is a defect in mental power neither produced by its own default nor the result of disease of the mind.* The Federal Supreme Court in R. v. Tabigen,[19] reduced the power of the definition when it said that whatever 'a defect in mental power' may connote, it doesn't mean inability to master the passions. That is, the fact that the accused was in a strong passion may be relevant only when it has been proven that he had mental disease or natural mental infirmity.

[17] Anil aggrawal. Textbook of Forensic Medicine and Toxicology. 1st edn. India: APC. 2015; 501
[18] (1949) 12 W.A.C.A 511
[19] (1960) 5 F.S.C 8

The above with respect is a mere tautology. First a definition was given by showing the practical example of it. Then the Supreme Court said the definition is nothing until the definition is shown. How is it shown if not by the example? In fact, Brett F.J advanced that the guidance for a definition should be sought from the English Mental deficiency Acts of 1913 to 1938, where mental defectiveness was defined as *–a condition of arrested or incomplete development of mind existing before the age of eighteen years, whether arising from inherent causes or induced by disease or injury.*

Already I assume you may be asking, what if it occurs after 18 years of age? Or can't it occur after 18 years of age? Or does such definition in archaic time still stand the test of today? How do we ascertain when it is inherent or induced? Does the Court have the technological machine to so find? Are we still going to need the assistance of the psychiatric testimony even though they don't always agree? Indeed this is a huge problem in the Nigerian jurisprudence and perhaps everywhere.

The General Rule always used by the court in boycotting the excesses of this defence is to ascertain from the facts whether the acclaimed insanity was self-induced. This was followed in R. V. Omoni. Also in R. V. Alice Eriyamremu,[20] the accused person killed her albino daughter and said it was the dictates of her confederacy in witchcraft. Morgan J held that even if she was overwhelmed with mental infirmity at the time she killed the girl, the fact remains that the infirmity was not 'natural' but was rather induced from her worship of juju.

But my problem with the self-inducement yardstick is – are all self-inducement actions unlawful? If the answer is no, which it is, then why punish a man over an act which was lawful or not stated to be unlawful when he cannot be punished for the subsequent act as a result of his mental state?

Again, if the material time of the offence is at the time the offence was committed, which is so, then why drag into view an immaterial time when the lawful victim induced himself over acts which may not be criminal nor the said offence contemplated? Surely, there is no neither should there be punishment without Law!

2 Lack Of Capacity To Understand What He Is Doing

[20] (1959) W.R.N.L.R. 270

Now having established whether there was a mental disease or natural mental infirmity, the Court would then proceed to see if there is any evidence that the accused person lacked the capacity to understand what he was doing. This means that the disease is not merely enough. Unfortunately, the Nigerian Court has not given strong attention on this requirement. But as noted by Prof. Okonkwo, the term 'understand' surely connotes more meaning than 'know'. Thus a person may know that he is stabbing his mother, but may not understand what he was actually doing i.e that she will die.

3 Lack of Capacity to Know That He Ought Not To Do the Act or Make the Omission

Apart from 2.2 above, an insane person may plead under this ambit. Now the question is - Can a man under mental insanity still know what he ought to and not to do? If yes, then it would seem only fair that the Court altitude to convict such accused person is fair. But if no, then the defence saves the victim and it is an exception to the rule that ignorance of the law is not a defence. This is because the victim's ignorance was due to mental disorder as defined by the code. This explains the reason why if upon arraignment an accused person is silent when the charge is read, the court will ascertain the reason behind the silence by examining the accused, so that if he is found to be insane, he will be remanded to the psychiatric hospitals and at the pleasure of the Governor.

4 Lack Of Capacity To Control His Actions

This is the major point of confusion and controversies. And most insanity defences always comes through this ambit. Thus an irresistible or uncontrollable impulse may fall in here as remarked by the Court in Omoni's case. It would seem that medical evidence here cannot be dispensed with. For instance, the court rejected Omoni's defence because all that could be shown for it was his word. But the court accepted the defence in Echem V. R (1952) 14 W.A.C.A 158 because medical evidence was produced along.

The attitude of the Court in these cases is still the same now despite the need for a better or holistic analysis of mental diseases and mental infirmities.

Non-Insane Delusions

It is important to note that apart from the provisions above, the second paragraph of Section 28 provides for non-insane delusions where defences like paranoia etc may fall. But in such a defence, the accused must show that he was at the time of the offence, affected by delusions on some specific matter(s), but still he will be liable to the same extent as if the facts which he believed to be true were actually true. For instance, in Iwuanyanwu v. R,[21] the accused suffered from delusions which induced him to believe that the deceased will send evil spirit to kill his wife, so before that could happen, he waylaid the deceased and killed him. He was still held liable as he was taken up on his own deluded facts, and found to have still killed willingly.

Now we have seen the legal stand on the issue, which tends to always limit the meaning of mental disease and natural mental infirmity and tie it up to responsibility, either this approach is inimical or not, we shall proceed to evaluate them in the light of present and widely accepted psychological findings on same subject matter.

MENTAL INFIRMITY AND DISORDER: A MODERN PSYCHOLOGICAL EVALUATION

In the legal process, while the Lawyer's basic responsibility is to speak for justice based on the tenets of the law, the Psychologist is interested in cognitive and behavioural explanations to the actions of persons involved in any case presented before a court of law. Again, while the Lawyer is faced with the duty of discharging, acquitting and sentencing the guilty and the not guilty, the Psychologist has the role of finding out if there is a question of mental disorder behind every criminal or delinquent act, and working towards behaviour modifications for such accused persons who have been charged with acts committed under the confines of insanity.

To prevent any form of abuse of the "Not Guilty By Reason Of Insanity" defence, the legal definition of insanity is not all-embracing of the many facets of psychological disorders. In the DSM-5 which classifies mental illnesses, there is no such diagnosis as "insane" or "insanity". However, it describes the term "mental disorder" thus:

[21] (1964) 1 ALL N.L.R 413

"A mental disorder is a syndrome characterized by clinically significant disturbance in an individual's cognition, emotion regulation, or behaviour that reflects a dysfunction in the psychological, biological, or developmental processes underlying mental functioning. Mental disorders are usually associated with significant distress in social, occupational, or other important activities. An expectable or culturally approved response to a common stressor or loss, such as the death of a loved one, is not a mental disorder. Socially deviant behaviour (e.g., political, religious, or sexual) and conflicts that are primarily between the individual and society are not mental disorders unless the deviance or conflict results from a dysfunction in the individual, as described above."

In the legal process, “insanity” is seen as “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 behavior. Insanity is distinguished from low intelligence or mental deficiency due to age or injury”.

Legal psychology refers to any application of psychological principles, methods or understanding to legal questions or issues. In addition to the applied practices, legal psychology also includes academic or empirical research on topics involving the relationship of law to human mental processes and behaviour. It is interesting to note the inherent differences that arise when placing psychology in the legal context. Psychology rarely makes absolute statements. Instead, psychologists traffic in the terms like level of confidence, percentages, and significance. Legal matters, on the other hand, look for absolutes: guilty or not guilty.

To the public at large to be insane might imply that you do ‘crazy things,’ that you are irrational and out of control, possibly threatening to yourself and others, prone to spontaneous and senseless acts which may be unpredictable. All of these descriptors may be true and most assuredly do apply to certain individuals who are severely mentally ill. These are the types of people we need to watch and monitor carefully, and at times even need to hospitalize for their protection and the protection of the public. However, while these people may be diagnosed as severely mentally ill and we might call them insane, from a legal standpoint the courts seldom call these types of people insane. The legal and mental health concepts of insanity differ notably, and in court only the legal definition of insanity will have a significant impact on the nature of sentencing.

In court you may be diagnosed by mental health professionals as schizophrenic and do irrational things, but from a legal standpoint if it is determined that you are capable of knowing right from wrong and you can "appreciate" the nature of your crime which may indeed have been guided by or encouraged by your emotional disorder, you are not from a legal standpoint insane. Now one may ask the question, if someone commits a completely crazy and inexplicable act like arbitrarily shooting someone as you walk down the street, can this person understand right from wrong. In the eyes of the court, at least in the United States, they would say yes.

The courts current definition of insanity allows for one to do a completely "crazy" thing but claim you knew it was wrong but you did it anyway. From the court's perspective it does not matter that your act may have been encouraged by a delusional process, a force seemingly beyond your control, as long as it can be determined that you knew it was wrong. However, this logic begs the question of, if your actions are controlled or encouraged by forces, feelings or bizarre misperceptions beyond your control, how can you be held accountable for the rightness or wrongness of the act. If you are 'out of your mind' it would seem that the moral and social rightness or wrongness of your behaviour would also be beyond your ability to "appreciate."

As one might suspect, at least part of the reason that the court system has both simplified the legal definition of insanity, while making it more difficult to prove in court is to discourage over-application of this insanity defence. The courts, the government and the more ultra-conservative elements in our country don't want criminals who commit heinous crimes to get off too easy. However, an individual who does successfully apply the not guilty by reason of insanity (NGRI) defence in court, isn't simply dismissed, they are mandated to a mental institution often for life, or until the doctors feel they are safe to re-enter society. In some jurisdictions they may actually then be sentenced to prison if they are sane enough now to appreciate their crime. Certainly, though, being found NGRI isn't really a soft touch. The catch is, though, it has become extremely difficult to apply or utilize the insanity defence, as from the court's standpoint it is too simple to demonstrate that you knew right from wrong. From the standpoint of many social psychological theorists and mental health professionals it is also believed that we all know right from wrong from a very early age on whether we exercise the option of doing right or not.

As a consequence of the increasing difficulty in applying the NGRI defence many of the most heinous crimes over the past several years have failed to successfully utilize this defence. In fact, one of the last successful major applications of the defence involved John Hinckley and his attempted assassination of Ronald Regan in 1981. In fact, it was as a result of the successful application of the defence, the 'rules of engagement' so to speak were changed reducing the criteria for NGRI to 'appreciation' of the crime committed and the individual's inherent understanding of right and wrong.

According to the viewpoint of psychology, based on the various classifications of mental disorders and their symptoms, a person who has earlier been diagnosed or has just received a diagnosis, or has shown significant symptoms, cannot be held responsible for his behaviour. This is because cases of mental illnesses develop overtime. One may be "sane" today and "insane" the next day. There are also possibilities that residual symptoms may have influenced a person's actions before a mental illness is diagnosed. Again, a person who has undergone therapy and rehabilitation has possibilities of relapse even without a current diagnosis and may be influenced by residual symptoms for criminal acts.

CONCLUSION

It has been ethically, legally and socially accepted that a person who is suffering from some sort of insanity cannot and should not be criminally responsible for his actions or inactions. This is a basic Defence encapsulated in those recognised Human Right of any person. Its' propriety is so true that the said defence do not only have a universal acceptance, but same forms part of International Law. However in Nigerian Law, the extent to which this defence may hold is not certain. To compound the problems, Judges are not readily moved to be swayed by such defence neither is the society. But more problematic is the fact that the legal scholars and Jurists are greatly limited in the knowledge of the psychology behind abnormality and the behavioural altitudes that could pass the definition of insanity or mental infirmity and disorder. Hence this article does not only delve into the definition and consequences of the definition of insanity in Nigerian Law, but additionally expose the limits of such definition, and more importantly brings into light, the scientific findings of the modern psychology on that specific part of abnormality known in law as insanity, with a view of properly evaluating the defence and making a case for a review of same.

RECOMMENDATIONS.

The point here is to try and encourage the powers that be to re-examine the nature of legal and psychological insanity and try and bring them more into accord. From the legal standpoint it is assumed that if a person has the capacity to plan a crime, and document step by step what they are going to do that they can't be insane, the nature of their actions are too logical and methodical. The logic of how someone carries out their illogical acts is really the question. The fact that someone plans and is methodical in no way should imply that they are also sane. To assume that someone understands right from wrong because they plan out their criminal acts is not always the case. If an individual's heinous acts are driven by a delusional misbelief, can we assume they are sane? If a person is delusional they are not in position to appreciate how their behaviour may impact negatively on others or themselves. It is inappropriate to assume that someone is logical and can appreciate what they do if a severely disturbed thought process is driving them.

We need to return to a more common sense and humane interpretation of legal insanity by paying closer attention to the severity of the emotional disturbance of the individual committing the disturbed and illogical act. Our major goal should not be to insure that a lesser number of criminals can apply the insanity defence because their behaviour on the surface presents as logical. The behaviour and act itself is still highly illogical if it is driven by severe emotional distortions of the world which are beyond the ability of the individual to understand or control.