Notes on Mental health law

Ifeoluwayimika Bamidele.

 Mental health has become a very important area of law over the years especially in criminal matters and matters of diminished responsibility. The criminal lawyers acting as society agent is primarily concerned with the statutory controls relevant to anti social behavior while the psychiatrist is more involved in understanding and treating patterns of pathological thought, feeling and conduct deriving from mental illness and which may manifest as deviant behavior.

 Mental illness according to Black’s Law Dictionary can be defined as a disorder in thought or mood so substantial that it impairs judgment, behavior, perceptions of reality, or the ability to cope with the ordinary demands of life; It however differentiates mental disease from mental illness by defining mental disease as that which is severe enough to necessitate care and treatment for the afflicted person’s own welfare or the welfare of others in the community.

 The major issues of intersection between mental health, psychiatry and law include but not limited to [diminished responsibility in crime, mens rea], [compulsory detention and hospitalization for mentally-ill], [treatment of the mentally ill, decision making] [divorce, testamentary capacity and execution of the mentally ill]

* Section 141 (1) and (2) Evidence Act, Section 28 Criminal Code. Aigupkhian v State (2003) FWLR pt 146 822 @ 830 CA

**Mental illness in criminal law**

 It is well accepted that it is inhuman to subject a person of unsound mind to the rigours of trial as he cannot even offer any valid defence. A defendant is hence deemed is incompetent to stand trial if because of mental illness, such a defendant is unable to understand the charge or participate meaningfully in his defence. *Okotogbo v State (2004) All FWLR pt 22*

 Mens rea is the state of mind that prosecution must prove that a defendant had when committing a crime. It is the second of the two essential element of every crime at common law, the other is actus reus.

The question as to mental health is whether a criminal has the mens rea and what effect his lack of intention will have in the execution of justice.

 Where the competence of an accused person is raised, the court orders detention for the purpose of a psychiatric examination and determination of competence to plead.

The requirements of fitness to plead are.

1. The accused must be able to understand the charge.
2. The accused must be able to follow the evidence.
3. The accused must be able to consult with counsel in his own defence.

Where the accused person cannot stand trial on the basis of his mental health he is deemed “insane on arraignment” and is to be detained in custody for psychiatric treatment till he is declared fit to plead by the responsible medical officer. This becomes a big problem as he is detained indefinitely in contrast with his health rights; also he is only detained to be treated only to be re arraigned. This would not serve the interest of seeking genuine solutions to mental health problems.

 The Nigerian criminal code provides that a person is not criminally responsible for an act or omission which occurs independently of the exercise of his will. It is widely accepted that a person cannot be found guilty of a crime, if “he has not the wit to form a criminal intent”. Burden of proof of existence of insanity rests with defence. Where mental disorder is proved during trial, the court is obliged to return the verdict, “not guilty… by reason of insanity”.

 **Mental Health and Compulsory Detention**

 The WHO Mental Health Atlas, States, that anywhere from ten percent to almost twenty eight percent of Nigerian’s adult population has some form of mental illness and that one in four patients visiting a health service in Nigeria has at least one mental neurological or behavioral disorder but most of these disorders are neither diagnosed nor treated.

 The statistic shows that we have mental health challenges like every country of the world. However the question of compulsory detention across the globe is one of the very knotty issues in mental health Law.

 The Mental Health Act 2007 of the UK provides the legal basis for patient’s compulsory admission to hospital and they are

1. He is suffering from mental disorder of a nature or degree which warrants the detention of the patient in hospital for assessment (or for assessment followed by medical treatment) for at least a limited period; and
2. He ought to be so detained in the interests of his own health or safety or with a view to the protection of other persons.

*Winterwerp v Netherlands (1979) 2 EHRR 387. Aerts v Belgium (2000) 29 EHRR. Kennan v United Kingdom (2001) 33 EHRR 38. See Section 60 and 65 of the Lunacy Act.*

While every person has the night to personal liberty, the Nigerian constitution excludes persons of unsound mind in Section 35 (1) (e)when detained for the purpose of their care or treatment or the protection of the community, this is in contrast with **Stuart Mill’s** assertion in his essay on liberty that;

 “The only purpose for which power can be rightfully exercised over any member of a civilized community, against his will is to prevent harm to others. His own good, either physical or moral is not a sufficient warrant”.

 A proposed review of Nigeria’s Lunacy Act of over 50 years also suggested that one of the grounds for compulsory admission which cannot be charged is that a person “ought to be so detained in the interest of his own safety or with a view to protecting the safety and interest of other persons. In Nigeria, lunacy has been treated traditionally and spiritually by herbalist and religious, hence the restriction is not new, they were always confined and restricted with chains regarded as worse than those of convicted criminals. The former Yaba Lunatic Asylum turned Yaba Mental Hospital and Aro Mental Hospital Abeokuta created an opening for orthodox medicine and therapy for the psychiatric community. The Aro model was to be replicated and was expected to pivot a change in the mental health policy however it did not, hence we have not progressed much. The Lunacy Act of 1958 a review of the 1916 Lunacy Ordinance still subsists where the MHA 2007 of the UK is already under review.

**Treatment of the mentally ill and decision making.**

 In *Herczegfalvy v Austria (1993) 15 EHRR 437* it was held that administration of treatment which is for treatment of mentally ill in *Section 58* of the MHA (1983) will be sanctioned by the courts if it is “convincingly” shown that the proposed treatment is a medical necessity even if a responsible body of medical practitioners were of the opinion that the treatment was medically unnecessary, that alone, would not be conclusive in favour of the patient.

 In the case of *B v Croydon Health Authority* B suffered from a psychopathic disorder and one of her symptoms was a compulsion to harm herself. She sought to restrain the health authority from tube feeding her without her consent although her weight had fallen to a very dangerous level and was not eating. **Thorpe J** held that tube feeding was treatment for her mental disorder and according to the MHA her consent was not required. On appeal by B, the court held that a holistic approach to medical treatment must be held and treatment must be seen as an attempt to alleviate or prevent deterioration or alleviation of the mental disorder.

 The detention of a mentally ill person does not however deprive the patient of all his right , he is still presumed competent to manage his affairs “unless proven otherwise”. Where such is proven medical evidence must show such and court will appoint a guardian who has full legal authority to take decision relating to the affairs of the patient.

**Divorce, Testamentary Capacity and Execution of the Mentally ill.**

DIVORCE

* Mental illness may act as bar to marriage and in some countries is a ground for the annulment of a previously constituted marriage and may constitute divorce grounds. In Sweden, “insanity and mental deficiency” are a bar to marriage save and except the king permits and they have submitted themselves to sterilization. Likewise in Switzerland, no mentally ill person can contract a valid marriage.

The MCA of England from which Nigeria derived its, statutes that a marriage may be declared null and void if at the time of the marriage one of the parties was of unsound mind or has a mental defect which the petitioner who is the same partner was ignorant of. The ground of an “incurable unsound mind” is a valid ground in divorce petitions across the globe including Nigeria. The exception or condition however requires that there is no reasonable probability of their recovery and they he/she has been continuously undergoing treatment for at least five years preceding petition.

 Testamentary capacity

 A valid will requires a sound mind. If the testator was mentally ill at the time of making the will, the will may be challenged in probate.

The rule is that the testator’s mental state at the time of writing the will is the most important factor. A psychiatrist may be required to give evidence in this regard especially as a witness during the will or as physician to the deceased.

 Prior mental illness is not a sufficient ground to invalidate a will. It must be shown that the mental illness impaired testator’s state of mind.

Clarity of mind is evidenced according to **MackRae** by

1. Testator must understand the nature and effect of making a will
2. He has reasonable knowledge of the extent of his property.
3. Knows and appreciates the claims to which the testator should give effect, that is, testator must know who the beneficiaries are.
4. Testator is not influenced in making the disposition by any abnormal emotion state or delusions

It is noteworthy that in Nigeria the criminal code does not accept delusional beliefs as sufficient mitigation of responsibility for a criminal act unless the act would have been justified had the substance of the belief been the time state of affair. It infers that killing of a partner claiming that she is a witch will not exempt penalty or diminish responsibility as the action would not have been justified even if the belief or delusion was true.

 **Execution of the mentally ill**

 It is not very popular information, however very true that when a prisoner is condemned to death, he may not be executed if while awaiting execution, he develops features of mental illness.

The Governor could suspend the death sentence and request for a medical report. A report of insanity by at least two qualified medical doctors appointed for the purpose of making the report would lead to stay of the death sentence by the Governor and the insane person is removed to “a fit place for the custody and treatment of lunatic” also referred to as an asylum.

 The doctor patient relationship is dealt hard blow in the subsequent condition that the insane mind is successfully treated and recovers. He would be remitted to prison to be dealt with according to law by the governor. “An accused person may thus refuse to cooperate with medical doctors to prevent or postpone his execution. This hampers successful treatment and therapeutic nature and effect of doctor patient relationship as he is only treated to be “well enough to be executed”.

 The intersection of mental health and law require constant and consistent policy review and update. This is still a challenge in Nigeria for Law and psychiatry, however psychiatrist are called upon to help in the judicial process as well advice especially with fitness of accused to plead and possible state of mind of accused at time of the commission of a crime. There is no obligation on court to investigate mental health where there is no indication of abnormality. *Edward Emofe v State (1979) 6 C.A, Godwin Ikpasa v State (1979) 10 CA, Andrew Ogbevweta v State (1979) 10 CA*