THE DEFENCE OF INSANITY UNDER THE NIGERIAN CRIMINAL JURISPRUDENCE: A COMPARATIVE ANALYSIS*

Abstract

The imposition of criminal liability for doing nothing sounds absurd and preposterous. Consequently, all legal systems of civilized societies have to a large extent included simple moral idea that no one should be convicted and punished for a crime unless some measure of subjective fault can be attributed to the person. The Nigerian criminal jurisprudence provides defence for those who cannot be said to be at fault such as the insane, the young people or those who acted in a state of unconsciousness. The crux of this article is a comparative analysis of the defence of insanity under the Criminal Code and Penal Code of Nigeria and other jurisdictions. This paper, which made use of primary and secondary data as well as the doctrinal research method, found that the Criminal and Penal Codes followed the footsteps of the celebrated M'Naghten Rules in the provisions on the defence of Insanity. However, the statutory provisions of these Codes are substantial improvements of the English rules. There are certain inadequacies which requires urgent legislative intervention. The Criminal Code contains difficult and undefinable phrases quite analogous to M'Naghten's rules. It is recommended that it should be amended to obviate confusion and much controversies in its interpretation. The obvious short coming of the Penal Code is that it does not specifically provide for the concept of irresistible impulse as factor for exemption from criminal responsibility. This omission is clearly against current scientific development in psychiatry and should be amended to incorporate the concept for the good of the accused and the community.

Keywords: Insanity, Delusion, Natural Mental Infirmity, Mental Disease, Irresistible impulse.

1. Introduction

The imposition of criminal liability is based on a number of presumptions, in particular, that the acts of the defendant which causes a prohibited result or conduct were freely willed and voluntary in the sense that the defendant was aware of his actions and able to control them. Thus, paradigmatically, criminal liability is only imposed upon a blameworthy or culpable actor whose conduct has caused a forbidden harm. It is not enough that a defendant has simply done the forbidden act or caused the prohibited harm. She must have done so in circumstances in which she can properly be blamed for her conduct. Without such blame or fault, she is regarded as 'innocent', and a civilized society is offended at the notion of punishing the innocent.[1] Capturing this point perhaps more vividly, Okonkwo observed that:

> All legal systems have to some degree or other incorporated the simple moral idea that no one should be convicted of a crime unless some measure of subjective fault can be attributed to him. Nigeria criminal law is no exception. Most offences are defined in terms of intention or knowledge. Defences are provided for those who cannot be said to be at fault, for the insane, for young people, for those who acted in a state of unconsciousness or under compulsion, and so on.[2]

It is obvious from the foregoing that defence is that which is alleged by a party who is proceeded against in an action or suit, as reason why the plaintiff should not recover or to establish that which he seeks by his complaint or petition.[3] In other words, defence is seen as a device which if successfully pleaded and established would exculpate the defendant or actor from criminal liability. Accordingly, the crux of this paper is to clarify the defence of Insanity under the Nigerian Criminal jurisprudence via a comparative analysis of the Criminal and Penal Codes.

2. Meaning and the Development of the Defence of Insanity

Insanity is defined as a condition which renders the affected person unfit to enjoy liberty of action, because of the unreliability of his behaviour with concomitant danger to himself and others and negates the individual's legal responsibility or capacity.[4] It is any mental disorder severe enough that it prevents a person from having legal capacity and excuses the person from criminal or civil responsibility.[5] Insanity is a blanket term embracing a considerable variety of mental abnormalities, mental infirmities, neurosis, and psychosis.[6] The defence of insanity presupposes that the accused committed the offence but that there was no *mens rea* on his part. The key element in the defence of

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[1] CMV Clarkson, *Understanding Criminal Law*, (3rd edn, Sweet and Maxwell, 2001) 54.

[2] Okonkwo and Naish, *Criminal Law in Nigeria*, (2nd edn, Spectrum Law Series, 2012) 66

[3] A Bryan Garner (ed) *Black's Law Dictionary*, (10th edn, Thomson Reuters, 2014) 508

[4] *Umar Muslapha Usman v the State* [2018] 15 NWLR (pt. 1642) 320. See also *Anthony Ejinima v State* [1991] 6 NWLR (pt. 200) 627.

[5] *Sabo Ilu v The State* [2025] 13 NWLR (pt. 2003) 479

[6] Ibid

insanity is the admission by the defendant that he committed the offence but that his liability ought to be mitigated by reason of insanity.[7]

The origin of insanity defence emanated from the famous English case of Daniel M Naghten[8], where he was indicted for the murder of Edward Drummond, secretary to the British Prime Minister, Sir Robert Peel in an attempt to assassinate the Prime Minister. Daniel who was a wood cutter from Scotland believed that the Prime Minister, Sir Robert Peel was responsible for his misfortune, and consequently, set off from London with the aim of shooting the Prime Minister. He missed the target and short the secretary, Edward Drummond. At the trial, Daniel raised the defence of insanity, especially, his obsession with certain morbid delusions. Nine witnesses testified to this fact. Lord Tindal C J directed the Jury as follows, the question to be asked is whether …the prisoner had or had not the use of his understandings, so as to know that he was doing a wrong and wicked act. The jury returned a verdict of not guilty by reason of insanity in favour of Daniel M Naghten. The acquittal of Daniel caused serious furor in England culminating to Queen Victoria who was not happy with the verdict directing the House of Lords to review the judgement. Consequently, the question of insanity and criminal responsibility was the subject of debate in the legislative chamber of House of Lords. In this regard, five questions were put to the judges of the day in determining insanity or insanity of the defendant. Their answers to questions 2 and 3 formed the famous M'Naghten Rules, by which lack of criminal responsibility on the premises of insanity is tested in many Common Law Jurisdictions, Nigeria inclusive[9]. They questions put to the judges include the following:

> Your Lordships are pleased to inquire of us… Secondly, what are the proper questions to be submitted to the jury, where a person alleged to be afflicted with insane delusion respecting one or more particular subjects or persons, charged with commission of a crime (Murder for example), and insanity is set up as a defence? Thirdly, in what terms ought the questions to be left to the jury as to the prisoner's when the act was committed.

These rules which form the foundation of the defence of insanity in most Common Law jurisdictions are set out below thus:

(1) That every man is presumed to be sane and to possess a sufficient degree of reason to be responsible for his crime until the contrary be proved.
(2) To establish a defence on the ground of insanity, it must be clearly proved that, at the time of committing the act, the party accused was labouring under such a defect of reason from disease of mind, as not to know the nature and quality of the act he was doing or if he did know it, that he did not know he was doing what was wrong.

With regard to the question 'if a person under an insane delusion as to existing facts commits an offence in consequence thereof is he thereby excused' the judges answered as follows: -

> … the answer must of course depend on the nature of the delusion but making the same assumption as we did before, namely that he labours under such partial delusion only and is not in other respects insane, we think he must be considered in the same situation to responsibility as if the facts with respect to which the delusion exists were real.

The above, is the circumstances surrounding the genesis of the McNaghten Rule and the defence of insanity and delusion.

It is discernable from the M'Naghten Rules that they were formulated in the belief that responsibility is the essence of criminal law and capacity to choose between right and wrong is the essence of responsibility. These rules have been criticized sequel to the increase of medical knowledge, especially from the Psychiatrists who pointed out that there may be mentally ill people who though were able to appreciate intellectually that an action might be wrong but were under intolerable emotional pressure to commit, such as people suffering from paranoid. Consequently, to declare such people responsible will not be fair or desirable.[10] This led to modifications in the M'Naghten's rule and introduction of the irresistible impulse provisions in many jurisdictions.

In the United States of America, medical advances penetrated into the application of the rules. In *Durharm v The United States,*[11] the Court of Appeal jettisoned the 'right' or 'wrong' formulation inherent in the M'Naghten's rule and maintained that an accused will have defence of insanity if he can show that his unlawful act was the product of mental disease or mental defect. It is pertinent to note that despite the impact of medical advances as illustrated in the *Durham's* case, the M'Naghten rule still did not hold sway in the United States of America. *Durharm* rule did not

[7] Ibid 485
[8] [1843[10CL and F 200.
[9] CMV Clarkson, *Criminal Law Text and Material*, (4th edn, Sweet and Maxwell, 1998) 371
[10] Okonkwo and Naish, *Criminal Law in Nigeria*, (2nd edn, Spectrum Books Limited, 2012)
[11] [1954] District of Columbia Circuit 214F $2d86_2$

attain any popularity and could not make any progress as a rule. Even some of the judges who gave their blessings to the *Durharm* rule *ab initio* have condemned the rule.

3. Comparative Analysis of the Insanity Defence

In Southern Nigeria, the defence of insanity is provided for by section 28 of the Criminal Code.[12] Section 28 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.
>
> 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 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 delusion to believe to exist.

In Northern Nigeria, the defence of insanity is provided for by section 51 of the Penal Code. It provides 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.[13]

A panoramic survey of the above two criminal legal regimes shows that there are glaring differences between them. These differences will be clarified by a comparative analysis of both codes as well as the codes of other jurisdictions with regard to the topic under discussion with a view to improving the application of the defence of insanity in Nigeria. Also, discernable from the foregoing provisions is that the Nigerian Codes have departed from the strict and complex wording of the M'Naghten rules.

The McNaghten's rules were premised on reasoning power and knowledge of right and wrong. Under section 28 of the criminal code, insanity has two segments of mind afflictions namely: (i) mental disease and natural mental infirmity and (ii) delusion on some specific matter or matters. That the provisions of section 28 of the criminal code are the lineal descendants of M'Naghten is clear enough in its division into two rules plainly, analogous to the M'Naghten's rules. However, a cursory look at the sections shows that the legislature has not only departed from the phraseology of M'Naghten but have also introduced two entirely new factors namely, 'natural mental infirmity' and capacity to control his actions.[14]

The Penal Code on the defence of insanity is section 51, Apart from the simplicity and clarity of language of section 51 of the penal code, the brevity of the section significantly sets it apart from section 28 of the Criminal Code.[15] The presumption of sanity enshrined in section 27 of the criminal code has no expression under the penal code. The phrases 'mental disease' and 'natural mental infirmity' were used in the criminal code while section 51 of the penal code contains on its part the phrase 'Unsoundness of mind.' Mental disease is one of the key elements in section 28.

An accused person relying on insanity as a defence must show that at the time of doing the forbidden act that he was suffering from a mental disease or a natural mental infirmity.[16] Thus, for the defence of insanity to succeed, the defendant must establish that he was at the time of the commission of the offence in such a state of mental disease or natural mental infirmity as to deprive him of the capacity to know what to do and what ought not to do.[17] The term mental disease is very encompassing, covering any impairment of the functioning of the brain due to disease of the brain itself or due to disease or illness of any part of the body or of the nervous system.[18] Mental disease is a disease relating to existing in the mind, that is, a disease of the mind.[19]

[12]Criminal Code, Section 27
[13]Penal Code, section 51
[14]A O Omotesho, 'Insanity and Criminal Responsibility: A Study of Insanity as a Defence in the Criminal Law of Nigeria', (1992), *Journal of Contemporary Legal Problem'* (3) 20.
[15]K S Chukkol, *The Law of Crimes in Nigeria*, (Revised edn, Ahmadu Bello, University Press Limited, 2010) 15
[16]*Usman v State* [2018] 155 NWLR (pt. 1642) 321
[17]*Sabo Ilu v the State* [2025] 13 NWLR (pt. 2003) 479. See also *Ejinuma v State* 1991 6 NWLR (pt. 200) 627, Edohor vState (2007) ALLFWLR (Pt.374)370.
[18]U U Chukwumaeze, 'The Defence of Insanity', Essays in Echeme Emole, 2020 568
[19]*Queen v Ayinde* [1963] NWLR 27

Natural mental infirmity is a condition of arrested or incomplete development of the mind.[20] In *R v Omoni,*[21] the court defined natural mental infirmity by adoption of a passage from Stephen's Digest of Criminal Law. According to them, it means, 'a defect in the mental power neither produced by his own default nor the result of disease of the mind'. Natural infirmity as the name implies is innate such as imbecility, mongnolism and senility.[22]

Under the penal code, for a person to escape from criminal liability, he must have been at the time of the act, by reason of unsoundness of mind incapable of knowing the nature of his act or that he was doing what was either wrong or contrary to law. The phrase 'nature of the act' refers to the physical character of the act and not its legal quality.[23] This no doubt seems to have solved the separate two camps as whether wrong means contrary to law or morally wrong. Under section 51 of the Penal Code, a person will benefit from the defence of insanity if his unsoundness of mind was such that rendered him incapable of knowing either the morality of his act or its legality.[24]

In the case of section 28 of the Criminal Code Act, having established that at the time of committing the crime, the accused was in a state of either of mental disease or natural mental infirmity, the defence in order to escape liability must show that it was such as to deprive him of any of the following capacities,[25] (a) capacity to understand stand what he is doing (b) capacity to know that he ought not to do the act or omission and (c) capacity to control his actions.[26]

A cursory examination of the key elements required to establish the defence of insanity as exhibited above shows that the first incapacity is the incapacity to understand what one was doing. The word understand is more encompassing and wide in connotation than the word know which was used in the English case of M'Naghten. A man may know that what he is doing is wrong but may not understand or be aware of the full implication of what he is doing due to insanity. In situation like this, such a person will not be held liable.

The second, the capacity to know that he ought not to do the act or make the omission. This is another exception to the maxim, *ignorontia juris neminet exusat.* This provision is to effect that a person may understand what he is doing and yet fail to know that it is something which he ought not to do as a result of mental disorder. This provision provides a defence for one whose mental disease or infirmity prevents him from knowing that what he is doing is contrary to the law even though he may fully understand the nature of his act. Whatever the correct interpretation of the preceding section, the present one clearly provides a defence for one whose mental disease or infirmity prevents him from knowing that what he is doing is contrary to law, even though he may fully understand nature of his act.[27] Such a case is obviously an exception to the rule that ignorance is no excuse; it is an excuse if your ignorance is due to mental disorder.[28]

The third capacity is the capacity to control his actions. This is otherwise called the irresistible impulse defence. Ii presupposes that one may understand the nature of his action and even that he ought not to do it, but is nevertheless unable to restrain himself from doing it.

4. The Concept of Irresistible Impulse

This concept emanates from the third capacity, the lack of capacity to control his actions. It is unique to section 28 of the Criminal Code Act of the Southern Nigeria. The uniqueness of this section derives from the fact that the section acknowledged that one could commit that prohibited act, though knowing that the act is wrong but cannot resist the urge to do the forbidden act under an impulse that is quite uncontrollable and irresistible. The defence does not mean inability to master one's actions, but must be attributable to either mental disease or natural mental infirmity.

This concept is not contained in the M'Naghten's Rule and accordingly, English Courts have rejected its application. This rejection was copiously demonstrated in the case of *R v Kopsh.* In this case, the accused killed his uncle's wife by strangulation. The accused person raised the defence of irresistible impulse which was diametrically rejected. Hewart, CJ, said that to recognize such a defence would be to engage in a fantastic theory. However, by virtue of the English Homicide Act 1957, the concept has been recognized in England. Section 2 of the Act provides that: where a person kills or is a party to the killing of another, he shall not be convicted of murder if he was suffering from such

[20]*R v Tabigen* [1960] FSC 8
[21][1949] 12 WACA 511
[22]*R v Wangara* 10 WACA 236
[23](n13) 58
[24](n14) 121
[25]Criminal Code, Section 28
[26]*Asanya v The State* [1991] 3 NWL (pt. 180) 432. See also *Imo v The State* [1991] 0 NWL (pt. 213) 11, *Ejinimia v The State* 6 NWLR (pt. 200), *Ilu v The State* [2025] 13 NWLR (pt. 2003) 479
[27](n10) 137
[28]Ibid

abnormality of mind as substantially impaired mental responsibility for his actions or omission in being a party to killing.[29] Sequel to the 1957 Homicide Act, the concept was recognized and applied in the case of R v Pryne.[30]

Regrettably, there is no specific provision on irresistible impulse under section 51 of the penal code. Although, the Court of Appeal in the case of *State v Suleiman,*[31] ruled that the motion of irresistible impulse can be accommodated in the term unsoundness of mind codified under section 51 of the Penal Code, it is submitted that this is tantamount speculation which is not the subject of Law. It is therefore, recommended that the concept of irresistible impulse should be specifically incorporated into Section 51 of the penal code. This is because, section 28 of the Criminal Code's approach accords with current realities in psychiatry and, is therefore, more humane than the formulations of the penal code.

Delusion

The second segment of mind affection under section 28 of the Criminal Code deals with cases of delusion. The provision is a codification of that position of M'Naghten Rules dealing with delusion. Where an accused is unable to claim protection under the first segment of section 28 of the criminal code, he may still be able to raise some defence under the second segment or arm of that section, provided that he can show that he had some affliction of mind on some specific matter or matters. The Supreme Court in the case of *Ejinma v State*[32], defined insane delusion as a product of a disordered mind which imagines facts to exist and adhered to against all evidence and reason to the contrary. Also, in *Yusuf v State,*[33] Court defined delusion thus: Delusion, both in legal and medical terms is a persistent, incorrigible belief that is in accessible to reason. It is the belief of things as realities which exist only in the imagination of the persons' suffering therefrom. In *R v Grumah*,[34] the West African Court of Appeal, defined delusion as a symptom of mental disturbance and false belief which is unshakable by facts. It is also defined as a distorted world view resulting from mental conditions which induces in a person the unshakable belief to regard what is unreal as if it is true. The person in delusion lives in a different world of fantasy which he regards as the true position. It is a false belief which is contrary to fact[35], per Karibi Whyte JSC as he then was.

Obvious from provision of section 28 of the Criminal Code and the decisions of the judicial authorities cited above is that the delusion must be a product of natural infirmity or mental disease. Mere eccentricity on the part of the person is not enough to constitute mental unsoundness or mental disease or natural infirmity, nor great caprice nor violent temper, but there must be aberration of reason.[36] This was lucidly captured by the court in *Yusuf v States,*[37] per Oputa JSC of the blessed memory thus;

> It is my view that second Limb of section 28 above does not contemplate general and absolute delusion which will, of course, be indistinguishable from insanity. It rather contemplates an otherwise normal person but who in respect of certain matters or maters behave abnormally because his mind is affected by delusion with regard to specific matters….the important thing to note about the second limb of section 28 is that not so much the general definition of delusion but the fact that the mind of the accused during the material time when he did or omitted to do the act leading to the death of his victim, was affected by delusion, and it must be a delusion on some specific matter or matters.[38]

Accordingly, in *R v Alue Eryamrenu,*[39] where the accused killed her daughter following an alleged instruction by her fellow witches to do so. Rejecting the defence of insane delusion, the court ruled that the infirmity disclosed was not a natural mental infirmity. In *Willie v State*[40], the accused under the impression that his mother has poisoned him by witchcraft and so he struck her to death. The court rejected the defence of insanity. Also, in *State v Clement Iwuanyanwu*[41], the High Court of the defunct Eastern Nigeria rejected the defence of insanity based on witchcraft.

It is pertinent note that Chukkol, has condemned the decision of the court in the above two cases on the ground that the court did not consider witchcraft as capable of bringing about such mental abnormality that could bring the

[29]English Homicide Act 1952 Section 2
[30][1959] 66 CRL 808
[31][1981] Nig. CR.M. Reports 242
[32][1991] 6NWLR (pt. 200) 627
[33][1988] 4NWLR (pt. 89) 96
[34] [1957] 2 NAFLR 255 (Gambian case)
[35] (n32) 632
[36] Ibid
[37] Ibid
[38] Ibid 629
[39] [1959] WRNLR 270
[40] [1968] ALLNLR 152
[41] [1964] 8 ENLR 85

accused within the arm of Section 28 of the Criminal Code Act. He referred to and preferred the decision of the court in *R v Magata S/o Ka Chehekama,*[42] where the accused's wife, two sons and some goats had died and some of his cows were sick. He believed that his father was responsible for his misfortunes and was practicing witchcraft on him. He killed his father on this belief. The East Africa Court of Appeal, said: An Africa living far away in the bush may become so obsessed with the idea that he is being bewitched that the balance of his mind may be disturbed to such an extent that it may be described as a disease of mind… the court allowed the appeal and availed the accused with the defence of insanity. With due respect, it is humbly submitted that it is very unfortunate that a seasoned scholar like Chukkol should subscribed to the reasoning and decision of the East Africa Court of Appeal in *R v Magata* and court in the cases of *R v Alice Eryamrenu, Willie v State* and *State Alwuanyanwu* discussed above as unsatisfactory and posited that if the court in these cases had considered the issue of witchcraft very well, that they would have arrived at the same conclusion as the East African Court of Appeal.

Our objection to this view is premised primarily on the ground that law does not deal with speculation. Section 28 provides natural infirmity or mental disease, not an infirmity or disease of the mind caused by voluntary conduct of the accused person, such as the voluntarily accepting a faith that led her to murder. Otherwise, the Boko Haram and Islamic State of West African province terrorists will be free because their orientation and radicalization renders them insane and the test become subjective, instead objective, the insanity being self-induced. Whatever the case may be, we hereby, subscribe to the decisions of the court in the following cases. *R v Windle*[43] and *Iluv State*[44], as well as the provisions of the extant law on the subject of discussion.

In *R v Windle* the accused, unhappy killed his wife by giving her drugs. He even reported himself to the police and informed that he knows that he will be hanged. The medical evidence to the effect that the accused was insane was diametrically rejected by the court per Lord Godard as follows:

> Courts of law can only distinguish between which is in accordance with the law and that which is contrary to the law…. The law cannot embark on the question, and it will be an unfortunate thing if it were left to the juries to consider whether some particular act was morally right or wrong. The test must be whether it is contrary to law… in the opinion of the court there is no doubt that in the M'Naghten Rules, 'wrong' mean contrary to the law and not wrong according to the opinion of the man or of a number of people.

In *Ilu v State,* the Supreme Court on the defence of insane delusion said: there is a lot of confusion of the legal defence of insane delusion or delusion on specific matters which arises from abnormal state of mind and the delusion on specific facts rooted in information, misinformation, dreams, crystal gazing or divination… the first limb or paragraph stipulates conditions which remove criminal responsibility from accused persons while the second limb or paragraph stipulates conditions where criminal liability attaches to accused persons proved subject to delusion, or insane delusion on specific subject. Delusion that has no causation in mental or natural mental infirmity does not afford any defence.

It is obvious from the foregoing that the belief in witchcraft or divination is a metaphysical issue which our courts of law lack the instruments to determine. Decisions of courts are founded on objective requirements of the law and not the subjective belief of the offender. Furthermore, section 210 of the Criminal Code Act prohibits witchcraft and juju[45]. Section 216 of the Penal Pode also prohibits witchcraft and juju. It is therefore, preposterous that raising the defence of delusion based on witchcraft or juju should be considered at all as a defence for anybody accused of crime. In the case of the Penal Code, section 51 did not specifically codify the concept of insane delusion. However, it is argued by scholars that it would be implied into section 51of the penal code since the code is basically founded on English jurisprudence of the common Law. This notwithstanding, it is suggested that section 51 should be amended to incorporate it in the section

5. Proof of Insanity

The onus of proof of the defence of insanity provided in section 28[46] of the criminal code rests on the accused person. This is an exception to the general rule, particularly, section 135 of the Evidence Act which provides that the onus of proving a crime is on the prosecution.[47] Thus, when it comes to proving insanity, the burden of prove shifts to the defence because, the criminal code presumed everybody to be sane.[48] Moreover, section 139 (3) (c)[49] of the Evidence

[42] [1957] EACA 330
[43] [1950] 8 OB 906
[44] [2005] 13 NWLR (pt. 2003) 479
[45]Criminal Code, Section 210
[46]Criminal Code
[47]Evidence Act 2011 (as amended) Section 35
[48]Criminal Code Act Section 27
[49](n 44) Section 139 (3) (c)

Act provides that nothing shall affect the burden placed on the accused person to prove a defence of intoxication or insanity. The onus placed on the accused by virtue of section 139 (3) (c) of the Evidenced Act is not discharged by mere denial but by giving credible evidence.[50] Accordingly, the Supreme Court in *Ndu v the State*[51] Said:

> The defence of insanity is a special plea which must be positively put forward by way of defence and evidence should be adduced in support. It is not something to be inferred from the prosecution's case. It is not a matter which calls for speculation or guess work from the totality of the evidence adduced by the prosecution. A court will not brand an accused person as insane without sufficient proof of such insanity.

In order to prove/establish the defence of insanity, the following facts must be established:

(a) Evidence as to the past conduct of the defendant relating to his/her state of mind.
(b) Evidence as to the conduct of the defendant immediately preceding the killing of the deceased.
(c) Evidence from prison officials who had custody of the defendant before, during and after the incident.
(d) Evidence of medical officers who examined the defendant
(e) Evidence of relations and neighbours about the general behaviour of the defendant and his reputation for acts of sanity or *insanity* in the neighbourhood.
(f) Evidence of genetic heritage of insanity and
(g) Such other facts that will make the trial court come to conclusion that the burden of proof placed by law on the defence has been discharged.[52] These facts will be examined below.

Lack of Motive

The act of homicide is not only a physical act but also psychological event.[53] It is usually done in revenge or self defence. However, where the accused could prove that the act was not done in revenge or self defence, but for no apparent reason except for insanity of the accused, the court will consider that the act was occasioned without motive to bring about homicide but due to the insanity of the accused. This was demonstrated in the case of *Adeyefa v Queen*.[54] It is also pertinent to note that lack of motive *perse* is not conclusive of insanity.[55] Where a killing is shown to be motiveless, the testimony of the parents and relations or even other persons who know the antecedents of the accused may be accepted to depict the change that has come upon the accused, and thus, assist the trial judge to come to an appropriate conclusion that the burden of proof of insanity placed by statute, has been discharge. Thus, proof of insanity can however, be established from the compelling evidence of the eye witnesses, particularly relatives of the accused, relating to his general behavior before, during and after the incident.[56] In *Asanya v State,* the Supreme Court held inter alia:

> The antecedent of the accused is very material. In this connection, the family history, any evidence of previous acts which show traits of insanity must be looked into to ensure that an accused is not found guilty of an act for which he is not responsible in law.

The Supreme court in the case of *foluso Oladele v The State,*[57] pontificated on the relevancy of evidence of the relations of an accused on his mental state as follows: Because the relations of an accused person are in the best position to give evidence as to the accused persons antecedents such as family history and evidence of previous acts which show trials of insanity and are material to the satisfaction of section 28 of the Criminal Code, the information required from the relations of an accused person is relevant and admissible. It is important to note the problem in relying on the evidence of the relations without medical report or evidence is that there are certain traits in human beings, to a varying degree, which are sometimes mistaken for insanity. Some of them are irascibility, irritability, eccentricity and quarrelsomeness. Persons afflicted with any of these traits to a high degree are easily spurred to violence and wrongly regarded as being insane by the uninformed.[58]

Medical/Expert Evidence

The law is that the onus of proof of the defence of insanity lies on the defence who pleads it, and it is discharged on the balance of probabilities. The accused person must prove that at the time he committed the offence, he was actually insane within the conditions stipulated by section 28 of the Criminal Code.[59] Put differently, he,the accused must

[50]*Okeke v The State* [2003] FWLR (pt. 2159) 1381
[51][1990] 7 NWLR (pt. 164) 550
[52]*Ilu v the State* [2025] 13 NWLR (pt. 2003) See also *Onyekwe v State* [1988] 1 NWLR 479 (pt. 72) 565, *Ejinima v State* [1991] 7 NWLR (pt. 200) 627, *Madjemu v State* [2001] 9 NWLR (pt. 718) 349
[53](n 14) 138
[54][1962] WNLR 235
[55]*Imo v State* [1991] 9 NWLR (pt. 213)1
[56](n32) 630 See *also Foluso V State* (1993) 1 NWLR (pt. 269) 294
[57][1993] 1 NWLR (pt. 269) 294
[58](n32) 631
[59](n55) 297. See also *Loke v State* [1985] 1 NWLR (pt. 1) 1, *Nkanu v State* [1980] 3-4 SCI

prove that he was insane at the time he committed to the offence, not before or after. This is illustrated in the case of *Addo v State*[60] thus; in determining a plea of insanity, it is not the mental state after the evident that is important and relevant but insanity at the time of the commission of the offence in which would have deprived him of the capacity to understand what he was doing…

However, the evidence of mental abnormality before or after the commission of the offence would tend to corroborate the finding that the accused was insane when he did the prohibited act which he is being charged.[61] It is pertinent to note that if the accused person committed the offence during his lucid interval the defence of insanity would not avail such an accused person.[62] In determining the question whether an accused person is insane and therefore, not responsible for his act or omission, it is his state of mind at the time of the commission of the offence with which he is charged that is material. And to help the court in making a determination, medical evidence may be called by either of the parties and indeed by the court itself.[63]

It is trite knowledge that the opinions of third persons as to the existence of facts in issue or relevant fact is inadmissible in evidence because, a witness is only allow to testify to facts known to him.[64] However, one of the recognized exceptions to this general rule is that opinions of experts may be relevant and admissible in evidence.[65] It is elementary that the evidence of a Doctor, which is based on his special field of medical scientific knowledge is expert evidence by virtue of section 68 (1) of the Evidence Act, 2011. Therefore, in the instant case, when the Senior Consultant Psychiatrist expressed his opinion vi-s-a-vis the mental condition of the appellant, he did so as an expert.[66]

The problem that has occupied the time of the court relates to the weight to be attached to the testimony of the experts. This a product of the long-standing tension between law and medicine on the vexed question, is insanity a medical or legal concept? From the provision and ingredients of section 28 of the criminal Code Act and section 51of the penal Code, it is clear that insanity is more of a legal concept than a medical concept. Accordingly, to exempt from criminal responsibility from our penal statutes, not only must the accused show that he is suffering from a mental abnormality but he must show that such mental abnormality prevented him from appreciating the consequences of his conduct. Consequently, the English as well as the Nigerian Courts have treated insanity as a legal concept. In *R v T Rivell,*[67] court held that; the issue is one to be determined by the jury and not by medical men of whatsoever pre-eminence. Also, in *Madugba v Queen,*[68] court held that: it seems to us quite clear that it is in every case for the trial judge to decide whether the accused person is of sound mind or not and that he is not bound by the certificate of medical officer to the contrary.

The lethargic and shoddy attitude to work by most Nigerians will make the testimony of even the most competent psychiatrist open to doubt. Sequel to the level of corruption in the country, some of them testify and give their opinion without actually examining the accused. In the case of *Queen v Yaro Bui,*[69] the doctor who testified to the accused's mental state only relied on the accused's statement to the police. All these challenges notwithstanding, it is respectfully submitted that the adoption of a multi-disciplinary approach involving the legal as well as the medical profession will ensure a better result.

Effect of Successful Plea of Insanity

Under the Criminal Code, the defence of insanity in section 28, insanity and delusion are distinct and carry separate legal consequences. While successful plea of delusion relieves the accused of liability, successful plea of insanity under the first limb of section 28 will lead to the confinement of the person as even though, he is not guilty due to the disease of the mind or natural mental infirmity. He is detained indefinitely till the pleasure of the governor. The only reason given is to restrain the person from harming other members of the society.[70]

We are of the opinion that such indefinite confinement should be reviewed and powers given to the court to confine the person for such periods of time depending on the degree of the insanity. Such person should be monitored by the

[60][2021] 12 NWLR (pt. 1791) 427
[61](n14) 140
[62]Lucid interval is the brief period during which an insane person regains sanity sufficient to have legal capacity to contract and act on his or her own. See Black's Law Dictionary edited by AG Brygan, 10th edn page 1091. Lucid internal is a period separating two attacks of insanity, defined by Joivitt, Dictionary of English Law, P1120.
[63](n 55) 298
[64]Evidence Act 2011 Section 38
[65]Ibid & Section 68 (1)
[66](n55) 298
[67][1950] 34 CR. APP. R 87
[68][1958] F3 FSCI
[69][164] NNLR 45 See also *State v Akinbamiwa* [1967] A NMLR 355
[70]*Adams v DPP* [1966] NMLR III

court and if found to have recovered from the insanity and now sane, should be discharged by the court. In order words, court should be empowered to detain the criminally insane pending the recovery or improvement in the accused person. Given the corrupt nature of institutions in Nigeria, a poor person who is so detained under the extant law may remain in prison forever because their relations do not have access to the governor. On the other hand, the accused whose relatives are well connected may come out the following day after the judgement was given.

6. Conclusion and Recommendations

We have examined the plea of insanity under the Nigerian Criminal jurisprudence. The discussion depicts that the penal and Criminal Codes follow the footsteps of the celebrated M'Naghten Rules in their provisions on the defence of insanity. However, the statutory provisions of our Codes are substantial improvements on the English rules. The provisions of the Criminal Code and Penal Code on the defence of insanity are far reaching.

There are certain inadequacies which require urgent legislative intervention. The Penal Code has been commended for the simplicity and clarity of language of section 51 and for brevity of the section. On other hand, the Criminal Code contains very difficult, complex and undefinable phrases quite analogous to M'Naghten's Rules. It is respectfully recommended that it should be re-examined with a view to supplying the section, to obviate confusion and much controversies with its interpretation and application.

One short coming of the Penal Code provision on the defence of insanity is that it does not specifically provide for the concept of irresistible impulse as a factor for exemption from criminal responsibility. This omission is clearly against current scientific development in the field of psychiatry. Consequently, urgent legislative amendment is required to incorporate the principle of irresistible into the penal code.

Under the Criminal Code, the defence of insanity in section 28, insanity and delusion are distinct and carry separate legal consequences. While successful plea of delusion relieves the accused of criminal liability and discharge, successful plea of insanity culminates to indefinite confinement of the accused. It is recommended that section 28 should be amended to bring about uniformity in the application of both segments.