



Rising from a quagmire-A case study for mental health laws regime in Nigeria

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Abstract

The focus of this work is to expound on the worrisome and often mostly ignored mental disabilities and illnesses, examine the extant laws on the subject matter in Nigeria in comparison with other jurisdictions in an attempt to appraise current legal frameworks. The methodology adopted shall be doctrinal, adopting the content analysis approach. This study finds amongst others that mental health laws are still in their infancy stage in Nigeria and no serious attempt was made both at advocacy and expository stage to create both awareness and offer help to victims. The study discovered participatory negligence on the part of health subsector practitioners who ordinarily should be at the forefront of advocating for the amendment of the necessary legal instruments instead of the neglect and relegation to the background. The study discovered that the extant legislation, remained a national embarrassment, static since 1958, and is at best a colonial relic. This study, therefore, recommends an immediate overhaul of the entire mental health subsector, the national mental health policy, and the legal regime. The study calls for the implementation of adequate funding, to reflect the enormity of the nation's mental health situation. The study also advocates an aggressive and consistent reorientation and enlightenment drive to correct the traditional perspectives of the populace about mental health.

Keywords: advocacy, culture, laws and legislations, policies, reforms

Introduction

Mental health is an integral part of the overall health. Nigeria has a significant number of its inhabitants denied of their complete mental state. In Nigeria, just as in most other African countries, mental health discourse has failed to gain the urgency and attention of successive governments given to some communicable diseases such as COVID – 19, HIV/AIDS, and Malaria. The failure to attain ascendancy of public discourse despite the daily increase in mental health cases across the continent fuelled by multifarious reasons and daily undaunted by the conducts of its citizens that is suggestive of a need to examine their mental health and/or institutionalize a mental health system. 'Victimized', 'traumatized', 'segregated', and 'sequestered' are some of the terms encapsulating the experience of the average mentally ill person in Nigeria, where many are deprived of basic human rights, help and societal empathy as well as legal protection. This is because mental illness is a highly neglected and misunderstood illness in Nigeria, largely due to cultural and religious leanings. Just as discussion on mental health has been relegated to the background in families and communities, governments have never deemed it proper to act urgently against a scourge that is fast depriving its young and virile future leaders. Sadly, it is characterized by discrimination (Onyemelukwe C, 2016) ^[7] and stigma (World Health Report 2003) ^[8]. The suffering and burden of mental illness is borne helplessly by sufferers, and silently by their caregivers, who are almost invariably family members. It is usually a closely guarded secret for one to be associated, especially by blood to any person with mental disability. To underscore the impact of the stigma meted out in cases of mental ill health, background checks are usually conducted into family

history of parties to a proposed marriage. Any trace of mental disabilities is always frowned upon and may be the reason to decline family consent to such a proposed marriage. (Onyemelukwe C, 2016) ^[7]. Mental disorder is a global phenomenon (Adedeji, O. 2017) comprising a broad range of problems with different symptoms (Adam Riley. 2019) ^[2]. These problems are generally characterized by some combination of abnormal thoughts, emotions, behavior and relationship with others bringing significant increase in awareness (Abdulmalik & Gureje 2017). Mental disability knows no social class, gender or occupation, and the prevalence continues to steep at an alarming rate. In fact, medical science regards mental disorders as a wide spectrum within which anyone could fall at some point in his life (David Adam, 2013). Mental health should therefore be a concern for everyone, rather than only for those who suffer from a mental disorder. (WHO Report 2017) Examples of mental health disorders, according to the World Health Organisation (WHO) are schizophrenia, depression, intellectual disabilities and disorders due to substance abuse (Abdulmalik & Gureje 2017). Others are clinical depression, bipolar disorder, dementia and even autism (Smitha Bhandari). Mental disorders that are less discussed than the aforementioned are Agoraphobia, Complex Post Traumatic Stress Disorder (with the acronym C-PTSD) and Post Traumatic Stress Disorder (PTSD). Examples of C-PTSD are sexual abuse of vulnerables, physical abuse, domestic violence and emotional abuse. Schizophrenia is the most disabling illness because it is associated with symptoms such as hallucinations and delusions. The WHO 2017 reports presented a staggering report that almost 4% of Nigeria's population suffers

from depression. This report present Nigeria as unarguably as the most depressed country in Africa. The reason for depression however are not farfetched. The 2003 WHO report identified at least about 200 classified forms of mental illness which suggest that most inhabitants must have suffered one form of mental illness at a point or the other. However, the most worrisome aspect is that a higher percentage of young persons increasingly are affected by this diseases (Olomjobi, 2019) ^[6] and are stigmatized in the long run.

Material and Method

Clarification of Concepts

Health

The right to health is fundamentally recognized by the United Nations. (Preamble, WHO) declares that the right to health is the right enjoyed by every human being, regardless of race, religion, political belief, economic and social class. The term "health" refers to the full state of physical, mental, and social well-being, rather than simply the absence of disease or infirmity. (Abdul-Aziz, Seidu, *et al.* 2020).

Mental Health

According to the World Health Organisation, A mental health include a state of well-being, perceived self-efficacy, autonomy, competence, intergenerational dependence, and recognition of one's intellectual and emotional potential. It has also been described as a state of well-being in which people recognize their abilities and are able to cope with the normal stresses of life, work, and relationships. Mental health in *Origins of Mental Health* (Mendell Wallace,) is perceived as a state of preserving the mind against all incidents and influences calculated to deteriorate its qualities, impair its energies, or damage its movement.

Mental Health Disorder

The value of good mental health cannot be overstated. A mental health disorder represent a state of mental enhancing incompetencies of individuals and communities, preventing them from achieving pre-determined goals. WHO Report 2003 ^[8]. A mental disorder is a challenge to the brain that cause mild or severe instabilities in the thought or behavior of a person (Olomjobi, 2019) ^[6]

Mental Health Laws

This provided for basic principles and mental health care laws These consist of the Nigeria Health System legal frameworks which include but not limited to the National Health Insurance Scheme Act, the National HIV/AIDS Agency Act, Counterfeit and Fake Drug and Unwholesome Processed Foods (Miscellaneous Provisions) Act; The National Agency for Drug Administration and Control (NAFDAC Act), National Primary Health Care Development Agency (NPHCDA) Act. Undoubtedly, mental health is fundamental to individual, organization and national well-being. The inavailability of an updated legislation and policy direction is of concern. (Oyewunmi A.E. *et al.*, 2019)

The Nigerian Situation

Nigerians still generally view mental health disorder in the context of supernatural forces, witches and evil spirits The

treatment of the mentally ill has been inhuman and with suspicion (Porter, 2002). There are misconception about people suffering from mental health illness and as a result of this misconceptions they are often restrained with chains, supposedly for their 'protection', to 'cleanse their iniquities' and to prevent further occurrences (Oyewunmi *et. Al* 2018). They are often left to roam the streets, which in itself exposes them to the risk of further abuse and shame. In some instances patients are given traditional treatments and handed over to herbalist who not abreast with the medical history of variants administer wrong prescription.

The Nigerian position was well captured by the 12th President of the World Bank, Jim Yong Kim who noted that despite hundreds of millions of people suffering from mental illness, mental health has remained in the shadows. This stem from the disjointed effort by world leaders from declaring an affirmative action against mental health just the same way, it was declared against COVID and malaria.

Nevertheless, societies have provided different narration as to the causes, nature and required intervention to mental health problems. (Ahmed, Sun and Nazar, 2015). Behind these narration remains cultural, religious, customs and traditions differences that often lead to stigmatizing patients of mental illness by the general society and this often led to abandoning the sufferer or at best ostracizing him from the larger society.

The Nigerian state is highly dependent on the existence of a Supreme Being and problems associated with mental wellness is adjudged as being a form or retribution from disobedience to the tenets of the Supreme Being (Gureje *et al* 2005)

Mental Health Regulation In Nigeria

The first indigenous legislation on mental health was the Lunacy Ordinance enacted in 1916. In 1958, the current legislation for mental health, the Lunacy Act of 1958 was birthed with the purpose of empowering medical practitioners and magistrates to detain an individual suffering from mental illness. The reasoning underlying both legislations is that a mentally ill person was to be restrained from constituting a nuisance or hazard to members of the public. The principles of both legislations are unfortunately the same. The term known as mental health today is still defined in these laws as 'lunacy'. This implies that mentally ill patients were regarded in 1958 as lunatics. But times have changed!

Very importantly, extant Nigerian laws have excluded the mentally ill from most productive functions. For instance, the workplace was described as a place for different psychological experiences in terms of providing a sense of time structure, developing social contact, fostering a sense of collective purpose, forging social identity, outside the family (Oyewale *et al.*, 2018) the public perception of a lunatic as a mentally disabled persons have been excluded from participation in the workplace.

In a similar vein, a lunatic by express provision of the Wills Act was adjudged incapable of testamentary capacity without a distinction between the many types of mental health conditions. Also, a person who has mental impairment has been excluded from membership of a Board of Directors. Section 283 of CAMA provides

The following persons shall be disqualified from being director—

(b) *a lunatic or person of unsound mind;*

Section 284. (1) The office of director shall be vacated if the director...

(d) *becomes of unsound mind*

By Constitutional provisions, a person with mental instabilities is prevented from aspiring from elective position in Nigeria. The effect of the provisions above show the extent of discrimination against people with mental disabilities without provision for their rights.

Rights of the Mentally Ill

Convention on Rights of Persons with Disabilities is an International Convention; The Convention on Rights of Persons with Disabilities, (2006) promoted by the United Nations seeks to create an equal playing field free of discrimination, distinction, exclusion or restriction amongst human beings. It also seeks to change attitudes and approaches to persons with disabilities. It adopts a broad categorization of persons with disabilities and reaffirms that persons with long-term mental impairment fall within the definition of 'disability'.

Some of the provisions of the Convention, being rights of the mentally ill which are contravened within Nigeria on a constant basis are the following;

Respect for inherent dignity, respect for human diversity, Equality of opportunity, Full participation and inclusion in society, Non-Discrimination, Accessibility as well as the right to liberty and security (Article 3, a to f). It is submitted here that the knowledge of mental ill health as a disability issue is not yet widespread.

Constitutional provisions

Rght to liberty

The average mentally ill individual is deprived of his liberty without his consent. Every person shall be entitled to their personal liberty and no person shall be deprived of such liberty... save in the case of persons of unsound mind for their care or treatment or protection of the community. (See the Constitution of the Federal Republic of Nigeria, Section 35)

Sadly, this Constitutional provision validates compulsory incarceration or involuntary commitment of the mentally ill, categorizing all incidents of mental illness as though their manifestations are same. A person with autism or depression may not be violent or likely to cause harm. This section is worthy of amendment to the extent that 'persons of unsound mind' may be required to be replaced with a statement akin to 'persons who are likely to cause harm..'

Right to Enjoy Freedom and Rights Without Discrimination

It would constitute an economy of truth to suggest that the treatment meted out to mentally ill people in Nigeria is not discriminatory. Sometimes, the handling of these people gives the impression that they are outcasts and sub-human. This right is clearly infringed within the country. The Constitution of the Federal Republic of Nigeria, Section 42)

Dignity of the Person

This Constitutional right states that every person is entitled to respect for the dignity of his person devoid of torture, inhuman or degrading treatment. Section 34 Constitution of Nigeria, Many sufferers of ill health undergo severe cruelty and inhuman treatment.especially when they are undergoing traditional treatment. Human Rights Watch, Torture and Cruel Treatment in Health Settings (2010)

Lessons from Other Jurisdictions

Some jurisdictions with progressive Governmental Involvement with Mental Health are the United Kingdom and Canada.

The United Kingdom Act governing mental disabilities is the Mental Health Act of 1983 and it covers the assessment, treatment and rights of people with a mental health disorder. This piece of legislation gives the mentally ill, the right to seek independent review of their treatment. In Canada, Canada's mental health legislation the ten Provinces and three Territories are responsible for their own health laws. However, despite some differences in legislation, all Canadian laws must conform to the Canadian Charter of Rights and Freedoms, which forms part of the country's constitution. It is interesting that all Canadian mental health laws tilt towards voluntary admission (which is when a person readily agrees to submit himself for psychiatric evaluation and treatment) and sometimes state this in unequivocal terms in their mental health acts. For involuntary admission or compulsory in-patient or community treatment to be valid however, three elements must be applied correctly: the process, the criteria and the rights procedures. These are strict rules to ensure that there is no violation of human rights.

There are clear lessons for Nigeria to draw from other jurisdictions on how to embark on its law reform of its Mental Health laws.

Discussion

Mental Health Law Reform In Nigeria

In 2003, a Bill for the enactment of a Mental Health Act was proposed to the National Assembly but was withdrawn in 2009. In 2013, the Bill was introduced again but no appreciable action was taken on it. In 2019, yet another Bill was tabled before the National Assembly with no progress whatsoever. For some inexplicable reason, the National Assembly is reluctant or lethargic about taking action on it. This situation has gone on for too long and should become a matter for priority attention.

The national mental health law remains one of colonial relics and reminder of colonialism in Nigeria. Attempts to enact a national law has not been successful and the 1958 Lunacy Act remains the legal framework till date. The 1991 mental health policy by the Federal government demonstrate the least attention paid those in authority. It is expected that a national legal instrument will emerge to deemphasize stigmatization and discourage discriminating against mental health patients in workplaces just as every form of discrimination.

Except in few states such as Ekiti and Ogun State with poised measure in passing a Mental Health Law for their respective state, a number of states glossed over this critical aspect and rather pays lip service. This attempt, however represent a fairly attempt by the government to address a societal burden and this must be done in the interest of young persons in Nigeria. Just as the piece of legislation, Lunacy Act is outdated, the call for its amendment should take a central stage in our national life. This became more urgent because of the level of suicidal tendencies witnessed by more young adult in today Nigeria. This suggest a more sickness of the mind that require a specialist trained in that regard. The attempt at having a piece of legislation have failed since the return of democracy in Nigeria. A piece of innovation sought in the amended Lunacy Act is the automation of the mental health status of citizen through the leverage on technology.

Nigeria with over 200 million inhabitant should have access to a number of mental health specialist and as such, emphasis should be placed on domiciling a Mental health evaluation center in all the 774 local government in Nigeria with properly trained specialist to assist the grossly inadequate psychiatrist. These if done will speedily give assistance and care to those mentally challenged. (WHO Action Plan)

Nigeria currently faces a global human rights emergency in mental health. With the United Nation affirmation action plan against mental illness have not been given needed impetus to develop in Africa. These are grossly underpinned by poor societal attitudes towards mental illness patient and inadequate resources, facilities, and mental health staff, figures suggest that approximately 80% of individuals with serious mental health needs in Nigeria cannot access care.

Africa in line with WHO expectation have doubled their effort in amending their mental health law and policy. The Nigeria government have gone that way too through advocacy and awareness programme sensitizing its populace on the dangers of straining the mental capacity but the pace have not been as smooth as expected as the number of people involved in substance abuse and depreseed left much to be desired.

To forestall the ugly trend of losing its best mind, the relevant piece of legislation should be enatrists of Nigeria and community representatives, is currently in process. In strong support of this Bill, we further put forward several considerations.

Specifically, we call for any resulting legislation to be in accordance with the WHO Checklist on Mental Health Legislation to ensure that it meets international standards. Second, legislation should be culturally sensitive and meet the human rights standards as set out by the International Covenant on Economic, Social and Cultural Rights

Conclusion

Mental health law require conscious, deliberate, urgent and concerted action as attention must be paid to debilitating malaise of mental disability. Clearly, it is time to bring out mental health into the open. The citizenry must demand reform of the mental health law from Government. This if addressed by demystifying mental infirmity. This is a task that must be done for the betterment of the Nigerian society.

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