A CRITICAL APPRAISAL OF THE INADEQUACY OF THE PROVISIONS OF THE CRIMINAL CODE ON INVOLUNTARY MANSLAUGHTER**[1]

Abstract

Manslaughter and murder are very serious offences which have as one of their elements that a person died. The difference in the two offences lies in the presence and/or absence of intention. Labelling one as having committed manslaughter bears with it heavy punishment of life imprisonment and so requires culpability of the same degree. The Criminal Code in providing for manslaughter has for the offence to wit. 'Any unlawful killing which does not amount to murder is manslaughter'. By this provision, a person who punches another on the face and accidentally kills the person due to an unforeseen physical weakness such as thin skill or enlarged spleen would be punished for manslaughter. Furthermore, a person who failed to exercise duty of care on a person under his care and the person died because he was incapable of appreciating the risk of death or grievious bodily harm at the time when the negligent act or omission causing death took place would be punished for manslaughter as well. This research will look into these lacunae created by the inadequate provisions of the Criminal Code on manslaughter and proffer solutions to them.

Keywords: Appraisal, Inadequate Provisions, Criminal Code, Involuntary Manslaughter

1. Introduction

The current provisions of the Criminal Code on manslaughter do not provide for involuntary manslaughter. The Criminal Code has provision on involuntary manslaughter[2] which reads thus:

> When a person who unlawfully kills another in circumstances which, but for the provisions of this Section of this Code, would constitute murder, does the act which causes death in the heat of passion caused by grave and sudden provocation, and before there is time for his passion to cool, he is guilty of manslaughter only.

By this provision above, it is clearly spelt out that killings or murder which emanated out of provocation would be manslaughter without which it will be murder. No such provision exists for involuntary manslaughter. The practice and the law on involuntary manslaughter are what we inherited from English law. Involuntary manslaughter occurs in two ways: (1) where the death occurred out of an unlawful and dangerous act and (2) by gross negligence. The problem that often arises in unlawful and dangerous act of manslaughter is in the cases of low deliberate violence which result in death. A person punches a person in the face with the intent of only assaulting the person and death occurred because the person fell and broke his head or the person had been sick and that punch aided in taking him untimely. The verdict will be that he caused the death and will be manslaughter. A situation should exist where he is punished for what he intended 'assault.' Furthermore, in gross negligence manslaughter, there is always a need to exercise due care and a duty of care. Where a person fails to exercise that duty of care out of gross negligence and the person dies, the criteria for measuring his culpability is on the basis of objective test of 'reasonableness.' What an average man will do in the circumstances and not on the capacity of the person being able to know that he ought to take care and failed to take care and death occurred. This work will consider various possible options that will aid in tackling these anomalies.

[1]*. **EOC Obidimma**, BA, LL. B, LL. M, PhD, BL, Professor of Laws in the Faculty of Law; Nnamdi Azikiwe University, Awka, Nigeria; 08034003436, 08090255555, Email: eoc.obidimma@unizik.edu.ng or eocobidimma@gmail.com

**** Obunadike, Nnenna Cynthia**, LLB, BL, LLM, PHD, Student of Nnamdi Azikiwe University Awka, Nigeria.

[2] . Criminal Code Cap C38 L.F.N 2004.

2. Possible Options for Reform

The first possible option for reforming the law on involuntary manslaughter will be to codify the law. There should be a law on involuntary manslaughter that will act as a guide to both the judges and practicing lawyers. However, codifying the law as it is without reform will also leave the law on involuntary manslaughter with the already existing anomalies associated with it to wit: A conviction for manslaughter by an unlawful and dangerous act would continue to be arrived at under the following circumstances:

(a) The act would be a criminal offence, carrying with it the risk of bodily harm to another (generally the offence will involve an assault).
(b) Dangerousness would continue to be judged objectively. The fact that an accused did not foresee or that a reasonable person in that position would not have foreseen death as a likely outcome of the unlawful conduct would continue to be irrelevant to a finding of guilt. Liability would continue to be constructive in that an accused's intention to inflict some trivial injury to another person would make it justifiable for the law to hold him accountable for the unexpected result (death) of his behavior.

Regarding gross negligence, codification without reform would means that a person could be convicted of this offence if the prosecution could successfully prove:

(a) that the accused was, by ordinary standards, negligent.
(b) that the negligence caused the death of the victim.
(c) that the negligence was of a very high degree.
(d) that the negligence involved a high degree of risk or likelihood of substantial personal injuries to others.

Having considered the risk it will pose if the law on involuntary manslaughter is codified without reform. It will be very pertinent to consider some possible options for reform in the law of unlawful and dangerous act manslaughter and gross negligence manslaughter.

2.1. Possible Options for Reform in the Law of Unlawful and Dangerous Act of Manslaughter

The research in this sub chapter seeks to examine whether the law on unlawful and dangerous act manslaughter should be reformed and if so, what form reform should take.

2.1.1. Exclude Low Levels of Deliberate Violence from the Scope of the Offence

It is very difficult to accept the fact and reality that a person who causes death by deliberately indulging in a low level of violence for example by punching the victim once in the face so that he falls down, hits his head off the pavement and dies[3] can be found guilty of this serious offence of manslaughter. People who punch others and accidentally kill them due to an unforeseen physical weakness such as a thing skull or enlarged spleen should be convicted for some offence for their damaging, antisocial conduct. Where deliberate wrongdoing is concerned such acts are at the bottom of the scale of culpability. Conviction for manslaughter is arguably too severe for these accidental killings, since the accused would have been charged with a minor assault supposing death was not involved. A good practice would be to charge the perpetrator with assault rather than manslaughter and take the fact that a death was caused into account when imposing a sentence.

[3] *R v Holzer* (1968) VR 481.

2.1.2. Restrict Unlawful Acts to Assaults

In this option for possible reform. It is suggested that the only unlawful acts which the Courts should recognize for the purposes of the offence, should include assaults which involve high level of violence, the danger of which would be obvious to a reasonable person in the accused's position.

According to Clarkson thus:

> A person who attacks another and risks injury cannot complain when criminal liability is imposed in relation to injuries – even death – resulting from the attack… It is only those who attack their victims in the sense of assaulting them intending or foreseeing some injury who alter their normative position relevantly to bring themselves within the family of violence. From this it follows that not every unlawful act should suffice for constructive manslaughter as it does under the present law (as long as it is dangerous).[4]

Following Clarkson's line of argument above, the decision of the Court in *DPP v Newbury and Jones*[5] would have been different i.e., the defendant would not have been found guilty of manslaughter. Similarly, in *R v Cato*,[6] the accused would have escaped liability for unlawful and dangerous act manslaughter. Clarkson stated that the offender in the case engaged in action of a certain moral quality and there might well be a risk of adverse consequences flowing from their wrong doing. Nonetheless, they have not chosen to embark on a violent course of action. They have not attacked their victims and have therefore departed too far from the family of violence. In Clarkson's view, the connection between their fault and the death is too tenous.[7]

2.1.3. Require Acts to be Unlawful and Life-Threatening

The main criticism of unlawful act manslaughter has been its constructive nature. It has been described as illogical[8] unattractive[9] and antiquated.[10] It involves the attribution of criminal liability for causing death in the commission of a crime,[11] provided there was the foreseeable risk of bodily harm which need not be serious harm[12] in all the circumstances that were known to the defendant.[13] This objective test takes no account of the defendant's capacity to foresee what the reasonable person would have foreseen.[14] Furthermore, the degree of foreseeable risk required is unclear.[15] According to Gavin Leigh,[16] these issues could be overcome by concentrating on the test of dangerousness, which in practice takes two forms. The first is when the unlawful act does not require recklessness as to injury, rendering the test objective. The second is when the unlawful act can be proven by recklessness as to some injury and the test is actually satisfied by the defendant's subjective risk taking.[17] In the first unlike in the second test, there is no opportunity to avoid creating the risk of

---

4. Clarkson, 'Context and Culpability in Involuntary Manslaughter: Principle or Instinct?' in Rethinking English Homicide Law, Ashworth and Mitchell (eds) (Oxford: Oxford University press, 2000) 133 – 165 at 159.
5. (1976) 1 ALL ER 365
6. (1976) 1 ALL ER 260, See also *R v Dias* (2001) EWCA Crim 2896
7. Clarkson, 'Context and Culpability in Involuntary Manslaughter: Principle or Instinct?' in Rethinking English Homicide Law, Ashworth and Mitchel (eds) (Oxford University Press 2000) 133 – 165 at 160.
8. *R v Creamer* (1966) 1 QB 72 (CCA) at 82.
9. *R v Lowe* (1973) QB 702 (CA) at 709.
10. *R v Scarlett* (1994) 98 (r App R 290 (CA) at 291
11. *R v Gibbons and Proctor* (1918) 13 (r App R 134.
12. *DPP v Newbury and Jones* (1977) AC 500 (H.L).
13. *R v Watson* (1993) 3 SCR 3 (SCC) at 61
14. *R v Creighton* (1993) 3 SCR 3 (SCC) at 61
15. *R v Larkin* (1943) 1 ALL ER 217.
16. Leigh, G, 'Reconstructing Unlawful and Dangerous Act Manslaughter' (2019) Journal of Criminal Law 272-283
17. J Horder, 'Violating Physical Integrity: Manslaughter by Intentional Attack' in Homicide and the Politics of

injury, unless the circumstances known before the crime is committed suggest there is the foreseeable risk of injury. A conviction for unlawful act manslaughter should depend on the foreseeable risk of injury from the circumstances known before the commission of the crime, unless recklessness as to some injury suffices for the unlawful act. Narrowing the law to a specific and dangerous circumstance, known before the commission of the crime, would allow the defendant the opportunity to avoid a conviction for unlawful act manslaughter and lessen the impact of luck on criminal liability.[18] A defendant's ability to foresee the risk of injury would not explain how culpability is derived from dangerousness, even if the objective test took account of the defendant's capacity to recognize the risk and required the relevant risk to be a likely risk of injury in the circumstances.[19] This is because culpability is based on creating the risk of injury which is different from the risk eventuating.[20] When that risk arises in the course of an unlawful act, the bystander might recognize that the risk has been created, but whether it eventuates is a matter of chance and by this time, moreover, the risk creation cannot be avoided.[21] This is not an issue for unlawful acts that can be proven by recklessness as to some injury, dangerousness is supplanted by the defendant's subjective recognition of the risk involved, which means there is an opportunity to avoid the risk creation at the appropriate time.[22] It is an issue, however, for unlawful acts that do not require recklessness as to some injury, which can be addressed by accepting that unlawful and dangerous acts are only dangerous by virtue of specific circumstances.[23]

In order to avoid the risk creation, those circumstances should be foreseeable before the unlawful and dangerous act is committed.[24] Only by ensuring that the unlawful and dangerous act can be foreseen and avoided is it fair to hold the defendant liable for the death caused[25]. Without a specific foreseeable and avoidable risk, manslaughter is unfair.[26] In *R v Arobieke*,[27] D assaulted V by following him to a railway station and searching for him on a train. In attempting to escape, V crossed a live track and was electrocuted. The unlawful act, on the basis that there was an assault, became dangerous, but a bystander would not have reasonably foreseen the injury and it was V's conduct that created the risk in the circumstances. This might suffice as a legal cause of the death, as V's conduct could be seen as non – voluntary but by the time a bystander would have recognized the risk of injury, from crossing the track, it was too late to avoid it. The relevant risk had already been created. The assault can be said to be a continuing unlawful act, which became dangerous, as the apprehension of unlawful personal violence might have been the cause of the victim's conduct. Whereas in *R v Lewis*,[28] where D had assaulted V by chasing him into oncoming traffic. The ground of appeal was based on causation but the conviction was upheld by the Court of Appeal. The chain of causation was not broken by the victim's conduct, because it was held to have been reasonably foreseeable. The assault was held to be dangerous in the circumstances and this would have been obvious to a bystander, as it had been to several witnesses who saw D chase V into and across the road. Before the risk of injury was created by that criminal act, it would have been obvious that it would create the risk of some harm. Although an assault is not inherently dangerous, this was an unlawful and dangerous act that was foreseeable and avoidable before it began.

Law Reform (Oxford: Oxford University Press, 2012) 143.

[18] . G Leigh, 'Reconstructing Unlawful and Dangerous Act Manslaughter (2019) 83 Journal of Criminal Law.

[19] . Ibid

[20] . Ibid

[21] . G Leigh, 'Reconstructing Unlawful and Dangerous Act Manslaughter' (2019) 83 Journal of Criminal Law.

[22] . Ibid

[23] . G Leigh, 'Reconstructing Unlawful and Dangerous Act Manslaughter' (2019) 83 Journal of Criminal Law.

[24] . Ibid

[25] . Ibid

[26] . Ibid

[27] . (1988) Crim LR 314 (CA)

[28] . (1967) 2 QB 981,

Furthermore, a look at what unlawful act includes, will also help in reaching a conviction in unlawful and dangerous act manslaughter. In *R v Lamb*,[29] it was considered that the act required to ground a conviction in unlawful and dangerous act manslaughter need not only be unlawful but also intended. The facts of the case are, the defendant, Terrence Walter Lamb, was arraigned on an indictment before Glyn-Jones J. that he unlawfully killed Timothy O' Donaghue. Lamb possessed a Smith and Wesson revolver with a five chambered cylinder. Lamb was joking with O' Donaghue, his best friend, by pointing the revolver at him whilst the cylinder contained two bullets in the chambers, neither of which was opposite the barrel. O' Donaghue likewise played along with the joke and was not concerned by the situation. Lamb then pulled the trigger, thereby rotating the cylinder clockwise causing a bullet to be placed opposite to the barrel. The bullet was struck by the striking pin and killed O' Donaghue. The Court in finding Lamb guilty on both grounds of unlawful and dangerous act and criminal negligence held thus:

> If you are satisfied of that, then I direct you as a matter of law and you must take from me, that to use a revolver, a lethal weapon such as this revolver, in the circumstances of this case, in such a manner as in the contemplation of any ordinary man, possessed of his reason, will cause real and unnecessary risk of injury to another, is an unlawful act, whether or not it falls within any recognized category of crime.

Furthermore, the Court continued:

> Surely, he ought to have known perfectly well that what he was doing was dangerous.

The judgment of Lamb, having regard to the judgments of *Andrews v DPP*[30] and *R v Church*[31] held that because *mens rea* was an essential element of assault, involuntary manslaughter on the ground of an unlawful and dangerous act could not be established on the facts except by proving the element of intention in regards to the assault, such that Lamb's conduct was unlawful.[32]

2.1.4. Create a New Offence Similar to 'Bodily Injury Resulting In Death' Under the German Criminal Code

The German Criminal Code[33] has arrangements for offences lesser than manslaughter and their punishments. In the Code, deaths which are unforeseeable consequence of acts of violence might fall under Section 227 of the Code which deal with Korperverletzung mit Todesfolge – 'Bodily injury resulting in Death'. The offence 'Bodily injury resulting in Death' is less serious than manslaughter in the German Criminal Code. Section 227 of the Code provides that if a person causes the death of another through the infliction of bodily injury (under Sections 223 to 226 of the Code), then he or she will face a minimum of 3 years imprisonment.

Section 223 of the German Criminal Code deals with the offence of causing bodily injury which includes physical maltreatment and damage to health. Section 224 deals with offences occasioning dangerous bodily injury. Section 225 of the Code concentrates on the maltreatment of wards and Section 226 deals with serious injuries, for example where the accused causes the victim to lose his sight, hearing or procreative capacity or where the victim is permanently disfigured or disabled.

[29] . (1967) 2 QB 981.
[30] . (1937) A C 576
[31] . (1966) 1 QB 56
[32] . *R v Lamb* (1967) 2 QB 981, 988.
[33] . German Criminal Code 1998.

If death is caused through the infliction of more serious forms of bodily injury under Sections 223 – 226 of the Code, for example, if the accused kills the victim by forcing them to consume a hazardous substance such as crushed glass or if they embark on an assault with a dangerous weapon under Section 224, the accused could be subject to a minimum term of 3 years imprisonment under Section 227 of the German Criminal Code. Those who cause death following the infliction of lower levels of bodily injury under Sections 223 – 226 are punishable with incarceration from one year up to ten years.

2.1.5. Arrange the Fault Element for Involuntary Manslaughter in order to Complement Offences Lying on Both Sides of it

Just like the provisions of Sections 223 – 226 of the German Criminal Code discussed above. It could be seen that the Code arranged the fault elements for involuntary manslaughter such that the offences with lesser degree of culpability are punished with lesser punishment than manslaughter.

According to Yeo,[34] he argued that Indian Law[35] is superior to English and Australian Laws in arranging the fault elements for involuntary manslaughter so as to complement the offences lying on both sides of it, which are murder and culpable killings falling short of manslaughter.[36] The Indian Penal Code[37] adopted a schematic approach, prescribing gradually descending degrees of fault for involuntary manslaughter each of which was carefully formulated to guarantee that it is one rung in degree of moral culpability below the corresponding fault element for murder identified by the Code.[38]

Under Section 300 of the Indian Penal Code, Culpable homicide is murder if the accused does an act causing death with the intention to cause death. Secondly, culpable homicide is murder if the offender intends to cause such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused. According to example (b) of Section 300 of the Indian Penal Code:

> A, knowing that Z is laboring under such disease that a blow is likely to cause his death, strikes him with the intention of causing bodily injury. Z dies in consequence of the blow. A is guilty of murder, although the blow might not have been sufficient in the ordinary course of nature to cause the death of a person in a sound state of health.

Thirdly, culpable homicide is murder if the offender intends to cause bodily injury to any person which is sufficient in the ordinary course of nature to cause death. In *Dhupa Chamar & Ors v State of Bihar,*[39] it was stated that there is no principle that Section 302 of the Indian Penal Code does not arise in all cases involving a single blow. The question has to be determined on the facts of each case:

> The nature of the injury whether it is on the vital or non-vital part of the body, the weapon used, the circumstances in which the injury is caused and the manner in which the injury is inflicted are all relevant factors which may go to determine the required intention and knowledge of the offender and the offence committed by him.

[34] . Yeo, Fault in Homicide (The Federation Press, 1996) 278
[35] . Indian Penal Code Act No. 45 1860
[36] . Yeo, Fault in Homicide (The Federation Press, 1996) 278.
[37] . Indian Penal Code Act No 45 1860.
[38] . Yeo, Fault in Homicide (The Federation Press, 1996) 278.
[39] . (2002) 3 LRI 526 Para 13.

Fourthly, a person will be found guilty of murder if when committing the act he or she knows that it is so imminently dangerous that it must in all probability, cause death or such bodily injury as is likely to cause death and commits the act without any excuse for incurring the risk of causing such injury or death. There are also exceptions under Section 300 of the Indian Penal Code where culpable homicide will not amount to murder to wit:

> If the offender kills while deprived of the power of self-control by grave and sudden provocation or as a result of excessive defence of person or property or if when acting for the advancement of public justice he or she causes death by doing an act, in the honest belief that it is lawful and necessary and without ill-will towards the deceased or
> When death is caused without premeditation in a sudden fight in the heat of passion upon a sudden quarrel and without the offender having taken undue advantage or acted in a cruel or unusual manner, or
> When the deceased, being above the age of eighteen years, suffers death or takes the risk of death with his own consent.

A person convicted of culpable homicide amounting to murder in India may be sentenced to death or to life imprisonment and may also be liable to pay a fine. Section 304 of the Indian Penal Code gives the following illustrations of scenarios in relation to culpable homicide not amounting to murder:

(a) A, lays sticks over a pit, with the intention of thereby causing death, or with the knowledge that death is likely to be thereby caused. Z believing the ground to be firm, treads on it, falls in and is killed. A has committed the offence of culpable homicide.
(b) A knows Z to be behind a bush. B does not know it. A, intending to cause, or knowing it to be likely to cause Z's death, induces B to fire at the bush. B fires and kills Z. Here, B may be guilty of no offence; but A has committed the offence of culpable homicide.
(c) A, by shooting at a fowl with intent to kill and steal it, kills B who is behind a bush: A not knowing that he was there. Here, although A was doing an unlawful act, he is not guilty of culpable homicide, as he did not intend to kill B, or to cause death by doing an act that he knew was likely to cause death.

Under Section 304 of the Indian Penal Code, a person who commits culpable homicide not amounting to murder is punishable with imprisonment for life or imprisonment for a term which may extend to ten years and shall also be liable to a fine. Section 304(a) provides for causing death by negligence. A person who causes the death of any person by doing any rash or negligent act not amounting to culpable homicide can be punished with imprisonment for a term which may extend to two years, or with a fine or with both. The advantage of having a broad homicide offence such as this, lower down the homicide not be restricted to deliberate assaults or other violent conduct but could also apply to cases of fatal neglect. Rather than merely prosecuting someone for assault or for neglect where the fatal consequences are ignored in the label, such an offence would be a specific homicide offence and the fact of death would therefore be recognized and marked.

2.2. Possible Option for Reform in the Law of Gross Negligence Manslaughter

2.2.1. Focus on the Capacity of the Accused

The offence of gross negligence manslaughter requires breach of an existing duty of care which it is reasonably foreseeable, gives rise to a serious and obvious risk of death and does, in fact, cause death in circumstances where having regard to the risk of death, the conduct of the defendant was so bad in all the circumstances as to go beyond the requirement of compensation but to amount to a criminal act or omission.

For a conviction to lie in a trial for gross negligence manslaughter, the prosecution must prove the following:

a. That the defendant owned the deceased a duty of care.
b. That the breach of that duty of care owned the deceased by the defendant caused or contributed to the death of the deceased.
c. The breach can be classified as grossly negligent (which makes it a crime).

This was the test formulated by the Court in *R v Adomako*[40] which was a case concerning a medical anesthetist, Mr. Adomako. Adomako was overseeing an operation on a patient when an important tube became disconnected which was crucial for the patient to breathe, the patient died as a result of that leading to a case of gross negligence against Adomako. In arriving at a verdict for gross negligence manslaughter against Adomako, the Jury considered these two things: First, whether Adomako's conduct was so negligent that it should be considered criminal and second, whether Adomako knew or ought to have known as a professional that there was a reasonably foreseeable risk of death or serious consequences should an incident like that occur. The Jury after considering these arrived at the decision that there was a duty of care owed as the defendant was supervising the procedure and the breach of the duty led to the death of the patient. The conviction was appealed but was dismissed on appeal.

The law on gross negligence manslaughter has always been hinged on the breach of the duty of care but does not focus on the capacity of the said defendant to comprehend or appreciate the risk that will emanate from his breach of the duty he owned to take care. According to Glanville Williams[41], he argued and opined thus:

> If we had a statutory duty to render assistance to specified classes of persons in immediate danger, as there is in many European countries, it is to be expected that the penalty would be relatively light, reflecting the moral difference between killing and letting die. The prohibition of killing is the most urgent requirement of any society, whereas the intervention of the criminal law to promote the giving of assistance to those in distress is little needed for the general safety.

Though, his argument is based on the duty to take care, it could also be likened to the capacity of the defendant to comprehend and appreciate the risk that will emanate from his failure to take care. This area of argument and concern was considered by the Court in *R v Stone*[42] and where this has already been considered before by a Court it is safe to make it part of the law on gross negligence manslaughter. In *R v Stone*,[43] the two defendants were Stone, a man of 67, of 'low average' intelligence, partly deaf and almost blind and his mistress, Mrs. Dobinson, aged 43, who was ineffectual and somewhat inadequate. Stone's sister, Fanny, came to live with the couple as a

[40] . (1995) 1 AC 171
[41] . Glanville Williams, Textbook of Criminal Law (2nd edn, New Delhi: Universal, 2009) 262.
[42] . (1977) QB 354
[43] . Ibid

lodger, she developed anorexia nervosa (a pathological condition involving an extreme disinclination to eat), became very weak and refused to reveal the name of her doctor (because she was afraid of being 'put away'). The defendants tried without success to find her doctor, walking a very considerable distance to do so (they were unable to use a telephone). They also tried unsuccessfully to find another doctor, but took no other further steps, not even mentioning the problem to a social worker who used to visit Stone's mentally retarded son at his house. Meanwhile, Fanny had taken permanently to her bed, eating only 'biscuits and pops.' When she died, in dreadful degradation because of lack of nursing care, the two defendants were convicted of manslaughter and their conviction was affirmed on appeal. The old man received an exceedingly unkind prison sentence of 12 months, 'If for nothing else at least to mark the public disapproval of such behaviour.'[44] Mrs. Dobinson had only a suspended sentence.

In Glanville William's[45] opinion, the Court of Appeal's idea of the function of a prison sentence is highly questionable and in point of justice, it insufficiently took account of Stone's poor intelligence and his evident sense of hopelessness in the face of his sister's refusal to accept treatment. The fact is that the problem was too big for him. Important as it is to maintain the principle that helpless invalids must be cared for, no great public harm would follow if indulgence were shown to inadequate people and those who do not wish to force ministrations upon others; and Stone fell into both categories.

Ashworth, who generally supports a subjectivist approach, believes that criminal liability for negligence is appropriate where those who negligently cause harm 'could have done otherwise.'[46]

It has been argued that it would be unjust if a legal system would hold intellectually disabled people responsible for causing death by gross negligence if they failed to take precautions against a particular form of harm to which they did not advert and would never advert even though, the reasonable person' would have easily recognized such a risk[47]. Applying a purely objective standard which paid no attention to the fact that the accused was less intelligent, mature or capable than the average person[48] would be to resort to absolute or strict liability for such a serious offence as manslaughter.

3. **Conclusion**

The inadequacies in the provision of the Criminal Code on involuntary manslaughter will be resolved when there are detailed provisions of it contained in the Criminal Code. Just like the Criminal Code has detailed provisions on murder. Giving various degrees of the acts and omissions that amount to murder.

The provisions for involuntary manslaughter will be enriched and detailed by first providing for the very serious cases of gross negligence manslaughter to the unlawful and dangerous cases of manslaughter. Then, the lesser cases of involuntary killings lying on both sides of it. An example could be seen in the German Criminal Code which provides for the lesser offence of 'Bodily injury resulting in death' lesser than manslaughter with the punishment of incarceration from one year up to ten years.

[44] . Glanville Williams, Textbook of Criminal Law (2nd edn, New Delhi: Universal, 2009) 263.
[45] . Ibid at 263 - 264
[46] . Ashworth, Principles of Criminal Law (2nd edn, Clarendon Press, 1995) 190
[47] . Law Commission for England and Wales Criminal Law: Involuntary Manslaughter (1994) Consultation paper No. 135 Paragraph 5.63 at 124.
[48] . Law Commission for England and Legislating the Criminal Code: Involuntary Manslaughter (1996) Law Com. No. 237 paragraph 4. 20 at 34