

AN OVERVIEW OF THE MENTAL ILLNESS/IMPAIREMENT
PECULIAR TO WOMEN AND THE POSITION OF THE LAW
IN GRANTING DIVORCE ON SUCH GROUNDS

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ABSTRACT

It has been noticed that mental impairments, when present in marriages, can significantly lead to an increase in divorce rates. As a matter of fact, factors such as depression, Post Traumatic Stress Disorder (PTSD), Post Natal Depression, Peri menopause and Menopause can bring on avid symptoms of mental illness. The purpose of this paper is to show that some forms of mental illness are peculiar to women because of their physical make up and hormonal structure. Men need to be sensitized about such illnesses so that they can recognise the symptoms and learn to live with it in view of the fact that these illnesses are not often of a permanent nature. These period may be unbearable to the male spouse, as a result of the manifestations of aggression and irrationality that may be displayed by their spouses. But breaking up a perfectly happy home for no fault of the woman is avoidable. This would also avoid unnecessary hardship traumatisation and stigmatization of the woman and children. This paper recommends that there is a need for increased awareness about the role of hormones in the life of a woman, and asks for caution on the part of the courts in speedily granting a divorce, whereas adequate counselling may have solved the issues between the couple. This area of assessing the influence of hormonal changes in the life of a woman is not yet well known in Africa, but in the western world, the awareness is very high. This is borne out of well documented research that shows that over there, most women actually ask for a divorce in their 50's and 60's, almost as if to announce a new found confidence, while their African counterparts are on the receiving end from their male spouses who either seek to end the marriage, or take succour in the arms of younger more stable women.

Keywords: Marriage Act, MCA, Divorce, Insanity, Nigeria.

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1. INTRODUCTION

The term mental illness, insanity or mental incompetence is interchangeable.³ In Nigeria, Section 3 of the controversial Nigerians with Disability Decree 1993 does not specifically define the word disability, but it defines a disabled person as:

“A person who has received preliminary or permanent certificate of disability to have condition which is expected to continue permanently or for a considerable length of time which can reasonably be expected to limit the person’s functional ability substantially, but not limited to seeing, hearing, thinking, ambulating, climbing, descending, lifting, grasping, rising to related function or any limitation due to weakness significantly decreased endurance so that he cannot perform his every day routine, living and working without significantly decreased hardship and vulnerability to everyday obstacles and hazards.

Mental illness can be viewed as a form of disability given the fact that routine everyday tasks cannot be performed with ease. Such a person will be prone to fits of anxiety and perhaps rage which will significantly impact their relationships. The preamble to the United Nations Convention on the Rights of Persons with Disabilities sees disability as an ‘evolving concept’.⁴ During interaction with others, one’s perception may lead him to regard the other as impaired or disabled, according to his or her own standard of what can be ordinarily perceived as normal. According to the Disability discrimination Act of England:⁵

When a person is said to have a disability, it may refer to a person with a physical or mental impairment which has a substantial or long adverse effect on his ability to carry out normal day to day activities...

The World Health Organisation (WHO) describes disability as any restriction or lack resulting from an impairment or ability to perform

³Family Law Lawyers., “Grounds for divorce” <http://family-law-lawyers.com/divorce/groundsfordivorce-insanity.html> accessed 04 May 2015

⁴The preamble to the United Nations Convention on the Rights of Persons with Disabilities, cited in N.O Odiaka (n.6) pp.261-285

⁵ The Disability Discrimination Act of England,1995

an activity in the manner or within the range considered normal for a human being.⁶ The WHO definition goes further to define impairment to make things clearer. It is seen 'as any loss or abnormality of psychological, physiological or anatomical structure or function'. It also defines 'handicap' as a disadvantage for a given individual resulting from an impairment or disability that limits or prevents the fulfilment of a role that is normal, depending on age, sex, social or cultural factors. The link here is made between being disabled and the environment.

Many people seem to have a bone to pick with the definition of the World Health Organisation, especially when they speak of 'normal for human beings.' To them, the term may in fact be derogatory or even exclusive of them as persons who deserve to be regarded as part of normal society. Technically they posit that what may be termed normal for human beings is relative. A stereotype may just be short sighted since it is possible that in everyone's lifetime, some form of disability or impairment may be experienced.⁷ It is suggested that the severity of the impairment is what informs labelling. When a disability evokes pity or rejection or is physically obvious, people tend to regard only such people as disabled. Yet this kind of social labelling is now rampant, and it is dangerous in the sense that it beclouds the inherent abilities and capabilities of the person regarded by them as 'disabled'.

2. TYPES OF MENTAL ILLNESS PECULIAR TO WOMEN WHICH MAY LEAD TO DIVORCE

Something as common as high daily levels of anxiety can drain a person to the point that they fall into depression. When a spouse is seeking better connection and understanding from the other and does not get it, they may get angry and display aggressive and hostile behaviour. But generally, the better known triggers for mental illness and depression include the under listed:

⁶World Health Organisation (WHO) (1980): International Classification of Impairments Disabilities and Handicaps (ICIDH), Geneva. Cited in the World programme of action concerning disabled persons, in N.O. Odiaka "Protection of Persons with Disability: The Nigerian Experience" *ABUAD Journal of Public and International Law (AJPIIL)* Vol.1, No.1 June 2015, pp.261-285

⁷Benedict-Agu Okay 'Road and Buildings approvals: 'The Place of Disabled Persons in Nigeria.' *Nigerian Institute of Advanced Legal Studies Journal* p.449

2.1 Post Natal Depression

Generally, men are more prone to suffer from depression. Their depression is often expressed in terms of anger, outbursts and extreme irritability.⁸ Post Natal depression is common to women and has to do with the multitude of emotions that women experience immediately after giving birth and the months that follow. No one is really sure what causes the onset of post natal depression. Most mothers feel tearful, emotionally low in the first three to ten days after they put to bed. This has been regarded as normal. However, some women go on to develop post natal depression. They find it difficult to form a parental bond with their new born baby, and some go as far as to harm the baby or to deprive the baby of timely nutrition such as feeding from breast milk or infant cereals.

It has been suggested in many quarters that the experience of having a child, staying up late most nights to attend to the needs of the child, coping with housework while at the same time cooking and attending to the sexual needs of her partner may be too much for the new mother to cope with. Due to economic problems which most newlywed couples encounter, the new mother also has to hold down a job. Most nursing mothers get househelps to assist them during this period, but then again as their symptoms get worse, they also begin to take out their anger on the house help and their spouse. Before long, the home begins to experience severe turbulence and unhappiness.

2.2 Menopausal Hormonal Imbalance: Peri- menopause and Post menopause

Menopause is the cessation of the monthly menstrual flow or cycle of the woman. This gradually starts to occur from about 48 years for most women and peaks around 55 years. It has been noted that as women move closer to menopause their emotional well-being may undergo serious changes. Doctors typically blame oestrogen. Oestrogen levels drop in the year leading up to menopause; the peri - menopause. Lower levels of oestrogen can lead to hot flashes, poor sleep, and more frequent urination. Cranky behaviour, irritability and mood swings are common and continuous.⁹

⁸Care.com “What mental illness means for your marriage”
www.care2.com/greenliving/mental-illness-divorce- accessed 04 May 2015

⁹Ellen Sarver Dolge ‘Divorce During Menopause’

Other symptoms include insomnia, irritability, palpitations, impatience, loss of concentration and mood swings which typically occur in peri-menopause when menstrual periods are occurring but hormone levels such as progesterone are declining.¹⁰ These symptoms can be experienced by women as young as 35 years. While having irregular and worsening premenstrual syndrome is a sign of onset of menopause, the process is quite gradual and all the symptoms may not manifest at the same time with the same intensity. The more the hormones alter, the more obvious behavioural dysfunction is noticed.¹¹

The decline of oestrogen hormones leads to risk of senility, osteoporosis and early signs of aging. Some of these symptoms may be so prevalent as to warrant a visit to the doctor. Ironically, in most cases, the symptoms are dismissed by the doctor as stress or signs of aging.¹² This paper takes the position that most husbands completely misread the symptoms displayed by their spouses also, and believe their unusual behaviour is specifically displayed with the aim of embarrassing the man and undermining his authority. Where these symptoms are displayed in extremity, the other spouse at the receiving end begins to think of divorce as an option to end the rounds of fights and upheavals being experienced by the family.

2.3 General Anxiety from Physical and Emotional Abuse, on Part of Male Spouse

Some women may suffer from excessive domestic physical and emotional abuse. Over time, this may lead to fear and compulsive stress both at the work place, and in dealing with the children. Often, aggression is transferred to the children. With the stress of juggling careers, children and physical abuse at home, some women may seek solace in alcohol as a means of escaping from such everyday turmoil. As time goes on, symptoms of mental impairment may become obvious. In Nigeria, studies have shown that interference from the extended family and poor earning capacity of young

www.sheknows.com/parenting/articles/823233/ accessed 05 May 2015

¹⁰A.L Gittleman, *Before the Change: Taking Charge of your Perimenopause*(Harper Collins Publishers, New York , 1998) p.4 and forward pages .xv-xviii, by Jonathan V. Wright, M.D.

¹¹*Ibid.* p. 7

¹²*Ibid*

couples to meet their obligations is a leading cause of divorce. Others include extra – marital affairs and wrong expectation of behaviour from each other. Breslau J. suggests that not only does mental illness affect an existing marriage, but continues to be a destabilizing factor if the ill spouse remarries. He is of the opinion that the most prevalent forms of mental illness affecting a marriage include alcoholism, specific phobia and major depression.¹³

3. THE IMPACT OF MENTAL ILLNESS ON THE OTHER SPOUSE

Mental illness or impairment of the female spouse has enormous effects on the husband, depending on his tolerance level and the premium he may place on the marriage. There are many outcomes of having a mentally ill individual as a partner or spouse. These have devastating outcomes for the whole family, especially in Nigeria where the extended family system is in place, relations who come to stay for brief intervals with the couple will have many unpleasant tales to report to other family members insinuating that their brother's wife has gone mad or is slowly losing it.

3.1 Excessive Attention to Mentally Ill Spouse

The mental illness may not be treatable or is subject to periods of relapse. Most forms of mental illness get progressively worse. It has been suggested that one's notion on divorce may determine the extent to which the other spouse is willing to cope with the illness of the other party. Where the form of illness only manifest in demanding extensive attention from the other party, some couples have been known to tolerate this.¹⁴

3.2 Breakdown of the Family

More and more menopausal women ages between 45-50-60 are initiating divorces. This in times past used to be the prerogative of the men as they were experiencing midlife crisis and wanted to uplift their images by marrying younger women. But with the onset of menopause, women who had been traditionally subservient start to question the role and authority of men in the household. Most

¹³ Final Project, "Causes and Effects of Divorce in Nigeria" finalproject.com.ng accessed 16 August 2021; Breslau J.'A study of mental disorders, marriages and divorce, <www.ncbi.nlm.nih.gov/pubmed>accessed on 23 November 2015

¹⁴Care.com (n.8)

previously stable homes are feeling the impact of these women as they acquire a new boldness and fearlessness that makes them ready to face life without the comforting support of their spouses.¹⁵

3.3 Excessive Hardship and Concept of Depravity

Menopause may put excessive strain on the relationship. The woman is often more irritable, confused and isolated. The lack of oestrogen and low levels of testosterone leads to dryness during sex, which leads to pain. Sooner or later, a total breakdown of communication will leave the couple with no other option but to divorce.¹⁶ Therapists and counsellors are often involved to equip parties with tools to deal with high conflict breakups. Needed boundaries have to be recognised. The children also have to be taught to deal with the situation in the home.¹⁷

4. LITIGATION INVOLVING MENTALLY ILL SPOUSES

Most mentally ill people may be incurable or subject to periods of relapse or both. Most jurisdictions require that the condition must have lasted for a period of at least five years.¹⁸ Where all forms of treatment fail, and one spouse is running out of patience, litigation may be the only option. It has been said that the spouse who continually cares for the ill patient suffers the most hurt. Litigation is often very expensive. The condition of the spouse suing for divorce gets blown out of proportion. In this situation, getting the sick spouse to reach a compromise often proves to be difficult.¹⁹

4.1 Mental Illness as a Ground for Dissolution of Voidable Marriages

According to Section 5 of the Matrimonial Causes Act, (MCA) of Nigeria, there are some grounds on which a valid marriage may be voidable. One of them is where “either party of the marriage is; of unsound mindor mentally defectiveor subject to recurrent attacks of insanity or epilepsy”²⁰We must note however that the

¹⁵M. Miller., (n.3)

¹⁶ Ellen Sarver Dolge, (n.9)

¹⁷S. Zarozny, “Handling Extra Difficult Situations: Divorcing when your Spouse has a Mental Illness and /or Personality Disorder”
www.huffingtonpost.com/sharon-zarozny/Handling-Extra-Difficult-Situations...
Accessed 04 May 2015

¹⁸ Family Law Lawyers., (n.4)

¹⁹Ibid.

²⁰ Section 5 (1) (b) (i), (ii), (iii) of the Matrimonial Causes Act 1970

condition must have existed at the time of marriage.²¹ As such the marriage remains valid until set aside on prompting of any of the parties. This reveals to us in this paper, the enormity attached, even by the law to unsoundness of the mind in marriage. While ‘mental defectiveness’²² is well defined by the Act, ‘unsoundness of mind’ is left open. Mental defectiveness is more in line with inherent causes or naturally occurring reasons from birth or physical injury. We may presume that most of the illness being discussed in this paper will fall under the ambit of ‘unsoundness of mind.’ But the fact remains that they both serve as grounds in conjunction with fits of ‘epilepsy’ or episodes of ‘insanity’ for making a marriage voidable.²³

4.2 Mental Illness as a Ground for Divorce in Nigeria

In Nigeria, with regard to the impact of mental illness on marriage, it is worth noting that there is no specific provision citing mental illness or unsound mind as a ground for divorce, even though such were sighted for grounds for making a valid marriage voidable. Rather, reference is made to acts of unreasonable behaviour of one spouse, which the other party cannot be expected to live with. The only ground for breakdown of marriage in Nigeria is ‘irretrievable breakdown’. Section 15 (1) and section 15 (2) of the Matrimonial Causes Act lists all the grounds which may constitute irretrievable breakdown. A petition for dissolution of marriage may commence by citing one or more of the grounds. According to section 15(2) of the MCA;²⁴ “that since the marriage, the respondent has behaved in such a way that the petitioner cannot reasonably be expected to live with the respondent.”

The issue now is to define what may constitute ‘unreasonable behaviour’. It must be noted that human beings have different levels of tolerance. What constitutes an aggravation for one party may be handled differently by another. Not every marital crisis can be attributed to one major incident. Many begin as small problems

²¹ Section 5(1) of the MCA

²² Section 5(2) of the MCA 1970 states that; ‘For the purpose of this section, “mental defective” means a person who, owing to an arrested development or incomplete development of mind, whether arising from inherent causes or induced by disease or injury, requires oversight, care or control for his own protection or for the protection of others and is, by reason of that fact, unfitted for the responsibilities of marriage.’

²³Section 5(1) (b) MCA 1970

²⁴ See section 15(2) C MCA

which were left unattended to and now manifest as a full blown crisis. Thus the petitioner may have endured a situation for a while, and may suddenly decide not to put up with such behaviour any longer. The courts try to decipher what kind of conduct a petitioner may be expected to put up with by using different standards. One of them is the 'objective test.'²⁵ According to S.A.Adesanya in *Odukomaiya v. Odukomaiya*,²⁶ "The test whether the petitioner can or cannot be expected to live with the respondent is objective. Therefore, it is not sufficient that the petitioner alleges that she cannot live with the respondent because of his behaviour, the behaviour must be such that a reasonable man cannot endure"

As for the 'subjective test, the court would prefer to be guided by the potential risk factors and exposure to harm of the petitioner, as well as his ability to cope in a given situation. In *Soetan v Soetan*,²⁷ the court assented to the petitioner's plea that he finds it intolerable to go on living with his wife.

4.3 Mental Illness as a Ground for Divorce across Some Jurisdictions in the United States

a) California: 'California is a no-fault divorce state meaning that there is no requirement to prove that a spouse acted improperly with respect to the marital relationship'²⁸In California, mental illness could be the basis for a divorce. According to the California Family Code,²⁹ 'Dissolution of the marriage or legal separation of the parties may be based on either of the following grounds which shall be pleaded generally';³⁰ Irreconcilable differences which have caused the irremediable breakdown of the marriage and incurable insanity.

b) Texas: Texas laws recognise fault or no fault divorce. Mental illness of one spouse is considered one of the grounds for divorce in Texas. But this applies only if one spouse has been confined to a

²⁵M. Onokah , *Family Law* (Spectrum Books Ltd, Ibadan, 2003) p.203-205

²⁶*Odukomaiya v Odukomaiya*Suit No. ID/38HD/85 of 22/6/87 (unreported) Lagos High Court

²⁷*Soetan v Soetan*, [1972] C.C.H.J./4/73

²⁸J.Stevens, 'California Divorce Laws Regarding Mental Illness' <<http://legalzoom.com/California-divorce-laws-regardingmentalillness...>> accessed 04 May 2015

²⁹ See section 2310 of the California Family Code

³⁰J. Steven (n.32)

mental institution for at least three years and the condition is unlikely to improve. If the ill spouse will improve, but continues to experience relapse, it is also a ground for divorce. If the mentally ill spouse is not institutionalised or in a mental care home, the other spouse may file on the ground of cruelty or extreme hardship resulting from the others' condition.³¹

c) Georgia: Though the state of Georgia recognises mental illness as a ground for divorce, such a spouse must be; 'adjudicated as mentally ill by a court of competent jurisdiction.' It is also necessary that she must be institutionalized or under continuous treatment for at least two years. There is also the condition that she must have been certified by at least two psychiatric physicians to be mentally ill.³² The difficult part of getting this kind of divorce is that it must be established that the chances of recovery are unlikely. Parties often find that it may be easier to seek a no fault divorce. "The burden of proof during litigation is on the party who alleges that the other spouse is not mentally stable. It is not necessary that insanity existed prior to the marriage. It is sufficient that it exists at the time of filing for dissolution of marriage."³³

4.4 Is it Easy to get a Divorce by Citing Mental Illness?

It has been shown that citing mental illness for divorce may hurt your chances of getting a divorce.³⁴ This is because judges may have their own individual quirks and emotional get up surrounding the implication of such a divorce. Also it is not very easy to prove that a spouse is mentally ill. Some may be border line cases, who are probably on medication. Evidences of the ill spouse or photographs taken in compromising situations may be called for as proof of such. Incidences of harm to healthy spouse by the ill spouse can also be called forth.³⁵ It would therefore be inappropriate to take advantage of such a situation by one spouse. Some men may deliberately confine the mentally ill spouse to a rehabilitation home, just for the mere

³¹A. Assad., "Texas Divorce Laws and Mental Illness"

³²A.Land Stephen, "Divorcing a spouse with psychological maladies"
<www.divorceland.com/articles/divorcing-spouse-with-mental-illness>

³³J. Stevens J, (n.32)

³⁴Flicker Bandita, "Can a Psychiatric Diagnosis Hurt You in a Divorce"
<<http://hubpages.commm/health/Mental-illness-and-Divorce>> accessed
23 November 2015

³⁵ Ibid

excuse of using such incarceration as evidence of her incompetence. This is not acceptable, and such action may well work against the chances of the petitioner being granted a divorce.³⁶

5. ISSUES ARISING UPON DISSOLUTION OF THE MARRIAGE WHERE ONE SPOUSE IS MENTALLY INCOMPETENT

Most times, where one party to a divorce is mentally unstable, many issues will arise for determination upon the dissolution of the marriage. Unlike in regular proceedings, more care has to be taken in order not to further subject the depressed party to more hardship and suffering beyond human capacity. Finance is of great importance as such a person may not be able to support themselves until they get well and may require medical therapeutic intervention.

5.1 Child Custody

Most times, when mental illness is cited as a ground for divorce, the judge is more sensitive to whom the custody of the children if any is awarded to. He is out to detect if malicious allegations are being made against a spouse in such a way as to deprive that spouse of custody or visitation right. Evidence will be called to ascertain whether such ill spouse can adequately take care of the children.³⁷

Where the mentally ill spouse is already undergoing excessive trauma, even with mentally stable women, not being with their children comes with attendant emotional discomfort after a divorce. It is suggested that for the mentally incompetent female, she may share right of visitation with her estranged husband. Such visits however have to be supervised to avoid any kind of harm to the children. Child custody in Texas is often called conservatorship of children. The healthy spouse has the right to demand for the children in view of the mental condition of the other spouse. But this is not a closed prerogative. Both parties will be given a chance to present their

³⁶ See section 42 (1) (a) of the 1999 Constitution which states that no citizen of Nigeria shall 'Be subjected to either expressly by ,or in the practical application of any law in force in Nigeria or any executive or administrative action of the government to disabilities or restrictions to which citizens of Nigeria of other Communities , ethnic groups, places of origin, sex, religion or political opinion are not made subject.'

³⁷ Flicker Bandita, (n.38)

arguments as to why they should be given custody of the children. But in all instances, the best interest of the child will be considered.³⁸

5.2 Maintenance Question

The question that arises is whether spousal support should be adjusted if the mentally challenged spouse recovers?³⁹ Child and spousal support could be as high as to consuming the paying parents' total resources. The mentally ill spouse may be exempted if it can be shown that she no longer has a source of income. But disability does not always mean exemption from paying support. Most often, the mentally deprived spouse may be the one in need of support. Then again when mental illness is cited as a ground for divorce the competent spouse may be under an obligation to provide for the ill spouse.⁴⁰

6. THE RIGHT TO DIGNITY OF THE ILL PATIENT

Every person that is undergoing any form of illness has a right to be treated well. Section 34 of the 1999 Constitution of Nigeria provides that every individual is entitled to respect of his dignity and shall not be subject to inhuman or degrading treatment.⁴¹ The right to be treated with respect is the foundation of many of the other rights in the constitution. Therefore, a woman who may be mentally incompetent has a right to be treated with respect, no matter her state of health.⁴² Article 5 of the African Charter on Human and Peoples rights (ACHPR) provides that every individual shall have the right to respect of the dignity inherent in a human being and to the recognition of his legal status.

It will be absolutely cruel for the sane spouse to cause his spouse to be detained in any manner, other than for the purpose of care and treatment, as this will derogate from their fundamental right to personal liberty.⁴³ Apart from the home front, the discrimination occurs in a wide area such as the workplace, schools, health centre,

³⁸ A. Assad, (n.35)

³⁹ Family Law Lawyers, (n.4)

⁴⁰ Flicker Bandita, (n.38)

⁴¹ See section 34 (1) of the 1999 Constitution of Nigeria.

⁴² J.O. Lokulo-Sodipe, "An examination of the legal rights of surgical patients under the Nigerian Law" (2009) *Journal of Law and Conflict Resolution*. Vol. 1(4), pp.079-087 <www.academicjournals.org/JLCR>, accessed on 12 August, 2015

⁴³ See section 35 of the 1999 Constitution of Nigeria.

and other recreational facilities; which further challenges them from living a normal life.⁴⁴ Under article 12 on The Convention on the Rights of Persons with Disabilities ⁴⁵the recognition everywhere of persons before the law and to enjoy legal capacity on equal basis with others, including access to support which they may need, to exercise their legal capacity is also of importance.

6.1 Privacy and disclosure

Disclosure to solicitor, of health records that are required for legal proceedings are usually obtained via Data Protection Act 1998 (UK) or Access to Health Record Act 1990 (UK) which allows health professionals to release information to a lawyer acting for their patients. The patient may be required to confirm that he understands the extent of the information being released. Where a lawyer is requiring information, but acting for someone other than the patient, then the patients consent must be obtained. There must however be an assurance that the information will be used only for the purpose for which it is disclosed, and only the barest minimum needed to achieve a given objective will be revealed. Where a lawyer is seeking information on a mentally ill female to be used in divorce proceedings by the male spouse, the females consent is needed. This is because research has shown that most patients do not know or misunderstand their legal and ethical rights to have their information and records kept in strict confidence.⁴⁶Nevertheless, privacy is an

⁴⁴ The Leonard Cheshire Foundation published a report in 2007 which captures the limitations that the disabled and mentally impaired are subjected to.. These, the foundation state are contrary to the intentions of ‘the Nigerian Constitution, the African Charter on Human and People’s Rights, the Continental Plan of Action for the African Decade of Persons with Disability, and the United Nations Convention on the Protection of the Rights and Dignity of Persons with Disability. They recommended that these disabilities result in vast array of limitations that must be given urgent remedies. The Leonard Cheshire Foundation, which was originally known as The Cheshire Foundation Home for the Sick, founded homes for the sick, especially with ex-service men in mind, as far back as 1948. Members of the local communities where the homes were set up were in charge of raising funds for the development of the homes.

⁴⁵ UN Committee on the Rights of Persons with Disabilities (CRPD Committee) Concluding Observations: Tunisia para.29, U.N. Doc. CRPD/C/TUN/CO/1 (2011).

⁴⁶Sankar Pamela et.al. ‘Patient Perspectives of Medical Confidentiality’ (2003) *Journal of General Internal Medicine* 18, No.8, 659.

important principle which must be respected. It may however be breached where other significant interest prevails.⁴⁷

Many mentally unbalanced patients may seek confidentiality despite their health status and the need for disclosure may be with the objective of advancing litigation, such as divorce proceedings. This is because they believe that special premium should be placed on their health condition and a need not to further aggravate their emotional states. For female mentally incompetent patients, this argument may be advanced. According to the Universal Declaration of Human Rights (UDHR) 1948 ‘All human beings are born free and equal in dignity and rights’⁴⁸ Thus, everyone can avail themselves of the freedoms set forth in the declaration regardless of status such as ‘birth or any other status’⁴⁹ ‘Treating equals as equals and unequal as unequal lies at the heart of the principle of justice.. ...’ sometimes though, individuals may not be equal in every respect.

It is suggested that a mentally incompetent person may have to be restrained to prevent self-harm by acting in their best interest.⁵⁰ A husband seeking for divorce may have no other option than committing the wife to a home for her benefit if he feels that it may be the best way to rehabilitate her, and prevent damage to the psyche of the children of the marriage.

7. CONCLUSION AND RECOMMENDATIONS

The mental issues that most Nigerian households face are quite distinct from those of their foreign counterparts; as such need home grown solutions. Most Nigerian women can cope with child birth and all that comes with it as well as taking care of their spouses. Due to financial difficulties they are also compelled to work outside the home. Families now shift the burden of childcare at tender age to institutions, and also have to pay for these child care crèches and schools. However, some traditional male spouses may insist she give up her career and stay home. This will be a major cause of depression

⁴⁷ Article 8 of the Human Right Act (UK); See also British Medical Association (BMA) guidelines.

⁴⁸ See Article 1, UDHR 1948

⁴⁹ See Article 2, UDHR 1948

⁵⁰ L. P. Ulrich, ‘Ethical Principles in Healthcare Ethics’
www.academic.udayton.edu/LawrenceUlrich/315prinsme.htm
accessed 10 April 2015

for such a career minded female.⁵¹ It is suggested that a lesson we can learn from this is to have jobs that have shifts which the nursing or child bearing wife can choose from. That way she can balance the needs of her home and career without putting too much pressure on herself. Also some companies in Nigeria now grant paternity leave to fathers to assist the wife at home and ease pressure on her. In a typical Nigerian society also, women suffer from mental illness and depression where they are unable to bring forth children into the marriage within a reasonable time. Others may have only female offsprings, and their husbands may put undue pressure on them to have male issues. While this is not a problem for their counterparts who are European or Asian, it is a very big issue especially in eastern and south- southern parts of Nigeria.

The mental agony becomes more intense on the female where the husband now brings in another wife to bear more children into the home. In the end, the couple may seek a divorce from the mental strain and anxiety in the home if the challenges remain unresolved. Customary Law allows a man to divorce his wife if she is barren, but the MCA does not recognize this. It is suggested that to avoid such mental breakdown and dissolution of marriage, the practice of child adoption should be encouraged, and also use of sperm donors where the infertility challenge is from the husband.

The Nigerian law should take into factor, the classes of ill health peculiar to women. Where expert evidence can buttress that, incidents arising from the onset of menopause, or post natal depression have a time frame, the challenged spouse should be given time to recover. Men should be made aware of how post natal depression and menopause affect women. When a person is sleep-deprived for a long period of time as is common with women nursing new born babies or women undergoing menopause, it will lead to irritability, temperamental behaviour and periods of throwing temper tantrums. They (the men) should show compassion and a higher level of tolerance rather than heading for the divorce courts.

On one hand, the male has to deal with temperament issues. But the situation in pre- menopause for example is also compounded by lack

⁵¹ Final Project, (n.13)

of sexual desire on the part of the woman. This is due to peri-menopause symptoms such as breast tenderness, vaginal dryness, depression, breast sagging, weight gain, hair loss, muscular weakness and joint pains. An understanding husband needs to recognise these symptoms and show some empathy. The husband or male may misread these symptoms and seek sexual gratification outside the home, while being unaware that sex and touch may actually be painful for the woman. Women should also increase their appearance and watch their weight, as they may be looking very unattractive at this point in time.

Awareness should be created through the medium of the news media and newspapers, in the same way that the government gives out information about life threatening diseases such as HIV or Hepatitis. Pre – menopausal symptoms are not due to disease. It is just a stage of life. A woman at either peri -menopausal or menopause is already undergoing a lot of disruptions in her body. It will be unfair for her also to have to undergo the trauma of a divorce and possible loss of her husband and children who are really supposed to be her support in the crises she is undergoing.