



## ABILITY IN DISABILITY: EXPLORING THE DIGNITY AND HEALTH RIGHTS OF DISABLED CHILDREN IN SHARĪ‘AH AND NIGERIAN LAWS

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### **Abstract**

*An estimated 32 million people in Nigeria, including children, live with one form of disability or another. These individuals often face discrimination, rejection, and neglect, especially regarding access to basic social services such as healthcare. This demographic reveals the insufficient attention given to disabled children in Nigeria, particularly in terms of healthcare provisions, unavailability of medications, and specialised care. Despite existing legal instruments, including the Constitution, the Discrimination against Persons with Disabilities (Prohibition) Act and the Child's Rights Act, disabled children remain vulnerable. This paper investigates the Sharī‘ah and Nigerian law’s position on the protection and care of disabled children facing health challenges and explores viable solutions. Employing a doctrinal method, the study analyses primary and secondary sources and finds that Nigeria law and the Sharī‘ah not only advocates for the protection of disabled children’s health but also provides detailed provisions for their care, including physical and spiritual dimensions, which align with Islamic teachings and ethical standards.*

**Keywords: Disability. Dignity, Health , Shariah, Nigeria**

### **1.0 INTRODUCTION**

Nigeria, like many other nations, comprises a population that includes individuals living with disabilities. According to the World Population Dashboard and the United Nations, a significant number of these are children who suffer from various health challenges. Relevant provisions under Nigerian law, such as the right to health enshrined in Chapter Two of the 1999 Constitution of the Federal Republic of Nigeria (as amended),<sup>1</sup> recognise the importance of healthcare for all citizens. Similarly, the Child’s Rights Act 2003<sup>2</sup> affirms the child’s right to enjoy the best attainable state of physical, mental, and spiritual health. This is apart from the Discrimination Against Persons with Disabilities (Prohibition) Act,<sup>3</sup> a principal law prohibiting discrimination against the disabled. Despite these legal frameworks, disabled children in Nigeria continue to grapple with inadequate healthcare services, exposing them to heightened risks of mortality and impaired quality of life.

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<sup>1</sup>See Section 17(3)(d) Constitution of the Federal Republic of Nigeria 1999 (as amended).

<sup>2</sup>See Section 13(1) Child's Rights Act, Cap. C50 LFN 2004.

<sup>3</sup>Discrimination Against Persons with Disabilities (Prohibition) Act, 2018.



There is a pressing need to strengthen healthcare services for children, particularly those with disabilities, to safeguard their lives and enhance their well-being. From the perspective of Shari'ah, which coincided with Nigeria laws, the welfare and protection of disabled children are of paramount importance. Health is viewed in Islam as one of the greatest blessings bestowed by Allah, enabling human beings to live a dignified and productive life.<sup>4</sup> Consequently, this research discusses the legal position of the health and dignity of disabled children from the perspective of Shari'ah and Nigeria laws and seeks to propose actionable and theologically grounded solutions for improving their condition.

## 2.0 THEORETICAL FRAMEWORK OF DISABILITY IN THE LIGHT OF NIGERIAN LAW, QUR'ĀN AND SUNNAH

Disability is broadly defined under the UN Convention on the Rights of Persons with Disabilities (CRPD) as including "long-term physical, mental, intellectual or sensory impairments" that may hinder full participation in society.<sup>5</sup> The Discrimination Against Persons with Disabilities (Prohibition) Act adopts the above definition<sup>6</sup>. Constructing a legal and theoretical framework for disabled children is a bit difficult, it requires an understanding of how disability and childhood are independently and jointly conceptualised in law.

In Islamic jurisprudence (*fiqh*), although there is no exact equivalent term for "disability" in the modern sense, the concept is addressed under various terminologies such as *a'mah* (blind), *majnūn* (mentally ill), and *marid* (ill person), often contextualised with mercy, responsibility, and protection<sup>7</sup> (have you considered the terms *u'lul Dharar* (persons with difficulty or disability; or *Al-Dau'afa* or *Al-Mustad'afeen*) these terms are variously used in the Quran (See Disability Rights in Islamic Law: A study of Quranic teachings and the life of Prophet Muhammad by Intizar Ahmad et al.. 2023 Journal of Positive school psychology vol 7, issue 1 pp. 383-394)

Disability and associated health challenges are universal concerns that transcend geography, ethnicity, and religion. People with disabilities, including children, are found across every nation. While the nation's legal and institutional responses vary, Islamic law recognises disability as part of the human condition and enjoins comprehensive ethical and legal obligations toward the disabled, children included.

### 2.1. Theoretical Framework of Disability in the Light of Qur'ān and Sunnah

The position of the *Shari'ah* is that all people belong to one human family; every person is created out of the same father and mother.<sup>8</sup> This implies that this equality of biological origin should be reflected in the equality of the human dignity common to all. It is important to state that the Holy Qur'ān has mentioned in various verses that the dignity of individual need to be

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<sup>4</sup>Al-Bukhari, Sahih al-Bukhari, Kitab al-Tibb (Book of Medicine), Hadith No. 5678; Al-Ghazali, *Ihya' 'Ulum al-Din*, vol. 4 (Dar al-Fikr, 1997), 232.

<sup>5</sup>Article 1, United Nations Convention on the Rights of Persons with Disabilities 2006.

<sup>6</sup>Section 2 of Discrimination Against Persons with Disabilities (Prohibition) Act, 2018.

<sup>7</sup>Yusuf Al-Qaradawi, *Fiqh al-Awlawiyyat* (Al-Risalah, 2001), p. 113.

<sup>8</sup>NurdengDeuraseh, (2009) "Preservation of Health in Islamic Law", International Islamic University, Malaysia. (2009) P.101.



respected and protected which include the children as well,<sup>9</sup> and there is need to respect and safeguard each other's dignity. Human evolution into 'nation and tribes' is meant to foster, rather than to diminish their mutual desire to understand and appreciate the essential human oneness underlying their outward differentiations.

The Qur'ān acknowledges the diversity of human creation and emphasises dignity and equality for all. Allah says: "O mankind! Indeed, We created you from a male and a female, and made you into nations and tribes so that you may know one another. Verily, the most honourable of you with Allah is the one who is most righteous."<sup>10</sup> This verse lays the foundation for mutual respect and recognition of human dignity, irrespective of physical or mental condition. The verse further underscores the principle of equality by affirming that all humans originate from the same source and are thus deserving of equal treatment and dignity. No doubt, human being is recognised as one of the best creatures of Allah as He made us as best of creation,<sup>11</sup> in terms of appealing features. However, these features tend to deteriorate as human being grows old.<sup>12</sup> The Qur'ān repeatedly reminds believers of the need to safeguard the dignity of all human beings, including children with disabilities.<sup>13</sup>

Furthermore, disability is never viewed as a divine punishment but rather as a test, and often as a means of spiritual elevation. The Qur'ān and Sunnah instruct Muslims to treat people with disabilities not merely with sympathy but with inclusion, compassion, and dignity. This is so, as it is crystal clear from the above that all human part will be drastically reduced and malfunction at certain age of human live.<sup>14</sup> That is, no matter how strong human beings are, there will be a time some part will be weaken and may need attention as regards to medical treatment. It is therefore, imperative to explain that attitude towards all human beings must be considered in relation to their state of health. This is well spelt-out in the Holy Qur'ān where Allah said:

O prophet Behold, We have created you all out of a male and female And have made you into nations and tribes, so that you might come to know one another. Verily, the noblest of you in the sight of God is the one who is most deeply conscious of Him. Behold, God is all knowing all aware.<sup>15</sup>

A vivid Qur'ānic example is found in the incident involving the Prophet Muhammad (SAW) and a blind companion, `Abd Allah ibn Umm Maktum. The Prophet, while engaged with prominent leaders of Quraysh, turned away when the blind man interrupted to seek religious

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<sup>9</sup> "Allah enjoins you concerning your children: The male shall have equal of the portion of two females; then if they are more than two females; they shall have two-third than what the deceased has left; and if there is one. She shall have the half and as for his parents each of them shall have sixth of what he has left if he has a child, but if he has no child and (only) his two parents inherit him then his mother shall have the third; but if he has brother then the mother shall have the sixth.....' Surah An-Nisā' (4):11.

<sup>10</sup> Surah Al-Hujurat (49):13. See also AbdurRahman I. Doi, Shari'ah: The Islamic Law (Gaskiya Corporation, 1984), 284.

<sup>11</sup> Surah At-Tin(95):3, 'Verily, man is in the best conformation'.

<sup>12</sup> Surah At-Tin (95):5, 'thereafter We reduce him to lowest of low-excepting only such as attain to faith and do good works.'

<sup>13</sup> Surah Al-'Isrā'i(17):70 "Indeed, We have honoured the children of Adam..."

<sup>14</sup> Sural Al Yasin (36) 68

<sup>15</sup> Surah Al-Hujurat (49):13.



guidance. The prophet was earnestly engaged in trying to persuade the leaders of Quraysh to accept the religious of Islam and indeed, many of them in the community accepted Islam. At that point, the prophet was approached by one of his followers who was blind to seek explanation on certain passages of the Qur'ān. The methodology adopted in raising the question annoyed the prophet, as it appeared interrupting the congregation. The prophet frowned and turned away from the blind man. In response, Allah revealed verses rebuking the Prophet's act thus:

He frowned and turned away because the blind man came to him. But what would make you perceive, [O Muhammad], that perhaps he might be purified or be reminded and the remembrance would benefit him?<sup>16</sup>

This early Qur'ānic rebuke demonstrates Islam's unequivocal emphasis on treating the disabled with full respect and attention. It emphasises that spiritual merit and sincerity not wealth or physical prowess—are the true indicators of human value.<sup>17</sup> This incident also serves as a legal and ethical precedent for equality and non-discrimination in Islamic jurisprudence. It communicates that people with disabilities deserve equal standing in both social and religious spaces, and their access to knowledge and guidance must never be compromised due to their condition. The Prophet's subsequent elevation of Ibn Umm Maktum, who was later appointed as a *Mu'azzin* and served as the Governor of Madinah in his absence, reflects the deeply rooted Islamic practice of inclusion and empowerment.<sup>18</sup>

## 2.2. Theoretical Framework of Disability in the Light of Conventional Law

Historically, disability has been viewed through the medical model, which defines it in terms of physiological or cognitive impairments requiring cure or certain correctional measure. This approach pathologies the individual and often justifies segregation or institutionalisation. Thus, this paradigm has been increasingly challenged by the social model of disability, which locates the “problem” not in the individual's condition like the medical model, but in the societal barriers, both environmental and attitudinal, that limit full participation of disabled children in the society.<sup>19</sup>

Contextualising disability from children perspective, the legal subject has traditionally been constructed as a condition of lacking autonomy and in need of protection.<sup>20</sup> The welfare model, which dominated earlier child rights frameworks, emphasised state guardianship and charitable intervention. In contrast, the rights-based approach to childhood, which underlies the Convention on the Right of Child (CRC), recognises children as holders of rights who are

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<sup>16</sup>Surah 'abasa (80):1–4; see also Muhammad Asad, *The Message of the Qur'ān* (Dar al-Andalus, 1980), 923–924.

<sup>17</sup>Al-Hafidh Ibn Kathir, *Tafsir al-Qur'ān al-'Azim*, ed. Sami ibn Muhammad Salamah (Dar Tayyibah, 1999), vol. 8, 303.

<sup>18</sup>Al-Nawawi, *Sharh Sahih Muslim*, vol. 9 (Dar al-Ma'rifah, 1996), 27; Ibn Hajar al-Asqalani, *Fath al-Bari*, vol. 2 (Maktabah Salafiyah, 1987), 101.

<sup>19</sup>Andrew J. Hogan, “Social and Medical Models of Disability and Mental Health; Evolution and Renewal” 191 no. 1 (2019): *Canadian Medical Association Journal*, <https://doi.org/10.1503/cmaj.181008> p. 18.

<sup>20</sup>Barbaca Fawcell, “Children and Disability; Constructions, Implications and Change” 59 no. 2 (2016): *International Social Work*, <https://doi.org/10.1177/0020872813515011> pp.224–234.



entitled to participation, protection, and provision.<sup>21</sup> When these models intersect, disabled children face a compounded marginalisation. They are often excluded from normative frameworks of childhood because disability is seen as an anomaly that precludes agency and autonomy. This is particularly evident in Nigeria, where prevailing cultural attitudes often associate disability with stigma or misfortune, leading to concealment, neglect, or even infanticide in extreme cases.<sup>22</sup>

The vulnerability theory, developed in legal scholarship by Martha Fineman, offers an alternative lens. It posits that all human beings are inherently vulnerable and that the state has a duty to respond by creating structures of resilience. For disabled children, vulnerability is not merely a biological fact but a socio-legal condition shaped by exclusion from education, healthcare, and community life. This theory moves the discourse beyond mere protection towards empowerment and inclusive citizenship.<sup>23</sup> Further, the capabilities approach, introduced by Amartya Sen and extended by Martha Nussbaum, provides a normative framework that emphasises the actual freedoms and opportunities people have to achieve well-being. Applied to disabled children, this framework calls for legal and policy measures that enable them to develop their capacities and function as full members of society.

In the Nigerian legal context, there remains a significant gap between these theoretical insights and their practical application. While certain laws make reference to non-discrimination and inclusion, there is often a lack of clarity on how these principles translate into enforceable rights or specific entitlements for disabled children. Bridging this gap requires a more integrated theoretical foundation, one that recognises children with disabilities not as subjects of charity but as full rights-bearers whose dignity must be preserved and promoted through law.<sup>24</sup>

### **3.0 RIGHT BASED APPROACH TO CHILD DISABILITY UNDER NIGERIA LAW**

Nigeria's commitments under international law form the cornerstone of its theoretical framework for the right of disabled children in Nigeria. In this regard, two key treaties are important, that is; the United Nations Convention on the Rights of the Child (CRC) and the Convention on the Rights of Persons with Disabilities (CRPD) which set forth principles that underpin rightsbased approaches to the disabled children.

The CRC advocated the Principle of Best Interests of the Child as a basic tenet. In one of its Articles, the CRC mandates that in all actions concerning children, the best interests of the child shall be a primary consideration.<sup>25</sup> This principle has dual dimensions: it protects children from harm and empowers them to participate in decisions affecting their lives. For disabled children, this principle demands proactive measures to ensure that their specific needs, such as

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<sup>21</sup>TheresiaDegener, "Disability in a Human Right Context" 5 no. 35 (2016): Laws, <https://doi.org/10.3390/laws5030035> p. 2 & 4.

<sup>22</sup>IfeomaAdaigweAmaechi, Paul OsemekeNwari, Augustine OnyebuchiAkadieze, "Stigmatizing Attitude Towards Mental Illness, Disabilities, Emotional and Behavioural Disorders Among Healthcare Students in a Tropical University College of Health Sciences" 12 no. 82 (2023): Journal of Education and Health Promotion, <https://doi:10.4103/jehp.jehp-73022>

<sup>23</sup>Malou Beck, "Empowering Vulnerability; The Social Model of Disability and Digital Government" (2024) Technology and Regulation, <https://doi.org/10.28116/techreg.2024.020> pp. 282-284.

<sup>24</sup>Thomas Wells, "Sen's Capability Approach Internet Encyclopaedia of Philosophy" <https://iep.utm.edu/sen-cap/>

<sup>25</sup>Article 3, Conventional on the Rights of Child.



access to assistive devices, inclusive education, and specialised healthcare, are met in a manner that maximises their well-being and development.

Following the Rights-Based Approach to Disability, The Convention on the Rights of Persons with Disabilities (CRPD), which was ratified in Nigeria in 2010, shifts the paradigm from charity and medical models to a rights-based model centred on equality, autonomy, and inclusion. The CRPD articulates obligations for state parties to ensure accessibility,<sup>26</sup> provides habilitation and rehabilitation services,<sup>27</sup> and promotes inclusive education.<sup>28</sup> The CRPD's emphasis on universal design and reasonable accommodation addresses the structural barriers that impede disabled children's full participation in society.

Nigeria's domestic legal landscape comprises several statutes and policy instruments aimed at protecting the rights of disabled children. This includes the Child Rights Act (CRA) 2003, Discrimination Against Persons with Disabilities (Prohibition) Act 2018, the Nigeria National Policy on Disability (2019), Education Sector Policy and Health and Social Protection Scheme. The Child Rights Act, which domesticated the CRC at national level, guarantees every child's fundamental rights, including access to health care,<sup>29</sup> education,<sup>30</sup> and protection from abuse.<sup>31</sup> The Discrimination Against Persons with Disabilities (Prohibition) Act 2018 on the other hand, criminalises discrimination on the basis of disability and mandates reasonable accommodation in public buildings, transportation, and educational institutions.<sup>32</sup> The law establishes a National Commission for Persons with Disabilities tasked with monitoring compliance and advising on policy.

Further, the National Policy on Disability developed by the Federal Ministry of Women Affairs and Social Development, outlines a framework for inclusive development, specifying measures for education, health, and social protection. It adopts a life-course approach. In the education sector, the Universal Basic Education (UBE) programme mandates nine years of free, compulsory education for all children. The UBE Act and accompanying guidelines all encourage inclusive education in Nigeria. Towing the same line, the National Health Insurance Scheme (NHIS) theoretically covers persons with disabilities, the Cash-transfer programs under the National Social Protection Policy have pilot schemes for vulnerable households although rarely target disability specifically.

Notwithstanding the above, while Nigeria's domestic frameworks articulate laudable goals, the theoretical promise often dissipates in implementation. The federal structure creates legislative patchworks, and absence of disaggregated data on disabled children impedes targeted interventions. Moreover, the lack of harmonisation between child and disability-centric laws perpetuates conceptual silos, reducing policy coherence. Again, the CRA's applicability is limited by non-uniform adoption across Nigeria's 36 states; as of 2025, only 28 states have enacted the CRA into state law.<sup>33</sup> With regards to the Discrimination Against Persons with

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<sup>26</sup> Article 9, Convention on the Right of Child with Disabilities.

<sup>27</sup> Article 26, Convention on the Right of Child with Disabilities.

<sup>28</sup> Article 24, Convention on the Right of Child with Disabilities.

<sup>29</sup> Section 14, Child Rights Act.

<sup>30</sup> Section 14, Child Rights Act.

<sup>31</sup> Section 11, Child Rights Act.

<sup>32</sup> Section 7, Discrimination Against Person With Disability (Prohibition) Act.

<sup>33</sup> National Human Right Commission, "Status of Child Rights Act Adoption in Nigeria States" NHRC Report, 2024, 12-14.



Disability (Prohibition) Act, it lacks child-specific provisions. It thus requires interpretative extension to encompass disabled minors.<sup>34</sup> While the National policy on disability falls short of clear implementation timelines and budgetary allocations, undermining its efficacy, the UBE program lacks enforcement mechanisms and teacher training programs tailored to special needs education. As of 2024, only 15% of primary schools had any infrastructure for disabled learners.<sup>35</sup><sup>[3]</sup>

#### 4.0 RIGHT OF DISABLE CHILDREN UNDER UNDER SHARI'AH AND NIGERIA LAW

##### 4.1. Right of Disabled Children to Health

The Nigerian children including disabled children have rights to adequate health care and health care facility.<sup>36</sup> In both Islamic and conventional legal contexts, health is considered a fundamental human right. The Nigerian legal framework, particularly the Child's Rights Act 2003, affirms that every child is entitled to enjoy the best attainable state of physical, mental, and spiritual health.<sup>37</sup> This provision aligns closely with Islamic law (Shari'ah), which recognises and guarantees the right to life and health as core components of human dignity.<sup>38</sup>

Under Shari'ah, the right to life is inviolable and intrinsically linked to the right to health. Allah prohibits the taking of life unjustly in the Qur'an, affirming that: "Do not kill the soul which Allah has made sacred except through legal right."<sup>39</sup> It is thus inferred that preservation of life, including through healthcare and protection against harm, is a divine obligation. This obligation extends to children, especially those who are disabled and thus more vulnerable to health-related neglect.

*Shari'ah* in many verses of the Qur'an prohibits killing of people and examples of this can be found in Qur'an 2 v 9 and Qur'an 2 v 17. These two verses give clear principles that persecution, in whatever form is not *intadem* with freedom, which mean a denial of freedom is a far worse and greater offence than killing which is a denial of the right to life.<sup>40</sup> This principle leads to logical conclusion that freedom is more important than life. This is by no means strange, bearing in mind that the very humanity of man is the result of such freedom. This proposition is strengthened by the *Hadith* of Prophet Muhammad SAW which says:

He who reaches the morning while he is health in body, Secure in dwelling, and possessing his day's sustenance, then it is as though the worldly life has been fully granted.<sup>41</sup>

<sup>34</sup>See Sections 7-9, Discrimination Against Persons With Disability (Prohibition) Act.

<sup>35</sup>Universal Basic Education Commission, "Inclusive Education Survey Report," UBE Report, 2024, 27-29.

<sup>36</sup>T. A. Abdulraheem, "Simple Biological Cycle : Explicating Maqasid Al-Shari'ah as a tool for protecting children's Right to health" International Journal without boundary. 1 no. (1) (2016): 170-186

<sup>37</sup>Section 13(1), Child's Rights Act, Cap. C50, Laws of the Federation of Nigeria 2004; Section 17(3)(d) Constitution of Nigeria 1999 (as amended).

<sup>38</sup>Yusuf al-Qaradawi, *Fiqh al-Awlawiyat* (Dar al-Shorouk, 1994), 45; Mohammad Hashim Kamali, *Principles of Islamic Jurisprudence*, 3rd edn (Islamic Texts Society, 2003), 348.

<sup>39</sup>Surah Al-'Isrā'i (17):33.

<sup>40</sup> T.A Abdulraheem and A.B Abdulkadir (2017) Right of children to life : Hindsight and Interface of Shariah and Nigerian child law. *Journal of Law (HUJIL)* 1 (1) 150-167.

<sup>41</sup> Recorded by at-Tirmithi, Ibn Majah and others, verified to be Hassan by Al-bani {Sahih al jami no. 6042.



The principle of *ḥifẓ al-naḥs* (protection of life) is one of the five essential objectives (*maqāṣid al-sharī'ah*) of Islamic law. This principle compels Muslim communities, governments, and individuals to actively safeguard life through accessible and quality healthcare.<sup>42</sup> Children with disabilities, therefore, are entitled to special consideration due to their increased vulnerability.

Furthermore, the Prophet Muhammad (peace be upon him) emphasised the blessing of good health as foundational to human welfare when said: “Whoever among you wakes up secure in his property, healthy in his body, and has his food for the day, it is as if he has acquired the whole world.”<sup>43</sup> This *ḥadīth* articulates a holistic view of well-being; physical, emotional, and economic. In the case of disabled children, these elements must be deliberately provided through inclusive healthcare policies, parental support, and public responsibility. Shari'ah, therefore, not only permits but encourages the establishment of healthcare systems and social services aimed at preserving the well-being of every individual, particularly children.<sup>44</sup> When a child is born with a disability, Islamic ethics require their care and treatment as a communal obligation (*farḍ kifāyah*) if the family is unable to do so.

#### 4.2. Disabled Children as Weak-Minded

Islamic law demonstrates a positive and inclusive attitude toward individuals with physical or mental disabilities. The Qur'ān and Hadith literature, while not using modern terminologies such as “disability,” consistently advocate for the care and dignity of persons with special needs, including children. Instead, the Qur'ān refers to such individuals using terms like *ḍu'afā'* (the weak or disadvantaged), a category that encompasses various states of vulnerability.<sup>45</sup>

Classical Islamic jurists have recognised the concept of intellectual or mental incapacity under categories such as *al-majīnūn* (the insane), *al-ma'tūh* (the mentally deficient), and *al-safīh* (the feeble-minded or immature). These classifications are used in Islamic jurisprudence (*fiqh*) to determine legal responsibility (*taḥlīf*) and rights.<sup>46</sup> Notably, mentally disabled individuals, particularly children, are considered *ghayr mukallafīn*, that is, those who are not legally accountable for religious obligations due to their lack of intellectual capacity.<sup>47</sup> This exemption is not punitive but protective, affirming that the duties of religious law are only imposed upon those who possess understanding and rationality. The Prophet (peace be upon him) in one of his widely reported *ḥadīth* stated: “*The pen has been lifted from three [types of people]: the one who is asleep until he awakens, the child until he reaches puberty, and the insane until he regains sanity.*”<sup>48</sup>

Within this context, disabled children are not merely excluded from legal obligations but are simultaneously entitled to a broader umbrella of care and protection. This legal recognition reinforces their right to medical attention, education, physical, emotional, spiritual,

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<sup>42</sup>JasserAuda, *Maqasid Al-Sharī'ah as Philosophy of Islamic Law* (International Institute of Islamic Thought, 2008), 14–17.

<sup>43</sup>Al-Tirmidhi, *Sunan al-Tirmidhi*, Hadith no. 2346; graded ḥasan by Al-Albani.

<sup>44</sup>Yusuf Al-Qaradawi, *Fiqh al-Zakat*, vol. 1 (Mu'assasat al-Risalah, 1996), 178.

<sup>45</sup>Surah An-Nisā' (4):98; see also Muhammad Asad, *The Message of the Qur'ān* (Dar al-Andalus, 1980), 125.

<sup>46</sup>Al-Kasani, *Bada'i al-Sana'i fi Tartib al-Shara'i*, vol. 7 (Dar al-Kutub al-'Ilmiyyah, 1986), 134; WahbaAl-Zuhayli, *Al-Fiqh al-Islami wa Adillatuhu*, vol. 4 (Dar al-Fikr, 1997), 287.

<sup>47</sup>Ibn Qudamah, *Al-Mughni*, vol. 3 (Dar al-Fikr, 1985), 108–110.

<sup>48</sup>Abu Dawud, *Sunan Abi Dawud*, Hadith no. 4403; also in *Al-Nasa'i* and *Al-Tirmidhi*.



psychological support, and inclusion in societal life. From a social standpoint, Islam encourages integrating the disabled into communal events and everyday life. The inclusion of disabled individuals in religious, social, and family functions is a deeply rooted tradition within the prophetic Sunnah. For instance, the Prophet appointed Ibn Umm al-Maktūm, a blind man, to lead the prayer and serve as his deputy in Madinah during his absence, an act that symbolises full inclusion.<sup>49</sup>

Furthermore, disabled children often face psychological struggles such as depression, low self-esteem, and exclusion. Islam's position on *karāmah* (dignity) necessitates their social reintegration. Islamic ethics urge society to treat the disabled with empathy, facilitate their access to healthcare and education, and protect them from ridicule or isolation.<sup>50</sup> Thus, the Islamic legal and ethical framework promotes a paradigm of dignified inclusion for mentally and physically disabled children. It transcends mere tolerance and insists upon active responsibility by families, communities, and governments to uplift and care for the weak-minded and vulnerable among them.

### 4.3. Rights of Treatment and Rehabilitation

From an Islamic legal and ethical standpoint, the right to preventive health care, including treatment and rehabilitation, is not only a moral obligation but a legal right. This right is grounded in the principles of the *maqāṣid al-sharī'ah*, particularly the objective of preserving life (*ḥifẓ al-nafs*). The Qur'ān and Sunnah address both preventive and remedial aspects of healthcare for all, including children with disabilities. In this regard, preventive care, as emphasised in Islamic teachings, involves proactive measures such as hygiene, diet, and healthy living. The Prophet Muhammad (peace be upon him) is reported to have said: "*Your body has a right over you.*"<sup>51</sup> This hadith implies that every person must protect their own health and well-being. This naturally extends to parents and guardians who bear a duty to protect the health of their children, especially those with physical or mental disabilities who are unable to care for themselves.

Further, remedial care in Islam can take three primary forms. That is: physical medication and treatment, rehabilitation, and spiritual healing.<sup>52</sup> The use of medical treatment is highly encouraged in Islam. This, the Prophet (peace be upon him) encouraged when he said: "*Make use of medical treatment, for Allah has not made a disease without appointing a remedy for it, except for one disease—old age.*"<sup>53</sup> The above hadith confirms the compatibility of medical science with Islamic ethics. Seeking treatment is therefore not a contradiction of faith but a manifestation of *tawakkul* (reliance upon Allah) coupled with practical effort. In fact, It is the view of some of the Islamic Jurists that it is a responsibility of every Muslim, including the disabled to use medication.<sup>54</sup>

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<sup>49</sup>Ibn Hajar al-Asqalani, *Fath al-Bari*, vol. 2 (MaktabahSalafiyyah, 1987), 101.

<sup>50</sup>Al-Ghazali, *Ihya' 'Ulum al-Din*, vol. 2 (Dar al-Fikr, 1997), 232–234.

<sup>51</sup>Al-Bukhari, *Sahih al-Bukhari*, Kitab al-Tahajjud, Hadith no. 1131.

<sup>52</sup>H. Al- Aoufi, N. Al-Zyoud, N Shahmina, "Islam and the cultural conceptualisation of disability", *International Journal of Adolescence and Youth*. (2012):208.

<sup>53</sup>Abu Dawud, *SunanAbiDawud*, Hadith no. 3855; see also Ibn Majah, *Sunan*, Hadith no. 3436.

<sup>54</sup> M.M Ghaly, "Physical and Spiritual Treatment of Disability in Islam: Perspective of Early and Modern Jurists", *Journal of Religion, Disability & Health*, (2008):110.



Additionally, spiritual remedies, such as *ruqyah*, *du'ā'*, and Qur'ānic recitations are also prescribed in the Sunnah for safeguarding the health. This practice, referred to as *tahṣīn* (spiritual fortification), is considered complementary to physical treatment and is widely practiced in Muslim communities.<sup>55</sup> Furthermore, the Hadith of the Prophet (peace be upon him) stating that: “A strong believer is better and more beloved to Allah than a weak one, although there is good in both...”<sup>56</sup> serves as a motivation to seek physical and psychological strength where and when possible, including through healthcare, rehabilitation, and proper nutrition etc. This includes disabled individuals who, through proper support and treatment, can achieve meaningful lives and contribute positively to society.

Under the conventional law, Nigeria is a signatory to several international instruments that guarantee the right to health and rehabilitation for disabled persons, including the United Nation (UN) Convention on the Rights of Persons with Disabilities (CRPD). Article 25 of the CRPD mandates state parties to provide persons with disabilities with the same range, quality, and standard of free or affordable health care as provided to other persons.<sup>57</sup> Hence, both Sharī'ah and conventional legal frameworks assign duties to the state to ensure the availability, accessibility, and quality of healthcare for all citizens, including disabled children. Nursing and caring for physically and mentally ill individuals is considered an act of *'ibādah* (worship) in Islam and a social obligation in law.<sup>58</sup> Governments and communities are therefore jointly responsible for guaranteeing these rights in policy and practice.

#### 4.4. Inclusiveness of Disabled in Almsgiving

In Nigeria, the situation of disabled children remains precarious. Government efforts toward the provision of adequate healthcare and other essential services for persons with disabilities are often insufficient.<sup>59</sup> Many disabled children face conditions of extreme poverty, social exclusion, and educational deprivation which of course are presumed to be their right.<sup>60</sup> These experiences reflect a broader pattern of structural marginalisation.<sup>61</sup> The importance of creating a quality environment for the disabled has been accorded the desired attention.<sup>62</sup> The inability of children to have access to basic necessities such as mainstream education, social security benefits, appropriate shelter, working aid, social life and others are some of the challenges facing the disabled children in Nigeria. It is therefore imperative to state that disabled need to be empowered by including them into certain alleviation programmes which Islamic law encourages.

<sup>55</sup>Al-Nawawi, Riyadh al-Salihin, Book of Medicine, Hadith no. 902; also Al-Jawzi Ibn Qayyim, Zad al-Ma'ad, vol. 4 (Mu'assasat al-Risalah, 1994), 115–118.

<sup>56</sup>Muslim, Sahih Muslim, Book of Destiny, Hadith no. 2664.

<sup>57</sup>Article 25, United Nations Convention on the Rights of Persons with Disabilities 2006.

<sup>58</sup>Ibn Hazm, Al-Muhalla, vol. 7 (Dar al-Fikr, 1980), 320; Yusuf al-Qaradawi, Fiqh al-Zakat, vol. 1, 178–179; Mashood A. Baderin, International Human Rights and Islamic Law (Oxford University Press, 2003), 208.

<sup>59</sup>Jibril O. Abdulmalik & Shehu Sale, “Pathways to Psychiatric Care for children and Adolescents at Tertiary Facilities in Northern Nigeria.” Journal of Public Health in Africa, (2012): 1-5.

<sup>60</sup> See section 15 (1) of the Child Right Act, 2003 which provided that ‘every child has the right to free, compulsory and universal basic education and it shall be the duty of government in Nigeria to provide such education’

<sup>61</sup>Human Rights Watch, “Nigeria: People with Disabilities Face Major Barriers”, (2020) <https://www.hrw.org/news/2020/10/15/nigeria-people-disabilities-face-major-barriers>.

<sup>62</sup>A. B. Abdulkadir, “An expository study of Islamic Approach in the jurisprudence of the right to healthful environment ‘ International Islamic University Law journal, Malaysia. 21 no. (1), (2013): 99-118



Islamic law offers a solution to this neglect through the concept of almsgiving (*zakāh* and *ṣadaqah*), which serves not merely as a charitable gesture but as a redistributive justice mechanism designed to uplift vulnerable populations, including children with disabilities.<sup>63</sup> Allah states in the Qur’ān thus: “*Alms are only for the poor and the needy... and for those in bondage, and those in debt, and in the cause of Allah, and for the wayfarer.*”<sup>64</sup> The above verse highlights eight eligible categories (*asnāf*) of *zakāh* beneficiaries. Scholars include disabled persons among the poor (*fuqarā’*) and the needy (*masākīn*), whose survival and inclusion in society depend upon communal and state support.<sup>65</sup>

Although begging is often criminalised under Nigerian law,<sup>66</sup> and viewed negatively in many Islamic sources, the Shari’ah offers an alternative through structured, dignified welfare support systems, notably *zakāh*, *waqf* (charitable endowment), and community-based assistance.<sup>67</sup> These mechanisms serve to alleviate hardship and poverty without stripping the recipients of dignity or agency. To further showcase the Shari’ah alternative to the disabled, Allah further instructs believers as follows “Do not entrust the feeble-minded with your property which Allah has assigned to you for support. But feed and clothe them from it and speak to them words of kindness.”<sup>68</sup> This verse enjoins both economic protection and humane treatment of persons with intellectual or mental impairments (the disabled). The command to “speak to them words of kindness” adds a layer of emotional and psychological dignity to their care.

From the perspective of Islamic jurisprudence, some scholars argue that charity toward the disabled should not merely be considered *tafaḍḍul* (an act of kindness), but an obligation (*ḥaqq*) and a form of justice (*‘adl*).<sup>69</sup> This view aligns with the modern human rights discourse, which calls for an inclusive and rights-based approach to disability, an approach that is also supported by the UNCRPD, which promotes full participation and equality for persons with disabilities.

Historically, Muslims with disabilities grounded their expectations in a “traditional sense of mutual responsibility and religious duty” within the community.<sup>70</sup> Islam discourages social derision and exclusion of people with disabilities and encourages their active participation in community life. This is seen in the Qur’ānic verse that: “*There is no blame on the blind, nor on the lame, nor on the sick...*”<sup>71</sup> This is to acknowledge the reality of disability while also affirming the rights of such individuals to participate in social and communal life on equal terms.

In essence, almsgiving in Islam serves a transformative role to empower, rather than marginalising disabled persons. It seeks to integrate them into the social fabric, ensuring that they are not left behind. The third pillar of Islam, *zakāh*, institutionalises this vision of justice and care. Governments, Non-Governmental Organisation (NGOs), and individuals are

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<sup>63</sup>Yusuf al-Qaradawi, *Fiqh al-Zakat*, vol. 1 (Mu’assasat al-Risalah, 1996), 132–134.

<sup>64</sup>Surah At-Tawba (9):60.

<sup>65</sup>Al-Nawawi, *Al-Majmu’ Sharh al-Muhadhdhab*, vol. 6 (Dar al-Fikr, 1997), 195.

<sup>66</sup> See Lagos State Street Begging Prohibition Law, 2013; Penal Code Act (Northern Nigeria), ss. 405–409..

<sup>67</sup>Mashood A. Baderin, *International Human Rights and Islamic Law* (Oxford University Press, 2003), 97–98.

<sup>68</sup>Surah An-Nisā’ (4):5.

<sup>69</sup>Mohammad Hashim Kamali, *The Dignity of Man: An Islamic Perspective* (Islamic Texts Society, 2002), 62–64.

<sup>70</sup>Kristine J. Ajrouch and Amira El-Zein, “Disability and Mutual Care in Muslim Families,” in *Disability in the Global South*, ed. Shaun Grech and Karen Soldatic (Springer, 2016), 405–423.

<sup>71</sup>Qur’ān 24:61.



enjoined to institutionalise such mechanisms, ensuring that disabled children are not merely the object of charity but active participants in their own empowerment.

## 5.0 CONCLUSION

This paper has established that both Islamic law and conventional legal frameworks recognise the dignity and health rights of disabled children. The Sharī'ah not only safeguards the right to life and health as a fundamental objective (*maqṣad*) but also mandates inclusive support mechanisms such as medical treatment, rehabilitation, and social empowerment for the physically and mentally disabled. The rights enshrined within the Sharī'ah is grounded in the Qur'ān, Sunnah, and classical jurisprudence. It affirm that disability does not diminish human worth or entitlement to care, dignity, and participation in society.

Disabled children are not to be seen as burdens but as individuals with rights and potential that must be nurtured. Islamic ethics place high value on compassion, justice (*'adl*), and mutual responsibility (*takaful*), all of which translate into legal obligations to support the vulnerable, including children with special needs.<sup>72</sup> The teachings of the Prophet Muhammad (peace be upon him) and the example of early Muslim communities reflect a tradition of inclusion, where the weak and the disadvantaged are actively protected and empowered.

From a conventional legal perspective, Nigeria's constitutional framework, the Discrimination Against Persons with Disabilities (Prohibitions) Act, and the Child's Rights Act 2003 provide legal grounds for ensuring the health and well-being of all children including the disabled. International instruments such as the Convention on the Rights of Persons with Disabilities (CRPD) further reinforce these protections, creating binding obligations for the state to ensure accessibility, quality healthcare, and social participation for children with disabilities.<sup>73</sup>

Therefore, it is incumbent upon all levels of government in Nigeria; federal, state, and local, to translate these legal and moral duties into practical realities. This includes establishing functional and inclusive healthcare infrastructure, especially in rural and underserved areas; equipping schools with health clinics; and implementing policies that ensure early detection, intervention, and support for disabled children. Parents and guardians must be sensitised to their responsibilities in providing care, protection, and emotional support. At the same time, communities and religious institutions should play a complementary role by engaging in charitable initiatives and advocating for policies that reflect compassion, equity, and dignity.

Ultimately, the combined approach of Sharī'ah and conventional law presents a comprehensive framework that not only recognises the inherent worth of disabled children but also compels society to create an environment where they can thrive and live fulfilling lives.

Despite the various legal provisions, implementation remains a major hurdle. The challenges embedded include lack of awareness, inadequate funding, infrastructural barriers, and cultural stigmatisation. For example, in rural areas, disabled children are often hidden, excluded from

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<sup>72</sup>Al-Qaradawi, *Fiqh al-Awlawiyyat*(Dar al-Shorouk, 1994), 94; Al-Mawardi, *Adab al-Dunyawa al-Din* (Dar al-Minhaj, 2006), 205–207.

<sup>73</sup>United Nations, *Convention on the Rights of Persons with Disabilities* (2006), especially Articles 4, 7, 23, and 25.



schools, or subjected to abuse due to superstitions.<sup>74</sup> Shari'ah-compliant societies sometimes misinterpret divine will as justification for neglecting the disabled, rather than as a test for the *ummah* to show compassion and justice.<sup>75</sup> Nigerian legal institutions, too, suffer from weak enforcement mechanisms, limited data, and institutional apathy. It is consequent upon the above that the following is recommended to further boost and encourage good treatment of disabled children in the society.

1. Public awareness should be intensified for the sensitisation and campaign to combat stigma and promote the capabilities of disabled children.
2. The government should ensure that state laws across board in Nigeria conform with CRPD and the Disability Act and navigate positive measure for the implementation.
3. Religious leader should be encouraged to preach inclusion and dignity from Islamic perspective as regard disabled children.
4. There should be Institutional Support and Improvement in budgetary allocation for disability-inclusive healthcare and education.
5. The government should also establish National Disability Registry to support effective planning and policy making on disabled children. It will also encourage data keeping and good monitoring of all governmental intervention towards the disabled.

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<sup>74</sup>A. Abubakar, "Disability in Northern Nigeria: A Cultural and Legal Appraisal," *Nigerian Journal of Human Rights*, 8, no. 2 (2020): 104.

<sup>75</sup>M. O. Adebayo, "Islam and Disability: Rights, Misconceptions, and Realities," *Ilorin Journal of Islamic Studies*, 6, no. 1 (2021): 87.