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## DISABILITY IN ISLAMIC LAW. HISTORICAL APPLICATIONS AND TODAY'S CHALLENGES

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ABSTRACT

### DISABILITY IN ISLAMIC LAW. HISTORICAL APPLICATIONS AND TODAY'S CHALLENGES

The author of the article conducts an analysis of Islamic law's perspective on disability by examining disability-related terminology and some texts from the primary legal sources of Islam – the Qur'an and the Sunnah. After a brief overview of the Muslim faith and the nature of Islamic jurisprudence, the chapter proceeds with a description of the nomenclature related to disability followed by a brief overview of historical perceptions. The paper concludes with insights into the condition of autistic children in the United Arab Emirates today.

**KEYWORDS:** disability, islam, sharia, Quran, sunnah, Islamic law.

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### Ability, Disability and Islam: Introduction

Whether well-delineated or nebulous, material or immaterial, a boundary can be defined as identifying an entity as demarcated from its surroundings. Not only tangible, but also abstract entities, such as concepts and ideas have boundaries of their own. The conceptualization of boundaries has a long tradition in ontological, epistemological, linguistic, and anthropological discourses. Anaximander of ancient Greece held in his cosmogony that everything originated from the *'apeiron'*, the 'infinite' and 'unlimited' source of all being. Emmanuel Kant explored the boundaries of reason, whereas Karl Jaspers made the notion of boundary central

to his philosophy. Jaspers claimed that boundaries, while dividing, restricting and limiting in nature, can also protect and provide security. Across cultures and eras, religion has been one of the central factors that has shaped the boundaries of attitudes toward people with mental, physical or sensory disabilities. According to United Nations, over 650 million individuals worldwide suffer from mental, physical, and sensory impairments. Approximately one-third are children in Muslim countries, where religious values play a major role in framing behaviours towards disadvantaged people. Islam is considered one of the largest and fastest-growing religions globally. It is also one of the sources (or the only source, as is the case with Saudi Arabia) of legislation. There is therefore a pressing need to analyse disability through the lenses of the principles and practices of Islam in order to provide a deeper understanding of how these principles are applied within the context of disability.

This paper aims to provide a brief analysis of ‘the boundaries’ of Islamic philosophy with regards to disability by examining rights of individuals with a disability mentioned in texts from the Qur’an and Sunnah, which are primary sources of Islamic law, as well as in legal texts written by Islamic scholars. After a brief overview of the Islamic faith and the specific nature of Muslim jurisprudence, the paper proceeds with a description of Islamic terminology related to disability, followed by the insights into the historical perceptions of disability. The paper concludes with insights into the condition of autistic children in the United Arab Emirates today.

## Overview of Islamic Faith and Jurisprudence

Islam is a monotheistic, Abrahamic religion and is considered one of the three main religions in the world. According to Muslims, Islam is a continuation of the message that God (*Allah* in Arabic) revealed to all of His Prophets including Adam, Abraham, Ishmael, Isaac, Moses and Jesus. Prophet Muhammad, as the last messenger, finalized and reaffirmed the eternal message between 610 to 632 CE in the cities of Mecca and Medina (present-day Saudi Arabia). According to Islam, one should surrender to the will of Allah by obeying His laws and commandments, which are recorded in the Muslim holy book, the Qur’an. The Qur’an consists of 114 chapters written in classical Arabic. Muslims believe that the Qur’an is the direct word of Allah, revealed to Muhammad through the angel

Gabriel. One of the central concepts of Islam is *tawheed*, the belief in the one and only God without partners. He is absolute, transcendent, creator of all animate and inanimate matter<sup>1</sup>. The five main pillars of Islam are: *Shahaadah*, the declaration of faith; *Zakaat*, the charitable giving of 2,5% of one's wealth when one year has passed; *Salaat*, the five daily ritual prayers; *Sawm*, the daily fasting during the holy month of Ramadan; and *Hajj*, the pilgrimage to Mecca, the Holy City at least once in one's lifetime.

The Qur'an, which is the primary source of information about religious duties, is also the primary source of Islamic law, regulating family life, business relationships, physical and mental health related issues, and crime. The second source of Islamic law after the Qur'an is the Sunnah, which conveys sayings (*hadith*), teachings, opinions, actions and ways of life of the Prophet Muhammad. The purpose of the Sunnah is to exemplify the Qur'an's pronouncements by putting its verses into practice<sup>2</sup>. *Ahaadith* (Plural form of the Arabic word *hadith*) were collected by Prophet's companions and later verified by Islamic scholars, who also used the tools of *qiyaas* (analogy) and *ijmaa'* (consensus) while interpreting the Qur'an and the Sunnah for legal purposes. In summary, there are four sources of Islamic law (sharia) recognized by the traditional theory of Islamic jurisprudence: (1) the *Qur'an*, (2) the *Sunnah*, (3) *Qiyaas* (analogical reasoning), and (4) *Ijma* (juridical consensus). Four major schools of jurisprudence (*fiqh*) are: (1) Hanafi, (2) Malaki, (3) Shafi'i, (4) Hanbali, named after their respective founding scholars. All of the schools developed their own methodologies for deriving rulings from the four above mentioned scriptural sources. Using a process called *ijtihad*, the schools provide pluralistic interpretations of the Qur'an and the Sunnah, shaping not only religious, but also civil law regulations. This aspect might be by far the most profound difference between the occidental understanding of law as a uniform system of common law or civil law regulations, as opposed to Islamic law, which is more of a 'scholarly discourse' than a transparent and coherent formulation of law. Two main branches of Islamic law are known as *'ibaadaat* and *mu'aamalaat*. *Ibaadaat* constitutes the part of *fiqh* (Islamic jurisprudence) responsible merely for religious rituals.

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1 I.R. Al-Faruqi, L.L. Al-Faruqi, *The cultural atlas of Islam*, New York 1986, p. 47.

2 M. Morad *et al.*, *Islam and the person with intellectual disability*, „Journal of Religion, Disability & Health”, 5, p. 65.

*Mu'aamalaat*, in contrast, provides rulings governing all aspects of *fiqh* that are not *'ibaadaat*, including the spheres of commercial transactions and Islamic financing.

When analysing sharia law perspective on disability, it is important to consider the fact that Arabia at the time of Muhammad and his revelations was strongly dominated by the tribal notions of honour, revenge and traditions<sup>3</sup>. In contrast to this dominant tribal authority, many of Muhammad's revelations advocated for non-discrimination, egalitarianism and emphasized the importance of protection of the underprivileged segments of society, including the ill and the disabled.

## Disability: Terminology in Islamic Law

Medical diagnosis is the process of establishing boundaries between what is considered healthy and unhealthy, able and disabled, normal and abnormal, and finally what has been captured in words and what still lacks nomenclature. The word *diagnosis* is derived from the Greek word *διαγιγνώσκειν* (*diagignōskein*) meaning 'to distinguish' or 'to discern'. To diagnose is therefore to distinguish an illness and to give it a name, which takes us back to the notion of a boundary since Wittgenstein argued that 'the limits of my language are the limits of my world; all I know is what I have words for'.

In the western world, disability can be broadly defined as: (1) a physical or mental impairment that substantially limits one or more of the major life activities [e.g., speaking, walking, hearing], (2) a record of such an impairment, or (3) being regarded as a having such an impairment<sup>4</sup>.

The Arabic terminology, and subsequently Islamic law, lack such a broad definition of disability. Neither the Qur'an, nor the Sunnah provide an encompassing term, which could be an equivalent to the generic English term 'disability'. Instead, both legal sources use specific terms to describe specific disabilities<sup>5</sup>:

<sup>3</sup> W. Hallaq, *The origins and evolution of Islamic law*, New York 2005, p. 18.

<sup>4</sup> L. Rothstein, J. Rothstein, *Disabilities and the law* (3rd ed.), St. Paul 2006, p. 1–4.

<sup>5</sup> M. Bazna, T. Hatat, *Disability in the Qur'an: The Islamic alternative to defining, viewing and relating to disability*, „Journal of Religion, Disability and Health” 2005, 9(1), p. 6.

- *a'maa* (blind)
- *asamm* (deaf)
- *abkam/akhras* (mute)
- *a'raj* (lame)
- *majnuun* (insane)

In addition to the above listed terms, and depending on the context, the Qur'an and the Sunnah tend to also use following adjectives to describe disabled individuals<sup>6</sup>:

- *yateem* (orphan)
- *da'if* (weak)
- *mustad'af* (oppressed)
- *miskin* (indigent)
- *marid* (sick)
- *faqir* (needy)

Classical sources – the Qur'an and the Sunnah often used the Arabic term *marīd*, which can be translated as 'ill' or 'individual with an illness'. The words *marīd* or *marad* (Arabic noun meaning 'illness') are used in these sources as broad class terms that include conditions that today would be classified as disability (e.g., Qur'an 24:61, 2:17–18, 4:75).

It is worth noting that all of the above listed words used in the legal Islamic sources are purely descriptive and do not contain any negative connotations or indications of stigma. They are all semantically neutral.

In the current legal discourse on disabilities other more generic terms are being used:

- *as-haab ul-'ahat*
- *dhawul 'ahat*
- *'aajizuun*
- *mu'awwaquun*

These terms are derived from Arabic words for difficulty, inability, defect, or weakness and are the closest to the English term 'disabled'. The term *mu'awwaquun* is the equivalent of the English term 'mentally or physically challenged' and as such is commonly used in the contemporary legal treatises on the subject of individuals limited in their physical or mental ability in the Muslim world<sup>7</sup>.

6 I. Bhatti et al., *Disability in Islam: Insights into Theology, Law, History, and Practice*, 2009, p. 160.

7 V. Rispler-Chaim, *Disability in Islamic law*, Dordrecht 2007, p. 228.

## Historical Applications of Islamic Law

*There is not upon the blind any guilt or upon the lame any guilt or upon the ill any guilt. And whoever obeys Allah and His messenger – He will admit him to gardens beneath which rivers flow: but whoever turns away – He will punish him with a painful punishment.*

(Qur'an, 48:17)

This chapter aims to provide a review of Islamic perspectives and Islamic philosophy on disability by examining selected texts from the Qur'an and the Sunnah and referring to events from the Islamic history.

Islamic philosophy has a positive attitude towards those who are physically or mentally disabled. The Qur'an and the Hadith not only refer to the existence of disabilities, but also provide principles for caring for the disabled. As mentioned in the previous part of this paper, the term 'disability' does not directly appear in the Qur'an, which uses the term 'disadvantaged people' while referring to those with special needs<sup>8</sup>. We can also find the generic term 'weak-minded', which according to '*tafsir*' (interpretation) by Ibn Ashur (1973), comprises several groups from very young children to mentally retarded and mentally ill.

Qur'an stresses the rights of people with disabilities on several occasions. The rights mentioned in the Qur'an include the right to protection, social rights, right to treatment and rehabilitation, right to education, and marital rights.<sup>9</sup> The last has stirred controversy among Islamic scholars, which will be discussed in more detail later in this chapter.

The notion of the right to protection touches upon the aspect of protection of honour and respect toward disabled individuals. The Qur'anic verses emphasize that respect is a basic human right and that under-estimating others is unacceptable: 'O you who believe, let not people ridicule [other] people; perhaps they may be better than them. (...); And do not insult one another and do not call each other offensive names.' (49,11). As far as social rights are concerned, those who are disabled are considered as having a rightful share.<sup>10</sup> There are, however, duties which can be

<sup>8</sup> M. Bazna, T. Hatab, *Disability in the Qur'an...*, p. 6.

<sup>9</sup> H. Al-Aoufi, N. Al-Zyoud, N. Shahminan, *Islam and the cultural conceptualisation of disability*, „International Journal of Adolescence and Youth” 2012, p. 208.

<sup>10</sup> M. Miles, *Disability in eastern religious context: Historical perspective*, „Disability and Society” 1995, 10(1), p. 51.

waived or reduced on the grounds of limited performance or the lack of mental maturity.<sup>11</sup> These duties include giving to charity or *Zakat* and performing religious rites and rituals such as *wudu'* and *ghusl*.

According to Islamic Law sanity is a prerequisite for the performance of all religious duties. The insane (*majnun*), the epileptic (*masru'*), the mentally deficient (*ma'tubh*) and the unconscious (*maghmiyy 'alayhi*) are not expected to perform any religious duties. Another important right within social rights is the right to inclusion. Since disabled individuals may be isolated, withdrawn and often suffering from psychological problems such as depression and low self-esteem, it is highly encouraged in Islam to include disabled people in social occasions such as visits, marriages and other ceremonies.<sup>12</sup> An example of such inclusion from the Sunnah is the story of the Prophet visiting Etban ibn Malik, a blind man from Ansar, in order to pray in the man's house and console him.<sup>13</sup> Rights of treatment and rehabilitation from the Islamic perspective can be categorized into two main forms: preventive and remedial. Prevention according to Qur'an and Sunnah may amount to changing one's lifestyle or medication. Remedy can take one of the three forms: medication (including vaccination), rehabilitation, and spiritual medication.<sup>14</sup> Islamic Fiqh Council<sup>15</sup> concluded that it is a responsibility of every Muslim to use vaccination and medication.<sup>16</sup>

The following Hadith from 'Sunan Abu Dawud' highlights the importance of medication:

*I came to the Prophet (Peace be Upon Him) and his Companions were sitting as if they had birds on their heads. I saluted and sat down. The desert*

11 M. Bazna, T. Hatab, *Disability in the Qur'an...*, *op. cit.*, p. 7.

12 H. Al-Aoufi, N. Al-Zyoud, N. Shahminan, *Islam and the cultural...*, *op. cit.*, p. 209.

13 M.Y. Muhammad, *Caring for people with special needs in Islam*, <https://theislamicworkplace.com/2007/06/14/caring-for-people-with-special-needs-in-islam/> [accessed: 15.11.2017].

14 H. Al-Aoufi, N. Al-Zyoud, N. Shahminan, *Islam and the cultural...*, *op. cit.*, p. 211.

15 Affiliate of the Muslim World League with an independent legal personality. It was founded 1977 (1398 H) and is made up of a group of Muslim jurists and scholars who meet periodically to consider serious issues concerning the Muslim Ummah and issue appropriate fatwas and resolutions based on the text of the Qur'an and the Sunnah. The headquarters is in Makkah, Kingdom of Saudi Arabia.

16 M.M. Ghaly, *Physical and spiritual treatment of disability in Islam: Perspectives of early and modern jurists*, „Journal of Religion, Disability & Health” 2008, 12(2), p. 110.

*Arabs then came from here and there. They asked: 'Apostle of Allah, should we make use of medical treatment?' He replied: 'Make use of medical treatment, for Allah has not made a disease without appointing a remedy for it, with the exception of one disease, namely old age.*

(Abu-Dawud, n.d., no. 3855).

Spiritual medication ('*tahseen*', meaning 'fortification') does not relate to any kind of physical medication and is solely based on performing a specific prayer. According to Muslim belief, these 'prayer supplications' constitute an effective defence against various dangers to one's health.<sup>17</sup>

According to Islam, the right to be educated should be granted to everyone regardless of disability. The Qur'an describes the right of education for disabled people through the following passage:

*'He [the Prophet] frowned and turned away because there came to him a blind man, But what would make you perceive, [O Mohammed], that perhaps he might be purified, or be reminded and the remembrance would benefit him?'*

(Qur'an, 80, 1-3).

Allah rebuked Muhammad when he turned away a blind man. Therefore, one can conclude that individuals have the right not to be undermined because of their disability and that they also have the right to resources for education.

When we analyse the marital rights of the disabled, it becomes clear that there is no unanimity in this particular case, unlike in the case of above-listed rights to protection, inclusion and treatment. There has recently been an intense debate among Islamic scholars and physicians over the idea of whether the mentally and intellectually disabled (including the cases of autism) should be allowed to get married. This debate is ongoing and there are differences in opinions and interpretations. Some scholars argue that marriage can prevent the practice of inappropriate sexual behavior by mentally disabled individuals. Others see marriage as a broader responsibility beyond sexual practice, and feel that intellectually or mentally disabled people are incapable of executing such responsibility, even with guardianship.<sup>18</sup>

<sup>17</sup> H. Al-Aoufi, N. Al-Zyoud, N. Shahminan, *Islam and the cultural...*, *op. cit.*, p. 211.

<sup>18</sup> A. Alawsat, *Theologians and doctors disagree about the legality of mentally handicapped marriage*, <http://www.aawsat.com/details.asp?section=17&article=106142&issue-no=8585> [accessed: 15.11.2017].



## Today's Challenges: Reflections on Autism in the United Arab Emirates

Autism (in Arabic التوحد, al-tawahod) was first defined by Leo Kanner from Johns Hopkins University. In 1943 he received a 33-page letter from the father of a boy named Donald, describing that the boy was happiest when alone, was oblivious to his surroundings, and had a mania for spinning toys. Whenever his routine was disrupted he would exhibit temper tantrums. Donald also referred to himself in the third person and repeated words and phrases spoken to him. Kanner described Donald and ten other children in a 1943 seminal paper entitled 'Autistic Disturbances of Affective Contact'.

Clinical definitions of autism continue to evolve. The current Diagnostic & Statistical Manual of the American Association (DSM-V) describes autism as a lifelong neurodevelopmental disorder that is characterized by impaired social interactions, impaired verbal and nonverbal communication and stereotyped, repetitive behaviors. The condition is part of a continuum of disorders collectively known as autism spectrum disorders (ASD) and is classified under the general category of pervasive developmental disorders (PDDs). As a spectrum, autism 'blurs' at the edges with disruptive behavior, communication disorders and intellectual disability at one end and with behaviors now thought to be neurotypical at the other.

Many researchers agree that the causes of autism are likely to be genetic, while other suspected factors are biochemical, neurological and environmental. The most commonly used treatments for children with autism are (1) Speech and Language Therapy, (2) iPhone/iPad applications, (3) Applied Behavior Analysis (ABA), (4) Picture Exchange Communication System (PECS), (5) Cognitive Behavior Therapy (CBT), (6) Occupational Therapy, (7) Holding Therapy, (8) Social Stories, (9) Equine therapy/ Therapeutic Horseback Riding, (10) Essential Fatty Acids. All of the above are legally accepted and available in the UAE.

Despite sporadic discrepancies in views on the rights of the disabled within the Islamic framework, there are two general principles of faith that shape Muslims' approaches towards disability. These include believing in the concept of 'reward and punishment' not only in terms of actions, but also in terms of intentions and motives behind these, and the concept of the 'belief in preordination' ('*qadar*'), which is based on the idea that what is meant to be, will be, and what is not meant to happen,

can never occur.<sup>19</sup> The notion of destiny in the face of autism of one's child is well reflected in the words of the Emirati father of an autistic boy:

*We want the world to know about autism. God gave him this, so it is nothing to be ashamed about.*<sup>20</sup>

However, parents who are shocked at the diagnosis of autism may instinctively resort to religion to explain the problem away, using it as a safety net from social stigma. An example of these reactions is when the parents of an autistic child consider the disability to be a punishment from Allah.<sup>21</sup> The danger of such an approach is that some parents tend to refuse treatment because of these beliefs.<sup>22</sup> This refers, above all, to early intervention services.<sup>23</sup> As a consequence, the child is left without adequate care and access to support services is denied or delayed. The social embarrassment of having an autistic child appears to play a crucial role in dealing with a disabled person in many families. In cases where the disability is obvious (for example in a low functioning, non-verbal autistic child) and cannot be hidden from others, parents tend to provide various explanations.<sup>24</sup> Such explanations include: envy ('*hasad*' or evil eye), using amulets<sup>25</sup>, black magic, and possession by evil spirits (the Jinns)<sup>26</sup>. Although all of the above mentioned have their roots in Qur'an and Sunnah, it seems that the parents use it as an argument which could be easily accepted by the surrounding traditional, religious community.<sup>27</sup>

19 R. Hasnain *et al.*, *Disability and the Muslim perspective: An introduction for rehabilitation and health care providers*, <https://digitalcommons.ilr.cornell.edu/cgi/viewcontent.cgi?article=1462&context=gladnetcollect> [accessed: 2.12.2017].

20 The quote comes from a UAE produced documentary 'As One: The Autism Project' (2014, director: Hana Makki).

21 M. Hadidi, *Educational programs for children with special needs in Jordan*, „Journal of intellectual & Developmental Disability” 1998, 23(2), p. 150.

22 M.M. Ghaly, *Physical and spiritual...*, *op. cit.*, p. 111.

23 R. Hasnain *et al.*, *Disability...*, *op. cit.*, *op. cit.*

24 H. Al-Aoufi, N. Al-Zyoud, N. Shahminan, *Islam and the cultural...*, *op. cit.*, p. 214.

25 R. Hasnain *et al.*, *Disability...*, *op. cit.*

26 C. Aminiday, L. Weller, *Effects of country of origin, sex, religiosity and social class on breadth of knowledge of mental retardation*, „British Journal of Developmental Disabilities” 1995, XLI, p. 53.

27 H. Al-Aoufi, N. Al-Zyoud, N. Shahminan, *Islam and the cultural...*, *op. cit.*, p. 214.

The official website of the General Authority of Islamic Affairs & Endowments, headquartered in Abu Dhabi, states that it is highly important to 'raise awareness regarding people with special needs by highlighting scientific facts and other various factors conducive to integrating autists into society.'<sup>28</sup> Awqaf stresses that it is highly recommended to 'admit a person with autism symptoms to a specialised centre noting that autism is of different types'.<sup>29</sup>

In 2013 Awqaf organized a lecture on autism for its staff. In 2017, during a press conference, Dr Mohammad Matar al Kaabi, Awqaf's Chairman, emphasised the initial indicators and results of the 'Year of Giving'. He listed a number of initiatives launched by Awqaf, including supporting the Autism Centre in Umm Al Quwain by furnishing all its classes with means of learning and rehabilitation. Another initiative aimed at autistic children was to provide buses for students' transportation for the schools of 'people with determination'.

## Conclusion

This paper's aim was to provide a brief review of Islam's primary legal sources – the Qur'an, the Sunnah and fiqh on a complex and still much under-researched subject: the Islamic view on disability. Based on the above review it can be concluded that Islamic law has provided multiple terms for disadvantaged people in the contexts of theory and practise of caring for them and provisioning their rights, which proves that individuals with disabilities were not marginalized during the Prophet's era. The Islamic perspective clearly states the rights of disadvantaged people and establishes duty of society towards them. According to Miles (2000) little has been done to investigate the impact of Islamic philosophy on Muslim practices related to working with individuals with disability. Moreover, it is often difficult to distinguish between cultural and religious practices as there is an overlap between what constitutes local cultural heritage and what could be described as religious values. Islam has provided examples of equality in Qur'an and Sunnah. However, there is often a contradiction between Islamic perspectives and local traditions.

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<sup>28</sup> General Authority of Islamic Affairs & Endowments, *Awqaf hosts lecture on autism*, <https://www.awqaf.gov.ae/en/awqaf-hosts-lecture-on-autism> [accessed: 10.11.2017].

<sup>29</sup> *Ibidem*.

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#### ABSTRAKT

### NIEPEŁNOSPRAWNOŚĆ W PRAWIE ISLAMSKIM.

### HISTORYCZNE ZASTOSOWANIA I DZISIEJSZE WYZWANIA

Autor w prezentowanym artykule przeprowadza krótką analizę stosunku prawa muzułmańskiego do osób niepełnosprawnych. Analiza opiera się na zaprezentowaniu nomenklatury oscylującej wokół szeroko pojętej problematyki niepełnosprawności fizycznej i umysłowej, zawartej w prymarnych źródłach muzułmańskiego prawa, czyli w Koranie i Sunnie, a także na zbadaniu wybranych tekstów z Koranu i Sunny. Artykuł otwiera syntetyczny opis islamu jako systemu religijnego, a także jako systemu prawnego, który reguluje postępowanie wobec osób niepełnosprawnych. Ostatni podrozdział rzuca światło na współczesny stosunek społeczeństwa wobec dzieci ze spektrum autyzmu w Zjednoczonych Emiratach Arabskich.

**SŁOWA KLUCZOWE:** niepełnosprawność, szariat, islam, prawo islamu, Koran, Sunna, autyzm.

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