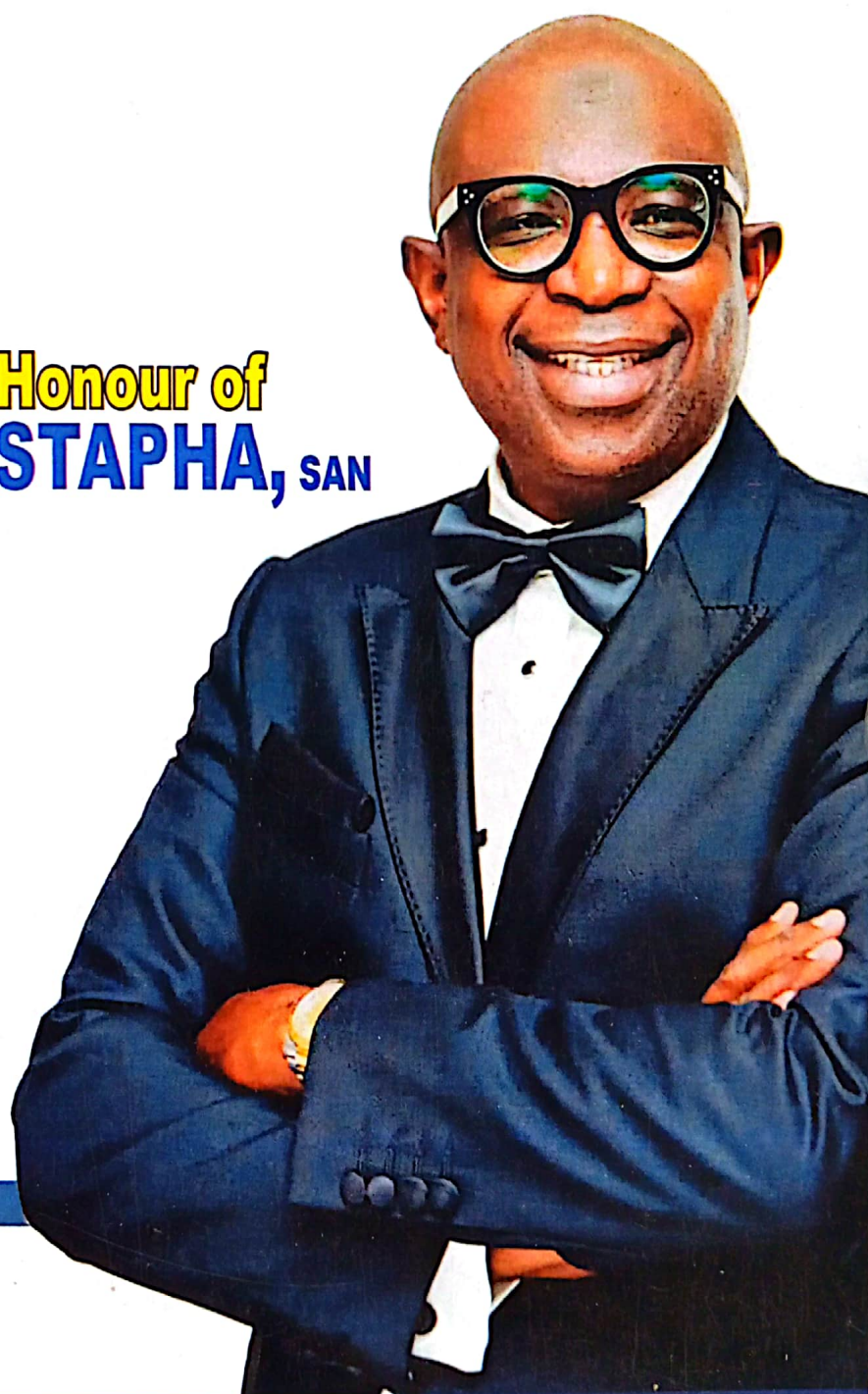


Trends

in Law, Practice and
the Shari'ah in Nigeria

Essays in Honour of
A. U. MUSTAPHA, SAN



Editors:

Prof. A. I. Abikan
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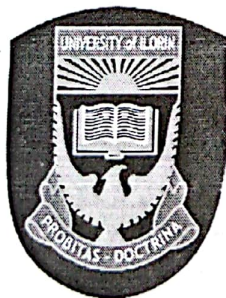
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CHAPTER TWELVE

MENTAL HEALTH AS A FUNDAMENTAL HUMAN RIGHT: A COMPARATIVE ANALYSIS OF SHARIAH AND NIGERIA LAWS

Ahmad Hussein Folorunsho¹

12.1 INTRODUCTION

Mental health is a fundamental human right that transcends cultural, religious, and geographical boundaries, representing a universally cherished value.² It is deeply ingrained in the core principles of human dignity, equality, and the pursuit of a life free from discrimination and suffering. The World Health Organization (WHO) defines mental health as a state of well-being in which an individual realises their abilities, can cope with the normal stresses of life, can work productively, and can make a contribution to their community. This definition underscores the nature of mental health, encompassing emotional, psychological, and social well-being. It also emphasizes that mental health is not merely the absence of mental disorders or disabilities but a state of optimal well-being and happiness.³

The global recognition of mental health as a fundamental human right has been enshrined in numerous international and regional instruments, such as the Universal Declaration of Human Rights (UDHR) of 1948, the International Covenant on Economic, Social and Cultural Rights (ICESCR) of 1966, and the Convention on the Rights of Persons with Disabilities (CRPD) of 2006. These instruments affirm the right to the highest attainable standard of physical and mental health, emphasizing that everyone is entitled to the enjoyment of this right without discrimination.⁴ However, while the principles enunciated in these international documents are universal, their interpretation and application often take shape within the unique legal and cultural contexts of individual nations.

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² McDougal M.S, Lasswell H.D, and Chen L.C, *Human rights and world public order: the basic policies of an international law of human dignity*, Oxford University Press, 2018.

³ Darabi F, and Foster S, *Mental Health and the well-being of postgraduate researchers and supervisory staff*, 2023.

⁴ Ifejika S.I, *Nigeria and the International Covenant on Economic, Social and Cultural Rights: Straightening the Crooked Path*, *Pertanika Journal of Social Sciences & Humanities*, 2023, p. 31(2).

Islamic law serves as a comprehensive legal and ethical framework that governs the lives of over a billion Muslims worldwide. It is deeply rooted in the teachings of the Qur'an and the Hadith of Prophet Muhammad (PBUH). Islamic jurisprudence, known as Fiqh, further interprets and applies these foundational sources to address complex legal and ethical issues, including matters related to mental health. In Islamic tradition, the Qur'an contains verses that emphasize the dignity and worth of all human beings, irrespective of their mental health conditions. For instance, Qur'an verses such as *And We have certainly honored the children of Adam*⁵ affirm the inherent dignity of every individual. This recognition of human dignity forms the cornerstone of Islamic ethics and informs the perspective of Islamic law on mental health as a fundamental human right.

Within Islamic ethics and jurisprudence, mental health is not viewed in isolation but is intertwined with the broader concepts of well-being, compassion, and justice. Islamic teachings encourage believers to care for their mental health as an integral part of their overall well-being.⁶ The Prophet Muhammad (PBUH) is reported to have said: "*Your body has a right over you*", emphasizing the importance of mental and physical health. This holistic approach underscores that mental health is not a luxury but a fundamental aspect of human existence. Moreover, Islamic ethics advocate compassion and empathy towards individuals facing mental health challenges. Islamic communities are urged to provide emotional and social support to individuals facing mental health challenges, recognizing the importance of a compassionate and inclusive society.⁷

Islamic law also provides legal protections for individuals with mental health conditions. It prohibits discrimination based on mental health status and upholds the right of individuals to seek medical treatment and therapy. Legal capacity is generally maintained unless a person is deemed incapacitated due to their mental condition, and even then, guardianship should be established through a fair and just process. Privacy and confidentiality are integral principles within Islamic medical ethics, extending to mental health care. This is because medical confidentiality ensures that individuals can seek mental health treatment without fear of their condition being disclosed without their consent. Islamic law also emphasizes the right to dignity and humane treatment, echoing the universal principles of mental health as a fundamental human right.⁸

Nigeria, on the other hand, boasts a diverse and dynamic legal landscape that reflects the nation's rich cultural and historical dimensions. The legal system in

⁵Qur'an, 17:70

⁶ Husain S.A., *Religion and mental health from the Muslim perspective*, In Handbook of religion and mental health, 1998, p. 279-290.

⁷Haque A, *Religion and mental health: The case of American Muslims*, Journal of Religion and Health, 43, 2004, p.45-58.

⁸ Khalil A.I., *The Islamic Perspective of Ethical and Legal Rights of Psychiatric Patients*, Journal of Islamic Studies and Culture, 2019, Vol. 7, No. 2, p. 80-96.

Nigeria is plural, drawing from indigenous customary laws, common law principles inherited from British colonialism, and a growing body of statutory law. This mosaic of legal sources shapes the Nigerian perspective on mental health as a fundamental human right. Within this legal framework, mental health has emerged as a critical area of concern and regulation. Nigeria, like many countries, recognizes the importance of mental health in the well-being of its citizens. The National Mental Health Policy of Nigeria, developed in 1991, underscores the commitment to addressing mental health challenges and promoting the rights of individuals with mental health conditions.⁹

Nigerian legislation also reflects the global commitment to mental health as a fundamental human right. The 1999 Constitution of Nigeria enshrines the right to dignity and prohibits discrimination. These constitutional provisions form the bedrock upon which mental health protections are built within Nigerian law. Nigeria has taken significant steps to codify and regulate mental health within its legal framework. The National Mental Health Act of 2021 represents a milestone in the recognition of mental health as a fundamental human right in Nigeria. This legislation not only reaffirms the right to dignity, privacy, and non-discrimination but also establishes a framework for the provision of mental health services, protection from abuse, and the promotion of community-based care. The objectives of the Mental Health Act of 2021 encompass a coherent and unified response to mental health services, the promotion and protection of human rights, the enhancement of the quality of life through access to integrated care, and the promotion of recovery, rehabilitation, and community-based approaches.

This comparative analysis seeks to shed light on the recognition and protection of mental health as a fundamental human right under Nigerian law and Islamic law. By juxtaposing these distinct legal systems, it is desired to discern commonalities, disparities, and potential areas of synergy in addressing the mental health needs of individuals. Additionally, this exploration will contribute to the broader conversation about the universality of mental health rights and the adaptability of legal systems to diverse sociocultural contexts.

12.2 MENTAL HEALTH IN CONCEPT

According to the World Health Organization (WHO), *mental health is a state of mental well-being that enables people to cope with the stresses of life, realize their abilities, learn well and work well, and contribute to their community.*¹⁰ Mental health encompasses beyond the mere absence of mental disorders or disabilities. Optimal mental well-being involves not only addressing existing conditions but

⁹ Funk M, Drew N, and Knapp M, *Mental health, poverty and development*, Journal of public mental health, 2012, 11(4), p.166-185.

¹⁰World Health Organization, *World mental health report: transforming mental health for all*, 2022.

also nurturing continuous wellness and promoting happiness.¹¹ The WHO further underscores the significance of safeguarding and reinstating mental health, both on an individual basis and within the broader context of communities and society as a whole.¹²

Nigeria, the most populous country in Africa with a diverse population of over 200 million, faces significant mental health challenges. Recent data indicate that approximately 20 million individuals in Nigeria have experienced mental health issues at some point in their lives. Unfortunately, only a small proportion of those currently dealing with mental health problems receive effective treatment.¹³ Despite the substantial population and the considerable social impact of mental disorders, mental health resources are limited and primarily concentrated in urban areas. In fact, there is an alarming scarcity of mental health professionals in Nigeria, with roughly one psychiatrist for every million citizens, a situation mirrored in many other African countries.¹⁴

The World Health Organization (WHO) has reported that only half of the countries in the African region have established mental health policies, and approximately 79.5% of these nations possess mental health legislation (in contrast to 91.8% in Europe). Notably, only about 30% of these mental health laws were enacted after 1990, with some dating back to the colonial era in the early 1900s.¹⁵

Despite approximately 20 percent of Nigeria's population experiencing a mental disorder, only few of those individuals receive the necessary treatment.¹⁶ This troubling gap in mental healthcare can be attributed to various factors, including widespread misconceptions about mental illness and the inadequate allocation of resources to mental health services in Nigeria. A survey conducted by EpiAFRIC and the African Polling Institute (API) revealed that a significant number of respondents held erroneous beliefs regarding mental health conditions, associating them with behaviors such as running naked (70%) or talking to oneself (63%). Furthermore, a substantial portion of respondents expressed a reluctance

¹¹Herrman H, and Jané-Llopis E, *The status of mental health promotion*, Public Health Reviews, 2012, 34, p.1-21.

¹²World Health Organization, *World mental health report: transforming mental health for all*, 2022.

¹³Gureje O, Lasebikan V.O, Kola L, *Lifetime and 12-month prevalence of mental disorders in the Nigerian Survey of Mental Health and Well-Being*, British Journal of Psychiatry, 2006, 188, p. 465-471.

¹⁴Ogunlesi A.O, Ogunwale A, De-Wet P, *Forensic psychiatry in Africa: prospects and challenges*, African Journal of Psychiatry, 2012, 15, 3-7.

¹⁵Morakinyo V.O, *The law and psychiatry in Africa*, African Journal of Psychiatry, 1977, 3, 91-98. See also, Ogunlesi A.O, Ogunwale A, De-Wet P, *Forensic psychiatry in Africa: prospects and challenges*, African Journal of Psychiatry, 2012, 15, 3-7.

¹⁶Izibeloko O, and Leana U, *Barriers to mental health services utilization in the Niger Delta region of Nigeria: service users' perspectives*, Pan African Medical Journal, 2013, 14: 159.

to associate with individuals suffering from mental health disorders due to concerns about personal safety (69%).¹⁷

These misconceptions deeply influence the treatment and perception of individuals with mental health challenges within society. A disheartening 2019 report by Human Rights Watch shed light on the disturbing conditions faced by mentally ill individuals in traditional healing centers, religious rehabilitation facilities, and psychiatric hospitals in Nigeria. These individuals endured inhumane treatment, including chaining, physical abuse, involuntary medical procedures, and appalling living conditions.¹⁸

12.3 MENTAL HEALTH AS A FUNDAMENTAL HUMAN RIGHT

Human rights are the species of rights that can be said to be in every human being. They are regarded as inalienable and immutable; hence, such rights cannot be taken away from any person without the affront to justice.¹⁹ Fundamental Human Right is a right that stands above the ordinary laws of the land and which is antecedent to the political society itself.²⁰

Mental health is an intrinsic component of human well-being and is inextricably linked to the broader concept of human rights.²¹ The recognition of mental health as a fundamental human right is a significant development in global jurisprudence. Mental health as a fundamental human right encompasses the recognition that every individual has the inherent right to enjoy the highest attainable standard of mental health.²² It extends beyond the absence of mental illness and includes the promotion of psychological well-being, the prevention of mental health conditions, and the provision of appropriate care and support for those affected. The concept of mental health as a human right underscores the dignity and worth of every person, irrespective of their mental health status, and emphasizes that no one should be subject to discrimination or violations of their mental health rights.

The recognition of mental health as a fundamental human right is pivotal for several reasons. To start with, it reinforces the principles of human dignity and equality. Mental health rights ensure that individuals are treated with respect and

¹⁷EpiAFRIC, African Polling Institute, Mental Health in Nigeria Survey (January 2020).

¹⁸ibid

¹⁹Falana F, *Fundamental rights enforcement in Nigeria*, (Legaltext Publishing Company Limited, Lagos 2013), p. 1.

²⁰Chief (Mrs.) Olufumilayo Ransome-Kuti & Ors vs. Attorney General of the Federation (1985) 2 NWLR (Pt. 6) 221 at 229-230

²¹Deci E.L, and Ryan R.M, *Facilitating optimal motivation and psychological well-being across life's domains*, Canadian psychology/Psychologie canadienne, 2008, 49(1), p.14.

²²Szmukler G, Daw R, and Callard F, *Mental health law and the UN Convention on the rights of persons with disabilities*, International journal of law and psychiatry, 2014, 37(3), p.245-252.

humanity, free from discrimination based on their mental health status.²³ In addition, it underscores the holistic nature of health, acknowledging that mental well-being is as essential as physical health.²⁴ Furthermore, it aligns with international human rights standards, such as the Universal Declaration of Human Rights and the Convention on the Rights of Persons with Disabilities, which recognize the right to health and the right to be free from torture or inhuman treatment, both of which are relevant to mental health.

12.4 NIGERIA LEGAL FRAMEWORK FOR MENTAL HEALTH

In Nigeria, every citizen unarguably has a right that is entrenched in the constitution and protected by law.²⁵ The entrenchment gives individuals the right and privilege to enforce it when it is been violated, one of these rights is mental health though not expressly stated. Everyone has the right to mental health; it relates not only to right to obtain a certain standard of health and healthcare but also state obligation to ensure certain standard of public health in the community generally.

Chapter IV of the Nigeria's Constitution establishes an array of fundamental rights that inherently encompass mental health, particularly Section 34, which guarantees the right to human dignity, prohibiting torture, inhuman, or degrading treatment. In corroborating this constitutional foundation, Nigeria has implemented specific legislation, most recently the National Mental Health Act of 2021. This legislation not only serves as a dedicated legal framework for mental health but also serves as an embodiment of the state's commitment to protecting mental health and the rights of individuals with mental disorders. It emphasizes the imperative of access to appropriate care, the prevention of discrimination, and the establishment of mental health facilities.

Historically, the Lunacy Ordinance enacted in 1916, which preceded the Lunacy Act of 1958, was Nigeria's first mental health legislation. Recently, the Nigeria Government under the presidency of Muhammadu Buhari signed into law Nigeria's first Mental Health Bill, the National Mental Health Act, 2021. The Act is a significant step forward for mental health in Nigeria as it seeks to promote and protect the lives of people suffering from mental illnesses while also addressing and correcting the flaws in the Lunacy Act. It also emphasizes the government's commitment to closing Nigeria's massive mental health care gap and eventually, achieving Universal Health Coverage. Section 1 expressly provide for the Act's objective thus; the objectives of this Act are to

²³ Burns J.K, *Mental health and inequity: A human rights approach to inequality, discrimination and mental disability*, In Health and human rights in a changing world, 2013, p. 449-464.

²⁴ *ibid*

²⁵ Johnson, I, and Salau J.O, *Human Rights and Governance in Nigeria, 2011-2015*. African Research Review, 2019, 13(1), pp.14-25.

- a) provide direction for a coherent, rational and unified response to the delivery of mental health services in Nigeria ;
- b) promote and protect the fundamental human rights and freedom of all persons with mental health conditions and ensure that the rights are guaranteed ;
- c) ensure a better quality of life through access to an integrated, well planned, effectively organized and efficiently delivered mental health care services in Nigeria ;
- d) promote the implementation of approved national minimum standards for mental health services in Nigeria ;
- e) promote recovery from mental health conditions and enhance rehabilitation and integration of persons with mental health conditions into the community ;
- f) facilitate the adoption of a community-based approach to the provision of mental health care services ; and
- g) facilitate the coordination of mental health services delivery in Nigeria

Additionally, sections 12-23 of the Act provide for various fundamental rights to be enjoyed by persons with mental health which are inalienable on the ground of mental health condition. Such rights include;

12.4.1.1 Equality and Non-Discrimination:

The provision explicitly states that persons in need of mental and substance abuse services, regardless of the cause, nature, or degree of their mental health conditions, shall have the same fundamental rights as their fellow citizens. This fundamental principle enshrines equality before the law and prohibits discrimination based on mental health status. It reinforces the idea that individuals with mental health conditions are entitled to the same human rights as any other citizen. By emphasizing equality and non-discrimination, this provision recognizes that mental health is an integral aspect of human dignity and that individuals should not be stigmatized or marginalized based on their mental health.²⁶

12.4.1.2 Rights of Persons with Mental Health Conditions:²⁷

This subsection delineates a comprehensive set of rights that persons with mental health conditions are entitled to, further emphasizing mental health as a fundamental human right in Nigeria:

- i. **Access to Services:** Individuals with mental health conditions have the right to access medical, social, and legal services.²⁸ This underscores the

²⁶Section 12(1)(a&b) of the National Mental Health Act, 2021.

²⁷Section 12(2) of the National Mental Health Act, 2021.

²⁸In pari material with Section 36(6)(c) of the 1999 CFRN

importance of providing comprehensive care and support to address their mental health needs.

- ii. **Protection from Abuse and Exploitation:** Persons with mental health conditions are entitled to protection from physical and mental abuse, exploitation, forced labor, violence, torture, cruel, inhuman, or degrading treatment or punishment, including practices like chaining. This right is fundamental in preventing the mistreatment and violation of the dignity of individuals with mental health conditions.
- iii. **Participation in Activities:** Individuals with mental health conditions have the right to engage in educational activities or vocational training, as well as leisure and recreational activities. This recognizes their capacity for personal development and social integration.
- iv. **Well-Being:** The provision affirms the right of persons with mental health conditions to take part in activities that promote their social, physical, mental, and emotional well-being. This highlights the holistic nature of mental health and the importance of addressing all aspects of an individual's well-being.
- v. **Dignified Treatment:** Persons with mental health conditions are entitled to humane and dignified treatment at all times, with respect to their personal dignity and privacy. This emphasizes the need for respectful and compassionate care that upholds their dignity.
- vi. **Freedom of Expression and Information:** Individuals with mental health conditions have the right to freedom of expression and opinion and access to information. This ensures that their voices are heard and that they have access to information relevant to their mental health.
- vii. **Care, Assistance, and Protection:** This provision acknowledges the role of family, legal representatives, caregivers, and the government in providing reasonable care, assistance, and protection to persons with mental health conditions. It underscores the collective responsibility to support and protect individuals with mental health conditions.

12.4.3 Reporting of Abuse: The final subsection reinforces the duty of any person who witnesses any form of abuse against a person with a mental health condition to report the incident immediately to the police. This provision is critical in ensuring accountability and protecting the rights of individuals with mental health conditions from any form of abuse or mistreatment.

Other rights provided for in the Act include; Employment rights, Housing, Right to mental health services, Right to quality and standard treatment, Right to appoint legal representatives, Right to participate in treatment planning, Right to privacy and dignity, Right of access to information, Right to confidentiality, Right to legal representation.²⁹

²⁹See sections 13 – 22 of the National Mental Health Act, 2021.

These rights, as provided for in the National Mental Health Act 2021, collectively reinforce the recognition of mental health as a fundamental human right in the country. They emphasize equality, non-discrimination, and respect for the dignity and autonomy of individuals with mental health conditions. By upholding these rights, Nigeria demonstrates its commitment to creating a society where mental health is an integral part of human rights, and where individuals with mental health conditions are treated with fairness, respect, and compassion, ensuring their full participation in society.

12.5 ISLAMIC LEGAL FRAMEWORK

Mental health in Islam is recognized as an integral component of an individual's psychosocial functioning, productivity and interactivity during their day to day lives, no less important than physical health. As such, mental stability is essential for ensuring optimal health and well-being, and necessary for a Muslim person to sustain his or her religious and spiritual obligations and exert primary responsibilities as a meaningful member of the wider community.³⁰ It is the duty of the Muslim individual to safeguard the mental health and a duty of the Muslim community at large to ensure that every individual enjoy an inviolable mental health care without discrimination. The protection of mental health is consequential to Islam and therefore provided for as one of the objectives of Islamic law otherwise referred to as Maqasidas-Shari'ah.

Maqasid as-Shari'ah provides a comprehensive framework for understanding the ethical and legal principles of Islam. It offers a lens through which one can examine how mental health is addressed as a fundamental human right within the context of Islamic jurisprudence. Muslim scholars categorized Maqasidas-Shari'ah into three, namely: necessities (al-Daruriyat), Complement (al-Hajiyat), and embellishments (at-Tahsiniyat). Necessities (al-Daruriyat) are the most essential and fundamental elements in life that cannot be omitted. They include religion (ad-Din), life (an-Nafs), mental (al-'Aql), progeny (an-Nasb), and wealth (al-mal). Preserving these elements is of utmost importance. Three of these objectives are interconnected with the right to mental health, they are;

12.5.1 Preservation of Life (Hifz al-Nafs):

One of the primary objectives of Shari'ah is the preservation of life (Hifz al-Nafs). This principle underscores the sanctity of human life and the imperative to protect it. The preservation of mental well-being is intrinsically linked to the preservation of life itself. Mental health disorders can have severe consequences, including self-harm or suicide, making it imperative to address mental health as a means of preserving life.

³⁰Khalil A.I, *The Islamic Perspective of Ethical and Legal Rights of Psychiatric Patients*, Journal of Islamic Studies and Culture, 2019, Vol. 7, No. 2, p. 80-96.

12.5.2 Preservation of Religion (Hifz ad-Din):

Another crucial objective of Shari'ah is the preservation of religion (Hifz ad-Din). Mental health can significantly impact an individual's ability to practice their religion and fulfill their religious obligations. Mental health conditions may disrupt one's ability to pray, fast, or engage in acts of worship. In this context, addressing mental health becomes essential to safeguard an individual's right to practice their religion without impediments.

12.5.3 Preservation of Intellect (Hifz al-Aql):

The preservation of intellect (Hifz al-Aql) is a fundamental objective of Shari'ah. Mental health is closely intertwined with cognitive functioning and the ability to make sound decisions. Mental health conditions can impair one's cognitive abilities, affecting their capacity to exercise rational judgment. Recognizing mental health as a fundamental human right aligns with the preservation of intellect, ensuring that individuals have the necessary mental capacity to make informed choices.

Muslims are forbidden to harm their mental health. Smoking cigarettes are considered one type of addiction and causes a number of health problems that may lead to mental illness, heart disease, emphysema, oral cancer, stroke, etc., and finally death as well as the risk to others, which is known as passive smoking.³¹ The Qur'an, does not specifically prohibit smoking, but gives behavioural guidance. Allah says, *...make not your own hands contribute to your destruction...;*³² *...nor kill yourselves...*³³ Prophet Muhammad said that *"Whomsoever drinks poison, thereby killing himself, will sip this poison forever and ever in the fire of Hell."*

Alcoholism is not a huge mental health problem among Muslims in comparison with Western society as Islam prohibits alcohol and substance use among Muslims. There are two main features of Islamic preventions:

- a. Islam stops the wrong doing from its roots and not at the end. There is no specific age for drinking, or safe drugs to get high. As in Western countries most of the teenage alcoholics do not buy the alcohol from the store but get it at home. Islam prohibits drinking completely (total abstinence) for all Muslim of any age and sex. It is the reason why the West finds it a difficult issue to manage the problems of drugs and alcohol, because it has made double standards.

³¹ibid

³²Qur'an 2:195

³³Qur'an 4:29

- b. Islam prevents Muslims from following the path, which may lead to drug and alcohol intake. Therefore not only promiscuous sex is prohibited, but casual mixing of sexes freely is also prohibited, obscenity and pornography is also prohibited. The drinking of alcohol, or to come in contact with alcohol or any other spirits such as making, selling, keeping them, or even growing grapes for the sole purpose of selling it to winery for making wine is prohibited. As mentioned in Quran, *"They ask you concerning wine and gambling."* Say: *"In them there is great sin, and some profit, for men, but sin is greater than the profit"*³⁴. *"O you who believe! Approach not prayers, with a mind befogged, until you can understand all that you say"*³⁵ *"O you who believe! Intoxicants and gambling, (dedication of) stones, and (divinations by) arrows, are an abomination of Satan's handiwork: Avoid such (abomination) that you may prosper"*³⁶ *"Satan's plan is to sow enmity and hatred among you with intoxicants and gambling, and to hinder you from the remembrance of Allah and from prayer. Will you not then give up"*³⁷ Prophet Mohammed said: *"Of that which intoxicates in a large amount, a small amount is haram"*³⁸ *"Khamar (intoxicants) is the mother of all evils"*³⁹

It is noteworthy to mention that Muslim communities were the trailblazers in establishing a framework for mental health care. During the early Islamic era, there was a pioneering approach to mental health and psychiatry. The Islamic world saw the establishment of the first psychiatric hospitals, marking a significant milestone in the history of mental health care.⁴⁰ These hospitals were founded in Arabic countries, including Baghdad in 705 A.D. (during the caliphate of El Waleed ibn Abdel Malek), Cairo in 800 A.D., and Damascus in 1270 A.D. Prominent figures in Arabic medicine, such as Razis (860–932 A.D.) and Avicennas (980–1037 A.D.), made substantial contributions with authoritative works like the 'Kitab al-Hawi' and the 'Al-Qanun fi al-tibb,' which were comprehensive multi-volume medical texts. They actively combated superstition and embraced the principles of Hippocratic organic psychiatry while applying psychological therapeutic methods.⁴¹ Muslim scholars have played a significant role in advancing various fields, including psychology. Their contributions have been particularly noteworthy in areas such as child development, social psychology, psychotherapy, and cognitive

³⁴Qur'an 4:43

³⁵Qur'an 2:219

³⁶Qur'an 5:93

³⁷ibid

³⁸Ahmad, Abu-Daud and AlTirmizi

³⁹Reported in Bukhari

⁴⁰Mohit A, *Mental health and psychiatry in the Middle East: historical development*, Eastern Mediterranean Health Journal, 2001, 7(3):336–347. See also, Youssef H.A, and Youssef F.A, *Evidence for the existence of schizophrenia in medieval Islamic society*, Hist Psychiatry. 1996, 7(25):55–62.

⁴¹Tzeferakos G.A, and Douzenis, A.I, *Islam, mental health and law: a general overview*. Annals of general psychiatry, 2017, 16, pp.1-6.

psychology. Among these scholars, Abu Zaid Al-Balkhi, a pioneer in cognitive psychology, stands out as he was the first to distinguish between neuroses and psychoses and introduced a treatment approach similar to Joseph Wolpe's concept of reciprocal inhibition. Another early psychologist, Abu Bakr Mohammad Ibn Zakariya Al-Razi (commonly known as Rhazes), was a strong advocate for psychotherapy and possessed expertise in addressing psychological, psychosomatic, and organic disorders.⁴² Additionally, Ibn Sina, a renowned Muslim physician, made significant contributions with his 14-volume masterpiece, "The Canon of Medicine," which remained influential in the Western world for seven centuries.⁴³

To comprehensively explore mental health as a fundamental human right under Islamic law, the following key aspects are further considered:

1. Recognition of Human Dignity:

Islamic law recognizes the inherent dignity of every individual, regardless of their mental health condition. The Qur'an emphasizes that all human beings are honored creations of Allah⁴⁴ and that human life is sacred.⁴⁵ This recognition of human dignity extends to individuals with mental health conditions, underscoring their right to be treated with respect and compassion.⁴⁶

2. Right to Health and Well-Being:

Islamic law places a strong emphasis on preserving and promoting human health and well-being. The Prophet Muhammad (PBUH) is reported to have said, *Your body has a right over you*, highlighting the importance of taking care of one's physical and mental health. Mental health is considered an integral part of overall well-being, and individuals have a right to seek treatment and support for mental health conditions.⁴⁷

⁴² Mommsen W, Introduction. In: Mommsen WJ, De Moor JA, editors. *European expansion and law: the encounter of European and Indigenous Law in 19th and 20th century Africa and Asia*. London: Bloomsbury Academic; 1992. p. 4

⁴³ Tamanaha B.Z, *Understanding legal pluralism: past to present, local to global*, Sydney Law Review. 2008;30:375–411.

⁴⁴ Qur'an 17:70

⁴⁵ Qur'an 5:32

⁴⁶ Andorno R, *Human dignity and human rights*, Handbook of global bioethics, 2014, 45(45–46).

⁴⁷ Kader H, *Human well-being, morality and the economy: an Islamic perspective*, Islamic Economic Studies, 2021, 28(2), pp.102-123.

3. Equality and Non-Discrimination:

Islamic teachings promote equality among all individuals, regardless of their physical or mental abilities. The Qur'an states that no one should ridicule or mock others,⁴⁸ emphasizing the importance of treating everyone with kindness and fairness. This principle extends to individuals with mental health conditions, ensuring that they are not discriminated against or stigmatized.

Mental health as a fundamental human right under Islamic law is firmly rooted in the recognition of human dignity, equality, compassion, and the right to health and well-being. Islamic principles emphasize the importance of treating individuals with mental health conditions with respect, providing them with access to treatment and support, and ensuring their full participation in society. These principles align with broader international human rights standards and reflect Islam's commitment to safeguarding the rights and well-being of all individuals, including those with mental health conditions.

12.6 COMMONALITY AND DISPARITY

12.6.1 Similarities:

Both Islamic law and Nigerian law emphasize the importance of recognizing the inherent dignity of every individual, including those with mental health conditions. They both prohibit discrimination based on mental health status, ensuring that individuals with mental health conditions are treated with respect and have the same fundamental rights as others. Additionally, both legal frameworks acknowledge the right of individuals, including those with mental health conditions, to seek medical treatment and therapy. They uphold the principles of privacy and confidentiality in healthcare, including mental health care, and ensure that individuals with mental health conditions are not subjected to unjust legal proceedings, protecting their legal rights. Furthermore, both Islamic law and Nigerian law encourage communities to show compassion and provide support to individuals facing mental health challenges, promoting their social inclusion and well-being.

⁴⁸Qur'an 49:11

12.6.2 Differences

One key difference lies in the cultural and religious context. Islamic law is influenced by Islamic beliefs and values, which have a unique cultural and religious context, while Nigerian law is a secular legal system that may not have the same religious or cultural underpinnings. Additionally, the sources of law differ; Islamic law is primarily derived from the Qur'an, Hadith, and scholarly interpretations, whereas Nigerian law is based on a combination of customary law, common law, and statutory law. Another distinction pertains to the mental health care framework, where Islamic law may involve elements of spiritual healing and counseling within mental health care, while Nigerian law typically follows Western medical and psychiatric models. In terms of legal structure, Islamic law does not have a centralized legal structure like a constitution and often relies on religious scholars and jurisprudence, whereas Nigerian law operates within a constitutional framework with specific statutes and regulations governing mental health. Finally, there is a variation in institutional arrangements, as Islamic law does not prescribe specific institutional arrangements for mental health care but emphasizes community and family support, while Nigerian law includes provisions for the establishment of mental health institutions and regulatory bodies to oversee mental health care services. These differences reflect the diverse approaches to addressing mental health as a fundamental human right in Islamic and Nigerian legal systems.

12.7 CONCLUSION

The exploration of mental health as a fundamental human right under Islamic law and Nigerian law has revealed significant commonalities and differences. Both legal frameworks share a commitment to upholding the inherent dignity of every individual, prohibiting discrimination, and recognizing the right to seek treatment while emphasizing privacy, legal protections, and social support for individuals with mental health conditions. These shared principles underscore the universal importance of safeguarding mental health as a fundamental human right.

However, key distinctions emerge in the cultural and religious contexts, sources of law, mental health care frameworks, legal structures, and institutional arrangements. Islamic law draws on Islamic beliefs and values, emphasizing a holistic approach to mental health that may include spiritual healing and community support. In contrast, Nigerian law operates within a secular framework, following Western medical models of mental health care and employing specific legal structures and regulatory institutions.

Despite these differences, both legal systems ultimately aspire to achieve the same fundamental goal: ensuring that individuals with mental health conditions are treated with respect, provided with appropriate care, and granted the opportunity to lead fulfilling lives. As societies evolve and awareness of mental

health issues grows, it is essential to continue the dialogue and collaboration between legal systems, recognizing the universal nature of mental health as a fundamental human right and working together to promote the well-being of all individuals, regardless of their mental health status.